Hayman Electric, Inc. *and* Local Union 211, International Brotherhood of Electrical Workers *and* Local Union No. 592, International Brotherhood of Electrical Workers

Frank J. Byers, Inc. *and* Local Union 211, International Brotherhood of Electrical Workers *and* Local Union No. 592, International Brotherhood of Electrical Workers

Janney Electrical Contractor, Inc. *and* Local Union 211, International Brotherhood of Electrical Workers

Pyramid Electric, Inc. *and* Local Union 211, International Brotherhood of Electrical Workers. Cases 4–CA–20687, 4–CA–21001, 4–CA–20690, 4–CA–20841, 4–CA–20882, 4–CA–20689, and 4–CA–20691

August 25, 1994

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND COHEN

On January 27, 1994, Administrative Law Judge Wallace H. Nations issued the attached decision. The Respondent, Hayman Electric, Inc., and the General Counsel filed exceptions. The Respondent filed a supporting brief[1] and the General Counsel and the Charging Party, Local Union No. 592, International Brotherhood of Electrical Workers (the Union), filed answering briefs.

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,[2] findings,[3] and conclusions and to adopt the recommended Order.[4]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondents, Hayman Electric, Inc., Vineland, New Jersey; Frank J. Byers, Inc., Clayton, New Jersey; Janney Electrical Contractor, Inc., Estell Manor, New Jersey; and Pyramid Electric, Inc., Collings Lake, New Jersey, their officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] Hayman Electric, Inc. is the only Respondent filing exceptions. Its exceptions are limited to the judge's findings concerning its relationship with and conduct toward Local Union No. 592, International Brotherhood of Electrical Workers.

[2] It is undisputed that the Respondent was shown authorization cards for its employees. Accordingly, we find it unnecessary to reach the judge's discussion at fn. 8 of his decision concerning whether it would have been significant to the question of majority status if the cards had not been shown.

Member Cohen agrees with the judge's ruling that under the rationale of *Casale Industries*, 311 NLRB 951 (1993), the Respondent is time-barred from questioning the Union's majority status as of the signing of the recognition agreement. He affirms the judge's conclusion that the Respondent violated Sec. 8(a)(5) of the Act solely on that ground.

[3] The Respondent 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. In this regard, we reject the Respondent's contention that the judge's crediting of NECA Chapter Manager Knecht's testimony over that of Walter Hayman is based on a factual error concerning Hayman's past involvement with the Union. The judge noted that Hayman was once an assistant business manager for the Union and would have more than just a passing knowledge of labor relations. The Respondent correctly asserts that there is no evidence that Hayman was ever an assistant business manager for the Union. However, the judge's credibility resolution is not based solely on this error. The judge's principal reasons for crediting Knecht's denial that he offered any explanation to Hayman about the Union's cover letter and recognition agreement is that the explanation Hayman attributed to Knecht was unbelievable and the documents standing alone made complete sense. We find that this provides sufficient support for the judge's credibility resolution.

The General Counsel excepts to a factual error by the judge and to the judge's failure to make a factual finding. The correct date for the recognition agreement executed by Hayman with IBEW Local 211 is November 27, 1990. Further, the record shows that the Respondent, Janney Electrical Contractor, Inc., signed a Letter of Assent binding it to the NECA agreement with IBEW Local 211 for residential work, effective December 1, 1989.

[4] The label for the notice for the Respondent, Pyramid Electric, Inc., is corrected to read ''Appendix D.''

Barbara O'Neill, Esq., for the General Counsel.
Denise M. Keyser, Esq. and *Ian D. Meklinsky, Esq.*, of Haddonfield, New Jersey, for the Respondents.
Michael Katz, Esq., of Philadelphia, Pennsylvania, for Charging Party Local No. 592.
Robert F. O'Brien, Esq., of Haddonfield, New Jersey, for Charging Party Local 211.

DECISION

STATEMENT OF THE CASE

WALLACE H. NATIONS, Administrative Law Judge. On April 30, 1992, Local Union 211, International Brotherhood of Electrical Workers (IBEW 211) filed unfair labor practice charges against Hayman Electric, Inc., Frank J. Byers, Inc., Janney Electrical Contractor, Inc., and Pyramid Electric, Inc. (individually Hayman, Byers, Janney, and Pyramid or collectively Respondents). Between June 25 and August 31, 1992, Local Union No. 592, International Brotherhood of Electrical Workers (IBEW 592) filed unfair labor practice charges against Byers and Hayman. Between July 30 and August 27,

1992, the Regional Director for Region 4 issued complaints and notices of hearing in all of the IBEW 211 cases and the IBEW 592 cases against Byers. On October 7, 1992, the Acting Regional Director issued a complaint and notice of hearing in the IBEW 592 case against Hayman. On December 16, 1992, the Regional Director issued an order consolidating cases which consolidated for trial all the above referenced cases. All of the complaints, with the exception of IBEW 592's complaint against Byers in Case 4–CA–20882, allege that Respondents violated Section 8(a)(1) and (5) of the National Labor Relations Act (the Act), by refusing to meet and bargain with IBEW 211 and IBEW 592 (collectively referred to as the Unions), thereby withdrawing recognition from the Unions. IBEW 592's complaint against Byers in Case 4–CA–20882 alleges that Byers violated Section 8(a)(1) and (5) of the Act by refusing to provide certain information to IBEW 592.

Between August 11 and October 13, 1992, the Respondents filed timely answers to the complaints referenced above. Respondents admit service of the charges, jurisdiction, and that the Unions are labor organizations within the meaning of Section 2(5) of the Act. Respondents also admit agency status and that they were each members of the National Electrical Contractors Association (NECA) and bound to the collective-bargaining agreements between NECA and the Unions. In addition, the Respondents admit that Hayman and Byers had collective-bargaining relationships with the Unions, that Janney and Pyramid had collective-bargaining relationships with IBEW 211, and that in a timely fashion, the Respondents notified the Unions that they intended to terminate their collective-bargaining agreements with the Unions upon the expiration of the NECA agreements. The Respondents also admit that the Unions requested bargaining for new contracts and that the Respondents declined to do so because they viewed their relationships to be merely 8(f) relationships which they could revoke upon contract expiration. Counsel for the General Counsel asserts that the Respondents had an obligation to meet and bargain with the Unions because their relationships were in fact 9(a) relationships. As for IBEW 592's additional complaint against Byers, Byers asserts that it provided some information to IBEW 592 and that it had no obligations to provide the rest of the information.

Hearing was held before me in Philadelphia, Pennsylvania, on February 9 and 10, 1993. Briefs were filed by the parties as well as citations to cases decided after the hearing. Based on the entire record, including my observation of the demeanor of the witnesses, and after consideration of the briefs, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent Hayman, a New Jersey corporation, has an office and principal place of business in Vineland, New Jersey. Respondent Byers has an office and principal place of business in Clayton, New Jersey. Respondent Janney, a New Jersey corporation, has an office and principal place of business in Estell Manor, New Jersey. Respondent Pyramid is a New Jersey corporation and has an office and principal place of business in Collings Lake, New Jersey. All the Respondents are engaged in the business of electrical construction and maintenance. Having admitted the jurisdictional allegations of the complaints, I find that Respondents are now, and have at all material times been, employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE INVOLVED LABOR ORGANIZATIONS

It is admitted and I find that the Unions are labor organizations within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Issues for Determination*

The complaints present for determination two issues:

1. Did the Unions establish 9(a) relationships with Respondents?

2. Did Respondent Byers unlawfully refuse to provide certain information requested by IBEW Local 592?

B. *Background Information*

For many years, IBEW Locals 211 and 592 have represented employees employed by contractors in the electrical business on the basis of their geographic jurisdiction. IBEW Local 211's jurisdiction encompasses the southeastern portion of the State of New Jersey, Cape May County, and most of Atlantic County, New Jersey. IBEW Local 592's jurisdiction encompasses the southwestern portion of the State of New Jersey, the eastern section of Salem County, Gloucester County, the western section of Atlantic County, and almost all of Cumberland County, New Jersey. The Respondents are electrical contractors that have worked in both Union's jurisdictions. The Respondents have on occasion moved their employees who were members of one involved Local Union into the jurisdiction of another Local to perform work there. This was done under the ''portability'' provisions of their contracts which allowed a limited number of journeymen electricians to be brought into the jurisdiction of a Local of which they are not a member. The Respondents could also move employees between the jurisdictions of the involved Local Unions under the residential contract to which they were parties. The residential portion of the Respondent's businesses, however, was only a fraction of their overall business, with one of the largest Respondents estimating it accounted for 15 percent of its business. The Respondents have at all relevant times been members of NECA and bound to the various collective-bargaining agreements entered into between NECA and the Unions. Specifically, NECA had two collective-bargaining agreements with IBEW Local 211: a contract for commercial inside work whose term ran from September 1, 1989, through August 31, 1992, and a contract for commercial outside work whose term ran from October 1, 1990, through September 30, 1992. NECA had two collective-bargaining agreements with IBEW Local 592: a contract for commercial inside work and a contract for commercial outside work whose terms ran from October 1, 1989, through September 30, 1992. NECA also had a collective-bargaining agreement covering residential work with both Unions, as well as IBEW locals 269 and 439, whose term ran from October 1, 1990, through September 30, 1992, otherwise referred to as the ''crop'' agreement.

Byers signed letters of assent binding it to the NECA agreement with IBEW Local 211 for commercial inside and

outside work, effective February 27, 1989. Pyramid signed a letter of assent binding it to the NECA agreements with IBEW Local 211 for commercial inside work, effective June 1, 1989. Hayman signed a letter of assent binding it to the NECA agreement with IBEW Local 211 for commercial inside work, effective November 27, 1990. Janney signed letters of assent binding it to the NECA agreements with IBEW Local 211 for commercial inside work, effective October 31, 1988. Byers signed letters of assent binding it to the NECA agreements with IBEW Local 592 for commercial inside work, effective March 23, 1989, commercial outside work, effective August 1, 1989, and residential work, effective August 1, 1989. Hayman signed letters of assent binding it to the NECA agreements with IBEW Local 592 for residential work, effective July 28, 1989, and commercial inside work, effective August 20, 1989.

After the Board issued its decision in *John Deklewa & Sons*, 282 NLRB 1375 (1987), the IBEW sent its various locals information dealing with ways to convert existing 8(f) relationships into 9(a) relationships. Both Local Unions involved in this proceeding set up a procedure to do that with electrical contractors with whom they had a contractual relationship. IBEW Local 592 took the following steps: (1) it had new letters of assent signed by electrical contractors doing business in its jurisdiction;[1] (2) it had new authorization for recognition cards signed by its members; (3) the contractors were then sent a packet containing signed authorization cards for their employees the Local showed on its manning board as then working for the contractor, together with a letter of explanation and what is termed hereinafter as a ''recognition agreement.'' The letter sent to the contractors reads:

> As per the recognition language contained in our Letter-of-Assent, enclosed please find copies of Authorization-for-Recognition cards signed by a majority of your bargaining unit employees. This proof of majority status converts our Agreement from Section 8(f), pre-hire status to Section 9(a) majority status.

The recognition agreement calls for the employer's signature, title, name of company and date. It reads:

> I have received and reviewed the authorization cards signed by my employees that empowers Local 592 IBEW to represent them in collective bargaining and I concur.

Local 211 followed a similar procedure. It had new authorization cards signed on a voluntary basis each time a member was referred to a job. Its business manager, George Fenwick, testified that the various contractors with whom it had dealings were shown the cards for their employees and then asked to sign a voluntary recognition agreement. The IBEW Local 211 recognition agreement reads:

> The below named employer, having satisfied itself that International Brotherhood of Electrical Workers Local Union 211, represents a majority of its employees in a unit appropriate for collective bargaining, does by the signing of this document agree to negotiate and bargain with Local Union 211 either by itself or through its chosen representative, recognizing Local Union 211 as the exclusive bargaining representative of said employees in accordance with the provisions of Section 9(a) of the National Labor Relations Act, as amended.

The recognition agreement called for the signatures of a representative of the involved employer and the Union and a date of signing. After the agreement was executed, Local 211 sent to the Employer a packet containing a cover letter, authorization cards signed by the Employer's employees, and a copy of the previous months benefits contribution form listing the contractor's employees for that month. The cover letter reads:

> Enclosed for your records is a fully executed copy of the Recognition Agreement.
>
> In addition, attached is a copy of Authorization for Representation cards signed by (appropriate number) of your employees. That number represents a majority of your employees in an appropriate bargaining unit.
>
> Also attached is a copy of last month's NEBF report for your company that shows these are the employees for which you are paying fringe benefits.
>
> In accordance with the Letter of Assent you signed, this will convert our Section 8(f) pre-hire relationship to a Section 9(a) relationship under the National Labor Relations Act. If you have any questions, please contact me immediately.

C. *The Action Taken by Respondents in Response to the Unions' Demand for 9(a) Recognition*

1. Respondent Byers

Frank Byers signed a recognition agreement for Local 211 as set out above on behalf of Respondent Frank J. Byers, Inc. on April 10, 1989, and it was signed by Fenwick on behalf of Local 211 on April 12. The Local sent Byers a packet as described above with the cover letter dated April 28, 1989, and enclosed six authorization cards. The cards were signed by employees Rodney D'Ottavio, dated January 23, 1989, Glenn Petersen, dated January 23, 1989, George Gross, dated February 27, 1989, Ronald Lucas, dated February 23, 1989, James Schmitz, dated February 27, 1989, and Milburn Thomas, dated February 23, 1989.[2] The contribution report enclosed with the packet lists all these men and no one else.

Byers testified that he saw a copy of a blank Local 211 recognition agreement at some point before he signed one. He testified that this was given to him by NECA Chapter Manager Joseph Knecht. According to Byers, he inquired of Knecht about the significance of the agreement and Knecht said he was unclear as to its meaning, but would report back after checking with NECA's attorneys. Byers testified that

[1] These letters of assent contain the following pertinent language:

> The Employer agrees that if a majority of its employees authorizes the Local Union to represent them in collective bargaining, the Employer will recognize the Local Union as the exclusive collective bargaining agent for all employees performing electrical construction work within the jurisdiction of the Local Union on all present and future jobsites.

[2] The names of various employees for whom cards were sent to the Respondents are spelled differently throughout the record and the exhibits. I have attempted to find the most likely spelling and having done so, have used that spelling throughout this decision.

Knecht subsequently reported that ''the agreement was not a major concern. The agreement had to do with the IBEW being able to maintain certain controls over different types of benefits and different funds around the country having to do with the IBEW and their members.'' Byers testified that he accepted this explanation without question and signed and returned the recognition agreement to Local 211. Knecht testified that he had a conversation with Byers in April 1989 relating to the new letters of assent and did not give advice about the recognition agreements. In fact, he testified that the first time he saw such an agreement was about 5 months prior to the hearing in this proceeding. With regard to the question of Byers about the letters of assent, he testified that he told Byers that ''it was just another factor of doing business with the IBEW.'' I do not credit Byers' testimony about the purported advice given him by Knecht about the recognition agreement and credit Knecht's testimony that he and Byers never discussed the matter. Knecht is still NECA chapter manager and presumably is aligned with Respondents in this matter. Moreover, the explanation of the meaning of the recognition agreement espoused by Byers simply does not make sense and totally ignores the clear intent of the agreement set out in its terms and amplified in the cover letter sent by Local 211 and one from Local 592 which he received in May 1989.

Local 592 sent a packet as described above to Byers on May 25, 1989, by certified mail, return receipt requested. The packet was signed for by Byers on May 27, 1989. The enclosed recognition agreement was signed by Frank Byers and dated May 31, 1989, and returned to the Local Union.

The cards shown to have been sent to Byers included those for IBEW Local 592 members, Carl Chowing, Richard DeMarco, Gordon Aranjo, Carl Howell, and Kenneth Simpson. With the exception of the card for DeMarco, which was not dated, the cards were signed in February, April, and May 1989. The Local 592 monthly benefits contribution report used by the Union and employers to report hours and wages for employees reflects that for May 1989, Byers reported income and hours for six employees, C. Howell, G. Aranjo, W. McCullough, R. Demarco, K. Simpson, and C. Chowing.

