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Crossroads Electric, Inc., and its alter ego Greer and Associates Electrical, Inc. *and* International Brotherhood of Electrical Workers, Local Union 429, AFL–CIO, CLC. Case 26–CA–21574

December 20, 2004

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

On September 1, 2004, Administrative Law Judge George Carson II issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief to the Respondent's exceptions.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Crossroads Electric, Inc., and its alter ego Greer and Associates Electrical, Inc., Nashville, Tennessee, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Dated, Washington, D.C. December 20, 2004

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Rosalind Eddins, Esq., for the General Counsel.
Bruce E. Buchanan and Michael D. Oesterle, Esqs., for the Respondent Greer and Associates Electrical, Inc.
Mr. Micheal Thomas, for the Respondent Crossroads Electric, Inc.
Mr. Michael Bearden and Sue D. Gunter, Esq. (on brief), for the Charging Party.

DECISION

STATEMENT OF THE CASE

GEORGE CARSON II, Administrative Law Judge. This case was tried in Nashville, Tennessee, on July 14 and 15, 2004, pursuant to a complaint that issued on April 30, 2004, following the filing of the charge in the above captioned case on February 20, 2004. The complaint alleges that Greer and Associates Electrical, Inc., is the alter ego of Crossroads Electric, Inc., and that it violated Section 8(a)(5) of the National Labor Relations Act by failing to honor the terms of the collective-bargaining agreement between Crossroads and the Union. The Respondents' answers deny all violations of the Act. I find that Greer and Associates is the alter ego of Crossroads and did fail to honor the terms of the collective-bargaining agreement.[1]

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, the Charging Party, and the Respondent Greer and Associates, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, Crossroads Electric, Inc, Crossroads, a corporation, was formerly engaged in electrical construction work from its facility in Nashville, Tennessee. Crossroads, in conducting its business, annually provided services valued in excess of $50,000 to enterprises engaged in interstate commerce. Crossroads admits, and I find and conclude, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Respondent, Greer and Associates Electrical, Inc., Greer and Associates, is a corporation engaged in electrical construction work from its facility in Nashville, Tennessee. Greer and Associates, in conducting its business, annually provides services valued in excess of $50,000 to enterprises engaged in interstate commerce. Greer and Associates admits, and I find

[1] 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.

[2] Chairman Battista agrees with former Chairman Hurtgen's view that the General Counsel must show, inter alia, an intent to avoid legal obligations under the Act in order to prove alter ego status. *Fallon-Williams, Inc*., 336 NLRB 602, 606 (2001). As the judge found, the General Counsel met that burden in the present case.

Member Schaumber agrees that substantial evidence supports the judge's finding of alter ego status, including an intent to evade the obligations of Crossroads' 8(f) agreement with the Union, and finds it unnecessary to rely on either the judge's inference that Greer and Associates had no need for working capital because the Randolphs' (Greer's in-laws) "bankroll" was "behind it," or the judge's inference "that the approach made by Greer to Billy [sic] Cole for working capital was intended to obfuscate the plan that Thomas would join Greer and Associates."

[1] In view of this finding, it is unnecessary to address the complaint allegation that Crossroads and Greer and Associates are a single employer. See *Johnston Corp.*, 313 NLRB 170 (1993).

and conclude, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Respondents admit, and I find and conclude, that International Brotherhood of Electrical Workers, Local Union 429, AFL–CIO, CLC, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Overview

Crossroads was established in 1997 and was owned initially by Billy Randolph, Thomas Greer, and Micheal Thomas.[2] Billy Randolph is married to Barbara Randolph, the sister of Micheal Thomas. Stacey Greer, wife of Thomas Greer, is the daughter of Billy and Barbara Randolph. Stacey Greer performed secretarial functions for Crossroads. Barbara Randolph kept the books for Crossroads. In 1997, Crossroads agreed to be bound by the terms of the collective-bargaining agreement between the Union and the National Electrical Contractors Association. The current agreement is effective from September 1, 2001, through August 31, 2005. Crossroads ceased operating in late 2003.

Greer and Associates was incorporated by Thomas Greer on July 22, 2003.[3] Greer resigned from Crossroads on August 18, and began operating Greer and Associates. Stacey Greer performs secretarial functions for Greer and Associates. Barbara Randolph keeps the books. Micheal Thomas was elected Vice President of Greer and Associates on December 29, and became coowner of Greer and Associates on January 1, 2004. The complaint alleges that the Union, verbally on February 6, 2004, and in writing on February 19, 2004, requested that Greer and Associates recognize the Union. Greer and Associates' answer admits that, by letter dated March 5, 2004, it "informed the Union . . . that it did not recognize the Union as the exclusive collective bargaining representative of its employees."

