

Morton Electric, Inc. and International Brotherhood of Electrical Workers, Local 16. Cases 25-CA-22389 and 25-CA-22601

July 20, 1994

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND DEVANEY

On December 3, 1993, Administrative Law Judge Steven M. Charno issued the attached decision. The Respondent filed exceptions and a supporting brief and the General Counsel filed an answering brief to the Respondent's exceptions.

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

The National Labor Relations Board has considered the decision in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions and to adopt the recommended Order as modified.²

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Morton Electric, Inc., Petersburg, Indiana, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Delete paragraph 1(b), reletter paragraph 1(a) as 1(b), and insert the following as paragraph 1(a).

“(a) Withdrawing recognition during the terms of the collective-bargaining agreements from the Union, as the exclusive bargaining representative of the Respondent's employees covered by the agreements.”

¹ We find it unnecessary to rely on the judge's finding at fn. 9 of his decision that Bob Morton possessed a degree of legal sophistication as demonstrated by his actions arising out of the use of his corporate name on an employee's vehicle.

We also note that it is evident from the judge's ruling at fn. 4 of his decision, that he meant to say that parol evidence is “inadmissible” to vary or contradict the terms of a contract which is plain on its face, rather than, as he inadvertently misstated, that such evidence is “admissible.”

² The modifications are made to reflect the narrower scope of the Order in situations involving repudiation of an 8(f) contract. Therefore, the judge's recommended remedy is also amended consistent with the action set forth in our modified Order. Accordingly, we will not order the Respondent to “recognize and, on request, bargain with the Union,” nor will we order the Respondent to “restore the status quo ante” or to “reinstate, honor, and abide by both collective-bargaining agreements.” Rather, we will require that the Respondent continue to honor the terms of the parties' inside wiring unit collective-bargaining agreement until its expiration on March 31, 1994, and to make whole the employees in both units for any losses they may have suffered, in the manner set forth in the judge's recommended remedy.

2. Substitute the following for paragraph 2(a), delete paragraph 2(b) and reletter the subsequent paragraphs.

“(a) Honor the terms and conditions of the parties' inside wiring unit collective-bargaining agreement until its expiration on March 31, 1994, and make whole employees for any loss of wages and other loss of benefits they may have incurred due to the unlawful conduct plus interest, in the manner set forth in the remedy section of the decision.”

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

APPENDIX

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

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 withdraw recognition during the term of a collective-bargaining agreement from the International Brotherhood of Electrical Workers, Local 16 (the Union), as the exclusive bargaining representative of our employees covered by the agreement.

WE WILL NOT repudiate our collective-bargaining agreement, effective April 1, 1991, through March 31, 1994, with the Union.

WE WILL NOT refuse, during the term of a collective-bargaining agreement with the Union, to supply the Union, on request, relevant information necessary to the Union's proper administration of the collective-bargaining agreement.

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 honor the terms and conditions of our inside wiring unit collective-bargaining agreement with the Union until its expiration on March 31, 1994, and WE WILL make whole employees for any loss of wages and other loss of benefits they may have incurred due to our unlawful conduct, plus interest.

WE WILL, on request, furnish the Union with the information sought by it in its March 11 and April 7, 1993 letters to us.

MORTON ELECTRIC, INC.

Walter Steele, Esq., for the General Counsel.
Brent Stuckey, Esq. (Hart, Bell, Deem, Ewing & Stuckey), of Vincennes, Indiana, for the Respondent.

DECISION

STEVEN M. CHARNO, Administrative Law Judge. In response to charges timely filed, a consolidated complaint was issued on August 31, 1993, which alleged that Morton Electric, Inc. (Respondent) had violated the National Labor Relations Act (Act), by failing to adhere to a collective-bargaining agreement with Local 16 of the International Brotherhood of Electrical Workers (Union) and by refusing to furnish information necessary for the Union's performance of its function as the exclusive bargaining representative of a unit of Respondent's employees. Respondent's answer denied the commission of any unfair labor practice.

A hearing was held before me in Petersburg, Indiana, on September 28 and 29, 1993. Briefs were thereafter filed by General Counsel and Respondent under extended due date of November 23, 1993.

