Oklahoma Fixture Company *and* Carpenters District Council of North Central Texas, affiliated with United Brotherhood of Carpenters & Joiners of America, AFL–CIO and Oklahoma Installation Company, Party in Interest. Case 16–CA–16265

April 4, 2001

DECISION AND ORDER

BY MEMBERS LIEBMAN, HURTGEN, AND WALSH

Based on a charge filed September 1, 1993, by Carpenters District Council of North Central Texas, affiliated with United Brotherhood of Carpenters and Joiners of America, AFL-CIO (the Union), the General Counsel of the National Labor Relations Board issued a complaint May 31, 1995, against Oklahoma Fixture Company (the Respondent or OFC), alleging that it violated Section 8(a)(5) and (1) of the Act by refusing to bargain collectively in good faith with the Union as the exclusive collective-bargaining representative of the employees in the bargaining unit. The Respondent filed a timely answer admitting in part and denying in part the allegations of the complaint.

On April 9, 1996, the Respondent and Oklahoma Installation Company (OIC), the Union, and the General Counsel filed with the Board a stipulation of facts and a motion to transfer this case to the Board. The parties agreed that the charge, the complaint, the answer to the complaint, and the stipulation, including attached exhibits, shall constitute the entire record in this proceeding and that no oral testimony is necessary or desired. The parties further waived a hearing before an administrative law judge and the issuance of an administrative law judge's decision. On September 30, 1996, the Board approved the stipulation and transferred the proceeding to the Board for issuance of a decision and order. The General Counsel, the Respondent, and the Union each filed briefs, and the Respondent and the Union each filed reply briefs.

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

On the entire record and the briefs, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

OFC, an Oklahoma corporation with an office and place of business in Tulsa, Oklahoma, is engaged in the manufacture and installation of retail store fixtures and custom architectural woodwork throughout the United States. During the 12-month period preceding the stipulation discussed above, OFC, in conducting its business operations, sold and shipped from its Tulsa, Oklahoma facility goods valued in excess of $50,000 directly to customers located in the State of Texas.

The General Counsel alleges in the complaint, the Respondent's answer admits, and we find that OFC is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Facts

The parties stipulated to the following facts:

1. OFC ownership, directors, & management structure

In March 1987, OFC was purchased by the following individuals, whose ownership interest was as indicated opposite their names:

Ron Line	51 Shares
Larry Bishop	8 Shares
Duane Walker	5 Shares
Mark Cavins	5 Shares
Faye Parrish	5 Shares
Jim Philip	2 Shares

Presently, Ron Line owns 84 percent of OFC's stock. Duane Walker and Mark Cavins each own 8 percent of OFC's stock. Ron Line, Duane Walker, Mark Cavins, and Mike Raburn are the current directors of OFC.

At all material times, the individuals named below have held the positions set forth opposite their names and have been agents of OFC within the meaning of Section 2(13) of the Act:

Ron Line	OFC President
Duane Walker	OFC Executive Vice President
Mark Cavins	OFC Vice President
Mike Raburn	OFC Vice President
William D.Wood	OFC Treasurer and Chief Financial Officer
David James	OFC Secretary
Stephen Andrew	Attorney
Faye Parrish	Secretary, 1987–1989

2. OIC ownership, directors, & management structure

OIC was formed on May 18, 1987, and is an Oklahoma corporation engaged in the installation of retail store fixtures and other custom woodwork throughout the United States. When it was formed, OIC was a "C" corporation for tax purposes; but, on January 1, 1989, OIC elected to be treated as a "Subchapter S" corporation for tax purposes. The original shareholders of OIC were William "Jack" Boler (5 shares) and a voting trust as authorized by

the statutes of the State of Oklahoma. The voting trustee was David James. The beneficial owners of the voting trust were Ron Line (51 shares), Duane Walker (10 shares), Mark Cavins (10 shares), Phil Kyle (5 shares), Jim Philip (2 shares), and Faye Parrish (2 shares).

Currently, OIC is owned by a voting trust, the beneficiaries of which are Ron Line (72-percent interest), Duane Walker (14-percent interest), and Mark Cavins (14-percent interest). David James is the trustee of the voting trust. The voting trust has the power to vote the shares of OIC and elects OIC's board of directors.

Since September 1994, the Board of Directors of OIC has been composed of William D. Wood and James Bigelow. Prior to September 1994, Jack Boler and David James were the directors of OIC.

During the dates indicated, the individuals named below have held the positions set forth opposite their names and have been agents of OIC within the meaning of Section 2(13) of the Act:

James Bigelow[1]	OIC President 9/94 to Present
Andrew Richardson	OIC Secretary 9/94 to Present
William D. Wood	OIC Treasurer 9/94 to Present
Jack Boler	OIC President 1987–1994
Randy Dillman[2]	OIC Secretary/Treasurer 1987–1993
Stephen Andrew	Attorney

3. Common financial matters

From 1988–1993, OIC made several periodic short-term loans to OFC for amounts varying from $100,000 to $600,000. These loans were never memorialized by notes or written agreements. The loans were requested by William D. Wood as treasurer of OFC and approved by William D. Wood as treasurer of OIC.

In 1993, OIC loaned a total of $1,900,000 to OFC, in the form of two separate loans of $700,000 and $1,200,000 that were consolidated in January 1994 and renewed on December 31, 1995. These loans are evidenced by a promissory note entered into on December 31, 1994, misdated on the face of the document as December 31, 1995.

