

**Nelson's Storefront Systems, Inc. and Viking Glass Company, Inc., alter egos and Sheet Metal Workers' International Association Local No. 73.** Cases 13-CA-29064 and 13-CA-29320

August 27, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS  
CRACRAFT AND RAUDABAUGH

On January 14, 1991, Administrative Law Judge Richard H. Beddow Jr. issued the attached decision. The Respondent, Nelson's Storefront Systems, Inc. and Viking Glass Company, Inc., filed exceptions and a supporting brief and requested leave to add to the record a deposition taken after the hearing. The General Counsel filed exceptions and a supporting brief, a brief in response to the Respondent's exceptions, and an opposition to the Respondent's motion for leave to file the posthearing deposition.

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<sup>1</sup> and has decided to affirm the judge's rulings,<sup>2</sup> findings,<sup>3</sup> and

<sup>1</sup> We deny the Respondent's motion to reopen the record for recommended order as a deposition in an unrelated matter taken several months after the hearing in this case.

<sup>2</sup> In affirming the judge's ruling granting the General Counsel's alternative motion to strike a posthearing exhibit and related arguments submitted by the Respondent, we do not rely on whether the Respondent's principal official, Terry Nelson, had a valid, persuasive reason for failing to appear at the hearing in response to the General Counsel's subpoena. As noted in the judge's decision, the Respondent's attorney at the hearing was provided a full opportunity to develop a record and he chose to proceed with the record as developed.

<sup>3</sup> The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The Respondent has also stated in its exceptions that the judge misconstrued the notice reopening provision of the collective-bargaining agreement between the Sheet Metal Contractors' Association and the Union. The Respondent is correct. Under art. XXII of the multiemployer agreement, that agreement would continue in effect from year to year unless written notice of reopening was given *not less* than 90 days prior to expiration, rather than *within* 90 days of expiration as stated by the judge. This technical correction, however, has no bearing on whether the Respondent, an individual employer signatory to a separate supplemental agreement, gave timely notice of its termination of the collective-bargaining agreement. As an individual party to the collective-bargaining agreement, the Respondent, by the terms of the supplemental agreement, was allowed to terminate the agreement only within 30 days following its receipt of each new collective-bargaining agreement. The Respondent did not avail itself of this contractual right after receiving a copy of the newly negotiated 1990-1992 collective-bargaining agreement, and it is therefore bound to the terms of the 1990-1992 agreement.

conclusions<sup>4</sup> and to adopt his recommended Order as modified.<sup>5</sup>

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Nelson's Storefront Systems, Inc. and Viking Glass Company, Inc., alter egos, Lemont, Illinois, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(b).

“(b) Refusing to bargain with the Union by failing and refusing to make contractually required payments to the Health and Welfare and Pension Funds and to other Union funds that are mandatory subjects of bargaining.”

2. Substitute the following for paragraphs 2(a) and (b).

“(a) Pay all delinquent Health and Welfare and Pension Fund payments, and other fund payments that are mandatory subjects of bargaining, as required by the parties' relevant collective-bargaining agreements.

“(b) In the manner set forth in the remedy section of this decision, make unit employees whole for any losses resulting from the Respondent's failure to adhere to the relevant collective-bargaining agreements, including reimbursing them for any loss of wages and benefits and expenses arising from the Respondent's failure to pay health insurance benefits and make other contractually required fund contributions that are mandatory subjects of bargaining.”

3. Substitute the attached notice for that of the administrative law judge.

<sup>4</sup> We note that on May 10, 1988, the Respondent executed a document voluntarily recognizing the Union as the collective-bargaining representative under Sec. 9(a) of its sheet metal workers based on a contemporaneous showing of majority status. The Respondent has not raised in this proceeding any contention that the Union was not the employees' majority representative. We therefore do not rely on the judge's references to principles set forth in *John Deklewa & Sons*, 282 NLRB 1375 (1987), with respect to nonmajority bargaining relationships established pursuant to Sec. 8(f) and apply Board law under Sec. 9(a) of the Act.

