

International Brotherhood of Electrical Workers, Local Union No. 46, AFL-CIO and Puget Sound Chapter, National Electrical Contractors Association and Cochran Electric Co., Inc., Evergreen Electrical Contractors, Inc., Holmes Electric Co., Hooper Electric Co., Industrial Electric-Seattle, Inc., Maple Valley Electric, Inc., Warburton Electric, Inc., Olympic Electric Co.¹ Cases 19-CB-5160, 19-CB-5216, 19-CB-5246, and 19-CB-5282

March 29, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT AND DEVANEY

On May 20, 1985, Administrative Law Judge Gordon J. Myatt issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed cross-exceptions and a brief in support of those exceptions and the judge's decision. The Charging Parties filed cross-exceptions with a supporting brief and an answering brief to the Respondent's exceptions. The Respondent filed an opposition to the cross-exceptions.

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

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

I. FACTS

The complaint alleges that the Respondent Union (the Union) violated Section 8(b)(1)(B) and (3) of the Act by (1) refusing to bargain with the chosen representatives of a group of independent employers (the Sundt group) who had timely withdrawn from multi-employer bargaining; (2) insisting on a single areawide

¹ At the hearing, the General Counsel amended the caption of the third amended consolidated complaint to include these individual Charging Party Employers.

² Although this case arises in the construction industry, the complaint alleges, and the answer admits, that the Respondent is the 9(a) representative of the employees of each of the individual Charging Parties.

We correct two inadvertent errors of the judge. There is only one collective-bargaining agreement between the National Electrical Contractors Association and the Respondent at issue here. It covers inside wiremen. The appropriate unit is:

All journeymen and apprentice electricians employed by the Employer within the geographic jurisdiction of Local 46, IBEW, AFL-CIO, excluding guards and supervisors as defined in the Act and all other employees.

³ The Respondent filed a motion to reopen the record for receipt of additional documentary evidence relating to the Charging Party Employers' Federal court suit. The Charging Party Employers filed a brief in opposition to the motion. After careful consideration, we deny the Respondent's motion to reopen, as the proffered evidence, even if accepted, would not affect the result reached here and therefore does not warrant a reopening of the record.

contract covering both the multiemployer association and those employers who had withdrawn; (3) subsequently submitting unresolved bargaining issues to interest arbitration; and (4) attempting to enforce the resulting arbitration award. The relevant facts, which are more fully set forth in the judge's decision, may be briefly summarized as follows.

For a number of years prior to 1984, the Puget Sound Chapter of the National Electrical Contractors Association (NECA), a multiemployer association representing employers in Seattle and other areas of north-west Washington State, was party to successive collective-bargaining agreements with the Respondent Union on behalf of both employer-members and independent contractors who agreed to be bound by the multiemployer contract. In December 1983, approximately 38 employers bound to the 1983-1984 agreement gave timely notice to the Union and canceled their letters of assent. These employers designated Maynard Sundt, NECA's executive director, as their bargaining representative for a successor agreement. On February 27, 1984,⁴ Sundt provided the Union with separate negotiating proposals with respect to both the NECA multi-employer group, which he continued to represent, and the "Sundt group" of individual employers. Each proposal contained a "most favored nations" clause.⁵ The Union immediately responded with its own reopening proposal addressed, however, to the NECA group alone.

The Respondent and the NECA group began negotiations for a successor agreement on March 5. NECA was represented by Sundt and by officials of five Charging Party Employers (Cochran, Holmes, Hooper, Industrial, and Olympic) who had previously withdrawn their bargaining authority from NECA and joined the Sundt group while retaining their memberships on NECA's board of directors. Sundt and the NECA committee members informed the Union that the committee represented NECA but that its members, as individual contractors, would not be bound by any agreement reached on behalf of NECA. Sundt further stated that the committee members could, on behalf of their companies, adopt the results of the NECA negotiations, negotiate a separate agreement as part of the Sundt group, or negotiate individually with the Union. The parties then met for approximately 2 hours of substantive bargaining.

The NECA group and the Union met again on March 13 and continued their efforts to reach agreement on a successor contract. Once again, Sundt and

⁴ All dates are in 1984 unless otherwise noted.

⁵ Sundt testified that the purpose of this provision was to obtain the better conditions negotiated in certain special project agreements between the Union and several large contractors. He admitted, however, that the clause could be invoked to provide every contractor he represented the benefit or the burden of every condition in both proposals. However, he considered that scenario "very hypothetical" given the Union's repeated statement in all previous negotiations that it would sign only "one contract."

the members of the NECA committee, joined this time by an official of Evergreen, stated clearly that they were negotiating for the NECA group only and not for their individual employers.

On March 6, the Union responded to Sundt's February 27 letter and indicated its desire to begin negotiations with the Sundt group, parallel to those already underway with the NECA group. The first meeting was held on March 19. Sundt and three of the six NECA committee members constituted the bargaining committee for the group of independent employers. The Sundt group committee informed the Union that any agreement reached between them would have to be approved individually by each employer in the Sundt group and that if such an employer did not approve, it had a right to negotiate with the Union individually for an agreement. Dave Jordan, business manager of the Union, stated that there would be only "one contract." Sundt understood that reference as a union insistence that only the contract achieved with the NECA bargaining team would be available to electrical contractors in the Union's jurisdiction. Following these opening statements, little substantive negotiations took place that day.

On March 20, the Union and the NECA committee met for a third time. Substantive bargaining occurred and the parties agreed to meet again on April 5.

On March 28, the Union filed unfair labor practice charges alleging violations of Section 8(a)(5) of the Act against NECA and the individual contractors who were members of both the NECA and the Sundt group bargaining committees. As a result of this charge, later withdrawn by the Union, those employers resigned from the NECA committee but continued their membership on the Sundt group committee. They were replaced on the NECA committee prior to the scheduled April 5 meeting between the Union and NECA by three employers who were still signatories to letters of assent delegating bargaining authority to NECA. On April 5, and again on April 10, the Union and the reconstituted NECA committee continued the substantive negotiations begun in March.

On April 16, the Union and the Sundt group committee held their second meeting. Sundt was accompanied at the bargaining table by officials of Employers Holmes, Hooper, Evergreen, and Cochran—original Sundt group representatives who had, until early April, also been members of the NECA bargaining committee. The Union immediately announced that it would not bargain with the employer representatives who had been on the NECA committee because of the then still pending unfair labor practice charge that the Union had filed. Union Business Agent Ed Olson stated that, based on a Board case issued in February,⁶ the Union now felt that the contractors present that day were on

the NECA committee and bound by those negotiations. Olson further stated that the Union would not "negotiate with them as both groups, because they were not entitled . . . to get the best of both worlds." The Sundt committee representatives insisted on remaining, whereupon the union representatives left, terminating the meeting.

A third meeting between the Union and the Sundt group was convened on April 19. Sundt brought to the meeting, in addition to the negotiating committee members, individual representatives of approximately 15 other employers in the Sundt group. The union representatives promptly refused to bargain in the presence of any employer representatives who had served on the NECA committee. After a management caucus, the Sundt group excused its bargaining committee members with the understanding that they were leaving under protest. As found by the judge, the remaining contractors then individually expressed their inability to compete under the terms of the existing collective-bargaining agreement and set out the modifications necessary for them to remain competitive. Without responding specifically to the employers' proposals or making any counterproposals, a union spokesman then stated that they could sign the NECA agreement when it was reached. No further meetings between the Union and either NECA or the Sundt group were held.

During the latter part of April, the Union, pursuant to the interest-arbitration clause of the 1983-1984 collective-bargaining agreement with NECA, unilaterally submitted outstanding negotiating issues to the Council on Industrial Relations (CIR), the industry's dispute resolution body. These submissions, supported by identical briefs, covered both the NECA unit and each of the 100 or more independent contractors, including those in the Sundt group. In reply, Sundt filed a brief on behalf of the NECA group and individual briefs on behalf of each of the other Employers, except Cochran, which filed its own brief.⁷

On June 8, the CIR, through two representatives to whom it referred the matter, issued its award detailing the terms of a new collective-bargaining agreement covering the NECA multiemployer unit. On July 6, Sundt wrote to the Union stating that seven named contractors in the Sundt group did not consider the award binding on them and that, on their behalf, he requested continued bargaining for a successor agreement. The Union responded by invoking the first step of the grievance/arbitration provision contained in the purported new contract in order to compel the requesting employers to accept the CIR award. Five of the contractors seeking continued negotiations filed a Federal court suit to vacate the interest-arbitration award.

⁶ *Dependable Tile Co.*, 268 NLRB 1147 (1984).

⁷ Sundt later argued the positions of the NECA group and the individual employers he was representing before the CIR panel in Washington, D.C.

The Union filed a counterclaim for enforcement of the CIR decision. This litigation is still pending.

II. THE JUDGE'S FINDINGS AND CONCLUSIONS AND THE PARTIES' EXCEPTIONS

For reasons fully stated in his decision, the judge found that on April 16 and 19, when the Union refused to meet and bargain with all the designated representatives of the Employers comprising the Sundt group, it had no lawful grounds for that refusal. He accordingly concluded that the Union thereby violated Section 8(b)(3) of the Act through a failure to bargain in good faith and Section 8(b)(1)(B) of the Act by coercing or restraining employers in their selection of their representatives for collective bargaining. He further found that the Union violated Section 8(b)(1)(B) of the Act by thereafter unilaterally submitting its negotiating disputes with the Sundt group employers to the CIR. He noted that the submission was made pursuant to an interest-arbitration clause in the expiring NECA contract, after the Sundt group employers had rescinded NECA's authority to bargain on their behalf. Finally, he found that the Union violated both Section 8(b)(1)(B) and (3) by refusing the requests by various Sundt group employers for continued negotiations after the CIR issued its award and by attempting to enforce the collective-bargaining agreement embodied in that award against those employers.

The judge dismissed the allegation that the Union violated Section 8(b)(3) of the Act by insisting to impose on imposing a single contract (the NECA multi-employer agreement) on the Sundt group employers. He reached this conclusion on the basis of his finding that the Sundt group employers were also seeking an areawide agreement—one with identical terms for themselves and NECA employers—so the Union could not be faulted for having a similar objective. The judge found that, in any event, the Union's refusal to meet with the Sundt group employers on April 16 and 19 was based on the identity of their negotiating representatives, not on their failure to accept the terms of the Union's proposed NECA agreement.

The Union has excepted to all the judge's findings that it violated Section 8(b)(1)(B) and (3) of the Act, and the General Counsel and the Charging Parties have excepted to the dismissal of the allegation that the Union unlawfully sought to impose a single agreement.

III. ANALYSIS AND CONCLUSIONS

We agree with the judge, for the reasons set forth in his decision, that the Union did not, as alleged, violate Section 8(b)(3) of the Act by seeking to impose a single areawide agreement, and we accordingly adopt his dismissal of that allegation. We also agree with the judge that the Union violated Section 8(b)(1)(B) and (3) of the Act by refusing to meet with the designated

Sundt representatives on April 16 and 19, that it violated Section 8(b)(1)(B) through its unilateral submission of negotiating issues to the CIR, and that it violated both Section 8(b)(1)(B) and (3) by its subsequent refusal to negotiate with certain Sundt group employers and its attempt to enforce the CIR award against them. Because our dissenting colleague disagrees with our decision to find the foregoing violations, and because we reach our conclusion concerning the violations related to the CIR on a basis different from that of the judge, we address these issues below.