FINDINGS OF FACT

I. JURISDICTION

Respondent is a corporation engaged as an electrical contractor with a place of business in Petersburg, Indiana. It was stipulated that Respondent, in the course of its operations during the 12-month period ending March 1, 1993, provided services valued in excess of \$50,000 for Indiana enterprises directly engaged in interstate commerce. Accordingly, I find that Respondent is an employer engaged in commerce within the meaning of the Act.

The Union is admitted to be, and I find is, a labor organization within the meaning of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

On August 15, 1990, Bobby J. Morton, Respondent's admitted president and sole shareholder, visited the Union's offices in Evansville, Indiana. After a brief conversation with union officials Larry Scott, Steven Henning, and Don Wilkie, Morton signed two separate letters of assent.¹ The first letter bound Respondent to recognize the Union as the exclusive bargaining representative of a specified group of employees (residential wiring unit)² and to comply with the terms of the then-current and any subsequent residential collective-bargaining agreement (residential contract) between the Union and the Evansville Division, Southern Indiana Chapter, National Electrical Contractors Association, Inc. (NECA). The letter provided that Respondent's obligations thereunder might be terminated by written notice to the Union and

NECA at least 150 days prior to the anniversary date of the residential contract. In order to create a copy of the residential contract then in effect between the Union and NECA, the union representatives revised an out-of-date contract to indicate a term of June 1, 1990, through May 31, 1991, and to reflect current wage and benefit rates.³ The residential contract thus revised required the payment of specified wages and benefits and Respondent's utilization of the Union as the exclusive source of referral of applicants for employment.⁴ Morton was given a copy of the revised document.⁵ The residential contract was thereafter renewed for the terms of March 4, 1991, through May 31, 1992, and June 1, 1992, through May 31, 1993.

The second letter of assent which Morton signed bound Respondent to recognize the Union as the exclusive bargaining representative of a second group of employees (inside wiring union)⁶ and to comply with the terms of the then-current and any subsequent inside collective-bargaining agreement (inside contract) between the Union and NECA. The second letter contained a termination provision which required written notice to the Union and NECA at least 150 days prior to the anniversary date of the inside contract. Morton was given a copy of the relevant inside contract,⁷ which was effective by its terms from April 1, 1988, through March 31, 1991, required the payment of specified wages and benefits and established an exclusive union hiring hall.⁸ Accordingly, I find that Respondent possessed explicit knowledge of the date of termination of the inside contract then in effect. The inside contract was subsequently renewed for the term April 1, 1991, through March 31, 1994.

Morton contends that (1) the revised residential contract which he received was intended to constitute a collective-bargaining agreement directly between the Union and Respondent, (2) that contract was intended to be the only collective-

³ The revised copy prepared by the Union's representative was the same in every material respect, including parties and term, as the residential contract then in effect. The credited testimony of Scott and NECA's executive manager concerning the then-current residential contract was substantiated by the executed copy of that agreement which was received in evidence. Given the Union's uncontested practice of reaching a collective-bargaining agreement and putting that agreement into effect before the contract was formally executed, I find immaterial the fact that the residential contract at issue had an effective date of June 1, 1990, but was not signed until December 12 of that year.

⁴ Because it is well settled that parole evidence is admissible to vary or contradict the terms of a contract which is plain on its face, I reject the alleged oral agreements between Respondent and the Union as immaterial to the issues before me. See, e.g., *Electro Metallurgical Co.*, 72 NLRB 1396 (1947); *Peterson & Lythe*, 60 NLRB 1070 (1945).

⁵ The parties so stipulated.

⁶ Respondent admitted that the inside wiring unit constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Sec. 9(b) of the Act.

⁷ Given the finding in text, I reject Respondent's argument that its December 21, 1992 notice terminated its obligations under the inside contract as of May 5, 1993.

⁸ Morton's testimony concerning other aspects of the August 15 meeting was shown to be freighted with self-serving mendacity, while the mutually corroborative testimony of Scott and Henning on these matters was generally supported by circumstantial evidence. I therefore credit Scott and Henning's account that Morton was given a copy of the inside contract over Morton's denial.

