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CTS, Inc. *and* International Union of Bricklayers & Allied Craftworkers, District Council of Wisconsin. Case 30–CA–16057–1

October 9, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS SCHAUMBER AND WALSH

On February 11, 2003, Administrative Law Judge Benjamin Schlesinger issued the attached decision. The General Counsel and the Union each filed exceptions and supporting briefs, the Respondent filed an answering brief, and the General Counsel and the Union each filed reply briefs. The Respondent also filed cross-exceptions and a supporting brief, the General Counsel and the Union each filed answering briefs, and the Respondent filed a reply brief to the Union's answering brief.

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

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

The Issue

The issue is whether the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to adhere to the terms of the June 1, 2002—May 31, 2005 collective-bargaining agreement (the 2002 agreement) between the Associated General Contractors (AGC) of Wisconsin and various Bricklayers & Allied Craftworkers Local Unions and the Wisconsin District Council (collectively, the Union).[2] The judge concluded that the Respondent did not violate the Act, and recommended that the complaint be dismissed. Contrary to our dissenting colleague, and for the reasons set forth below, we affirm the judge's conclusion and adopt his recommendation.

Facts

On August 22, 2001,[3] Respondent President Lloyd Gleason signed an INDEPENDENT CONTRACTOR—ASSUMPTION OF AGREEMENT agreeing to assume and be bound by all of the terms and provisions of the June 1, 1999—May 31, 2002 collective-bargaining agreement between the AGC and the Union (the 1999 agreement, the predecessor to the 2002 agreement).[4] Article I of the 1999 agreement provides that it will continue in full force and effect until May 31, 2002, and from year to year thereafter, unless terminated by written notice given by either party to the other not less than 90 days prior to the expiration date, or anniversary thereof. Article III of the agreement provides in pertinent part that the Union recognizes the AGC as the bargaining representative for all employers who have so authorized the AGC for all work covered by the agreement. Article III further provides that individual employers who have not authorized the AGC to represent them shall become part of the multiemployer bargaining unit by becoming party to this agreement, that such individual employers authorize the AGC to negotiate successor Master Agreements on behalf of the individual employers, and that the individual employers specifically adopt all provisions of any successor Master Agreement entered into between the AGC and the Union. Finally, article III provides that withdrawal from the multiemployer bargaining unit may be accomplished only by written notice to the Union and the AGC at least 60 days but not more than 90 days prior to the expiration date of the agreement (May 31, 2002) or of any renewal period of the agreement.

On February 20, the Union sent the following letter, addressed "TO: ALL CONTRACTORS," and received by the Respondent, stating, in pertinent part:

> Gentlemen:
>
> Re: [The 1999 agreement].
>
> Pursuant to the provisions of the . . . [1999 agreement] the BAC [Bricklayers & Allied Craftworkers] District Council of Wisconsin hereby gives notice to terminate the agreement effective on the termination date (May 31, 2002).
>
> It is the intention of the District Council to negotiate changes and modifications to the current

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

[2] At the hearing, the Respondent amended its answer to the complaint to admit that, at all times since August 22, 2001, based on Sec. 9(a) of the Act, the Union has been the collective-bargaining representative of the unit.

[3] All dates are within August 1, 2001—July 31, 2002, inclusive, unless otherwise stated.

[4] Although the Respondent has never been a member of the AGC, the parties stipulated that non-AGC members have authorized the AGC to bargain on their behalf solely by signing such an INDEPENDENT CONTRACTOR—ASSUMPTION OF AGREEMENT.

agreement and to incorporate these modifications into a new agreement.

Representatives of the District Council are ready and willing to meet and confer with you on mutually convenient dates.

Sincerely,

BAC DISTRICT COUNCIL OF WI.

Timothy Ihlenfeld, Director

After receiving this letter, Gleason contacted Union Field Representative Owen Jones to determine how to write a similar letter announcing the Respondent's intent to terminate the agreement. When Jones did not respond to this request, the Respondent sent the following letter to the International Union on February 25:

RE: [The 1999 agreement].

