

**Pioneer Electric of Monroe, Inc. and Pioneer Electrical and Mechanical Contractor, Inc., a single employer and/or alter ego and International Brotherhood of Electrical Workers, Local Union No. 446, AFL-CIO.** Cases 15-CA-15190, 15-CA-15384, 15-CA-15685, and 15-CA-15736

April 30, 2001

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS  
LIEBMAN  
AND HURTGEN

On February 23, 2001, Administrative Law Judge Richard J. Linton issued the attached decision. The Respondent filed exceptions.

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.<sup>1</sup>

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Pioneer Electric of Monroe, Inc., and its alter ego, Pioneer Electric and Mechanical Contractor, Inc., a single employer, Monroe, Louisiana, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

*Sandra L. Hightower, Esq.*, for the General Counsel.

*Essex Lacy, Pres.* (Pioneer), of Monroe, Louisiana, for the Respondent, Pioneer.

*John Hopkins*, Bus. Mgr. (IBEW), of Monroe, Louisiana, for the Charging Party.

<sup>1</sup> The Respondent does not except to any of the violations found by the judge or to his finding that Pioneer Electric of Monroe, Inc. (Pioneer 1) and Pioneer Electrical and Mechanical Contractor, Inc. (Pioneer 2) constitute both a single employer and alter egos. Rather, the Respondent excepts only to the judge's recommended remedy of reinstatement and backpay for six employees who were unlawfully laid off when Pioneer 1 closed on January 14, 2000. Specifically, the Respondent argues that these employees rejected offers of employment with Pioneer 2 on that date, so it should not be required again to extend offers of employment to them or to give them backpay. We disagree. Absent exceptions, it is now undisputed that the Respondent did not offer the discriminatees employment under the same contractual terms and conditions and with the continued collective-bargaining representation by the Union that they had while employed by Pioneer 1. The offers of employment were therefore part and parcel of the Respondent's unfair labor practices and cannot serve to toll the Respondent's remedial obligations. We therefore find that the traditional backpay and reinstatement remedy ordered by the judge was proper.

DECISION

STATEMENT OF THE CASE

RICHARD J. LINTON, Administrative Law Judge. This is an alter ego case in which it is alleged that Pioneer Electrical and Mechanical Contractor, Inc.<sup>1</sup> (Pioneer 2) was created to escape the perceived burdens of the collective-bargaining agreement between Pioneer Electric of Monroe, Inc. (Pioneer 1) and IBEW Local 446 (the Union or Local 446). In January 2000, Essex Lacy and his wife DeBorah Lacy, the owners of both Pioneer 1 and Pioneer 2, ceased operating Pioneer 1 and terminated its employees. Pioneer 1's employees were represented by the Union. (For consistency in this decision I shall refer to Essex Lacy as Lacy and to DeBorah Lacy by her full name.) I find that Pioneer 1 and Pioneer 2 (the Respondent), violated the National Labor Relations Act by refusing to bargain with the Union and by discharging the employees of Pioneer 1. I also dismiss certain allegations of bad-faith bargaining.

I presided at this 2-day trial in Monroe, Louisiana, on July 17 and 18, 2000, pursuant to a third order consolidating cases, consolidated complaint and notice of hearing issued by the General Counsel of the National Labor Relations Board through the Regional Director for Region 15 on April 25, 2000.<sup>2</sup> The complaint is based on charges filed by the Union in 1999 and 2000.<sup>3</sup>

In the complaint, the General Counsel alleges that Respondent Pioneer 1 and Respondent Pioneer 2 are a single employer or, in the alternative, that they are a single employer and that Pioneer 2 is a disguised continuance and alter ego of Pioneer 1. Respondent Pioneer 1 is alleged to have violated Section 8(a)(5) of the Act by failing and refusing to furnish relevant information and to have violated Section 8(a)(3) of the Act by laying off employee Carlos Gasca. Respondent Pioneer 1 and Respondent Pioneer 2, the Respondent, are alleged to have violated Section 8(a)(3) and (5) of the Act by ceasing to operate Pioneer 1, discharging all employees in the unit, and repudiating the collective-bargaining agreement between Pioneer 1 and the Union, and to have violated Section 8(a)(5) of the Act by directly dealing with employees, and failing to bargain in good faith. The answer of the Respondent admits certain factual matters but denies violating the Act.

The pleadings and record establish that the Board has both statutory and discretionary jurisdiction over the Respondent, that Respondent Pioneer 1 and Respondent Pioneer 1 jointly are a statutory employer, and that the Union is a statutory labor organization.

<sup>1</sup> The name has been corrected to conform to the articles of incorporation. (GCX 4.) References to the two-volume transcript of testimony are by volume and page. Exhibits are designated GCX for the General Counsel's and RX for those of the Respondent.

<sup>2</sup> All dates are in the year 1999 unless otherwise indicated.

<sup>3</sup> The charge in Case 15-CA-15190 was filed on February 1; the charge in Case 15-CA-15384 was filed on June 14; the charge in Case 15-CA-15685 was filed on January 18, and was amended on February 11, March 27, and April 3, 2000; the charge in Case 15-CA-15736 was filed on March 1, 2000.

