Southwest Security Equipment Corporation *and* International Association of Bridge, Structural, Reinforcing and Ornamental Iron Workers, Local Union No. 75, AFL-CIO. Case 28-CA-6007

June 30, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS JENKINS AND HUNTER

On July 29, 1981, Administrative Law Judge Earldean V. S. Robbins issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the Charging Party filed cross-exceptions and a supporting brief. In addition, Respondent filed an answering brief. The Charging Party then filed a reply, moving to strike a portion of Respondent's answering brief. Respondent opposed the motion.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions[1] of the Administrative Law Judge and to adopt her recommended Order.[2]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Southwest Security Equipment Corporation, Phoenix, Arizona, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

APPENDIX

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

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

WE WILL NOT refuse to abide by the terms of our collective-bargaining agreement with International Association of Bridge, Structural, Reinforcing and Ornamental Iron Workers, Local Union No. 75, AFL-CIO.

WE WILL NOT refuse to bargain collectively with the above-named Union as the exclusive bargaining representative of our employees in the following appropriate unit:

All employees engaged in field fabrication and/or erection and/or contracted maintenace of structural, ornamental and reinforcing steel work coming within the jurisdiction of the International Association of Bridge, Structural, Reinforcing and Ornamental Iron Workers Union as set forth in our collective-bargaining agreement with the above-named Union.

WE WILL NOT unilaterally change any terms or conditions of employment of employees in the above unit during the life of any union contract without first reaching agreement with the Union about such changes.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of rights under the Act.

WE WILL, upon the Union's request, recognize and bargain with the above-named Union

[1] The Charging Party excepts only to the Administrative Law Judge's finding that the contract between the parties expired on July 31, 1980, a finding with which we agree. In its brief in response to this exception, Respondent for the first time takes issue with the Administrative Law Judge's finding that the hiring hall referral provision of that contract survived the expiration of the agreement. We find merit in the Charging Party's contention that Respondent's claim, which amounts to an additional exception to the Administrative Law Judge's Decision, is untimely. Sec. 102.46 of the Board's Rules and Regulations, Series 8, as amended. Accordingly, the Charging Party's motion to strike that portion of Respondent's answering brief relating to the hiring hall provision is granted and, in the absence of a timely exception, we adopt *pro forma* the Administrative Law Judge's finding with respect to the hiring hall provision.

In the absence of exceptions, Chairman Van de Water and Member Hunter would adopt *pro forma* the Administrative Law Judge's conclusion that the arbitration provision of the parties' collective-bargaining agreement survived the expiration of that agreement. In so doing, they specifically disclaim any reliance on *American Sink Top & Cabinet Co., Inc.*, 242 NLRB 408 (1979).

[2] With respect to the Administrative Law Judge's recommended Order as it relates to Respondent's payment of contributions to various benefit funds, said payments shall be determined in the manner set forth in *Merryweather Optical Company*, 240 NLRB 1213, 1216, fn. 7 (1979).

concerning the employees in the above-described unit.

WE WILL, upon the Union's request, rescind all unilateral changes made in the terms and conditions of employment of employees in the above described unit which are contained in the referral, fringe benefit, and grievance and arbitration provisions of the 1977-80 Arizona Master Labor Agreement between said Union and the Arizona Steel Field Erectors Association incorporated in our April 22, 1980, Memorandum Agreement with said Union.

WE WILL, upon the Union's request, give effect retroactively to the referral, fringe benefit, and grievance and arbitration provisions set forth in said Memorandum Agreement and Master Labor Agreement, and make whole our employees and would-be employees for losses suffered by reason of our failure to comply with those provisions, including the hiring hall provisions, with interest.

WE WILL, upon the Union's request, make all contributions to the health and welfare, training, supplemental benefits, vacation savings, and pension funds, and pay the prescribed fees to administer said funds, as provided in the 1977-80 Arizona Master Labor Agreement and the various Contributing Employers Agreements signed by us relating to said funds, which have not been paid and which would have been paid absent our unlawful discontinuance of such payments.