¹ The parties so stipulated.

² Respondent admitted that the residential wiring unit constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Sec. 9(b) of the Act.

bargaining agreement reached on August 15, 1990, and (3) he was unaware that he had signed the two letters of assent because he did not read any of the documents which he signed. These contentions are rejected for the following reasons: (1) it was the Union's general practice to negotiate entire collective-bargaining agreements only with NECA and not with individual employers, (2) the named parties to the revised residential contract were the Union and NECA, not the Union and Respondent, (3) it would be irrational for a contract negotiated and executed on August 15, 1990, to be given a term of June 1, 1990, through May 31, 1991, when that contract's admitted scope did not begin until after June 1, (4) Morton's signature appears on every page of the revised residential contract, a practice consonant with an acknowledgment of the revisions set forth therein, but does not appear on the signature line on the final page as one would expect if he were in fact a contracting party, (5) Morton unsuccessfully bid a First Union Methodist Church job in 1992 using noncompetitive wage rates prescribed by the inside contract, a highly improbable course of action for one who purported to believe that his company was not bound by that contract, and (6) Morton had been a member of the Union for over 20 years in August 1990 and was possessed of a demonstrated degree of business and legal sophistication⁹ which render highly improbable his purported failure to read or comprehend the documents which he signed. Even if I were to wholly accept Morton's account of what transpired on August 15, I could not conclude that Respondent should be released from its obligations under the agreements which Morton admittedly executed simply because he failed to read them prior to execution.¹⁰

After operating in at least partial conformity with its obligations under the two letters of assent during the period August 1990 through October 1991, Respondent undertook the following jobs without using the Union's referral system and without paying contract-prescribed wages and benefits to its employees: (1) Petersburg City Park, four employees during November–December, 1991; (2) Triad Mine, two employees during March 2–16, 1992; (3) Triad Mine, five employees during May 4–July 20, 1992; (4) Rose Disposal, three employees during July or August 1992; (5) Chandler Library, five employees during July 15–August 13, 1992; (6) Texas Eastern, six employees during August 10–November 9, 1992; (7) Rose Disposal, three employees during November 16–December 8, 1992; and (8) Southern Indiana Wood Preservation, two employees during December 1–8, 1992. At least part of the work performed by Respondent's employees on

⁹Morton's business acumen is shown by the fact that his interest in entering an agreement with the Union was motivated at least in part by his intention that the Union should subsidize his operations through its "target" grant program. His awareness of the legal implications of his activities is demonstrated by the fact that he purportedly took action to prevent tort liability arising from the use of his corporate name on an employee's vehicle.

¹⁰For the reasons set forth in text, I find *Bonanno Linen Service v. NLRB*, 454 U.S. 404 (1982), and its progeny to be inapposite here.

all but one of these jobs¹¹ was of the same type as that performed by journeyman wiremen under the inside contract.¹²

For the foregoing reasons, I find that Respondent, since at least November 1991, has failed to continue in effect the terms and conditions of the collective-bargaining agreements to which it was a party, including those terms requiring it to utilize the Union's exclusive hiring hall and to pay appropriate wages and benefits. I further find that these terms and conditions of employment are mandatory subjects for the purpose of collective bargaining. Accordingly, I conclude that Respondent has engaged in the unfair labor practice of refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(5) of the Act.

On December 21, 1992, Respondent wrote to the Union and NECA revoking "all letters of assent." On January 4, 1993, the Union replied, acknowledging that Respondent's termination notice would be effective as to the residential contract on May 5, 1993, and on March 31, 1994, with respect to the inside contract.

On March 11, 1993, the Union wrote Respondent seeking to review the latter's payroll records on March 23 in order to determine whether Respondent had "employed workmen . . . that were hired and compensated contrary to the terms set forth in our collective bargaining agreements." Respondent's counsel replied that the suggested inspection date was inconvenient. The Union repeated its request in an April 7, 1993 letter to Respondent. The second letter was not answered by Respondent.¹³ I therefore conclude that Respondent has engaged in a second unfair labor practice by refusing during the term of a valid collective-bargaining agreement to supply the Union with relevant information necessary for the latter to properly administer the agreement. I further conclude that this unfair labor practice violates Section 8(a)(5) of the Act as alleged by General Counsel.