1. In agreeing with the judge that the Union, on April 16 and 19, violated Section 8(b)(1)(B) and (3) of the Act by refusing to negotiate with, or even in the presence of, certain members of the Sundt group, we begin with the question as he formulated it, correctly in our view. The issue is whether the Union's refusals were privileged under *General Electric Co.*, 173 NLRB 253 (1968), *enfd.* 412 F.2d 512 (2d Cir. 1969). He found that the Union has not met its burden of showing that the Sundt group's chosen representatives were "so tainted with conflict or so patently obnoxious as to negate the possibility of good-faith bargaining."

As the judge found, the Sundt group tactics, specifically including the identical composition of the bargaining committees at the *outset* of separate bargaining sessions, demonstrated a permissible intent to continue the longstanding pattern of including all employers, both members and nonmembers of NECA, under a single collective-bargaining agreement. The judge emphasized that the Union's claim of an inherently disruptive conflict was substantially weakened by the Union's waiting until *after* the Sundt group members were replaced on the NECA committee before raising the claim. As the judge observed, given the Sundt group members' timely withdrawal of bargaining authority from NECA as well as the differences between the NECA and Sundt group proposals, their continuing as NECA officials does not demonstrate that they would not have confined their efforts to the Sundt group's interests when bargaining on behalf of that group.

Thus, when the Union refused to meet with, or in the presence of, the Sundt group's designated representatives on April 16 and 19, it did not have sufficient justification for believing that they intended to engage in coordinated bargaining beyond their own group of independent employers. At best the Union acted prematurely in assuming that the presence of two bargaining committees with the same initial memberships and Sundt's participation in the efforts of both committees to achieve new contracts constituted bad-faith bargaining. Accordingly, the Union was not relieved of its own statutory obligation to meet and negotiate with the Sundt group's chosen representatives. *Indiana & Michigan Electric Co.*, 235 NLRB 1128 (1978), *enfd.* 599 F.2d 185 (7th Cir. 1979); *Minnesota*

Mining & Mfg. Co., 173 NLRB 275 (1968), enf. 415 F.2d 174 (8th Cir. 1969).

We do not agree with our dissenting colleague that the Sundt group employers' active participation in negotiations as members of the multiemployer association bargaining committee before April 16 brought this case within the rule of *Dependable Tile Co.*, 268 NLRB 1147 (1984), and therefore warranted the Union's refusals to meet. Like the judge, we view the circumstances here as more akin to those in *Walt's Broiler*, 270 NLRB 556 (1984). In both *Dependable Tile* and *Walt's Broiler*, the Board sought to determine whether employer conduct was inconsistent with a stated intent to abandon group bargaining. In *Dependable Tile*, the conduct was deemed inconsistent, and in *Walt's Broiler* it was not. The rule discernible from the two cases read together is that active presence on a multiemployer bargaining committee is one factor, but not the only one, in determining whether employers have maintained their abandonment of group bargaining. As the judge found, here, as in *Walt's Broiler*, that factor was outweighed by repeated statements "at the outset and during subsequent bargaining sessions" that the Sundt group employers intended to negotiate separate contracts and did not intend to be bound by the multiemployer negotiations. 270 NLRB at 557. In addition, the Employers here had already ceased their participation as members of the multiemployer committee when the Union refused to meet with them.

Because we agree that the Sundt group employers at all times made it clear that they did not intend to be bound by the NECA group bargaining, they were not, as our dissenting colleague maintains, trying unfairly to have the best of several worlds. Although we agree with our dissenting colleague that the possibility remained that the Sundt group employers might end up agreeing to terms like those reached between the Union and NECA, we do not agree that this renders the Sundt group's conduct equivocal. It will always be the case that employers who make clear their intent to bargain separately may in the end decide to agree to terms mirroring those agreed to by a multiemployer group. Indeed, unions often urge such agreement without conceding that this obliterates the boundaries between multiemployer and single employer negotiations. Thus, our dissenting colleague's delineation of possible outcomes of the various sets of negotiations does not persuade us that the Union had grounds for concluding that the Sundt group negotiators were fatally compromised on April 16 and thereafter by their previous participation on the multiemployer bargaining committee.

2. Although we agree with the judge's conclusions that the Union violated Section 8(b)(1)(B) and (3) of the Act through its submission of negotiating issues to the CIR, its attempt to enforce the CIR award, and its

refusal to meet with Sundt group employers who declined to be bound by the award, our analysis must take account of the Board's intervening decision in *Electrical Workers IBEW Local 113 (Collier Electric)*, 296 NLRB 1095 (1989). In *Collier*, the Board, over Chairman Stephens' dissent, set forth a framework, based on the language of the applicable collective-bargaining agreement, for determining the legality of a union's submission of unresolved bargaining issues to interest arbitration.⁸ However, the Board emphasized that the presence of an interest-arbitration provision in a collective-bargaining agreement does not relieve employers and unions of their responsibilities to engage in good-faith bargaining and, on proper invocation of its jurisdiction, the Board will review the bargaining for a renewal agreement to ensure that the parties have bargained in good faith prior to the submission of any unresolved issues to interest arbitration. As the Board made clear in *Sheet Metal Workers Local 54 (Texas Sheet Metal)*, 297 NLRB 672, 677 (1990), an early post-*Collier* case, "bad-faith bargaining by a party prior to its unilateral submission of unresolved issues to interest arbitration will render that submission unlawful."⁹

In the instant case, we have already adopted the judge's finding that the Union violated Section 8(b)(3) of the Act by refusing to meet and bargain with the Sundt group's chosen negotiating committee. It therefore follows automatically from *Collier* and *Texas Sheet* that, as alleged by the General Counsel, the Union's subsequent submission to interest arbitration constituted bad-faith bargaining in violation of Section 8(b)(3) and coerced the Sundt employers in the selection of their bargaining representatives in violation of Section 8(b)(1)(B). We agree with the judge's finding that the Union also violated these same provisions of the Act by refusing thereafter to bargain with certain Sundt group employers who informed the Union that they did not consider the CIR arbitration award binding on them and promptly requested continued negotiations.¹⁰

⁸The Board first considers whether there is a reasonable basis in fact and law for a union's submission of unresolved bargaining issues to interest arbitration, i.e., whether a single employer, who has timely withdrawn from the multiemployer association, is arguably bound by the contractual interest-arbitration provisions. If it is determined that the collective-bargaining agreement at least arguably binds the employer to the interest-arbitration provisions, the union will be free to seek enforcement of these provisions, including pursuit of a court suit to enforce the contract, without violating Sec. 8(b)(3) or (1)(B) of the Act. On the other hand, if the collective-bargaining agreement does not even arguably bind the single employer to the interest-arbitration provision, then the union's submission of unresolved bargaining issues to interest-arbitration would constitute bad-faith bargaining and coercion of the employer in the selection of its collective-bargaining representative, in violation of Sec. 8(b)(3) and (1)(B).

⁹Though he dissented from the *Collier* majority's test of "reasonable basis in fact and law" in favor of the standard of clear and unmistakable waiver, Chairman Stephens agrees with that portion of *Collier* that imposes a threshold test of good-faith bargaining that must be met before the Board reaches the issue concerning the applicability of the interest-arbitration clause.

¹⁰Although not alleged, these violations were fully litigated.

For the same reasons set forth above with respect to the Union's invocation of interest arbitration in the first instance, we agree with the judge that the Union's subsequent attempt to enforce the awarded contract through its grievance procedures violated Section 8(b)(1)(B) and (3).¹¹

AMENDED CONCLUSIONS OF LAW

Substitute the following for paragraphs 6 and 7 of the judge's Conclusions of Law.

"6. By then, after engaging in the bad-faith bargaining set forth above, unilaterally submitting its negotiation dispute with the employers of the Sundt group to the Council on Industrial Relations for resolution, Local 46 has violated Section 8(b)(1)(B) and (3) of the Act.

"7. By refusing the request of various employers of the Sundt group for continued negotiations after the CIR award and by attempting, through the grievance-arbitration procedure, to enforce the CIR-directed collective-bargaining agreement against those employers, Local 46 has violated Section 8(b)(1)(B) and (3) of the Act."

ORDER

The National Labor Relations Board orders that the Respondent, International Brotherhood of Electrical Workers, Local No. 46, AFL-CIO, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Refusing to meet and bargain in good faith for a collective-bargaining agreement with the following Employers or their designated bargaining representatives:

Cochran Electric Co., Inc., Evergreen Electrical Contractors, Inc., Holmes Electric Co., Hooper Electric Co., Industrial Electric-Seattle, Inc., Maple Valley Electric, Inc., Warburton Electric, Inc., and Olympic Electric Co.

(b) Submitting, without first bargaining in good faith, any unresolved negotiation disputes with the above-named Employers to the Council on Industrial Relations for determination.

(c) Attempting to invoke the grievance-arbitration procedure of the collective-bargaining agreement directed by the CIR, in order to enforce the agreement, against those above-named Employers that had renewed their requests for negotiations following the issuance of the CIR award.

¹¹ The judge found it unnecessary to find, because cumulative, whether the Respondent's effort to enforce the arbitration award in Federal court was unlawful. We agree because whether or not a violation is found concerning this effort, our finding unlawful the Union's resort to its grievance/arbitration procedures to enforce the contract awarded by the CIR would preclude any subsequent conduct arising from it. Accordingly, we shall include a provision in our Order that the Union cease and desist from attempting to enforce the awarded contract in any manner against the involved Employers.

(d) Attempting to enforce the CIR award by filing, in the Charging Party Employers' Federal court suit to vacate the award, a counterclaim to confirm the award.

(e) In any like or related manner restraining or coercing the above-named Employers in the selection of their representatives for the purposes of collective bargaining or in any like or related manner refusing to bargain collectively with the above-named Employers.

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

(a) On request, meet and bargain in good faith with the Employers named in paragraph 1(a), above, or their designated bargaining representatives concerning wages, hours, and other terms and conditions of employment for the employees in the following appropriate unit:

All journeymen and apprentice electricians employed by the Employer within the geographical jurisdiction of Local 46, IBEW, AFL-CIO, excluding guards and supervisors as defined by the Act and all other employees.

(b) Notify those Employers named in paragraph 1(a), above, which had renewed their requests for negotiations following the issuance of the CIR award that the Union will not invoke the grievance-arbitration procedure of the collective-bargaining agreement directed by the CIR in order to enforce the terms of that agreement.

(c) Post at the offices and meeting halls of the Union copies of the attached notice marked "Appendix."¹² Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Sign and return to the Regional Director sufficient copies of the notice for posting by the above-named Employers and by Puget Sound Chapter, National Electrical Contractors Association, if willing, at all locations where notices to employees are customarily posted.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that all allegations of the third amended consolidated complaint not found to be violations are dismissed.

¹² 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."

MEMBER DEVANEY, dissenting.

Contrary to the judge and my colleagues, I find that the employer-members of the Sundt group negotiating committee engaged in activity inconsistent with their stated intent to abandon multiemployer bargaining and that the Union was therefore justified in refusing to meet with them as negotiators for the Sundt group. I do not think that this Board should force a union to conduct two separate sets of negotiations when the employers with whom it is negotiating are participating in both sets of negotiations and need not be bound to the results of either set of negotiations. The majority's ruling allows employers to compel a union to submit to their blatant search for the best of several worlds of bargaining. I would not place the imprimatur of the Board on such conduct.

