Ray Black & Sons Construction, Inc. ***and*** **Local 702, International Brotherhood of Electrical Workers, AFL–CIO.** Cases 14–CA–25168, 14–CA–25409, and 14–CA–25618

August 27, 2001

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN AND WALSH

On August 1, 2000, Administrative Law Judge William G. Kocol issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.

The judge found that Respondent violated Section 8(a)(5) and (1) of the Act by: (1) withdrawing recognition from the Union because Respondent failed to show, in its defense, that the bargaining unit had declined to a stable single employee unit; and (2) refusing to provide the Union with certain requested information. For the reasons set forth below, we disagree.

The facts are undisputed. Respondent is a corporation engaged in the construction industry as a general contractor and subcontractor. The Union began an organizing drive in 1996 to represent Respondent's electrical workers. On June 24, 1996, the Regional Director issued a Decision and Direction of Election for the following unit:

> All employees who are primarily engaged in the performance of electrical work, excluding office, clerical and professional employees, guards and supervisors as defined in the Act and all other employees.

The Regional Director found that there were nine employees who spent at least 85 percent of their time during the 12-month period prior to May 3, 1996, performing electrical work, and nine other employees who spent less than 8 percent of their time performing electrical work during that period. The Regional Director concluded that the unit should consist only of the former group.

Only the Respondent requested that the Board review the Regional Director's Decision and Direction of Election. The Respondent also asserted that the Regional Director should have delayed the scheduling of the election because Respondent was nearing completion of a substantial job after which the size of the unit would contract. The Board denied the Respondent's request for review.

The Union was certified on April 17, 1997, and collective bargaining began in or about July 1997. During bargaining, the Union sought to modify the certified unit description to include *all* employees engaged in electrical work rather than just employees "primarily engaged" in the performance of electrical work. The Respondent did not agree to the modification, insisting on maintaining the unit description set forth in the Union's certification.

On June 14, 1999, Respondent withdrew recognition from the Union, asserting, inter alia, that the bargaining unit consisted of a single employee. Respondent asserted that the only employee "primarily engaged" in electrical work was Mark Collier. The record shows that Collier spent 75.9 percent of his time performing electrical work during the period January 1–June 15, 1999, and 84 percent of his time performing electrical work during 1998. The record also shows that David Hester and Dean Marlow spent 37.6 percent and 28.7 percent of their time, respectively, performing electrical work during the period January 1–June 15, 1999, and 29.5 percent and 19.6 percent of their time, respectively, performing electrical work during 1998.

In finding the withdrawal of recognition unlawful, the judge first analyzed the intent of the phrase "primarily engaged in the performance of electrical work" in the unit description. He found "primarily" to be clear and unambiguous. Citing *Northwest Community Hospital*, 331 NLRB 307 (2000) (stipulated unit), he found that because the unit description is clear and unambiguous, the parties should be held to the unit as described. He therefore found that the mere fact that Hester and Marlow performed electrical work for *substantial* percentages of time on a yearly basis was insufficient for them to be included in the unit of employees who are *primarily* engaged in performing electrical work.

The judge further determined, however, that the "unit description must be understood in light of industry practice." Considering the fluctuating nature of employment in the construction industry and the fact that construction industry employees may work for short periods on different projects, the judge reasoned that the "unit description in this case must include employees who were 'primarily' engaged in electrical work *for substantial periods of time*." (Emphasis supplied.) The judge was not persuaded by the Respondent's argument that the judge was bound by the Regional Director's use of an annual percentage computation to define the scope of the term "primarily engaged." Instead, the judge found that Hester and Marlow were primarily engaged in the performance of electrical work for *substantial periods* of time in 1998 and 1999, and were therefore properly included in

the unit when the Respondent withdrew recognition from the Union on June 14, 1999.

Having thus concluded that the Respondent had failed to show that the size of the unit had declined to a stable single employee at the time of the withdrawal of recognition, the judge found that Respondent violated Section 8(a)(5) and (1) of the Act by withdrawing recognition and refusing to provide requested information.

Contrary to the judge, we find that the unit at issue was a stable single-employee unit when the Respondent withdrew recognition from the Union. We therefore find that Respondent's withdrawal of recognition was lawful, and Respondent was thus under no obligation to provide the Union with the requested information.