On the entire record, including my observation of the demeanor of the witnesses, and after consideration of the briefs filed by the General Counsel and the Respondent, I make these

#### FINDINGS OF FACT

##### *A. Background and Overview*

Essex and DeBorah Lacy created Pioneer 1 on August 19, 1992. (GCX 3) The business purpose of Pioneer 1 was to perform residential and commercial electrical, heating, and air conditioning work. (GCX 21, par. 17.) On February 3, 1993, Pioneer 1 signed a Letter of Assent that authorized the Ouachita Valley Chapter, Inc., N.E.C.A. (National Electrical Contractors Association) to act on its behalf in collective bargaining with the Union. (GCX 9, p 3) In 1997, the Union obtained arbitration awards directing Pioneer 1 to sign and abide by the terms of the Inside Agreement, Commercial Market Recovery Agreement, and Local Industrial Agreement that were effective from September 1, 1995, through August 31, 1997. (GCX 5, 7, and 8.) When Pioneer 1 did not comply, the Union sought and obtained enforcement of the arbitration awards from the United States District Court for the Western District of Louisiana in a Judgment entered October 30, 1998, that directed Pioneer 1 to abide by the terms of the foregoing agreements. (GCX 9.) On July 9, the District Court issued its "Ruling" (GCX 15) enforcing an arbitration award finding Pioneer 1 liable for \$32,359.60 for violations of the foregoing agreements. The Court's judgment was formally entered (pursuant to FRCP 58) on July 14. As it turns out, the exhibit (GCX 15) presenting the July 9 Ruling of the court contained the court's July 14 single-page judgment, a separate document, inserted as an unnumbered page just before the July 9 signature page of the Ruling. Rather than assigning the July 14 judgment a separate exhibit number, I have removed the inserted copy of the court's July 14 judgment and placed it on top of the Ruling, so that the judgment will remain part of General Counsel Exhibit 15.

In 1996, Union Business Agent John Hopkins sought to establish the Union as under Section 9(a) representative of the employees of Pioneer 1 on the basis of a card check. Pioneer 1 refused to agree to recognition, the Union filed a petition, and a representation election was held. (1:67.) On August 19, 1996, as alleged in the complaint and admitted in the answer, the Union was certified as the 9(a) representative of the employees of Pioneer 1 in the following appropriate unit:

All full time and regular part time journeymen and apprentices employed by the Respondent in Union, Morehouse, West Carroll, East Carroll, Lincoln, Jackson, Ouachita, Caldwell, Richland, Franklin, Madison and Tensas Parishes; excluding all office clerical employees, guards, professional employees, and supervisors as defined in the Act.

Thereafter, the Union and Pioneer 1 became parties to the Inside Agreement that was, by its terms, effective from September 1, 1997, through August 31, 1999. (GCX 6.) Article I, section 1, of that agreement provided that the agreement would continue in effect from year to year unless, as provided in section 2(a), 90 days written notice was given by either party expressing a desire to change or terminate the agreement. On June 2, exactly 90 days before August 31, the Union sent to

Pioneer 1 letters stating its desire to terminate the current Inside Agreement, Commercial Market Recovery Agreement, and Local Industrial Agreement. (GCX 12, 13, 14.) Thereafter, the parties met for negotiations prior to the contract expiration, but no agreement was reached. (1:77, 81) Article I, section 2(c), of the Inside Agreement provides that its provisions remain in effect "until a conclusion is reached in the matter of proposed changes." (GCX 6.)

During the summer of 1999, on July 6, Essex and DeBorah Lacy chartered Pioneer 2. The parties stipulated that Pioneer 2 was created because Pioneer 1 "was not able to meet the financial obligations caused by the Union and the \$32,000 judgment." (GCX 21, par. 8.) Pioneer 1 ceased to bid on contracts in July. (GCX 21, par. 23.) On January 14, Lacy informed the employees of Pioneer 1 that Pioneer 1 was closed and he offered them employment with Pioneer 2. (1:155; 2:249; GCX 2.) The terms of the collective-bargaining agreement between Pioneer 1 and the Union were "not applied to the employees of" Pioneer 2. (GCX 21, par. 38.)

##### *B. The Information Request*

On November 2, 1998, following the enforcement by the United States District Court of the arbitration award relating to the contract that had expired on August 31, 1997, the Union sent a letter to Pioneer 1 requesting information. In pertinent part, it states:

Pursuant to the National Labor Relations Act, Local 446 hereby demands a list of *all* electrical jobs and projects worked by your firm in 1995, 1996, 1997, and 1998. Also, please itemize *all* electrical employees and their hours worked on these projects, including "helpers."

This information is crucial to our separately filed grievances under the Agreements. [(GCX 10, emphasis in the original.)]

The Respondent's answer admits that the information sought was relevant and necessary and that it refused to provide the information. Lacy initially testified that, following receipt of the information request, he informed Hopkins that he "could not provide the information as he [Hopkins] requested because my accounting system and my paperwork did not reflect everything he was asking for." (2:261.) Notwithstanding this admission, Lacy later testified that he informed Hopkins that he could provide a portion of the information shortly after the request was made. (2:262.) I do not credit this later version. When first questioned regarding the ability of Pioneer 1 to partially comply with the request, Lacy responded that a "portion of these documents have been offered to Local Union 446 through the NLRB." (2:261, 262.) In explaining this response, Lacy testified that he informed a Board agent that he could provide the contracts that would reflect the jobs worked but that the Board agent did not want them. (2:262) Lacy's assertion of a prior offer of the documents to Hopkins is inconsistent with his testimony that he offered them "through the NLRB."

Regarding the records identifying the electrical employees that worked on specific jobs and the hours that they worked, Lacy testified that Pioneer 1 was unable to produce those records because "there are no company records indicating payroll and manhours." (2:226.) In further testimony, he explained

that Pioneer 1 had attempted to have employees record their hours on specific jobs, but, “with a lot of employees not coming directly to the office, it . . . has been hard to get that in place.” (2:264.) Insofar as an attempt was made in this regard, it would appear that Pioneer 1 could have some records, even if incomplete records, that would be responsive to this aspect of the Union’s request.

Employers are obligated to furnish available information needed by a union to administer an existing contract. *Praxair, Inc.*, 317 NLRB 435, 436 (1995). Although there is no obligation to furnish information that does not exist, Lacy admitted that information regarding the jobs worked by Pioneer 1 did exist. His offer to provide this information to a Board agent, an offer made after the charge was filed, did not fulfill the obligation of Pioneer 1 to provide this information to the Union. *Praxair, Inc.*, supra, 436 at fn. 3. Respondent Pioneer 1, by failing and refusing to provide the Union with requested relevant information identifying the jobs worked and whatever records it had that would identify the employees that worked on those jobs and the hours worked, violated Section 8(a)(5) of the Act.