OFC is located at 2900 Apache Street in Tulsa, Oklahoma. OIC leases office space from OFC at the 2900 Apache Street site. OIC also rents warehouse space from OFC next to OFC's warehouse. There are no written or formal agreements with respect to these leases.

Each month, OFC sends OIC a bill covering office and warehouse rent, delivery of OIC's tools to OFC's jobsites, health insurance, computer time, and administrative costs. The administrative costs include maintaining OIC's general ledger and accounts receivable, invoicing, and deposits. These administrative functions are performed by OFC under the direction and supervision of William Wood.

4. Common personnel matters

The individuals listed in OFC's telephone directory under "Installation Department" were employees of OIC at the time that document was in effect. The individuals listed in OFC's Team Meeting Agenda dated September 16, 1992, under "OIC Core Group" were employees of OIC at the time that document was in effect.

OFC and OIC have profit sharing plans which are pooled together to reduce administrative costs, but are held in separate accounts. OIC employees participate in OFC's health benefit plan for a monthly fee paid by OIC to OFC for each participating employee. There is no written agreement or document evidencing this arrangement.

At various times, employees of OFC, including job superintendents, job clericals, and craft employees, have performed work for OIC. The OFC employees who work for OIC must leave OFC's employ and complete new employment applications with OIC. Since at least 1993, the insurance and benefits coverage of superintendents and job clerks who have moved from OIC to OFC, or vice versa, has not been interrupted.

Bob Stringer, OFC human resource director, and Mark Cavins, OFC vice president of manufacturing, administer collective-bargaining agreements between OFC and various unions representing employees at OFC's Tulsa facility. Attorney Stephen Andrew is the primary negotiator for OFC regarding these agreements. OIC labor relations policies are set by James Bigelow and William D. Wood. Prior to September 1994, OIC labor relations policies were set by Jack Boler in consultation with Stephen Andrew.

5. Collective-bargaining history

On July 7, 1975, OFC entered into an agreement with the Union, whereby OFC agreed "to recognize the negotiated agreement between the North Texas Contractors Association and the Carpenters District Council of North Central Texas as the agreement between the Company and the Union." Since 1975, the Union and the North Texas Contractors Association have maintained successive collective-bargaining agreements, the most recent of

[1] Prior to becoming OIC president in 1994, James Bigelow was the director of safety for OFC.

[2] Prior to becoming OIC secretary/treasurer in 1987, Randy Dillman was a project manager for OFC.

which has a term effective from July 1, 1994, through April 30, 1997.[3] Each of these agreements contains a "Duration" clause which provides that the contract shall remain in full force and effect through the term of the contract, and thereafter, year to year, until terminated. A party may terminate the collective-bargaining agreement by providing the other party written notice at least 90 days prior to the agreement's expiration date.

6. Installation work

a. Generally

At all material times since 1975, OFC's primary customer has been Dillards Department Stores. For example, during 1993 and 1994, OFC derived approximately $45,000,000 of its $55,000,000 average annual revenues from its contracts with Dillards.

Since 1987, OFC has performed approximately 10 to 15 percent of its own installation work.[4] Since 1987, approximately 3 to 4 percent of the installation of OFC's fixtures has been performed by entities other than OFC or OIC. The remainder of the fixtures manufactured by OFC has been installed by OIC pursuant to contracts with the purchasers of the fixtures.

OIC derived revenues of approximately $18,000,000 in 1993 and $15,000,000 in 1994. Approximately 95 percent of this revenue was derived from OIC's contracts with Dillards.

Both OIC and OFC also install other companies' products when installing OFC fixtures. From 1987 to 1994, OFC performed the project estimating for all OIC jobs. Since 1994, OIC has estimated most of its own jobs, consulting with OFC regarding unusual situations. OFC's job records and reports list and account for both OFC and OIC work. From 1987 to 1995, the contact person for both OFC and OIC regarding their respective contracts with Dillards was Duane Walker. From 1995 until the present, OIC's contact person with Dillards has been James Bigelow.

b. Within the Union's jurisdiction

(1) OFC

From July 1975, when it entered into agreement with the Union, through 1985, OFC performed installation services within the Union's geographic jurisdiction and made payments into the Union's health and welfare pension trust benefit funds according to rates determined by collective-bargaining agreements between the Union and the North Texas Contractor's Association. From 1985 through November 1995, OFC did not perform installation services within the Union's geographic jurisdiction.

OFC resumed performing installation services within the Union's geographic jurisdiction in December 1995 and has since made payments into the Union's health and welfare pension trust benefit funds. Since its contributions to these Union funds resumed, OFC has unilaterally and without consulting the Union or the Trust Funds marked through the following language on the Contribution Report form:

> [The Employer] agree[s] to contribute the sums stipulated in the Agreement for each hour worked by Carpenters who are employed by the undersigned and represented in collective bargaining by a Local Union of the Carpenters International Union for payroll time accumulated within the territorial jurisdiction of the Local from this date until expiration of the contract.

(2) OIC

Since 1987, OIC has performed installation of fixtures and architectural woodwork for customers located within the Union's geographic jurisdiction. OIC's services were performed pursuant to agreements between OIC and the customers in question. Since 1987, OIC has obtained building permits from local municipalities within the Union's geographic jurisdiction.[5] OIC did not notify the Union that it was performing work within the Union's jurisdiction.