CONCLUSIONS OF LAW

1. Respondent is an 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.

¹¹The record concerning the jurisdictional status of the work performed by Respondent's employees on the Southern Indiana Wood Preservation job is not wholly clear.

¹²Findings concerning Respondent's abandonment of the collective-bargaining agreements are based on the credited and essentially uncontroverted testimony of Roger Bonesteel, one of Respondent's employees from June 1, 1991, through December 8, 1992. Bonesteel's evidence concerning the second Rose Disposal job was corroborated by Scott and Wilkie's hearsay accounts of the Union's November 1991 surveillance of Respondent's operations, while Bonesteel's account of the Texas Eastern job is supported by Respondent's own timesheets for that job. Although Morton initially testified that the Texas Eastern job involved high-voltage transmission work outside the Union's jurisdiction, he subsequently acknowledged that two of his employees on that job did the work of union electricians.

¹³Wilkie so testified without controversy.

3. The residential wiring unit and the inside wiring unit constitute units appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

4. Between August 15, 1990, and May 3, 1993, and at all times material, the Union has been the exclusive collective-bargaining representative of the employees in the residential wiring unit.

5. Since August 15, 1990, and at all times material, the Union has been the exclusive collective-bargaining representative of the employees in the inside wiring unit.

6. By repudiating its collective-bargaining agreements with the Union, Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

7. By refusing during the term of its collective-bargaining agreements with the Union to supply relevant information necessary for the Union to properly administer those agreements, Respondent engaged in an unfair labor practice within the meaning of Section 8(a)(1) and (5) of the Act.

8. The aforesaid unfair labor practices affect interstate commerce within the meaning of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease those practices and to take certain affirmative action designed to effectuate the policies of the Act. Accordingly, Respondent shall be ordered to recognize and, on request, bargain with the Union pursuant to the collective-bargaining agreement as the exclusive bargaining representative of the employees in the appropriate unit and that, where necessary to restore the status quo ante, Respondent shall reinstate, honor and abide by both collective-bargaining agreements. Further, Respondent shall be ordered to make whole any employees in the bargaining units to the extent they may have sustained losses in wages or any other benefits because of Respondent's repudiation of its agreements with the Union, such amounts shall be computed as prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Any employee benefit fund reimbursements shall be made in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979), and employee reimbursements for expenses shall be made in accordance with *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. 661 F.2d 940 (9th Cir. 1981). Respondent shall also be ordered to provide the information sought in the Union's letters of March 11 and April 7, 1993.

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

¹⁴If 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, Morton Electric, Inc., Petersburg, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Repudiating its collective-bargaining agreement, effective April 1, 1991, through March 31, 1994, with the International Brotherhood of Electrical Workers, Local 16 (the Union).

(b) Refusing to recognize and bargain with the Union as the exclusive bargaining representative of Respondent's employees in the inside wiring unit.

(c) Refusing, during the term of a collective-bargaining agreement with the Union, to supply the Union, on request, relevant information necessary to the Union's proper administration of the collective-bargaining agreement.

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

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

(a) Reinstate and honor the terms and conditions of the parties' two collective-bargaining agreements from the date of Respondent's repudiation thereof in November 1991 forward, and make whole employees for any loss of wages and other loss of benefits they may have incurred due to the unlawful conduct, plus interest, in the manner set forth in the remedy section of this decision.

(b) Recognize and, on request, bargain with the Union as the collective-bargaining representative of employees in the inside wiring unit.

(c) On request, furnish the Union with the information sought in the Union's March 11 and April 7, 1993 letters to Respondent.

(d) 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 backpay due under the terms of this Order.

(e) Post at its Petersburg, Indiana facility copies of the attached notice marked "Appendix."¹⁵ Copies of the notice, on forms provided by the Regional Director for Region 25, 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.

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

¹⁵If 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."