

The Sobeck Corporation and Roof Pro, Inc. and Local Union No. 124 of the United Union of Waterproofers and Allied Workers of Wilkes-Barre - Williamsport and Vicinity. Case 4-CA-22877

May 21, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

On December 4, 1995, Administrative Law Judge Marvin Roth issued the attached decision. The Respondents filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

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,¹ and conclusions and to adopt the recommended Order as modified and set forth in full below.²

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below and orders that the Respondents, The Sobeck Corporation and Roof Pro, Inc., Wyoming, Pennsylvania, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discouraging membership in Local Union No. 124 of the United Union of Waterproofers and Allied Workers of Wilkes-Barre - Williamsport and Vicinity, or any other labor organization, by discriminatorily laying off or failing or refusing to recall employees, or in any other manner discriminating against them with

¹ The Respondents have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In adopting the judge's conclusion that The Sobeck Corporation (Sobeck) and Roof Pro, Inc. are alter egos, we do not rely on his statement that Sobeck became a union shop in 1989, nor on his corresponding statement that Marilyn Sobeck was evidently "not well informed" about Sobeck's labor policy, which statement was based on her testimony that Sobeck had been a union shop since its inception in 1979. We also find it unnecessary to rely on the judge's statement that he found incredible Frank Sobeck's testimony that the Sobeck Corporation did not perform work in the county in which it was located.

² We shall modify the judge's recommended Order in accordance with our decision in *Indian Hills Care Center*, 321 NLRB 144 (1996).

regard to their tenure of employment or any term or condition of employment.

(b) Failing or refusing to recognize and bargain collectively with the exclusive bargaining representative of its employees in the appropriate unit, or failing or refusing to honor collective-bargaining agreements applicable to those employees.

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

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

(a) Within 14 days from the date of this Order, offer Robert Selner, William Miller, Ben Hummel, Neil Oliver, Brian Appel, Lynn Ashworth, Lawrence Beneski, James Bottoms, James Hannagan, Joseph Krietzer, Michael Konycki, and Ben Sherlinski full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Robert Selner, William Miller, Ben Hummel, Neil Oliver, Brian Appel, Lynn Ashworth, Lawrence Beneski, James Bottoms, James Hannagan, Joseph Krietzer, Michael Konycki, and Ben Sherlinski whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges, and within 3 days thereafter notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

(d) Give full effect to the 1993-1995 collective-bargaining contract between The Sobeck Corporation and the Union, up to January 1, 1995, including but not limited to: (1) making whole all employees employed by Roof Pro, Inc. for any loss of wages and benefits they incurred because of Respondents' failure to apply or maintain the established terms and conditions of the contract; (2) making the contractually established payments to the various trust funds established by the contract; and (3) reimbursing their employees for any expenses ensuing from Respondents' failure to make such contributions; all as set forth in the remedy section of this decision.

(e) Preserve and, within 14 days of a 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.

(f) Within 14 days after service by the Region, post at its Wyoming, Pennsylvania office and place of business copies of the attached notice marked "Appen-

dix.”³ Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondents’ authorized representative, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondents have gone out of business or closed the facility involved in these proceedings, the Respondents shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since June 24, 1994.

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

³If 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.”

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.

WE WILL NOT discourage membership in any labor organization, by discriminatorily laying off or failing or refusing to recall employees, or in any other manner discriminating against them with regard to their hire or tenure of employment or any term or condition of employment.

WE WILL NOT fail or refuse to recognize and bargain collectively and in good faith with the exclusive bargaining representative of our employees in the appropriate unit, or fail or refuse to honor collective-bargaining agreements applicable to those employees. The appropriate unit is:

All journeymen roofers, damp or waterproof workers, apprentices, foreman and other workmen employed by The Sobeck Corporation and Roof

Pro, Inc., excluding guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your right to engage in union or concerted activities, or to refrain therefrom.

WE WILL, within 14 days from the date of the Board’s Order, offer Robert Selner, William Miller, Ben Hummel, Neil Oliver, Brian Appel, Lynn Ashworth, Lawrence Beneski, James Bottoms, James Hannagan, Joseph Krietzer, Michael Konycki, and Ben Sherlinski full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Robert Selner, William Miller, Ben Hummel, Neil Oliver, Brian Appel, Lynn Ashworth, Lawrence Beneski, James Bottoms, James Hannagan, Joseph Krietzer, Michael Konycki, and Ben Sherlinski whole for any loss of earnings and other benefits resulting from their discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board’s Order, remove from our files any reference to the unlawful discharges of Robert Selner, William Miller, Ben Hummel, Neil Oliver, Brian Appel, Lynn Ashworth, Lawrence Beneski, James Bottoms, James Hannagan, Joseph Krietzer, Michael Konycki, and Ben Sherlinski, and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that the discharges will not be used against them in any way.

WE WILL give full effect to the 1993–1995 collective-bargaining contract between The Sobeck Corporation and Local Union No. 124 of the United Union of Waterproofers and Allied Workers of Wilkes-Barre - Williamsport and Vicinity, up to January 1, 1995, including but not limited to:

Making whole all employees employed by Roof Pro, Inc., for any loss of wages and benefits they incurred because of our failure to apply or maintain the established terms and conditions of the contract, with interest.

Making the contractually established payments to the various trust funds established by the contract.

Reimbursing our employees for any expenses ensuing from our failure to make such contributions.

THE SOBECK CORPORATION AND ROOF
PRO, INC.

Mark E. Arbesfeld, Esq., for the General Counsel.
Scott C. Gartley, Esq., of Wilkes-Barre, Pennsylvania, for the Respondent.

DECISION

STATEMENT OF THE CASE

MARVIN ROTH, Administrative Law Judge. This case was heard at Scranton, Pennsylvania, on September 19 and 20, 1995. The charge was filed on June 24, 1994, by Local Union No. 124 of the United Union of Waterproofers and Allied Workers of Wilkes-Barre - Williamsport and Vicinity (the Union). The complaint, which issued on February 24, 1995, and was amended at the hearing, alleges that The Sobeck Corporation and Roof Pro, Inc. (respectively Sobeck Corp. and Roof Pro, and collectively Respondents), violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act (the Act). The gravamen of the complaint is that, allegedly: (1) Roof Pro is a disguised continuance of Sobeck Corp., and Respondents are alter egos and a single employer; (2) the Union, until January 1, 1995, was collective-bargaining representative of Respondents' employees in an appropriate unit; (3) Respondents' terminated 12 employees of Sobeck Corp., in violation of Respondent's bargaining obligation, and in order to avoid recognizing the Union as bargaining representative; and (4) Respondents' failed and refused to recognize and bargain with the Union, and to apply their collective-bargaining contract to Respondents' business operations. Respondents' answer denies the commission of the alleged unfair labor practices. All parties were afforded full opportunity to participate, to present relevant evidence, to argue orally, and to file briefs. The General Counsel and Respondents' each filed a brief.