7. The Union's request for information

By letter dated May 21, 1993, the Union requested information from OFC regarding its relationship with OIC. OFC responded to the Union's May 21, 1993 communication by letters dated July 19, 1994.[6] Since May 21, 1993,

[3] One of the successive collective-bargaining agreements referred to above was terminated effective April 30, 1984, by the NTCA pursuant to the language of the "Duration Clause" described below. From May 1, 1984, to August 23, 1984, the parties were involved in negotiating a successor agreement and the Union engaged in an economic strike in support of the negotiations. A new collective-bargaining agreement was executed and became effective on August 23, 1984.

[4] From 1982 to 1987, a portion of OFC's work was performed by Fixture and Drywall Company (FADCO) pursuant to subcontracting arrangements with OFC. Some of the work performed by FADCO was located within the Union's territorial jurisdiction. Fifty percent of FADCO, an Oklahoma corporation, was owned by Lloyd K. Stephens, the principal owner of OFC prior to March 1987.

[5] The issuance of building permits is published by commercial sources such as the "Dodge Report," which provides such information to subscribers for a fee. This information is also public information available in the files of the issuing municipalities.

[6] In pertinent part, one of the letters stated:

> Without admitting that Oklahoma Fixture Company was ever bound or is bound as of this date, the purpose of this letter is to notify you that effective immediately, Oklahoma Fixture Company repudiates, terminates and cancels the 8(f) agreement alleged to have been signed

OFC has failed and refused to furnish the Union with the information requested by the Union's May 21, 1993 letter. The Union responded to OFC's July 19, 1994 communications by letter dated August 1, 1994.[7]

On September 1, 1993, the Union filed the charge in these proceedings. Since the 6 months prior to the filing of the charge, OIC has not abided by the terms of the successive collective-bargaining agreements between the Union and the NTCA referred to above.

B. Contentions of the Parties

The General Counsel contends that OFC entered into an 8(f) collective-bargaining relationship with the Union when it signed a "me-too" agreement with the Union in 1975, which bound it to a collective-bargaining agreement between the Union and the NTCA effective May 1, 1973, through April 30, 1975, and to successor agreements; that OFC made no attempt to repudiate its 8(f) relationship with the Union before its July 19, 1994 letter denying the Union's request for information; and that it thus remains obligated to recognize and bargain with the Union. Further, the General Counsel asserts that OFC created and utilized OIC as an alter ego in order to evade its bargaining obligation with the Union and that, together, OFC and OIC constitute a single employer. The General Counsel alleges that OFC, through its alter ego OIC, has violated Section 8(a)(5) and (1) of the Act by failing and refusing to bargain with the Union and to comply with the terms of the successive collective-bargaining agreements between the Union and NTCA by: OIC's failure to pay the wage rates and health and pension benefits and to notify the Union that it had hired employees without union referrals,[8] as required by the contracts. The General Counsel argues that OFC is estopped from asserting as a defense that the charge is time-barred under Section 10(b) because OFC fraudulently concealed its unlawful conduct.

The General Counsel also alleges that OFC further violated Section 8(a)(5) and (1) by refusing to provide the Union with the information it requested concerning the relationship between OFC and OIC. The General Counsel contends that the Union had a good-faith basis for requesting information concerning OIC and therefore is entitled to the requested information.

OFC contends that it does not have a collective-bargaining obligation to the Union because the 1975 "me-too" agreement created an 8(f) relationship that expired at the end of the 1975–1978 master agreement between the Union and the NTCA. OFC contends that, even if it had a duty to bargain with the Union, the bargaining obligation does not extend to OIC because OIC is neither an alter ego of nor a single employer with OFC. Finally, OFC contends that, even if it and OIC were obligated to bargain with the Union, the charge in the instant case is barred by Section 10(b) and the doctrines of waiver and estoppel.

The Charging Party makes essentially the same arguments as the General Counsel.

C. Discussion

1. The duration of OFC's duty to bargain with the Union

The threshold issue in this case is whether the 8(f) relationship established by the Union's and OFC's 1975 "me-too" agreement survived the expiration of the 1975–1978 NTCA collective-bargaining agreement. The relevant principles are well established.

Under Section 8(f) of the Act, employers and unions in the construction industry are permitted to enter into collective-bargaining agreements before the union has established its majority status. Either party is free to repudiate the collective-bargaining relationship once an 8(f) contract expires by its terms. *John Deklewa & Sons*, 282 NLRB 1375 (1987), enfd. sub nom. *Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988), cert. denied 488 U.S. 889 (1988). However, an automatic renewal clause in an 8(f) agreement will be given effect and operates to bind the parties to a continuation of the agreement. *Cedar Valley Corp.*, 302 NLRB 823 (1991), enfd. 977 F.2d 1211 (8th Cir. 1992), cert. denied 508 U.S. 907 (1993); *Fortney & Weygandt*, 298 NLRB 863 (1990). When an employer repudiates a collective-bargaining agreement during its term, it violates Section 8(a)(5) and (1) of the Act. See *John Deklewa*, supra, 282 NLRB at 1385. We shall now apply these principles to the facts of this case. On July 7, 1975, OFC signed an 8(f) prehire agreement ("me-too" agreement) with the Union, which was then in the process of negotiating a new master contract with NTCA. In signing the me-too agreement, OFC agreed to pay certain existing wage rates and agreed further to pay the wages and to provide the other terms and conditions of employment on which the Union and

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by a representative of Oklahoma Fixture Company on or about July 7, 1975.