Byers admits receiving and signing the recognition agreement from Local Union 592, but denies receiving the cards and the letter of explanation. I do not credit his denial. He told a Board agent in the investigation of this case and a Federal district court that he had never received the cards. Subsequently he claims to have found them shortly before this hearing began. Byers' testimony in other respects was shown to be either not truthful or incorrect as a matter of failed memory, as for example his testimony about his purported conversations with Knecht about the Local 211 recognition agreement. I believe that to be the case with respect to what he received from IBEW Local 592 and credit the Local with sending him the entire packet containing the letter dated May 25, 1989, the cards described above, and the recognition agreement.

Byers never contacted either Local Union about the material, and prior to his refusal to bargain in 1992, never questioned the majority status of IBEW Locals 211 and 592, the appropriateness of the unit, or the effect of signing the recognition agreement on the relationship between the Local Union and his Company. The Respondent introduced evidence which purports to show that for the period April 10, 1987, through April 10, 1989, there were approximately 11 Byers employees who had worked in the geographic jurisdictions of Local 211 and: (1) who had been employed for at least 30 working days in the 12-month period immediately preceding April 10, 1989; or (2) who had some employment in the 12-month period immediately preceding that date and had a cumulative amount of employment of 45 days or more in the 24-month period immediately preceding April 10, 1989. It also introduced similar information which showed that approximately 32 Byers employees worked in Local 592's jurisdiction for at least 30 working days in the 12-month period immediately preceding May 31, 1989, or had some employment in the 12-month period immediately preceding that date with a cumulative amount of employment of 45 working days or more in the 24-month period immediately preceding May 31, 1989.[3] On the other hand, Byers did not show that on the dates that he signed the recognition agreements that his employees were not the ones for whom cards were supplied and who were the employees listed on the contribution forms supplied to the Unions by him. Moreover, the business managers for both Local Unions testified credibly that they could have supplied more cards if Byers or any other employer demonstrated having more employees than the ones for which cards were supplied. No such request was made by Byers.

2. Respondent Hayman

Walter Hayman signed a recognition agreement with Local 211 on November 27, 1990. Hayman testified that he signed the recognition agreement under what he called an intimidated state of mind. He had a contract to do electrical work on a McDonald's restaurant being constructed within the jurisdiction of Local 211. Though he had received permission before construction started to bring in an employee who was a Local 592 member, when work began Local 211 objected. After a round of discussions which involved the International Union, he was allowed to use the employee, Leo Meade, but had to first sign a letter of assent with Local 211. He was sent a letter by Local 211 which stated that he had to come to the Local's office and sign a new letter of assent and recognition agreement. When he went to the union hall to sign this letter, he was also given a Local 211 recognition agreement to sign. He testified that he signed everything put in front of him and does not remember seeing an authorization card for Meade at the time. He did read the recognition agreement ''real fast'' before signing it. The recognition agreement is dated November 27, 1989. According to Fenwick, a copy of Meade's card, dated October 22, 1990, was shown to Hayman before he signed the agreement.

At the time of signing, Hayman did not question the majority status of Local 211, the appropriateness of the unit, or any other facet of the recognition he was extending. Meade was the only Hayman employee working in the jurisdiction of Local 211 when the card was signed. If as claimed by Respondent Hayman, the Local 211 recognition agreement was signed because he did not believe that Meade could work in the Local's jurisdiction unless he did so, it does not explain

[3] I allowed this information in the record over the objection of General Counsel. I do not believe this information is necessary to the correct decision in this proceeding, but allowed it in evidence to afford the Respondents to make their full argument to the Board.

why he did not repudiate the agreement upon completion of the job, or why he did not file a grievance asserting the portability provisions of the contract were being violated. As Hayman did not repudiate his extension of voluntary recognition until well into 1992 when the other Respondents also repudiated them, I do not credit his late assertion of intimidation.

On March 29, 1991, Local 211 sent Hayman a cover letter together with an executed copy of the new letter of assent and recognition form. It asked Hayman to contact Fenwick immediately if he had any questions. Hayman did not contact Fenwick and did not question the agreement, the majority status of the Union, nor the appropriateness of the unit upon receipt of this letter.

Local 592 sent Hayman the packet described above together with authorization cards signed by Robert Dooley on May 1, 1989, Leo Meade on April 29, 1989, and Mike Vizzard, undated. The contribution form for Hayman's business for the month of April shows as Hayman's employees R. Dooley, L. Meade, W. Vizzard, and K. Poloff. Vizzard testified that he signed the card sometime in May 1989. The acknowledgement letter was signed by Hayman on May 30, 1989, and returned to the Local Union. In his direct testimony, Hayman testified that he received three cards with the recognition agreement. On cross-examination, he asserted that he did not receive either the cover letter or the cards with the recognition agreement. I did not find his testimony in this regard to be credible. I find that he received the cover letter, authorization cards, and recognition agreement in the same package.

Hayman also testified that he called Knecht and asked him about the Local 592 recognition agreement at the time he received it. According to Hayman, Knecht told him that ''it was nothing more than the employees somehow were getting their fringe benefits and the union didn't like it and it was to protect the union which made sense to me at the time because a man had hired me, we were doing some work at a 98 and if he went out of town he would have had just enough time to collect his retirement benefits out of Vineland so I figured that makes sense to me and I just went along with it. He [Knecht] told me it had to do with the fringe benefits, that somehow the men were getting their fringe benefits in an envelope and this was to stop it.'' Knecht testified that he did not discuss the recognition agreement with Hayman and as noted above did not see a recognition agreement until about 5 months before this hearing. I credit Knecht's testimony that he did not give Hayman the advice Hayman purportedly received. Again the purported explanation is not believable and the cover letter and recognition agreement make complete sense. It should also be noted that at one time, Hayman was an assistant business manager for Local 592 and would have more than just a passing knowledge of labor relations.

While acknowledging that three cards sent to Hayman by Local 592 represent a majority of Hayman's employees in May 1989, it introduced evidence that eight persons worked for Hayman in the Local's jurisdiction for at least 30 working days in the 12-month period immediately preceding May 31, 1989. Hayman did not ask to see cards for these employees, however.

3. Respondent Pyramid

Local 211 sent a letter dated April 24, 1989, to Pyramid, which reads:

> A recent review of our files has revealed that we are lacking certain vital documents. Accordingly, enclosed are the following:
>
> 1. Five copies of a current Letter of Assent-A; and
> 2. Two Copies of a Recognition Agreement
>
> I am aware that your company is not currently performing work in Local 211 jurisdiction. However, since you do perform work in this Local's jurisdiction from time to time, it is important that I have these documents on file. Please sign all copies of the enclosed documents and return them to me in the enclosed envelope.

Pyramid, by its secretary and shareholder John Medica, signed the recognition agreement on June 1, 1989, and it was signed by Fenwick on June 6. It is identical in its language to the one signed by Byers for Local 211. Pyramid had performed work in the jurisdiction of Local 211 prior to the time the letter was sent. Fenwick believes the Company was working in the area when the recognition agreement was signed.

Medica testified that Pyramid has been in business since 1981 and does commercial and industrial electric work in the jurisdictions of Locals 439, 211, and 592. Pyramid's normal jobs in the period 1989 to 1992 averaged 3 employees, with some calling for 9 or 10 for a short duration of time. There were times when Pyramid employed only one or no employees. He used men from Local 211, and also used some from Local 592. During 1989, he used men exclusively from Local 592.

He testified that the recognition agreement with Local 211 was mailed to him. Upon receipt of the agreement and cover letter, he called Frank Byers, then president of the local NECA chapter. According to Medica, Byers told him he had checked with Knecht and that the letter of recognition was a document to protect the Union against their employees collecting their own benefits. Based on this explanation which I have heretofore found has no basis in fact, Medica signed the agreement and mailed it back. He claims to have had no idea that signing the agreement changed his Company's relationship with the Union. He did not consult an attorney before signing nor he did not speak with any union representative before or after signing to ask them what the agreement meant. In April 1989, he had one Local 592 member working for him. This employee was named Dave DeVleechower. In September 1992, he had two employees, DeVleechower and Ed Watt.