Unlike the judge, we find that the unit description *is* facially ambiguous. It includes: "All employees who are primarily engaged in the performance of electrical work," but it does not state a period of time during which "primarily engaged" is to be measured. In these circumstances, a resort to extrinsic evidence is warranted to determine the intent of the unit description.[1] As discussed, the Regional Director determined which employees were "primarily engaged" in the performance of electrical work, and thus in the unit, by computing the percentage of time they were engaged in the performance of electrical work during the 12-month period prior to the Union's filing its representation petition. The Union did not request review of the Regional Director's determination that the unit consisted of employees "primarily engaged" in electrical work, or of the Regional Director's use of an annual percentage computation to decide which employees were included in the unit. Rather, *after* the election, the Union expressly but unsuccessfully sought the Respondent's agreement to expand the scope of the unit to include *all* employees engaged in electrical work, not just those "primarily engaged." Thus, the relevant extrinsic evidence clearly establishes that the parties understood that the use of the term "primarily engaged" in the unit description was based on the Regional Director's computing the percentage of time the employees were engaged in the performance of electrical work during the 12-month period prior to the Union's filing its representation petition.

We therefore find that the judge's consideration of construction industry practice, to engraft a "for substantial periods of time" qualification on the "primarily engaged" language in the unit description, was unwarranted. Rather, to determine whether the bargaining unit is a stable single employee unit, we conclude that the unit, and its "primarily engaged" component, should be reviewed using the annual measurement employed by the Regional Director and understood by the parties. As noted above, in 1998 and 1999, up to the time of the Respondent's June 14, 1999 withdrawal of recognition from the Union, only Mark Collier was "primarily engaged in the performance of electrical work." Thus, Respondent has demonstrated that the unit was a stable single-employee unit at the time of the allegedly unlawful withdrawal of recognition. In these circumstances, Respondent was privileged to withdraw recognition from the Union and to decline to forward the requested information to the Union. As set forth in *McDaniel Electric*, 313 NLRB 126, 127 (1993), "The Board has long recognized the principle that collective bargaining presupposes that there is more than one eligible person who desires to bargain." Accordingly, we reverse the judge's findings and we dismiss the complaint.

ORDER

The complaint is dismissed.

Kathy J. Talbott-Schehl, Esq., for the General Counsel.
Andrew J. Martone, Esq. (Bobroff, Hesse, Lindmark, & Martone, P.C.), of St. Louis, Missouri, for the Respondent.
James I. Singer, Esq. (Schuchat, Cook, & Werner), of St. Louis, Missouri, for the Union.

DECISION

STATEMENT OF THE CASE

WILLIAM G. KOCOL, Administrative Law Judge. This case was tried in St. Louis, Missouri, on April 26, 2000. The original charges were filed June 22, 1998, January 6, and June 18, 1999. Amended charges in the last two cases were filed March 2, and November 30, 1999. An order consolidating cases, order revoking settlement, consolidated complaint and notice of hearing (the complaint) was issued November 30, 1999. The complaint alleges that Ray Black & Sons Construction, Inc. (Respondent) violated Section 8(a)(5) and (1) of the Act by withdrawing recognition from Local 702, International Brotherhood of Electrical Workers, AFL–CIO (the Union) and by refusing to provide the Union with certain requested information. The complaint also set aside a settlement agreement that had been previously agreed upon by the parties. Respondent filed a timely answer that, as amended at hearing, admitted the filing and service of the charges, jurisdiction, the Union's labor organization status, the agency status of Dan and Darrel Black, the appropriateness of the unit, and the Union's certification as the representative of the employees in the unit, and that it withdrew recognition from the Union. Respondent denied the Union's 9(a) status and the substantive allegations of the complaint. Respondent also plead a number of affirmative defenses, including that it owed no obligation to continue to recognize the Union because there was only one person in the unit.

[1] See, e.g. *Northwest Community Hospital*, 331 NLRB 307, 308 (2000) ("Where the stipulation is unclear, resort to extrinsic evidence is appropriate to determine the parties' intent regarding the disputed classification.")

On the entire record,[1] including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Respondent and the Union, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a corporation, is engaged in the construction industry as a general contractor and a subcontractor at its facility in Mt. Vernon, Illinois, where it annually purchases and receives goods valued in excess of $50,000 directly from points located outside the State of Illinois. Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

As indicated, Respondent is engaged in the construction business. The Union began an organizing drive in 1996 to represent Respondent's electrical workers. After filing a representation petition with the Board a hearing was held and the Regional Director issued a Decision and Direction of Election. The Regional Director directed an election in the following unit:

> All employees who are primarily engaged in the performance of electrical work, excluding office, clerical and professional employees, guards and supervisors as defined in the Act and all other employees.