On the entire record in this case¹ and from my observation of the demeanor of the witnesses, and having considered the arguments of counsel, and the briefs submitted by the General Counsel and Respondents, I make the following

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENTS'

At all times material until December 25, 1993,² Sobeck Corp., a Pennsylvania corporation, with an office and place of business at 58-62 West Eighth Street, Wyoming, Pennsylvania (sometimes the facility), was engaged in the roofing construction business. Since a date (at issue) in December 1993, Roof Pro, a Pennsylvania corporation, with an office and place of business at the facility, has been engaged in the roofing construction business. In the course of their respective operations, Respondents' have each annually purchased and received at the facility, goods valued in excess of \$50,000 directly from points outside of Pennsylvania. Whether viewed as separate employers or as a single entity, Respondents are employers or an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

¹ By a ruling and order dated November 2, 1995, I directed that the stenographic transcript of proceedings be corrected in certain respects.

² All dates herein refer to the period from October 1, 1993, through September 30, 1994, unless otherwise indicated.

II. THE LABOR ORGANIZATION INVOLVED

The Union was, until January 1, 1995, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. The Management of Sobeck Corp., its Relationship With the Union, and the Bargaining Unit Involved

Sobeck Corporation, jointly owned by Elmer Sobeck and his wife, Marilyn, commenced business in 1979. Elmer died in 1982, and Marilyn inherited ownership of the business. She remained as sole share holder.³

Elmer and Marilyn Sobeck had five children, three of whom (Frank, Robert, and Mark) were involved in the business. Mark left the business in May 1991. Thereafter, Frank, Robert, and Marilyn Sobeck comprised the board of directors. Frank served as president, treasurer, and also comptroller until December 25, 1993. Robert served as vice president and assistant secretary until the same date. Marilyn served as corporate secretary until December 30, by which time Sobeck Corp. had ceased operations. She then became president and sole officer of the defunct entity. During Sobeck Corp.'s operation, no nonfamily member had supervisory authority. In sum, Sobeck Corp. was owned, managed, and controlled within the Sobeck family.

On May 25, 1989, following a Board conducted election, the Union was certified as collective-bargaining representative of Sobeck Corp.'s employees in an appropriate unit. It is undisputed that as of December 1993 (prior to commencement of Roof Pro's operations) the appropriate unit consisted of all journeymen roofers, damp or waterproof workers, apprentices, foreman, and other workmen employed by Sobeck Corp., excluding guards and supervisors as defined in the Act. It is also undisputed that the Union was the exclusive collective-bargaining representative of the unit employees.

Following certification, Sobeck Corp. and the Union entered into a series of collective-bargaining contracts. The most recent contract was effective by its terms from May 1, 1993, to April 30, 1995. At Sobeck Corp.'s request, the Union had previously agreed that wage rates would be 20-percent less than that specified in their contracts. Although the 1993-1995 contract was unsigned, it is undisputed that the contract was negotiated and agreed to between the Union and two employers (Sobeck Corp. and Paul J. Eyerman, Inc.) and that Sobeck Corp. adhered to the agreed on terms.

The collective-bargaining contract contained an exclusive referral provision. In sum, Sobeck Corp. recognized the Union as the proper source to get employees when available. Sobeck Corp. further agreed to notify the Union of employees otherwise hired.

As of mid-December 1993, Sobeck Corp. employed 12 unit employees: Robert Selner, William Miller, Ben Hummel, Neil Oliver, Brian Appel, Lynn Ashworth, Lawrence Benesky, James Bottoms, James Hannagan, Joseph Kreitzer, Michael Konycki, and Ben Sherlinski. The Company also had five employees represented by other unions. The remainder of Sobeck Corp.'s personnel complement (in addition to the Sobeck family members), all nonunion, consisted of estimator, Norman Kirkpatrick; secretary, Rachel Williams; roof-

³ In the interest of brevity, I have sometimes referred to members of the Sobeck family simply by their first names.

er-helper, Joseph Rainier; and part-time yard man, Jeffrey Cegelka.

With regard to the management and operations of Sobeck Corp., the role played by Marilyn Sobeck is in dispute. None of the personnel had a private office. Rather, the Sobecks' estimator, Kirkpatrick, and secretary Williams each had a desk in a large room.

Unit employee Benjamin Sherlinski, who began working for the Company in 1987, testified in sum as follows: He was interviewed and hired by Mark Sobeck. During Mark's tenure, Mark appeared to be in charge. He did estimating and made decisions with respect to hiring, firing, and discipline. Robert Sobeck apparently functioned as a superintendent. He gave out work orders and sometimes checked on jobs. Frank Sobeck functioned like a bookkeeper, taking care of the payroll. Marilyn Sobeck, who had a desk near the entrance, performed secretarial work. If Sherlinski had a problem, he would contact Robert or Frank. On one occasion, there was suspicion that Sherlinski had stolen some material. The three Sobeck brothers questioned him. Apparently satisfied with his answers, they took no further action. Marilyn did not participate in the interview.

Sherlinski further testified in sum as follows: After Mark left the firm, Frank and Robert took over his functions. If Sherlinski had problems or needed materials, he would tell Frank or Robert. If Marilyn answered the phone, she would refer the call to Frank. Marilyn continued to do secretarial work. She spent more time in the office than before, and usually worked in the office several hours each day. In October 1993, Robert fired Sherlinski, apparently believing that Sherlinski had ordered unnecessary material. Sherlinski told Marilyn, who said she was sorry but that was a matter between him and Robert. Sherlinski spoke to Robert who agreed to reinstate Sherlinski, with the promise that Sherlinski would reimburse Sobeck Corp. for the wasted material.