<sup>5</sup> The General Counsel has excepted to the remedy ordered by the judge to the extent that it covers only the Respondent's delinquencies in payments to the Union's Health and Welfare and Pension Funds. We agree that the remedy is too limited; it covers neither the Respondent's failure to pay contractually required wages nor delinquencies in the Respondent's contractually required payments to other fringe benefit funds that are mandatory subjects of bargaining. Accordingly, we shall require the Respondent to make unit employees whole, with interest, for any loss of wages and benefits they may have sustained as a result of the Respondent's unlawful contract repudiation in the manner specified in *Ogle Protection Service*, 183 NLRB 682 (1970) and *New Horizons for the Retarded*, 283 NLRB 1173 (1987). We shall also require the Respondent to remit all payments it owes to fringe benefit funds that are mandatory subjects of bargaining and to reimburse employees for any expenses they may have incurred because of the Respondent's failure to make those payments, as prescribed in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). The amounts to be paid into the benefit funds and any interest thereon shall be determined as specified in *Merryweather Optical Co.*, 240 NLRB 1213 (1979).

## APPENDIX

## DECISION

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

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

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT repudiate our automatically renewed collective-bargaining agreement with Sheet Metal Workers' International Association Local No. 73 by failing and refusing to recognize and bargain with the Union as collective-bargaining representative of our employees.

WE WILL NOT refuse to bargain with the Union by failing and refusing to make contractually required payments to the Health and Welfare and Pension Funds and to other funds that are mandatory subjects of bargaining.

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

WE WILL pay all delinquent Health and Welfare and Pension Fund payments, and other fund payments that are mandatory subjects of bargaining, as required by the parties' relevant collective-bargaining agreements.

WE WILL make our unit employees whole for any losses resulting from our failure to adhere to the relevant collective-bargaining agreements, including reimbursing them for any loss of wages and benefits, and for expenses arising from our failure to pay health insurance benefits and other contractually required fund contributions that are mandatory subjects of bargaining, plus interest.

*Jessica T. Willis, Esq.*, for the General Counsel.  
*Richard Goldner, Esq.*, of Naperville, Illinois, and *John F. Horvath, Esq.*, of Chicago, Illinois, for the Respondent.  
*Robert T. Oleszkiewicz, Esq.*, of Chicago, Illinois, for the Charging Party.

## STATEMENT OF THE CASE

RICHARD H. BEDDOW JR., Administrative Law Judge. This matter was heard in Chicago, Illinois, on July 16, 1990. Subsequent to an extension of the due date, briefs were filed by Respondent and the General Counsel. The proceeding is based upon charges filed November 3, 1989,<sup>1</sup> and March 6, 1990, by Sheet Metal Workers' International Association Local No. 73. The Regional Director's consolidated complaint dated April 11, 1990, alleges that Respondent Nelson's Storefront Systems, Inc., and its alter ego Viking Glass Company, Inc., of Lemont, Illinois, violated Section 8(a)(1) and (5) of the National Labor Relations Act by withdrawing recognition of and repudiating the collective-bargaining agreement and refusing to abide by the terms and conditions set forth in that agreement with the Union. Hearing was scheduled to commence March 29, 1990, however, Respondent failed to submit an answer to the initial complaint served December 15, 1989. An additional service of the complaint and notice of hearing was made January 2, 1990, and again the Respondent failed to submit an answer. The Union filed an additional charge in Case CA-29320 alleging that the Respondent violated Section 8(a)(1) and (5) of the Act since on or about Nelson's inception in September 1989 by continuing to fail and refuse to recognize the Union as the exclusive collective-bargaining representative of the unit under Section 9(a) of the Act and by continuing to repudiate the collective-bargaining agreement and by failing and refusing to abide by the terms and conditions set forth in that agreement.