The essential facts are not in dispute. Prior to negotiations for the 1984–1985 agreement between the Union and the Puget Sound Chapter, National Electrical Contractors Association (NECA), 38 contractors who had previously been bound by the multiemployer negotiations gave notice to the Union that they no longer intended to be bound by such negotiations. It is undisputed that this notice constituted a timely withdrawal from multiemployer bargaining. Shortly after notice of withdrawal had been given, the contractors signed letters of appointment conferring authority on Maynard Sundt, the executive director of NECA, to act as labor negotiator for the individual contractors while reserving to the contractors the right of final approval of any agreement reached. Sundt in turn advised the Union that he represented the now-independent contractors (the Sundt group) and it was their intention to terminate or modify their existing agreements with the Union. He forwarded the Sundt group contract proposals to the Union. At the same time, Sundt, acting as executive director for NECA, forwarded NECA's contract proposals to the Union.

By prior arrangement, the NECA group met with the Union to commence negotiations on March 5, 1984.¹ The NECA negotiating committee was headed by Sundt and was composed of five contractors, each of whom was a member and on the board of directors of NECA, but each of whom had withdrawn from multiemployer bargaining and was part of the Sundt group. At this meeting, the Union raised the question as to who was being represented by the members of the NECA negotiating committee. Sundt informed the Union that the committee members represented NECA but, as individual contractors, would not be bound by any agreement reached on behalf of NECA. He told the Union that the members of the NECA committee could accept the results of NECA negotiations, negotiate a separate agreement as part of the Sundt group,

or negotiate individually with the Union. The parties then engaged in substantive negotiations.

At the next meeting between the Union and the NECA group, the Union protested the statements repeated by the members of the NECA group regarding their individual bargaining liability. The Union stated it was unfair to require the "Union to go over the same contract again and again." However, substantive negotiations took place during the remainder of the meeting. When the Union met with the Sundt group for the first time on March 19, the Sundt group was represented by Sundt and three of the contractors who were part of the NECA bargaining committee. They told the Union that any agreement in the negotiations would have to be approved individually by each of the Employers in the group and that if an Employer did not approve of the agreement reached, it had the right to negotiate individually with the Union. The Union stated that there would only be one agreement. Little or no substantive negotiations occurred.

On the next day, the Union met with the NECA committee and engaged in negotiations on substantive matters. Again, contractors on the Sundt group negotiating committee were on the NECA negotiating committee. About a week after this meeting, the Union filed unfair labor practice charges with the Board against NECA and the contractors who were on NECA's committee and were also on the Sundt group committee. As a result of this charge, which was ultimately withdrawn, the six contractors withdrew from the NECA committee.

When the second meeting occurred between the Union and the Sundt group on April 16, the Union stated that it would not meet with the representatives of the contractors who had been on the NECA committee. The union representative stated that the Union "would not negotiate with them as both groups because they were not . . . to get the best of both worlds." The Sundt committee representatives insisted on staying and the union representative left the meeting. At the third and last meeting between the Union and the Sundt group on April 19, the Union refused to meet while those employers who served on the NECA negotiating committee were in the room. The employers the Union found objectionable left under protest, but there were no negotiations on the respective proposals of the parties.

Shortly thereafter, the Union unilaterally submitted the dispute over the contract negotiations to the Council on Industrial Relations under the interest-arbitration provision in the expired contract with NECA.

The Union argued before the judge that it was privileged to refuse to meet with members of the Sundt group bargaining committee who were on the NECA bargaining committee because those members' actions on the NECA committee were inconsistent with their

¹ All dates are in 1984.

timely withdrawal from multiemployer bargaining. In support of this position, the Union cited *Dependable Tile Co.*, 268 NLRB 1147 (1984), in which the Board found that Dependable Tile violated Section 8(a)(5) by not honoring a contract reached through multiemployer bargaining even though Dependable Tile had given timely notice of withdrawal from multiemployer bargaining. The Board found that Dependable Tile's president, Jack Hartman, acted inconsistently with the withdrawal from multiemployer bargaining by actively participating in multiemployer negotiations for a new contract.²

The judge and my colleagues reject this argument on the basis of their finding that the conduct here is controlled by *Walt's Broiler*, 270 NLRB 556 (1984).³ The judge found, and my colleagues agree, that the contractors here, like the employers in *Walt's Broiler*, gave unequivocal notice of abandonment of group bargaining and reserved the right to bargain individually while remaining members of the multiemployer association, and also repeatedly informed the Union of their position during negotiating sessions. The judge conceded that, more in keeping with the facts of *Dependable Tile*, the Sundt group negotiators actively participated in the negotiations on behalf of NECA as members of that groups' negotiating committee. He nevertheless concluded that the controlling factor is that the contractors repeatedly made clear their position at both the NECA and Sundt group negotiation meetings with the Union.

I do not agree with this analysis. The basis on which the Board expressly distinguished *Dependable Tile* was the employer's *active participation* in negotiations on behalf of the multiemployer unit after its timely withdrawal from multiemployer bargaining—not whether the employer had repeatedly informed the union that it

did not intend to be bound by multiemployer bargaining.⁴ That distinguishing factor is absent here. To the contrary, the contractors here, like the employer in *Dependable Tile*, actively participated in negotiations on behalf of the multiemployer association *after* withdrawing from multiemployer bargaining. Not only did they actively participate in such negotiations, they made up the *entire* NECA negotiating committee (with the exception of Sundt) and withdrew from the committee only after the Union filed unfair labor practice charges against them. It can be said here equally as well as in *Dependable Tile* that the contractors participated in group negotiations in an attempt to secure satisfactory terms in the multiemployer agreement, but at the same time reserved the right to reject any agreement not to their liking.⁵ The repeated statements of the contractors that they had withdrawn from multiemployer bargaining do not change the fact that by their active participation in the negotiations they were trying to affect the terms of the multiemployer agreement. In this regard, they clearly sought “the best of the two worlds” of multiemployer and individual bargaining and such conduct, no matter how clearly or repeatedly revealed to the Union, is prohibited.⁶ Accordingly, I would find, under the rationale of *Dependable Tile*, that the contractors' conduct in this case was inconsistent with their withdrawal from multiemployer bargaining, that the Union was privileged to consider them bound to the multiemployer group, and that the Union, therefore, could lawfully refuse to meet with them as the negotiators for the Sundt group.

Apart from the active participation in multiemployer bargaining, I find that this case is distinguished from *Walt's Broiler* in another significant way. In *Walt's Broiler*, the employers proposed only one set of negotiations with only two possible outcomes. Multiemployer bargaining would take place in one set of meetings and the employers could, but were not bound to, agree to the multiemployer contract or could negotiate a separate individual agreement. Here, the contractors essentially proposed *two* sets of negotiations with *three* possible outcomes. First, multiemployer bargaining was to take place in one set of negotiations. The contractors effectively *conducted* this bargaining and could, but were not bound to, agree to the multiemployer contract resulting from this set of negotiations. Second, the Sundt group bargaining was to take place simultaneously in a separate set of negotiations. In the Sundt group bargaining, the contractors could, but were not bound to, agree to any contract negotiated for

²The Board concluded that by participating on the negotiating committee for the multiemployer association from the time of its December 21, 1981 withdrawal until the expiration of its contract on March 31, 1981, Dependable Tile acted in a manner inconsistent with its withdrawal from multiemployer bargaining. Thus, the Board found that Hartman continued in group negotiations in an attempt to secure satisfactory terms in the multiemployer agreement, but at the same time attempted to reserve the right to reject any agreement not to his liking. This inconsistent conduct nullified the withdrawal from multiemployer bargaining and bound Dependable Tile to the contract reached through multiemployer bargaining on November 15, 1981.

³In that case, various employer-members of the Gray's Harbor Restaurant Association (the Association) who had been bound to a contract negotiated between the Association and the Union, notified the Union that in forthcoming negotiations for a new collective-bargaining agreement, they would be a part of the Association, but retained the right to accept or reject any part of the contract negotiated and would negotiate any differences separately. Subsequently, Maynard Cornyn, a management consultant, informed the Union that he was authorized to represent the members of the Association as a group and as individuals. In numerous negotiating sessions with the Union, Cornyn explained that he was representing the employer-members as a group and individually. During this time, the Union executed separate compliance letters with four employer-members. The Board found nothing in the employer-members' postwithdrawal conduct that was inconsistent with their withdrawal from group bargaining. The Board stressed that each employer-member informed the Union that it would not be bound by group bargaining but would be represented individually by Cornyn, and that Cornyn repeatedly reminded the Union of this bargaining posture during negotiating sessions.

⁴*Walt's Broiler*, 270 NLRB 556, 558 at fn. 3.

⁵That the contractors here withdrew from the NECA negotiating committee does not require a different conclusion. The *Dependable Tile* employer also withdrew from the multiemployer negotiating committee on the expiration of his current contract with the Union, some 3 months after the beginning of multiemployer negotiations.

⁶*Associated Shower Door Co.*, 205 NLRB 677 (1973); *Michael J. Bollinger Co.*, 252 NLRB 406 (1980).

the Sundt group or could negotiate with the Union for an individual agreement. (Actually, the first set of negotiations was the whole show in *Dependable Tile* and the second set of negotiations was the whole show in *Walt's Broiler*.) In effect, the contractors here sought to have the Union commit itself to two separate sets of group bargaining. The same contractors would get two chances to negotiate a group contract and still retain the right to reject either one and bargain a separate agreement. They sought the best of not two but three worlds. I believe this conduct is inconsistent with a valid withdrawal from multiemployer bargaining and can lawfully be resisted by the Union. I would dismiss the 8(b)(3) and (1)(B) allegations concerning the Union's refusal to meet and bargain with all the designated representatives of the contractors comprising the Sundt group.

I would further dismiss the allegations concerning the Union's unilateral submission of negotiating issues to the Council on Industrial Relations (CIR) and its subsequent refusal to negotiate with certain Sundt group employers and its attempt to enforce the CIR award against them. The Union's submission was made pursuant to an interest-arbitration clause in the expiring NECA contract to which the Sundt group contractors were bound. In the absence of bad-faith bargaining by the Union, I find that the contractors are arguably bound by the contractual interest-arbitration provisions and that the Union is, therefore, free to seek enforcement of these provisions. *Electrical Workers IBEW Local 113 (Collier Electric)*, 296 NLRB 1095 (1989).

APPENDIX

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

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to meet and bargain in good faith for a collective-bargaining agreement with the following Employers or their designated bargaining representatives:

Cochran Electric Co., Inc., Evergreen Electrical Contractors, Inc., Holmes Electric Co., Hooper Electric Co., Industrial Electric-Seattle, Inc., Maple Valley Electric, Inc., Warburton Electric, Inc., and Olympic Electric Co.

WE WILL NOT submit, without first bargaining in good faith, any unresolved negotiating disputes with the above-named Employers to the Council on Industrial Relations for determination.

WE WILL NOT attempt to invoke the grievance-arbitration procedure of the collective-bargaining agreement directed by the Council on Industrial Relations, in order to enforce the agreement, against those above-named Employers that had renewed their requests for negotiations following the issuance of the CIR award.

WE WILL NOT attempt to enforce the CIR award by filing a counterclaim in the Employers' Federal court suit to vacate the award.

WE WILL NOT in any like or related manner restrain or coerce the above-named Employers in the selection of their bargaining representatives for the purposes of collective bargaining or in any like or related manner refuse to bargain collectively with the above-named Employers.

WE WILL, on request, bargain in good faith with the above-named Employers, or their designated bargaining representatives, concerning wages, hours, and other terms and conditions of employment for the employees in the following appropriate unit:

All journeymen and apprentice electricians employed by the Employer within the geographic jurisdiction of Local 46, IBEW, AFL-CIO, excluding guards and supervisors as defined in the Act and all other employees.