In his decision the Regional Director noted that there were nine employees who spent at least 85 percent of their time performing electrical work. He noted that were nine other employees who spent between 7 and 8 percent, or less, performing electrical work. He concluded that the unit should consist of the former group of employees; he excluded the latter group from the unit.

An election was held July 19, 1996. The final tally of ballots issued April 9, 1997, showing that the Union won the election by a vote of 6 to 2. The Union was certified on April 17, 1997. Bargaining between the parties began in July and continued through March 1998. During bargaining, the Union sought to modify the unit description to cover all electrical work rather than employees primarily engaged in electrical work. The Union made this proposal because it recognized that under the certified unit description Respondent was able to use nonunit employees to perform electrical work. Respondent rejected this proposal and insisted upon the unit description as set forth in the certification.

B. The First Withdrawal of Recognition

As indicated above, the parties engaged in collective bargaining beginning in about July 1997. By letter dated May 21, 1998, Respondent stated:

> Please be advised that Ray Black & Sons Construction, Inc. is hereby withdrawing recognition from IBEW Local 702 as the representative of any of its employees.

By letter dated November 4, the Union requested the following information:

> I was told by a representative of Asgrow Seed Company that your Company was serving as a general contractor for the construction of a new grain processing plant in Centralia. Since hearing this from Asgrow, I have attempted to verify who would be doing the electrical construction and when this work would start have now learned that within the last week or so, electrical work has started on the new grain plant, that your Company is in fact serving as general contractor, and that Mathias Electric is on the job working with its own employees as your subcontractor.
>
> Please submit to me all correspondence related to the Asgrow job, including the general contract, any electrical subcontract, bids for electrical work, and records showing the names, dates and hours worked by any employees performing electrical work. Local 702 must insist that your Company bargain in good faith over all conditions of employment, including subcontracting, and that our laid off members and member applicants be recalled to perform electrical work as provided for under the NLRB settlement agreement.[2]

Respondent answered by letter dated November 6. Respondent reminded the Union that it had withdrawn recognition and therefore was not obligated to supply it any information. Respondent also denied that it was serving as the general contractor for Asgrow's new plant and also denied that Mathias Electric was its subcontractor. The Respondent requested the name and telephone of the source of the Union's information so that it could "set the record straight." The General Counsel alleges that the refusal to provide this information was unlawful.

By letter dated January 18, 1999,[3] the Union stated:

> For the purpose of bargaining, I would like to request for the second time all correspondence related to the Asgrow job, including the general contract, any electrical subcontract, bids for electrical work, and records showing the names, dates and hours worked by any employees performing electrical work.

[1] On June 28, 2000, the General Counsel filed a motion to strike a portion of Respondent's brief. On July 6, 2000, Respondent filed an opposition to the General Counsel's motion. Those documents are received into evidence as ALJ's Exhs. 1 and 2, respectively. In his motion the General Counsel argues that Respondent incorrectly stated that the parties had stipulated that two named individuals were the only employees primarily engaged in electrical work. In this regard, the General Counsel is correct; the parties did not so stipulate. However, as clarified in Respondent's opposition, the assertion was made more in the nature of argument rather than as a binding admission. Accordingly, I will deny the motion to strike.

[2] The General Counsel and the Union argue that this request for information covered all electrical work performed by Respondent, not just at the Asgrow site. I disagree. In context, the Union's request may most reasonably be understood to cover electrical work only at the Asgrow site.

[3] The remaining dates are in 1999 unless otherwise indicated.

On April 8, the Regional Director approved a settlement agreement signed by Respondent that provided that the Respondent would not refuse to bargain with the Union by failing to provide requested information and would not refuse to recognize the Union. The settlement agreement further provided that Respondent would rescind its withdrawal of recognition and provide the Union with the information requested in the November 4, 1998 letter.

On April 13, Respondent sent the Union a letter that stated in pertinent part:

> Please contact me at your earliest convenience so that we can discuss negotiation dates (I would propose April 29th at 10:00 a.m.) as well as which issues will be addressed and in which order. In addition, if there is information you need prior to continuing negotiations, please let me know.