### C. The Layoff of Carlos Gasca

Carlos Gasca was hired by Pioneer 1 on June 14. Lacy interviewed Gasca on June 13. Lacy told Gasca that he could not hire him as electrician “because of the contract.” He was hired as an air-conditioner installer helper. (2:234–237.) Gasca believed, erroneously, that because he was not a union member he could not be hired as an electrician. He did not seek a referral as a nonmember, but contacted Lacy directly. (1:165.) Gasca did not recall that Lacy informed him of his classification, but he does remember that his pay rate was \$9 per hour. (1:167.) The first job to which he was assigned was performing electrical work at a church in Epps, Louisiana, but Gasca does not deny that he did perform air-conditioning work as well as electrical work. (1:167, 177.) About September 1, Pioneer 1 transferred Gasca to work at its Marriott motel jobsite. (2:238.) When working on that job, Gasca was performing electrical work. He learned that he could become a union member by taking a test that would establish his proficiency. (1:170.) He took the test on October 13 and became a member of the Union in November. (1:101, 172.)

October 13, the date Gasca took the proficiency test, coincided with a scheduled negotiating session between Pioneer 1 and the Union. The parties met at the local union hall. Essex and DeBorah Lacy saw Gasca at the hall. (1:172; 2:39.) In the negotiations, Business Agent John Hopkins complained that Pioneer 1 was working employees who had not been referred by the Union and who were not being paid the contractual wage rate. (1:100; 2:240.) Lacy responded that Pioneer 1 had requested personnel in August but, when the Union failed to refer anyone, he put Gasca on the job. Hopkins testified that he told Lacy that Gasca was at the hall to be tested to become a journeyman wireman, that he was tired of working for \$9 an hour. (1:100.) Lacy testified that, after complaining about employees who had not been referred by the Union, Hopkins requested that he lay off Gasca and that he told Hopkins he would do so. (2:242, 243.) Hopkins denied making any such request, and I

credit his denial. (1:141.) Lacy admitted that he could not “recall exactly what Mr. Hopkins said.” (2:241–242.) Hopkins also denied that Lacy told him that Gasca would be laid off. (1:100, 101.) DeBorah Lacy corroborated Hopkins. She testified that the decision to lay off Gasca was made after the meeting. (1:37.)

I find it immaterial whether Hopkins noted that Gasca was seeking to become a journeyman wireman. The mutually corroborative testimony of Hopkins and the Lacys confirm that Gasca was observed at the union hall and was mentioned by name. Hopkins protested that Pioneer 1 was working employees who had not been referred by the Union and who were not being paid the contractual wage rate. I do not credit Lacy’s testimony that he told Hopkins he would lay off Gasca. Hopkins denied that any such statement was made, and DeBorah Lacy testified that the decision to lay off Gasca was made after the meeting. Gasca was laid off the following day, October 14. The document laying him off states “lack of work.” (RX 2; 1:41.) Lacy testified that Gasca was laid off “because the union complained that he was on the project . . . [and Pioneer 1] did not have any other work in its air conditioning division to transfer Mr. Gasca back to.” (2:242.)

In assessing the evidence under the analytical framework of *Wright Line*, 251 NLRB 1083 (1980), I find that the presence of Gasca at the union hall, observed by the Lacys, establishes both union activity on his part and knowledge by the Respondent Pioneer 1. It is immaterial whether Lacy was informed that Gasca was seeking to become a union member. Hopkins’ statements to the Lacys revealed that Gasca had told the Union that he was performing electrical work at the Marriott jobsite but was not being paid in accordance with the contract. Pioneer 1 was liable for a judgment in excess of \$32,000 that had resulted from prior violations of the contract. In a negotiating session, Lacy complained that “the issues that were causing the grievances needed to be addressed” and stated that the “survival of the company” depended upon the “day-to-day operating procedures” he was proposing. (2:226.) Lacy’s statement referring to grievances, and equating the survival of the Company with acceptance of his proposed changes in contractual operating procedures, reveals animus towards the union activity of filing grievances to enforce the contract. Gasca had provided the Union with information of a contract violation. Respondent Pioneer 1 laid off Gasca after learning that he had provided the Union with information establishing a contract violation. The General Counsel has carried the burden of proving that union activity was a substantial and motivating factor for the layoff of Gasca. *Manno Electric*, 321 NLRB 278 (1996).

Respondent Pioneer 1 has not rebutted the prima facie case presented by the General Counsel. Gasca was assigned to work as an electrical employee about September 1. No other employee was laid off from the Marriott jobsite in mid-October. Job Steward Michael Newton testified that, at the time Gasca was laid off, the employees were finishing up the job and “it was a little hectic . . . trying to catch all our loose ends.” (1:159.) I find that Respondent Pioneer 1 violated Section 8(a)(3) of the Act by laying off Carlos Gasca in retaliation for his union activity.

Although I have found that Gasca was discriminatorily laid off on October 14, the collective-bargaining agreement required that employees not referred by the Union be considered temporary employees and that those employees should be separated prior to employees referred by the Union. (GCX 6, art. V, Sec. 6 and 7.) Job Steward Newton testified that the first person to be laid off would be the “person without a [referral] ticket.” (1:162.) As the Marriott job was being concluded, Pioneer 1 laid off Anthony Wilson and Justin Bailey on November 2, both of whom had been referred by the Union and neither of whom is alleged to have been discriminatorily laid off. (GCX 17, RX 4, 5.) Gasca had been working as an electrical employee since September 1. Under the contract, Gasca had no priority since he was not referred by the Union and did not have a “ticket.” Thus, notwithstanding my finding that Pioneer 1 unlawfully laid off Gasca on October 14, when it was hectic on the Marriott job, the layoffs of Wilson and Bailey establish that, as the Marriott job neared completion, there were nondiscriminatory economic layoffs and that, pursuant to the contract, Gasca had less priority than the first two employees who were laid off. There is no evidence disputing Lacy’s testimony that there was no air-conditioning work to which Gasca could be transferred. In view of the foregoing, I find that, but for his discriminatory layoff on October 14, Gasca would have properly been laid off under the contract at the same time as Wilson and Bailey, on November 2.