SOUTHWEST SECURITY EQUIPMENT CORPORATION

DECISION

STATEMENT OF THE CASE

EARLDEAN V. S. ROBBINS, Administrative Law Judge: This matter was heard by me in Phoenix, Arizona, on April 14, 1981. The charge was filed by International Association of Bridge, Structural, Reinforcing and Ornamental Iron Workers, Local Union No. 75, AFL-CIO, herein called the Union, and served on Southwest Security Equipment Corporation, herein called Respondent, on July 24, 1980. The complaint, which issued on August 29, 1980, alleges that Respondent violated Section 8(a)(1) and (5) of the National Labor Relations Act, as amended, herein called the Act.

The principal issue herein is whether Respondent repudiated its collective-bargaining agreement with the Union.

Upon the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the post-hearing briefs filed by the parties, I make the following:

FINDINGS OF FACT

I. JURISDICTION

At all times material herein, Respondent, an Arizona corporation with an office and place of business in Phoenix, Arizona, has been engaged in the business of selling, servicing, and installing bank security equipment. Respondent, in the course and conduct of its business operations during the 12-month period preceding the issuance of the complaint herein, has purchased and received goods and products valued in excess of $50,000 directly from suppliers located outside the State of Arizona.

The complaint alleges, Respondent admits, and I find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

The complaint alleges, Respondent admits, and I find that the Union is now, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Facts*

There is little dispute as to the essential facts herein. On October 29, 1979, the Union was certified as the collective-bargaining representative of all installers employed by Respondent at its Phoenix, Arizona, facility. Thereafter, Respondent and the Union engaged in several negotiation sessions in November and December 1979. Among other things, the scope of unit work was discussed during some of these sessions.

Ed Gallagher, who was negotiating for the Union, testified without contradiction that in the first negotiation session the Union proposed its agreement negotiated between the Arizona Steel Field Erectors Association and the Union, herein referred to as the Master Agreement. Rick Iglesias, president of Respondent, proposed that they negotiate a special agreement covering only the specific kind of work performed by Respondent. Gallagher pointed out the jurisdictional claims outlined in the Master Agreement and said the Union was interested in the installation of bank vault doors, cladding on the inside of drive-in windows, night depository boxes, installation of drive-in windows, drops, and other apparatus within the pneumatic system for automatic teller windows, and the replacement of parts for any of the items installed.

Gallagher further testified that at one of the November or December meetings, Iglesias explained the intricacies of the electronics attendant to vault installations and asked if the Union had any electricians with the expertise to do electronic installations. Iglesias then explained that there is a wired electronic system that has to be installed before the job is complete, but that it is not done simultaneously with the installation of the vault or vault door. Iglesias said he had people who were experienced in that work. Gallagher said the Union did not necessarily claim any of the electronics work, and referred specifically to

the console that controls the time lock, camera systems, and the photoelectric eye, because that was not taught in the Union's apprenticeship classes. Thereafter, there was no further discussion of this subject. No agreement was reached as to covered work in the November and December 1979 meetings, and no further meetings were scheduled after December 1979.

Gallagher further testified, without contradiction, that around April 19 or 20, 1980,[1] Iglesias telephoned either Gallagher or Harry Steele, the business manager of the Union, and said he was ready to sign the agreement. Steele instructed Gallagher to go to Respondent's office and get the agreement signed. On April 22, Gallagher went to Respondent's office. Iglesias said "give me the contract, I'll sign the contract." There was no discussion as to scope of unit work or exclusions from unit work covered. Iglesias and Gallagher then signed an agreement, the body of which reads:

MEMORANDUM AGREEMENT

This Agreement is made this *22nd* day of *April* 1980.

Whereas, the Employer recognizes the Union as the Collective Bargaining Representative of the employer's employee performing work within the recognized jurisdiction of the Union; and

Whereas, the parties intend by this Memorandum Agreement to eliminate multiplicity of collective bargaining in the industry, to provide for uniform conditions of employment among the several employers recognizing the Union, and to simplify the record keeping connected with the execution of lengthy agreements:

Now, therefore, it is mutually agreed as follows:

1. The parties hereto agree to comply with and be bound by all the terms and provisions of that certain Collective Bargaining Agreement negotiated between Steel Fabricators and Erectors Negotiating Committee of the Arizona Steel Field Erectors Association and the International Association of Bridge, Structural, Reinforcing and Ornamental Iron Workers, Local No. 75, which agreement is dated August 1, 1977, and which became effective as of August 1, 1977.