At the commencement of the hearing on July 16, 1990, Respondent's counsel orally moved to postpone the hearing indefinitely alleging that Respondent's President, Terry Nelson, had been in a serious automobile accident in June 1989, and was incapable of testifying due to his emotional and mental status. Counsel also expressed a willingness to stipulate information into the record and 15 joint exhibits were thereafter received into evidence. In support of his motion Respondent introduced a letter dated July 12, 1990, addressed to "Whom It May Concern" signed by Maria C. Paliteo, M.D., as attending psychiatrist. The letter asserted that Nelson was being treated for depression and posttraumatic stress disorder, was taking antidepressant medication, that he was vulnerable and reactive under stress to the point of loss of control, and that testifying in court might trigger deterioration and explosive behavior. In response to the court's inquiry, counsel disclosed that Nelson presently was running the business as its principal (and only) operating manager (with some assistance from his wife and stepdaughter). Respondent's motion for a continuance was denied and the proceeding moved forward in an attempt to develop a record sufficient to resolve the issues without requiring Nelson's attendance in response to the General Counsel's subpoena. During the presentation of the General Counsel's case in chief, the Respondent introduced and had received two exhibits regarding 1988 tax records. After the General Counsel rested, the Respondent introduced a financial statement, which was received, and an unsigned letter purported to be a communication from former Vice President Dennis

<sup>1</sup> All following dates will be in 1989 unless otherwise indicated.

Plaskett to Nelson, which was rejected. Respondent then said it had nothing further to present. The court then asked:

Is Respondent prepared to make a defense based on the record as it exists in his arguments of the law, based on the exhibits of record?

Counsel for the Respondent replied:

Yes, your Honor. Again, based on my client's, I will say inability to testify competently, this attorney on his behalf will make the argument based on what has been introduced into evidence at this time.

On brief, Respondent, now represented by different counsel then at the hearing, included a proposed Exhibit 5, an unsigned affidavit by Nelson. By letter received September 7, 10 days after the brief due date of August 28, a signed and notarized copy of the same affidavit was submitted. By motion dated that same day the General Counsel asked that the brief be stricken, or in the alternative, that proposed Exhibit 5 be stricken and that arguments related thereto be not considered and/or rejected. By pleading dated October 15, Respondent answered and contends that its brief and proposal exhibit are proper.

Under the circumstances presented, I conclude that the Respondent was given ample opportunity to present evidence and witnesses and it is not shown that it was not allowed to develop a record sufficient to allow a presentation of its arguments on brief. Otherwise, Respondent does not show why the information sought to be provided is relevant nor does it show good cause why it should be allowed to present an untimely affidavit from a witness it declined to bring forward in response to the General Counsel's subpoena.

Although the matter of compliance with the subpoena was not pursued because of the development of the record through the stipulation of exhibits, it is apparent that Respondent's principal official, Nelson, did not have a persuasive, valid reason for his failure to appear. In this regard it is noted that his doctor's letter is lacking in proof of authenticity and Nelson's purported incompetent condition is contradicted by the showing that he is fully capable of running and does run all aspects of Respondent's business. If the matter had not proceeded as agreed to by Respondent's counsel, it would have been necessary to give the General Counsel the opportunity to have Nelson's purported condition evaluated by its own psychiatrist. Otherwise, the Respondent has not sought appropriate good cause, permission from the court to file any supplemental material and, at the hearing, Respondent made no attempt to arrange for any possible alternative to Nelson's appearance in court and Respondent made no attempt to have any other person with some knowledge of the business, such as Nelson's wife or former business associate, testify regarding any aspect of the controversy.

The circumstances presented are not such that could allow discretionary disregard of timely and proper procedure and they are not circumstances that show that the Respondent somehow was precluded from properly and fully litigating the complaint against it. Accordingly, the General Counsel's alternative motion is granted and Nelson's affidavit and all matter in Respondent's brief relative thereto are hereby stricken.