*D. The Status of Pioneer 2 as a Single-Employer and/or Alter Ego*

The threshold issue regarding the remaining allegations of the complaint is whether Pioneer 1 and Pioneer 2 are a single employer or, alternatively, whether Pioneer 2 is a disguised continuance and alter ego of Pioneer 1. Virtually all of the relevant facts bearing upon this determination were stipulated.

Pioneer 1, chartered on August 19, 1992, is owned by Lacy and his wife DeBorah Lacy. Lacy is, and at all times has been, president and chief executive and DeBorah Lacy is, and at all times has been, Secretary-Treasurer of Pioneer 1. Pioneer 1 operates from a building at 5061 Highway 165 bypass, South, Monroe, Louisiana, and was created to perform residential and commercial electrical, heating, and air conditioning work. (GCX 21, par. 2, 3, 9, 10, 17, 29.)

Pioneer 2, chartered on July 6, 1999, is owned by Lacy and his wife. Lacy is, and at all times has been, president and chief executive and DeBorah Lacy is, and at all times has been, secretary-treasurer of Pioneer 2. Pioneer 2 operates from the same building as Pioneer 1 and was created to perform residential and commercial electrical, heating, and air-conditioning work. (GCX 21, par. 4, 5, 11, 12, 18, 29.)

The Lacys were employed by Pioneer 1 until January 14, 2000, the date that Lacy informed employees of Pioneer 1 that it had closed. Since January 14, 2000, the Lacys have been employed by Pioneer 2. DeBorah Lacy performs all administrative tasks for Pioneer 1 and 2. Lacy performs bidding, signs contracts, and is responsible for the overall supervision of all projects performed by Pioneer 1 and 2. (GCX 21, pars. 6, 13, 14, 15, 16.) Pioneer 1 and 2 perform the same kind of work, and Pioneer 2 uses the same vendors and provides services to

the same customers and same type of customers as Pioneer 1. Pioneer 1 ceased bidding on contracts in July 1999, and Pioneer 2 bids on the same contracts that previously would have been bid on by Pioneer 1. (GCX 21, pars. 19, 20, 21, 22, 23.) Lacy owns the building from which Pioneer 1 and 2 operate. Until January 14, 2000, the building was leased to Pioneer 1. After January 14, 2000, it was leased to Pioneer 2. Pioneer 1 and 2 have the same telephone and facsimile number and use the same office equipment. Pioneer 1 and 2 perform projects in Monroe, Louisiana, under a single permit issued to “Pioneer Electric.” The assets of Pioneer 1 and 2 are insured by the same company under the same account number. Lacy and his wife are responsible for the policies, work rules, and benefits of Pioneer 1 and 2. (GCX 21, pars. 27, 28, 29, 30, 31, 32, 35, 37.)

About 95 percent of the physical assets used by Pioneer 1 and 2 are personally owned by Lacy who has leased or loaned those assets as needed to Pioneer 1 and 2. (1:64.) Included in those assets are 13 vehicles that Lacy previously leased to Pioneer 1 and thereafter leased to Pioneer 2. There was no written lease with Pioneer 1 and no written lease prior to January 24, 2000, with Pioneer 2. (GCX 21, pars. 33.)

Until the Lacys ceased operating Pioneer 1, Pioneer 2 subcontracted all work that it obtained to Pioneer 1. The parties stipulated: “Once . . . [Pioneer 2] was formed, it subcontracted for labor and materials any contracts it was awarded to the first company, which is . . . [Pioneer 1]. This subcontracting agreement between the two companies was not in writing.” (1:60). This arrangement obviously ceased on January 14, 2000, when the employees of Pioneer 1 were informed that it had closed. There is no evidence that Pioneer 2 employed anyone prior to January 14, 2000. After ceasing to operate Pioneer 1 in January, Lacy “reactivated” it in February or March for a short time in order to complete a job. (2:270.)

The four basic indicia for finding a single employer are (1) common ownership, (2) common management, (3) interrelation of operations, and (4) common control of labor relations. *IMCO/International Measurement Co.*, 304 NLRB 738, 739 (1991). The record herein amply establishes that that Pioneer 1 and 2 are a single employer with common ownership and management of all aspects of both entities, including labor relations, by the Lacys. There was an undisputed interrelation of operations since any contracts bid for Pioneer 2 by Lacy were “subcontracted for labor and materials . . . to the first company . . . [Pioneer 1].”

The foregoing finding is relevant since Pioneer 1 continues to exist. The more significant issue is the status of Pioneer 2 on and after January 14. The record establishes that Pioneer 2 was and is a (thinly) disguised continuance and alter ego of Pioneer 1 and, therefore, is bound to the collective-bargaining agreement between Pioneer 1 and the Union.

In *Johnstown Corp.*, 313 NLRB 170 (1993), the Board quoted from its decision in *Crawford Door Sales Co.*, 226 NLRB 1144 (1976), stating:

Clearly each case must turn on its own facts, but generally we have found alter ego status where the two enterprises have “substantially identical” management, business purpose, op-

eration, equipment, customers, and supervision, as well as ownership.

In the instant case, Pioneer 1 and 2 have identical ownership, management, and business purpose. Pioneer 2 operates in the same manner, although not pursuant to the collective-bargaining agreement with the Union, as did Pioneer 1. The equipment used by employees of Pioneer 2, 95 percent of which is owned by Lacy, is the same equipment previously used by employees of Pioneer 1. Ultimate supervision is by Lacy. The parties stipulated that Pioneer 2 provides services to the same customers and same type of customer as Pioneer 1 and that Pioneer 2 bids on the same contracts that previously would have been bid upon by Pioneer 1. Pioneer 2 is the alter ego of Pioneer 1.