William Miller, the General Counsel's other employee witness, substantially corroborated Sherlinski's testimony in significant respects. Miller worked for Sobeck Corp. at various times from 1981 to December 25, 1993, including the last 2 years of that period. Miller testified in sum as follows: Robert coordinated jobs and supervised employees in the field. After Mark Sobeck left, Frank performed bookkeeping and financial functions. Marilyn did secretarial work and relayed messages to Frank or Robert. When Miller needed materials to be purchased he asked Frank or Robert. When he wanted a day off he asked Robert or he asked Frank if Robert was unavailable. He never asked Marilyn. Miller was disciplined once, when Mark gave him a disciplinary layoff. On other occasions when Miller was laid off, Robert so informed him. To Miller's knowledge, Marilyn never directed work, or discharged, laid off, or disciplined employees.

John Bushko was union president, and subsequently union business agent. Previously, from 1979 to 1986 or 1987, he worked for Sobeck Corp. As business agent, he dealt regularly with the Company. He negotiated contracts with Mark (until he left), Frank, Sobeck Corp. Attorney David Koff, and Paul Eyerman of the Eyerman firm. During contract term he dealt with Mark, and later Frank or Robert, concerning contract issues and other problems, such as the proper ratio of apprentices. He never dealt with Marilyn.

Marilyn Sobeck (now) Martin testified that she performed secretarial duties for Sobeck Corp. She testified that she was responsible for Sobeck Corp.'s labor policy. If so, then it is evident that Marilyn was not well informed about that policy. Marilyn testified that Sobeck Corp. "has been a union shop since day one." In fact, Sobeck Corp. became a union shop only by reason of the 1989 certification. Frank Sobeck testified that in 1989 he declined to recognize the Union, whereupon the Union filed its election petition.

Frank Sobeck, in his testimony, did not dispute the testimony of employees Sherlinski and Miller concerning functions performed by himself and Robert. Frank testified in sum that Robert functioned as an outside job superintendent, assigning work, and checking materials, while he remained principally in the office, functioning, among other responsibilities, as comptroller.

However, Frank testified that Marilyn had final responsibility for hiring, firing, determining labor policy, and negotiating contracts, and that she made the decision to close Sobeck Corp. He testified that Attorney Koff handled contract negotiations, but Marilyn made the final decision on contracts. According to Frank, Marilyn's policy was to make decisions, and he would carry them out.

Frank Sobeck initially testified that his brother, Mark, resigned from the Company. Frank subsequently testified that Marilyn fired Mark. Although Marilyn was presented as a company witness, she did not testify concerning the matter. The corporate minutes indicate that Mark resigned. In view of these factors, and other factors herein discussed, I find that Mark resigned.

With respect to the October 1993 discharge of employee Sherlinski, Marilyn testified that when Robert told her that he fired Sherlinski, they discussed the matter, she said she wanted Sherlinski reinstated, and Sherlinski was recalled. Marilyn in her testimony, did not deny Sherlinski's testimony concerning their conversation, i.e., that she said the matter was between him and Robert. This was the only matter (other than the ultimate decision to terminate the business) wherein Marilyn testified as to an alleged instance in which she exercised supervisory or managerial authority. Frank Sobeck testified that Marilyn decided to rehire Sherlinski. However, Robert, who actually terminated Sherlinski and then rehired him, was not called as a witness. In light of the absence of Robert's testimony, the omissions in Marilyn's testimony, and the lack of objective evidence that Marilyn ever exercised supervisory authority (which will be further discussed) I find that Marilyn was not involved in the decision to reinstate Sherlinski.

There is a total lack of objective evidence to indicate that Marilyn ever exercised supervisory or managerial authority in the operations of Sobeck Corp. Rather, Respondents' position in this regard rests on the self-serving assertions of Frank, and to a lesser extent, those of Marilyn. Even the testimony of Respondents' nonfamily witnesses indicated that Frank in fact, directed the business. Sobeck Corp.'s accountant and bank official, Marie Beggin, testified that Frank furnished most of the information and engaged in most of the discussions concerning Sobeck Corp.'s alleged financial problems and the proposed plan to terminate Sobeck Corp.'s operations.

As discussed, Marilyn was not well informed concerning Sobeck Corp.'s operations and policies. If in fact Marilyn

called the shots, then this was plainly not apparent to the employees or to anyone else who dealt with Sobeck Corp. If Marilyn made the final decisions with respect to collective-bargaining contracts, then at some point this would have become known to Business Agent Bushko. However, as indicated, Bushko had no reason to believe that Marilyn had any involvement or input into collective bargaining.

I find that after Mark Sobeck left the firm, Frank was both nominally and, in fact, chief executive of Sobeck Corp. with his brother Robert playing a subordinate managerial role. Although as owner of the firm, Marilyn had the potential right to exercise control, she did not do so, and was only minimally informed concerning the operations and policies of Sobeck Corp. Rather, her functions and involvement were limited to the performance of routine clerical tasks.

B. Sobeck Corp.'s Alleged Financial Difficulties and the Decision to Terminate Sobeck Corp.

The Respondents' witnesses (Frank Sobeck, Marilyn Sobeck Martin, accountant James Clemente, and then First Eastern Bank Official Marie Beggin)⁴ testified in sum as follows: In June 1988, Sobeck Corp. took a line of credit in the amount of \$300,000 with First Eastern Bank. The purpose was to enable Sobeck Corp. to continue operations. Such lines of credit are normally used to meet short-term operating needs. The credit line agreement was signed for Sobeck Corp. by Frank Sobeck, as then vice president and treasurer. However, Marilyn personally guaranteed repayment.

First Eastern Bank annually renewed the line of credit until September 1993, when the Bank converted the line of credit to a demand note, requiring repayment in full. At that time, Sobeck Corp. owed the Bank \$290,000. Beggin initially testified that the Bank took this action because Sobeck Corp. was in default, and had serious financial problems. However, she subsequently testified that Sobeck Corp. had not failed to pay on the loan. Accountant Clemente testified that since 1991 Sobeck Corp. had been losing money (net losses of about \$104,000 in 1991, \$114,000 in 1992, and continuing losses during the first 6 months of 1993). As a result, Sobeck Corp.'s net equity decreased from about \$270,000 to about \$54,000.

The company witnesses further testified in sum as follows: Bank Official Beggin met with Frank, Robert, and Marilyn. Beggin requested that they present a proposed repayment plan. She suggested alternatives including refinancing through another bank. Instead, on October 18, 1993, Frank Sobeck submitted a proposal to repay First Eastern Bank by liquidating the assets of Sobeck Corp. and certain personal assets of Marilyn, with repayment during the period from December 1993 through May 1994. Frank thereby committed personal assets of Marilyn toward repayment of the corporate debt.