WE WILL notify those above-named Employers that had renewed their requests for negotiations following the issuance of the CIR award that we will not invoke the grievance-arbitration procedure of the collective-bargaining agreement directed by the CIR in order to enforce the terms of that agreement.

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL UNION
No. 46, AFL-CIO

James C. Sand, Esq., for the General Counsel.
Hugh Hafer, Esq. (Hafer, Price, Rinehart & Schwerin), of Seattle, Washington, for the Respondent.
Ronald W. Novotny, Esq. (Thierman, Simpson & Cook), of San Francisco, California, for the Charging Party.

DECISION

STATEMENT OF THE CASE

GORDON J. MYATT, Administrative Law Judge. Upon a series of charges filed by Puget Sound Chapter, National Electrical Contractors Association (NECA) against International Brotherhood of Electrical Workers, Local Union No. 46, AFL-CIO (Local 46 or the Union) on behalf of various employers, the Regional Director for Region 19 issued several consolidated complaints and finally a third amended consolidated complaint and notice of hearing on October 3, 1984.

¹ The final consolidated complaint alleges that Local 46 vio-

¹ Unless otherwise indicated, all dates are in 1984.

lated Section 8(b)(1)(B) and (3) of the National Labor Relations Act (the Act).

Specifically, the consolidated complaint alleges that the employers were part of a multiemployer bargaining unit represented by NECA and, as such, were parties to successive collective-bargaining agreements with Local 46. Further, that prior to the expiration of the latest agreement (1983–1984), a number of employers, including the eight employers on whose behalf the underlying charges were filed, timely withdrew from the multiemployer unit and notified the Union they would be represented individually and would bargain separately for a successor agreement. The consolidated complaint alleges that when representatives of these employers (the Independents) met with representatives of the Union, they were informed there would be only one agreement and it would apply to the multiemployer unit and the Independents. Additionally, that in subsequent meetings with the Independents the Union refused to negotiate in the presence of certain members of that group because the Union considered them to continue to be members of the multiemployer unit.

The consolidated complaint also alleges that Local 46 unilaterally submitted all unresolved issues of the negotiations between it and the Independents, as well as between it and the NECA bargaining unit, to a disputes resolution panel established by and composed of members of the parent organizations of NECA and the Union. That as a result of this submission, the terms of a new agreement were directed by the panel to apply to the multiemployer group and the Independents alike. Finally, the consolidated complaint alleges that when certain Independents thereafter renewed their request for negotiations for a successor agreement Local 46 invoked the grievance and arbitration procedures of the purported new agreement against them in order to enforce the terms directed by authority of the panel.

It is alleged that the above acts restrained and coerced the individual employers, named in the complaint, in the selection of their representatives for purposes of collective bargaining. It is also alleged that by this conduct Local 46 has refused to bargain collectively with the Independents as required by the Act.

Local 46 filed an answer to the second amended consolidated complaint issued in this matter and at the hearing, its counsel stated this answer also applied to the final amended consolidated complaint. The answer admits certain allegations of the consolidated complaint, denies others, and specifically denies the commission of any unfair labor practices.

By way of an affirmative defense, Local 46 asserts that NECA and the Independents have engaged in a “conspiracy,” dating back to the negotiations for the 1983–1984 agreement, to “confuse, frustrate, and prevent good-faith bargaining and/or the consummation of a legitimate collective-bargaining agreement.” The Union asserts, *inter alia*, that NECA and the Independents sought to accomplish this objective by: (1) admitting nonunion contractors to membership; (2) encouraging members to establish double-breasted operations; (3) encouraging union contractors to operate as non-union contractors; and (4) having the chief negotiator for the NECA bargaining unit serve as the negotiator for the Independents seeking to bargain for “separate and substantially inferior” agreements, while insisting that the NECA agreement contain a “favored nations” clause. Counsel for the General Counsel filed a motion to strike the Union’s affirma-

tive defense and at the hearing, after the parties stated their respective positions on the record, the motion was granted.²

A hearing was held in this matter on October 15–18, 1984, in Seattle, Washington. All parties were represented by counsel and afforded full opportunity to examine and cross-examine witnesses and to present relevant and material evidence on the issues involved. Briefs have been submitted by all counsel and have been duly considered.

On the entire record³ in this case and on my observation of the witnesses while testifying, I make the following

FINDINGS OF FACT

I. JURISDICTION

Cochran Electric Co., Inc.; Evergreen Electrical Contractors, Inc.; Holmes Electric Co.; Hooper Electric Co.; Industrial Electric-Seattle, Inc.; Maple Valley Electric, Inc.; Warburton Electric, Inc.; and Olympic Electric Co. are each Washington corporations with offices and places of business located in the State of Washington, and are engaged in the electrical contracting business within the territorial jurisdiction of Local 46. During the 12 months preceding the issuance of the complaint in this matter, each of the above employers, in the course and conduct of their business operations, had gross sales of goods and services valued in excess of \$500,000. During a similar period, each of the employers sold and shipped goods or provided services valued in excess of \$50,000 from their facilities in the State of Washington to customers outside the State, or to customers within the State who were themselves engaged in interstate commerce. During the same period, each of the above employers purchased and caused to be delivered to their facilities in the State of Washington goods and materials valued in excess of \$50,000 directly from sources outside the State, or from sources within the State who in turn obtained such goods and materials directly from sources outside the State of Washington.

Based on the foregoing, I find that the above employers, and each of them, are employers within the meaning of Section 2(2) engaged in commerce or in an industry affecting commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

International Brotherhood of Electrical Workers, Local Union No. 46, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background Facts

The Puget Sound Chapter of NECA is a multiemployer association representing electrical contractors doing business in the Seattle and other northwest Washington areas. Historically, NECA has negotiated collective-bargaining agreements with Local 46 on behalf of its employer-members and for independent contractors who have agreed to be bound by the

²In his brief, counsel for Local 46 requested reconsideration of this ruling. The request for reconsideration is denied and the granting of the motion to strike stands.

³Certain errors in the transcript are noted and corrected.

results of the multiemployer negotiations.⁴ Individual contractors become bound by the multiemployer negotiations by executing either letters of assent A by which they authorize NECA to be their bargaining representative, or letters of assent A and B by which they agree to comply with the terms of the multiemployer/Local 46 agreement. (See G.C. Exhs. 4(a) and (b) for examples of letters of assent “A” and “B”.)⁵

The record reveals that the traditional pattern of negotiations between NECA and Local 46 changed during the negotiations for the 1983–1984 agreement. A number of contractors timely revoked their letters of assent A and stated they would bargain separately with the Union. These contractors were represented individually by Maynard Sundt, the executive director of NECA, who also headed the negotiating committee for the multiemployer group. In addition, several contractors who revoked letters of assent A were part of the committee negotiating with Local 46 for the NECA group. A successor agreement was ultimately reached between NECA and Local 46 and many of the revoking contractors agreed to be bound by that contract.⁶ This agreement was effective from June 1, 1983, through May 31, 1984.

The background evidence indicates, however, that approximately 20 employers who revoked letters of assent A refused to accept the negotiated agreement and continued to bargain with the Union to impasse. They then implemented their final offer. The Union thereupon sought to submit its dispute over the successor agreement with these employers to the Council on Industrial Relations (the CIR) for a decision.⁷ The testimony indicates the CIR declined jurisdiction over the matter and the Union ultimately filed an action against these employers in the Federal district court.

B. The Current Negotiations for the 1984–1985 Agreement

In December 1983, 38 contractors gave timely notice to the Union revoking their letters of assent A.⁸ On January 17, 1984, Sundt sent a memorandum to each of these employers seeking their written authorization appointing him to bargain on their behalf and requesting the contractors’ position on issues to be raised during the negotiations with the Union. (See R. Exh. 3.) The letter of appointment conferred authority on Sundt to act as labor negotiator for the individual contractor while reserving to the contractor the right of final approval of any agreement reached. (See R. Exh. 2.) On February 27, Sundt advised the Union, in writing, that he rep-

resented the now-independent contractors and that it was their intention to terminate or modify the existing agreement with Local 46. (See G.C. Exh. 6(a).) On the same date, Sundt forwarded the contract proposals of the Independents (the Sundt group) to the Union. (See G.C. Exh. 6(b).) In addition, acting as executive director of the multiemployer group (the NECA group), Sundt also forwarded that organization’s contract proposals to the Union. (See G.C. Exh. 6(c).) Dave Jordan, business manager of Local 46, sent the Union’s contract proposals for the NECA group to Sundt on the same date. (See G.C. Exh. 6(d).)

The proposals of the NECA and Sundt groups contained a “most-favored-nations” clause and a modified CIR provision. By the latter, the employers were seeking to limit the jurisdiction of the CIR to disputes involving existing agreements only and not those involving terms of future agreements. By the most-favored-nations clause the employer groups were seeking to require the Union to grant to all signatory employers the most favorable terms offered to any employer operating within the Union’s jurisdiction. While Sundt testified this provision was primarily directed to “special agreements” extended by the Union to major contractors (such as Bechtel Co.) on special projects, he admitted the provision could be applied to any situation where more favorable terms were granted by the Union to any employer.

Sundt further testified that during the subsequent negotiations with the Union for both the Sundt and NECA represented employers, the employers were prepared to drop their proposal, including the most-favored-nations clause, if the Union agreed to wage rollback and the modified CIR provision. Although he first stated on direct examination that he informed the Union of this, he subsequently admitted on cross-examination that he never told the union representatives, during negotiations for either employer group, this was the employers’ bargaining position.

By prior arrangement, the NECA group met with the Union on March 5 to commence negotiations for a successor agreement. The union negotiating committee was headed by Jordan and consisted of various business agents and other representatives of Local 46. The NECA negotiating committee was headed by Sundt and was composed of representatives of several electrical contractors, each of whom was a member of NECA but had canceled their letters of assent.⁹ Sundt testified that the NECA negotiating committee had been appointed by the president of NECA (Richards) after discussions with him in January. According to Sundt, the objective was to have NECA represented by employers who were strong in the industry, had prior experience in negotiations, and reflected a geographic cross-section of the contractors so that the concerns of those located outside the greater Seattle area would be considered.

In keeping with past practice, a member from each negotiating committee was selected to serve as chairman and secretary, respectively, of the negotiations. Sundt of NECA was designated chairman and Jordan of the Union was designated

⁴The agreements negotiated by NECA and by Local 46 have included the inside wiremen, residential, stockmen, and lighting maintenance agreements. These are the agreements at issue here.

⁵The bargaining unit appropriate for purposes of collective bargaining under the inside wiremen agreement is:

All journeymen and apprentice electricians employed by the Employer within the geographic jurisdiction of Local 46, IBEW, AFL–CIO, excluding guards and supervisors as defined by the Act and all other employers.

⁶See G.C. Exh. 3 (Inside Construction Agreement).

⁷The CIR is a disputes resolution body established by the National NECA organization and the International Union. It is composed of an equal number of members from National NECA and the International. Where existing agreements provide for the CIR procedure, this body renders final decisions not only on disputes involving existing agreements but also on disputes involving negotiations for future agreements. (See G.C. Exh. 28 for the rules and standing policies of the CIR.)

⁸See G.C. Exhs. 5(a)–(h) for examples of the revocation notices sent to the Union by various contractors.

⁹The contractors attending this meeting were: Eugene Richards (president of NECA)-Holmes Electric; Terry Hooper-Hooper Electric; Hank Burkhardt-Olympic Electric; Gordon Cochran-Cochran Electric; Gary Lane-Industrial Electric. Each of the negotiating contractors was a member of the board of directors of NECA.

secretary.¹⁰ The minutes of each negotiating session had to be approved by the respective committees and there is no dispute as to their content.