He terminated the authority of NECA to bargain for his Company because he no longer wanted to be a union contractor. He testified that rates are too high, going from one jurisdiction to another is a problem, and with the raises the Union's keep getting, he did not think he could stay in business.

In 1989, Pyramid had one employee from January to September. From September 1989 to approximately June 1990, it had no employees. From June 1990 until September 1992, it had 3 to 4 and up to 10 employees working steadily. He

had employees working in Local 211 jurisdiction from June 1990 to September 1992.

4. Respondent Janney

Janney executed a recognition agreement with Local 211 on December 1, 1989. The Local sent him a letter like the one sent to Byers, enclosing copies of five authorization cards, for employees Robert Larria, dated December 14, 1989, Clarence Davenport, dated December 13, 1989, Charles Parker, dated July 24, 1989, Ralph Tunnell, dated October 13, 1989, and Mark Baillio, dated October 11, 1989. The contribution report for the month of November 1989 reflects as employees, C. Parker, M. Baillio, R. Tunnell, T. Ferguson, G. Hazard, and W. Gallagher. Hazard would not be counted as part of the unit as he worked only 8 hours in the month of November. A contribution report for Janney for December reflects employees as C. Parker and R. Larria. Fenwick stated that Janney was shown three cards when he signed the agreement. The cards from Larria and Davenport were obtained after Janney signed the recognition agreement and were sent subsequently with the packet to Janney.

Janney did not inquire of anyone about the meaning of the agreement nor did he question any aspect of it with Local 211. Janney claims that when he received his letter from Local 211, there were no cards attached. Yet, he did not call or write the Union and inquire about this seeming omission. As was the case with the other Respondents making a similar claim, I do not believe it and find that cards were sent to him with the executed agreement. He claims that when he signed the agreement, he did not understand that it changed his relationship with the Union. I find this difficult to believe as the recognition agreement he signed states this on its face. I do not believe that the signing of agreements with labor unions is any different from an employers signing any other contract in his business. The employer has a duty to inquire before signing and barring some fraud or misrepresentation is bound by what he signs.

Janney further testified that aside from Parker, he had no employee in 1989 that worked more than 21 days. He calculated this by looking at the Union's contribution forms and dividing by eight the number of hours shown for each employee he had during the year. He testified that Robert Larria is a residential wireman from Local 592, that Clarence Davenport is a residential wireman from Local 211 who did not work for Janney because of travel involved, that Mark Baillio is a journeyman electrician from Virginia Beach, Virginia, and that Tunnel is a residential wireman from Local 211.

D. *Discussion and Conclusions with Respect to the Relationship of the Respondents and Local Unions*

1. The legal guidelines for determining whether a 9(a) relationship exists in the construction industry

In *John Deklewa & Sons*, supra, the Board reevaluated the law interpreting Section 8(f) of the Act, along with the associated ''conversion'' doctrine, and announced a new rule. The Board rejected the conversion doctrine which permitted an 8(f) relationship to convert to a 9(a) relationship because it required the Board to '''look back' any number of years into a relationship characterized by sporadic and shifting employment patterns to determine whether the union, at any time, enjoyed majority support.'' 282 NLRB at 1383. The Board viewed the doctrine as creating ''serious practical problems with the reliability and relevance of evidence purporting to establish majority status.'' Id. According to the Board, reaching a conclusion as to whether or not there was a conversion occurred ''in adversarial litigation based on [the factors noted above that were] often incomplete, contradictory . . . unavailable. . . . [not in fact the best indicators of majority status and] based on a highly questionable factual foundation.'' 282 NLRB at 1383–1384.

In rejecting the conversion doctrine, however, the Board in *Deklewa* did not reject the notion that a union seeking to represent employees in the construction industry could never obtain 9(a) status. Indeed, since *Deklewa* the Board has stated that a party can prove the existence of a 9(a) relationship either through a Board-conducted representation election, or a union's express demand for, and an employer's voluntary grant of, recognition to the union based on a contemporaneous showing of union support among a majority of the employees in an appropriate unit. *Deklewa*, 282 NLRB at 1385 and fn. 41; *Golden West Electric*, 307 NLRB 1494 (1992); *J & R Tile*, 291 NLRB 1034, 1036 (1988); *Harris Painting*, 286 NLRB 642 (1987). Short of a Board election, however, the issue of what evidence is required to establish that a union has created a 9(a) relationship is not entirely clear.

In *J & R Tile*, supra, a successor employer in the construction industry filed an RM petition asserting that its predecessor's contract with the union was an 8(f), not a 9(a), collective-bargaining agreement. In that case the only evidence presented to establish that the relationship had been transformed into a 9(a) relationship was that the contract provided for health, welfare, and pension benefits and that the predecessor employer's president had been a union member; therefore he must have known his employees were also union members. The Board looked at the facts twice and in both instances concluded that the evidence presented was ''insufficient to establish that the contract . . . was entered into pursuant to Section 9(a) of the Act.'' 291 NLRB at 1035, 1037. The Board noted in that case that the very availability of 8(f) agreements in the construction industry renders ambiguous a union's demand to execute an agreement and concluded that in order to establish voluntary recognition pursuant to Section 9(a) of the Act in the construction industry, there must be evidence that ''the union unequivocally demanded recognition as the employees' 9(a) representative'' and that ''the employer unequivocally accepted it as such.'' 219 NLRB at 1036. The Board in *Deklewa* and in *J & R Tile* cited *Island Construction*, 135 NLRB 13 (1962), as an example of a case in which a union sought and obtained 9(a) recognition from a construction employer.[4] In *Island Con-*

[4] The Board in *J & R Tile*, supra, also referred to several other cases concerning the burden of proof needed to establish 9(a) status. In *Harris Painting*, supra, the only evidence presented, beside the 8(f) agreement itself, was the existence of a union-security clause in that agreement. In *Brannan Sand & Gravel Co*., supra, the only evidence presented to establish 9(a) status was that the parties' collective-bargaining relationship commenced before the enactment of Sec. 8(f) of the Act. In *American Thoro-Clean*, 283 NLRB 1107 (1987), there was absolutely no evidence presented to establish that the parties had transformed the relationship from an 8(f) to a 9(a) relationship. In all these cases the Board concluded that the burden had not been met.

struction, supra, a union demanded recognition from a construction industry employer asserting that it represented a majority of that employer's employees. The union showed the employer, upon request, authorization cards signed by a majority of the employer's employees at that time, which the employer checked against its payroll list. There was no evidence presented in that case to verify the union's claim of majority status. The Board found the collective-bargaining agreement entered into between the union and the employer after the verification of majority status to be a 9(a) agreement, and not an 8(f) agreement, and therefore a bar to an RC petition filed by another union. In *Precision Striping*, 284 NLRB 1110, 1112 (1987), the Board indicated that in certain circumstances an employer-conducted poll prior to recognition may establish a 9(a) relationship. And finally, the Board has indicated that in situations where an employer admits to the majority status of the union, the 9(a) relationship is established. Thus, in *Carmichael Construction Corp*., 258 NLRB 226 fn. 1 (1981) (cited approvingly in *Brannan Sand & Gravel Co*., 289 NLRB 977, 979 fn. 9 (1988), and *Golden West*, supra, the Board relied on the employer's admission of majority status to satisfy the burden of proof of 9(a) status.