The record does not indicate when First Eastern Bank approved the repayment plan. However, the plan was eventually consummated. The outstanding debt was paid during 1994, with final payment in November 1994. Payment was made with \$51,000 from liquidation of personal assets of Marilyn, and the balance of the \$290,000 obligation from liquidation of Sobeck Corp.'s assets.

⁴In June 1994, after the events which gave rise to this case, First Eastern Bank merged into NBO National Bank.

The corporate minutes of Sobeck Corp. indicate that on December 6, 1993, the board of directors recommended, and Marilyn as sole owner agreed, that Sobeck Corp. cease doing business as of December 25, and that the corporation be dissolved. By letters dated December 20 to Business Agent Bushko and to the unit employees, Marilyn Sobeck informed them that Sobeck Corp. would cease doing business as of December 25. This was the first and only notice given to them. The letter to Bushko stated that if the Union wished to bargain over the consequences of the decision, he should contact Attorney Koff. Marilyn and Frank testified in sum that the decision was made because of the Company's financial problems, and not in order to avoid dealing with the Union, or to enable Frank and Robert to form a nonunion company.

On December 23, having received Marilyn's letter, Bushko spoke to Frank, who told Bushko that he was losing money and could not operate. Bushko asked if there was anything the Union could do. Frank responded that it was a done deal. Frank said nothing about a new company.

C. Formation of Roof Pro, Transactions Among Sobeck Corp., Roof Pro, and the Sobeck Family Members, Comparison of the Operations of Sobeck Corp. and Roof Pro, and Alleged Discriminatory Layoff and Failure or Refusal to Recall the Unit Employees

Roof Pro was incorporated on December 9, 1993. Frank Sobeck and his wife, Joline, were the sole shareholders, and comprised the board of directors. At the organizational meeting on December 10, they designated Frank as president-treasurer, Robert Sobeck as vice president-assistant secretary, and Joline Sobeck as secretary. Frank and Robert continued to serve in their respective capacities, i.e., the same positions which they held with Sobeck Corp. Joline's position was nominal. She was employed elsewhere, and took no part on the operations of Roof Pro.

Frank Sobeck testified in sum as follows: He formed Roof Pro because with Sobeck Corp.'s closing, he would be unemployed. He and his wife took out a loan from Luzerne National Bank in the amount of \$100,000 for working capital. They also took a loan from that Bank in the amount of \$75,000 to pay for equipment purchased from Sobeck Corp., and to pay off a Sobeck Corp. debt of \$25,000. They gave the Bank a mortgage on their home as a guarantee of repayment. Both loan agreements were dated January 3, 1994.

On Sunday, December 26, Roof Pro, by Frank, executed an agreement with Marilyn Sobeck to lease the premises at 58-62 West Eighth Street for 10 years commencing with a rental of \$500 per month. As of July 1994, the rent would be increased to \$800 per month. The premises consisted of the office building and warehouse, which until then had been leased by Marilyn Sobeck to Sobeck Corp., also at a monthly rental of \$500. Roof Pro, like Sobeck Corp. until December 25, used the facility as its office and place of business.

Frank and Mark Sobeck, and their wives owned premises diagonally across the street from the facility (83 West Eighth Street), which contained a warehouse and adjacent undeveloped land. Sobeck Corp. had leased the premises. On December 26, Roof Pro, by Frank, entered into an agreement with the owners to rent the premises for 10 years at a monthly rental of \$100. Sobeck Corp. had until then, rented the premises and used the warehouse in its business.

Frank testified that Roof Pro leased only the undeveloped land. However, the lease agreement contains no such limitation. Frank, in his testimony, did not indicate why Roof Pro would rent only undeveloped land. Employee William Miller, who was hired by Roof Pro on March 11, and continued to work for Roof Pro until December 1994, testified that on occasions until an auction on April 30 (which will be discussed) he obtained material from the warehouse.

In October 1994, Frank, Mark, and their wives sold the premises at 83 West Eighth Street to a nonfamily purchaser. Frank testified that thereafter, he rented the undeveloped land from the new owner at a monthly rental of \$75. I find that at least until April 30, Roof Pro used the warehouse at 83 West Eighth Street which had previously been used by Sobeck Corp. in its business.

Also on December 26, Roof Pro entered into an agreement with Sobeck Corp. to purchase equipment valued at \$73,450. The equipment included vehicles, operating equipment, tools, and office equipment, comprising most of Sobeck Corp.'s equipment inventory. Roof Pro agreed to pay Sobeck Corp. \$48,450 on or before January 15, and to assume a debt of \$25,000 owed by Sobeck Corp. to Luzerne National Bank.

Again on December 26, Roof Pro entered into an agreement with Sobeck Corp. to purchase supplies valued at \$5300, and miscellaneous equipment valued at \$1175, with payment to be made on or before June 30, 1994.

Roof Pro took immediate possession of the purchased equipment and supplies, without making any down payment. On January 5, Roof Pro paid Sobeck Corp. for the purchased equipment, with proceeds of the January 3 loan from Luzerne National Bank. Roof Pro did not pay for the second purchase (total of \$6475) until June 30, the final due date. In sum, assuming these to be arm's-length transactions, Sobeck Corp. sold nearly its entire inventory of equipment and supplies, permitting Roof Pro to have immediate possession and use, with no down payment and no assurance that Roof Pro would have the funds necessary for payment.

Frank Sobeck testified that he (on behalf of Roof Pro) paid fair market value, or higher than fair market value for Sobeck Corp.'s equipment. He made no effort to purchase equipment from other sources. Frank testified that he made these generous transactions in order to help his mother, by reducing Sobeck Corp.'s indebtedness and getting rid of its equipment.

Also on December 26, Roof Pro and Sobeck Corp. entered into another written agreement, whereby Sobeck Corp. gave Roof Pro its customer mailing lists, job files, and work in progress. Such work was defined as \$100 in unfinished work for Blake Collins, and \$900 in unfinished work for Bell of Pennsylvania. In exchange, Roof Pro agreed to honor Sobeck Corp.'s standard 2-year roofer's warranties, and the first 2 years of Carlisle Syntec Systems (Carlisle) warranties for faulty work. Frank Sobeck explained that Carlisle manufactures a type of roof process, and will reimburse the roofer for warranty costs after the first 2 years. However, the roofer must assume any warranty costs during the first 2 years. Frank testified that he did not give anything for Sobeck Corp.'s good will. He estimated that the warranty work committed by Roof Pro, i.e., Roof Pro's asserted consideration for the agreement, might be worth about \$10,000.