The other letter stated, inter alia, that OFC and OIC are neither alter egos nor a single employer, and that the Union's information request is barred by Sec. 10(b) of the Act.

[7] The union's letter stated that OFC's attempted termination of their 8(f) relationship was ineffective because the notice did not comply with the notification requirements set forth in the 1994–1997 NTCA master agreement.

[8] The most recent collective-bargaining agreements between the Union and NTCA, 1991–1994 and 1994–1997, at art. X, sec. 38, require employers that hire carpenters without union referral "to notify the Union within a reasonable length of time."

NTCA ultimately agreed. The me-too agreement stated in pertinent part:

> The Company, who has not given their bargaining rights to the North Texas Contractors Association, and the Union recognize the negotiated agreement between the North Texas Contractors Association and the Carpenters District Council of North Central Texas as the agreement between the Company and the Union. The parties agree to keep this agreement in full force and effect until an agreement has been reached between the negotiating parties.
>
> The Company agrees to pay the wages now in effect and also agrees to pay retroactive to May 1, 1975, the wages finally agreed upon in the negotiations going on at the present time. Then the terms and conditions of that agreement will be in effect.

Thereafter, the Union and the NTCA reached agreement on a new master agreement which would be effective from July 30, 1975 until April 30, 1978. In pertinent part, article VI, Duration, of the 1975–1978 master agreement provided:

> This agreement shall become effective July 30, 1975, and shall continue in full force and effect through April 30, 1978. Thereafter, this agreement shall continue in full force and effect from year to year unless either party shall notify the other in writing of its desire to change, cancel, or modify this agreement and the notice is received by the other party not less than ninety (90) days prior to April 30.

Thus, OFC, based on the express terms of the me-too agreement, agreed to abide by the existing 1973–1975 master agreement until the Union and the NTCA reached agreement on a successor contract, and then to be bound to "the terms and conditions of that agreement." The me-too agreement's reference to "the terms and conditions of" the 1975–1978 agreement was not limited to any specific provisions of that successor agreement, but rather encompassed all of the terms of that agreement, including the automatic renewal provision of the Duration clause. By entering into the me-too agreement, OFC unequivocally accepted the as-yet unknown results of the negotiations underway in July 1975 between the NTCA and the Union. That acceptance demonstrated OFC's intent to enter into a collective-bargaining relationship with the Union on the basis of the 1975–1978 agreement, regardless of the terms of that agreement ultimately reached by the parties to the master contract negotiations. Accordingly, we find that OFC voluntarily entered into a collective-bargaining relationship with the Union in 1975, based on OFC's willingness to accept all terms of the master agreement which would result from the NTCA-Union negotiations.

As found above, one of those terms was the Duration clause requiring written notice of termination. OFC's adoption of the 1975–1978 master agreement as its own contract with the Union consequently bound it to annual renewals of that master agreement until OFC gave the requisite termination notice. In this regard, the facts of the instant case are quite similar to those of *Fortney & Weygandt*, supra. In *Fortney & Weygandt*, the respondent signed a letter of assent on July 29, 1985, adopting the 1984–1986 master agreement. The Board found that without the requisite notice to terminate or modify the master agreement, the master agreement renewed for another year until 1987. Accord, *Wilson & Sons Heating*, 302 NLRB 802 (1991), enf. denied 971 F.2d 758 (D.C. Cir. 1992).[9]

It is undisputed in this case that OFC took no affirmative steps between 1978 and 1994 to terminate the 1975–1978 agreement or to prevent the agreement from being automatically renewed year-to-year. In fact, after 1978, OFC continued to recognize its collective-bargaining obligation to the Union by making payments into the Union's benefit funds whenever it performed work within the Union's jurisdiction. OFC cannot successfully attempt, some 19 years after entering into the me-too agreement, to limit the agreement and therefore extinguish its relationship with the Union when the plain language of the me-too agreement, as well as OFC's consistent conduct thereafter, clearly belie the Respondent's assertions.

In finding that OFC was bound to a series of year-to-year renewals of the 1975–1978 master agreement, we necessarily disagree with the General Counsel's contention that OFC was bound to a series of successor master agreements negotiated by NTCA and the Union. As stated above, in the me-too agreement, OFC agreed to be bound to "the terms and conditions of [the 1975–1978] agreement." Significantly, the me-too agreement contained no terms indicating that OFC was consenting to be bound to any successors to the 1975-1978 master agreement. Cf. *Construction Labor Unlimited*, 312 NLRB

[9] As the dissent is forced to concede, our finding that OFC was a "party" to the 1975–1978 master agreement and bound by the automatic renewal provision is consistent with Board precedent. See *C.E.K. Industrial Mechanical Contractors*, 295 NLRB 635 (1989), enfd. in pertinent part 921 F.2d 350 (1st Cir. 1990)(individual employer, which signed employer association contract as a nonassociation member, was a "party" to the contract and thus bound to the contract's automatic renewal clause); see also *Sheet Metal Workers Local 20 (Baylor Heating)*, 301 NLRB 258, 260 (1991) (individual employer, which signed employer association contract as a nonassociation member, was a "party" to the contract).

