United States Government

NATIONAL LABOR RELATIONS BOARD

OFFICE OF THE GENERAL COUNSEL

Washington, DC 20570

January 29, 2018

Michael E. Gans
Clerk of the Court
U.S. Court of Appeals for the Eighth Circuit
Thomas F. Eagleton Courthouse
Room 24.329
111 South 10th Street
St. Louis, MO 63102

Re: *NLRB v. Jon P. Westrum d/b/a J. Westrum Electric and JWE LLC, alter egos and a single employer*
Board Case No. 18-CA-182656

Dear Mr. Gans:

I am enclosing the original and three copies of the National Labor Relations Board's application for enforcement of its order in this case. Within forty days of the Court's docketing of this application, I will file the certified list of the contents of the agency record.

Please serve a copy of the application on the Respondents, Jon P. Westrum d/b/a J. Westrum Electric and JWE LLC, alter egos and a single employer, whose address appears on the service list. I have served a copy of the application on each party admitted to participate in the Board proceedings, and their names and addresses also appear on the service list.

I am counsel of record for the Board, and all correspondence should be addressed to me. I would appreciate your furnishing the Board's Regional Director, whose name and address also appear on the service list, with a copy of any correspondence the Court sends to counsel in this case. The Board attorneys

directly responsible for this case are Micah Jost (202) 273-0264 and Julie Broido (202) 273-2996.

Very truly yours,

Linda Dreeben
Deputy Associate General Counsel
National Labor Relations Board
1015 Half Street SE
Washington, DC 20570-0001
(202) 273-2960

Enclosure(s)

SERVICE LIST

NLRB v. Jon P. Westrum d/b/a J. Westrum Electric and JWE LLC, alter egos and a single employer

Board Case No. 18-CA-182656

Cynthia Sauter Burdzinksi & Partners, Inc. 2393 Hickory Bark Drive Dayton, OH 45458-9424	Respondents' Counsel
Jon Westrum Jon P. Westrum, d/b/a J. Westrum Electric and JWE LLC 7205 181st Avenue NW Anoka, MN 55303-3030	Respondents
Justin D. Cummins, Esq. Cummins & Cummins, LLP 1245 International Centre 920 2nd Avenue South Minneapolis, MN 55402-3318	Charging Party's Counsel
International Brotherhood of Electrical Workers, Local Union Number 292, AFL - CIO 312 Central Avenue SE, Suite 292 Minneapolis, MN 55414-1087	Charging Party
Jennifer A. Hadsall NLRB – Region 18 Regional Office Federal Office Building 212 3rd Avenue S, Suite 200 Minneapolis, MN 55401	Regional Director
Benjamin Mandelman Subregional Office 310 West Wisconsin Avenue, Suite 450W Milwaukee, WI 53203-2211	Officer-in-Charge

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	)	
	)	
Petitioner	)	No.
	)	
v.	)	Board Case No.
	)	18-CA-182656
JON P. WESTRUM d/b/a J. WESTRUM ELECTRIC AND JWE LLC, ALTER EGOS AND A SINGLE EMPLOYER	)	
	)	
Respondents	)	

CROSS-APPLICATION FOR ENFORCEMENT
OF AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Board hereby applies to the Court for enforcement of its Order issued against Jon P. Westrum d/b/a J. Westrum Electric and JWE LLC, alter egos and a single employer on December 13, 2017, in Board Case No. 18-CA-182656, reported at 365 NLRB No. 151. The Board seeks enforcement of its Order in full.

The Court has jurisdiction over this application pursuant to Section 10(e) of the National Labor Relations Act, as amended (29 U.S.C. § 160(e)). Venue is proper in this Circuit because the unfair labor practices occurred in Anoka, Minnesota.

Linda Dreeben
Deputy Associate General Counsel
National Labor Relations Board
1015 Half Street SE
Washington, DC 20570-0001
(202) 273-2960

Dated at Washington, D.C.
January 29, 2018

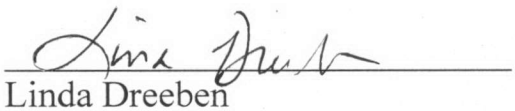
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	)	
	)	
Petitioner	)	No.
	)	
v.	)	Board Case No.
	)	18-CA-182656
JON P. WESTRUM d/b/a J. WESTRUM ELECTRIC AND JWE LLC, ALTER EGOS AND A SINGLE EMPLOYER	)	
	)	
Respondents	)	

CERTIFICATE OF SERVICE

The undersigned certifies that one copy of the Board's application for enforcement in the above case has this day been served by UPS next-day air mail upon the following counsel at the address listed below:

Cynthia Sauter
Burdzinksi & Partners, Inc.
2393 Hickory Bark Drive
Dayton, OH 45458-9424



Linda Dreeben
Deputy Associate General Counsel
National Labor Relations Board
1015 Half Street SE
Washington, DC 20570-0001

Dated at Washington, D.C.
January 29, 2018

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Jon P. Westrum d/b/a J. Westrum Electric and JWE LLC *and* International Brotherhood of Electrical Workers, Local 292. Case 18–CA–182656

December 13, 2017

DECISION AND ORDER

BY MEMBERS MCFERRAN, KAPLAN, AND EMANUEL

On May 31, 2017, Administrative Law Judge Sharon Levinson Steckler issued the attached decision. The Respondents filed exceptions with supporting argument, and the General Counsel filed an answering letter.

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

The Board has considered the decision and the record in light of the exceptions and letter and has decided to affirm the judge's rulings, findings,[1] and conclusions,[2] to amend the remedy, and to adopt the recommended Order as modified and set forth in full below.[3]

AMENDED REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Because the judge found that the Respondents and the Union had an 8(f) collective-bargaining relationship, we shall order the Respondents to recognize the Union as the limited exclusive collective-bargaining representative of their unit employees. See *Allied Mechanical Services*, 351 NLRB 79, 83 & fn. 18 (2007) (citing *Willis Roof Consulting, Inc.*, 349 NLRB No. 24, 2007 WL 324556, at *3–4 (Jan. 31, 2007) (not reported in Board volumes)).

To the extent that any employees made personal contributions to union funds that were accepted by the funds in lieu of the Respondents' delinquent contributions during the period of the delinquency, the Respondents will reimburse the employees, but the amount of such reimbursement will constitute a setoff to the amount that the Respondents otherwise owe the funds. See, e.g., *Oliva*

[1] The Respondents have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings. In addition, some of the Respondents' exceptions allege that the judge's rulings, findings, and conclusions demonstrate bias and prejudice. More specifically, the Respondents argue that the judge displayed bias against them because after the General Counsel finished presenting his case, and again at the close of the hearing, the judge encouraged the parties to discuss settling the matter. However, the NLRB Division of Judges Bench Book instructs judges to inquire about settlement at those times, and the judge stated at the beginning of the hearing that she would inquire about settlement at those times. By simply encouraging the parties to consider settlement, the judge did not display bias against any party or create the impression that she had prejudged the case. Additionally, the Respondents failed to object during the hearing to the judge's allegedly biased conduct. Therefore, the Respondents did not timely raise their bias claim. See *Canal Electric Co.*, 245 NLRB 1090, 1090 fn. 2 (1979). In any event, we have carefully examined the judge's decision and the entire record, and we are satisfied that the Respondents' contentions are without merit.

[2] There are no exceptions to the judge's findings that Respondent JWE LLC is the alter ego of Respondent J. Westrum Electric, and that JWE LLC and J. Westrum Electric are a single employer within the meaning of the Act. Further, the Respondents do not except to the judge's substantive findings that they violated Sec. 8(a)(5) and (1) by failing and refusing to recognize the Union, to apply the terms of their collective-bargaining agreements with the Union, and to furnish the Union with the information that it requested on August 12, 2016. Instead, the Respondents only argue that the Union's initial unfair labor practice charge was barred by the 10(b) statute of limitations. We agree with the judge that the Union's charge was timely. Jon Westrum testified that, during a May 5, 2015 telephone call, he informed Union Business Representative John Kripotos that he had dissolved J. Westrum Electric and was now operating a new nonunion company. We find that the judge reasonably declined to credit Westrum on this point given his overall problems with credibility, lack of detail, and testimonial inconsistencies, all of which are well documented in the decision. We note that when recounting Westrum's testimony about that telephone call, the judge incorrectly stated that Kripotos, rather than Westrum, placed the call. This error does not affect our decision. We also agree that the Union did not have constructive knowledge that the Respondents had repudiated the NECA Agreement. That Kripotos learned by talking to electricians that Jon Westrum was using nonunion labor on the Northtown Mall Hobby Lobby job outside the Union's jurisdiction hardly demonstrates that the Union had constructive knowledge that the Respondents had repudiated the contract. Nor did due diligence require Kripotos to research whether the Respondents did work in the Union's jurisdiction and verify onsite that they used union labor. As the judge noted, there were over 200 signatory contractors to the NECA Agreement, and the Union could not possibly monitor each one. Lastly, the Respondents' conduct was not so bald as to put the Union on notice that they had repudiated the NECA Agreement. See *Neosho Construction Co.*, 305 NLRB 100, 101–103 (1991) (finding that union did not have notice of employer's intent to repudiate an 8(f) agreement, despite employer performing 20 nonunion jobs in contract area over 14 years).

[3] We shall modify the judge's recommended Order in accordance with our decision in *J. Picini Flooring*, 356 NLRB 11 (2010), and to conform to the judge's conclusions of law, the amended remedy, and the Board's standard remedial language. We shall substitute a new notice to conform to the Order as modified.

In the Remedy, the judge ordered the Respondents to "mail the notice to all employees who were employed on or after January 1, 2015, but no longer are employed by [them]." However, the judge failed to require notice mailing in the Order itself. Because the Respondents have experienced a significant amount of employee turnover since January 1, 2015, we shall include the judge's notice-mailing remedy in the Order. See, e.g., *A.W. Farrell & Son, Inc.*, 361 NLRB 1487, 1487 (2014); *Sommerville Construction Co.*, 327 NLRB 514, 514 fn. 2 (1999), enfd. 206 F.3d 752 (7th Cir. 2000).

Supermarkets LLC, 363 NLRB No. 170, slip op. at 1 fn. 5 (2016).