The minutes of the March 5 meeting and the testimony in the record indicate that the union representatives questioned who was being represented by the members of the NECA negotiating committee. Sundt advised the union representatives that the management negotiating committee represented NECA but, as individual contractors, would not be bound by any agreement reached on behalf of NECA. He informed the union representatives that the members of the NECA committee could accept the results of NECA negotiations, negotiate a separate agreement as part of the Sundt group, or negotiate individually with the Union. (See G.C. Exh. 7(a).) Sundt testified that the individual members of the NECA committee also made similar statements to the union representatives regarding their declination to be bound by the results of the NECA negotiations. The parties then proceeded to engage in substantive negotiations and the meeting lasted approximately 2 hours.

The next meeting between the Union and the NECA bargaining committee occurred on March 13. At this meeting, Sundt and the members of the NECA committee¹¹ again informed the union representatives that they were not bound individually by the results of the negotiations on behalf of NECA. The undisputed testimony indicates that Edward Olson, a business representative of Local 46 and one of the union negotiators, protested against the statements made by the members of the NECA Group regarding their individual bargaining liability. Olson stated it was “unfair” because the arrangement required “the Union to go over the same contract again and again” and afforded the NECA bargaining committee members three options to negotiate with the Union. Nevertheless, the Union and the NECA group proceeded to engage in substantive negotiations during the course of the meeting.

In response to Sundt’s letter of February 27, Jordan offered, on March 6, to meet with the employers of the Sundt group individually or as a group. (See G.C. Exh. 8.) The first meeting between the Union and the Sundt group was held on March 19. The union representatives attending this meeting were Jordan and Olson. Attending for the Sundt group were Sundt and representatives of three of the employers who were part of the NECA bargaining committee—Richards, Cochran, and Mackey.¹²

Sundt and the members of his committee advised the union representatives that any agreement reached in the

Sundt group negotiations would have to be approved individually by each of the employers in that group. Further, that if an employer did not approve the agreement reached during the negotiations, that employer had a right to negotiate individually with the Union for an agreement. Sundt testified that Jordan stated there would only be one agreement.¹³ There was discussion by both parties concerning their respective opening letters but little or no substantive negotiations occurred at this meeting.

The following day, the NECA committee met with the union committee to continue negotiations for the NECA group. Burkhardt, Lane, Mackey, and Richards were part of the employer group. The minutes reflect that the parties engaged in negotiations on substantive matters during this meeting and agreed to meet again on April 5.

On March 28, the Union filed charges with the Board’s Regional Office against NECA and the six contractors who were on NECA’s bargaining committee and were also on the Sundt group bargaining committee. The Union alleged the conduct of NECA and the named contractors constituted a violation of Section 8(a)(5) of the Act.¹⁴

The Union and the NECA group met again on April 5. Sundt explained the new composition of the NECA negotiating committee and the parties proceeded to continue their negotiations for a new agreement. (See G.C. Exh. 13(a).) Further negotiations between the NECA group and the Union took place on April 10. (See G.C. Exh. 14(a).) A subsequent meeting was scheduled for April 17, but did not occur for reasons not indicated in the record.

On April 16, a second meeting was held between the Union and the negotiating committee for the Sundt group. The union representatives announced at the outset of the meeting that they would not meet with the representatives of the contractors who had been on the NECA negotiating committee because of the NLRB charge against them.¹⁵ Olson testified he told the Sundt group that the Union had “received an NLRB decision on a tile case.”¹⁶ As a result, he stated the Union felt the members of the Sundt negotiating committee who had been on the NECA bargaining committee were bound by the NECA negotiations. He further stated that the Union “would not negotiate with them as both groups because they were not . . . to get the best of both worlds.” According to Olson, the Sundt committee rep-

¹⁰It was the practice to alternate the holding of these respective positions each negotiating year between a union and a management representative.

¹¹At this second meeting, James Mackey, president of Evergreen Electric, also attended as a member of the NECA bargaining group. Like the other members of the NECA committee, Evergreen had revoked its letters of assent “A” and its president remained a member of the board of directors of NECA. In addition to Mackey, Richards, Cochran, and Hooper attended for the NECA group.

¹²Although at one point in his testimony, Sundt stated that the employer representatives bargaining on behalf of the Sundt group constituted a “non-official” committee, it is evident from his testimony and the minutes that these individuals were considered by both the Union and Sundt to be the bargaining committee for the Sundt group. Indeed, Sundt frequently referred to them as “his negotiating committee” in his testimony. He also stated it was the intention of the employers to have the same bargaining committee for both the NECA and Sundt groups in order to coordinate the “aims and goals” of the employers.

¹³According to Sundt, the union representatives repeatedly stated in past negotiations and during the current negotiations that there would only be one collective-bargaining agreement applied to the contractors in the area. Olson’s testimony, while differing in certain respects, corroborated Sundt’s statement that the Union was seeking one agreement to apply to all contractors. According to Olson, Sundt mentioned on several occasions at this meeting that the Union would only give one contract and Jordan responded, in each instance, in the affirmative.

¹⁴These charges and charges subsequently filed by NECA against the Union were submitted by the Regional Director to the General Counsel’s Division of Advice in Washington, D.C. The Regional Director was instructed to dismiss the charges filed by the Union, in the absence of a withdrawal, and proceed to complaint on the charges filed against the Union. When notified of this intended action, the Union withdrew its charge against NECA and the six named contractors. As a result of the Union’s charge, the six employer representatives withdrew from the NECA negotiating committee. Sundt testified that this was done in order to “resolve any differences as it pertain[ed] to the multi-employer group.”

¹⁵Richards, Mackey, Hooper, and Cochran attended this meeting as the representatives of the employers to whom the Union objected.

¹⁶Olson was referring to the Board’s decision in *Dependable Tile Co.*, 268 NLRB 1147 (1984).

representatives insisted on staying and the union representatives left the meeting.

A third meeting between the Sundt group and the Union occurred on April 19. While no minutes of this meeting were approved by the parties, there is virtually no dispute as to what took place. Sundt testified the union representatives refused to meet while those employers who served on the NECA negotiating committee were in the room. The management group then caucused and decided that the employers the Union found objectionable would leave the meeting under protest so that negotiations could resume with the remaining employers of the Sundt group.¹⁷ Sundt testified there were no negotiations on the respective proposals of the parties. According to Sundt, the remaining contractors individually expressed their inability to compete under the terms of the existing collective-bargaining agreement and the need for a major modification so they could remain competitive. Sundt recalled that either Jordan or Olson stated the multi-employer (NECA) agreement would be available to the employers of the Sundt group and other independent contractors.

The record reveals there were no further negotiations with either the NECA or the Sundt group. Sundt stated that attempts by an interim committee to resolve the differences of the employers and Local 46 were unsuccessful.

Sometime during the latter part of April, Local 46 unilaterally submitted the dispute over the contract negotiations to the Council on Industrial Relations (CIR).¹⁸ Sundt was notified of the submission to the CIR regarding the NECA group, and over 100 contractors, including those in the Sundt group, were notified individually of the submission involving them. Sundt filed a brief with the CIR on behalf of the NECA group as well as individual briefs on behalf of each of the other employers, except Cochran.¹⁹ The Union's written statements of its position before the CIR regarding the NECA group and the individual employers were identical.

Sundt went to Washington, D.C., to present orally the positions of NECA and the individual contractors he was representing before the CIR panel. According to the unrefuted testimony of Sundt, the CIR panel hearing the matter termed it a dispute between Local 46 and the Puget Sound Chapter

of NECA. After making his presentation on behalf of NECA, Sundt stated the panel was about to adjourn to consider the submissions and the oral arguments. He then reminded the panel of the submissions involving the 100 individual employers. The panel thereupon heard Sundt's presentation involving the individual employers. Sundt testified he argued that Local 46 had failed to engage in "bona fide collective bargaining" as required by the Council rules as a prerequisite to consideration of a unilateral submission. He also stated that while he felt the CIR had no jurisdiction over the employers who had withdrawn their letters of assent, he did not argue this position before the panel.²⁰

The CIR did not render a decision on the disputes but referred the entire matter, on May 18, to the Ninth District Vice President of the International Union S.R. McCann and Western Regional Director of National NECA Daniel J. McPeak for resolution. Although McCann and McPeak previously sat on other CIR panels, neither of these individuals was a member of the panel hearing the instant disputes when they were presented in Washington, D.C., by the parties.²¹ Nor were they members of Local 46 or the local NECA chapter. Rather, they were officials of the International Union and National NECA, respectively.

On May 31, McCann and McPeak issued a telegram to Sundt, as executive director of the NECA chapter, notifying him of the highlights of their decision setting forth the terms of a new collective-bargaining agreement. (See G.C. Exh. 24.) A written decision was issued on June 8 detailing the terms of the new agreement decided on by McCann and McPeak. (See G.C. Exh. 25.)

On July 6, Sundt wrote to Jordan of Local 46 stating that seven named contractors did not consider the McCann/McPeak decision binding on them and renewing their request for continued negotiations with the Union.²² The letter set forth the final proposal on behalf of the seven contractors and stated the terms would be implemented if the Union failed to respond to the request in 7 days. (See G.C. Exh. 26.) On July 12, Jordan responded in writing by requesting a labor-management conference to consider the Union's grievance against the seven contractors pursuant to the new collective-bargaining agreement resulting from the McCann/McPeak decision. The Union took the position that these seven employers failed to abide by the CIR decision. (See G.C. Exh. 27.)

¹⁷ According to Sundt, there were 14 or 15 employers present at this meeting other than the employers who were on the negotiating committee.

¹⁸ The CIR rules permit unilateral submission of negotiations disputes where there is a "Council clause" in the existing agreement between the parties. Among other things, the CIR standing policies require the following regarding unilateral submissions:

(2) The submitting party has engaged or attempted to engage in bona fide collective bargaining in accordance with the terms of the local labor agreement in an effort to effect a local settlement. (See CIR rules and standing policies, G.C. Exh. 28, art. VIII, at 8.)

The existing agreement contained the following provisions regarding unresolved negotiation disputes:

Section 1.02

.....

(d) Unresolved issues in negotiations that remain on the 20th of the month preceding the next regular meeting of the Council on Industrial Relations, may be submitted jointly or unilaterally by the parties to this agreement to the Council for adjudication prior to the anniversary date of the agreement.

(e) Where a case has been submitted to the Council, it shall be the responsibility of the negotiating committee to continue to meet weekly in an effort to reach settlement on the local level prior to the meeting of the Council.

¹⁹ Cochran withdrew authority from Sundt to represent it and filed its own brief with the CIR.

²⁰ In the written submissions to the CIR prior to the oral presentation, Hooper Electric was the only contractor on whose behalf Sundt contested the jurisdiction of the CIR to hear the dispute with the Union. (See G.C. Exh. 21(a).)

²¹ It should be noted at this point that Gordon Cochran of Cochran Electric Co. was a NECA member of the CIR. As such, he was not eligible to sit on a panel hearing a dispute in which he was involved. The record testimony reveals, however, that Cochran subsequently sat on a panel of the CIR in August on a matter involving other parties.

²² Five of the six contractors who were on the original NECA bargaining committee were among the employers named in Sundt's letter. (Cochran, Hooper, Industrial, Holmes, and Evergreen.) Olympic decided to make its peace with the Union and abide by the CIR decision. Maple Valley Electric and Hagen Electric were the other two contractors included in the group objecting to the CIR decision. It was subsequently discovered that Hagen had not revoked its letter of assent A and that firm's name was withdrawn from the group objecting to the CIR decision. Warburton Electric, Inc., a member of the Sundt group, was neither on the original NECA bargaining committee nor among the seven contractors seeking negotiations after the CIR decision. However, this employer was named in the charge filed by NECA in Case 19-CB-5282 asserting that the Union's conduct violated the Act.