*E. The Cessation of Operations of Pioneer 1, Discharge of Employees, Repudiation of the Collective Bargaining Agreement, and Direct Dealing*

On January 14, Pioneer 2 began operating as a nonunion contractor. (GCX 21, par. 6, 38.) Job Steward Newton recalled that all employees were called into the office conference room where Lacy stated that he had, in June or July, incorporated a new company, Pioneer 2, that it was “time to let Pioneer [1] go,” and that, in order for the employees to change companies, “he had to lay us off.” Lacy informed the employees that he would hire them at the same wages and benefits, but that they needed to sign W-2 forms reflecting their employment by Pioneer 2. The union affiliated employees went to the union hall because they had not been properly referred to Pioneer 2. Those employees were Newton, Charles Monroe, Tommy Tumilson, Eric Shopper, James Carter, and Anthony McDonald. (1:4, 155).

Immediately following their arrival at the union hall, the union members informed Business Agent Hopkins of what had occurred. After the employees arrived, Hopkins received, at 9:43 a.m. by facsimile, a letter from Lacy dated January 14, 2000, advising that Pioneer 1 had ceased doing business and that the employees had been laid off. (GCX 2: 1:106.) The letter states that the employees had been offered jobs with Pioneer 2. Prior to this Hopkins had not known of the existence of Pioneer 2. (1:106.) Hopkins called Lacy who confirmed the facts stated in the letter. Hopkins explained that the employees could not work for Pioneer 2 unless it had an agreement with the Union and that Pioneer 2 could not submit payments to any benefit funds without an agreement. (1:107.) The terms of the collective-bargaining agreement between Pioneer 1 and the Union were “not applied to the employees of” Pioneer 2. (GCX 21, par. 38.) The six laid-off employees were never employed by Pioneer 2.

The parties stipulated that Pioneer 2 was created in July because Pioneer 1 “was not able to meet the financial obligations caused by the Union and the \$32,000 judgment.” (GCX 21, par. 8.) The creation of Pioneer 2 had no effect upon the employees of Pioneer 1 which continued to perform work pursuant to the collective-bargaining agreement. Indeed, the Union did not even know that Pioneer 2 existed until January 14, 2000, when Pioneer 1 ceased operating and Pioneer 2 began employing employees and performing work.

The record establishes that the Lacys ceased operating Pioneer 1 in order to avoid the obligations of the collective-bargaining agreement between Pioneer 1 and the Union. Lacy testified that, following a conference with a bankruptcy attorney on January 13 in which the subcontracting of bids made by Pioneer 2 to Pioneer 1 for performance of the bid work was discussed, the Lacys decided to close Pioneer 1 because it “had no contracts or assets.” (2:248.) Pioneer 1 had no contracts because Lacy stopped bidding contracts for Pioneer 1 in July. (2:274; GCX 21, par. 23.) Pioneer 1 had few assets because 95 percent of its assets were the personal assets of Lacy that he leased or loaned to Pioneer 1. The motivation for closing Pioneer 1 is revealed in the testimony of Lacy regarding bargaining. In explaining that “wages were not a main issue,” when bargaining in the summer of 1999, Lacy testified (2:226–227):

[Q]uite a number of grievances have been filed against . . . [Pioneer 1]. Therefore, the issues that were causing the grievances needed to be addressed. The survival of the company will depend on the day-to-day operating procedures we are trying to negotiate, as well as being able to compete with all electrical contractors in the jurisdiction.”

Lacy’s concerns regarding “day-to-day operating procedures” continued in subsequent negotiations. On January 12, 2000, Essex stated to Hopkins that “the Union could not tell him how to operate [his] business.” (2:286) In explaining that comment, Lacy testified (2:294.):

The comment made at the January 12 negotiating of 2000 meeting that the Union could not tell me how I could operate my business was dealing with issues that we were trying to negotiate on the day-to-day operational aspects of the company. There are procedures in the contract documents . . . which give the Union an overwhelming authority on day-to-day operational procedures. And at that time, we were attempting to try and get those procedures out of the contract, so we would have more flexibility with our operational procedures, and these comments were made more or less in response to that statement.

Pioneer 1 had failed to abide by the collective-bargaining agreement in the past, resulting in grievances and an adverse \$32,000 judgment. The Union had not agreed to get the “day-to-day operational procedures,” about which Lacy was concerned “out of the contract.” Lacy was not going to let the Union tell him how to operate his business. On January 14, he and his wife ceased operating Pioneer 1. I find that they did so in order to avoid the obligations of the collective-bargaining agreement. When they did so, they terminated the employees of Pioneer 1.

Pioneer 2 is the alter ego of Pioneer 1 and, as such, they constitute a single Respondent. The Respondent has “not applied to the employees of” Pioneer 2 the terms of the collective-bargaining agreement between Pioneer 1 and the Union. Because Pioneer 2 is the alter ego of Pioneer 1, it is, and has been since January 14, 2000, bound by the collective-bargaining agreement between Pioneer 1 and the Union. The Respondent’s failure to honor the agreement constitutes a violation of Section 8(a)(5) and (1) of the Act. *Mar-Kay Cartage*, 277

NLRB 1335, 1342 (1985), enfd. 822 F.2d 1089 (6th Cir. 1987); *Advance Electric*, 268 NLRB 1001, (1984). The cessation of the operations of Pioneer 1 and activation of Pioneer 2 did not constitute a change in the nature of the Respondent's business. Rather, it was an attempt to avoid the obligations of the collective-bargaining agreement which restricted the "flexibility . . . [of the] operational procedures" of Pioneer 1. In ceasing to operate Pioneer 1 without notice to or bargaining with the Union and, when doing so, laying off the employees in the appropriate unit, Respondent violated Section 8(a)(5) of the Act. See *Otis Elevator Co.*, 269 NLRB 891, 984 (1984). This action, taken without notice to or bargaining with the Union also "effectively repudiated the collective-bargaining agreement . . . and "constituted a separate, albeit a derivative and subsidiary, violation of [Section 8(a)(5) of] the Act. *Mar-Kay Cartage*, supra at 1342.