In *Golden West*, an employer filed an RM petition and the Acting Regional Director dismissed the petition as contract barred based on the conclusion that a recognition agreement, very similar to the recognition agreements in the instant cases, established the Union as the 9(a) collective-bargaining representative. On review, the Board remanded the case back to the Region to develop a full record as to ''what evidence, if any, supported the Union's claim, and the Employer's acknowledgment of the Union's status of majority representative.'' Supra at 1494. On remand, the hearing included testimony as to the circumstances surrounding the execution of the recognition agreement, including testimony by both the employer and the union concerning authorization cards that were shown to the employer when the employer was requested to sign the recognition agreement. The testimony essentially established that sometime in September 1988, the union representative visited the employer's jobsite, requested that the employer sign a letter of assent and a recognition agreement, presented the employer with signed authorization cards, and the employer responded, ''Yeah, these are the signatures of the guys.'' Although at trial, the employer testified that he never saw any cards, on cross-examination the employer admitted that he did not doubt that the union represented a majority of his employees at that time. The Board found that the union had met its burden to establish that the relationship had been transformed into a 9(a) relationship:

> [U]nder all the circumstances presented, the Union has established by the weight of the evidence a clear intent of the parties in September 1988 to establish a 9(a) relationship founded on the Union's majority status. The voluntary recognition agreement signed by the Employer by its terms unequivocally states that the Union claimed it represented a majority of the employees and the Employer acknowledged that this was so. In this regard, [the Employer] testified that he had read the voluntary recognition agreement before signing it and, at the time he signed it, was in agreement that the Union represented a majority of his unit employees. Thus, although there is conflicting evidence as to whether the Employer in fact saw the authorization cards, there is no dispute that the Employer knew at the time it signed the recognition agreement that both parties were in accord that the Union was seeking recognition as the unit employees' majority representative and that the Employer was granting the Union recognition as such. [Fns. 5 and 6 omitted; 307 NLRB at 1495.]

In the recent case of *Casale Industries*, 311 NLRB 951 (1993), the Board further discussed what is sufficient to establish a 9(a) relationship in the construction industry and set a time limitation on challenges which may be made to existing apparent 9(a) relationships. In *Casale*, the Board faced a challenge by one union to a longstanding bargaining relationship between an association of contractors and an incumbent union, a relationship which had been created following a private election in which employees of the association's employer-members had been given the choice of being represented by one or the other of two unions. Under the terms of the agreement leading to the election, all parties to it agreed that the winner would be recognized as the employees' bargaining representative just as if certified by the Board. The winner thereafter entered into a series of collective-bargaining agreements with the association that extended over a period of about 6 years. Another union filed a petition with the Board seeking to represent the employees of two employers within the association, Casale and Miller. The petitioner argued that even if the multiemployer bargaining unit could constitute an appropriate unit, the majority showing must be demonstrated on a single-employer basis to satisfy the requirements for a 9(a) status under *Deklewa*. Because there was no showing that a majority of either Casale's or Miller's employees voted to be represented by the incumbent local, the contract cannot be Section 9(a) with respect to either employer. The petitioner also argued that the ''election'' conducted by the parties was insufficient to establish a 9(a) relationship between the incumbent local and the association because the election lacked Board safeguards; there was no ''no union'' choice on the ballot; and the certification was devoid of any delineation of the appropriate unit or the participants. The Regional Director decided that a voluntarily extended 9(a) relationship existed between the association and the incumbent local in the larger multiemployer unit and that the smaller unit sought by the petition was inappropriate. On review of this decision, the Board looked at the relationship and held, 311 NLRB at 952–953:

> Under *Deklewa*, the Board presumes that parties in the construction industry intend their relationship to be an 8(f) relationship. Thus, the burden is on the party who seeks to show the contrary, i.e., that the parties intend a Section 9 relationship.
>
> In the instant case, it is clear that the parties intended a Section 9 relationship. The parties agreed to hold an election and further agreed that the winner would be recognized by the employers ''as if the election had been conducted by the NLRB itself and an appropriate certification(s) issued.'' As no showing of majority status is necessary to establish an 8(f) relationship, the very fact that the parties [intended] to hold an election indicates that they intended to establish a 9(a) relationship by proof of majority support. The parties' analogy

to Board certification . . . is further evidence that they meant to create a 9(a) relationship. Plainly, if the parties had intended only an 8(f) relationship, it would have been entirely unnecessary for them to have entered into these agreements and to have used these procedures.

Of course, even where parties intend a 9(a) relationship, that intention will be thwarted if the union does not enjoy majority status at the time of recognition. Clearly, if majority status is challenged within a reasonable time, and majority status is not shown, the relationship will not be a valid 9(a) relationship.[5]

In the instant case, there is at least a substantial question as to whether majority status has been shown. In this regard, we note that the employees were not presented with a ''no union'' choice. Further, quite apart from this problem, there was no separate tally of the votes of the employees of Casale and Miller. However, the challenge to majority status came 6 years after Section 9 recognition was extended and accepted. The parties reached agreement on three successive contracts during that period. The issue before us is whether to permit a challenge to majority status after 6 years of stability in a multiemployer relationship.

We will not permit the challenge. Our conclusion that the petitions should not be processed in single-employer units is based on the proposition that a challenge to majority status must be made within a reasonable period of time after Section 9 recognition is granted. In *Comtel*, the Board's statement of the governing principles included a requirement that the challenge to majority status be made within a reasonable period of time. In the instant case, the Section 9 recognition was extended 6 years before the challenge to majority status. For the reasons that follow, we believe that this 6-year period was more than a reasonable period of time.

In nonconstruction industries, if an employer grants Section 9 recognition to a union and more than 6 months elapse, the Board will not entertain a claim that majority status was lacking at the time of recognition. A contrary rule would mean that longstanding relationships would be vulnerable to attack, and stability in labor relations would be undermined.

These same principals would be applicable in the construction industry. In *Deklewa*, the Board said that unions in the construction industry should not be treated less favorably than those in nonconstruction industries. As shown above, parties in nonconstruction industries, who have established and maintained a stable Section 9 relationship, are entitled to protection against a tardy attempt to disrupt their relationship. Parties in the construction industry are entitled to no less protection. Accordingly, if a construction industry employer extends 9(a) recognition . . . and 6 months elapse without a charge or petition, the Board should not entertain a claim that majority status was lacking at the time of recognition.[6]

Because the challenge to majority status in this case was made substantially more than 6 months after the grant of Section 9 recognition, we would not permit the challenge. Accordingly, we would not process these petitions in single-employer units.

Because we have found that the appropriate unit for an election in this case is the recognized multiemployer bargaining unit, the petitions seeking single-employer units cannot be processed . . . . [Fns. 11, 13–17, and 19 omitted.]

2. The Unions' established valid 9(a) relationships with Respondents

I have found that each employer has signed a recognition agreement which on its face or as amplified by a cover letter which I have found they received, clearly and unequivocally sets out a union demand for recognition as the 9(a) bargaining representative of the Employers' employees and a voluntary recognition by the Employers of that status. The recognition agreements acknowledge the majority status of the Local Unions. Additionally, each Respondent signed a new letter of assent which clearly states that if a majority of its employees authorizes the Local Union to represent them, the Employer will recognize the Local Union as the exclusive collective-bargaining representative for all employees performing construction work within the jurisdiction of the Local Union on all present and future jobsites.

I can find nothing inappropriate with the unit encompassing the employees of Respondents working within the geographic jurisdictions of the involved Local Unions. This is the historic unit utilized by the parties in their collective-bargaining agreements and there were shown to be differences in the working conditions between the Locals' jurisdictions. Recognizing a union on the basis of its geographic jurisdiction has not been found to be an inappropriate unit. See *Oklahoma Installation Co*., 305 NLRB 812 (1991); *Ameritech Communications*, 297 NLRB 654 (1990); *Wilson & Dean Construction Co*., 295 NLRB 484 (1989); *Dezcon, Inc*., 295 NLRB 109 (1989); *P. J. Dick Contracting*, 290 NLRB 150 (1988).

With respect to the showing of majority status, I find that with the exception of Respondent Pyramid, both Local Unions had valid authorization cards for a majority of each Respondent's employees as reflected on that Respondent's monthly benefits contribution form for the month preceding the signing of the agreements. I find that the cards authorizing Local 592 to represent the named employees were shown to Respondents Byers and Hayman at the time they signed the recognition agreements with that Local Union. Respondents Byers and Janney were supplied with authorization cards demonstrating majority support for Local 211 at the time of their executing a recognition agreement or subsequent to their signing of their agreements. Respondent Hayman may not have seen the card signed by Leo Meade authorizing Local 211 to represent him, but acknowledged at the hearing that Meade was its only employee working in Local 211's

[5] See *Comtel Systems Technology*, 305 NLRB 287 (1991).