2. The above described agreement is incorporated herein by reference the same as if fully set forth herein, and the signatures of the parties hereto shall have the same effect as if they were affixed to said above described agreement. In this connection, the Employer acknowledges receipt of a copy of said agreement.

3. The term of this Memorandum Agreement and its termination shall be governed by the provisions set out in the above described agreement.

4. This Memorandum agreement shall be binding upon the heirs, executors, successors and assigns of the parties.

IN WITNESS WHEREOF, we have hereunto set our hands the day and year first above written.

[1] All dates hereinafter will be in 1980 unless otherwise indicated.

The Master Agreement, incorporated therein, provides, *inter alia*:

> The Employers hereby recognize the Union as the sole and exclusive collective bargaining representative of all employees engaged in field fabrication and/or erection and/or contracted maintenance of structural, ornamental and reinforcing steel work coming within the jurisdiction of the International Association of Bridge, Structural, Reinforcing and Ornamental Iron Workers Union.

The Master Agreement further provides that such fabrication, erection, and maintenance work shall include ". . . safes, vaults, vault doors, safe deposit boxes . . . ."

The Master Agreement also provides that covered employers contribute, on behalf of each unit employee, certain prescribed amounts to a training fund program, a health and welfare fund, a supplemental benefit plan, a vacation saving trust, and a pension fund, and to make payments of certain prescribed fees to administer said funds. In accordance therewith, on April 22, Iglesias and Gallagher also signed contributing employers agreements specifically requiring Respondent to make payments on behalf of unit employees to the above-described funds during the term of the Master Agreement, including any and all amendments, supplements, modifications, extensions, renewals, or successor agreements thereto, and from year to year thereafter unless written notice revoking said agreement is given to the respective boards of trustees.

Section 3 of the Master Agreement, herein referred to as the hiring provision or the referral provision, provides, *inter alia*, that "all employees required by the Employer shall be furnished and referred by the Union to the Employer off the hiring lists." In accordance therewith, from April 22 through May 16, Respondent requested, and the Union furnished to Respondent, workers from the Union's hiring hall lists. However, according to the uncontradicted testimony, which I credit, of employee Juan De La Cruz and Union Business Agent and dispatcher Michael McKee, sometime in May, Respondent began obtaining employees from sources other than the Union to perform unit work. Since May 16, Respondent has not requested the Union to refer any workers to it. Similarly, Respondent has made no contributions to the various contractual fringe benefit funds except for the month of June. A report was made to the funds for the month of May but no actual payment was ever made for May. Further, no contributions were made for the month of June for some of the employees identified by De La Cruz as working along with him performing unit work. De La Cruz was the only employee listed on Respondent's June report.

Section 21 of the agreement provides a grievance and arbitration procedure for the resolution of disputes regarding the application or interpretation of said agreement. On May 15, Steel sent a letter to Iglesias with a copy to the Arizona Steel Field Erectors Association, herein called the Association, the body of which reads:

> I had assumed that when you signed the agreement we would have continued a good relationship. On May 14, 1980, you informed our Agent McKee that you were going to sub-contract all of the bargaining unit work to M & J Installations. Please review Section 20 of the Collective Bargaining Agreement.
>
> This Local Union has, as it is a contractural [sic] prerogative, requested that the Labor Management Committee be convened to hear this grievance.
>
> You will be hearing from Mr. Jim Kienitz of the Arizona Steel Field Erectors Association with respect to a time and date of the hearing.
>
> The enclosure will clarify our grievance.

Respondent made no response to this letter.

Subsequently, a letter dated May 27 was sent to Iglesias by James F. Kienitz, representative for the Association, the body of which reads:

> On May 19, 1980 this office received correspondence from Ironworkers Local #75 indicating their desire to pursue a grievance as filed by the Union alleging a violation of Section 20.
>
> The mechanism for resolving disputes is found in Section 21 of the enclosed contract.
>
> We have been unsuccessful in our attempt to contact you in an effort to schedule a hearing date.
>
> Please be advised that, if we do not receive a response from you by June 13, 1980, we will notify the Union accordingly. We are not aware of what contractural [sic] action the Union may be contemplating should the instant grievance go unresolved.