In fact, Roof Pro received much more than \$1000 of unfinished work directly from Sobeck Corp. Orlowski, a chain

of minimarts, was a customer of Sobeck Corp. Frank Sobeck testified that on December 27, Roof Pro's first day of operation, he bid a job for Orlowski, was awarded the contract on December 29, started the job on December 30, and began to install the roof on December 31. However, on January 24, Roof Pro paid Sobeck Corp. \$49,55.10 for materials and supplies purchased on December 26 and 29. Frank Sobeck testified that the materials and supplies were purchased for the Orlowski job. The purchase invoice indicated that the materials and supplies were taken by Roof Pro on December 27. Business Agent Bushko testified that on December 24, he saw a construction worker working on the roof of an Orlowski minimart. The worker indicated that Sobeck was doing the job. Bushko further testified that on December 27, he saw Robert Sobeck and a crew working on the same roof, using Sobeck Corp. equipment. It is evident and I so find, that Roof Pro took over the Orlowski job from Sobeck Corp. without any contractual agreement with Sobeck Corp. or need to submit an independent bid.

In fact, Roof Pro benefited by assuming Sobeck Corp.'s warranty obligations. Carlisle normally designated the installing roofer to perform warranty work beyond the initial 2-year period, and reimbursed the roofer for such work. By assuming Sobeck Corp.'s initial warranty obligations, Roof Pro was assured that it would receive the subsequent and lucrative post 2-year warranty work, and so represented to potential customers. Roof Pro earned \$20,871 in revenue from Carlisle warranty work during the first 9 months of its operation.

On April 30, at a public auction, Roof Pro purchased Sobeck Corp.'s equipment and supplies for a total price of \$2095. This constituted only a small fraction of Sobeck Corp.'s original inventory. No evidence was presented to indicate either that Roof Pro obtained any significant part of its equipment from a source or sources other than Sobeck Corp. or that Sobeck Corp. sold or otherwise transferred a significant part of its equipment to any roofing firm other than Roof Pro. In sum, Roof Pro and Sobeck Corp. used substantially the same equipment.

Frank Sobeck testified in sum as follows: Sobeck Corp. was a commercial roofing and sheet metal fabricating contractor, operating in New York, New Jersey, and Pennsylvania, the latter principally in Lackawanna, Lycoming, and Columbia Counties. Roof Pro is a primarily residential roofing contractor, and waterproofing contractor, operating in Luzerne County, Pennsylvania (where the facility is located). Roof Pro's goal is to be an exclusively residential contractor.

In fact, Roof Pro is engaged in substantially the same business as Sobeck Corp. and so represented to prospective customers, including former Sobeck Corp. customers, and to the general public. By letter dated December 27, Frank and Robert Sobeck informed prospective customers, including former Sobeck Corp. customers, in pertinent part as follows:

We are writing this letter to inform you that we, the Sobeck bothers, Frank and Bob, have formed a new business, ROOF PRO, INC., which will engage in commercial, industrial and residential roofing services. We bring with us almost thirty years combined total experience in the roofing industry as former employees of The Sobeck Corporation, and we assure you that we will continue the traditional "Sobeck approach" of pro-

viding the best possible service at the most competitive price.

ROOF PRO, INC., has been authorized as a Carlisle Applicator and by contract we have agreed to honor any of the standard warranties issued by The Sobeck Corporation on a job by job and limited dollar basis.

Norm Kirkpatrick has also been hired as our Estimator/Project Manager.

We would appreciate the opportunity to serve your roofing needs and we look forward to working with you on your next project. [Emphasis added.]

It is evident from the foregoing letter, and in particular, the Sobeck's assurance that they would "continue the traditional 'Sobek approach,'" that Frank and Robert were indicating that Roof Pro was in fact a continuation of Sobeck Corp.

Similarly, the sign on the facility's front door identifies the business of Roof Pro as "commercial, industrial, and residential contractors." Roof Pro's ad in the yellow pages, also so identifies the business. None of these notices made reference to waterproofing, nor did they indicate that Roof Pro's operations were limited to Luzerne County.

Respondents' presented in evidence, a chart showing Sobeck Corp.'s 10 largest accounts during the period from April to December 1993, and Roof Pro's 10 largest accounts during the period from January to September 1994. That chart showed that Roof Pro's two largest accounts were among Sobeck Corp.'s 10 largest accounts, and that 5 of Roof Pro's 10 largest accounts were among Sobeck Corp.'s 10 largest accounts. The identity of these five customers is significant. All five are real estate or construction firms, plus Carlisle (warranty business) whose roofing needs would likely be recurring. The remaining accounts which were not shared by Roof Pro and Sobeck Corp. during the indicated periods comprised schools, churches, and nonconstruction industry establishments, whose business would not likely be recurring. They included, among Sobeck Corp. accounts, a labor union, which would not likely do business with a non-union roofer. The chart makes no reference to Orlowski, which as indicated, was an important customer of Sobeck Corp. and continued as a customer of Roof Pro.

Respondents' also introduced in evidence, charts for the above indicated 9-month periods, comparing the relative, commercial, and residential business of Sobeck Corp. and Roof Pro, including Roof Pro's new accounts. The charts indicated that of 172 Roof Pro accounts, 118 had also been Sobeck Corp. accounts. The charts also indicated that Roof Pro did significantly more residential work than Sobeck Corp. Such work accounted for less than 4 percent of Sobeck Corp.'s revenue, but about 21 percent of Roof Pro's revenue. However, Roof Pro earned \$90,471 in revenue from new commercial accounts, comprising about 28 percent of its revenue from new accounts. It is evident that Roof Pro solicited and obtained new commercial business.

Frank Sobek, in his testimony, admitted that Roof Pro does commercial work, that commercial work generates more revenue than residential jobs, and that commercial work was basically the "bread and butter" for both Sobek Corp. and Roof Pro. Frank also testified that Roof Pro could not remain in the residential market if it had to pay union wages. In sum, by operating nonunion, Roof Pro was able to enlarge Sobek Corp.'s former share of the residential market.