The complaint alleges that Greer and Associates is the alter ego of Crossroads. As hereinafter discussed, there are multiple interlocking family relationships among the principals of both corporations and various financial transactions between those family members and both corporations. In late 2003, Greer and Associates began operating out of the facility located at 2003A Gladstone Avenue that had formerly been the facility of Crossroads.

B. The Alter Ego Issue

1. Facts

Crossroads, initially, was owned jointly by Billy Randolph, Thomas Greer, and Micheal Thomas. Minutes of a Board of Directors meeting on January 26, 2001, reflect that it was agreed that Billy Randolph could cut back to working 3 days a week. Minutes of a Board of Directors meeting on March 1, 2002, reflect that Billy Randolph "has decided to sale [sic] his shares in Crossroads Electric" to Micheal Thomas and Thomas Greer. Respondent Greer, citing minutes of a meeting on August 31, which reflect that Billy Randolph "decided to take early retirement" and signed his stock back to the company on August 31, argues that Randolph continued to be an owner after March 1, 2002. I give no credence to the representation in those minutes. The Schedule K-1 attachments to the 2003 income tax return of Crossroads reflect that Thomas and Greer each owned 50 percent of Crossroads, and each was allocated 50 percent of its $12,328 loss in 2003. Billy Randolph did not testify.

The minutes of the March 1, 2002, meeting further report that, upon Billy Randolph's sale of his stock, Crossroads appointed new officers. Thomas remained President, Greer was appointed Vice President, and Barbara Randolph was appointed Secretary/Treasurer. The foregoing, although inconsistent with the answer filed by Crossroads which admits that Billy Randolph was Vice President and Greer was Secretary/Treasurer of Crossroads, is consistent with the minutes of the Board of Directors dated August 1, which reflect that "Thomas R. Greer decided to resign from Crossroads as [of] August 1, 2003. Barbara A. Randolph decided to resign as Secretary and Treasure[r] of Crossroad[s] Electric as of August 1, 2003. The resignation[s] were accepted." The minutes also reflect that, on that date, Crossroads "decided to sell" to Thomas Greer "Truck and Equipment" for which Greer would pay "$750 a month plus interest for 60 months[s]"

Notwithstanding the August 1 resignation of Thomas Greer, minutes of a Board of Directors meeting on August 18, report that Greer resigned on August 18, 2003, and, on that date, signed his shares of stock back to the corporation, "relieving him of all obligation[s] of Crossroads Electric, Inc."

Following his resignation on August 18, Greer began operating Greer and Associates out of his home. On September 1, he leased a small office in a building located at 2803A Foster Avenue. In November he moved to the former Crossroads facility on Gladstone Avenue.

Thomas Greer, at Crossroads, was chiefly responsible for the day-to-day progress on jobs that the company was performing. He was "going out and checking the jobs, you know, out in the field, pretty much." Micheal Thomas spent 80 percent or more of his time in the office, making estimates and preparing bids. Billy Randolph, who it had been agreed could work 3 days a week and who had sold his interest in Crossroads in March 2002, also was an estimator for Crossroads. When Thomas Greer began operating Greer and Associates, he made estimates, submitted bids, and also supervised. After January 1, when Micheal Thomas became coowner, Thomas began performing the estimating and bidding work and Greer supervised the work in the field, the same division of labor as had existed at Crossroads. Thus, the direct supervision of employees at both companies was by Greer. When President of Crossroads, Thomas signed personnel documents. As President of Greer and Associates, Greer has that responsibility.

Greer and Associates, like Crossroads, performs electrical work. When asked whether there was any difference in the work performed by Crossroads and Greer and Associates, Micheal Thomas testified, "All electrical companies perform the same type of work." Employee Preston Jackson, who for-

[2] Counsel for the Respondent Greer notes that Micheal is the correct spelling of the first name of Mr. Thomas. It will be correctly spelled in this decision; however, it is misspelled throughout the transcript and upon various official documents.

[3] All dates are in 2003 unless otherwise indicated.

merly was employed by Crossroads and is now employed by Greer and Associates, confirmed that the two companies perform the same type of work, specifically including electrical installations for small restaurants. In the Nashville area, all electrical contractors obtain their supplies from the same electrical warehouses. As subcontractors for commercial work, electrical contractors bid the jobs obtained by general contractors. Thomas Greer testified that Greer and Associates had submitted bids to general contractors to which Crossroads had not submitted bids, but also bids jobs with the same general contractors as Crossroads. Crossroads had established itself as an electrical contractor capable of meeting and fulfilling the specifications for the construction of small restaurants such as Ruby Tuesday and McDonald's in metropolitan Nashville and Davidson and Williamson counties. Greer and Associates has performed similar subcontracts in the same area including electrical installations for Pizza Hut and Jim & Nick's Barbecue.