As per Article I, Duration of Agreement, Section 1.1 of the [1999 agreement] we are terminating our agreement as of May 31, 2002 unless a settlement is reached before such time.

Sincerely,

Lloyd E. Gleason, President—CTS, Inc.

In March, Gleason told Jones that he wanted to meet with Jones so that they could begin to review Gleason's "issues." Jones told Gleason that he would "get back to [him] and [they] would do it." Gleason had 6–8 followup calls with Jones trying to set up a negotiation meeting. Although no date for such a meeting was ever set, Jones informed Gleason that he would negotiate with him. Gleason testified without contradiction that Jones never said that he could not bargain with Gleason. When Gleason was asked at the hearing whether Jones said that he would bargain with Gleason, he testified without contradiction, "Yes, he [Jones] would sit down and talk with us, yes." Indeed, Jones acknowledged at the hearing that Gleason told him in March that "we need to meet," and that Jones and Gleason spoke numerous times by telephone during March–June.[5]

In late May, Jones announced to Gleason that Jones was on his way to negotiations for a contract covering the Respondent. Gleason responded that he did not understand and did not agree with having other parties negotiate a collective-bargaining agreement for the Respondent. He also told Jones that they had not yet met on contract matters and that they had not "gone over" anything.

The AGC and the Union engaged in negotiations and reached agreement on the 2002 agreement on May 31, subject to ratification. They entered into the 2002 agreement on June 10. When Jones told Gleason that the AGC and the Union had reached agreement on a new contract, Gleason reminded Jones that they still had not "talked," that Gleason had no idea what had been negotiated, and that he "[did] not agree to this." On June 13, the Respondent sent a letter to the District Council, "Attn: Owen Jones," stating:

Dear Owen:

We recently received your June 10, 2002 letter regarding [new contractual] wage increases. We do not agree with these increases and as mentioned before, CTS, Inc. desires the chance to sit down and negotiate our own contract with you in good faith. Please notify us as soon as possible as to when we can sit down together. Until that time wages and benefits will remain at status quo.[6]

Sincerely,

Lloyd E. Gleason—President
Daryle J. Wooley—Vice President

Jones called Gleason as soon as Jones received this letter. Jones told Gleason that he was "signatory" to the 2002 agreement and that he should pay the increased wages. Notwithstanding this action, about a week later, Gleason called Jones, asking to meet with Jones and District Council Director Ihlenfeld to "work this issue out." Thereafter, in late June, Jones met at a restaurant with Gleason and Respondent Vice President Daryle Wooley. Wooley asked Jones to look at a document that Wooley proffered. After asking if the document was "an addition to the addendum of the contract," Jones accepted the document, which is dated June 25 and titled "Summary of Economic Proposals." As expressly set forth in that document, the Respondent stated that "CTS, Inc. is not part of any multi-employer bargaining group." The document then enumerates various terms and conditions of employment and includes specific bargaining proposals on those issues. Jones reviewed the document and

[5] The judge effectively discredited Jones' testimony that the meeting requested by Gleason was only about the Respondent's delinquencies in contributions to the health insurance and pension funds, and not about negotiating a new collective-bargaining agreement.

[6] The parties stipulated that the Respondent was continuing to pay wages pursuant to the 1999 agreement and that it has not implemented or adopted the 2002 agreement.

told Wooley that "no union could ever agree to these proposals."

On June 28, the Union notified Gleason in writing that it considered the Respondent to be bound to the 2002 agreement, and that the Union intended to enforce the full terms and conditions of that agreement with the Respondent in the same manner as it did with all other signatories. The Union's letter closed with the following request: "Please make sure your company remains in compliance. Thank you."

On July 8, the Respondent replied in writing to the Union's June 28 letter, saying that it disagreed and that:

> As you know, both the Union and the Company sent contract termination notices to each other months ago. Accordingly, the collective bargaining agreement between the Union and CTS, Inc. expired June 1, 2002 [sic.].
>
> However, we remain committed to negotiating a new collective bargaining agreement. We have already met for such negotiations and look forward to meeting again to continue the process.
>
> Please contact [Gleason] at your earliest possible convenience to discuss mutually agreeable times, dates and locations for continued negotiations. Thank you for your attention to this matter.