Five of the seven contractors requesting continued negotiations (Cochran, Hooper, Industrial, Evergreen, and Holmes) filed a petition to vacate the award rendered by the CIR in the United States district court. Local 46 filed a counterclaim for enforcement of the decision rendered by the CIR through McCann and McPeak. This litigation is currently pending in Federal district court.

IV. CONCLUDING FINDINGS

The General Counsel contends that Local 46 committed several violations of the Act during the negotiations for a new agreement with the Sundt group employers.²³ First, it is contended that the Union violated Section 8(b)(3) by refusing to meet with the negotiating committee of the Sundt group because it was composed of representatives of employers who were also members of the NECA bargaining committee. Second, the General Counsel argues that the Union's refusal to bargain with the employers of the Sundt group while the members of their negotiating committee were present constituted an attempt by the Union to coerce the Sundt group employers in the selection of their bargaining representative in violation of Section 8(b)(1)(B). Next, the General Counsel argues that the Union's insistence on an areawide agreement, to apply to the NECA and Sundt groups and to all other independents, evidenced bad-faith bargaining and violated Section 8(b)(3). Finally, the General Counsel contends the unilateral submission by Local 46 of its negotiation dispute with the Sundt group to the CIR was a further violation of Section 8(b)(1)(B) and (3) because these employers had timely revoked the authority of NECA to negotiate on their behalf and the CIR lacked jurisdiction over them. In this connection, the General Counsel further asserts the Union's refusal to negotiate with seven of the Sundt group employers after the CIR decision and the Union's efforts to enforce the CIR decision against these contractors constituted additional violations of Section 8(b)(1)(B) and (3).

Local 46, on the other hand, argues, in essence, that it was under no duty to bargain with the Sundt group bargaining committee because under the Board's decision in *Dependable Tile*, these employers were bound to the multiemployer negotiations. The Union further argues that due to the identical composition of the multiemployer and Sundt group bargaining committees and because both employer groups sought a most-favored-nations clause in their proposals, it was apparent the Sundt group negotiators were attempting "to subvert coherent negotiations" and the Union was privileged to refuse to bargain with them. Local 46 also contends the most-favored-nations clause in the proposals of both the NECA and Sundt groups and their bargaining strategies demonstrate the employer groups were seeking one agreement. Thus, the Union's efforts in this regard did not violate Section 8(b)(3) and was consistent with the bargaining history of the parties. Regarding the submission of the negotiations dispute with the Sundt group to the CIR and the subsequent efforts to enforce the decision of the CIR, Local 46 urges the following: (1) the Sundt employers remained members of NECA for other purposes and thus were represented on the CIR level; (2) the Sundt group employers acquiesced to the submission by merely objecting to procedural defects in the

submission and not to substantive jurisdictional authority of the CIR over them; and (3) the Sundt group employers never repudiated the CIR clause in the 1983–1984 agreement prior to the submission.

A. *The Refusal to Negotiate with the Members of the Bargaining Committee of the Sundt Group*

While these cases present a number of issues, the threshold issue to be resolved is whether Local 46 was privileged to refuse to negotiate with the members of the Sundt group negotiating committee. Despite the cogent and well-reasoned arguments advanced by counsel for Local 46, the case law bearing on this issue compels me to conclude that the Union was not so privileged.

The basic question here distills itself to whether the bargaining committee representing the Sundt group presented such an inherently disruptive threat to the bargaining process that the Union was justified in refusing to meet with that employer committee. This question and its mirror image (i.e., employer refusal to meet with a union negotiating committee which includes members of other unions who represent different bargaining units of the employer) have been presented to the Board on a number of occasions over the years. See *Bausch & Lomb Optical Co.*, 108 NLRB 1555 (1954); *General Electric Co.*, 173 NLRB 253 (1968), *enfd.* 412 F.2d 512 (2d Cir. 1969); *Minnesota Mining & Mfg. Co.*, 173 NLRB 275 (1968), *enfd.* 415 F.2d 174 (8th Cir. 1969); *Iron Workers Local 625 (Construction Industry Bargaining Assn.)*, 211 NLRB 128 (1974); and *Harley-Davidson Motor Co.*, 214 NLRB 433 (1974). Cf. *Asbestos Workers Local 27 (Master Insulators)*, 263 NLRB 922 (1982).

The basic principles applied by the Board are set forth in the *General Electric* case, *supra*. There the employer refused to meet and negotiate with a union negotiating committee regarding a new agreement covering a companywide unit of employees because the union committee contained members of other unions which represented different bargaining units of the employer. The Board held that the right granted to employees by Section 7 of the Act to bargain collectively through representatives of their own choosing included, "the derivative right of the duly elected bargaining agent to select the bargaining team which will represent it at the negotiating table." *Id.* at 254. The Board noted that "the same right to determine the composition of its own bargaining committee exists for employers as well." *Id.* at 256 *fn.* 20. In upholding the Board's decision, the Second Circuit observed that these rights are fundamental to the statutory scheme. *General Electric Co. v. NLRB*, 412 F.2d at 516. The Board pointed out in the *General Electric* case, however, that these rights are not absolute and are "subject to limitation in unusual circumstances where the chosen representative is so tainted with conflict or so patently obnoxious as to negate the possibility of good-faith bargaining."²⁴

As noted, Local 46 contends the factual circumstances surrounding the instant matter fall within the exceptions to the general proposition enunciated in the *General Electric* case. In this connection, Local 46 points to the following: (1) The identical composition of the initial negotiating committees of the NECA and Sundt units; (2) the fact that the members of the negotiating committees for both employer groups re-

²³The General Counsel's theory of these violations was adopted and extensively briefed by counsel for the Charging Parties.

²⁴*General Electric Co.*, *supra* at 254.

mained officials and board members of NECA, although they withdrew bargaining authority from that organization; (3) the contract proposals of both the NECA and Sundt units sought a most-favored-nations clause; (4) the disclaimer of the employer negotiating members of any responsibility to be bound individually by the results of either the NECA or Sundt group negotiations; and (5) the disclaimer of the employers in the Sundt group of the responsibility to be individually bound by the results of the negotiations conducted on behalf of that employer unit.

In essence, Local 46 contends this was a stratagem designed to permit coordinated bargaining by ostensibly separate employer groups so as to insure the possibility that the Union would be forced to accept a single areawide agreement (due to the most-favored-nations clause) containing all the concessions that might be negotiated by either employer group or with any employer who was free to bargain individually. By asserting this was “an attempt to subvert coherent negotiations,” the Union is, in effect, contending that this arrangement was antithetical to good-faith bargaining; thereby freeing it to refuse to meet and negotiate with the representatives of the Sundt group. As the court noted in the *General Electric* case, however, a party seeking to bring itself within the limited exceptions to the general rule (that either party may choose freely those who will represent them at the negotiating table) “undertakes a considerable burden” which requires a “showing of a clear and present danger to the collective-bargaining process.” *General Electric Co. v. NLRB*, supra at 517. In my judgment, the facts here do not demonstrate the Union has satisfied this burden.

Concededly, the negotiating committee for the NECA and Sundt groups were composed of the same members until April 5 and although separate proposals were submitted by each employer unit, they both contained a most-favored-nations clause. But these factors, of themselves, do not establish that the Sundt bargaining committee did not confine its negotiations to that of the Sundt group. Nor do they establish a conspiracy to frustrate or undermine the bargaining process.

Historically, all the signatory electrical contractors within the Union’s geographic jurisdiction, whether members of NECA or not, have been bound by a single agreement negotiated by the Union and NECA. Thus, it is evident that a commonality of bargaining goals and objectives existed between all the negotiating employers, including the NECA and Sundt represented units. By being members of both negotiating committees and proposing a most-favored-nations clause²⁵ while also retaining the right to negotiate individually, the Sundt group negotiators were seeking to ensure that whatever agreement was finally reached would contain the most favorable terms—whether negotiated by either of the employer groups or by an individual employer. While undoubtedly distasteful to the Union, this arrangement did not evince a conspiracy to disrupt or undermine the bargaining process. Rather, the arrangement, in my judgment, was designed to strengthen the bargaining position of the employers to allow

them to achieve the most favorable agreement with the Union; an objective that is normal and permissible for employers and unions alike. *General Electric Co. v. NLRB*, supra at 519.

Furthermore, the Sundt group negotiators were replaced on the NECA negotiating committee by April 5 as a result of the unfair labor practice charges filed by the Union. Since their removal from the NECA committee occurred prior to the Union’s refusal to meet with them as members of the Sundt bargaining committee, the Union’s claim of an inherent disruptive conflict is substantially weakened.

Nor does the fact that the members of the Sundt negotiating committee remained officials and directors of NECA establish, either standing alone or in conjunction with the overall bargaining posture of the NECA and Sundt units, a disruptive threat to the bargaining process. All the employers in the Sundt group, including the members of its negotiating committee, timely withdrew bargaining authority from NECA to negotiate a new agreement on their behalf. That these employers remained members and officials of NECA for other purposes does not compel the conclusion they intended to engage in coordinated bargaining and would not confine their negotiations solely to the Sundt unit. The Union, however, points to the memo sent by Sundt to the employers prior to negotiations soliciting cancellations of letters of assents A. There Sundt stated only one agreement would be negotiated and the multiemployer unit and the canceling employers would present the same proposals and negotiate simultaneously with the Union for an acceptable contract.²⁶ In this regard, Sundt testified that while he initially took this position, the responses of the contractors canceling their letters of assents A altered this approach prior to the commencement of negotiations. They felt that if they could negotiate better terms than the NECA group, they should attempt to do so. The fact that the initial proposals submitted by the NECA and Sundt groups differed in many respects tends to substantiate this testimony.

Thus, however accurate the Union’s perception that the Sundt negotiating committee was intending to engage in coordinated bargaining beyond the Sundt unit, this anticipation of events that might occur did not provide sufficient justification for refusing to meet with the selected bargaining representatives of the Sundt group. By refusing to meet with the Sundt negotiating committee or to bargain with the Sundt-represented employers in the presence of these negotiating committee members, the Union foreclosed any possibility of ascertaining whether its fears were correct or not. In short, the Union’s actions were premature and did not relieve it of the statutory duty to meet and negotiate with the representatives of the Sundt group. *General Electric Co. v. NLRB*, supra; *Minnesota Mining & Mfg. Co.*, supra; *Iron Workers Local 625*, supra; *Harley-Davidson Motor Co.*, supra; and *Indianapolis Newspapers*, 224 NLRB 1490 (1976).

Local 46 also contends the composition of the Sundt negotiating committee posed such a basic conflict to the bargaining process that the Union was relieved of its duty to bargain with that group. The Union asserts that the Sundt committee members were “potential non-union employers” and their

²⁵It is of no significance that Sundt testified that both employer groups would have dropped the most-favored-nations clause if the Union had been willing to grant a wage rollback and modified the CIR clause. By his own admission this was never communicated to the Union. In light of this, the only factors that are relevant here are those which were made known to the Union at the time it refused to meet with the Sundt negotiating committee.

²⁶See R. Exh. 3.

interests were in conflict with their competitors in the multi-employer group. I find this argument to be nonpersuasive.