At the same meeting in which Lacy advised the unit employees that Pioneer 1 was closed and he had to lay them off, he offered them jobs with Pioneer 2 but changed their working conditions by failing to apply the terms of the collective-bargaining agreement to employees of Pioneer 2. Pioneer 2, the alter ego of Pioneer 1, was obligated to continue to apply the terms of the collective-bargaining agreement in effect between the Union and Pioneer 1. By directly offering the unit employees jobs with different terms and conditions of employment, that is, no collective-bargaining agreement, Respondent bypassed the Union and dealt directly with employees in violation of Section 8(a)(5) of the Act.

Insofar as I have found that the Respondent's actions were motivated by its desire to avoid the obligations of the collective-bargaining agreement, the cessation of operations of Pioneer 1 and failure to abide by the terms of the collective-bargaining agreement constituted a change in the terms and conditions of employment of unit employees and discouraged them from engaging in union activity in violation of Section 8(a)(3) of the Act. The termination of unit employees contemporaneously with the cessation of operations of Pioneer 1 also constituted a violation of Section 8(a)(3) of the Act. "Such a termination of union-represented employees in an alter ego situation is unlawful because it forces the employees to work without a union contract or not to work at all." *Mar-Kay Cartage*, supra at 1342. See also *Advance Electric*, supra.

#### F. The Bargaining in Bad-Faith Allegations

The complaint alleges (pars. 23(b) in conjunction with pars. 27 and 30) that the Respondent bargained in bad faith with the Union in June, July, August, and September by failing to give notice prior to the first bargaining session of changes it desired in the collective-bargaining agreement, proposing deletion of the recognition, subcontracting, and hiring hall clauses in the collective-bargaining agreement, refusing to discuss wages and benefits unless the Union accepted certain of its proposals, and proposing to put any wage increase into effect at some indefinite point in the future.

The answer admits that the Respondent failed to give notice prior to the first bargaining session of the changes it desired and that it proposed deletion of the recognition, subcontracting, and hiring hall clauses. The answer denies refusing to discuss

wages and benefits or proposing implementation of a wage increase at some indefinite point. The Respondent denies that its admitted conduct violated the Act.

At trial the General Counsel referred to the admissions made in the answer and stated that the allegation of bad faith bargaining was predicated upon the indicia of bad-faith specified in the complaint. (1:181-182.) Notwithstanding this statement, on brief the General Counsel refers to exhibits that reflect the Respondent paid journeymen electricians \$15.70 per hour in January, 2000, and then reverted to the contractual \$14.70 rate in April, 2000. (GCX 19, 20.) Counsel argues that the fluctuations in pay rates are "indicative of animus and bad faith." Business Agent Hopkins acknowledged that paying an employee more than the contract would not violate the contract, "[y]ou can pay him anything you want to, just don't . . . pay less [than \$14.70]." There is no charge or complaint allegation relating to the issue of pay fluctuations. This issue was not fully litigated, and I shall not consider it.

Although the complaint alleges that the Respondent bargained in bad faith in June, July, August, and September, the General Counsel submitted minutes of meetings held on March 22, April 13, and July 7, 2000. (GCX 23, 24 29.) The minutes reflect the exchange of proposals in March and July, 2000, but no discussion of the provisions contained in the proposals. The minutes of the April 2000 meeting reflect that the Union asked Lacy to sign a letter of assent and that he refused. There was no testimony regarding these meetings. Hopkins, when asked whether anyone from Pioneer 2 negotiated with the Union "concerning the terms and conditions under which employees would perform electrical work," answered, "No." (1:109.) Lacy testified, that "[t]here has not been any negotiation with the Union and [Pioneer 2] at any time." (2:260.) There is no complaint allegation relating to bargaining after September, and I shall, therefore, make no findings in that regard.

The General Counsel argues that Respondent refused to discuss mandatory subjects of bargaining until the Union agreed to Respondent's management proposals, referring to the complaint allegation that Respondent refused to discuss wages and benefits. Hopkins testified that, at the first negotiating meeting on June 8, Lacy stated that he was working under the Commercial Market Recovery Agreement. Hopkins informed him that the Union had terminated that agreement and was negotiating the Inside Agreement. He presented to Lacy the Union's proposal. Lacy, who thought that he was working under the Commercial Market Recovery Agreement, had no proposal at that meeting. (1:77-78.) The next meeting that Hopkins addressed was on August 12. Unable to recall "all of the items" that were in the Union's proposal, Hopkins did recall that Lacy proposed that employees furnish their own battery pack drills, that the Union agree to delete payments to the trust fund, and that Pioneer 1 be permitted to hire "off the street." (1:81, 82) Although the Respondent's answer admits proposing deletion of the hiring hall clause, its proposal actually relates only to the Union being the exclusive source of all employees. (RX 7, GCX 6, Art. V, Sec. 2.)

Hopkins testified that Lacy stated that wages could not be discussed until "some of these other issues had been worked out." Even so, there is no evidence that the Union sought to

discuss wages on August 12. Hopkins noted that the Union had initially proposed a wage increase but that “some items that were not settled . . . with the other contractors” had been submitted to the NECA. When the NECA “came back with what their wage increase would be . . . we offered [Pioneer 1] the same wages and conditions . . . we had received back.” (1:84) Hopkins acknowledged that Lacy stated that he would agree to a wage increase “in the future, after other problems had been worked out.” (1:86.) The NECA wage package provided for wage increases at 6 month intervals, in September and March of each year. (1:84.) On cross-examination, Lacy asked Hopkins whether he had “refused to negotiate any wage increases or talk about pay increases with Local Union 446.” Hopkins testified (1:131):

Again, each time that was brought up, as far as a complete wage agreement, wage discussion on wages for the agreement, it was always put in place of saying, “Well, when we get some of this other; we may want a one-year contract; we may want a two-year contract. Then we’ll work—whatever we decide we’re going to get, we’ll work out wages.”