On the entire record in this case and from my observation of the witnesses and their demeanor, I make the following

## FINDINGS OF FACT

### I. JURISDICTION

Respondent is engaged in the installation of glass with sheet metal frames. It annually purchases and receives goods and materials valued in excess of \$50,000 directly from points outside Illinois and at all times material it is, and has been an employer engaged in operations affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act. The Union is a labor organization within the meaning of Section 2(5) of the Act.

### II. THE ALLEGED UNFAIR LABOR PRACTICES

The Union is party to a master collective-bargaining agreement with the Sheet Metal Contractor's Association which covers 350 to 400 contractors in the Chicago area. Respondent is party to this agreement. As set forth in the agreement, the Union represents employees in the following appropriate unit:

All employees engaged in (a) the manufacture, fabrication, assembling, handling, alteration, repairing and servicing of all ferrous or non-ferrous metal work of U.S. No. 10 gauge or its equivalent or lighter gauge and all other materials used in lieu thereof and of all air-veyor systems and all air handling systems regardless of material used including the setting of all equipment and all reinforcements therewith; (b) all lagging over insulation and all duct lining; (c) testing and balancing of all air handling equipment and duct work; (d) the preparation of all shop and field sketches used in fabrication and erection, including those taken from sketches, and (e) all other work included in the jurisdictional claims of the Sheet Metal Workers Association including the operation of computerized equipment used in but not limited to the performance of the work described above excluding supervisors as defined in the Act.

Respondent became party to the master agreement in November 1983 by virtue of a supplemental agreement signed by Terry Nelson as president of Viking Glass Company, Inc. By signing the supplemental agreement Respondent agreed to be bound to the terms and conditions of the master agreement along with all renewals, future amendments, and addenda thereof. It also provided that the Respondent could terminate the agreement only upon written notice to the Union during the 30-day period following Respondent's receipt of any newly negotiated agreement.

Although the Union was not obligated to secure additional supplemental agreements to continue Respondent's bargaining obligations under the contract, Business Agent Leroy Esposito testified that he solicited an additional supplemental agreement from Viking in January 1985 because Viking Glass Company had moved its business operations to a new location. Dennis Plaskett, as vice president of Viking signed the additional supplemental agreement in January 1985 and thereby reaffirming Viking Glass Company's bargaining obligations under the contract.

In May 1988, at the request of the Union (and with specific reference to the *Deklewa* proceeding, *infra*), Terry Nelson as president of Viking executed a document entitled "Acknowledgment of the representative status of Sheet Metal Workers Local Union No. 73 Sheet Metal Workers' International Association, AFL-CIO" by which Respondent voluntarily recognized the Union as the exclusive bargaining representative of a majority of its sheet metal employees pursuant to Section 9(a) of the Act. Prior to Nelson's execution of the document, the Union had solicited authorization cards from all sheet metal employees of the various contractors who were party to the contract. Based on this objective evidence of majority support, the Union solicited voluntary 9(a) recognition from the contractors who were party to the contract and Nelson recognized the Union as the 9(a) bargaining representative of his employees by signing and submitting the "Acknowledgement" document mailed to him by the Union in order to protect itself in recognition of the Board's decision in *John Deklewa & Sons*, 282 NLRB 1375 (1987).

Respondent periodically failed to meet its contractual obligation to make contributions to the Union's health and welfare and pension benefit fund and, during June 1989, the Union learned that Nelson was using nonunion employees to perform bargaining unit work. When Business Representative Esposito confronted Nelson during early June, Nelson told Esposito that Nelson intended to get rid of the Sheet Metal Workers' Union just as he had done with the Glaziers' Union.

Shortly thereafter, Esposito received a letter dated June 15, from Nelson in which Nelson purported to repudiate the contract and withdraw recognition from the Union (see the discussion, *infra*). Esposito did nothing further with the letter because this attempted repudiation was untimely, as it was mid-term in the contract (the contract then in effect did not expire until May 31, 1990).