ORDER

The National Labor Relations Board orders that the Respondents, Jon P. Westrum d/b/a J. Westrum Electric and JWE LLC, alter egos and a single employer, Anoka, Minnesota, their officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Failing and refusing to recognize the International Brotherhood of Electrical Workers Local 292 (Union) as the limited exclusive collective-bargaining representative of its unit employees during the term of the 2012–2015 collective-bargaining agreement and any successor agreement in effect between the Union and J. Westrum Electric.

(b) Refusing to apply the 2012–2015 collective-bargaining agreement and any successor agreement between the Union and J. Westrum Electric.

(c) Refusing to bargain collectively with the Union, by failing and refusing to provide the Union with requested information that is necessary and relevant to its role as the limited exclusive representative of the Respondents' unit employees.

(d) 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 purposes and policies of the Act.

(a) Recognize the Union as the limited exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All employees employed by Respondents, including Journeymen Wiremen, Apprentices, Cable Splicers, Welders, Instrument Technician I, Instrument Technician II, Foremen, General Foremen and 2nd General Foremen, in the geographic areas in Minnesota of all of Hennepin, Carver and Scott Counties, all that part of Anoka County containing the cities of Andover, Anoka, Columbia Heights, Coon Rapids, Fridley, Hilltop, Ramsey and Spring Lake Park, all of Wright County and that portion of Benton and Sherburne Counties east of State Highway 25 to Highway 10 and an imaginary line straight west to the Mississippi River; excluding office clerical employees, guards and supervisors as defined in the Act.

(b) Abide by the current collective-bargaining agreement between the National Electrical Contractors Association, Minneapolis Chapter, and the Union in effect from May 1, 2015, through April 30, 2018, and apply the terms and conditions of employment provided in the agreement to the employees in the unit described above.

(c) Make whole unit employees for any loss of earnings and other benefits resulting from the Respondents' failure to apply the 2012–2015 and 2015–2018 collective-bargaining agreements, plus interest, and pay all contractually-required fringe benefit contributions not previously paid and reimburse unit employees for any losses or expenses arising from the Respondents' failure to make the required payments plus interest in accordance with Board policy.

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

(e) Compensate the bargaining unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 18 within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar year(s) for each employee.

(f) Furnish the Union with the information it requested in its August 12, 2016 letter.

(g) Within 14 days after service by the Region, post at all of its facilities and job sites copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 18, after being signed by the Respondents' authorized representative(s), 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 Respondents customarily communicate with their 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 addition, within 14 days after service by the Region, the Respondents shall duplicate and mail, at their own expense, a copy of the

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted and Mailed by Order of the National Labor Relations Board" shall read "Posted and Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

signed notice to all former unit employees employed by the Respondents at any time since January 1, 2015. If 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 January 1, 2015.

(h) Within 21 days after service by the Region, file with the Regional Director for Region 18 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.

Dated, Washington, D.C. December 13, 2017

Lauren McFerran, Member

Marvin E. Kaplan, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED AND MAILED 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 and refuse to recognize the International Brotherhood of Electrical Workers, Local 292 (Union) as the limited exclusive collective-bargaining representative of the unit employees during the term of the 2012–2015 collective-bargaining agreement and any successor agreement in effect between the Union and J. Westrum Electric.

WE WILL NOT refuse to apply the 2012–2015 collective-bargaining agreement and any successor agreement with the Union.

WE WILL NOT refuse to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the limited exclusive collective-bargaining representative of our unit employees.

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

WE WILL recognize the Union as the limited exclusive collective-bargaining representative of our employees in the following appropriate unit:

> All employees employed by Respondents, including Journeymen Wiremen, Apprentices, Cable Splicers, Welders, Instrument Technician I, Instrument Technician II, Foremen, General Foremen and 2nd General Foremen, in the geographic areas in Minnesota of all of Hennepin, Carver and Scott Counties, all that part of Anoka County containing the cities of Andover, Anoka, Columbia Heights, Coon Rapids, Fridley, Hilltop, Ramsey and Spring Lake Park, all of Wright County and that portion of Benton and Sherburne Counties east of State Highway 25 to Highway 10 and an imaginary line straight west to the Mississippi River; excluding office clerical employees, guards and supervisors as defined in the Act.

WE WILL abide by the current collective-bargaining agreement between the National Electrical Contractors Association, Minneapolis Chapter, and the Union in effect from May 1, 2015, through April 30, 2018, and apply the terms and conditions of employment provided in the agreement to the employees in the unit described above.

WE WILL make you whole for any loss of earnings and other benefits suffered as a result of our failure to apply the 2012–2015 and 2015–2018 collective-bargaining agreements, plus interest, and WE WILL pay all contractually required fringe benefit contributions not previously paid and reimburse you for any losses or expenses arising from our failure to make the required payments plus interest in accordance with Board policy.

WE WILL compensate the bargaining unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 18 within 21 days of the date the amount of backpay is fixed, either by agreement

or Board order, a report allocating the backpay awards to the appropriate calendar year(s) for each employee.

WE WILL furnish the Union with the information it requested in its August 12, 2016 letter.

JON P. WESTRUM D/B/A WESTRUM ELECTRIC AND JWW LLC

The Board's decision can be found at www.nlrb.gov/case/18–CA–182656 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.

Florence I. Brammer, Esq., for the General Counsel.
Brian S. Carroll, Labor Relations Expert (hearing) and *Cynthia A. Sauter (on brief)*, for the Respondent.
Justin D. Cummins, Esq., for the Charging Party.

DECISION

STATEMENT OF THE CASE

SHARON LEVINSON STECKLER, ADMINISTRATIVE LAW JUDGE. This case was tried in Minneapolis, Minnesota, on March 14 and 15, 2017. Charging Party International Brotherhood of Electrical Workers, Local 292 (Local 292) filed the charge on August 23, 2016, and the General Counsel issued the complaint on December 15, 2016.[1]

The complaint alleges that Jon P. Westrum first operated his electrical contracting business as J. Westrum Electric (J. Westrum), a sole proprietorship, and, subsequently as JWE, LLC (JWE). The complaint contends that J. Westrum and JWE, having almost the same management, business purposes, operations, equipment, supervision, customers and ownership, were alter egos and a single employer, designed to evade responsibilities pursuant to the National Labor Relations Act (the Act). In June 2012, J. Westrum entered into a building and construction industry's multiemployer collective-bargaining agreement with Local 292 and never notified Local 292 of any intent not to be bound by the contract. The evidence reflects that J. Westrum became JWE in 2015; neither of the electrical contracting entities nor Jon P. Westrum himself notified the IBEW of that change. When Local 292 discovered Jon P. Westrum utilizing electricians on a job within its jurisdiction, it filed a grievance to obtain proper recognition, back dues and benefit payments. A labor-management committee, following procedures in the collective-bargaining agreement, made a final and binding determination that J. Westrum Electric was in violation of its contractual obligations; it ordered J. Westrum to pay its employees and Local 292 monetary and fringe benefit remedies. Based upon the arbitration award, Local 292 requested information and allegedly never received the information. The complaint contends that Respondent has violated Section 8(a)(5) and (1) of the Act by failing to recognize Local 292 and failing to provide information. Respondent pled a number of affirmative defenses, including that the charge was not timely per Section 10(b) of the Act. Ultimately, I find that J. Westrum and JWE are alter egos and these business entities have violated the Act as alleged.

The parties filed timely briefs, which I have duly considered. I therefore make the following

FINDINGS OF FACT[2]

I. JURISDICTION

Both J. Westrum Electric and JWE are electrical contracting companies with their offices located at the same address in Anoka, Minnesota. In conducting the business operations for each entity, Respondent has purchased and received at its place of business goods and services valued in excess of $50,000 from sources located outside the State of Minnesota for each of the described entities.[3] At all material times, J. Westrum Electric was an employer within the meaning of Section 2(2), (6), and (7) of the Act. Similarly, at all material times, JWE was an employer within the meaning of Section 2(2), (6), and (7) of the Act.

I also find that Local 292 is a labor organization within the meaning of Section 2(5) of the Act.

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[1] All dates occur in 2016 unless otherwise stated.

[2] Although I have included citations to the record to highlight particular testimony or exhibits, my findings and conclusions are not based solely on those specific record citations, but rather upon my review and consideration of the entire record for this case. My findings of fact encompass the credible testimony, evidence presented, and logical inferences. The credibility analysis may rely upon a variety of factors, including, but not limited to, the context of the witness testimony, the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences that may be drawn from the record as a whole. *Double D Construction Group*, 339 NLRB 303, 303–305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996)), enfd. 56 Fed.Appx. 516 (D.C. Cir. 2003). Credibility findings regarding any witness are not likely to be an all-or-nothing determination and I may believe that a witness testified credibly regarding one fact but not on another. *Daikichi Sushi*, 335 NLRB at 622.

When a witness may reasonably be assumed to be favorably disposed to the party, an adverse inference may be drawn regarding any factual question on which the witness is likely to have knowledge. *International Automated Machines*, 285 NLRB 1122, 1123 (1987), enfd. 861 F.2d (6th Cir. 1988). This is particularly true where the witness is the Respondent's agent. *Roosevelt Memorial Medical Center*, 348 NLRB 1016, 1022 (2006). Testimony from current employees tend to be particularly reliable because it goes against their pecuniary interests when testifying against their employer. *Gold Standard Enterprises*, 234 NLRB 618, 619 (1978); *Georgia Rug Mill*, 131 NLRB 1304 fn. 2 (1961); *Gateway Transportation Co.*, 193 NLRB 47, 48 (1971); *Federal Stainless Sink Division*, 197 NLRB 489, 491 (1972).

[3] At hearing, Respondent stipulated to the commerce language.

II. BACKGROUND

The National Electrical Contractors Association (NECA) in Minneapolis maintains a multiemployer collective-bargaining agreement with Local 292 (NECA agreement). The latest NECA agreement is effective from May 1, 2015, through April 30, 2018. (GC Exh. 4.) It includes a prehire agreement, which requires a signatory contractor to obtain employees through the IBEW hiring hall. A contractor relying on the NECA agreement for employees submits firing benefit funds. Some contractors may not perform work at all. The NECA Agreement also permits a contractor to change its name, but the obligations arising as a signatory to a Letter of Assent continue to bind the newly named employer.