Analysis and Conclusion

1. The Judge's decision

The judge found that when signing the INDEPENDENT CONTRACTOR—ASSUMPTION OF AGREEMENT on August 22, 2001, the Respondent manifested an intention to be bound by group bargaining, and an agreement to be bound by all of the terms and provisions of the 1999 agreement, including the provisions of article III set out above.

Although the judge further found that the Respondent's subsequent February 25 letter did not satisfy the legal requirements under *Retail Associates, Inc.,* 120 NLRB 388, 394 (1958), to constitute an effective withdrawal from multiemployer bargaining, the judge concluded that the Union, by its conduct, clearly demonstrated its intent to terminate the multiemployer bargaining relationship and thereby release the Respondent from its agreement to be bound by group bargaining. Specifically, the judge found that through its February 20 letter, addressed to "ALL CONTRACTORS," and specifically offering to meet and confer separately with the contractors on mutually convenient dates, the Union communicated to the Respondent that it wanted to terminate the 1999 agreement and negotiate changes and modifications to the agreement with contractors individually. Based on the Union's own language, the judge found that the only assumption the Respondent could make after reading this letter was that the Respondent's obligations under the 1999 agreement had ended. The judge found that this was reinforced by the Respondent's telephone calls to the Union seeking assistance in how to phrase *its* termination letter. Further, within 4 days after receiving the Union's February 20 letter, the Respondent wrote to the Union, terminating the 1999 agreement unless the Respondent and the Union reached a settlement on a new agreement before May 31. Under these facts, the judge found that the Union terminated the 1999 agreement, the Respondent agreed that it was terminated, the Union offered to bargain individually with the Respondent, the Respondent sought meetings with the Union to bargain individually, and the Union's offer to bargain individually was antithetical to its present claim that the Respondent is bound by the results of multiemployer bargaining. Thus, the judge recommended dismissal of the complaint.

We agree.

2. Applicable principles

Rules governing withdrawal from multiemployer units are set forth in *Retail Associates, Inc.,* 120 NLRB at 393. These rules apply equally to employers and unions. *Evening News Assn.,* 154 NLRB 1494 (1965), affd. sub nom. *Detroit Newspaper Publishers Assn. v. NLRB,* 372 F.2d 569 (6th Cir. 1967). As recognized in *Retail Associates,* supra, multiemployer bargaining is predicated upon mutual consent of the union and employers involved in it. Id. at 193 ("[M]utual consent of the union and employers involved is a basic ingredient supporting the appropriateness of a multiemployer bargaining unit[. . .]"). Id. Where parties have agreed to be bound by multiemployer bargaining, withdrawal from that bargaining relationship requires a sincere abandonment, with relative permanency, of the multiemployer unit, and the embracement of a different course of bargaining on an individual employer basis. Id. at 394.

Retail Associates specifies the mechanics by which parties to multiemployer bargaining relationship effectively may withdraw. Id. at 395. However, even in circumstances where an employer's attempt to withdraw from multiemployer bargaining is ineffective under the *Retail Associates* rules, its withdrawal may nonetheless be valid based on the union's conduct. Thus, a union may be found implicitly to have consented to or acquiesced in the attempted withdrawal, where the totality of the union's conduct toward that employer consists of a course of affirmative action that is clearly antithetical to any claim that the employer has *not* withdrawn from multiemployer bargaining. *I. C. Refrigeration Service,* 200 NLRB 687, 689 (1972). In determining whether the union has consented or acquiesced to the employer's

withdrawal, a prime indicator is the union's willingness to engage in individual bargaining with the employer that is seeking to abandon multiemployer bargaining. Id.

3. Application of principles

Based on the totality of the Union's conduct in this case, we find that it consented or acquiesced in the Respondent's effort to abandon multiemployer bargaining. We therefore find that the Respondent is not bound by the 2002 collective-bargaining agreement between the Union and the AGC, and that the Respondent has therefore not violated Section 8(a)(5) and (1), as alleged, in refusing to abide by that Agreement.

