Independent Steel Products, LLC *and* Local 2947, United Brotherhood of Carpenters and Joiners of America. Case 29–CA–26283

June 28, 2005

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

On December 2, 2004, Administrative Law Judge Raymond P. Green issued the attached decision. The General Counsel and Charging Party filed exceptions and supporting briefs.

The National Labor Relations 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, to adopt his recommended Order as modified and set forth in full below, and to substitute a new notice for that of the judge.

The complaint alleged, and the judge found, that the Respondent violated Section 8(a)(1) and (5) of the Act by withdrawing in an untimely manner from multiemployer bargaining, insisting on bargaining individually with the Union, and thereafter unilaterally changing unit employees' health care benefits. The judge ordered the Respondent to cease and desist from this unlawful conduct, to bargain on request with the Union through the multiemployer association (the Association), and to resume compliance with its financial obligations to the Union's Welfare Fund (health care benefits). Because the judge found that the Respondent was not on notice that the General Counsel was additionally contending that the Respondent failed to execute the collective-bargaining agreement that was entered into by the Association and Union on August 24, 2004, or failed to abide by its terms, the judge declined to find that the Respondent's failure to do so violated the Act, and declined to order the Respondent to execute and abide by the agreements as a remedial measure.

Both the General Counsel and the Charging Party excepted to the judge's recommended order.[1] Although not asserting that the judge erred in failing to find that the Respondent violated the Act by not executing and abiding by the Association agreement, they contend that the judge erred by not ordering the Respondent to abide by the agreement, which they claim is one of the standard remedies for an employer's untimely withdrawal from multi-employer bargaining. The Charging Party further argues that ordering the Respondent to bargain through the Association at this point makes no sense given that the Association has already reached an agreement with the Union, and because it would effectively give the Respondent what it did not lawfully achieve—individual bargaining. The Respondent did not file a brief in reply to these exceptions.

In light of the limited scope of the pleadings and to ensure against possible infringement of the Respondent's due process rights, on April 21, 2005, the Board issued a Notice to Show Cause.[2] This notice specified the additional relief sought by the General Counsel and allowed the Respondent until May 5, 2005, to present arguments why the Board should not modify the remedy in the manner proposed by the exceptions. The Respondent filed no response to the Notice.

In the absence of opposition from the Respondent, the Board has decided to grant the requested modification of the remedial order in accordance with the General Counsel's and Charging Party's exceptions.[3]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below and orders that the Respondent, Independent Steel Products, LLC, Farmingdale, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Withdrawing in an untimely manner from multiemployer bargaining through the Hollow Metal Door and Buck Association (the Association), and insisting on bargaining with the Union on an individual basis.

(b) Failing and refusing to abide by the terms of the collective-bargaining agreement between the Association and the Union, executed August 24, 2004.

(c) Unilaterally changing the health care benefits provided to its employees.

[1] The Respondent filed no exceptions.

[2] Chairman Battista and Member Schaumber; Member Liebman dissenting.

[3] Thus, we shall order the Respondent to abide by the terms of the Association agreement in all respects, including resuming contributions to the Union's Welfare Fund as ordered by the judge. We shall also order the Respondent to make the unit employees whole for any loss of earnings and other benefits they may have suffered as a result of the Respondent's failure to abide by the agreement, computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded,* 283 NLRB 1173 (1987). We shall further order the Respondent to make whole all benefit funds provided by the Association agreement for any failure to make the contractually required contributions, with any additional amounts due funds computed in the manner set forth in *Merryweather Optical Co.*, 240 NLRB 1213, 1216, fn. 7 (1979). Finally, we shall order the Respondent to reimburse employees for any losses they may have suffered as a result of its failure to make contributions to contractually-required benefit funds, in the manner prescribed in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), with interest as provided in *New Horizons for the Retarded*, supra.

(d) In any like or related manner interfering with, restraining, or coercing its 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) Abide by the terms of the collective-bargaining agreement between the Association and the Union (the Association agreement), executed August 24, 2004.

(b) Make employees whole, with interest, for any losses they may have suffered as a result of the Respondent's failure to abide by the agreement, consistent with the modified remedy described above.

(c) Make the Union's Welfare Fund and all other benefit funds required by the Association agreement whole, with interest, for any contributions that were not made because of the Respondent's failure to abide by the terms of the agreement (in the case of the Welfare Fund, the contributions that were not made from April 1, 2004), and reimburse unit employees for any expenses they incurred as a result of the failure to make such contributions, with interest, in the manner set forth in the remedy section of the judge's decision, as modified herein.

(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 money due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facilities in the Bronx and Queens, New York, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent 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 a 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 April 1, 2004.

(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 it has taken to comply.

[4] 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."

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 a 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 withdraw in an untimely manner from multiemployer bargaining through the Hollow Metal Door and Buck Association (the Association) and WE WILL NOT insist on bargaining with the Union on an individual basis.

WE WILL NOT unilaterally change the health care benefits given to our employees.

WE WILL NOT fail and refuse to abide by the terms of the collective-bargaining agreement reached between the Association and the Union (the Association agreement) and executed August 24, 2004.

WE WILL NOT in any like or related manner interfere with, restrain or coerce you in the exercise of your rights as set forth above.