Employee William Miller testified that Sobek Corp. did waterproofing work, although this was not a major part of its operation. With respect to geographic area of operations, Frank Sobek admitted that Sobek Corp. performed an average of one job per year in New York, and that Roof Pro did a job in Strodsburg, Pennsylvania, which is not in Luzerne County. I find incredible, Frank's assertion that Sobek Corp. did not perform work in the county in which it was located (the Orlowski job which Roof Pro took over from Sobek Corp. was located down the street from the facility).

In sum, Sobek Corp. and Roof Pro were engaged in substantially the same line of business, namely roofing construction. They operated substantially in the same market. Both were ready and willing to perform work which they were capable of performing, without restriction as to nature of customer or geographic location, if they could do so profitably.

Sobek Corp. and Roof Pro used the same accountant and the same law firm. Frank Sobek testified that they dealt with different banks, in that First Eastern Bank was the primary financial institution for Sobek Corp., and Luzerne National Bank was the primary financial institution for Roof Pro. However, Sobek Corp.'s own records indicate that it received substantial financing from Luzerne National Bank.

Roof Pro requested and obtained a different telephone number and post office box from those of Sobek Corp. However, Roof Pro used the same telephone system which it purchased from Sobek Corp. As indicated, Roof Pro also did business at the same locations as Sobek Corp.

Roof Pro commenced operations, on December 27, using the same nonunion personnel previously employed by Sobek Corp. Frank, as president, was as before, in overall charge of the business. Robert, as vice president, as before, supervised field operations. Norman Kirkpatrick remained as estimator and Rachel Williams, as secretary (Williams later left for other employment). Frank Sobek testified that he told Kirkpatrick on December 20, and Williams on December 21, that he was forming a new business.

Marilyn Sobek was present and also performing the same functions which she had performed for Sobek Corp. As before, she answered the phone, did some typing, and handed out paychecks. Frank testified that she was not paid by or an employee of Roof Pro.

On December 27, Roof Pro began operations, using Rainer and Cegelka, the nonunion roofer helper and yardman. During January, Roof Pro hired seven additional employees. Six had not been Sobek Corp. employees, and were either not union members or not known by Roof Pro to be union members. The seventh was roofer mechanic Robert Selner, who resigned from the Union in January, and was hired by Roof Pro on January 10.

The average wage rate at Sobek Corp. was about \$14.30 per hour. Employees also were covered by health insurance and a pension plan. Roof Pro paid its employees \$11 per hour, with no fringe benefits.

Frank Sobek did not inform either the Union or the unit employees that he was forming Roof Pro. He did not request the Union to refer employees, and Roof Pro did not adhere to the terms of the Union's contract with Sobek Corp. Frank testified in sum as follows: He did not notify the Union or the unit employees about Roof Pro because it was his business. In January he contacted employee Brian Appel, but they could not agree on wages and benefits. In March, he

contacted Michael Konycki, who said he was then busy. At some time, Robert Sobeck called James Hannagan, but Hannagan did not return the call. Frank did not call Ben Sherlinski, because he thought they could not agree on wages and benefits. He did not call Lawrence Benesky or Joseph Krietzler because he did not know them well, and also because Benesky worked for the Eyerman firm. He did not call Lynn Ashworth because he understood Ashworth took a job with another firm, and he did not call James Bottoms because he considered him a “know it all.”

In March 1994, Roof Pro placed a help wanted ad in two area newspapers. William Miller responded to the ad, and was hired on March 11. Roof Pro subsequently hired two other laid-off Sobeck Corp. unit employees: Ben Hummel on April 18, and Neil Oliver on June 13. Frank did not explain why he did not previously contact these employees.

Miller testified that when he was hired, Frank Sobeck told him that he was getting into Roof Pro at a good time, because Frank had been advised by his lawyers not to hire too many of the men who had worked with the Union. Frank, in his testimony, denied making the alleged statement. Frank testified that he had no such policy, and did not discriminate against union employees in hiring.

I credit Miller, because it is evident that this is what Frank did. Absent a discriminatory motive, it would make no sense to conceal from his experienced employees, the fact that he was forming a new company, to begin operations with the two least skilled Sobeck Corp. employees, and thereafter, to hire a work force composed predominantly of employees who had not worked for Sobeck Corp. I do not credit Frank’s explanation that he failed to call certain employees because he did not know them well or did not like them. All of the Sobeck Corp. employees had been hired by Frank or Mark Sobeck, and had worked under the supervision of Robert and Frank. Plainly, Frank was more familiar with their qualifications, than the qualifications of new hires who had not been Sobeck Corp. employees. I find as Frank intimated to Miller, that he intentionally hired a nonunion work force, and thereafter hired only a few of the former Sobeck Corp. employees, in order to avoid dealing with the Union.

D. Analysis and Concluding Findings

The complaint alleges that Roof Pro was established as a disguised continuance of Sobeck Corp., and that Sobeck Corp. and Roof Pro have been at all times material, alter egos and a single employer under the Act. The complaint also alleges that “Respondent,” meaning both companies, laid off and failed and refused to recall the 12 unit employees (4 of them, until the dates previously indicated) in order to avoid recognizing the Union as bargaining representative of the unit employees. Therefore, liability of both companies for the layoffs is in issue in this case. The complaint alleges that Respondents’ violated Section 8(a)(1) and (5) by failing and refusing, until January 1, 1995, to recognize and bargain with the Union as representative of the unit, and to apply their 1993–1995 contract to their operations. The complaint further alleges that by laying off and not recalling the unit employees, Respondents’ violated Section 8(a)(1), (3), and (5).

The Board and courts have held that ostensibly separate firms may be regarded as a single employer under the Act where there is interrelation of operations, together with cen-

tralized control of labor relations, common management, and common ownership or financial control. *NLRB v. M. P. Building Corp.*, 411 F.2d 567 (5th Cir. 1969).

Under the alter ego doctrine, two nominally separate business entities may be regarded as a single employer if one is the alter ego or “disguised continuance” of the other. *Southport Petroleum Co. v. NLRB*, 315 U.S. 100, 106 (1942). In determining “whether two facially independent employers constitute alter egos” under the Act, the Board has long held that “although each case must turn on its own facts, we generally have found alter ego status where the two enterprises have substantially identical [ownership], management, business purpose, operation, equipment, customers and supervision.” *Advance Electric, Inc.*, 268 NLRB 1001, 1002 (1984). “None of these factors, however, ‘taken alone, is the same sine qua non of alter ego status.’” In particular, “substantial identity of formal ownership between two employers is not the sine qua non of an alter ego relationship.” Rather, “it is actual control that highlights whether a change in formal ownership between the old and new employers is the type of ‘mere technical change in the structure or identity’ of an employer that is prescribed by the alter ego doctrine.” *NLRB v. Omnitest Inspection Services*, 937 F.2d 112, 118, 120 (3d Cir. 1991). “The main focus of the inquiry is to determine whether the two employers are the same business in the same market.” *Stardyne, Inc. v. NLRB*, 41 F.3d 141, 151 (3d Cir. 1994).