Although the Respondent's February 25 letter was not by itself a legally effective withdrawal from multiemployer bargaining under *Retail Associates*, because it was not issued within the narrow window period for such notices provided in the parties' collective-bargaining agreement, there can be no doubt that Respondent's conduct and communications with the Union after the February 25 letter continued to clearly evidence its plan to withdraw from multiemployer bargaining and engage in individual bargaining. For example, the Respondent told the Union that it wanted to meet with it to begin to review the Respondent's issues and to negotiate a new collective-bargaining agreement. The Respondent also persisted over the next several months in its attempts to schedule such a meeting with the Union. Also during this time, the Respondent told the Union that it would not agree to having another party negotiate a collective-bargaining agreement for it. Consistent with this course of conduct, when the Respondent finally met face-to-face with the Union, it presented the Union with a full list of the Respondent's contract proposals for a separate agreement.

Further, we find, contrary to our colleague, that the Union evidenced by *its* conduct and communication with the Respondent its acquiescence in the Respondent's plan. *I. C. Refrigeration Service*, supra. Thus, the Union's February 20 letter indicated that the Union desired to bargain with the contractors individually. That letter was addressed only to "ALL CONTRACTORS," [not to the AGC], and offered to meet and negotiate "with you," i.e., with the individual contractors, on modifications to the 1999 agreement, to be incorporated into a new agreement.[7] Furthermore, subsequent events discussed below further establish the Union's intent to bargain with the Respondent individually.

In March, shortly after receiving the Union's February 20 letter, Respondent President Gleason told Union Field Representative Jones that he wanted to meet with Jones so that they could begin to review the issues that the Respondent was concerned about and begin negotiating a new collective-bargaining agreement. Jones told Gleason that he would get back to him, and that the Union would do as Gleason asked. The Union thus communicated to the Respondent that the Union was planning to engage in individual bargaining with the Respondent. Although no date for a bargaining session was subsequently set, Gleason and Jones spoke 6–8 times during March–June and Jones never told Gleason that the Union did not intend to bargain individually with the Respondent. Instead, Jones told Gleason that he would sit down and talk with the Respondent. When Jones subsequently told Gleason that the Union had negotiated a new collective-bargaining agreement with the AGC, Gleason reminded Jones that the Respondent and the Union still had not negotiated, and that the Respondent did not agree to the new agreement between the Union and AGC. Again, Jones did not challenge Gleason's statements and did not say or do anything else to dissuade the Respondent from the expectation that the Union planned to negotiate with it individually. Although Jones at one point did tell Gleason that the Respondent was "signatory" to the new 2002 agreement and that it should pay the wages called for in that agreement, Jones subsequently met with Gleason and Respondent Vice President Wooley, reviewed a list of the Respondent's bargaining proposals, and referred those proposals in turn to his union superiors.[8]

In sum, under *Retail Associates*, supra, multiemployer bargaining is predicated upon mutual consent of the union and the employers involved in it. Here, however, the totality of the evidence establishes that both the Union and the Respondent expressed to one another their mutual desire to withdraw from multiemployer bargaining and engage in *individual* bargaining instead. The Un-

[7] We are not suggesting that the February 20 letter was, by itself, proof that the Union was amenable to individual bargaining. However, it is a relevant piece of evidence that, in context with other evidence, establishes that the Union was so amenable.

Our colleague's reliance on *Standard Roofing Co.*, 290 NLRB 193 (1988), enfd. mem. in pertinent part 920 F.2d 933 (6th Cir. 1990), for a different result is unavailing. In that case, there were no individual negotiations with any employer association members, whereas here the Union and the Respondent maintained an ongoing dialogue premised on the expectation of individual bargaining, and indeed ultimately did meet face-to-face when the Respondent presented its proposals in its late June restaurant meeting with the Union.