On August 18 and 19, Thomas Greer submitted bids for work on behalf of Greer and Associates with his home address on the bid. On November 7, Greer submitted a bid to Cole Construction with the return address of 2004A Gladstone Avenue, the address of Crossroads.

The telephone bill for Greer and Associates dated November 26, for number (615) 331–1468, the telephone number at the Foster Avenue office, reflects credits designated as "credit for service disconnected" for the period November 7 through 25. The last long distance call billed to that number occurred on October 24. A telephone bill for Greer and Associates dated December 8 for number (615) 242–3884, the former number of Crossroads, reflects long distance calls on November 4, 5, 11, 18, 20, and December 1 and 3. Stacey Greer admitted that the number of Greer and Associates was changed "as soon as possible" when its office moved to the facility formerly occupied by Crossroads on Gladstone Avenue. Even if the calls on November 4 and 5 be disregarded, the foregoing documentary evidence compels the conclusion that Greer and Associates, contrary to the testimony of Stacey and Thomas Greer that the move occurred in mid to late December, moved to the facility formerly occupied by Crossroads no later than November 7.

Crossroads completed a project that it was performing for Johnson Controls and laid off its last employees on October 31. Micheal Thomas could not recall making any bids for work on behalf of Crossroads after August, other than "if somebody called … and wants a price on … a little bitty simple thing I can put in myself."

A memorandum dated August 20, signed by Micheal Thomas as President of Crossroads and Greer as President of Greer and Associates, formalizes the sale of trucks and equipment noted in the minutes of August 1. The memorandum reflects Greer and Associates' agreement to purchase 5 trucks with tools for a total of $45,000, "Payment[:] 60 Monthly payment[s] of $750.00 and Interest." Thomas testified that the unspecified interest rate was to be "market rate." The titles were signed over. No monthly payments were made.

A balance sheet reflecting the assets of Greer and Associates dated August 8, reflects assets of $10,000. Thomas Greer testified that the foregoing funds came from a loan he received from Barbara Randolph, his mother-in-law.

On August 28, Greer and Associates paid Billy Randolph $10,000 in full satisfaction of the $10,000 loan made on August 8, by Barbara Randolph. Thomas Greer testified that the loan was repaid when he received an advance upon a job awarded to Greer and Associates.

On October 20, Crossroads issued three checks, 11550, 11551, and 11552, in the amount of $500 each to Micheal Thomas, Thomas Greer, and Barbara Randolph. The entry on the sheet reflecting these disbursements states "bonus." Greer had purportedly resigned from Crossroads on August 1, and again on August 18, when he signed over his stock, and relieved himself "of all obligations of Crossroads." Neither Thomas nor Greer addressed this bonus in their testimony. Barbara Randolph did not testify.

On October 31, 2003, Crossroads filed its annual report with the Tennessee Secretary of State reflecting that Micheal Thomas was president and Stacey Greer was Secretary. Although Barbara Randolph, sister of Micheal Thomas, resigned as Secretary/Treasurer of Crossroads on August 1, the ledger of disbursements from Crossroads reflects that, in addition to the $500 October bonus, she was paid $650 a week from November 13 through December 23. In November and December, Barbara Randolph was signing checks on behalf of Greer and Associates, but receiving no salary from Greer and Associates. Stacey Greer admitted that she continued to perform secretarial work and payroll for Crossroads after her husband Thomas Greer began operating Greer and Associates. She also performed those same functions for Greer and Associates. Stacey Greer testified that her mother had also continued to perform the bookkeeping for Crossroads and also kept the books for Greer and Associates.

Minutes of the Board of Directors of Greer and Associates dated December 16, report that the Board met to determine whether Micheal Thomas "wanted to join Thomas Greer in Greer and Associates." On December 18, Greer and Associates issued Christmas bonus checks to its employees. Micheal Thomas received a check for $500, the same amount received by Barbara Randolph and Thomas Greer. Although Thomas characterized the $500 as a "signing bonus," the notation on the check, check number 1305, is "Christmas."

The minutes of a Board of Directors meeting of Greer and Associates on December 29, reflect that, on that date, Thomas Greer was elected President of Greer and Associates. Micheal Thomas was elected Vice President and Barbara Randolph was elected Secretary/Treasurer. On January 1, 2004, Micheal Thomas became coowner of Greer and Associates. He brought with him the two remaining Crossroads vehicles, which had not been sold to Greer and Associates, and miscellaneous equipment. Prior to January, Greer and Associates had issued no stock. On January 1, Greer and Associates issued 400 shares of stock each to Greer and Thomas.

The final page of the 2003 tax return of Crossroads, Form 1120S reflects that Thomas and Greer each owned 50 percent of the shares of that company and reports no change in the number of shares owned.