On September 21, Nelson appeared before the employer association union joint arbitration board on the matter of his failure to make payments to the Union's health and welfare fund. Nelson informed the panel that he was operating Viking nonunion and had been doing so since June. When Timothy Roche, union president, informed Nelson that he could not unilaterally abrogate the contract mid-term, Nelson explained that he had terminated the contract by letter dated June 15, which was sent to Lee Esposito. Roche informed Nelson that the Union had no notice of his attempted repudiation prior to this meeting and Nelson was told that his attempted termination was ineffective because it was untimely, and that Nelson was still obligated to make contributions to the Union's funds as called for by the contract.

The day after Respondent verbally announced its termination of the contract during the joint arbitration board meeting, Nelson filed articles of incorporation for Nelson's Storefront Systems, Inc.

Nelson, as president of Viking Glass Company, Inc. filed an article of incorporation with the State of Illinois in 1982 and stated that Viking's business purpose was the "sale and installation of glass, aluminum and related products." Dennis Plaskett was vice president and both Nelson and Plaskett were identified as shareholders. Nelson filed articles of incorporation with the State of Illinois on behalf of Nelson's Storefront Systems, Inc. on September 22, 1989, and its business purpose as stated in its articles of incorporation was to

"furnish and install glass, architectural aluminum products, windows and entrance systems; including doors, door frames and door hardware. The buying and selling of real estate. General contracting." The record, however, contained no evidence Nelson's Storefront Systems, Inc. bought and sold real estate.

After its incorporation in September Nelson's Systems, through Terry Nelson, assumed all of Viking's contractual obligation for an ongoing construction project located at the Chicago area Chatham Ridge Shopping Center in an agreement dated November 1. Nelson's Systems also assumed responsibility for other, ongoing Viking projects including two Cub Food Store projects located in Chicago Heights, Illinois, and Seaway Bank, two South Loop Distribution Center projects and the Chatham Ridge II, project all located in Chicago. Invoices for each of the above projects show Viking Glass Company and Nelson's Storefront Systems, Inc. shared the same business address.

On November 17, Nelson's Systems assumed the remaining months of Viking's lease. Nelson executed the lease assumption agreement and signed as president of both companies.

On January 24, 1990, Nelson's Systems, through Terry Nelson, purchased Viking's inventory of office equipment. Nelson signed the sales agreement as president of both companies. On that same day, Nelson executed an additional agreement for both companies where by Nelson's Systems agreed to purchase shop tools and equipment from Viking including a break metal machine, cutting chip saws, wet sander, drill press, grinds, scaffolds, van, hammer drills, ladders, and a radial arm saw.

Joint Exhibit 8 appears to document payments and deposits by and between the two companies throughout November, December 1989 and January 1990 and Joint Exhibit 9 shows payment by Nelson's System to Illinois Bell to clear Viking's account before it took over the phones. Joint Exhibit 10 is an invoice for payment in full to Viking by Mark IV Realty for work performed, dated March 30, 1990, 6 months after Nelson's Systems was incorporated. The invoice is written on stationery bearing the name Viking Glass Company, Inc. at the top and was signed by Terry Nelson as president of Viking Glass Company.

Joint Exhibits 15(g) and 15(h) are quarterly employee contribution and wage reports filed by Respondent for the third quarter, 1989 and first quarter 1990 respectively and show that Nelson's Systems continued to employ all but one former Viking Glass Company employee.<sup>2</sup>

Esposito testified that subsequent to Nelson's Systems incorporation he continued to observe Viking vehicles and employees performing bargaining unit work at jobsites throughout January and February 1990. Esposito testified that he spoke with employees at a jobsite located in February 1990 and asked about whether they worked for Viking (Esposito presented himself as a general contractor looking for a price quote). Esposito was told that Viking was now Nelson's Sys-

<sup>2</sup>Lisa Erklin does not appear to have been hired by Nelson's Storefront Systems, Inc. according to a comparison of Jt. Exhs. 15(g) and (h). The Wage Report filed for the third quarter of 1989 lists Heidi Maynard as working for Viking Glass Company (Jt. Exh. 15(g)). The wage report filed for the 1st quarter of 1990 by Nelson's Storefront Systems, Inc. and does not list Heidi Maynard (Jt. Exh. 15(h)). Maynard and Nelson share the same social security number and therefore, absent contrary evidence in the record, should be presumed to be the identical employee.

tems and was given a piece of stationery bearing a Nelson's System letterhead and phone number and was told to contact Terry Nelson for a quote.