[6] *Brannan Sand & Gravel Co*., supra, does not require a contrary result. There was no showing in that case that the parties intended a 9(a) relationship. Rather, the General Counsel argued, unsuccessfully, that the Board should presume that pre-1959 relationships were 9(a) relationships. By contrast, in the instant case, there is a showing that the parties intended a 9(a) relationship. Similarly, in *J & R Tile*, supra, and in *American Thoro-Clean*, supra, there was no showing that the parties intended to have a 9(a) relationship.

jurisdiction at the time of his signing of the recognition agreement with Local 211.

With respect to Pyramid, Local 211 sent Pyramid a letter on April 24, 1989, at a time when Pyramid was not working in Local 211's jurisdiction, and requested that Pyramid execute a letter of assent and a recognition agreement in anticipation of future work within Local 211's jurisdiction. Fenwick could not recall if any cards were ever presented to Pyramid. The fact that Local 211 could not go back 3 years and piece together what, if anything, it had done to get Pyramid to sign the recognition agreement, and if it had any cards signed by any Pyramid employees, does not compel a finding that no 9(a) relationship had been formed, especially in light of the express language of the recognition agreement which Pyramid signed. There is nothing in the law which would necessarily preclude an employer in the construction industry from entering into a voluntary 9(a) recognition agreement with a union, even if at the time it had no employees, provided it was clear that the union would not be foisted upon the employees but that the employer would give his employees the opportunity to indicate whether they would like to be represented by the union. *General Motors Corp., Saturn Corp. and Auto Workers, UAW*, Cases 7–CA–24872 and 7–CB–6582, Advice Memorandum dated June 2, 1986, 122 LRRM 1187, 1191–1192 (1986). Medica testified that Pyramid had used men from the Local 211 hall. He also testified that he employed one employee in 1989 out of Local 592, that from June 1990 to September 1992, he employed anywhere from three to nine employees in Local 211's jurisdiction with two employees working as of September 1992. Fenwick testified that the contractors had to get their employees to work in Local 211's jurisdiction from the Local 211 hall, with the limited exception of portability, and that all employees referred out to a contractor were requested to sign an authorization card for Local 211. It is thus reasonable to assume that all Pyramid employees who worked in Local 211's jurisdiction after Pyramid executed the recognition agreement had signed Local 211 authorization cards. Significantly, no Pyramid employee is complaining about the recognition extended Local 211 by Pyramid.

The Unions clearly and unequivocally asserted majority status among the employees in Respondents' work force and based on that assertion demanded recognition. Both Unions were in possession of authorization cards which apparently represented a majority of the Respondents' employees at the time the demand for recognition was made.[7] Each Respondent read the demand and signed the voluntary recognition agreement which acknowledged majority status. None of the Respondents questioned majority status at the time of signing until April 1992, a period ranging from 1-1/2 years to 3 years.[8] None of the Respondents questioned the appropriateness of the unit being defined as the geographical jurisdiction of each involved Local Union for the same period of time. I find that the Local Unions have satisfied the requirements of *J & R Tile* and *Golden West* and have established 9(a) relationships with the Respondents as of the date of execution of the recognition agreements.

I do not credit Respondents' late assertions that they did not understand the significance of what they were signing. The documents they admittedly read and signed clearly state their purpose, that is to change an existing 8(f) relationship to a 9(a) relationship. There was no purpose in the Unions demanding recognition based on majority status and the Respondents signing of recognition agreements if all that was intended was to preserve the existing 8(f) relationships. I believe that the Respondents knew what they were signing and at the time of signing were consciously consenting to changing their relationships with the involved Local Unions to 9(a) status. It was only much later, when economic conditions in the area worsened significantly did Respondents have second thoughts about what they had done.

Finally, I find that the Board's recent holding in *Casale*, supra, bars the Respondents' challenge to their relationship with the involved Locals, or to majority status of the Unions at the time of signing of the recognition agreements or the appropriateness of the involved units, such challenges com-

[7] I believe it is sufficient for the Unions to have established majority status as of the time of signing of the recognition agreements and that it is unnecessary for the Unions in the circumstances here presented to satisfy the eligibility requirements of *Daniel Construction*, 133 NLRB 264 (1963). In *Bay Area Sealers*, 251 NLRB 89 (1980), the union proved 9(a) majority status by showing that on the day the employer signed the collective-bargaining agreement it had signed authorization cards from four of the six employees in the unit. And, in *Golden West*, 307 NLRB at 1495 fn. 6, the Board noted at the end of its decision that ''the evidence shows that, at the time of recognition, the Union had majority support within the unit.''

[8] Although most of Respondents were shown authorization cards for their employees, I would not find it significant to the question of majority status if they had not been given them in light of Respondents' failure to question the Unions about this issue. The Board has repeatedly held from *Deklewa* to *Casale* that construction industry unions are not in a less favored status than those in nonconstruction industries. In a nonconstruction setting, a union may approach an employer and demand recognition asserting that it represents a majority. At that point the employer is free to accept or reject the union's request for recognition, can file an RM petition, and can ask to see the union's evidence of majority status. If the employer asks for verification and is given evidence of majority status, the employer is obligated to recognize the union. See *Linden Lumber Division v. NLRB*, 419 U.S. 301 (1974); *Sullivan Electric Co.*, 199 NLRB 809 (1972). The union, however, is not required to show the employer any evidence of majority status unless the employer requests to see the evidence. *Moisi & Son Trucking*, 197 NLRB 198 (1972); *Soil Engineering Co.*, 269 NLRB 55 (1984); *Marysville Travelodge*, 233 NLRB 527 (1977); *Lincoln Mfg. Co.*, 160 NLRB 1866, 1876–1877 (1966). If an employer voluntarily recognizes a union based solely on that union's assertion of majority status, without verification, an employer is not free to repudiate the contractual relationship that it has with the union outside the 10(b) period, i.e., beyond the 6 months after initial recognition, on the ground the union did not represent a majority when the employer recognized the union. *Morse Shoe, Inc.*, 231 NLRB 13 (1977); *Berbiglia, Inc.*, 233 NLRB 1476 (1977). Moreover, where an employer outside the construction industry expressly recognizes a union as the 9(a) representative, the union becomes the 9(a) representative of the unit employees, unless the employer timely produces affirmative evidence of the union's lack of majority at the time of recognition, i.e., within the 10(b) period. See *Royal Coach Lines*, 282 NLRB 1037 (1987); *E. L. Rice & Co.*, 213 NLRB 746 (1974); *Moisi & Son Trucking*, supra, or, outside the 10(b) period, presents evidence that the employer has a good-faith doubt that the union represents a majority of his current employees, *Auciello Iron Works*, 303 NLRB 562 (1991); *Wayne Electric*, 226 NLRB 409 (1976). The Board's ruling in *Casale*, supra, effectively extends time limitations similar to 10(b) limitations to the construction industry.

ing far after the 6-month period established by the Board for making such challenges. Even if I had not found that the involved Local Unions had satisfied the requirements of *J & R Tile* and *Golden West* and successfully had converted their relationships with Respondents to 9(a) relationships, I would find that Respondents are barred from questioning the relationship established by the signing of the recognition agreements based on the recognition agreements alone, under the holding in *Casale.*

Based on the foregoing, I find that Local Union 592 has had a 9(a) relationship with Respondent Byers since May 31, 1989, and with Respondent Hayman since May 30, 1989. I find that Local Union 211 has had a 9(a) relationship with Respondent Byers since April 10, 1989, with Respondent Hayman since November 27, 1990, with Respondent Janney since December 1, 1989, and with Respondent Pyramid since June 1, 1989. Respondents Byers and Hayman withdrew recognition from and refused to bargain with Local Union 592 since May 1 and July 24, 1992, respectively. Respondents Hayman, Byers, Janney, and Pyramid withdrew recognition from and refused to bargain with Local Union 211 since April 3, May 1, April 3 and 10, 1992. Since the dates of withdrawal of recognition from the Local Unions, Respondents have continued to refuse to recognize and bargain with the Local Unions. Such actions are unlawful and in violation of Section 8(a)(1) and (5) of the Act.