Each of the Sundt group employers canceled their letters of assent and were themselves potential nonunion employers if an agreement with the Union were not negotiated. Since the Sundt committee was bargaining on behalf of this unit, of which they were members, there certainly was no conflict between them and the employers they represented. As noted by counsel for the Charging Parties, any semblance of a conflict would have been between the NECA and Sundt bargaining units, both of whom were negotiating for a new agreement with the Union. In my judgment, this is not the type of conflict envisioned by the Board in the *Bausch & Lomb* case²⁷ relied on by the Union or in any of the other cases where a refusal to bargain has been found justified.²⁸ In all the cases where a disruptive conflict was found to justify a refusal to meet, that conflict existed between the parties on the opposite sides of the bargaining table. In the instant matter the only conflict that existed was the usual adversarial posture inherent in collective bargaining between the union and the employer unit; i.e., the union seeking the best terms for its members and the employers seeking the most favorable terms with which they could live. This hardly constitutes a basic conflict which disrupts the bargaining process. Rather, it is indicative of the nature of collective bargaining on the American scene. Therefore, I reject the Union's argument on this point.

The Union further contends that it was not obligated to meet and bargain with the members of the Sundt group negotiating committee because these same employers were on the NECA negotiating committee, actively bargaining for an agreement on behalf of the multiemployer unit. The Union argues that the NECA activity of the Sundt group negotiating committee members bound them to the multiemployer group. To support this position, the Union relies on the Board's decision in *Dependable Tile Co.*, 268 NLRB 1147 (1984). There, the employer gave timely notice at the end of December that he was withdrawing from multiemployer bargaining with the union as of March 31 of the following year. In January, the employer paid his quarterly dues to the employer association (covering January through March) and until March 31, its president actively participated as a member of the employer association negotiating committee seeking a new agreement with the Union. A Board majority (Members Zimmerman and Hunter) found this conduct to be "clearly inconsistent with a stated intent to abandon group bargaining and negotiate separately." Citing prior Board decisions in *Associated Shower Door Co.*, 205 NLRB 677 (1973); and *Michael J. Bollinger Co.*, 252 NLRB 406 (1980), the majority found the employer sought "the best of the two worlds"; i.e., to continue in group negotiations to obtain satisfactory terms in the multiemployer agreement but reserving the right to reject any agreement not to his liking. *Dependable Tile Co.*, supra at 1147.

The General Counsel and Charging Parties argue that *Dependable Tile* is not applicable and the facts of the instant

matter are controlled by the Board's more recent decision in *Walt's Broiler*, 270 NLRB 556 (1984). In the latter case, the members of a multiemployer association gave timely notice to the union that they would no longer engage in group bargaining but would negotiate, as association members, through a named consultant while reserving the right, individually, to accept or reject any agreement resulting from the negotiations. Finding the employers' withdrawals from group bargaining to be effective, especially in view of the fact they were reiterated at the outset of the negotiations, the Board held that neither the continued membership of the employers in the association nor their decision to retain the same negotiator to represent them was inconsistent with the withdrawal from group bargaining. Id. at 557-558. Distinguishing this case from its decision in *Dependable Tile*, the Board stated, id. at 558 fn. 3:

The situation here is distinguishable from that in *Dependable Tile Co.* There, after the employer gave timely notice of its intention to withdraw from a multi-employer bargaining unit, the employers' president continued to represent the multiemployer unit in negotiations with the union. The Board majority found the employers active participation in negotiations on behalf of the multiemployer unit was inconsistent with its stated intent to abandon group bargaining. No such inconsistent action is present in the instant case.

Factually there is no dispute in the instant cases that the Sundt group employers, including the six members of the negotiating committee, gave timely notice to the Union withdrawing the bargaining authority of NECA while retaining the right to negotiate individually through the arrangement with Sundt. The critical question here is whether the subsequent conduct of the members of the Sundt negotiating committee was inconsistent with their stated intent to abandon group bargaining through the multiemployer unit. While the distinction between the rationale in *Walt's Broiler* and *Dependable Tile* is not that precise, I find the facts of the instant cases far more readily fall under the *Walt's Broiler* decision.

Here, as in that case, the employers gave unequivocal notice of abandonment of group bargaining, reserving the right to negotiate individually, while remaining members of the multiemployer association. Similarly, this notification was reiterated in statements by the employers and Sundt at the outset and during the negotiations with NECA, as well as with the Sundt group. Unlike the *Walt's Broiler* facts but more in keeping with the *Dependable Tile* facts, however, the Sundt group negotiators actively participated in the negotiations on behalf of the multiemployer unit as members of that group's bargaining committee. Although the matter is not entirely free from doubt, I am persuaded that the actions of the members of the Sundt negotiating committee were not inconsistent with their withdrawal from the multiemployer bargaining. The controlling factor here, as I read the *Walt's Broiler* decision, is that the timely withdrawals and the statements of these employers and Sundt regarding their bargaining positions, made "at the outset and during subsequent bargaining sessions" of the multiemployer unit, sufficiently demonstrate that the employers had abandoned group bargaining and retained the right to negotiate individually.

²⁷ *Bausch & Lomb Optical Co.*, supra (union established business in direct competition with employer).

²⁸ *NLRB v. Kentucky Utilities Co.*, 182 F.2d 810 (6th Cir. 1950) (union negotiator had expressed great personal animosity towards employer); *NLRB v. Ladies Garment Workers*, 274 F.2d 376 (3d Cir. 1960) (exunion official made a part of the employer negotiating committee).

Therefore, I am constrained to hold that while the members of the Sundt group negotiating committee actively participated in the multiemployer negotiations, they were not, in these particular circumstances, bound by the group negotiations. From this it follows that the Union was not privileged to consider them bound to the multiemployer group and could not lawfully refuse to meet with them as the negotiators for the Sundt group.²⁹

In sum, I find the Union has not sustained its burden of demonstrating that the composition of the Sundt negotiating committee was “so tainted with conflict or so patently obnoxious” that it was disruptive to the collective-bargaining process. I further find that the members of the Sundt negotiating committee did not engage in activity inconsistent with their stated intent to abandon group bargaining so as to justify the refusal of the Union to meet with them as negotiators for the Sundt unit. Accordingly, I find the Union was not privileged to refuse to meet and negotiate with the chosen bargaining representatives of the Sundt group and by so doing on April 16 and 19, the Union has refused to bargain in good faith with the Sundt employer unit in violation of Section 8(b)(3) of the Act. These refusals, as a matter of law, restrained and coerced the Sundt group employers in the selection of their bargaining representatives and is also a violation of Section 8(b)(1)(B) of the Act. *Asbestos Workers Local 27*, supra.

B. *The Union’s Efforts to Get an Areawide Agreement*

The General Counsel and Charging Parties contend that in seeking a single standard agreement, the Union adopted an intractable bargaining posture in its negotiations with the employers of the Sundt group. It is argued that this conduct violated the good-faith bargaining requirements mandated by Section 8(b)(3) of the Act.

It has been long established that it is lawful for a union to seek to negotiate uniform terms for employees represented in different bargaining units. See *Mine Workers v. Pennington*, 381 U.S. 657, 665 (1965). In so doing, however, a union is not relieved of the statutory obligation to bargain in good faith and cannot adopt a “take it or leave it attitude.” *NLRB v. Insurance Agents*, 361 U.S. 477, 487 (1960). As Justice Frankfurter stated in his separate opinion in *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 154 (1956), “good faith means more than merely going through the motions of negotiating. It is inconsistent with a predetermined resolve not to budge from an initial decision.”³⁰ The Board has found bad-faith bargaining where a union has insisted on a contract of its “own composition” while adopting an intractable attitude during negotiations. See *Graphic Arts Local 280 (James H. Barry Co.)*, 235 NLRB 1084 (1978).

In the instant matter, the General Counsel and Charging Parties argue the union representatives refused to negotiate

with the Sundt employers concerning any substantive matters during the negotiations and insisted that whatever areawide agreement resulted from the multiemployer bargaining would apply to the Sundt unit. They point to the fact that Jordan stated, in response to Sundt’s questioning, there would be only one agreement. They also point to the fact that at the conclusion of the last meeting on April 19, Jordan or Olson stated the Union’s latest proposals to the multiemployer unit would be available to the Sundt employers. General Counsel also relies on the fact that the negotiation dispute with the Sundt employers was submitted to the CIR as evidence of the Union’s intransigent insistence on an areawide agreement.

In my judgment, the arguments advanced by the General Counsel and Charging Parties overlook certain other critical factors which also must be considered in evaluating the Union’s conduct here. Although it is correct that the Union was seeking an areawide agreement and the past history of the parties shows their relationship has been governed by a single standard contract, the Union was not the only party in the negotiating equation seeking a single agreement. Sundt’s memo to the employers in January indicates the initial bargaining strategy of the employers canceling their letters of assent was to negotiate separately from but simultaneously with the multiemployer unit, and the most favorable agreement reached would become the areawide agreement for all. Although this strategy was altered prior to the start of the negotiations, it is evident that the operation of the most-favored-nations clause—sought by the multiemployer unit and the Sundt group—would have resulted in a single areawide agreement. Indeed, Sundt admitted as much in his testimony regarding the effect of this provision in the proposals advanced by both employer groups. I place no reliance on Sundt’s explanation that the employers were prepared to drop this particular clause if they received a wage rollback and a modified CIR provision. Such a tradeoff was never communicated to the union representatives in either the Sundt or the multiemployer unit negotiations; although Sundt was an active participant in both sets of negotiations. Therefore, whatever may have been the results had the parties successfully completed negotiations for a new agreement, it is apparent that the Sundt employers had not abandoned the concept of a single areawide agreement embodying the most favorable terms; whether negotiated by the multiemployer unit or by the employers in the Sundt group.

Such being the case, the General Counsel and Charging Parties are not now in position to argue that the Union was seeking an areawide agreement to the point of intransigence. Indeed, both parties in both sets of negotiations were in fact seeking a single agreement and the dispute was over the terms that it would contain. Furthermore, the undisputed facts reveal the Union did not refuse to meet and negotiate with the Sundt employers because it was waiting to finalize an agreement with the multiemployer group, which it would then seek to impose on the Sundt group. Rather, the record discloses the Union refused to meet with the negotiators for the Sundt group because it felt, albeit unlawfully, that they were bound to the multiemployer unit. The facts disclose that when the Sundt negotiators left under protest at the April 19 meeting, the union representatives and the Sundt employers proceeded to engage in collective bargaining. Jordan’s statement at the conclusion of this meeting that the Union’s latest

²⁹Although the question was not presented or raised in the party’s briefs, query whether the Union was privileged to refuse to meet with the Sundt negotiating committee members even if they were found to be bound by the multiemployer negotiations? In view of my findings above regarding the limited situations in which a party can justify a refusal to meet with the chosen bargaining representatives of the other party, I am inclined to think not. Therefore, the Union’s refusal here to meet with the Sundt bargaining committee members would still be a violation as to the other employer members in the Sundt group.

³⁰*Truitt Mfg. Co.*, above (Frankfurter, J., concurring in part and dissenting in part).

proposal to the multiemployer unit would be available to the Sundt group does not establish that the Union was intractably insisting it would not negotiate with the Sundt employers. Rather, the statement is equally subject to the construction that the Union was offering similar terms to both employer groups and prepared to negotiate those terms with each.

Nor does the fact that the Union unilaterally submitted its dispute with the Sundt employers to the CIR, along with its dispute with the NECA unit, warrant a different conclusion. Without deciding whether the submission itself violated the Act (treated subsequently in this decision), the facts show that individual submissions were made concerning each employer of the Sundt group, apart from the multiemployer unit; thereby evincing an intent to treat each employer separately even though seeking a uniform agreement.