“Once an employer is found to be an alter ego of another, it is responsible for the other’s violations of the Act, as well as its obligations under the collective bargaining agreement.” *NLRB v. Omnitest*, 937 F.2d at 122. In *Advance Electric*, supra, the Board held that in determining whether an alter ego status was present, it would consider “whether the purpose behind the creation of the alleged alter ego was legitimate or whether, instead, its purpose was to evade responsibilities under the Act,” but that such intent is not an essential element of an alter ego relationship. Accord: *Stardyne, Inc. v. NLRB*, 41 F.3d at 151; *Fugazy Continental Corp. v. NLRB*, 725 F.2d 1416, 1419 (D.C. Cir. 1984); and *Goodman Piping Products v. NLRB*, 741 F.2d 10, 12 (2d Cir. 1984).

In *Stardyne, Inc.*, supra, the court affirmed the Board’s finding of alter ego status, but remanded the case to the Board “for clarification of its precedents concerning the relationship between the alter ego and single employer doctrines” 41 F.3d at 144. The court expressed its view that the “single employer doctrine generally applies to situations where the two entities *concurrently* perform the same function and one entity recognizes the Union and the other does not”; whereas the alter ego doctrine “usually comes into play when a new legal entity has replaced the predecessor (or at least the unionized portion of the predecessor).” (41 F.3d at 152; emphasis in original). Pending Board clarification, I find it unnecessary to decide in the present case, whether Sobeck Corp. and Roof Pro constitute a single employer. As will be discussed, I find them to be alter egos. Therefore, a single employer status would add nothing to violations found, or to the remedy.

I find as alleged, that Roof Pro was established as a disguised continuance of Sobeck Corp. and that the companies are alter egos. Roof Pro and Sobeck Corp. share six of the seven criteria delineated in *Advance Electric*, supra.

Roof Pro has the same management and supervision as Sobeck Corp. As with Sobeck Corp., Frank is in charge of the business, with Robert functioning as his deputy, and each performing the same managerial and supervisory functions. Significantly, Roof Pro retained Sobeck Corp.'s nonunit personnel (estimator Kirkpatrick, secretary Williams, Marilyn helping in the office, and the two nonunion field employees).

Roof Pro continued substantially the same operation as Sobeck Corp. using the same facilities and equipment. As discussed, Roof Pro continued business at the facility, also using the premises across the street. Roof Pro immediately took control and put to use, Sobeck Corp.'s equipment and supplies. Roof Pro did not obtain any significant equipment from any other source, and Sobeck Corp. did not sell or otherwise transfer any significant part of its equipment to any other roofing firm. Both firms used the same accounting and law firms. That factor also tends to indicate a lack of arms'-length dealing between the Companies.

Roof Pro is engaged in the same business and the same market as Sobeck Corp. with the same business purpose and to a considerable and significant extent, the same customers. In these respects it is significant that Frank and Robert made clear to Sobeck Corp.'s customers and potential customers, that they were still in business at the old stand, and still providing the "Sobeck approach," albeit under a different name. Frank and Robert described themselves as "former employees" of Sobeck Corp. However, those customers had always dealt with Frank, Robert, or Kirkpatrick, never with Marilyn, and had no reason to believe that anyone other than Frank was in charge of Sobeck Corp.

It is also significant that Frank and Robert made certain that Sobeck Corp.'s operations would continue uninterrupted, with no loss of time or customer good will. They recognized that Sobeck Corp.'s good will was also their good will. Roof Pro took over Sobeck Corp.'s jobs in progress or under contract. In the case of the Orlowski job, Roof Pro did so without even the pretense of an agreement with Sobeck Corp. Roof Pro also promptly assumed Sobeck Corp.'s warranty obligations.

As discussed, Roof Pro's revenue, as with Sobeck Corp. derived principally from commercial roofing work. Roof Pro's principal customers were also Sobeck Corp.'s principal customers. Roof Pro did more residential roofing work. However, as Frank admitted, this was possible only because Roof Pro was paying its employees below union scale, and not providing union benefits.

In finding alter ego status, the absence arm's-length dealing, coupled with accommodation to family interests, is also significant. The transactions among the two Companies and the Sobeck family members, were for all practical purposes, a matter of Frank Sobeck dealing with himself. Roof Pro paid market value or more than market value for Sobeck Corp.'s used equipment, in order to meet First Eastern Bank's requirements, and enable Sobeck Corp. to repay its indebtedness. These would not be considerations for a bona fide arm's-length purchaser. Roof Pro also obtained Sobeck Corp.'s good will, customer lists, job files, work in progress or contracted, and warranty work, with no meaningful consideration.

As discussed, in determining alter ego status, actual common control is more significant than a change in ownership. That is particularly true where the change takes place within

a family, and even more so as here, between a parent and child. As discussed, Marilyn was not involved in management of Sobeck Corp. It is probable that at some point in time Marilyn would have transferred ownership of the business to one or more of her offspring (probably Frank). As owner and lessor of that facility, Marilyn continued to have a financial interest in the business. In these circumstances, the factors demonstrating alter ego status, outweigh the change in ownership. See *Apex Decorating Co.*, 275 NLRB 1459, 1473 (1985), *enfd. mem.* Docket No. 86-2558 (4th Cir. 1987); *Truck & Dock Services*, 272 NLRB 592 fn. 2 (1984); and *EG Sprinkler Corp.*, 268 NLRB 1241, 1244 (1984), *enfd. sub nom Goodman Piping Products v. NLRB*, 741 F.2d 10 (2d Cir. 1984).