[8] The dissent suggests that the Respondent capitulated at this meeting by Wooley's statement to Jones, before handing Jones the Respondent's contract proposals, that the Respondent agreed that it was bound to the newly negotiated 2002 contract between the Union and the AGC. We disagree. Inasmuch as the Respondent was tendering an economic proposal, Wooley's statement obviously meant that the Respondent agreed to be bound to the 2002 contract, *subject to the changes that Wooley concurrently handed to Jones*, which changes would be part of an agreement between the Respondent and the Union.

ion's February 20 letter and subsequent course of communication with and conduct toward the Respondent were consistent with the notion of individual bargaining between the Union and the Respondent. Certainly, the Respondent during the relevant period made it unmistakably plain to the Union that the Respondent would not "go" with the multiemployer collective-bargaining agreement. And the Union, for the most part, did not disabuse the Respondent of its belief that the Union would bargain individually with the Respondent. Rather, the Union led the Respondent to believe that the Union was going to bargain individually with the Respondent, and demonstrated its acquiescence in the Respondent's abandonment of multiemployer bargaining.

4. Conclusion

For all of the above reasons, we conclude that the Respondent is not bound by the 2002 agreement, and that it has therefore not violated Section 8(a)(5) and (1) of the Act as alleged by failing to abide by it.[9]

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

Dated, Washington, D.C. October 9, 2003

Robert J. Battista, Chairman

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER WALSH, dissenting.

Contrary to my colleagues, I would find that the Respondent has violated Section 8(a)(5) and (1) of the Act as alleged by unlawfully failing and refusing to abide by the 2002 multiemployer collective-bargaining agreement.

Discussion

First, the Union's February 20 letter on its face does not constitute or reasonably communicate a withdrawal by the Union from multiemployer bargaining under the standard set out in *Retail Associates, Inc.*, 120 NLRB 388 (1958), cited and discussed by my colleagues. The Union's failure expressly to include the AGC as an addressee on the letter is not an unequivocal disclaimer of the Union's representation of the multiemployer unit and notice of intent to engage instead in bargaining on an individual employer basis. The letter does not *say* or reasonably imply that, and the Union's subsequent course of multiemployer bargaining with AGC for the 2002 agreement belies it.

In *Standard Roofing Co.*, 290 NLRB 193 (1988),[1] the Board found that the employer violated Section 8(a)(5) and (1) by its unilateral and untimely withdrawal from multiemployer bargaining and its subsequent refusal to sign the collective-bargaining agreement reached between the employer association and the union. The union had sent a notice of termination of the expiring contract and request for negotiations for a new agreement to each employer member of the association and to nonmember employers with which the union had a collective-bargaining relationship. Like the Union here, however, the union in *Standard Roofing* did not send such a notice to the association itself. The Board nevertheless found that the evidence did not show that the union was seeking individual negotiations with the members of the association, including the employer. The Board found that the individual notices of termination and requests for bargaining did not show either that the union sought to establish individual negotiations with association employers in derogation of the association's authority or that the union sought to undermine the association's authority. 290 NLRB at 199.

My colleagues argue that *Standard Roofing* is inapposite because in that case there was no showing that the union engaged in individual negotiations with any employer association members, whereas in the instant case the Union and the Respondent maintained an ongoing dialogue premised on the expectation of individual bargaining. But, contrary to my colleagues, the Union's post-February 20 conduct cannot be considered individual contract negotiations with the Respondent. True, they culminated in a face-to-face meeting where the Respondent gave the Union a set of "economic proposals," but the Union was expressly wary of accepting that document. Thus, prior to this meeting, Union Official Ihlenfeld had instructed Union Representative Jones that it was unnecessary for the Union to meet with Respondent President Gleason, because the Respondent was signatory to the 2002 agreement. Nevertheless, Ihlenfeld gave Jones permission to meet with Gleason, but instructed Jones not to discuss wages and to speak with an attorney before meeting with Gleason. And at the meeting itself, before taking the Respondent's document styled "Summary of Economic Proposals" proffered by

[9] In light of this conclusion, we find it unnecessary to pass on the Respondent's exceptions that the complaint should be dismissed because, contrary to the judge's finding, the 1999–2002 contract was extended for one year, not terminated, and that the Respondent complied with the contract's terms during the extension year.

[1] Enfd. mem. in pertinent part 920 F.2d 933 (6th Cir. 1990).