David Manderson (Manderson) is the executive director for NECA's Minneapolis chapter. Manderson performs labor relations duties and negotiating collective-bargaining agreements for electrical contractors.

Both JWE and J. Westrum perform commercial and residential electrical work. (GC Exh. 39.) Respondent J. Westrum's owner, Jon Westrum, has worked as an electrician since age 15. He became a union electrician about 2001. He is a master electrician. A master electrician license is necessary for contracting electrical work. He testified he currently works for JWE and said JWE is actually nephew Alex Westrum's company. (Tr. 34.)

After finishing a degree at University of Phoenix, Alex Westrum allegedly is an electrical apprentice for his uncle, and working with other journeymen hired by JWE. Although he labeled himself as an independent contractor for J. Westrum, Alex Westrum worked as the accountant/bookkeeper, beginning in April 2013, and continued doing so for JWE. Before JWE, he drew up the papers to change from the business form from J. Westrum to JWE. His role at JWE, however, has several versions. As the apprentice, he helped on remodeling projects. His JWE titles shift, depending on the document. At times he is listed as the accountant/member, sometimes as principal, and another as "VPO," which may stand for vice president of operations.

Local 292 is a chapter of the International Brotherhood of Electrical Workers (IBEW). Peter Lindahl (Lindahl) is the current business manager for Local 292 and until 2014, was a business representative. Lindahl recently was appointed to the State Board of Electricity, with a term to begin in April 2017. The business manager until 2014 was Rodger Kretman.

John Kripotos is a business representative for Local 292. He serves as a field representative in the northern metropolitan area and makes jobsite visits when possible. For jobsite visits, Kripotos looks for construction projects, arrives unannounced and, after checking with the general foreman or superintendent, sees who is performing electrical work. Sometimes he is not allowed access and he may not discover electrical work when a project is small or of short duration.

III. J. WESTRUM ELECTRIC OPENS FOR BUSINESS AND, IN 2012, SIGNS A LETTER OF ASSENT WITH LOCAL 292

The Minnesota Secretary of State records reflect that the name J. Westrum was registered on January 30, 2008. (GC Exh. 5.) Between 2008 and 2012, Jon Westrum filed additional records with the State of Minnesota that he owned J. Westrum.[4] Before that time, he was a master electrician but said he obtained little work through the IBEW hiring hall.

Jon Westrum claimed Local 292 permitted union electricians to perform side work, which to him meant working without permission of the Union.[5] He obtained his insurance and bonding and, as side work, contracted with a building owner to wire a space for Goodwill in 2012. While working on the project, Kripotos, as a business representative, made a site visit and found Jon Westrum performing nonunion "side" work. Kripotos told Jon Westrum that he could be facing some fines, penalties and/or other internal union punishment for performing nonunion work. Kripotos told Jon Westrum that he could become a signatory to the NECA Agreement by signing a Letter of Assent. A Letter of Assent binds the signatory to the NECA Agreement, which was negotiated between the IBEW and NECA.[6]

On June 1, 2012, Jon Westrum, as J. Westrum, signed a Letter of Assent with Local 292 at the union hall. By signing the Letter of Assent, Jon Westrum agreed, on behalf of J. Westrum, to be bound to NECA Agreement. The terms of the Letter of Assent spell out that it remains in effect until terminated by the undersigned employer (here, J. Westrum Electric) by giving written notice to the Minneapolis NECA Chapter and Local 292 at least 150 days before the current anniversary date of the approved agreement.

The International IBEW office approved the agreement on July 18, 2012. (GC Exh. 40.) On September 2, 2012, Jon Westrum signed an authorization for representation and a dues-checkoff authorization with Local 292. The dues-authorization checkoff was renewable for 1-year periods and spelled out the requirements for revocation. (GC Exh. 41.) Local 292 also referred him through the hiring hall for work at J. Westrum. (GC Exh. 41.)

When Jon Westrum signed the Letter of Assent, Business Manager Kretman and Business Representative Kripotos were present. Kripotos testified he was sitting in a chair and Kretman was sitting behind his desk. John Westrum claimed the two were standing and told him that he could owe several thousand dollars in fines. Jon Westrum maintained that the union officials told him that he could dissolve his company and go back to being just an electrician or a nonunion contractor. Kretman stated that, during the meeting, normally the union representatives followed a checklist about the Letter of Assent. However, Kretman denied stated anything about dissolving or dissolution of a company. Kripotos testified he primarily observed the proceedings, but recalled Jon Westrum asked about receiving a copy of the Letter of Assent and hiring hall proce-

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[4] J Westrum, according to Jon Westrum, was formed about June 2012.

[5] Jon Westrum repeatedly testified that "the union" permitted side work. However, nothing in the NECA Agreement gives such permission and in fact expressly disallows side work. When pressed, he admitted that he heard talk among electricians, and never anything from any Local 292 official. (Tr. 270–271.)

[6] The Letter of Assent signed was a "Letter of Assent—A," which applied to "inside" electricians—those who work within buildings, as opposed to "outside" electricians, who work outside of the building.

dures. Once Jon Westrum signed the Letter of Assent, the Local 292 officials said the fines were waived.

Jon Westrum maintained that he was coerced into signing the Letter of Assent. He did not read it when he signed it. When he received the approved Letter of Assent in the mail, he again did not bother to read it and threw it into a file cabinet in his home. In 2013, when Alex came to work for the company, he maintained he never looked in the J. Westrum files to see what was there, and claimed he had no idea about the Letter of Assent.

IV. JON WESTRUM AND ALEX WESTRUM CHANGE THE BUSINESS FROM J. WESTRUM TO JWE

Jon Westrum annually filed his required bond with the state to operate as an electrical contract, the last of which was filed as J. Westrum on March 1, 2014. Workers' compensation documentation in 2012, filed by Jon Westrum for J. Westrum, stated he employed no one. Jon Westrum d/b/a J. Westrum maintained its electrical contractor bond through March 1, 2016, which the Minnesota Department of Labor and Industry approved on March 28, 2014. (GC Exh. 13.) On December 10, 2014, Jon Westrum requested a tax identification number for J. Westrum. (GC Exh. 15.)

By that time, nephew Alex Westrum was handling J. Westrum's bookkeeping, but Jon Westrum considered Alex self-employed too.[7] Jon Westrum initially testified that Alex Westrum formed JWE to grow the business for Alex. However, upon further questioning Jon Westrum admitted he told Manderson he changed to JWE because he could not grow as a union business.

On July 13, 2014, Jon Westrum as J. Westrum contracted with a company to perform electrical contracting work. (GC. Exh. 16.) However, he filed income tax only for himself with a profit/loss statement on J. Westrum for the year 2014. (GC Exh. 17.) However, J. Westrum requested a voluntary termination of its electrical contractor license effective June 17, 2014. (GC Exh. 18.)

Jon Westrum testified that, about February 2015, J. Westrum was dissolved so that JWE could be formed.[8] In contrast, JWE filed for LLC status with Minnesota on November 24, 2014. Jon Westrum's home address was listed the executive office address and Alex Westrum, who filed the papers, identified himself as the "manager." (GC Exh. 22.) The Minnesota Secretary of State issued a Certificate of Organization to JWE LLC, dated November 24, 2014, approximately 2 to 3 months before Jon Westrum identified the change. (GC Exh. 23.) The JWE disclosure of business partners to the state, dated November 25, 2014, identified Jon Westrum as the owner and Alex Westrum as "accountant/member."[9] This document again reflected the company's office as Jon Westrum's home address, email address, and telephone numbers, the same used for J. Westrum. (GC Exh. 25.)

When shifting from J. Westrum to JWE, Jon Westrum continued to serve as the master electrician of record, with the same master electrician number he held as licensed in Minnesota. (GC Exh. 32.) It again listed the same address and email as J. Westrum. (GC Exh. 26.) When applying for his electrical contractor license as JWE, again the same address, email and phone number for JWE were used. This time, Jon Westrum was listed as "owner" and Alex Westrum as "Accountant/member." (GC Exh. 30.) Filing the bond paperwork with the State of Minnesota on December 22, 2014, Alex Westrum listed himself as the principal but had no signature from Jon Westrum. (GC Exhs. 31, 34.) When filing workers' compensation compliance with the State of Minnesota, Alex Westrum, listing himself again as "Accountant/member," included the same master electrical contractor license number and home address as J. Westrum. (GC Exh. 32.)

Jon and Alex Westrum have business cards for JWE. Jon Westrum's title is estimator and lists his home telephone number and address for the business. Alex's card calls him the office manager, but lists his own home address as the business address.

The telephone number was listed upon Jon Westrum's personal truck, which he previous used while working as J. Westrum. When he switched to JWE, he still used the same truck, with JWE and his contractor license number on the truck.[10] JWE's application for bond, dated December 1, 2014, also listed Alex Westrum as "Partner/Accountant" and Jon Westrum as "Owner/President," again with the same address, phone number and email address as J. Westrum. It also listed gross sales and net income for the previous 2 years. The reason for the change only listed as the J. Westrum, but no other reason. (GC Exh. 27.) When applying for the bond for JWE, he stated that the company had been in business for 5 years; on the date in 2014 of the application, only J. Westrum had been in existence for 5 years, not JWE, which began operation in January 2015. In fact, both Jon and Alex Westrum signed the form, which included the section for the reasons for the change as "Jon Westrum d/b/a J. Westrum Electrical" with J. Westrum's surety number. (Tr. 383–384; GC Exh. 27.)

Alex Westrum apparently filed for a tax identification number, listing JWE LLC as an individual/sole proprietor or single-member LLC. (GC Exh. 35.) JWE received a tax identification number on January 31, 2015. (GC Exh. 24.) When filing JWE's taxes for 2015, the profit/loss Schedule C (line 30) deducted expenses for the business use of the home, which was listed as Jon Westrum's home address. As with the JWE's initial application for the tax identification number, JWE filed as the principal business of electrician and a sole proprietorship. Cost of labor and materials and supplies each exceeded $280,000. For 100 percent use in the business, it listed three trucks from model years 2002, 2013, and 2014.[11]

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[7] Jon Westrum denied that Alex Westrum was the accountant for J. Westrum or JWE. (Tr. 59.)