Thomas Greer, in explaining why he left Crossroads and started Greer and Associates, testified that he did not want "to be stuck . . . in a company [Crossroads] that was losing

money." He then elaborated, referring to the contract with the Union, "their insurance, their hourly wages, it was getting harder and harder to get a job, you know, and if they [the Union] didn't do something to help the contractors get their total overhead down to where I could bid jobs and get 'em, you know, if they don't help me, if they don't do something, I was eventually going to have to do something. . . . I wasn't going to sit over there [at Crossroads], after, you know, seven or eight years, and then go broke."

On July 7, Thomas Taylor of the Middle Tennessee Chapter of the National Electrical Contractors Association had written Local Union 429 that "the work situation in Nashville has become . . . desperate" due to "open shop competition." There is no evidence that the Union agreed to make any concessions to improve the ability of union contractors to compete.

Micheal Thomas testified that when Thomas Greer left he decided to begin "[s]caling down, winding down," that "everybody's left" and Crossroads "had no jobs." In further testimony, Thomas noted that Crossroads had "lost money for the last two or three years . . . due to the fact you had to estimate the jobs so cheap to get one that there was no profit in it." Thomas denied having any plans other than closing Crossroads.

Thomas testified that the last major project that Crossroads completed was for Johnson Controls and that "probably after October 31st . . . and [before] mid December" an unnamed individual with Johnson Controls "said they had a position available in Chattanooga." Thomas' son, who formerly worked for Crossroads, was hired by Johnson Controls in Nashville. Thomas testified that he turned down the position in Chattanooga. He did not address whether he, like his son, was offered a job in Nashville. He also, at the request of Larry Page, one of the owners of Elect-Tech Electric, met with Page and a Mr. Green, who informed him that they had bid upon a large project in metropolitan Nashville. The bid was pending when the meeting took place. Thomas, who recalled that he was still operating Crossroads when it occurred, "didn't give him [Larry Page] a response," and there was no further contact. In December, Thomas, who was an instructor in the apprenticeship program, spoke with Elbert Carter, the salaried director of the Joint Apprenticeship and Training Committee whom he had known since 1993. Carter was aware that Thomas was closing Crossroads and recalls asking Thomas what he was going to do. Thomas replied, "I really don't know what I'm going to do at this point in time." Carter then asked whether Thomas would be interested in a salaried position in the apprenticeship program "if it were to come to fruition." Thomas testified that to the "[b]est of my knowledge, I told him yes." Carter testified that Thomas did not give "a yes or a no," but mentioned that he had spoken with the principals of Elec-Tech Electric and "didn't know what the results of that was going to be." Carter had no position to offer, and I credit his testimony that Thomas did not give a yes or no answer regarding his interest if such a position became available in the future.

Greer testified that, prior to Thomas joining Greer and Associates, he had sought another business partner, Billy Cole, a contractor, but not an electrical contractor. Cole confirmed that Thomas approached him in mid-September and spoke with him regarding joining him and providing "working capital." Cole asked Greer about Micheal Thomas and recalls that Greer responded that Thomas "had an intention of going with his son to Johnson Controls or teaching for the Union." In a later conversation between Cole and Greer, the offer was not repeated and no request for working capital was made. Cole recalls that, in that conversation, Greer stated that Thomas was undecided regarding what he was going to do.

Greer and Associates had no need for working capital. A $10,000 loan had been repaid to the Randolphs in late August when the company received an advance for a job that Thomas Greer had bid. Thereafter, records reflect the payment of $4,000 on September 22, check number 1052, and $9,000 on October 29, check 1129, to Billy Randolph, payments that Greer described as repayment for advances made to cover the payroll. With the Randolphs' bankroll behind it, Greer and Associates had no need for working capital.

Greer and Associates did need a facility with adequate office space at which trucks could be parked and at which equipment could be stored. There is no evidence that Thomas Greer sought such a location in September or October. Micheal Thomas, who acknowledged that he was "terrible with dates," testified that Thomas Greer informed him of the inadequacy of the Foster Avenue location during a family visit over Thanksgiving. I do not credit that testimony. The telephone service at Foster Avenue was disconnected on November 7.

Thomas denied having any involvement with Greer and Associates or consulting with Thomas Greer after August 18. Contrary to that denial, there had to be consultation regarding the move of Greer and Associates to Gladstone Avenue and assignment of the Crossroads telephone number to Greer and Associates. The foregoing denial is also belied by cellular telephone records reflecting calls from Thomas' cellular telephone to (615) 331–1468, the number of Greer and Associates at Foster Avenue, on October 3 and 24 and more than 25 telephone calls from Thomas' cellular telephone to Thomas Greer's cellular telephone number in the 2-month period from September 26 through November 25.