Respondent Vice President Wooley, Jones told Wooley and Gleason that the Respondent was signatory to the 2002 agreement. Wooley expressly agreed with that, and the record does not show that Gleason disagreed. Finally, there was no substantive discussion of the Respondent's proposals.

Nor did the Union's conduct toward the Respondent following the February 20 letter demonstrate to the Respondent that the Union consented to or acquiesced in the Respondent's unsuccessful attempt to withdraw from multiemployer bargaining.[2] I agree with my colleagues that the standard set out in *I. C. Refrigeration Service*, 200 NLRB 687 (1982), is applicable here, but I disagree with the result they reach in applying that standard. Thus, the Union's conduct following the February 20 letter—i.e., telling the Respondent that it would meet with it about negotiating a new collective-bargaining agreement and to review the Respondent's issues; failing expressly to dissuade the Respondent of any notion held by the Respondent that the Union was willing to negotiate with the Respondent individually; and, finally (after the Union and the AGC had entered into the 2002 agreement), meeting with the Respondent at the restaurant and accepting a copy of the Respondent's "proposals"—does not constitute a course of action that is clearly contrary to the Union's claim that the Respondent has not withdrawn from multiemployer bargaining.[3] Indeed, the Union's alleged acquiescence in the Respondent's abandonment of multiemployer bargaining is belied by certain conduct by the Union during this same time period, i.e., not meeting with the Respondent about negotiating a new collective-bargaining agreement during March–June despite the Respondent's repeated requests that the Union meet with it, and subsequently demanding that the Respondent abide by the terms of the new 2002 agreement.

Conclusion

For the above reasons, I find, contrary to my colleagues, that the Union has not unequivocally disclaimed representation of the Respondent's employees in the instant multiemployer bargaining unit, under *Retail Associates*, supra, and that the Union has not consented to or acquiesced in the Respondent's abandonment of multiemployer bargaining, under *I. C. Refrigeration*, supra. Consequently, I find that the Respondent has violated Section 8(a)(5) and (1) of the Act as alleged, by failing and refusing to abide by the 2002 collective-bargaining agreement between the Union and the AGC.

Dated, Washington, D.C. October 9, 2003

Dennis P. Walsh, Member

NATIONAL LABOR RELATIONS BOARD

Eryn M. Doherty, Esq., for the General Counsel.
Kevin J. Kinney, Esq. (Krukowski & Costello, S.C.), of Milwaukee, Wisconsin, for the Respondent.
Owen Jones, Field Representative, of New Berlin, Wisconsin, for the Charging Party.

DECISION

FINDINGS OF FACT AND CONCLUSIONS OF LAW

BENJAMIN SCHLESINGER, Administrative Law Judge. On June 1, 1999, the Associated General Contractors of Wisconsin (AGC) and the Bricklayers & Allied Craftworkers Local Unions #1, #3, #6, #7, #9, #11, #13, #19, #21, and #34 and the Wisconsin District Council (the Union) entered into a collective-bargaining agreement for the period from June 1, 1999, to May 31, 2002. On June 10, 2002, the same parties entered into a new agreement, effective from June 1, 2002, to May 31, 2005. Respondent CTS, Inc., was bound by the 1999–2002 agreement, but has not complied with the 2002–2005 agreement, which the complaint[1] alleges is a violation of Section 8(a)(5) and (1) of the Act. Respondent denies that it violated the Act in any manner.

Respondent, a corporation, with an office and place of business in Wales, Wisconsin, has been engaged in plastering, drywalling, insulating, and fireproofing construction. During calendar year 2001, Respondent purchased and received goods valued in excess of $50,000 directly from suppliers located outside Wisconsin. I conclude that Respondent is an employer 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.

On August 22, 2001, Lloyd Gleason, Respondent's president, signed an Independent Contractor—Assumption of Agreement, in which he agreed to "assume and be bound by all the terms and provisions of" the 1999–2002 agreement. In turn, that agreement provided in section 3.4:

[2] As my colleagues acknowledge, it is undisputed that the Respondent's February 25 letter did not satisfy the *Retail Associates* standards for an effective withdrawal from multiemployer bargaining.