[8] Minnesota Secretary of State's internet webpage, dated March 1, 2017, reflects that J. Westrum remains "active/in good standing" with a renewal date of January 30, 2018. (GC Exh. 7.)

[9] When asked whether he was a truly a member, Alex Westrum repeatedly testified that his status as a member was for tax purposes only.

[10] Jon Westrum denied that anyone else except Alex used the truck and initially testified the truck belonged to Alex Westrum.

[11] Jon Westrum testified that these trucks were actually his "personal" trucks, which he owned for a significant length of time. The 2002 truck, he stated, was parked about 11 months of the year, but when he

However, the Minnesota Secretary of State's internet webpage, dated March 1, 2017, reflect that J. Westrum remains "active/in good standing" with a renewal date of January 30, 2018. The address remains Jon Westrum's home address. (GC Exh. 6.) A YouTube marketing testimonial, dated March 16, 2016, reflected that the company was called J. Westrum, had 10 employees, and had performed work within the Minneapolis-St. Paul, Minnesota area, St. Cloud and in Wisconsin. (GC Exh. 20.)[12] When Alex Westrum renewed the LLC in 2015, the principal executive office address remained Jon Westrum's home address. (GC Exh. 37.)

According to the state website, J. Westrum obtained state electrical work permits to perform electrical work through November 12, 2015. Eight of the permits for J. Westrum were within Local 292's jurisdiction and of those, five were for Jon Westrum himself. JWE obtained permits as early as April 29, 2015 through January 2017. Of the seven JWE projects within Local 292's jurisdiction, only two were for Jon Westrum himself. (GC Exhs. 43, 44.)

Although electricians normally have their own hand tools and cordless drills, some equipment was used at both J. Westrum and JWE. These tools included a lift, some ladders, and a gang box. The gang box, which is used to store tools for the electricians, is moved around to contract locations and still has a "J. Westrum sticker" on it. J. Westrum also had a lift, which JWE also had. The same trucks were used at both entities. Respondent presented no bills of sale or documents showing transfer from J. Westrum to JWE for these items.

The only person preparing bids for either entity was Jon Westrum as Alex had no experience in the area. Jon Westrum, when not preparing bids, also performed electrical work for both entities. Alex only "prettied up" the bids. If a potential customer asked if the company was unionized, the representation was made that this electrical subcontractor was nonunion. (Tr. 407.) Alex Westrum, who hired all employees for both entities, determined their wages and prepared the payroll.

Alex Westrum prepared a comparison of who worked for J. Westrum versus JWE. (GC Exh. 39.) All persons who worked for J. Westrum, with the exception of owner Jon Westrum, were listed as independent contractors.[13] Alex decided that everyone was an independent contractor after consulting with two people: an accountant and a general contractor, neither of whom was familiar with the electrical trade. (Tr. 369–370.)

The J. Westrum list included Alex Westrum, who started in April 2013. The list did not reflect that Alex was performing some work as an apprentice. None were considered supervisors, according to Alex's preparation. Nothing in the list identified who was a journeyman or apprentice for J. Westrum. Lee Hegna, Joe Rudolph, and Rod Schmidt began working for J. Westrum in July 2014. Joe Mahowad and James Roberts began working for J. Westrum in March 2014.[14] Lastly, Chris Toonen joined J. Westrum in September 2014. All worked through January 2015. Jon Westrum and Alex Westrum were listed as supervisors. Jon Westrum received a member draw and the remainder were paid hourly without benefits. (GC Exh. 39.)

All those listed with J. Westrum at the close of J. Westrum's business in December 2014 began employment with JWE in January 2015. Jon and Alex Westrum are both listed as supervisors. This time, Alex Westrum classified himself as the office manager and "VPO"—vice president of operations. Jon Westrum's position was "senior estimator." JWE called them employees and paid them hourly, except for Jon Westrum, who received a member draw. Instead of listing the workers as independent contractors, each of the remaining workers was given the title of apprentice or journeyman/foreman. Lee Hegna, Joe Mahowald, James Roberts and Chris Toonen were listed as apprentices. Hegna and Rudolph left employment in January 2016 and April 2015, respectively. John Hoffman began employment at JWE as an apprentice in June 2015 and continues to work there. Jon Westrum's son also worked as an apprentice for the summer of 2015. The top rate of pay for an apprentice was $20 per hour and the lowest $15 per hour, the same as J. Westrum.

Joe Rudolph and Ron Schmidt began in January 2015 as journeymen/foremen. Rudolph left employment with JWE in April 2015. The rate of pay at J. Westrum for journeymen was $30, which also was Rudolph's pay at JWE. Cody Swartzendruber began employment as a journeyman/supervisor in April 2015. Swartzendruber and Schmidt made $31 per hour. (GC Exh. 39.) At JWE, medical and dental benefits were offered, which were not offered at J. Westrum because, as Alex Westrum stated many times, the persons working for J. Westrum were independent contractors and not employees. (GC Exh. 39.)

Both J. Westrum and JWE performed commercial and residential electrical contracting work, which includes buildouts and maintenance work. Alex Westrum prepared a list of electrical projects for both entities but the list was incomplete. Under examination, Alex Westrum admitted he omitted maintenance contracts from the list because there were "too many." (GC Exh. 39.)[15]

In early May 2015, Local 292 Business Manager Kripotos made a jobsite visit to the Northtown Mall Hobby Lobby and

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started leaving that truck was not clear from his testimony. He then testified that only one truck, a 2016 model, was his personal truck, after he traded in his 2014 model truck. JWE made the payments, including licensure and maintenance, on all trucks.

[12] Both Jon and Alex Westrum testified that the marketing company erred by calling the contractor "J Westrum" and went to great lengths to show that they told the marketing company the contractor name was "JWE." However, the change did not take place until June 2016, after Jon and Alex saw the video at the NECA-IBEW Labor-Management Committee panel. (Tr. 373–376.)

[13] Jon Westrum testified contradictorily that these people were independent contractors and worked for Alex because he was "trying them out."

[14] The document lists the dates as "March 2015-January 2015," apparently a typographical error as any other interpretation exceeds the dimensions of the space-time continuum.

[15] On cross-examination, Alex Westrum testified that JWE entered into over 20 subcontracts but failed to include maintenance work. He further testified that the maintenance jobs were "way too many to count," "over a hundred." (Tr. 363, 406.) This testimony demonstrates some significant omissions from GC Exh. 39.

spoke with the superintendent, who told him JWE was performing electrical work on the site. Kripotos asked whether he could speak with the employees, which the superintendent permitted. Afterwards, he continued his driving around. When he returned to the office to complete his reports, he recalled seeing at the Hobby Lobby site a gang box, a lockable box that holds materials and tools, with a "J. Westrum" sticker. A few days later, he checked Local 292's data base that contains all employees and contractors. As a result, on May 5, 2015, he made a telephone call to Jon Westrum and left a voice mail message stating that he had non-union employees on the job. (R. Exh. 1.) Kripotos has no recollection of any return call from Jon Westrum. Upon further checking, Kripotos discovered that the Northtown Mall was within Local 110's jurisdiction, for the St. Paul, Minnesota area. He left a voice mail message for Brad Malm, a Local 110 business representative but did not follow up on the call.

According to Jon Westrum, Kripotos called him for a 12-minute conversation. (R. Exh. 3.) Jon Westrum initially was short on details, but was adamant that when Kripotos told him he had nonunion workers on the site, he told Kripotos that he started a new company, JWE, which was nonunion. Jon Westrum claimed they talked about dissolving the company, as was discussed when he signed the Letter of Assent. Jon Westrum stated he never told Alex Westrum about his conversation with Kripotos. Kripotos had no recollection of the contents of the conversation.

V. LOCAL 292 DISCOVERS JWE OPERATING WITHIN ITS JURISDICTION AND JON WESTRUM DENIES ANY OBLIGATION TO THE LETTER OF ASSENT

Local 292's St. Cloud, Minnesota business representative, Steven Ludwig (Ludwig) reports directly to Business Manager Peter Lindahl. He attends Local 292's business meetings on the first Thursday of each month and reports what he has been doing for the previous month. The business meeting is attended by the business manager, business representatives, local president, and membership.

On the first Thursday of March 2016, March 3, Ludwig reported at the meeting that he was on a jobsite where the employees of JWE, Jon Westrum Electric, wanted to organize with Local 292. Business Manager Lindahl said that Jon Westrum Electric was already a union company. Ludwig said that could not be because the employees wanted "to become union." Lindahl insisted that it was a union company, with which Ludwig disagreed again. Lindahl again said that it was union and they left the topic until after the meeting.

After the meeting, Lindahl and Ludwig met. Ludwig began to look into the matter and made a search for "Westrum" on the Minnesota Department of Labor website: The search revealed two entities, J. Westrum Electric and JWE. He then asked Joan Hoppe, Local 292's office manager, to search for a Letter of Assent for J. Westrum Electric. Hoppe emailed him a copy of J. Westrum's Letter of Assent. Before these events, Ludwig had never heard of either J. Westrum or JWE.

On about March 4, Lindahl also requested that another business representative check permits for JWE. That search returned a number of permits within Local 292's jurisdiction for both JWE and J. Westrum. Within a few days of receiving the information about the search Lindahl telephoned Jon Westrum and confronted him about operating a shop with nonunion workers, which was a violation of his Letter of Assent. Jon Westrum told him that, when he signed the Letter of Assent, Kretman told him if he did not want to be a union contractor he could change his name and just operate as a nonunion contractor. Lindahl did not cite the 150-day notice provision to Jon Westrum but told him, "Jon, you signed the contract. You've got to fulfill your obligation under the contract. And you are a union contractor. And these employees, you've hired them in violation of the contract." Jon Westrum again claimed he said he could just get out of the union by changing his name and closing up shop, like Kretman said. Lindahl did not believe that anyone in the union would make such a statement and then told him that Local 292 would file a grievance. Jon Westrum told him to do what he had to do. (Tr. 217–218.)