Upon expiration of the collective-bargaining agreement then in effect, on or about June 1990 Respondent was mailed a copy of the newly negotiated agreement between the Union and the Contractor's Association. The newly negotiated agreement is effective from June 1, 1990, to May 31, 1992. Respondent made no attempt to terminate the contract by giving the requisite notice to the Union during the 30-day period following Respondent's receipt of the agreement as called for by the agreement.

### III. DISCUSSION

The record here clearly shows that the companies controlled by Terry Nelson have failed to meet contractual obligations to the Union. On brief the Respondent presents numerous arguments in defense of its actions, these arguments, however, are consistently at odds with established Board law.

First, it asserts that Nelson's Systems is not the alter ego of Viking Glass. To the contrary, I find that the record clearly shows that Nelson's Systems was created by its President Terry Nelson to evade bargaining obligations which arose out of the collective-bargaining agreement between Viking Glass and the Union. Alter ego status must be found where, as shown here, the two assertedly separate enterprises have "substantially identical" management, business purpose, operations, equipment, customers, supervision, and ownership. *Advance Electric*, 268 NLRB 1001, 1002 (1984). Here, Terry Nelson is president and principal shareholder of both enterprises. Both enterprises share identical employees, office equipment, tools, machinery, business address, customers, and business purpose and Nelson's Systems assumed Viking's lease, debts, and contractual obligations. Moreover, it is shown that Nelson's Systems was created on September 22, 1989, in an attempt to evade bargaining obligations between Viking Glass and the Union, after Respondent first made an ineffective attempt to repudiate the contract and withdraw recognition of the Union and after Nelson appeared before the joint arbitration board on September 21, see *Fugazy Continental Corp.*, 265 NLRB 1301 (1982). Nelson's Systems then assumed all of Viking's remaining business operations and the new corporation continued to lease the same property, employ the same employees, utilize the same office machinery, tools, and equipment and share the same customers, business address, and business purpose. Accordingly, I find that Nelson's Systems is the alter ego of Viking Glass and that it is responsible under the obligation of the bargaining agreement with the Union, see also *Capitol Steel & Iron Co.*, 299 NLRB 484 (1990), and cases cited therein.

Respondent asserts that it is not bound by any agreement because it is now a corporation whose place of business is in a county outside of Cook and Lake Counties, Illinois, where Local 73 of the Union hold area jurisdiction. Respondent has the burden of proving a change in the identity or the appropriateness of its employees' bargaining representative, *Insulfab Plastics*, 274 NLRB 817, 821 (1985), and here its mere assertion regarding the Union's status fails to show any meaningful change relevant to the parties' agreement, especially in view of the fact that the work performed by the Respondent is shown to have occurred at specific jobsites in Cook and Lake Counties, making Nelson's corporate location

essentially irrelevant. Accordingly, it is concluded that Respondent's change in its corporate location had no effect on the validity of the agreement between it and the Union.

The Respondent also argues that any agreement automatically terminated 30 days after the Union's receipt of Nelson's letter on behalf of Viking Glass which was sent on June 15, 1989, within 30 days of an addendum to the agreement which took effect June 1, 1989.

The agreements signed by Nelson and other representative of the Respondent containing a provision which states that it would remain in effect until served with "written notice on the other party by certified mail, return receipt request, of its desire to terminate this agreement" and "only during a period of 30 days following employer's receipt of each new collective-bargaining agreement." Here, however, there is no indication that the addendum (which reflects only the updated wage scale to then take effect), constitutes a "new collective bargaining agreement" nor is their any showing that the letter of June 15 otherwise met the certified mail requirements.