On or about February 4, 2004, Union Business Agent Bearden called the Crossroads telephone number. Stacey Greer answered the telephone saying "Greer and Associates." In the course of the ensuing conversation, Bearden asked what had happened to Crossroads. Stacey Greer answered, "[W]e are pretty much the same. . . . Except for we aren't Union any more. That is the only difference." Bearden then asked whether "they just decide[d] to not be Union anymore?" Stacey Greer answered, "Hard to get jobs, hard to compete, you know what I mean, when you are union verses nonunion."

Following this conversation, Bearden visited several Greer and Associates jobsites where he observed vehicles still bearing the contractor license numbers of Crossroads as well as equipment bearing the name Crossroads.

2. Analysis and Concluding Findings

The General Counsel argues that this is a classic alter ego case in which the principals created a new entity in order to avoid the obligations of a collective-bargaining agreement.

Respondent Greer and Associates, citing language in *Redway Carriers*, 301 NLRB 1113, 1115 (1991), argues that "alter ego

status is to be determined based on the developments which took place at the time the alter ego was formed, not on what may have happened at a later date." In support of the foregoing argument, Respondent Greer and Associates points out that Thomas Greer incorporated Greer and Associates in July and began operating that company with no association with Micheal Thomas, his former business partner, in late August.

Redway Carriers cites *Rogers Cleaning Contractors*, 277 NLRB 482 (1985), as the authority for the statement that "alter ego status is to be determined . . . at the time the alter ego was formed." In *Rogers Cleaning Contractors* the respondent contended that it was not an alter ego because the principal founder left the new business after 10 months. The Board found that the departure of the principal after 10 months did not preclude finding alter ego status predicated upon the situation at the time the alter ego was formed. Id. at 488–489. In *Redway Carriers* the alter ego was intended "to be temporary," and it ceased to exist. The Board's language regarding what took place "at the time the alter ego was formed" was the predicate for its holding that "the fact that a company is defunct does not preclude the Board from issuing a remedial order against it." 301 NLRB at 1115.

The foregoing language in *Redway Carriers* does not establish a general principle for analysis of alter ego determinations. As the Charging Party correctly points out, the Board does not hold that "the fact finder is limited to the very beginning of a new entity. . . . Such a rule would make avoidance of obligations under the Act a mere matter of waiting a short hiatus before resuming full operations."

The applicable precedent in the circumstances of this case is stated in *Blue & White Cabs*, 291 NLRB 1047, 1048 (1988), where the Board, in finding no alter ego, held that that "to restrict consideration of the alter ego issue to . . . [the time of the alleged alter ego's] formation would distort the picture of . . . [its] essential identity and purpose.

The Board, in *Advance Electric*, 268 NLRB 1001 (1984) succinctly summarized the proper analysis in evaluating the issue of alter ego:

> The legal principles to be applied in determining whether two factually separate employers are in fact alter egos are well settled. Although each case must turn on its own facts, we generally have found alter ego status where the two enterprises have "substantially identical" management, business purpose, operation, equipment, customers, and supervision, as well as ownership. *Denzil S. Alkire*, 259 NLRB 1323, 1324 (1982). Accord: *NLRB v. Campbell-Harris Electric*, 719 F.2d 292 (8th Cir. 1983). Other factors which must be considered in determining whether an alter ego status is present in a given case include "whether the purpose behind the creation of the alleged alter ego was legitimate or whether, instead, its purpose was to evade responsibilities under the Act." *Fugazy Continental Corp.*, 265 NLRB 1301 (1982).

On January 1, 2004, Micheal Thomas officially became a coowner of Greer and Associates, Thus, the ownership of the two companies was the same. Thomas began performing the same functions that he had performed for Crossroads, estimating and bidding. Although Thomas Greer had, from August through December, submitted bids on behalf of Greer, after January 1, 2004, the vast majority of his time was spent supervising the projects being performed by Greer and Associates, the same function that he performed for Crossroads. The company operated from the location out of which Crossroads had operated and had no equipment other than the equipment formerly used by Crossroads. It had obtained the telephone number of Crossroads. See *Standard Commercial Cartage, Inc.*, 330 NLRB 11, 14 (1999). Micheal Thomas acknowledged that "[a]ll electrical companies perform the same type of work." Greer and Associates, like Crossroads, performs the electrical work for various contractors including the electrical work involved in the construction of small restaurants. The absence of a total identity of customers, a "'repeat' clientele," is attributable to the simple fact that, once a facility is completed, the electrical installation work has been performed. Greer and Associates continues to serve the same "market area," metropolitan Nashville and Davidson and Williamson counties as served by Crossroads. *Barnard Engineering Co.*, 295 NLRB 226, 247 (1989). As of January 1, 2004, I find that the ownership, management, business purpose, operation, equipment, customers, and supervision of Crossroads and Greer and Associates was substantially, if not virtually, identical.