VI. LOCAL 292 FILES A GRIEVANCE, WHICH PROCEEDS TO A FINAL AND BINDING DECISION FROM THE NECA-IBEW LABOR-MANAGEMENT COMMITTEE

On March 11, Local 292 Business Manager Lindahl sent, by certified mail, a grievance addressed to J. Westrum at the same address of its operation. NECA Executive Director Manderson was copied on the grievance. The grievance claimed J. Westrum, also known as JWE, violated the collective-bargaining agreement by performing electrical work without using bargaining unit employees. The grievance alleged that use of non-bargaining unit employees resulted in violations of four collective-bargaining agreement provisions: Union security; hiring procedures; the union as the exclusive source of employees; and, wages and fringe benefits. The NECA Agreement provides a grievance procedure that culminates in a final and binding decision made by the Labor-Management Cooperative Committee (labor-management committee). NECA and the IBEW each send four persons to hear a grievance.[16] The parties then debate whether the evidence was valid and issue a final and binding decision.

Because Jon Westrum signed the Letter of Assent, NECA represented J. Westrum at the grievance proceedings. Before the arbitration, Manderson met with Jon Westrum to discuss the grievance, the process and discuss NECA's representation at the labor-management meeting. Jon Westrum and Alex Westrum were present at the labor-management meeting. During the meeting, held on June 13, Manderson made statements to defend J. Westrum as the contractor. Jon Westrum testified at the meeting that he closed J. Westrum on February 1, 2015 and shortly thereafter opened JWE because he wanted to be able to compete better and could not do so while paying union wages.[17] JWE was located at the same address as J. Westrum--Jon Westrum's personal address. Manderson also learned that the entities had the same tools and equipment. During the la-

[16] In this case, some persons were absent but the same number of votes applied for each side.

[17] Alex Westrum never spoke with Manderson. Jon Westrum also testified that he was performing maintenance for a furniture store and did not try to find work. He also was buying houses, which he remodeled and sold.

bor-management meeting, Jon Westrum hesitantly admitted that he changed the name "because I couldn't grow as a union contractor." He made no mention of Alex Westrum as a reason for the change in the entity. (Tr. 237.) Alex Westrum also testified at that hearing that JWE was his company. (Tr. 380.)

On the same day as the meeting, June 13, the labor-management committee issued its decision regarding the hearing. It sent its decision to Jon Westrum, as Jon P. Westrum d/b/a J. Westrum Electric and JWE LLC, by certified mail and email. The committee found against Jon Westrum and both entities. (GC Exh. 3.) Among its findings of fact were that the business entities had:

- the same owner, manager and legally required master electrician;
- the same business address, which was Jon Westrum's home address, and the same email address;
- the same business telephone number;
- substantially the same corporate filings;
- substantially the same equipment, vehicles and tools; and,
- substantially the same employees performing the same work.[18]

In addition, the entities had not paid wages set forth in the NECA Agreement, conveyed union dues or contributed to the fringe benefit funds. The "unanimous" determination found the entities violated the NECA Agreement and must cease and desist from doing so. It further ordered a make whole remedy, which included wages and fringe benefit contributions on behalf of all employees. The decision also required the entities to provide to Local 292, within 10 days of the decision, all time and pay records from May 1, 2015, to present.

Neither J. Westrum nor JWE complied with the labor-management committee's decision, including providing information to Local 292 by May 23, 2016.

VII. LOCAL 292 MAKES AN INFORMATION REQUEST

Business Manager Lindahl testified without contradiction that, after the final and binding decision, Local 292 attempted to work with the entities' attorney(s) to obtain the information required by the decision. Lindahl received nothing.

On August 12, approximately 2 months after the labor-management committee rendered its decision, Local 292 Business Manager Lindahl sent, by certified mail, email and regular mail, to Jon Westrum d/b/a J. Westrum Electric and JWE LLC an information request for four groups of information:

> (1) A list of every person employed by Jon P Westrum, d/b/a J. Westrum Electric and/or JWE LLC at any time from May 1, 2015, to the present and, for each such person, identification of his or her job classification;
>
> (2) All time records from May 1, 2015 to the present for Jon P Westrum d/b/a J. Westrum Electric and/or JWE LLC, including without limitation all time cards and contemporaneously prepared work hour reports for each employee;
>
> (3) All pay records from May 1, 2015, to the present for Jon P Westrum, d/b/a J. Westrum Electric and/or JWE LLC, including without limitation all payroll and wage reports for each employee;
>
> (4) All benefit records from May 1, 2015 to the present for Jon P. Westrum d/b/a J. Westrum Electric and/or JWE LLC, including without limitation all fringe benefit contribution receipts and benefits reports for each employee.

The information request demanded compliance with the information request as make-whole relief pursuant to the arbitration award and the grievance for contract repudiation. (GC Exh. 42.) Notably, the May 1, 2015 date coincides with the beginning of the term for the latest NECA Agreement.

Jon Westrum testified that some of the information was provided but he did not know what specifically was given to Local 292. He testified Alex and legal counsel knew what was provided. (Tr. 125–126.) Respondent presented no evidence to support Jon Westrum's claim that some information was provided to Local 292. Lindahl testified that Local 292 has yet to receive any of the requested information.

VIII. ANALYSIS

In this portion of the decision, I first provide a detailed discussion regarding credibility. I next discuss the alter ego status of the two business entities, the alleged repudiation and the information request. Lastly, I deal with Respondent's affirmative defenses, including its claim that Section 10(b) requires dismissal of the complaint.

A. Credibility

I credit little of the testimonies of Jon Westrum and Alex Westrum. Each had internal conflicts within the testimony, frequently disproven by documentation or further questioning by General Counsel or Local 292. They also were externally inconsistent with the testimonies of each other and other witnesses.

For example, Jon Westrum initially testified that J. Westrum began operations in 2012, yet the documentation he provided to General Counsel pursuant to subpoenas showed he applied for the name in 2008 and maintained state-required licensing as early as 2010. When asked about the list of personnel prepared by Alex, Jon Westrum first testified that the J. Westrum "independent contractors" were Alex's employees and Alex was trying them out at J. Westrum to see if they would work at JWE. (Tr. 138–139; GC Exh. 39.) Jon Westrum also shifted his defenses about why JWE was formed. He first told Manderson that he could not grow as a union company and later insisted the new company was for Alex's benefit.

Jon Westrum also presented conflicting testimony about the ownership of the trucks used for both J. Westrum and JWE. He claimed they were his personal trucks, then shifted to only the new 2016 truck was now his personal truck. As a result, I find that the same trucks were used at J. Westrum and JWE.

Jon Westrum also testified that because the union hall did

[18] The Labor-Management Committee's findings and determinations provide historical context in this matter and are not relied upon as ultimate findings of fact for this proceeding.

not place him, he spent a good deal of time collecting unemployment before he obtained the job at Goodwill in January 2012. (Tr. 266.) Whether he collected unemployment while performing work is at issue. He stated that, when meeting with Kretman and Kripotos about the Letter of Assent, they told him he could receive fines in the range of several thousand dollars. He testified he felt intimidated "because I'm running out of or I had ran out of unemployment and there was a long distance to be able to get back off of the bench." Although he later denied that he was receiving unemployment while working, he actually delayed in answering that question. I attribute this delay to finding a moment to think of an answer that would not have been an admission he was receiving unemployment payments while working, the proverbial Freudian slip. It is further conflicted by the original statement that he was running out of or had ran out of unemployment. (Tr. 272.)

Jon Westrum also testified about a May 2015 12-minute conversation in which he told Kripotos he switched to JWE and was told he could do so when he signed the Letter of Assent. Kripotos could not recall whether Jon Westrum returned his call. I am persuaded that in May Jon Westrum did not make these representations to Kripotos based upon Westrum's problems with credibility and lack of detail. In contrast, Jon Westrum did not testify to the March 2016 conversation with Business Manager Lindahl, in which the record was clear that Jon Westrum told Lindahl that he could just change his company and be nonunion, which was the same content Jon Westrum claimed he told Kripotos. I credit that Lindahl's version, that Jon Westrum had a conversation in 2016 with Lindahl about the topic after Lindahl discovered JWE's employees wanted to organize and find that the only time Jon Westrum told Local 292 that he was no longer a union employer took place in March 2016.

This story also flies in the face of Jon Westrum's failure to read the Letter of Assent, which spelled out his contractual obligations should he wish to withdraw. Respondent's position is that Local 292 never gave Jon Westrum a copy of the NECA agreement. However, nothing reflects that Westrum asked for a copy either. He received notices of parties from Local 292, which he admitted, but denied he received any other notifications. However, on cross-examination, he admitted that he received a party invitation, which also included instructions on how to check his benefits. He did not want to check his benefits and never did so. (Tr. 300.) Denial of receipt of any other substantive documents from Local 292, which was clearly false, combined with his failure to read the documents, leads me to believe that Jon Westrum had little intention of abiding by his contractual obligations under the NECA Agreement and the Letter of Assent.

Jon Westrum also contended Local 292 forced him to sign the Letter of Assent and to become a contractor. The evidence, however, shows he was already working as an electrical contractor before Local 292 caught him performing nonunion work in 2012. He also contradicted himself in that he said the union permitted side work: The NECA Agreement does not permit such work. Upon further examination, it turned out no union official ever told him side work was permitted, but he only heard gossip among electricians. Even then, other electricians side work discussed was of the nature of perhaps wiring a basement, not an entire store; Jon Westrum could see no distinction between the two.

Although both Alex and Jon Westrum attended the entire hearing, they also contradicted each other. Jon Westrum contended that he never asked for electricians from the union hall because he never had any work for them to do; he was only performing maintenance work. (Tr. 156.) In many cases, Jon Westrum would testify something happened, and when asked for further details, he would testify that he left those details to Alex because he only had a head for electrical work but not the business details. However, I credit their admissions against interest. These admissions include Jon Westrum's admission that he never read the Letter of Assent and that the transition from J. Westrum to JWE was seamless, and Alex Westrum's admission that he never looked in the files to determine what, if any, were J. Westrum's obligations before he formed JWE.

In response to the subpoena duces tecum, Alex Westrum compiled the information contained in General Connsel's Exhibit 39: When pressed with further examination, he admitted the document was missing significant information that he did not bother to include. The summaries failed to report all jobs both entities performed. Alex Westrum did not offer any reasonable explanation for why did not include all the jobs on his list except that it likely exceeded 100 maintenance jobs. I therefore must find that J. Westrum and JWE were engaged in more business than what was listed on the exhibit. I further assess that failure to include these customers likely hid the identities of customers who might be repeat customers.