Lacy testified that “wage scales was always a one permanent thing that definitely could not be changed. There’s a clause in the contract that states that Local Union 446 cannot give one agent anything better than it gives another, and the monetary value of a contract was one of the items.” (2:228.) When asked if he told this to the Union, Lacy answered, “It wouldn’t have been stated [that way] . . . we went down the contract items line item by line item . . . . My response was, ‘this is the same wage package that the other contractors have; we will accept this.’” (2:232.) Hopkins specifically denied that Lacy ever stated that he would accept the NECA wage rate, yet he was not asked whether the wage scale was “one permanent thing that definitely could not be changed” or whether the parties understood that the Respondent would be bound by the NECA rate. (2:301.)

Consistent with the testimony of Lacy, I find that the parties understood that the NECA wage rate would be a part of any contract to which they agreed. Lacy’s response to Hopkins that “we’ll work out wages” after determining the length of the contract is completely consistent with the evidence that the NECA wage package provided for increases at 6 month intervals. On September 9, Pioneer 1 proposed a 1 year contract, from September 1 through August 31, 2000. The minutes do not reflect any discussion of this, and Lacy noted on his copy of the proposal that this item was left open. That proposal reflects that Pioneer 1 proposed an hourly rate for journeymen as of September 1 at \$15.20, increasing to \$15.70 on March 1, 2000. (RX 7.) Lacy testified (2:233) that those were the NECA rates, and Hopkins’ testimony confirms that those were the NECA rates. (1:81.)

Article I, section 2(b), of the collective-bargaining agreement and past practice between the parties contemplated the submission of proposed changes no later than the first negotiating meeting between the parties. (GCX 6; 1:128.) Although Pioneer 1 did not submit a written proposal at the first negotiating meeting on June 6, Hopkins’ testimony establishes that Lacy mistakenly believed that Pioneer 1 was continuing to operate

under the Commercial Market Recovery Agreement. At the next meeting, Pioneer 1 presented proposals.

The General Counsel cites *Bozzuto’s Inc.*, 277 NLRB 977 (1985), for the proposition that one party may not insist to impasse that the parties bargain about permissive subjects of bargaining to the exclusion of mandatory subjects of bargaining. I concur with the General Counsel’s statement of the law. The facts do not establish that this occurred. Although Hopkins asserted that Lacy, on various occasions, made statements postponing discussion of a final wage package, the General Counsel presented no evidence that Pioneer 1 insisted to impasse upon discussing permissive rather than mandatory bargaining subjects. Cf. *Storer Communications*, 294 NLRB 1056, 1079 (1989).

The minutes of the negotiating meeting of September 9 submitted by the General Counsel note discussion of various contractual issues, identified by the Article numbers. (GCX 22.) Those minutes, consistent with the testimony of Lacy, reflect that the parties “went down the contract items line item by line item.” Even though the parties had not agreed upon all the terms of a prospective agreement, Lacy agreed that Pioneer 1 would implement a wage increase “in the future, after other problems had been worked out.” I fail to see how this commitment to implement a wage increase, at “some indefinite point in the future” as alleged in the complaint, constitutes evidence of bad faith. The wage increase was dependent upon the parties reaching agreement. The proposal submitted by Pioneer 1 on September 9 reflects the NECA rates for one year and proposed a one year contract. Since the NECA wage package provided for increases at 6 month intervals, the final wage agreement between the parties would be dependent upon the length of the contract. There is no probative evidence that Pioneer 1 bargained in bad faith. I therefore shall dismiss complaint paragraph 23(b).

#### CONCLUSIONS OF LAW

1. By failing and refusing to provide to the Union information reflecting electrical jobs and projects performed by Pioneer 1 in 1995, 1996, 1997, and 1998, the employees who worked on those jobs, and the hours those employees worked, the Respondent Pioneer 1 has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

2. By laying off employee Carlos Gasca because of his union activities, the Respondent Pioneer 1 has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

3. By ceasing to operate Pioneer 1, terminating the unit employees of Pioneer 1, and failing to apply the terms of the collective-bargaining agreement to the unit employees of Pioneer 2 without notice to or bargaining with the Union and in order to avoid the obligations of the collective-bargaining agreement, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3), (5) and (1) and Section 2(6) and (7) of the Act.

4. By dealing directly with unit employees regarding the terms and conditions of their employment, the Respondent has engaged in unfair labor practices affecting commerce within the

meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) 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 and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having unlawfully failed to provide the Union with the relevant information it requested reflecting electrical jobs and projects performed by Pioneer 1 in 1995, 1996, 1997, and 1998, the employees who worked on those jobs, and the hours those employees worked, the Respondent must provide that information. I am mindful that Lacy testified that "there are no company records indicating payroll and manhours." (2:226..) In view of his further testimony that he had attempted to have employees record their hours on specific jobs, it appears that Respondent may have some records, even if incomplete, that are responsive to the Union's request. Consistent with the foregoing, Respondent must provide all records in its possession, even if not complete, that are responsive to the Union's request.

Having discriminatorily laid off Carlos Gasca, the Respondent must make him whole for any loss of earnings and other benefits, computed on a quarterly basis from October 14, until November 2, 1999, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Having unlawfully and discriminatorily terminated its union-represented employees on January 14, 2000, the Respondent must restore the status quo ante by offering Michael Newton, Charles Monroe, Tommy Tumilson, Eric Shopher, James Carter, and Anthony McDonald their former jobs or, if those jobs no longer exist, substantially equivalent jobs, without prejudice to their seniority and other rights and privileges, dismissing if necessary, any employees hired on or since January 14, 2000, to fill any of those positions, and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, supra, plus interest as computed in *New Horizons for the Retarded*, supra.