Thereafter, a letter, dated June 20, and signed by Robert L. Scott, Jr., representative for the Association, was sent to Iglesias, the body of which reads:

> Our past efforts to arrange with you a hearing date for the Arizona Labor-Management Committee to resolve a grievance filed by Iron Workers Local No. 75 have been unanswered.
>
> Please be advised that a hearing has been scheduled to commence at 4:00 p.m. Tuesday July 1st at the Arizona Employers' Council, Inc. located at 1820 North 7th Street Phoenix, Arizona.
>
> At the hearing, you will be afforded the opportunity to rebut the allegations and present evidence and/or testimony. Should you fail to attend, a decision in support of the Union's position will more than likely be issued.

The hearing was held as scheduled on July 1 before the Arizona Labor-Management Committee, herein called the Committee. The Union asserted that Respondent had violated the hiring, wage, fringe benefits, and grievance and arbitration provisions of the Master Agreement. Respondent made no appearance. According, the Committee concluded, as reflected by the committee minutes:

> DISCUSSION: It is apparent that reasonable efforts have been directed to having this matter heard before the established Labor-Management Committee in an effort to resolve the grievance. Based on the evidence presented and the facts discussed, and in the absence of no appearance nor rebuttal on the part of the Company, the Labor-Management Committee was forced to resolve the issue and render decision without contest.
>
> DECISION: The Company has violated the provision of the collective bargaining agreement relating to hiring, payment of wages, payment of benefits, and adjustment of grievance and dispute. Since the Company has not complied with the provisions of the agreement and arbitration procedure to this point, and this Committee has decided that the Company is in fact in violation of several provisions of the collective bargaining agreement, the Union is free to seek whatever remedy through civil litigation or administrative agency.
>
> A majority of the panel members approved this decision.

The Master Agreement was effective by its terms from August 1, 1977, through July 31, 1980. The Union gave timely reopener notice to the Association and by letter dated May 30, gave the following notice to Respondent:

> The Arizona Master Labor Agreement By and Between Arizona Steel Field Erector Association and the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers Local Union 75, Phoenix, Arizona, to which you are bound has been opened with the appropriate signatory Associations to negotiate amendments, modifications, extensions and/or renewals to said Agreement. As has been the practice in the past, upon conclusions of these negotations, we will send you a summary of the changes, amendments, modifications, extensions and/or renewals to said Agreements.
>
> If you are a member of any signatory Association to the Master Agreement, your association has already been notified to this reopener, you will be bound by the negotiations between said Association and the Union. Therefore, please disregard this letter.

Subsequently, the Union and the Association entered into an agreement effective by its terms from August 1, 1980, to August 1982. There is no evidence that the Union and Respondent entered into a new agreement or even that any negotiations were had to that end.

B. *Conclusions*

The General Counsel argues that by hiring employees obtained from sources other than the Union, by failing and refusing to make contractually required payments to the respective benefit funds, and by failing and refusing to participate in and abide by the contractual grievance and arbitration procedures, Respondent has repudiated

its collective-bargaining agreement with the Union in violation of the Act.

Respondent argues that the General Counsel has failed to show that Respondent employed any unit employees during the period that it is claimed that Respondent breached the hiring and fringe benefit contributions provision of the Master Agreement, and that the employees it hired from other sources and for whom it failed to make benefit payments were excluded from coverage under the Master Agreement. I find no merit in this argument. Witnesses for the General Counsel credibly testified that in May and June Respondent had employees working with De La Cruz performing unit work, and that in July persons were observed performing unit work for Respondent who were not referred by the Union and for whom Respondent made no fringe benefit contributions.

Further, the record does not support Respondent's contention that these employees were excluded from coverage under the Master Agreement. Contrary to Respondent's contention, I find no evidence that would explain the jurisdiction and recognition provisions of the Master Agreement in the manner asserted by Respondent. Although it is evident that Respondent did not perform all of the work listed in the Master Agreement as being within the Union's jurisdiction and it seems probable from Gallagher's testimony that Respondent did employ a person or persons to perform electronics work not listed as within the Union's jurisdiction, it is clear from Gallagher's testimony that when Iglesias agreed to sign the memorandum agreement there was no proposal or discussion as to any deviation from the Master Agreement nor was there any discussion which might serve to explain any ambiguity as to the scope of the unit described in the contract, or any reference to the November or December discussions relative to the scope of the unit.