Both Alex and Jon Westrum testified about the marketing company that allegedly erred in calling JWE by the former name, J. Westrum. Alex testified that he attempted to correct the matter twice, in the spring or summer of 2015. The video was not recorded, however, until November 2015. As Alex testified that he and Jon Westrum did not hear again about the error on the video until the labor-management committee proceedings in June 2016, the testimonies raise strong doubts about the recording and efforts to change. First, JWE allegedly was in existence at the time they were contacted for a testimonial about the marketing company. Second, the timeline does not match about requesting the marketing company make corrections for the testimonial. (Tr. 377.) Further, if the marketing company made mistakes twice in the testimonial and the transcript, one would reasonably believe that either Jon or Alex would check before June 2016 to ensure the requested changes were made.

Another credibility issue relates to JWE's corporate form and tax status. Alex Westrum insisted that he could report the JWE taxes to the Internal Revenue Service as a single member/owner and that representation is only "for tax purposes." He otherwise insisted that he and his uncle are both members of the limited liability corporation known as JWE. This presentation is inconsistent with his representations to the State of Minnesota and this administrative proceeding.

Respondent attempted to put words into Business Mgr. Lindahl's mouth—that he knew or should have known about the change and Lindahl's testimony remained consistent throughout cross-examination. Lindahl also demonstrated expertise

regarding obligations of electrical contractors as a recent appointee to a State of Minnesota board. I therefore credit Lindahl's testimony in toto.

A. Alleged Alter Ego and Single Employer Relationship for J. Westrum and JWE

1. Applicable law

The determination of whether J. Westrum and JWE are alter egos drives the remainder of the issues in this case. In successorship situations, an employer might not be bound by a collective-bargaining agreement, but not so with an alter ego, which is the disguised continuance of the predecessor. *J. Vallery Electric Inc. v. NLRB*, 337 F.3d 446, 450–451 (5th Cir. 2003), enfg., 336 NLRB 1272 (2001).

Whether factually separate employers are alter egos is a fact-intensive inquiry. The inquiry examines whether the two entities have "substantially identical" business purpose, management, operation, equipment, customers, supervision, and ownership. *Midwest Prcision Heating & Cooling, Inc.*, 341 NLRB 435, 439 (2004), affd. 408 F.3d 450 (8th Cir. 2005); In re *Cofab, Inc.*, 322 NLRB 162, (1996), enfd. sub nom. *NLRB v. DA Clothing Co.*, 159 F.3d 1352 (3d Cir. 1998). Although not required to make an alter ego determination, the Board considers whether the new entity was created "to evade another employer's responsibilities under the Act." *Island Architectural Woodwork, Inc.*, 364 NLRB No. 73, slip op. at 6–7 (2016), citing *Fugazy Continental Corp.*, 265 NLRB 1301, 1301–1302 (1982), enfd. 725 F.2d 1416 (D.C. Cir. 1984). The burden of proof to establish alter egos remains with General Counsel. *Island Architectural*, 364 NLRB No. 73, slip op. at 4.

2. J. Westrum and JWE are alter egos and a single employer[19]

a. The parties' positions

Respondent, arguing that J. Westrum and JWE are not alter egos, cites *Deer Creek Electric*, 362 NLRB No. 171 (2015). In *Deer Creek*, the Board found two entities were not alter egos, despite having substantially identical supervision and management as other factors were missing. General Counsel contends that these facts substantiate "one of those rare cases in which virtually every primary indicia of alter ego/single employer status is met . . ." and evidence further demonstrates that Respondent took these actions to evade its statutory obligations. (GC Br. at 31.)

b. "Substantially identical"

The business purpose of both entities is identical. J. Westrum and JWE are electrical contractors, both of which perform interior remodeling and new construction. Most of the work performed from December 2014 to present appeared to be retail stores, at least those Alex Westrum reported, and some were continuations of the same projects. It appears no hiatus took place between the alleged end of J. Westrum and the beginning of JWE, and the transition was admittedly "seamless." A seamless transition supports finding an alter ego. *Island Architectural*, 364 NLRB No. 73, slip op. at 4.

The employees hired by JWE in January 2015 were the identical "independent contractors" used by J. Westrum in December 2014. Both entities used the same person to contract and the same master electrican, Jon Westrum.

Common management is also present. This factor exists when one company owner does not have relevant experience and relies upon the other owner to prepare contract bids, hire workers and supervise them in the field. *Deer Creek Electric*, 362 NLRB No. 171 (2015). Jon Westrum and Alex Westrum made up the management team of both J. Westrum and JWE. Alex was instrumental in making a "seemless" shift from one business form to the other. In this case, Jon Westrum prepared the contract bids and, as a master electrician, was ultimately responsible for supervision. Common management is therefore established. Id.

Ownership too is substantially identical. Jon Westrum is owner of both J. Westrum and JWE. Alex only denies he is a member of JWE when it involves tax status. In all other aspects, he presents himself as a member of the limited liability corporation. As ownership is within the same family and the other factors show everything else substantially the same, "substantially identical ownership is established." *Cofab*, 322 NLRB at 163–164.

Because Alex relies upon a single owner for tax status, I find that J. Westrum and JWE actually have one owner: Jon Westrum. *Fugazy International*, 265 NLRB 1301 (1982). Even if this would not be the case, because the two family members possibly share ownership in JWE, substantially identical ownership would be established as well. *Cofab*, 3232 NLRB at 163–164.

Substantial control concentrates upon the financial arrangements, particularly when the entities have not kept an arm's length relationship. *Island Architectural*, 364 NLRB No. 73, slip op. at 5–6. Alex Westrum controlled J. Westrum's finances as early as 2013, when he began his bookkeeping duties. He continued in this role after the shift to JWE. The shift in equipment, particularly the trucks, created a benefit to JWE as it did not pay for the equipment but listed it on its taxes. The continued use of Jon Westrum's home as the business location also continued a tax benefit, previously conferred on Jon Westrum himself, upon JWE. Marketing the business, particularly as shown in the YouTube video, demonstrates that not only J. Westrum was not gone, but JWE accrued additional benefits by using the marketing video, regardless of which name was on it.

Deer Creek Electric, as cited by Respondent, is distinguishable. Much of the equipment used in the second entity was initially gifted but later turned to a sale. The second entity's owner never worked for the first company, plus there was no evidence of improper motive or financial control. See *Island Architectural*, 364 NLRB No. 73, slip op. at 7, fn. 16. In comparison, not only has J. Westrum and JWE continued same ownership and management, it also had the same employees, management, control, business purpose and customers.

c. Unlawful motive

Although the Board does not require a finding of unlawful

[19] The test for single employer is virtually identical to the alter ego, without the unlawful motive. *Vallery Electric*, 336 NLRB at 1276, citing *Advance Electric*, 268 NLRB 1001, 1004 (1984).

motive, that conclusion is unavoidable here. Jon Westrum made statements that he established JWE and left J. Westrum behind because he could not survive as a union contractor. I do not credit that he established JWE so that Alex would have something in the future or that it was all Alex's idea.

These statements also support finding the entities as alter egos: JWE was created so that Jon and Alex Westrum could evade their collective-bargaining responsibilities established by the Letter of Assent and the Act itself. *Cofab*, 322 NLRB at 164. "[T]he business had responsibilities under the Act which its owners cannot with impunity reject simply because they want." *Midwest Precision Heating & Cooling*, 341 NLRB at 439. Also see *William N. Taylor, Inc.*, 288 NLRB 1049, 1050 (1988).

d. Conclusion for alter ego

J. Westrum and JWE had common ownership, business purpose, employees, financial arrangements, equipment, customers and control. In addition, unlawful motive is present. Because these factors are present, the two entities are alter egos.[20]

C. Alleged Repudiation of Collective-Bargaining Relationship with IBEW

1. Applicable law

When an alter ego relationship exists between two entities, the collective-bargaining agreement that was binding upon the first entity is also binding upon the second entity. *Vallow*, 335 NLRB at 24. The collective-bargaining relationship under Section 8(f) of the Act confers bargaining authority upon a multi-employer association, such as NECA, for all matters in the bargaining relationship. *Gary's Electrical Service Co.*, 326 NLRB 1136 (1998).

A signatory's untimely notification to a union of its withdrawal and failure to maintain the terms of the collective-bargaining agreement constitutes a repudiation of the collective-bargaining relationship. *Gary's Electric Service*, 326 NLRB at 1136; *R. L. Reisinger Co.*, 312 NLRB 915, 917 (1993), enfd. 43 F.3d 1472 (6th Cir. 1994).

> In *John Deklewa & Sons,* 282 N.L.R.B. 1375, 1387 (1987), *enforced sub nom. International Association of Bridge, Structural & Ornamental Workers, Local 3 v. NLRB,* 843 F.2d 770 (3d Cir.1988) ("*Deklewa* "), the Board held that a § 8(f) agreement confers a limited § 9(a) representative status on a union signatory and that an employer signatory commits an unfair labor practice under §§ 8(a)(1) and (a)(5) by unilaterally repudiating the agreement while it is in force.[4] A few years later in *NLRB v. Bufco Corp.,* 899 F.2d 608, 611 (7th Cir. 1990), this court approved the *Deklewa* rule in enforcing an order of the Board that, applying *Deklewa,* found an employer had committed an unfair labor practice under §§ 8(a)(1) and (a)(5) by repudiating its § 8(f) pre-hire agreements with a union.

Sheehy Enterprizes, Inc. v. NLRB, 602 F.3d 839, 843 (7th Cir. 2010).

[20] Additionally, because the test is the same, the factors support finding that JWE and J. Westrum are single employers.

2. Respondent Unlawfully Repudiated, in Violation of Section 8(a)(5)

The NECA Agreement is a lawful 8(f) pre-hire agreement for the construction industry. Even when Jon Westrum was the only employee, the NECA Agreement continued to renew itself. *R. L. Reisinger Co.*, 312 NLRB 915, 917 (1993). The NECA Agreement in effect when Westrum signed expired on April 30, 2015.

By signing the Letter of Assent, Respondent bound himself to the NECA Agreement and delegated his bargaining authority to NECA as his bargaining agent. *William N. Taylor*, 288 NLRB at 1050. As the evidence demonstrates that Respondents never effectively repudiated their relationships with NECA and Local 292, the alter egos have violated Section 8(a)(5) of the Act. Id.