364 (1993) (acceptance agreement bound employer to current master agreement and "any successor agreement(s)"); *Neosho Construction Co*., 305 NLRB 100 (1991) (stipulation bound employer to current master agreement and "all future master agreements"); *Z-Bro, Inc*., 300 NLRB 87 (1990) (independent agreement bound employer to current master agreement and to "any renewals, additions, modifications, extensions and subsequent [master] agreements"). Rather, the language of the me-too agreement was similar to that appearing in the letters of assent in issue in *Fortney & Weygandt*[10] and *Wilson & Sons*,[11] which the Board construed as binding each signatory to automatic renewal of the original master agreement, not to the successor master agreement.

In one of the two letters to the Union dated July 19, 1994, OFC notified the Union that, effective immediately, it "repudiates, terminates, and cancels the 8(f) agreement" of July 7, 1975. That notice did not immediately end the parties' 8(f) relationship as asserted; however, we find that the notice, served "not less than ninety (90) days prior to April 30" in accordance with the Duration clause of the 1975-1978 master agreement, terminated the parties' collective-bargaining relationship as of April 30, 1995.

Accordingly, for the reasons stated above, we conclude that OFC's 8(f) relationship with the Union, which commenced with the signing of the me-too agreement on July 7, 1975, continued until April 30, 1995.

2. The variance between the rationale of this decision and the theory of the complaint

As discussed above, our finding that OFC was bound to a series of year-to-year renewals of the 1975–1978 master agreement does not correspond precisely with the theory of the General Counsel's complaint, which is that OFC was bound to a series of successor master agreements negotiated by the parties to the master agreement (NTCA and the Union), the most recent of which had terms effective 1991–1994 and 1994–1997. It is well settled, however, that the Board may find and remedy a violation even in the absence of a specific allegation in the complaint if the issue is closely connected to the subject matter of the complaint and has been fully litigated. *Pergament United Sales*, 296 NLRB 333, 334 (1989), enfd. 920 F.2d 130 (2d Cir. 1990). Applying the two-part *Pergament* test by analogy here, we find that it is appropriate for us to conclude that OFC was bound to annual automatic renewals of the 1975–1978 master agreement, even though the complaint allegations are not based on this theory.

First, there can be no doubt that the annual renewal issue is closely connected to the subject matter of the complaint. The complaint allegation that OFC's me-too agreement bound it to successor master agreements necessarily presents the issue of the effect of the 1975–1978 master agreement on the duration of OFC's 8(f) relationship with the Union. That issue would be resolved by an examination of the language of the agreements, as well as any extrinsic evidence that the parties have set forth in their stipulation of facts. Similarly, the related question of whether the me-too agreement bound OFC to the automatic renewal provisions of the original master agreement turns on the same contractual language and stipulated evidence, and clearly presents the same factual issues as the complaint allegation. Furthermore, our finding that OFC was bound to the automatic renewal provision of the 1975–1978 master agreement is a more limited theory of violation than that sought by the General Counsel, and it is encompassed within the complaint's broader theory that OFC was bound not only to the terms and conditions of the 1975–1978 master agreement, but also to a series of successor master agreements.

Second, we find that the annual renewal issue has been fully and fairly litigated. All of the evidence that OFC has offered in defense to the complaint allegation that it was bound to successor master agreements is identical to the evidence that could be offered in response to the allegation that OFC was bound to the annual automatic renewal provision of the 1975–1978 master agreement. Specifically, the Respondent's primary contention is that it was not bound to successor master agreements because the 8(f) relationship created by the 1975 me-too agreement expired upon expiration of the 1975–1978 master agreement. The Respondent would advance this same argument in defense of the allegation that the me-too agreement bound OFC to annual automatic renewals even after expiration of the 1975–1978 master agreement. Indeed, in its reply brief, OFC states that "[c]ontrary to the Union's assertion, Oklahoma Fixture Company has not overlooked the automatic renewal clause in the duration article of the 1975–78 contract." Further, we find that OFC is not prejudiced by an inquiry into whether it was bound to annual automatic renewals because OFC has not argued that it provided the requisite contractual termination notice.

Accordingly, for the above reasons, we find that there is no procedural barrier to our finding that OFC was bound to a series of annual renewals of the 1975–1978 master agreement.

[10] 298 NLRB at 867 (letter of assent provided that employer did "hereby join in, adopt, accept, and become a party to" the master agreement).

[11] 302 NLRB at 811 (letter of assent bound employer to "all the terms" of the master agreement).

3. OIC's work within the Union's jurisdiction

The complaint alleges that OFC and OIC constitute a single, integrated business enterprise and have been alter egos and a single employer; and that OFC, through its alter ego OIC, violated Section 8(a)(5) and (1) by failing to notify the Union about work OIC performed within the Union's geographical jurisdiction and by failing to apply contractual terms and conditions to the OIC employees performing that work. Having found that OFC maintained a bargaining obligation to the Union through April 30, 1995, we must next address whether OIC and OFC are alter egos; if they are, OFC's collective-bargaining obligation to the Union would necessarily extend to OIC.

In determining whether one business is an alter ego of another, the Board examines whether the entities share "substantially identical management, business purpose, operation, equipment, customers, and supervision, as well as ownership." *Crawford Door Sales Co*., 226 NLRB 1144 (1976). The Board does not require the presence of each factor to conclude that alter ego status is warranted. See, e.g., *Fugazy Continental Corp*., 265 NLRB 1301 (1982), enfd. 725 F.2d 1416 (D.C. Cir. 1984).