With regard to motivation, Respondents', as discussed, presented evidence concerning Sobeck Corp.'s financial problems, and the action of the First Eastern Bank in converting the line of credit to a demand note. First Eastern Bank proposed alternative solutions, including refinancing through another bank. In fact, Frank Sobeck did this. In essence, he arranged for repayment to First Eastern Bank, while taking out loans in the amount of \$175,000 from Luzerne National Bank. However, instead of directly obtaining refinancing for Sobeck Corp. from Luzerne National Bank, Frank used Sobeck Corp.'s financial problems as an excuse to liquidate Sobeck Corp. as an entity, form a new corporation which would operate nonunion, and obtain refinancing through the medium of the new corporation.

I specifically find that Respondents' laid off the unit employees, and thereafter failed and refused to recall them, in order to avoid dealing with the Union and honoring their collective-bargaining contract. Respondents' thereby violated Section 8(a)(1) and (3) of the Act. On the basis of Frank Sobeck's statement to employee Miller, his actions in concealing the formation of Roof Pro from the Union and unit employees, while retaining nonunion personnel, and his demonstrated intent to operate Roof Pro as a nonunion firm, the General Counsel presented a prima facie case that Respondents' laid off the unit employees, and failed and refused to recall them, in order to avoid recognizing and bargaining with the Union. As Respondents' variously failed to advance reasons for their personnel actions, or advanced reasons which were demonstrably false, pretextual or based on their own unlawful refusal to honor their contract, it follows that Respondents' failed to meet the burden of establishing that they would have terminated the unit employees in the absence of Respondents' unlawful motivation.

As Sobeck Corp. and Roof Pro were alter egos, it follows that Roof Pro was obligated to apply the collective-bargaining contract to its operations, including the exclusive hiring agreement. Therefore, Respondents' violated Section 8(a)(1) and (5) by laying off and failing and refusing to recall the unit employees, and by failing and refusing to pay the contractual wage rates and provide the contractual fringe benefits. Even if the decision to liquidate Sobeck Corp. were not discriminatorily motivated, the transfer of operations to Roof Pro, in the words of the Fourth Circuit Court of Appeals, "resulted in an expected or reasonably foreseeable benefit to the old employer related to the elimination of its labor obligations." *Alkire v. NLRB*, 716 F.2d 1014, 1020 (4th Cir. 1983); see also *NLRB v. McAllister Bros, Inc.*, 819 F.2d 439, 445 (4th Cir. 1987).

Sobeck Corp. and Paul J. Eyeran, Inc. were the only employers having contracts with the Union. Sometime after liquidation of Sobeck Corp., Paul Eyeran, the principal of his firm, retired from the roofing business. This left the Union with no union contractors. On December 19, 1994, by direction of its International president, the Union was merged into Philadelphia Local 30 of the International, effective as of January 1, 1995. As there was no membership vote on the merger, the General Counsel requested, and I granted leave to amend the complaint to limit Respondents' bargaining obligation to January 1, 1995, the effective date of the merger.

CONCLUSIONS OF LAW

1. Sobeck Corp. and Roof Pro are employers or an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Roof Pro was established as a disguised continuance of Sobeck Corp. and together they are alter egos.

3. The Union was, until January 1, 1995, a labor organization within the meaning of Section 2(5) of the Act.

4. All journeymen roofers, damp or waterproof workers, apprentices, foreman, and other workmen employed by Respondents', excluding guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

5. At all times material, until January 1, 1995, the Union was the exclusive representative of the employees of Respondents' in the appropriate unit.

6. By interfering with, restraining, and coercing their employees in the exercise of the rights guaranteed them by Section 7 of the Act, Respondents have engaged, and are engaging, in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. By failing and refusing until January 1, 1995, to recognize and bargain with the Union as the exclusive representative of the unit employees, by failing and refusing, until that date, to apply the terms and conditions of their collective-bargaining contract with the Union to those employees, and by laying off and failing and refusing to recall, unit employees Robert Selner, William Miller, Ben Hummel, Neil Oliver, Brian Appel, Lynn Ashworth, Lawrence Beneski, James Bottoms, James Hannagan, Joseph Krietzer, Michael Konycki, and Ben Sherlinski, Respondents' have violated and are violating Section 8(a)(5) of the Act.

8. By discriminatorily laying off and failing and refusing to recall the above-named employees, Respondents' have engaged, and are engaging, in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

9. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondents' have committed violations of Section 8(a)(1), (3), and (5) of the Act, I shall recommend that they be required to cease and desist therefrom, to post appropriate notices, and to take certain affirmative action designed to effectuate the policies of the Act.

I shall recommend that Respondents' be ordered to offer the above-named discriminatees immediate and full reinstatement to their former jobs or, if such jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings and benefits that they may have suffered from the time of their termination to the date of Respondents' offer of reinstatement. As some of the discriminatees were offered reinstatement under terms and conditions imposed by Respondents' in violation of their collective-bargaining obligations, such offers were inadequate for remedial purposes. I shall further recommend that Respondents' be ordered to remove from their records any reference to the discriminatees' unlawful terminations, to give each of them written notice of such expunction, and to inform them that Respondents' unlawful conduct will not be used as a basis for further personnel actions against them. Backpay shall be computed in accordance with the formula approved in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).⁵

I shall further recommend that Respondents' be ordered to take such actions as are necessary to fulfill their contractual obligations, including but not limited to the following: Respondents' shall reimburse employees employed by Roof Pro for any loss of wages and benefits they incurred because of Respondents' failure to apply or maintain the established terms and conditions of their collective-bargaining agreement, with interest, in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970). See *European Parts Exchange*, 270 NLRB 1244 fn. 2 (1984). Respondents' shall make the contractually established payments to the various trust funds established by the collective-bargaining agreements. In accordance with Board policy, the amount of interest if any due on such payments shall be determined at the compliance stage of this proceeding. *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). Respondents' shall reimburse their employees for any medical, dental, or pharmacy bills they have paid to health care providers that the contractual policies would have covered, for any premiums they may have paid to third party insurance companies to continue health care coverage in the absence of Respondents' required contributions, and for contributions the employees may have made for maintenance of the trust funds, after Respondents' unlawfully discontinued or failed to make contributions to those funds. *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. 661 F.2d 940 (9th Cir. 1981). All reimbursement shall be with interest in the manner prescribed in *New Horizons for the Retarded*, supra. It will also be recommended that Respondents' be required to preserve and make available to the Board, or its agents, on request, payroll and other records to facilitate the computation of reimbursement due.

[Recommended Order omitted from publication.]

⁵ Under *New Horizons*, interest on and after January 1, 1987, is computed at the "short-term Federal rate" for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621.