The Letter of Assent provided a 150-day window in which Respondent could have extricated himself from the obligations of the NECA Agreement and the Letter of Assent. The most recent NECA Agreement was effective on May 1, 2015, but Respondent took no action as required in the Letter of Assent to withdraw at any time. Instead, Jon Westrum shifted his business from J. Westrum to JWE without notification to Local 292 of the name change, much less his intent to operate as a nonunion company. He finally informed Local 292 of the changes only after he was confronted by Lindahl in March 2016, over a year after the new agreement was in effect. By that time, the window for withdrawal from the agreement had long passed.

The contention that Jon Westrum was coerced into signing the Letter of Assent does not excuse his obligations. He had an opportunity to read the Letter of Assent when presented to him initially. He also had further opportunities to read the Letter of Assent when he received it in the mail. He instead threw it into a file cabinet and claimed ignorance. The terms were spelled out in plain language. I reject the implication that either alter ego business was excused from the terms of the Letter of Assent and the NECA Agreement because Jon Westrum claimed coercion. See generally *Sheehy Enterprizes, Inc.*, 353 NLRB 803 (2009), reaffd. after remand, 355 NLRB 478 (2010), enfd. 431 Fed.Appx. 488 (7th Cir. 2011).

D. Information Request Allegation

1. Applicable law

An employer has an obligation to provide information that is necessary and relevant for the bargaining representative to carry out its duties. *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 303 (1979); *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435–436 (1967). Information requests pertaining to terms and conditions of bargaining unit employees are "presumptively relevant," and the employer must provide the requested information. *Disneyland Park*, 350 NLRB 1256, 1257 (2007); *U.S. Information Services*, 341 NLRB 988 (2004).

The Board reviews relevance under a liberal, discovery-type standard and whether the information would have some bearing or use to the union in carrying out its statutory responsibilities. *Public Service Co. of New* Mexico, 360 NLRB 573, 574 (2014), citing *Sands Hotel & Casino*, 324 NLRB 1101, 1109, (1997), enfd. 172 F.3d 57 (9th Cir. 1999). The information may be necessary for the union to assess whether to exercise its

representative function, such as advancing negotiations and policing an agreement. *NLRB v. Whitesell Corp.*, 638 F.3d 883, 894–895 (8th Cir. 2011), enfg. 355 NLRB 635 (2010), affg. 352 NLRB 1196 (2008); *Public Service Co. of New Mexico*, 360 NLRB 573 (2014). The fact that a union may obtain information by other means or from another source does not alter or diminish the obligation of an employer to furnish relevant information. *Holyoke Water Power Co.*, 273 NLRB 1369, 1373 (1985). "Like a flat refusal to bargain, '[t]he refusal of an employer to provide a bargaining agent with information relevant to the Union's task of representing its constituency is a per se violation of the Act' without regard to the employer's subjective good or bad faith." *Piggly Wiggly Midwest, LLC*, 357 NLRB 2344, 2355 (2012), quoting *Brooklyn Union Gas Co.*, 220 NLRB 189, 191 (1975); *Procter & Gamble Mfg., Co.*, 237 NLRB 747, 751 (1978), enfd. 603 F.2d 1310 (8th Cir. 1979).

The duty to furnish information also requires a reasonable good-faith effort to respond to the request as promptly as circumstances allow. Presumptively relevant information must be produced within a reasonable period unless the employer established legitimate affirmative defenses to production of the information. *Metta Electric*, 349 NLRB 1088 (2007); *Postal Service*, 332 NLRB 635 (2000).

2. Respondent Violated Section 8(a)(5) by Failing to Provide Information

Lindahl testified, without evidentiary contradiction, that Local 292 never received the information requested from J. Westrum and/or JWE, as requested on August 12, 2016. The information request covered the period from May 1, 2015, until present. The requested information included: Names of employees; time cards and work hour reports; and pay and benefit records. Respondent presented no defenses why it was not produced, but denies in the answer that the information is necessary and relevant.

As an 8(f) signatory with an ineffective withdrawal, the alter egos had an obligation to provide necessary and relevant information to Local 292. *Gary's Electrical Service*, 326 NLRB at 1136. All of the requested information is presumptively relevant. *CVS*, 364 NLRB No. 122, slip op. at 1 (2016) (work schedules, pay rates, benefits including insurance, pension and 401(k)); *Pontiac Nursing Home, LLC*, 344 NLRB No. 31 (2005) (not reported in Board volumes) (name, pay rate, overtime, shift differentials, health plan cost and other benefit information); *Republic Die & Tool Co.*, 343 NLRB 683, 686 (2004) (wages, pensions, medical benefits); *U.S. Information Services*, 341 NLRB at 988 (salaries, wages, overtime); *LaGloria Oil & Gas Co.*, 338 NLRB 858 (2003) (employee names, addresses, phone numbers); *Smith & Wollensky*, 316 NLRB 217, 218–219 (1995) (sign-in sheets); *Radisson Plaza Minneapolis*, 307 NLRB 94 (1992), enfd. 987 F.2d 1376 (8th Cir. 1993) (names, addresses, wages). By failing to provide presumptively relevant information, Respondent violated Section 8(a)(5) of the Act.

E. Respondent's Affirmative Defenses

Respondent primarily discussed that the charge was untimely because Local 292 did not make an additional investigation into JWE in 2015. It also pled other defenses. None of the defenses change the outcome of this case.

1. Respondent maintains the charge was not timely per Section 10(b)

The charge was filed August 23, 2016. Respondent contends that the charge was not timely because Local 292 knew or should have that JWE was operating as a non-union entity in 2015, not in March 2016. According to Respondent, Local 292 did not file the charge within the 6-month statute of limitations provided by Section 10(b) of the Act; because the charge was untimely, the complaint must be dismissed.

Section 10(b)[21] requires filing the initial charge in a matter within a 6-month statute of limitations, and failure to do so bars any subsequent complaint. *Masonic Temple Assn. of Detroit*, 364 NLRB No. 150, slip op. at 1 fn. 1 (2016); *Positive Electrical Enterprises, Inc.*, 345 NLRB 915, 918. A 10(b) allegation is not jurisdictional, but instead is considered an affirmative defense. *Federal Management Co.*, 264 NLRB 107 (1982). The party alleging this affirmative defense has the burden of proof, which is met when the party demonstrates that the filing party had actual or constructive knowledge of the unfair labor practice. *Broadway Volkswagen*, 342 NLRB 1244, 1246 (2004).

The 6-month statute of limitations begins to run when a party has "clear and unequivocal notice of the violation," not when "a party sends conflicting signals or otherwise engages in ambiguous conduct." Id., citing *CAB Associates*, 340 NLRB 1391, 1392 (2003). Also see: *Minteq Intl, Inc.*, 364 NLRB No. 63 (2016), rev. denied 855 F.3d 329 (D.C. Cir. 2017). In a case involving repudiation, the specific repudiation provides the "clear and unequivocal" evidence of when the statute of limitations begins to run. *Vallow Floor Coverings, Inc.*, 335 NLRB 20 (2001). Also see: *Positive Electrical Enterprises,* 345 NLRB at 919; *Industrial Power*, 321 NLRB 816 (1996).

Respondent's primary argument is that Local 292 knew or should have known about the existence of JWE by Kripotos's May 2015 visit to Northtown. Respondent contends that, although Northtown Mall was not within Local 292's jurisdiction, it should have done the research to discover what Jon Westrum, J. Westrum and JWE were doing within Local 292's jurisdiction. Respondent asked Kripotos several questions about enforcement of the NECA Agreement. Kripotos was not aware of whether staff checked to ensure J. Westrum was compliant with union security or dues checkoff. If delinquent, the treasurer would also check, but Kripotos did not know if the checks were ever performed. Kripotos did not know whether Westrum opted out of benefits when he signed the Letter of Assent. General Counsel, citing three separate cases, argues Local 292's alleged inaction or failure to discover the entities' non-work did not constitute notice of repudiation before the 6-month statute of limitation. (GC Br. at 11.)

Respondent cites *A&L Underground*, 302 NLRB 467 (1991). The facts in this case demonstrates that the union had actual notice of the repudiation when the employer failed to return an executed copy of a contractual agreement in December 1986. The employer sent a letter to the union that it repudiated any

[21] Also see: Board Rule §102.14, Service of charge.

further agreements. The union waited until August 24, 1987, to file a charge, or 8 months after the union had knowledge that the employer was not continuing its bargaining relationship. Because the union had actual notice of repudiation over 8 months before the charge was filed, the Board rejected a "continuing violation" theory and found the charge was not timely filed. Id. at 467–468.

A&L Underground was differentiated in *Vallow Floor Coverings, Inc.*, 335 NLRB 20 (2001). Respondent's version of facts also relies upon Jon Westrum's alleged May 2015 conversation with Kripotos, which I discredited. Because I do not credit Jon Westrum's claim he told Kripotos in May 2015 about the alleged dissolution of J. Westrum, I find that Local 292 did not have clear and unequivocal notice that J. Westrum or JWE repudiated its Letter of Assent and contractual obligations in May 2015. Finding an employer working outside of the union's jurisdiction only shows the Westrum entities were not abiding by a collective-bargaining agreement.

What Kripotos found in May 2015 was a contract violation, to which *A&L Underground* spoke. *Vallow*, supra, at 20–21. Respondent's failure to pay into funds are breaches of the collective-bargaining agreement, and "each successive breach constitutes a separate unfair labor practice unrelated to previous breaches." *Vallow*, 335 NLRB at 20. Also see *Masonic Temple*, 364 NLRB No. 150, slip op. at 1 fn. 1 and at 6–7 (statute of limitations began to run only when employer clearly stated it would no longer bargain or recognize). Respondent was a small contractor and one of many signatory contractors to the Minneapolis NECA Agreement. It made it impossible for Local 292 to monitor each contractor's activities. *Positive Electrical Enterprises*, 345 NLRB at 920.

Therefore, *Vallow* controls the discussion. Until March 2016, Local 292 did not have clear notice of the repudiation, which was delivered by telephone to Local 292 from Jon Westrum himself. Because Jon Westrum gave sufficient notice in March 2016, the August 23, 2016 charge was well within the 6-month statute of limitations. Section 10(b) does not dictate dismissal of the complaint.