The Board also considers 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."[12] A showing of unlawful motivation is not, however, essential to finding alter-ego status. *Hiysota Fuel Co*., 280 NLRB 763 fn. 2 (1986), enfd. in unpublished decision (3d Cir. Oct. 30, 1986). "Rather, the presence or absence of unlawful motivation is merely one factor that the Board considers in weighing the circumstances of any particular case." Ibid. There is no evidence in this stipulated record that OIC was created for the purpose of evading responsibilities under the Act. The other factors in the alter-ego analysis are clearly present with respect to OIC's relationship to OFC, as set forth below.

a. Ownership

In 1987, Ron Line, Duane Walker, Mark Cavins, Faye Parrish, and Jim Philip, together, owned an 89.5 percent interest in OFC. Likewise in 1987, the same five individuals, together, were beneficial owners of 93.75 percent of the voting trust that owned all but 5 of OIC's shares. Presently, Line, Walker, and Cavins are OFC's only shareholders, and are the only beneficiaries of the voting trust that now owns all of OIC. We conclude that OFC and OIC have identical ownership.

[12] *Watt Electric Co*., 273 NLRB 655, 658 (1984).

b. Management and supervision

David James, OFC's Secretary, is the trustee of the OIC voting trust and a former OIC director. James Bigelow, previously OFC's director of safety, has been OIC's president since September 1994 and is one of OIC's two directors. Additionally, William D. Wood is Treasurer of both OFC and OIC and, as such, has both requested and approved loans from OIC to OFC. Wood is the other of OIC's two directors. Since September 1994, Bigelow and Wood have been responsible for establishing OIC's labor relations policies. Stephen Andrew, who is the attorney for both OFC and OIC, is OFC's primary labor negotiator and, until September 1994, was involved in setting OIC's labor policies. Mark Cavins, OFC vice president and director and part-owner of OFC and OIC, administers collective-bargaining agreements covering OFC employees at its Tulsa facility. Duane Walker, OFC vice president and director and part-owner of OFC and OIC, was the contact person for OFC and OIC regarding their respective contracts with Dillards from 1987–1995.

The listing of OIC employees in OFC's telephone directory as the OFC Installation Department indicates common supervision of installation employees. Similarly, including "OIC Core Group" within the September 16, 1992 OFC Team Meeting Agenda also indicates common supervision. Further, evidence concerning employee benefits demonstrates centralized management. Specifically, OFC and OIC have pooled profit sharing plans; OIC employees participate in OFC's health benefit plan; and the insurance and benefits coverage for OIC superintendents and job clerks who have moved to OFC, or vice versa, has not been interrupted. This seamless benefit coverage could not be provided to employees without management centralization.

Given these circumstances, we conclude that OFC and OIC share common management and supervision.

c. Operations, business purpose, and customers

The business purpose and operations of OIC and OFC are greatly interrelated. OFC manufactures and installs retail store fixtures; OIC installs retail store fixtures. Since 1987, OFC has installed 10–15 percent of the fixtures it manufactures; 3–4 percent have been installed by entities other than OFC or OIC; OIC has installed the remainder. Both OFC and OIC install other companies' products when installing OFC fixtures. From 1987–1994, OFC performed the project estimating for all OIC jobs. Since 1994, OIC has estimated most of its own jobs, but still consults with OFC concerning unusual situations. OFC's job records and reports list and account for both OFC and OIC work.

OFC's primary customer has been Dillards Department Stores; likewise, Dillards has also been OIC's primary customer. In 1993 and 1994, OFC and OIC derived 82 percent and 95 percent of their revenues, respectively, from contracts with Dillards. From 1987 to 1995, the contact person for both OIC and OFC regarding their Dillards contracts was Duane Walker.

OIC rents office space and warehouse space at OFC's office and warehouse site in Tulsa, Oklahoma, for which it is billed monthly by OFC. Additionally, OFC bills OIC monthly for delivery of OIC's tools to OFC job sites, health insurance, computer time, and administrative costs including maintaining OIC's general ledger and accounts receivable, invoicing, and deposits.

Based on the above findings, we conclude that OFC and OIC have identical business purposes, operations, and customers.

d. Conclusion

Having found that OFC and OIC share substantially identical ownership, management, supervision, business purpose, operations, customers and equipment, we find that OIC is the alter ego of OFC.[13] Accordingly, we find that the 1975–1978 master collective-bargaining agreement, as automatically renewed annually until April 30, 1995, applies to OIC as well as OFC. *Howard Johnson Co. v. Detroit Local Joint Executive Bd. Hotel & Restaurant Employees*, 417 U.S. 249, 259 fn. 5 (1974). Therefore, we conclude that OFC and OIC violated Section 8(a)(5) and (1) by failing to notify the Union when OIC performed installation work within the Union's geographical jurisdiction and by failing to apply the terms and conditions of the 1975–1978 master agreement to the OIC employees performing that work.[14]

4. The information request

The final issue is whether OFC violated Section 8(a)(5) and (1) of the Act by failing and refusing to provide the Union the information it requested on May 21, 1993, concerning OFC's relationship to OIC.