E. *The Information Request by IBEW Local 592*

Sometime in early February 1992, IBEW Local 592 Business Manager Ben Merighi was told by his members that Frank Byers, president of Byers, held a meeting with his employees and asked them if they would stay with him if he went nonunion. Merighi investigated and found that a new corporation had been established to do electrical construction and maintenance under the name Byers Electrical Construction (BEC). BEC was listed as being located at the same address as Byers and was ''composed of'' Frank Byers Jr. and Stephanie A. Clowney, Frank Byers' son and daughter. In order to work as an electrical contractor in New Jersey, the contractor must be licensed by the State. To Merighi's knowledge, neither Clowney nor Byers Jr. were licensed in New Jersey as electrical contractors. Merighi obtained a copy of the business permit issued to BEC for the State of New Jersey. That listing was under a different name, Joseph M. Quinn. At this point Merighi discussed his findings with his attorney, Michael Katz.

On May 29, 1992, Katz wrote a letter to Byers' attorney, Frederick J. Rohloff, requesting information concerning BEC. Noting that IBEW Local 592 had discovered that ''a company trading as Byers Electrical Construction—[was] currently performing work at the Foster-Forbes Millville, New Jersey facility which [was] customarily . . . performed by Frank J. Byers, Inc.,'' Katz requested the following information:

> 1. The identity of the principals (i.e., owners, stockholders, officers, and directors) of Byers Electrical Construction.
>
> 2. Whether Byers Electrical Construction is utilizing any trucks, equipment, tools, or materials which are owned by Frank J. Byers, Inc. or any of its principals.
>
> 3. Whether any electricians who are or who have been employees of Frank J. Byers, Inc. are currently performing the work in question for Byers Electrical Construction.
>
> 4. The wage rates, job classifications, and fringe benefits provided to the employees performing the work.

In response, Frank Byers wrote to Katz dated June 3, 1992. Frank Byers said that he did not ''own or control [BEC and that] . . . [a]ny other information that you have requested will have to be obtained from other sources.''

On June 25, 1992, Katz wrote to Frank Byers requesting additional information. In the June 25 letter, Katz requested this information ''[f]or purposes of enabling Local 592 to monitor and administer its collective bargaining agreements with [Byers] and, further, for purpose of investigating potential grievances.'' Specifically, Katz requested:

> 1. The names and addresses of all officers, stockholders, and directors of Frank J. Byers, Inc.
>
> 2. The names and addresses of all officers, shareholders, and directors of Byers Electrical Construction.
>
> . . . .
>
> 5. Identify the owner of all trucks and equipment utilized by Byers Electrical Construction, state whether Frank J. Byers, Inc. has loaned, leased, sold, or otherwise conveyed or provided any vehicles or equipment to Byers Electrical Construction. If such has occurred, state the date thereof and identify the vehicles and equipment involved.
>
> 6. Payroll records of Frank J. Byers, Inc. from [December 1, 1991] to the present.

On August 13, 1992, Rohloff, responded to this letter. First, Rohloff informed Katz that to the extent IBEW Local 592 had already obtained the information it requested from the State of New Jersey, ''it did not need any further response from him.'' Also, Rohloff informed Katz that Frank Byers is the father of the two principals of BEC, that neither Frank Byers nor Byers has any connection with BEC, and that Byers has made no loans, contributions, payments, or advances of capital to or on behalf of BEC. In addition Byers has not loaned, sold, or otherwise conveyed or provided any vehicles or equipment to BEC ''with the exception of the loaning of some equipment on occasion.'' Finally, Rohloff explained that Byers had already been the subject of several audits and that because Byers and BEC are ''completely separate and distinct business entit[ies]'' Byers is in no position to furnish information concerning that entity.

When a union seeks information concerning data about employees and operations other than those represented by the union in order to establish a double-breasted, single-employer, or alter ego operation, the information is not presumptively relevant but the union must show an objective factual basis for believing that such a relationship between the two operations exists. *Arch of West Virginia*, 304 NLRB 1089 (1991); *Electrical Energy Services*, 288 NLRB 925, 931–932 (1988); *M. Scher & Son*, 286 NLRB 688, 690–691 (1987); *Barnard Engineering Co.*, 282 NLRB 617, 619–621 (1987); *Pence Construction Corp.*, 281 NLRB 322, 324–325 (1986); *Doubarn Sheet Metal*, 243 NLRB 821, 823–824 (1979). A union is entitled to information that is relevant for determining whether a violation of the collective-bargaining

agreement has occurred and to determine whether in fact a grievance should be filed. *Electrical Energy Services*, supra at 932; *Barnard Engineering Co*., supra at 620; *Pence Construction Corp*., supra at 324–325; *Doubarn Sheet Metal*, supra.

I find that the Local Union has met its burden of establishing an objective factual basis for believing that BEC might have a legally relevant relationship with Byers. At the same time Byers is notifying Local 592 that it is terminating its collective-bargaining relationship with Local 592 upon contract expiration, Frank Byers is talking to Local 592 members about remaining as employees of Byers if he chooses to operate nonunion. Local 592's business manager, Merighi, discovers a recent listing with the State of New Jersey with a very similar name, BEC, operating out of the same address, owned by Frank Byers' daughter and son, neither of whom were licensed in the State of New Jersey as electrical contractors. In addition, Merighi is told that BEC is performing work at jobsites awarded to Byers. Under all these circumstances, it was reasonable for Local 592 to conclude that BEC might be related to Byers. *Westmoreland Coal Co*., 304 NLRB 528 (1991); *Jervis B. Webb Co*., 302 NLRB 316 (1991).

In addition, the parties have a 9(a) contractual relationship and therefore Byers has a continuing obligation to recognize, and bargain with, Local 592 upon contract expiration, including an obligation to continue terms and conditions of employment pending negotiations for a new contract. Local 592 is entitled to the requested information to determine to what extent any violations of the contract have occurred by the operation of BEC.

Once the information sought by Local 592 is deemed relevant, the Employer is obligated to provide all the information requested in a timely fashion.[9] The Union is not required to apprise Byers of its reasons for believing that Byers and BEC are one and same[10] and Byers may not refuse to provide information because the Union may have obtained some of the information sought from a different source.[11] In addition, Local 592 is not required to accept at face value Byers' assertion that it is not related to BEC[12] and is entitled to conduct its own investigation and evaluation of the merits of its claim. Nor is Local 592 required to take at face value Byers' assertion that, because it allegedly has no relationship with BEC, the information requested is not in Byers' possession.[13]

By failing and refusing to comply with Local 592's necessary and relevant information request as discussed above, Respondent Byers has violated Section 8(a)(1) and (5) of the Act.

CONCLUSIONS OF LAW

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

2. IBEW Local Unions 211 and 592 are labor organizations within the meaning of Section 2(5) of the Act.

3. The appropriate unit for purposes of collective bargaining within the meaning of Section 9(b) of the Act for IBEW Local Union 211 with respect to Respondents Byers, Hayman, Janney, and Pyramid is their employees working within the geographic jurisdiction of IBEW Local Union 211.

4. IBEW Local Union 211 has been the designated exclusive bargaining representative of the unit based on Section 9(a) of the Act and has been recognized as such by Respondent Byers since April 10, 1989; by Respondent Hayman since November 27, 1990; by Respondent Janney since December 1, 1989; and Respondent Pyramid since April 24, 1989.

5. The appropriateuUnit for purposes of collective bargaining within the meaning of Section 9(b) of the Act for IBEW Local Union 592 with respect to Respondents Byers and Hayman is their employees working within the geographic jurisdiction of IBEW Local Union 592.

6. IBEW Local Union 592 has been the designated exclusive bargaining representative of the unit based on Section 9(a) of the Act and has been recognized as such by Respondent Byers since May 31, 1989, and by Respondent Hayman since May, 30, 1989.

7. By withdrawing recognition from and refusing to bargain with IBEW Local Union 211, Respondents Byers, Hayman, Janney, and Pyramid have engaged in conduct in violation of Section 8(a)(1) and (5) of the Act.