The Union did not indicate that it needed any information to resume bargaining.[4] The parties returned to the bargaining table on April 29, May 14, and June 10. At the first meeting Paul Noble, business representative for the Union, testified that the Union reiterated its desire for the information requested in its November 4, 1998 letter. At the next meeting on May 14, Noble testified that the Union told Respondent that it wanted to know "who their electricians were, who was doing the work and who had been doing it prior to us departing from negotiations the first time."[5]

On May 21, Respondent provided certain information requested in the November 4 letter. Respondent sent the Union copies of a letter dated June 3, 1998, from Respondent to The Ken Bratney Company concerning a price quote Respondent made for the cost of performing electrical work on the Asgrow site. Respondent also sent the Union a subcontracting agreement between The Ken Bratney Company and Respondent concerning electrical work at the same site. The Ken Bratney Company was the general contractor for work done at the Asgrow location. However, the Union was never provided the information concerning the names, dates, and hours worked by Respondent's employees performing electrical work on the Asgrow site.[6]

At the June 10 bargaining session, the Union discussed the information that it had recently been provided. At the June 10 bargaining session the Union told Respondent that it wanted to know who did the electrical work and the hours worked on the Asgrow job but on other jobs as well.[7] Black claimed that the Union already had that information, but Respondent's attorney corrected him and said that the information had been provided to the Board but not to the Union and that the Union would be provided that information.

C. The Second Withdrawal of Recognition

On June 14 Respondent sent the Union a letter that stated:

> Given that the bargaining unit consists of a single employee (who has previously indicated that he does not wish to [be] represented by Local 702) and, given that Local 702 has failed and refused to negotiate in good faith with Black & Sons over the past few months, am writing to inform you that Ray Black & Sons has elected to withdraw recognition from and cease negotiations with IBEW Local 702.

The Union responded by letter dated June 16; it claimed that it was Respondent who was failing to bargain in good faith. The Union further asserted that Respondent had never provided it with the names of the employees who were performing the electrical work at the Asgrow site, information that the Union had specifically requested in its November 4, 1998 letter. The Union claimed that Respondent had unilaterally changed the unit by assigning electrical work to nonunit employees and then claiming that there was only one person in the unit. In the letter the Union claimed that at the bargaining session held on April 29, 1999,[8] it had requested the following additional information:

> 1. A list of all electrical work performed by Ray Black & Sons Construction during the period from November 4, 1998, to the present time.
>
> 2. A list of all employees who performed this work.
>
> 3. A list of the number of hours spent performing electrical work and the number of hours each individual employee spent performing this work.
>
> 4. A list of all work currently under contract by Ray Black & Sons.
>
> 5. All electrical work which has been subcontracted by Ray Black & Sons Construction to other firms or individuals since November 4, 1998.[9]
>
> At the April 29 meeting, you promised to provide this information. On May 21, 1999, the Union was provided information that was specifically limited to some contractual information on the Asgrow job at Centralia. While not showing the names, dates and hours worked, his material showed that Ray Black & Sons Construction had contracts to perform more electrical work than could be performed by one employee.
>
> . . . .

[4] Respondent argues that by failing to respond, the Union waived its right to the information. I disagree. The settlement agreement provided that Respondent would provide the information; no additional request was needed.

[5] The General Counsel and the Union contend that the Union expanded its request for information beyond that stated in its November 4 letter. To the extent that there is any direct evidence to support that assertion, I do not credit that evidence. But this is ultimately of little consequence because, as will be seen below, the Union expanded its request for information at the June 10 meeting.

[6] The Respondent asserts that the Union admitted that it did receive this information. I reject this assertion. First, Respondent does not contend that it actually provided this information to the Union; rather it argues only that the Union admitted that it did. In any event, the testimony of Noble that Respondent relies on was clarified thereafter in the record. I credit the clarification.

[7] This is based on the credible testimony of Paul Noble, the Union's business representative.

[8] As indicated above, I conclude that no such request was actually made until the June 10 meeting.

[9] The complaint alleges only that Respondent unlawfully failed to provide "the names of each of Respondent's employees who had performed electrical work since March 27, 1998, and the number of hours of electrical worked performed by each employee."

> We need the additional records to determine the dates, names and hours worked, etc., by employees performing electrical work.

The Union asserted that it had reiterated its request for this information at the June 10, 1999 bargaining meeting.