Because the Union's information request relates to matters outside the bargaining unit, the Union "has the initial burden of showing relevancy." *NLRB v. Leonard B. Hebert, Jr. & Co.*, 696 F.2d 1120, 1124 (5th Cir. 1983). As the court explained in *Walter N. Yoder & Sons, Inc. v. NLRB*, 754 F.2d 531, 535 (4th Cir. 1985), however, this burden is not a particularly heavy one:

> The standard of relevancy is a liberal, discovery-type standard, *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 437 & n. 6 (1967); therefore, information is relevant if it is germane and "has any bearing on the subject matter of the case." *Local 13, Detroit Newspaper Printing and Graphic Communications Union v. NLRB*, 598 F.2d 267, 271 (D.C. Cir. 1979).
>
> The practical burden upon the union then is to show that the information will aid investigation of contract violations "where the union has established a reasonable basis to suspect such violations have occurred." *NLRB v. Associated General Contractors*, 633 F.2d 766, 771–72 (9th Cir. 1980); see also *San Diego Newspaper Guild, Local 95 v. NLRB*, 548 F.2d 863. "Actual violations need not be established in order to show relevancy." *NLRB v. Associated General Contractors*, 633 F.2d at 771 & fn. 6.

Applying this standard here, we find that the Union has established a reasonable basis to believe that violations of the contract had occurred. Indeed, OFC does not even argue that the Union lacked such a reasonable belief. Specifically, the Union knew that OFC had regularly performed installation work within its jurisdiction at least since 1975, making contractually required payments to the Union's health and welfare pension trust benefit funds. The Union also knew that in 1985 OFC abruptly ceased performing such work within its jurisdiction and, likewise, ceased making payments to the contractual benefit funds. When the Union became aware in 1993 that a similarly-named employer, OIC, was performing installation work within its jurisdiction, it suspected that OIC may have been a single employer or alter ego of OFC and requested information concerning the relationship between the two companies. This information clearly is relevant to the Union's enforcement of its collective-bargaining agreement with OFC. Further, while an actual contract violation need not be established to show relevancy, in this case we have found above that

[13] In view of our finding that OIC is the alter ego of OFC, we find it unnecessary to pass on the single-employer issue.

[14] We reject the Respondent's defense based on Sec. 10(b) of the Act. In order to prevail on this defense, the Respondent must show that the Union was on "clear and unequivocal notice" that the Respondent, through its alter ego OIC, was performing work within its jurisdiction more that 6 months prior to the filing of the charge, without applying the terms of the collective-bargaining agreement. The Respondent has not met that burden, because it has not shown that OIC's performance of installation work within the Union's jurisdiction beginning in 1987 was sufficiently "bald" to put the Union on notice that the Respondent was working in its area without complying with the collective-bargaining agreement. See *Baker Electric*, 317 NLRB 335, 346 (1995). Inasmuch as the charge herein was filed September 1, 1993, which is within 6 months of the Union's May 21, 1993 information request, we find that the charge was timely filed.

In view of our finding that OFC's 8(f) relationship with the Union terminated April 30, 1995, we shall limit the make-whole remedy for this violation to the time period between March 1, 1993, which is 6 months before the charge was filed, and April 30, 1995.

OIC is indeed the alter ego of OFC and that OIC did, in fact, violate the collective-bargaining agreement when it performed installation work within the Union's geographical jurisdiction.[15] Accordingly, we conclude that when the Union requested information about OFC's relationship to OIC on May 21, 1993, OFC was obligated to provide that information and that its failure and refusal to do so violated Section 8(a)(5) and (1).

THE REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, we shall order them to cease and desist and to take certain affirmative actions designed to effectuate the policies of the Act.

We shall order that the Respondent Oklahoma Fixture Company provide the Union with all the information requested in the Union's letter of May 21, 1993. We shall also order the Respondents to apply the terms and conditions of the 1975–1978 NTCA master agreement with the Union to the employees of Respondent Oklahoma Installation Company for the work performed within the Union's jurisdiction from March 1, 1993, until April 30, 1995.

Further, we shall order the Respondents to make whole their employees, for any losses they may have suffered as a result of the Respondents' failure to apply the 1975–1978 NTCA master agreement with the Union, from March 1, 1993, until April 30, 1995, *Kraft Plumbing & Heating*, 252 NLRB 891 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), to be computed as provided in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), including making contractual payments and contributions to the Union and the benefit funds on their behalf, with interest and other required payments computed in the manner prescribed in *Merryweather Optical Co*., 240 NLRB 1213, 1216 fn.7 (1979). Finally, the Respondents shall post notices to employees at any jobsite currently in progress within the geographical jurisdiction of the Union and at its place of business in Tulsa, Oklahoma.

CONCLUSIONS OF LAW

1. The Respondents are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

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

3. Respondent Oklahoma Installation Company is the alter ego of Respondent Oklahoma Fixture Company.

4. By refusing to bargain collectively with the representative of its employees by failing to comply with the Union's May 21, 1993 request for certain necessary and relevant information, and by failing to apply the terms and conditions of the 1975–1978 NTCA master agreement with the Union to the employees of Oklahoma Installation Company from March 1, 1993-April 30, 1995, the Respondents engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

ORDER

The National Labor Relations Board orders that the Respondents, Oklahoma Fixture Company and Oklahoma Installation Company, Tulsa, Oklahoma, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to furnish the Union, Carpenters District Council of North Central Texas, affiliated with United Brotherhood of Carpenters & Joiners of America, AFL–CIO, with requested information that is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees.