The General Counsel presented a strong *prima facie* case that employees hired through sources other than the Union were employed in the appropriate unit herein and that no fringe benefit payments were made on their behalf. Respondent presented no evidence to rebut this testimony. If such evidence did in fact exist, it was particularly within the knowledge of Iglesias, who was Respondent's president and supervisor of unit employees, and provable through Respondent's payroll and personnel records. However, Iglesias did not testify and was not present at the hearing herein. Respondent called only one witness, Ed Gallagher, the former union representative who had previously testified on behalf of the General Counsel, and did not produce any documentary evidence in support of its position.

In these circumstances, I find it proper to infer, and I do, that if Iglesias had testified and if the appropriate records of Respondent had been introduced, such evidence would not have supported Respondent's position. Therefore, I find, as alleged in the complaint, that Respondent has unilaterally discontinued abiding by the hiring hall provisions of the contract; has unilaterally discontinued the contractually required payments to the fringe benefit trust funds and the contractually required payments of fees to administer said funds; and has failed and refused to participate in the contractual grievance and arbitration procedure. I further find that these breaches of Respondent's contractual obligation are so substantial and pervasive as to evince a deliberate intent by Respondent to avoid its obligations under the collective-bargaining agreement with the Union. Accordingly, I find that Respondent by the above-described unilateral conduct, has violated Section 8(a)(1) and (5) of the Act. *V M Construction Co., Inc.*, 241 NLRB 584 (1979); *Farmingdale Iron Works, Inc.*, 249 NLRB 98 (1980).

Further, I reject Respondent's argument that it was free to ignore the terms and conditions of the collective-bargaining agreement following the expiration of said agreement. It is well settled that certain contractual provisions such as grievance and arbitration procedure and fringe benefit payments survive the expiration of an agreement and cannot be modified unilaterally absent impasse. *American Sink Top & Cabinet Co., Inc.*, 242 NLRB 408 (1979); *Wayne's Olive Knoll Farms, Inc., d/b/a Wayne's Dairy*, 223 NLRB 260 (1976).

As to the referral provision, I conclude that it is analogous to arbitration provisions. It is a mandatory subject of bargaining generally of significant importance to employees in a covered industry, for by setting hiring priority standards, it directly affects their opportunities for continued employment in the industry. *Houston Chapter, Associated General Contractors of America, Inc.*, 143 NLRB 409 (1963). In fact, the parties herein have specifically recognized this significance, for the referral provision of the Master Agreement begins with the following recital:

> In order to maintain an efficient system of production in the industry to provide for an orderly procedure for the referral of applicants for employment, and to preserve the legitimate interests of employees in their employment, the Employers and the Union agree that when an individual Employer requires Iron Workers to perform any work covered by this Agreement, he shall hire applicants for employment to perform such work, in accordance with this Agreement.

Having expressed this concern and considering that an immediate cessation of the use of the contractual referral procedure upon the expiration of the contract would do violence to the interests the procedure was designed to protect, it is difficult to infer that the parties intended for the referral procedure to expire with the contract. I therefore conclude that in the absence of some indication to the contrary, the parties did not intend that the hiring hall referral provisions of the contract expire automatically with the contract. See *Nolde Brothers, Inc.* v. *Local No. 358, Bakery & Confectionery Workers Union, AFL-CIO*, 430 U.S. 243 (1977); *American Sink Top & Cabinet Co., Inc., supra*. Accordingly, I find that Respondent's obligation to abide by the referral, grievance and arbitration and fringe benefit provisions of the contract continued after the expiration thereof[2] and that by its refusal to

[2] I reject Charging Party's argument that the contract did not expire since Respondent did not give notice to reopen the contract. I find that the Union gave such notice by its May 30 letter to Respondent.

comply with said provisions, Respondent has unilaterally modified the terms and conditions of employment of its employees set forth in said contract in violation of Section 8(a)(1) and (5) of the Act.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

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

3. By faillng and refusing to abide by the fringe benefit, referral, and grievance and arbitration provisions of the 1977-80 Arizona Master Labor Agreement between the Association and the Union, which Agreement is incorporated into the Memorandum Agreement between Respondent and the Union dated April 22, 1980, thereby unilaterally changing the terms and conditions of employment of its employees, Respondent has engaged in unfair labor practices violating Section 8(a)(5) and (1) of the Act.