[3] In *I. C. Refrigeration* itself, by way of contrast, the Board found that the union acquiesced in the employers' abandonment of multiemployer bargaining where the union engaged in active and extensive negotiations with some members of the multiemployer association who were refusing to sign the recently executed collective-bargaining agreement between the association and the union. The union's postcontract extensive negotiation with the recalcitrant employers in *I. C. Refrigeration*, however, was clearly not comparable to the Union's conversations and post-contract meeting with the Respondent here, as described above and by my colleagues.

[1] The District Council filed its charge against Respondent on July 1 amended it on August 14, 2002. The complaint issued on August 20, and the hearing was held in Milwaukee, Wisconsin, on November 4, 2002.

> The Union recognizes the Associated General Contractors of Wisconsin as the bargaining unit for all Employers who have so authorized the Association for all work covered hereunder. The Association agrees to furnish the union lists of such employers prior to June 1, 1999, and upon request thereafter. Upon such authorization any employer shall become a member of the multi-employer bargaining unit here involved and thereby a party to this Master Agreement. Individual employers who have not so authorized the Association shall, by becoming party to this Master Agreement, also become part of said multi-employer bargaining unit, and said individual employer authorizes the Associated General Contractors of Wisconsin, to negotiate successor Master Agreements on its behalf and said individual employer specifically adopts all provisions of any successor Master Agreements entered into between the Associated General Contractors of Wisconsin and the Union. Withdrawal from the multi-employer bargaining unit may be accomplished only by written notice to the Union and to the Association, at least sixty (60) days, but no more than ninety (90) days prior to the date of expiration of this Agreement or of any renewal period hereof. Notice to the Association, wherever is required herein, shall constitute notice to each and all members of the multi-employer bargaining unit.

On February 25, 2002, Respondent wrote to the Union:

> As per Article I, Duration of Agreement, Section 1.1 of the current contract for 1999–2002 we are terminating our agreement as of May 31, 2002, unless a settlement is reached before such time.

The General Counsel's theory is that Respondent's letter could not lawfully rescind its earlier agreement to be bound by all contracts entered into by AGC. That is accurate. The letter failed in three respects. First, it was untimely. The agreement specifically stated that withdrawal had to be made at least 60 days but no more than 90 days prior to the expiration of the agreement, May 31, 2002. The appropriate dates were, therefore, March 1 to March 31, 2002. Respondent was early by 6 days. Second, section 3.4, quoted above, requires that written notice be provided to both the Union and the AGC. Respondent's letter was sent only to the Union and thus did not comply with the notice that Respondent agreed to provide.

Third, Gleason's notice was conditioned upon no settlement being made before May 31, 2002. If a settlement—and the letter, considered alone, does not make clear who the parties to the settlement are—had been reached before then, he would have been bound by the settlement, under the terms of his own letter. Equally important, Respondent, having agreed to authorize the AGC to act as its bargaining representative and having agreed to be a part of the multiemployer bargaining unit, never indicated in its letter that it was withdrawing its authority from the AGC or withdrawing from the unit. Accordingly, his letter was not clear and unequivocal, but was conditional and did not demonstrate an abandonment of the multiemployer unit and an intent to deal with the Union individually, as required by *Retail Associates, Inc.*, 120 NLRB 388, 394 (1958).

Respondent defends on two grounds. The first is that the complaint does not allege that the 1999–2002 agreement was ever terminated by the Union and AGC and that, because there was no proof that they did, the agreement must have been extended for a year, at least as to Respondent, which has continued to abide by its terms. However, that was not what Respondent agreed to. It agreed to be bound by the then master agreement, the 1999–2002 agreement, and all successor agreements, the first of which is 2002–2005 agreement. Even had one of the parties to the 1999–2002 agreement not properly terminated the agreement, and the record evidence makes that most doubtful, the propriety of the notice was a matter to be raised by the parties to that agreement and not Respondent. In any event, if Respondent wished to rely on the failure to properly terminate the agreement, it was its burden to prove that, not the General Counsel's. There was no proof supporting this defense, and I reject it.