(b) Failing to apply the terms and conditions of the 1975–1978 collective-bargaining agreement to which they were bound through April 30, 1995, to the employees of Oklahoma Installation Company performing installation work within the Union's geographical jurisdiction.

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

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

(a) Provide the Union with the information requested May 21, 1993.

(b) Make whole employees for any losses suffered as a result of the Respondents' failure to apply the collective-bargaining agreement in the manner specified in the remedy section of this decision.

(c) 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 and other payments due under the terms of this Order.

(d) Within 14 days after service by the Region, post at all current jobsites within the geographical jurisdiction of the Union and at their Tulsa, Oklahoma facilities, copies

[15] See *Weinreb Management*, 292 NLRB 428, 432 (1989) (where two companies found by the Board to be single employer, union's request for information concerning the companies' relationship held to be relevant and necessary to the union's duty to police the contract).

of the attached notice marked "Appendix."[16] Copies of the notice, on forms provided by the Regional Director for Region 16, 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 March 1, 1993.

(e) 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.

MEMBER HURTGEN, dissenting.

I do not agree that Respondent OFC was bound to annual renewals of the contract between the Union and the North Texas Contractors Association (NTCA).

On July 7, 1975, OFC and the Union entered into a Section 8(f) contract. At that time, the Union and NTCA were negotiating a contract. Although OFC was not a member of NTCA, it agreed to be bound by "the terms and conditions of that agreement" (i.e. the NTCA contract then being negotiated). The Union and NTCA reached an agreement that was effective July 30, 1975, to April 30, 1978. That agreement had a duration clause. That clause was a "term and condition" of that contract, and thus OFC was bound thereby. The duration clause of the NTCA contract provided that the contract would remain in effect until April 30, 1978, and from year to year thereafter, "unless either party shall notify the other in writing of its desire to change, cancel, or modify this agreement and the notice is received by the other party not less that ninety (90) days prior to April 30."

In my view, the phrase "either party" refers to the parties to the NTCA contract. The contract is between NTCA and the Union, and the contract refers to no other parties. Clearly, then, NTCA and the Union are the parties contemplated by the duration clause. Accordingly, when the Union gave timely notice to NTCA that it was terminating the 1975–1978 contract, that contract ended on April 30, 1978. It follows that OFC's contractual obligation ended on the same date.[1]

Contrary to the majority, I do not concede that OFC was a "party" to the 1975–1978 NTCA contract. OFC agreed, in a separate document, to be bound to the terms and conditions of that contract on a "me-too" basis, but that is not the same as saying that it was a "party" to that contract. The parties to that contract were NTCA and the Union.

Sheet Metal Workers Local 20 (Baylor Heating), 301 NLRB 258 (1991), and *C.E.K. Industrial Mechanical Contractors*, 295 NLRB 635 (1989), are distinguishable. In those cases, the individual employers signed the Association contract, and thereby became "parties" to it. By contrast, the Respondent herein signed a separate document agreeing to be bound to the terms and conditions of the Association contract.

In light of the above, I do not agree with my colleagues that OFC was bound to annual renewals of the 1975–1978 contract between NTCA and the Union. I would also note that even the General Counsel does not make this contention.

My colleagues rely on other two cases for their view. However, one case is clearly distinguishable, and the other was denied enforcement on the relevant point. *Fortney & Weygandt*, 298 NLRB 863 (1990), is distinguishable. In that case, the contract specifically provided that "an individual employer" could give notice to terminate the contract. Thus, if the individual employer failed to give the notice, the contract continued as to that employer. By contrast, the instant case does not contain the phrase "individual employer." Concededly, *Wilson & Sons Heating*, 302 NLRB 802 (1991), like the instant case, does not contain the "individual employer" language, and yet the Board found that the contract renewed itself as to the individual employer. However, the D.C. Circuit disagreed with the Board on this point, and enforcement was denied. 971 F.2d 758 (1992).

In light of the above conclusion, I need not reach the issue of whether OFC and OIC are alter egos. Since OFC was not bound to a contract after April 30, 1978, OIC would not be bound even if it were the alter ego of OFC.

Similarly, I do not find that there was an "informational" Section 8(a)(5) violation. The premise for the violation was that OFC was bound to the NTCA contract, and that OIC might be an alter ego of OFC and thus bound as well. As shown, the first premise is not correct.

[16] 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."

[1] The fact that OFC chose to pay into the Union's benefit funds after 1978 does not establish that it was contractually obligated to do so, much less that it was obligated to follow other parts of the contract.

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 refuse to furnish the Union, Carpenters District Council of North Central Texas, affiliated with United Brotherhood of Carpenters & Joiners of America, AFL–CIO, with requested information that is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees.

WE WILL NOT fail to apply the terms and conditions of the 1975–1978 collective-bargaining agreement to which we were bound through April 30, 1995, to the employees performing installation work within the Union's geographical jurisdiction.

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 provide the Union with the information requested May 21, 1993.

WE WILL make whole employees for our failure to apply the collective-bargaining agreement with the Union, including making the payments and contributions to which the Union and the contractual benefit funds are entitled under the agreement, with interest.

OKLAHOMA FIXTURE COMPANY AND OKLA-LAHOMA INSTALLATION COMPANY