Respondent Greer and Associates argues that Greer and Associates was established as a separate entity and, until January, was managed solely by Thomas Greer. Although, in form, the foregoing formality existed, the substance of what occurred belies the facade. To focus upon the formality rather than the reality would "distort the picture" of what actually occurred. Greer incorporated Greer and Associates while a coowner and officer of Crossroads. There was no exchange of capital when Greer left Crossroads. Greer was not paid a proportionate amount of the value of the assets of the business, which included vehicles and equipment. The tax return for Crossroads for the year 2003 reflects Greer as a 50 percent owner of the company for the entire tax year. Greer and Associates purportedly purchased five vehicles. Although no payment was made at the time of purchase, Greer obtained title to the five vehicles. No payments were thereafter made to Crossroads. When "winding down" Crossroads, Micheal Thomas made no demand for the monthly payments of $750 for the 5 trucks and equipment that had ostensibly been sold to Greer and Associates. In October, Crossroads, which reported a $12,328 loss on its 2003 income tax return, paid Thomas, Barbara Randolph, and Greer, who had supposedly severed all ties with Crossroads, a $500 bonus. Although supposedly not employed by Greer and Associates until January 1, Micheal Thomas was paid a $500 Christmas bonus on December 18, and elected Vice President of Greer on December 29. Throughout this period, Barbara Randolph was performing bookkeeping functions for both companies, being paid by Crossroads in November and December, and signing checks for Greer and Company. Stacey Greer was performing secretarial functions for both companies, and was signing checks for both companies.

The Respondent Greer argues that "[t]he efforts of Thomas Greer and Micheal Thomas to go their separate ways is further proof that Greer and Associates is not an alter ego . . . ." I find no credible evidence in support of that argument. I find that the

approach made by Greer to Billy Cole for working capital was intended to obfuscate the plan that Thomas would join Greer and Associates. Greer had no need for working capital. Any time Greer needed money, the Randolphs provided it. I also reject any inference that Thomas had any intention other than joining Greer and Associates. There is no evidence that he formally sought any position with any employer. Although Thomas testified that he discussed but rejected a position in Chattanooga with Johnson Controls, there is no evidence that he formally applied for a position with Johnson Controls. Thomas did not address whether he was also offered but rejected a job in Nashville. The meeting with Page and Green was at their request. Thomas gave no commitment to them and made no further attempt to contact them. The discussion of a then nonexistent but possible future salaried position with the Joint Apprenticeship and Training Committee was initiated by Carter, and Thomas did not give a yes or no answer. Although Thomas stated to Carter that he did not know what he was going to do, I find that he knew perfectly well what he was going to do. In view of his long association with Carter as an instructor in the apprenticeship program, Thomas was unwilling to inform his friend Carter that he intended to join Greer and Associates and operate as a nonunion contractor.

Contrary to an intent to "go their separate ways," Thomas and Greer were in regular communication with each other as confirmed by records showing multiple cellular telephone calls. In October, Crossroads paid a bonus to Greer. In December, Greer and Associates paid a bonus to Thomas. Micheal Thomas made no attempt to obtain the $750 monthly payments due for property purportedly sold to Greer. Thomas Greer made no effort to locate a suitable facility from which to operate Greer and Associates. Telephone bills reflecting disconnected service on November 7, at the Foster Avenue number, long distance calls billed to Greer and Associates at the Gladstone Avenue number, and a bid submitted by Greer and Associates on November 7, showing the 2004A Gladstone Avenue address establish that, at least by November 7, within a week of October 31, the day that Crossroads laid off its last employee, Greer and Associates had moved to the Crossroads facility. Stacey Greer was still signing checks on behalf of Crossroads in November and December; thus, Greer and Associates and Crossroads were operating from the same facility. There was no intent or effort to "go their separate ways."

Respondent Greer cites three cases that it argues establish that Greer and Associates is not an alter ego of Crossroads. All three are distinguishable from the facts herein. In *Polis Wallcovering Inc.*, 323 NLRB 873, 878–879 (1997), the alleged alter ego was owned by only one of the former partners, it operated from a different location, it used none of the same equipment, and it had no employees, relying upon subcontractors who supplied their own equipment to perform the work that it obtained. *Electrical Workers IBEW Local 3 (Telecom Plus)*, 286 NLRB 235 (1987), was a CP case involving recognitional picketing by the respondent union of an employer, held not to be an alter ego, whose employees were represented by a different union. Id at 236, 239. In *Perma Coatings*, 293 NLRB 803 (1989), the alleged alter ego was wholly owned by a former minority owner of the defunct company and the equipment that the former minority owner purchased from the defunct company "helped alleviate a fraction of [the defunct company's] debt." Id at 804. In the instant case, there was no alleviation of any debt because there were no payments for the equipment purportedly purchased from Crossroads.