Moreover, the letter itself is ambiguous and does not clearly refer to a desire to terminate the parties agreement but instead refers to a "current financial situation that will not allow me to employ members of Sheet Metal Local No. 73," that "I would rather be disinvolved than have you take me to court for large amounts of unpaid benefits," and a statement that:

It is not necessary for me to cancel the agreement that was signed by Terry Sweeney approximately five years ago. He was not a corporate officer and he was never given a letter of resolution authorizing him to sign contracts or agreements of any kind.

A Terry Sweeney did sign a supplemental agreement for Viking Glass on November 1, 1983, however, Terry Nelson himself signed an identical document on the same day as "president" of Viking. Plaskett signed a supplemental agreement as vice president of Viking on January 1, 1985, and Nelson himself signed (at the Union's request) an acknowledgment of representative status of Local 73 on May 10, 1988, and, accordingly, I find that Nelson's (and Plaskett's) endorsements of the supplemental agreements noted above make any question about Sweeney's authority irrelevant and I find that any assertion that no valid agreement exist is baseless.

Under these circumstances, I also find that the letter of June 15 was not a clear, effective, or valid satisfaction of an contractual provisions that would automatically or otherwise act to terminate the collective-bargaining agreement in 30 days or at any time.

Respondent also urges, in the alternative, that Nelson's discussion of the contract termination during his appearance before the joint arbitration board constituted a "conference" regarding the letter of termination and thereby allowed the agreement to end on September 21 when the conference was terminated by either party, in accordance with the language of the agreement. This argument is inapposite inasmuch as the wording of the agreement referring to a "conference" is precondition upon a written notice of reopening given within 90 days of the expiration date, a condition not properly met herein. Moreover, the so called "conference" was not a con-

ference relative to any notice of reopening between the parties to the agreement but was before a joint arbitration board whose duties at this meeting were not shown to embrace consideration of termination of the collective-bargaining agreement itself.

Respondent's final alternative contention is that the letter of June 15 and the verbal notice before the joint arbitration board manifest an intent to terminate and were sufficient to terminate the agreement as of May 31, 1990, the date the then-current agreement expired. This argument again fails to recognize the lack of proper and timely written notice as well as the inappropriateness of the parties at the arbitration conference vis-a-vis the contract and I conclude that Nelson's acts failed to perfect Respondent's alleged intent to terminate its contractual relationship, especially since all that was required was the taking of the simple step of providing written notice in the time period prior to the current agreement expiration date (and in order to avoid the automatic renewal provisions), in accordance with the provisions of the agreement.

In summation, I find that Respondent clearly became party to the collective-bargaining agreement between the Contractor's Association and the Union by virtue of supplemental agreements signed in 1983 and 1985 and when in May 1988 it voluntarily recognized the Union as the 9(a) bargaining representative of a majority of Respondent's employees based upon objective proof offered by the Union as to its representation status. Respondent therefore was not free to unilaterally repudiate the contract midterm or withdraw recognition from the Union. Respondent's bargaining obligations arising under the contract continued to run after Respondent's first attempted repudiation in its letter to the Union dated June 15, 1989, through the present time and Respondent was prohibited from unilaterally repudiating the contract midterm, see *John Deklewa & Sons*, supra, and *Z-Bro, Inc.*, 300 NLRB 87 (1990).

The bargaining agreement is enforceable through application of Section 8(a)(5) of the Act and either party is prohibited from unilateral repudiation of the agreement until it expires or until that employer's unit employees vote to reject or change their representative. Here, Nelson's Systems, as alter ego to Viking Glass assumed these continued bargaining obligations. The collective-bargaining agreement between the parties had not expired but was only in midterm at the time of Respondent asserted attempts to repudiate and withdraw recognition in both June and September 1989, and Respondent's bargaining obligations continued to run. There is no evidence that Respondent made any attempts to terminate the contract upon its expiration in May 1990. The contract was renegotiated by the Contractor's Association and it is currently in effect until May 31, 1992. Respondent therefore continues to be bound to the agreement, see *Fortney & Weygandt, Inc.*, 298 NLRB 863 (1990).