2. Respondent's additional affirmative defenses

Respondent's brief failed to address any other affirmative defenses pled in its answer. These pled defenses included Section 8(c) protection, legitimate business justification and de minimis impact. To clean up a frequently used phrase, Respondent pled these affirmative defenses, threw them against the wall, and waited to see if they stuck. Nothing has stuck.

I find no relevance for Section 8(c) protection as the complaint contained no alleged violations of speech. Even if Respondent presented a legitimate business reason for changing from a proprietorship to a limited liability corporation, it does not mean that Respondent is relieved of its bargaining duties as an alter ego. *Michael's Painting, Inc.*, 337 NLRB 860 (2002), enfd. 85 Fed.Appx. 614 (9th Cir. 2004). Regarding the defense that Respondent's actions were de minimis, that contention is incorrect. Respondent's unlawful actions hurt the employees, who should have been in the bargaining unit: They had no bargaining power and were deprived of the benefits of the collective-bargaining agreement. See generally *Island Architectural*, 364 NLRB No. 73, slip op. at 6–7. These effects, arising from Respondent's unlawful conduct, are not de minimis.

Conclusions of Law

1. Respondents Jon P. Westrum d/b/a J. Westrum and JWE, LLC constitute an employer engaged in commerce, and in operations affecting commerce, within the meaning of Section 2(2), (6), and (7) of the Act.

2. International Brotherhood of Electrical Workers, Local 292, is a labor organization within the meaning of Section 2(5) of the Act.

3. At all material times, IBEW Local 292 has been the limited exclusive representative of all employees in the collective-bargaining unit within the meaning of Section 9(a) of the Act.

4. Respondent Jon Westrum d/b/a J. Westrum Electric is the alter ego of Respondent JWE, LLC.

5. Since January 1, 2015, Respondent failed and refused to recognize IBEW Local 292 as the collective-bargaining representative of the unit employees.

6. Since January 1, 2015, by refusing to apply the terms of its collective-bargaining agreement with IBEW Local 292 to all unit employees, including payment to them of contractual wages and payment on their behalf of fringe benefit contributions, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

7. Since August 2016, Respondent has committed unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act by refusing to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its function as the collective-bargaining representative of Respondent's unit employees.

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

Remedy

Having found that Respondent Jon P. Westrum d/b/a J. Westrum Electric and JWE, LLC, alter egos and a single employer, has engaged in certain unfair labor practices, I find it must be ordered to cease and desist from doing so and to take certain affirmative actions designed to effectuate the policy of the Act.

In order to remedy the 8(a)(5) and (1) repudiation violation, Respondent must give full force and effects to the terms and conditions of employment provided in the collective-bargaining agreement from May 1, 2012, through April 30, 2015 and any successor agreement between Local 292 and J. Westrum for all bargaining-unit employees, including JWE employees in covered classifications, that is, employees performing electrical work in the bargaining unit described below. Respondent shall bargain in good faith with the Union as the exclusive collective-bargaining representative of the bargaining unit.

Respondent also shall make whole unit employees by, inter alia, making all delinquent contributions to the fringe benefit funds set forth in the collective-bargaining agreement that have not been made since January 1, 2015, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). Also see *Positive*

Electrical Enterprises, supra; *Vallow Floor*, 335 NLRB at 21.[22] Respondent also shall be required to reimburse the unit employees for any expenses ensuing from the failure to make the required benefit fund contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). Such amounts shall be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest at the rate prescribed in *New Horizons,* 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center,* 356 NLRB 6 (2010). In accordance with *Don Chavas, LLC d/b/a Tortillas Don Chavas,* 361 NLRB 101 (2014), the Respondent shall compensate the employees for the adverse tax consequences, if any, of receiving lump sum backpay awards, and, in accordance with *AdvoServ of New Jersey, Inc.,* 363 NLRB No. 143 (2016), the Respondent shall, within 21 days of the date the amount of backpay is fixed either by agreement or Board order, file with the Regional Director for Region 18 a report allocating backpay to the appropriate calendar year for each employee. The Regional Director will then assume responsibility for transmission of the report to the Social Security Administration at the appropriate time and in the appropriate manner.

Respondent shall post an appropriate informational notice, as described in the attached "Appendix." This notice shall be posted in the Employer's facility or wherever the notices to employees are regularly posted for 60 days without anything covering it up or defacing its contents. 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. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 1, 2015. When the notice is issued to the Employer, it shall sign it or otherwise notify Region 18 of the Board what action it will take with respect to this decision. Respondent must also post the notice to employees, attached as "Appendix," at any jobsite currently in progress within the geographical jurisdiction of the applicable agreement and at its place of business in Anoka, Minnesota. *R. L. Reisinger Co.*, 312 NLRB at 918. In addition, Respondent will mail the notice to all employees who were employed on or after January 1, 2015, but no longer are employed by it.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[23]

ORDER

Respondent, Jon P. Westrum d/b/a J. Westrum and JWE, LLC, alter egos and a single employer, Anoka, Minnesota, its officers, agents, successors and assign shall

1. Cease and desist from:

(a) Failing and refusing to recognize the International Brotherhood of Electrical Workers Local 292 (Local 292) as the exclusive collective-bargaining representative of the employees in the bargaining unit at its J. Westrum and JWE facilities in the following appropriate unit by refusing to apply the 2012–2015 collective-bargaining agreement and any successor agreement in effect between Local 292 and J. Westrum to employees in JWE:

> All employees employed by Respondents, including Journeymen Wiremen, Apprentices, Cable Splicers, Welders, Instrument Technician I, Instrument Technician II, Foremen, General Foremen and 2nd General Foremen, in the geographic areas in Minnesota of all of Hennepin, Carver and Scott Counties, all that part of Anoka County containing the cities of Andover, Anoka, Columbia Heights, Coon Rapids, Fridley, Hilltop, Ramsey and Spring Lake Park, all of Wright County and that portion of Benton and Sherburne Counties east of State Highway 25 to Highway 10 and an imaginary line straight west to the Mississippi River; excluding office clerical employees, guards and supervisor as defined in the Act.

(b) Refusing to bargain collectively with Local 292, by failing and refusing to provide Local 292 with requested information that is necessary and relevant to its role as the exclusive representative of Respondent's unit employees;

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

2. Take the following affirmative actions necessary to effectuate the purposes and policies of the Act.

(a) Honor and abide by the terms and conditions of its executed contract with the Union since June 2012;

(b) For the period beginning January 1, 2015, make whole its employees in the bargaining unit, for losses suffered as a result of its failure to adhere to the NECA Agreement and the Letter of Assent and reimburse them for any expenses ensuing from its failure to make required contributions to the benefit funds; and make whole the benefit trust funds for losses suffered in the manner set forth in the remedy section of the decision.

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

(d) Compensate the bargaining unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 18 with-

[22] *Moeller Bros. Body Ship, Inc.*, 306 NLRB 191–193 (1992), is not on point. That case had no allegation of repudiation as the employer paid union wages pursuant to the collective-bargaining agreement, but failed to pay fringe benefits into the fund. The administrative law judge found, and the Board agreed, that the union did not exercise due diligence over a period of years. My reasoning is further explained in the discussion about Sec. 10(b).

[23] 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 due under the terms of this Order.

in 21 days of the d ate the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar year for each employee.

(e) Furnish IBEW Local 292 with the information it requested in its August 12, 2016 letter.

(f) Within 14 days after service by the Region, post at all of its facilities and jobsites copies of the attached notice marked "Appendix."[24]

(g) Within 21 days after service by the Region, file with the Regional Director for Region 18 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

(h) IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleged violations of the Act not specifically found.

Dated, Washington, D.C. May 31, 2017

APPENDIX

NOTICE TO EMPLOYEES
POSTED AND MAILED 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 and refuse to bargain collectively and in good faith with the International Brotherhood of Electrical Workers, Local 292 (Union) as the exclusive bargaining representative of employees in the following unit:

> All employees employed by Respondents, including Journeymen Wiremen, Apprentices, Cable Splicers, Welders, Instrument Technician I, Instrument Technician II, Foremen, General Foremen and 2nd General Foremen, in the geographic areas in Minnesota of all of Hennepin, Carver and Scott Counties, all that part of Anoka County containing the cities of Andover, Anoka, Columbia Heights, Coon Rapids, Fridley, Hilltop, Ramsey and Spring Lake Park, all of Wright County and that portion of Benton and Sherburne Counties east of State Highway 25 to Highway 10 and an imaginary line straight west to the Mississippi River; excluding office clerical employees, guards and supervisor as defined in the Act.

WE WILL NOT repudiate or refuse to adhere to the collective-bargaining agreement that we entered into with the Union.

WE WILL NOT refuse to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our unit employees.

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

WE WILL, on request, bargain in good faith with the Union as the exclusive collective-bargaining representative of our employees concerning terms and conditions of employment.

WE WILL rescind the actions taken that constituted repudiation of the collective-bargaining agreements.

WE WILL abide by the current collective-bargaining agreement between NECA and the International Brotherhood of Electrical Workers, in effect from May 1, 2015, through April 30, 2018, and restore wages, fringe benefit contributions, and other working conditions for the Unit and make Unit employees whole for the losses in pay or benefits, including payments to various fringe benefit funds, with interest computed in accordance with Board policy.

WE WILL make whole our unit employees by making all delinquent benefit fund contributions that have not been made in accordance with the collective-bargaining agreement in effect from 2012 to 2015, and any subsequent agreements.

WE WILL make whole our unit employees by reimbursing them, with interest, for any expenses that they may have incurred that resulted from our failure to make required benefit fund payments in accordance with the collective-bargaining agreement in effect from 2012 to 2015, and any subsequent agreements.

WE WILL make whole employees hired by alter ego JWE, LLC for losses incurred as a result of our failure to provide contractual wage rates, benefits, or any other contractual terms and conditions in accordance with the collective-bargaining agreement in effect from 2012 to 2015, and any subsequent agreements.

WE WILL compensate the bargaining unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 18 within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years.

WE WILL furnish to the Union in a timely manner the information requested by the Union on August12, 2016.

JON WESTRUM D/B/A J. WESTRUM ELECTRIC AND JWE LLC

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/18–CA–182656 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.

[24] 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."