4. All employees engaged in field fabrication and/or erection and/or contracted maintenance of structural, ornamental, and reinforcing steel work coming within the jurisdiction of the International Association of Bridge, Structural, Reinforcing and Ornamental Iron Workers Union, as set forth in the collective-bargaining agreement between Respondent and the above-named Union, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

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

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that Respondent be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the purposes of the Act.

Having found that Respondent violated Section 8(a)(5) and (1) of the Act by its unlawful refusal to implement the terms and conditions of employment for unit employees contained in the referral, fringe benefit and grievance and arbitration provisions of the 1977-80 Arizona Master Labor Agreement between the Union and the Association, it is recommended that Respondent rescind all unilateral changes made in said terms and conditions of employment; give effect retroactively to the terms and conditions of employment for the unit employees as contained in said provisions; make whole the employees and would-be employees in the unit found appropriate herein for losses suffered by reason of its failure to comply with said provisions, with interest; and make all contributions to the health and welfare, training, supplemental benefits, vacation savings, and pension funds and make payments of the prescribed fees to administer said funds as provided in the 1977-80 Arizona Master Labor Agreement and the various Contributing Employers Agreements signed by Respondent relative to said funds, which have not been paid and which would have been paid absent Respondent's unlawful discontinuance of such payments. Backpay plus interest for those incurring loss because of Respondent's noncompliance with the referral provision of the 1977-80 agreement shall be computed in the manner set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).[3]

Upon the foregoing findings of fact and conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[4]

The Respondent, Southwest Security Equipment Corporation, Phoenix, Arizona, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to abide by the terms of its collective-bargaining agreement with International Association of Bridge, Structural, Reinforcing and Ornamental Iron Workers Local Union No. 75, AFL-CIO.

(b) Refusing to bargain collectively with the above-named Union as the exclusive bargaining representative of the employees in the following appropriate unit:

> All employees engaged in field fabrication and/or erection and/or contracted maintenance of structural, ornamental and reinforcing steel work coming within the jurisdiction of the International Association of Bridge, Structural, Reinforcing and Ornamental Iron Workers as set forth in the collective-bargaining agreement between Respondent and the above-named Union.

(c) Unilaterally changing any terms or conditions of employment of employees in the above unit during the life of any union contract without first reaching agreement with the Union about such changes.

(d) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights under the Act.

2. Take this affirmative action:

(a) Upon union request, recognize and bargain with the above-named Union concerning the employees in the above-described unit.

(b) Upon union request, rescind all unilateral changes made in the terms and conditions of employment of employees in the above-described unit contained in the referral, fringe benefit, and grievance and arbitration provisions of the 1977-80 Arizona Master Labor Agreement between said Union and the Arizona Steel Field Erectors Association incorporated in the April 22, 1980, Memorandum Agreement between Respondent and said Union.

(c) Upon union request, give effect retroactively to the referral, fringe benefit and grievance and arbitration provisions set forth in said Memorandum Agreement and Master Labor Agreement, and make whole its employees

[3] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

[4] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

and would-be employees for losses suffered by reason of its failure to comply with those provisions, including the referral provisions, with interest.

(d) Upon union request, make all contributions to the health and welfare, training, supplemental benefits, vacation savings, and pension funds, and pay the prescribed fees to administer said funds, as provided in the 1977–80 Arizona Master Labor Agreement and the various Contributing Employers Agreements signed by Respondent relative to said funds, which have not been paid and which could have been paid absent Respondent's unlawful discontinuance of such payments.

(e) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts owing under the terms of this Order.

(f) Post at its offices and jobsites copies of the attached notice marked "Appendix."[5] Copies of said notice, on forms provided by the Regional Director for Region 28, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and shall be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director for Region 28, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[5] In the event that 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."