D. Employees in the Unit

Records show that for January 1 through June 15, 1999, eight persons performed some amount of electrical work for Respondent. Of these, four spent 4.4 percent of their time, or less, performing electrical work. One of the remaining four, Gerald Higgerson, spent 67.1 percent of his time performing electrical work, but the Regional Director concluded that he was a supervisor and there is no evidence that his duties have changed. I, thus, also conclude that he is a supervisor and therefore not part of the unit. Mark Collier spent 75.9 percent of his time performing electrical work; he is the employee who all parties agree is in the unit. The remaining two employees, David Hester and Dean Marlow, spent 37.6 and 28.7 percent, respectively, performing electrical work. It is these two employees who the General Counsel primarily relies on to show that the unit has not been reduced to one person during this time period. Records for 1998 show that 13 persons performed some amount of electrical work. Nine of these performed electrical work 2.1 percent of their time, or less. Supervisor Higgerson spent 71.3 percent of his time doing so. Collier, Hester, and Marlow spent 84, 29.5, and 19.6 percent, respectively. However, during this period there were several weeks when Hester and Marlow spent 24 hours or more performing electrical work. Specifically Hester's figures are:

10/14/98	40 hours
10/21/98	24 hours
11/4/98	40 hours
11/11/98	32 hours
12/16/98	40 hours
12/23/98	40 hours
12/30/98	28 hours
1/6/99	32 hours
1/13/99	34.5 hours
1/20/99	40 hours

Marlow's figures are:

5/13/98	24 hours
11/4/98	32 hours
11/11/98	32 hours
12/16/98	32 hours
12/23/98	40 hours
1/6/99	40 hours
1/13/99	38 hours

In 1997, Collier again was at least one employee performing unit work. During that year, Tom Cagle also performed electrical work. The weeks he spent substantial time doing so are:

5/21/97	40 hours
5/28/97	29 hours
6/4/97	40 hours
6/11/97	35.5 hours
6/18/97	40 hours
6/25/97	25.5 hours

During this same 7-week period admitted unit employee Collier performed electrical work 267.5 hours, for an average of 33.4 hours per week, performing electrical work. In addition, Respondent recalled four employees to perform electrical work on a specific project. Two of these employees worked for 3 consecutive weeks for a total of 102 hours and 113 hours, respectively; the remaining two worked 4 consecutive weeks for a total of 137 and 131.5 hours, respectively.

III. ANALYSIS

A. Withdrawal of Recognition

As indicated, Respondent contends that it acted lawfully when it withdrew recognition from the Union because the unit consisted of only a single employee. In *McDaniel Electric,* 313 NLRB 126 (1993), the Board stated:

> The Board has long recognized the principle that collective bargaining presupposes that there is more than one eligible person who desires to bargain. *Luckenbach Steamship Co.,* 2 NLRB 181, 193 (1936). And the Board has recognized that if it is not empowered to direct an election and to certify a one-man unit, it logically follows that the Act precludes the Board from directing an employer to bargain with respect to such a unit. *Foreign Car Center,* 129 NLRB 319 (1960). In short, when the employee complement at issue has no "collective" character, and thereby has no meaningful relationship to the practice and procedure of collective bargaining that underlies the statutory framework, it is altogether appropriate for the Board to withhold its statutory representational and unfair labor practice processes.
>
> Before we will withhold those processes, however, we will require proof that the purportedly single-employee unit is a stable one, not merely a temporary occurrence.

Id. at 127.

In order to resolve whether there was a stable single-employee unit, I must first define the unit. Here, the unit description is somewhat unusual. Instead of defining the unit as "all employees performing electrical work" of "all electricians" the unit is described as all employees who "primarily" engage in electrical work, but excluding all other employees. In ascertaining the intent of this unit description, I am guided by the framework set forth *Northwest Community Hospital,* 331 NLRB 307 (2000). Thus, where the unit description is clear and unambiguous, the Board will hold the parties to the unit as described. The General Counsel and the Union argue that the word "primarily" should be ignored or, at least be interpreted to mean something other that its normal meaning. They argue that because Hestor and Marlow spent a substantial of time on a yearly basis performing electrical work they should be included in the unit even if they were not "primarily" performing electrical work on a yearly basis. I reject that argument. I am not free to ignore or modify clear language in the unit description, and there is no need to examine extrinsic evidence where the unit description is clear. I conclude that the mere fact that Hester and Marlow worked substantial percentages of time on a yearly basis performing electrical work is insufficient for them to be included in this unit.