Respondent's second defense is that it did not manifest an unequivocal intention to be bound by group bargaining. While conceding that the multiemployer language relied on in *Ruan Transport Corp.*, 234 NLRB 241, 242 (1978); and *Schaetzel Trucking, Inc.*, 250 NLRB 321 (1980), is certainly different from section 3.4, Respondent nonetheless contends that the legal principles enunciated by the Board remain unchanged: that it will examine all relevant evidence to determine whether an employer has evidenced clear and unequivocal intent to be bound by group bargaining. The only reason that the Board did so in those decisions was that the multiemployer language relied on was, in *Ruan Transport*, ambiguous, or, in both decisions, lacked a delegation of authorization to represent the employer in future negotiations. In order to explain the ambiguity or to determine the scope of the authorization, the Board felt compelled to look at the employer's conduct indicating an intent to be bound by group action. Here, however, the language is unambiguous. There is specific delegation to AGC. No external evidence is necessary or should be considered. The above-quoted section 3.4, contrary to Respondent's contention, is sufficient. This is the agreement that Respondent chose to make, and Respondent is bound by it.

However, while Respondent indicated its unequivocal intent to be bound by group bargaining by assuming 1999–2002 agreement, the Union did not desire to hold Respondent to its agreement. Thus, on February 20, 2002, the Union sent the following letter to "ALL CONTRACTORS," including Respondent:

> Re: Bricklayers & Allied Craftworkers Local # 1, #3, #6, #7, #9, #1 l, #13, #19, #21, #34 WI 1999–2002 Labor Agreement
>
> Pursuant to the provisions of the Bricklayers & Allied Craftworkers International Union Local #1, #3, #6; #7, #9, #11, #13, #19, #21, #34 Wisconsin 1999–2002 Labor Agreement the BAC District Council of Wisconsin hereby gives notice to terminate the agreement effective on the termination date (May 31, 2002).
>
> It is the intention of the District Council to negotiate changes and modifications to the current agreement and to incorporate these modifications into a new agreement.

> Representatives of the District Council are ready and willing to meet and confer with you on mutually convenient dates.

The Union terminated the agreement and wanted to negotiate changes and modifications with its contractors individually—the letter is addressed to the "contractors," not the AGC—and to make a new agreement. The letter closes with the specific offer to meet and confer with the individual contractors on mutually convenient dates. Gleason could only assume from a reading of this letter that his obligations under the 1999–2002 agreement had ended, and that prompted him and his office to call the Union to find out what kind of letter he should write. Unfortunately, the Union chose not to answer, so Gleason, within 4 days after receiving the Union's letter, wrote the Union that he, too, terminated the agreement, unless he reached a settlement with the Union before then, and he repeatedly called Union Field Representative Owen Jones in early spring to set up a meeting, albeit without success.[2] What Gleason was saying in his letter, in layman's language, is that he would have no agreement with the Union, unless a settlement before the termination resulted in a new contract.

In sum, the Union terminated the agreement, and Respondent agreed that it was terminated. The Union offered to bargain individually with Respondent, an offer which is antithetical to the Union's present claim that Respondent was bound by multiemployer bargaining. The Union should not now be permitted to resurrect what it freely ended and force an unwanted multiemployer agreement on Respondent, which correctly believed, from the Union's letter, that it was no longer bound by its agreement to be a part of a multiemployer bargaining unit.[3]

On these findings of fact and conclusions of law and on the entire record, including the briefs submitted by the General Counsel and Respondent, I issue the following recommended[4]

ORDER

The complaint is dismissed.

Dated, Washington, D.C. February 11, 2003

[2] I discredit all of Jones' testimony to the contrary. To the extent that Gleason asked about the status of the negotiations between the Union and the AGC, that did not indicate his attempt to accept or reject their agreement, but merely to aid him in his own negotiations.

[3] Although factually distinguishable, this conclusion finds support in Board decisions finding that a union acquiesced in an employer's faulty or untimely notice of withdrawal from a multiemployer unit. See, e.g., *I. C. Refrigeration Service*, 200 NLRB 687, 690 (1972).

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