8. By withdrawing recognition from and refusing to bargain with IBEW Local Union 592, Respondents Byers and Hayman have engaged in conduct in violation of Section 8(a)(1) and (5) of the Act.

9. By failing and refusing to supply the information requested by IBEW Local Union 592 in its requests dated May 29 and June 25, 1992, Respondent Byers has engaged in conduct in violation of Section 8(a)(1) and (5) of the Act.

10. The unfair labor practices found to have been committed by Respondents are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that Respondents have engaged in conduct in violation of Section 8(a)(1) and (5) of the Act, it is recommended that they be ordered to cease and desist therefrom and to take certain affirmative action necessary to effectuate the policies of the Act.

Having found that Respondents have unlawfully withdrawn recognition from and refused to bargain with the Local Unions with which I have found they have a 9(a) bargaining relationship, it is recommended that Respondents be ordered to, upon request, recognize and bargain with the Local Unions with which they have been found to have a 9(a) bargaining relationship over wages, hours, and other terms and conditions of employment for their employees in the units found to be appropriate, and if agreement is reached, embody the agreement in a collective-bargaining agreement.

It is recommended that Respondent Byers be ordered to comply with the requests for information filed with it by IBEW Local Union 592 on May 29 and June 25, 1992.

---

[9] *Electrical Energy Services*, supra at 932.

[10] *Barnard Engineering Co*., supra at 620.

[11] *Electrical Energy Services*, supra; *New York Times Co*., 265 NLRB 353 (1982); *Kroger Co*., 226 NLRB 512, 513 (1976).

[12] *Barnard Engineering Co*., supra at 621; *Doubarn Sheet Metal*, supra at 824.

[13] *Arch of West Virginia*, supra at 1089 fn. 1; *United Graphics*, 281 NLRB 463, 465–466 (1986); *Doubarn*, supra.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[14]

ORDER

A. The Respondent, Hayman Electric, Inc., Vineland, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from:

(a) Withdrawing recognition from and refusing to bargain with IBEW Local Union 211 and IBEW Local Union 592 with whom Respondent executed recognition agreements and which Local Unions are the designated collective-bargaining representatives for its employees in the appropriate units.

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

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

(a) Extend recognition to IBEW Local Union 211 and IBEW Local Union 592 with whom it executed recognition agreements as the exclusive collective-bargaining agents for its employees in the appropriate unit and, on request, bargain in good faith with the Local Unions over wages, hours, and other terms and conditions of employment of the unit employees and, if agreement is reached, embody such agreement in a collective-bargaining agreement.

(b) Post at its facility in Vineland, New Jersey, copies of the attached notice marked ''Appendix A.''[15] Copies of the notice on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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

B. The Respondent, Frank J. Byers, Inc., Clayton, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Withdrawing recognition from and refusing to bargain with IBEW Local Union 211 and IBEW Local Union 592 with whom Respondent executed recognition agreements and which Local Unions are the designated collective-bargaining representatives for its employees in the appropriate units.

(b) Failing and refusing to comply with the information requests made by IBEW Local Union 592 on May 29 and June 25, 1992.

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

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

(a) Extend recognition to IBEW Local Union 211 and IBEW Local Union 592 with whom it executed recognition agreements as the exclusive collective-bargaining agents for its employees in the appropriate unit and, on request, bargain in good faith with the Local Unions over wages, hours, and other terms and conditions of employment of the unit employees and, if agreement is reached, embody such agreement in a collective-bargaining agreement.

(b) Comply with the information requests made by IBEW Local Union 592 on May 29 and June 25, 1992.

(c) Post at its facility in Clayton, New Jersey, copies of the attached notice marked ''Appendix B.''[16] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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

C. The Respondent, Janney Electrical Contractor, Inc., Estell Manor, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Withdrawing recognition from and refusing to bargain with IBEW Local Union 211 with whom Respondent executed a recognition agreement and which Local Union is the designated collective-bargaining representative for its employees in the appropriate unit.

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

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

(a) Extend recognition to IBEW Local Union 211 with whom it executed a recognition agreement as the exclusive collective-bargaining agent for its employees in the appropriate unit and, on request, bargain in good faith with the Local Union over wages, hours, and other terms and conditions of employment of the unit employees and, if agreement is reached, embody such agreement in a collective-bargaining agreement.

(b) Post at its facility in Estell Manor, New Jersey, copies of the attached notice marked ''Appendix C.''[17] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

---

[14] 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.

[15] 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.''

[16] See fn. 15, above.

[17] See fn. 15, above.

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

D. The Respondent, Pyramid Electric, Inc., Collings Lake, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Withdrawing recognition from and refusing to bargain with IBEW Local Union 211 with whom Respondent executed a recognition agreement and which Local Union is the designated collective-bargaining representative for its employees in the appropriate unit.

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

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

(a) Extend recognition to IBEW Local Union 211 with whom it executed a recognition agreement as the exclusive collective-bargaining agent for its employees in the appropriate unit and, on request, bargain in good faith with the Local Union over wages, hours, and other terms and conditions of employment of the unit employees and, if agreement is reached, embody such agreement in a collective-bargaining agreement.

(b) Post at its facility in Collings Lake, New Jersey, copies of the attached notice marked ''Appendix D.''[18] Copies of the notice on forms provided by the Regional Director for Region 4, shall, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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

[18] See fn. 15, above.

APPENDIX A

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

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT withdraw recognition from and refuse to bargain with IBEW Local Union 211 and IBEW Local Union 592 with whom we executed recognition agreements and which Local Unions are the designated collective-bargaining representatives for our employees in the appropriate units.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of rights guaranteed by Section 7 of the Act.

WE WILL extend recognition to IBEW Local Union 211 and IBEW Local Union 592 with whom we executed recognition agreements as the exclusive collective-bargaining agents for our employees in the appropriate unit and, on request, bargain in good faith with the Local Unions over wages, hours, and other terms and conditions of employment of the unit employees and, if agreement is reached, embody such agreement in a collective-bargaining agreement.

HAYMAN ELECTRIC, INC.

APPENDIX B

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

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT withdraw recognition from and refuse to bargain with IBEW Local Union 211 and IBEW Local Union 592 with whom we executed recognition agreements and which Local Unions are the designated collective- bargaining representatives for our employees in the appropriate units.

WE WILL NOT fail and refuse to comply with the information requests made by IBEW Local Union 592 on May 29 and June 25, 1992.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of rights guaranteed by Section 7 of the Act.

WE WILL extend recognition to IBEW Local Union 211 and IBEW Local Union 592 with whom we executed recognition agreements as the exclusive collective-bargaining agents for our employees in the appropriate unit and, on request, bargain in good faith with the Local Unions over wages, hours, and other terms and conditions of employment of the unit employees and, if agreement is reached, embody such agreement in a collective-bargaining agreement.

WE WILL comply with the information requests made by IBEW Local Union 592 on May 29 and June 25, 1992.

FRANK J. BYERS, INC.

APPENDIX C

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

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT withdraw recognition from and refuse to bargain with IBEW Local Union 211 with whom we executed a recognition agreement and which Local Union is the designated collective-bargaining representative for our employees in the appropriate unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of rights guaranteed by Section 7 of the Act.

WE WILL extend recognition to IBEW Local Union 211 with whom we executed a recognition agreement as the exclusive collective-bargaining agent for our employees in the appropriate unit and, on request, bargain in good faith with the Local Union over wages, hours, and other terms and conditions of employment of the unit employees and, if agreement is reached, embody such agreement in a collective-bargaining agreement.

JANNEY ELECTRICAL CONTRACTOR, INC.

APPENDIX D

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

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT withdraw recognition from and refuse to bargain with IBEW Local Union 211 with whom we executed a recognition agreement and which Local Union is the designated collective-bargaining representative for our employees in the appropriate unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of rights guaranteed by Section 7 of the Act.

WE WILL extend recognition to IBEW Local Union 211 with whom we executed a recognition agreement as the exclusive collective-bargaining agent for our employees in the appropriate unit and, on request, bargain in good faith with the Local Union over wages, hours, and other terms and conditions of employment of the unit employees and, if agreement is reached, embody such agreement in a collective-bargaining agreement.

PYRAMID ELECTRIC, INC.