Having found that Pioneer 2 is a single employer with Pioneer 1, and that Pioneer 2, as the alter ego of Pioneer 1, has continued to operate the same business, they constitute a single Respondent. Inasmuch as Pioneer 2 has failed and refused to recognize the Union or to apply the terms of the collective-bargaining agreement between the Union and Pioneer 1, I shall order Pioneer 2 to recognize the Union as the representative of its employees and to honor and apply the terms of that agreement, and any subsequent agreement, to its unit employees. The Respondent shall also make whole its employees by making the contractually established payments to the welfare and pension funds established by the collective-bargaining agreement, with interest, in accordance with the formula set forth in *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979), and by reimbursing unit employees for any expenses they incurred as the result of the unlawful failure to make such re-

quired payments, as provided in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), affd. mem. 661 F.2d 940 (9th Cir. 1981).<sup>4</sup>

The Respondent will also be ordered to post an appropriate notice.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>5</sup>

#### ORDER

The Respondent, Pioneer Electric of Monroe, Inc., and its alter ego Pioneer Electrical and Mechanical Contractor, Inc., a single employer, Monroe, Louisiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to provide to the Union information reflecting electrical jobs and projects performed by Pioneer 1 in 1995, 1996, 1997, and 1998, identifying the employees who worked on those jobs, and the hours those employees worked.

(b) Laying off employees because of their union activities.

(c) Discouraging membership in the Union, or any other labor organization, by terminating its employees because they belong to the Union, or any other labor organization, or because they are covered under a collective-bargaining agreement, or by otherwise discriminating against its employees in regard to hire, tenure of employment, or other terms and conditions of employment.

(d) Refusing to recognize and bargain with the Union as the exclusive representative of its employees in the appropriate unit with respect to wages, hours, working conditions, or other terms and conditions of employment, and refusing to honor the collective-bargaining agreement applicable to those employees.

(e) Dealing directly with employees represented by the Union concerning the terms and condition of their employment.

(f) 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) Provide to the Union information reflecting electrical jobs and projects performed in 1995, 1996, 1997, and 1998, and provide such records that exist showing the employees who worked on those jobs, and the hours those employees worked.

(b) Make Carlos Gasca whole for any loss of earnings and other benefits suffered as a result of his discriminatory layoff in the manner set forth in the remedy section of the decision.

(c) Within 14 days from the date of this Order, offer Michael Newton, Charles Monroe, Tommy Tumilson, Eric Shopher, James Carter, and Anthony McDonald full reinstatement to

<sup>4</sup> Respondent, in its brief, notes that it is a "mom and pop operation," and that compassion should be granted because of its "financial state." Board precedent prescribes the appropriate remedies I have ordered as a result of the violations that I have found. The economic condition of a respondent is not a basis for altering those remedies.

<sup>5</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, 29 CFR 102.46, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, 29 CFR 102.48, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

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.

(d) Make Michael Newton, Charles Monroe, Tommy Tumilson, Eric Shopper, James Carter, and Anthony McDonald 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.

(e) Within 14 days from the date of this Order, remove from its files any reference to the unlawful layoff or terminations and notify the employees in writing that this has been done and that the layoffs and terminations will not be used against them in any way.

(f) Comply with the terms and conditions of the collective-bargaining agreement between the Union and Pioneer 1, retroactively to January 14, 2000, including making the appropriate trust funds, employees, and the Union whole in the manner described in the remedy section of this decision.

(g) On request, bargain with the International Brotherhood of Electrical Workers, Local Union No. 446, AFL-CIO as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment:

All full time and regular part time journeymen and apprentices employed by the Respondent in Union, Morehouse, West Carroll, East Carroll, Lincoln, Jackson, Ouachita, Caldwell, Richland, Franklin, Madison and Tensas Parishes; excluding all office clerical employees, guards, professional employees, and supervisors as defined in the Act.

(h) 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, including an electronic copy of the records if stored in electronic form, that the Board or its agents deems necessary to analyze the amount of backpay due under the terms of this Order.

(i) Within 14 days after service by the Region, post at its office at Monroe, Louisiana, copies of the attached notice marked "Appendix."<sup>6</sup> Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by Respondent's authorized representative, shall be posted by the Respondent and maintained by it 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or ceased its operation at the facility involved in this proceeding, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at

<sup>6</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."

any time since November 2, 1998, the date of the first unfair labor practice found in this proceeding.

(j) 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 Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

#### 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 do anything that interferes with, restrains, or coerces you with respect to these rights, and more specifically:

WE WILL NOT lay you off or otherwise discriminate against any of you for supporting IBEW Local 446 (the Union) or any other union.

WE WILL NOT refuse to recognize and bargain with IBEW Local 446 as the exclusive representative of our employees in the appropriate unit with respect to wages, hours, working conditions, or other terms and conditions of employment.

WE WILL NOT fail and refuse to bargain collectively with the Union by bypassing the Union and dealing directly with employees, who are represented by the Union, concerning the terms and conditions of their employment.

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 make whole Carlos Gasca for any loss of earnings and other benefits resulting from his layoff from October 14, 1999 until November 2, 1999, less any net interim earnings, plus interest.

WE WILL, within 14 days of the Board's Order, offer Michael Newton, Charles Monroe, Tommy Tumilson, Eric Shopper, James Carter, and Anthony McDonald full reinstatement to their former jobs, and if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights or privileges previously enjoyed, and WE WILL make them whole for any loss of earnings and other benefits resulting from their terminations, 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 layoff of Carlos Gasca and the terminations of Michael Newton, Charles Monroe, Tommy Tumlison, Eric Shopher, James Carter, and Anthony McDonald and, 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, on request, bargain with the International Brotherhood of Electrical Workers, Local Union No. 446, AFL-CIO, as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment:

All full time and regular part time journeymen and apprentices employed by the Respondent in Union, Morehouse, West Carroll, East Carroll, Lincoln, Jackson, Ouachita, Caldwell, Richaland, Franklin, Madison, and Tensas Parishes; ex-

cluding all office clerical employees, guards, professional employees, and supervisors as defined in the Act.

WE WILL comply with the terms and conditions of the collective bargaining agreement between the Union and Pioneer Electric of Monroe, Inc., retroactively to January 14, 2000, including making the appropriate trust funds, employees, and the Union whole in the manner described in the Remedy section of the decision.

WE WILL provide the Union with a list of all electrical jobs, by year, worked by Respondent Pioneer Electric of Monroe, Inc. in 1995, 1996, 1997, and 1998, and a list, by year and by job, of all employees and their hours worked on these jobs.

PIONEER ELECTRIC OF MONROE, INC.