The Board, when determining whether a newly formed entity is an alter ego, also considers whether there is evidence of unlawful motivation, that is, "an objective of escaping further dealings with the Union." *Martin Bush Iron & Metal*, 329 NLRB 124 (1999). There is ample evidence that avoidance of Crossroads' contractual obligations was the impetus for the creation of Greer and Associates. In his candid acknowledgement regarding the formation of Greer and Associates, Thomas Greer testified that the Union contract's insurance and wages made it "harder and harder to get a job . . . and if they [the Union] didn't do something to help the contractors get their total overhead down . . . I wasn't going to sit over there [at Crossroads], . . . and then go broke." In virtually similar words, Micheal Thomas explained that he could not keep operating Crossroads because "you had to estimate the jobs so cheap to get one that there was no profit in it." See *RCR Sportswear*, 312 NLRB 513, 519 (1993).

I find that the "essential identity and purpose" of the newly created entity Greer and Associates was to obtain electrical work and make a profit, a profit that could not be made when paying the wages and benefits specified in the collective-bargaining agreement to which Crossroads was obligated. To that end, Greer and Thomas engaged in less than arms lengths transactions over a 4-month period with the result that, as of January, Greer and Associates had occupied the Crossroads facility, obtained its telephone number, and was operating with all of the vehicles and equipment formerly owned by Crossroads and for which it had not paid Crossroads any money at all. Thereafter, just as at Crossroads, day-to-day supervision of jobs was carried out by Thomas Greer. Estimating and bidding was performed by Micheal Thomas. In this case as in *Vallery Electric, Inc.*, 336 NLRB 1272 (2001), enfd. 337 F.3d 446 (5th Cir. 2003), the unionized company, Crossroads, "was left dwindle . . . in order to shield" the nonunion alter ego, Greer and Associates, from the obligations of the collective-bargaining agreement. Id. at 1277. After what Greer and Thomas believed was an appropriate interval, Thomas joined Greer in the new enterprise. On February 4, Stacey Greer, niece of Micheal Thomas and wife of Thomas Greer, informed Union Representative Michael Bearden that Crossroads and Greer and Associates were "pretty much the same. … [but] we aren't Union any more. That is the only difference." I find that Greer and Associates is the alter ego of Crossroads.

C The Section 10(b) Argument and Section 8(a)(5) Allegations

The charge herein was filed on February 20, 2004. The complaint alleges that, since on or about August 21, the Respondent failed to pay its employees the contractually established wage rates, failed to make contributions to the NECA/IBEW Welfare Trust Fund and Southern Electrical Retirement Fund, failed to utilize the Union's referral procedure, and failed to deduct and remit Union dues, all as provided in the collective-bargaining agreement between the Union and Crossroads. The answer of

Respondent Greer and Associates admits that, by letter dated March 5, 2004, it refused to recognize the Union as the collective-bargaining representative of its employees. As an affirmative defense, Respondent Greer and Associates pleads that it was not obligated to abide by the terms of the collective-bargaining agreement because the agreement was a Section 8(f) agreement between the Union and Crossroads.

The Respondent Greer and Associates argues that the complaint must be dismissed pursuant to Section 10(b) because the Union was on notice that Thomas Greer was forming a nonunion company. Although Greer had made statements indicating his intention to begin operating on a nonunion basis, there is no evidence that the Union was either actually or constructively aware that he had done so prior to the Section 10(b) date of August 20. The first instance in which Greer and Associates failed to abide by the Section 8(f) agreement was on August 21, when, rather than seek referral of employees from the Union, it placed an advertisement for employees in the newspaper. The Union had no notice of this because the advertisement did not identify the name of the employer. Thomas Greer testified that he began operating Greer and Associates "a couple of days" after August 18, the date of his second purported resignation from Crossroads. There is no evidence that any unit employee was hired or that the Union was aware that the Respondent was failing to pay contractual wage rates or make appropriate contributions prior to August 20, the Section 10(b) date. The Respondent has not established that the charge must be dismissed pursuant to Section 10(b).

All parties agree that the relationship between Crossroads and the Union is a Section 8(f) relationship. Nevertheless, Greer and Associates is the alter ego of Crossroads, and, as such, it was, and is, obligated to abide by the terms of the Section 8(f) agreement until that Section 8(f) relationship is terminated. *Industrial Turnaround Corp.*, 321 NLRB 181 (1996).