Respondent was precluded from unilaterally terminating the contract at any time after its expiration in May 1990, by any means other than those provided in the agreement itself. Respondent therefore continues to be bound until expiration of the current agreement and accordingly, I find that the General Counsel has shown that Respondent has attempted to withdraw recognition and to repudiate the contract midterm, that it has refused to recognize the Union, and has further refused to abide by the terms and conditions of the agreement by failing and refusing to make required contributions

to the Union's health and welfare and pension benefits funds, and that it has thereby violated Section 8(a)(1) and (5) of the Act, as alleged.

#### CONCLUSIONS OF LAW

1. Respondent Nelson's Storefront Systems, Inc., and Viking Glass Company, Inc., are alter egos and a single, continuous employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

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

3. The Respondent was bound by the automatic renewal clause of both the 1983 and 1985 supplemental agreements between it and the Union.

4. By repudiating the automatically renewed 1985 agreement on or about June 15, 1988, and by withdrawing recognition of the Sheet Metal Workers' International Association Local No. 73 as the exclusive 9(a) bargaining representative of a majority of Respondent's employees in the bargaining unit, the Respondent has violated Section 8(a)(5) and (1) of the Act.

5. By ceasing during the term of the contract to make contractually required payments to the health and welfare fund, and the pension fund, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### THE REMEDY

Having found that Respondent has engaged in unfair labor practices in violation of Section 8(a)(1), (3), and (5) of the Act it is recommended that the Respondent be ordered to cease and desist therefrom and to take the affirmative action described below which is designed to effectuate the policies of the Act.

With respect to the necessary affirmative action, it is recommended that it be ordered to abide by the terms and conditions set forth in the collective-bargaining agreement with the Sheet Metal Workers' International Association Local No. 73 and that Respondent make whole the appropriate funds and the unit employees by making all contributions to the health and welfare fund and the pension fund, as provided in the collective-bargaining agreement that have not been paid and that would have been paid but for the Respondent's unlawful discontinuance of payments.<sup>3</sup> Respondent shall also be ordered to reimburse the unit employees for any expenses ensuing from its failure to make such payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), with interest computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>4</sup>

<sup>3</sup>Because the provisions of employee benefit fund agreements are variable and complex, the question of whether the Respondent must pay any additional amounts into the benefit funds in order to satisfy our "make-whole" remedy must be left to the compliance stage. *Merryweather Optical Co.*, 240 NLRB 1213 (1979).

<sup>4</sup>If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

## ORDER

The Respondent, Nelson's Storefront Systems, Inc. and Viking Glass Company, Inc., Lemont, Illinois, alter egos, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Repudiating its automatically renewed collective-bargaining agreement with Sheet Metal Workers' International Association Local No. 73 by failing and refusing to recognize and bargain with the Union as collective-bargaining representative of Respondent's employees.

(b) Refusing to bargain with the Union by failing and refusing to make contractually required monetary payments to the health and welfare and pension fund, without having afforded the Union an opportunity to bargain about such acts and conduct and the effects of such acts and conduct.

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

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

(a) Pay all delinquent health and welfare fund and pension fund payments as required by the parties' collective-bargaining agreement.

(b) Make unit employees whole for any losses resulting from the Respondent's failure to adhere to the collective-bargaining agreement, including reimbursing them for expenses ensuing from the Respondent's failure to pay the health in-

surance benefits pursuant to the collective-bargaining agreement in the manner set forth in the remedy section of this decision.

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

(d) Post at its facility in Lemont Illinois, copies of the attached notice marked "Appendix."<sup>5</sup> Copies of the notice, on forms provided by the Regional Director for Region 13 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees 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.

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

<sup>5</sup> 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."