In light of the above, I find the record evidence does not preponderate in favor of a finding that the Union engaged in bad-faith bargaining in seeking an areawide agreement. Accordingly, the allegations of the consolidated complaint alleging this to be a violation of Section 8(b)(3) are dismissed.

C. Whether the Union's Submission of its Negotiation Dispute with the Sundt Employers to the CIR Violated the Act

The General Counsel and Charging Parties contend that the Union violated Section 8(b)(1)(B) and (3) by submitting its negotiation dispute with the Sundt employers to the CIR. Central to this argument is the contention that the CIR provision in the existing agreement was effectively abrogated by the employers when they timely canceled their letters of assent and withdrew from multiemployer negotiations.

It is evident here, and all parties agree, that under established Board law the CIR provision is a nonmandatory or permissive subject of collective-bargaining. See *Sheet Metal Workers Local 59 (Employer Assn. of Roofers)*, 227 NLRB 520 (1976); *Plumbers Local Union 387 (Mechanical Contractors Assn. of Iowa)*, 266 NLRB 129 (1983). As such, it may be abrogated by either party during the life of an agreement without violating the Act. *Allied Chemical & Alkali Workers v. Pittsburgh Plate Glass*, 404 U.S. 157, 188 (1971).

The Union argues that while the CIR provision is a nonmandatory subject of bargaining, it is virtually identical to the one found in the *Mechanical Contractors* case wherein the Board refused to find a violation when a negotiation dispute was submitted to a higher level of an employer association and a union for resolution.³¹ There, as in the instant cases, the dispute resolution provision required submission of negotiation disputes to a body designated as the Industrial Relations Council (IRC) composed of equal members of the International Union and the national organization of the Employer Association. There, as here, the decisions of the dispute resolution panel were required to be unanimous and were made after the negotiating parties presented their positions on the issues in dispute. The Board determined "that representatives of the union and . . . the employers [on the IRC] would reach a unanimous result only through a process of negotiation and compromise, particularly since the economic interests of the parties they represent are clearly involved and would be expected to be disparate." *Id.* at 2. The

Board concluded that the IRC provision was "an extension of the collective-bargaining process by a different set of negotiators, once the individuals who have begun the negotiations are unable to compromise their differences." *Id.* at 2.

The General Counsel and Charging Parties contend, on the other hand, that the results here are controlled by the Board's decision in *Sheet Metal Workers*, supra. In that case, the existing agreement provided for the submission of unresolved negotiation disputes to a body called the National Joint Adjustment Board (NJAB) established by the International Union and a national employer association of which the negotiating employer association was not a member. The triggering mechanism for the NJAB process in that case was a "deadlock" on negotiation issues. The negotiating employer association refused to agree to the inclusion of existing disputes resolution provisions in the new agreement and the Union submitted the dispute to the NJAB. A Board majority found the deadlock constituted an impasse and by submitting the dispute to the NJAB, the Union insisted to the point of impasse on a nonmandatory subject in violation of Section 8(b)(3). The majority decision also held that by insisting on the retention of the NJAB procedures, the Union was attempting to compel the employer association to relinquish its right to select its bargaining representative in violation of Section 8(b)(1)(B). In so holding, the Board majority found the entire thrust of the Union's negotiation tactics was to force a deadlock to insure the nonmandatory provisions would be determined by a panel on which the negotiating employer association was not represented. *Sheet Metal Workers Local 59*, supra at 521.

Contrary to the General Counsel and Charging Parties, I do not find the parties in the instant matter had negotiated to the point of impasse. Indeed, the facts reveal that the Union and the Sundt employers were engaged in active negotiations on April 19. That the Union thereafter submitted the dispute to the CIR was dictated by the CIR provisions in the existing agreement requiring unresolved issues remaining on the 20th of the month preceding the next meeting of the CIR be submitted prior to the contract's anniversary date. There is nothing in the record which demonstrates the negotiations were at an impasse at the time the Union made its submission to the CIR. Hence, it cannot be said that the Union here was insisting on nonmandatory subjects of bargaining to the point of impasse.

Although I do not find the negotiating tactics employed by the Union here approached those condemned in the *Sheet Metal Workers* case, I deem it necessary to examine whether the submission itself, under these particular circumstances, violated the Act. Central to this consideration is the question of the effect of the cancellation of the letters of assent by the Sundt employers.

The Union insists that the cancellation of the letters of assent merely revoked the bargaining authority of the local NECA chapter (or the agreement to be bound by a contract negotiated by the local chapter). The Union argues that by remaining members and officials of the NECA chapter for all other purposes, the Sundt employers continued to have representation in the local employer association and through it, the parent organization which supplied the employer representatives on the CIR. The Union points to the fact that one of the Sundt employers (Cochran) was a current member of the CIR, although he could not sit on the panel involved

³¹ *Mechanical Contractors Assn. of Newburgh*, 202 NLRB 1 (1973).

in the instant dispute. Equally important, according to the Union, is the fact that the Sundt employers never abrogated the CIR provision in the existing agreement, either directly to the Union or before the CIR when the matter was heard in May. The Union relies on this asserted failure as evidence that the Sundt employers were still bound by the CIR provisions in the existing agreement at the time of the submission by the Union.

As appealing as the argument of the Union may be, I am persuaded that the revocation of the bargaining authority of the local NECA chapter by the Sundt employers carried with it a rejection of the authority of the parent organization to bargain in any fashion on behalf of the canceling employers. While I am mindful that it is a basic tenant of the national labor policy that parties adhere to agreements negotiated in good faith, it is an equally fundamental principle that both employers and employees have the right to bargain collectively through representatives of their own choosing and the relinquishment of that right will not be imputed lightly, even though once waived. *Sheet Metal Workers Local 59*, supra.

Since the CIR provisions were nonmandatory, the Sundt employers were free to rescind them at any time during the life of the existing agreement. *Allied Chemical & Alkali Workers v. Pittsburgh Plate Glass*, supra. Under the Board's holding in the *Mechanical Contractors* case, the CIR provisions contained in the existing agreement amounted to an extension of the negotiations between the Union and the Sundt employers, albeit through a higher level body consisting of representatives of the parent organizations of the negotiating parties. Concededly, the Sundt employers remained members of and retained their official positions in the local employer association and, as such, retained their affiliation with the national employer association. But, by the timely cancellations of their letters of assent and their subsequent conduct, the Sundt employers had manifested an intent to abandon all form of multiemployer bargaining, whether through the local employer association or its parent organization. In these circumstances, it would seem incongruous to find the explicit withdrawal of bargaining authority from the local employer association did not also operate as an implicit abrogation of the CIR provisions permitting the parent organization of the local employer association to engage in bargaining on behalf of the canceling employers.

I find, therefore, that the Sundt employers impliedly abrogated the CIR provisions of the existing agreement when they canceled their letters of assent. Thus, the Union's submission of the negotiation dispute with these employers to the CIR was an unlawful attempt to compel the Sundt employers to relinquish their right to select their own bargaining representative. In view of this finding, it was unnecessary for the Sundt employers to specifically abrogate the CIR provisions; either directly to the Union or when responding to the Union's submission before the CIR. Accordingly, I conclude that in these circumstances the Union's submission of its negotiation dispute with the Sundt employers to the CIR restrained and coerced those employers in the selection of their representatives for purposes of collective bargaining in violation of Section 8(b)(1)(B) of the Act. *Sheet Metal Workers Local 59*, supra. Nor does the fact that no impasse was found at the time of the submission or that the Union had not engaged in overall bad-faith bargaining warrant a different conclusion here. The vice found in the Union's conduct is the

submission of the negotiation dispute with the Sundt employers to the CIR after these employers had withdrawn the bargaining authority from the local NECA chapter, and thereby impliedly abrogated the CIR provisions in the existing agreement.

D. *The Union's Efforts to Enforce the Terms of the CIR-Directed Agreement Against Various Sundt Employers*

Having determined that the Union's unilateral submission of its negotiation dispute with the Sundt employers to the CIR violated Section 8(b)(1)(B), it follows that the award rendered by that dispute resolution body was not binding on the Sundt employers. This being the case, there was no new agreement in effect between the Sundt group and the Union at the time the employers requested continued negotiations in July, and the Union's bargaining obligation with these employers remained. It is evident, therefore, that by invoking the first step of the grievance-arbitration procedure contained in the new CIR-directed agreement against these Sundt employers, the Union was refusing to continue to bargain with them for a new agreement. This refusal on the part of the Union violated Section 8(b)(3). It also restrained and coerced these employers in the selection of their collective-bargaining representative in violation of Section 8(b)(1)(B). It is apparent that the Union's invocation of the grievance provisions of the CIR-directed agreement was an attempt to compel the requesting employers to accept the contract terms awarded by the CIR and relinquish their right to bargain collectively through representatives of their own choosing. *Sheet Metal Workers Local 59*, supra. Cf. *Asbestos Workers Local 27 (Master Insulators)*, 263 NLRB 922 (1982). I find, therefore, that the Union's efforts to enforce the terms of the CIR-directed agreement against the employers requesting continued negotiations violated Section 8(b)(1)(B) and (3) of the Act.³²

CONCLUSIONS OF LAW

1. Cochran Electric Co.; Evergreen Electric Contractors, Inc.; Holmes Electric Co.; Hooper Electric Co.; Industrial Electric-Seattle, Inc.; Maple Valley Electric, Inc.; Warburton Electric, Inc.; and Olympic Electric Co. are employers engaged in commerce or in an industry affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. International Brotherhood of Electrical Workers, Local Union No. 46, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees of each of the above employers constitutes a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All journeymen and apprentice electricians employed by the Employer within the geographic jurisdiction of Local 46, IBEW, AFL-CIO, excluding guards and su-

³²No useful purpose would be served by also finding that the Union's efforts to enforce the CIR award in the Federal district court violated the same provisions of the Act. Aside from the question of the authority of the Board or its judges to make such a determination regarding the court litigation, *Bill Johnson's Restaurants v. NLRB*, 461 U.S. 731 (1983), such a finding would merely be cumulative. It is sufficient here to find that the Union's efforts to enforce the CIR-mandated agreement through the grievance-arbitration provisions against those employers requesting continued negotiations violated the Act. Cf. *Watchmen Local 1852 (Amstar Corp.)*, 209 NLRB 513 (1974).

pervisors as defined by the Act and all other employees.

4. By seeking an areawide collective-bargaining agreement with the employer members of the Sundt group, Local 46 did not violate Section 8(b)(3) of the Act.

5. By refusing to meet and bargain collectively with the representatives selected by the employers of the Sundt group to represent them in negotiations for a new collective-bargaining agreement, Local 46 violated Section 8(b)(1)(B) and (3) of the Act.

6. By unilaterally submitting its negotiation dispute with the employers of the Sundt group to the Council on Industrial Relations (CIR) for resolution after those employers had rescinded the bargaining authority of the local NECA chapter, Local 46 violated Section 8(b)(1)(B) of the Act.

7. By refusing the request of various employers of the Sundt group for continued negotiations after the CIR award and by attempting to enforce the collective-bargaining agree-

ment resulting from the CIR award against these employers, Local 46 has violated and is violating Section 8(b)(1)(B) and (3) of the Act.

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

THE REMEDY

Having found that Respondent, International Brotherhood of Electrical Workers, Local Union No. 46, AFL-CIO, has engaged in and is engaging in unfair labor practices, it shall be ordered to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. The Union shall be required, on request, to return to the bargaining table with the Charging Employers here and bargain in good faith with them, individually or with their designated bargaining representatives, concerning a successor agreement.

[Recommended Order omitted from publication.]