Mickey Patterson and Preston Jackson, both of whom had worked for Crossroads and are now employed by Greer and Associates, testified. Neither was referred by the Union. Patterson, who is married to Stacey Greer's sister and, like Thomas Greer, is a son-in-law of the Randolphs, was not asked about his union affiliation. Jackson resigned his union membership when he obtained employment with Greer and Associates. The record does not establish whether Greer and Associates received any signed authorizations for the deduction of Union dues from any employees. If it did receive any such authorizations, it is obligated to deduct those dues and remit them to the Union. *Williams Pipeline Co.*, 315 NLRB 630, 632 (1994). I shall leave the determination regarding any liability in this regard to the compliance stage of this proceeding. Thomas Greer acknowledged that employees of Greer and Associates "really don't have classifications, that . . . I still to this day really don't know what to call half of my men." The foregoing confirms that the Respondent did not compensate employees on the basis of the classifications set out in collective-bargaining agreement. Consistent with the denial by Greer and Associates of any obligation to the Union, and as confirmed by the absence of any payments reflected in its financial statements, Greer and Associates made no contractually required fund contributions. The foregoing conduct violated Section 8(a)(5) of the Act.

CONCLUSIONS OF LAW

By failing to give effect to the terms of the Section 8(f) collective-bargaining agreement in effect with the Union, the Respondent, Crossroads and its alter ego Greer and Associates, has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent, Crossroads and its alter ego Greer and Associates, having failed and refused to give effect to the terms of the collective-bargaining agreement in effect with the Union until August 31, 2005, it must make all unit employees whole for any loss of earnings and other benefits resulting from its failure to honor the terms of the collective-bargaining agreement. Backpay shall be computed in the manner prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Further, the Respondent shall make the payments as required by its collective-bargaining agreement to the NECA/IBEW Welfare Trust Fund and Southern Electrical Retirement Fund retroactive to August 21, 2003. The amounts due the employee benefit funds shall be paid as prescribed in *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). The Respondent shall also reimburse the unit employees for any expenses ensuing from the Respondent's unlawful failure to make the required benefit payments as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), with interest as prescribed in *New Horizons for the Retarded*, supra. Insofar as the Respondent failed to deduct and remit dues to the Union, it must comply with the collective-bargaining agreement and honor any signed dues-deduction authorizations and remit those dues to the Union.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[4]

ORDER

The Respondent, Crossroads Electric, Inc., and its alter ego Greer and Associates Electrical, Inc., Nashville, Tennessee, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to honor the collective-bargaining agreement that is in effect until August 31, 2005, between Crossroads Electric, Inc., and its alter ego Greer and Associates Electrical, Inc., and International Brotherhood of Electrical Workers, Local Union 429, AFL–CIO, CLC, that establishes the terms and

[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.

conditions of all of its employees performing electrical work within the jurisdiction of the Union.

(b) Failing to pay its employees the contractually establish wage rates.

(c) Failing to make contractually required contributions to the NECA/IBEW Welfare Trust fund and the Southern Electrical Retirement Fund.

(d) Failing to utilize the contractual referral procedure as the sole and exclusive source of referrals of applicants for employment.

(e) Failing to deduct union dues and remit them to the Union for any employees who have signed dues-deduction authorizations.

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

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

(a) Give full force and effect to the terms and conditions of employment provided in the collective-bargaining agreement with the Union and make whole unit employees for any loss of earnings and other benefits resulting from the Respondent's failure to honor the terms of that agreement in the manner set forth in the remedy section of this decision.

(b) Remit the benefit fund payments which have become due and reimburse unit employees for any expenses ensuing from the Respondent's unlawful failure to make the required payments, in the manner set forth in the remedy section of this decision.

(c) Deduct union dues and remit them to the Union for any employees who have signed dues-deduction authorizations.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Nashville, Tennessee, copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 26, 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 21, 2003.

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

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

Dated, Washington, D.C. September 1, 2004

APPENDIX

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

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to honor the terms and conditions of employment set forth in the collective-bargaining agreement that is in effect until August 31, 2005, between Crossroads Electric, Inc., and its alter ego Greer and Associates Electrical, Inc., and International Brotherhood of Electrical Workers, Local Union 429, AFL–CIO, CLC, and that establishes the terms and conditions of employment for all of you who are performing electrical work within the jurisdiction of the Union.

WE WILL NOT fail to utilize the contractual referral procedure as the sole and exclusive source of referrals of applicants for employment.

WE WILL give full force and effect to the terms and conditions of employment provided in the collective-bargaining agreement with the Union and make you whole for any loss of earnings and other benefits resulting from the our failure to honor the terms of that agreement in the manner set forth in the remedy section of the decision.

WE WILL remit the benefit fund payments which have become due and reimburse you for any expenses resulting from our unlawful failure to make the required payments, in the manner set forth in the remedy section of the decision.

WE WILL deduct union dues and remit them to the Union for any of you who have signed dues-deduction authorizations.

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

CROSSROADS ELECTRIC, INC. AND ITS ALTER EGO
GREER AND ASSOCIATES ELECTRICAL, INC.

[5] 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."