More persuasive, however, is the argument that the unit description must be understood in light of industry practice. The Board has long recognized that in the construction industry employees may work for short periods of time on different projects. *Daniel Construction Co.,* 133 NLRB 387 (1961), as modified 167 NLRB 1078 (1967). See also *SAS Electrical Services,* 323 NLRB 1239, 1251–1252 (1997). Thus, the unit description in this case must include employees who were "primarily" engaged in electrical work for substantial periods of time. Respondent argues against such an interpretation of the unit description. It argues that in the Regional Director's decision the Regional Director himself used annual percentages to define the scope of the unit. I find that argument unpersuasive. The Regional Director's decision did not decide specifically how the word "primarily" was to be applied; it merely dealt with the fact pattern presented in that case.

Examining the record in light of such an understanding of the unit, it is apparent that employees other that Collier were primarily engaged in electrical work. As more fully described in the columns above, in 1997 Cagle was such an employee; in 1998 and 1999 Hester and Marlow were such employees. As such they were included in the unit. Moreover, it is Respondent's burden to establish the existence of a stable single-employee unit. *Crispo Cake Cone Co.,* 190 NLRB 352, 354 (1971), enfd. 464 F.2d 233 (8th Cir. 1972). I note that there is no evidence that Respondent is no longer seeking to perform electrical work or that it has adopted a policy or practice to only engage in electrical work that can be performed primarily by only one employee. At the very least, Respondent has not shown that the unit has declined to a *stable* single employee. It follows that Respondent violated Section 8(a)(5) and (1) when it withdrew recognition from the Union on May 21, 1998, and June 14, 1999.

The Union argues that Respondent was not privileged to withdraw recognition in any event even if the unit consisted of a single employee. It argues that any assignment of electrical work to nonunit employees would have been in breach of contract. I am not persuaded by that argument because the issue of whether those assignments were in breach of contract was not fully litigated in this proceeding and I, thus, am unable to make any findings in that regard.

B. Refusal to Provide Information

In fulfillment of its obligation to bargain in good faith, an employer must provide to a union requested information that has at least probable relevance and use to the union in fulfilling its role as the collective-bargaining representative of the employees. *NLRB v. Acme Industrial Co.,* 385 U.S. 423 (1967). The standard used to ascertain relevancy is similar to that used in discovery proceedings. The requested information need not be dispositive; it need only have some bearing on the issues. *W-L Molding Co.,* 272 NLRB 1239 (1989).

As set forth above, Respondent never provided the Union with "the names, dates and hours worked by any employees performing electrical work" at the Asgrow site and never provided the Union with the names of each of Respondent's employees who had performed electrical work since March 27, 1998, and the number of hours of electrical work performed by each employee. The potential relevance of that information is patent; it was necessary to determine whether the work performed there was unit work; moreover, I note that Respondent does not contend that the information lacked relevance. Under these circumstances I conclude that Respondent violated Section 8(a)(5) and (1) by failing to provide the Union with that information.[10] Moreover, by failing to fully provide the information requested in the November 4, letter, Respondent breached the terms of the settlement agreement. Thus, the Regional Director properly set it aside.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act

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

3. The Union, by virtue of Section 9(a) of the Act, is the exclusive collective-bargaining representative of Respondent's employees in the following unit:

> All employees who are primarily engaged in the performance of electrical work, excluding office, clerical and professional employees, guards and supervisors as defined in the Act and all other employees.

4. By withdrawing recognition from the Union on May 21, 1998, and June 14, 1999, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

5. By failing to provide the Union with requested information that is relevant and reasonably necessary to the Union's performance of its obligations as the collective-bargaining representative of employees in the unit, Respondent violated Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

6. Respondent has not violated the Act in any other manner as alleged in the complaint.

REMEDY

Having found that 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. Respondent must rescind its withdrawal of recognition of the Union and recognize the Union as the collective-bargaining representative of the employees in the unit. Respondent must provide the Union with the information it has unlawfully failed to supply.

[Recommended Order omitted from publication.]

[10] I have considered the fact that Respondent delayed providing the Union with the other information requested in the November 4 letter. However, the General Counsel did not specifically allege in the complaint that Respondent had unlawfully delayed providing this information. Nor did the General Counsel raise that issue at the trial. Finally, even in his post trial brief the General Counsel still does not raise this issue. Under these circumstances I conclude that this issue has not been fully litigated in that Respondent was not reasonably on notice that this matter was an issue that needed to be addressed at the trial.