WE WILL abide by the terms of the Association agreement and WE WILL make our employees whole, with interest, for any losses they suffered as a result of our failure to abide by its terms.

WE WILL make the Union's Welfare Fund and all other benefit funds required by the Association agreement whole, with interest, for any missed payments (since April 1, 2004, to the Welfare Fund) in accordance with the terms of the Association agreement, and WE WILL reimburse unit employees, with interest, for any expenses they may have incurred as a result of our failure to make required payments to the funds.

INDEPENDENT STEEL PRODUCTS, LLC

James Kearns Esq., for the General Counsel
Wendell Shepherd Esq., for the Union.

DECISION

STATEMENT OF THE CASE

RAYMOND P. GREEN, Administrative Law Judge. I heard this case in Brooklyn, New York, on November 9, 2004. The charge was filed on May 5, 2004, and the complaint was issued on August 2, 2004. In substance, the complaint alleges that after negotiations had begun between the Union and the Hollow Metal Door and Buck Association, of which the Respondent was a member, the Respondent withdrew from the Association and unilaterally changed the health insurance benefits of its employees.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the brief filed,[1] I make the following

FINDINGS OF FACT

I. JURISDICTION

The complaint alleges and the Answer did not deny (and therefore admitted), paragraphs 1 through 6 along with paragraphs 8, 10, 11, and 14 of the complaint. Accordingly I make the following findings.

1. The Respondent is a corporation with its principle office and place of business located at 55 Engineer Lane, Farmingdale, New York, where it has been engaged in the manufacturing of steel products. (The other evidence was that it is engaged in the manufacturing of steel doors.)

2. That during the past year, which period is representative of its annual operations generally, the Respondent in the course of its business operations, purchased and received at its Farmingdale facility supplies and materials valued in excess of $50,000 directly from points located outside the State of New York.

3. That at all material times, the Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

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

5. That the Hollow Metal Door and Buck Association has been an organization composed of various employers engaged in steel door production and that one purpose of this Association is to represent its employer-members in negotiating and administering collective-bargaining agreements with the Union.

6. That the appropriate bargaining unit consists of certain employees of the Respondent and the various employer-members of the Association that authorized the Association to bargain on their behalf. The classifications of employees within the bargaining unit are:

> All employees, including mechanics, machinists, welders, layout employees, bench hands, grainers and finishers, assemblers, operators, sprayers, fillers, grinders, punch and drill press operators, maintenance employees, hi-lo operators, sanders, dippers, packers, laborers and utility employees, but excluding guards and supervisors as defined in Section 2(11) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Frank Morino, the Union's president, testified that his Union has had a longstanding bargaining relationship with the Respondent and its predecessor companies. In this respect, it seems that the present owners, David and Steven Glaser, operated similar companies under different names and sold the business to another person in the 1990s. The facility was moved to New Jersey, and the Glasers, along with many of the employees also moved to New Jersey as employees of the new enterprise. The Union also followed these various moves and continued to represent the employees through a series of collective-bargaining agreements.

In the 1990s the Company was known as Well Built Steel Products and in 2000 it moved from Hoboken, New Jersey, to Farmingdale.

Morino testified that in 2000, he received a call from the Glasers who told him that they desired to purchase the assets of Well Built, employ the existing group of workers and enter into a collective-bargaining agreement with the Union.

According to Morino, the Glasers executed two agreements in January 2001. One was a collective-bargaining agreement, and the other an agreement to make payments on the accrued indebtedness that that predecessor company was owing to the Health Fund and the Pension Fund on behalf of the bargaining unit employees. After these agreements were signed, the Glasers took over the business and in February 2001, resumed operations in Farmingdale, New York. The collective-bargaining agreement that they executed was the same as the one that had previously been signed by Well Built and also was the same as the contract negotiated between the Union and the Association. However, the contract itself was between the Union and the Respondent. The term of the contract was effective, retroactive from August 1, 2000, to July 31, 2003.

Morino testified that in June 2003, he met with the representatives of the Association and was told that its members included the Respondent, along with General Fireproof, Acme Steel, FHA Corp., and LIF Industries. The head of the Association was Jack Teich and its attorney was Scott Travella.

A series of 11 or 12 bargaining sessions took place between July 1, 2003, and March 2004. Morino testified that one or both of the Glasers attended and participated in about 9 or 10 of these bargaining sessions. By March 2004, the Union and the Association had not reached an agreement. However, Morino testified that at various points during the negotiations, the parties agreed to extend the terms of the contract that had expired on July 31, 2003.

By letter dated March 22, 2004, Neil Frank wrote to Charles Claytor, the Fund administrator and a trustee of the Union. He stated that his firm had been retained to represent the Respon-

[1] The Respondent did not appear at the hearing and did not file a Brief. It did, however, file an answer to the complaint which admitted certain allegations and denied others. I also note that a new attorney, Lawrence Rosenbluth, requested an adjournment of the hearing on October 14, 2004, because of his unfamiliarity with the case and this was granted by Judge Biblowitz on October 15, 2004.

dent in connection with its welfare fund and requested a group of fund documents.

Morino testified that he and Claytor had a meeting with Frank on March 26, 2004. He testified that at that point, the Respondent owed the Welfare Fund the sum of $1,900,000. According to Morino, Frank, expressed a desire to negotiate for a new collective-bargaining agreement on behalf of the Respondent in addition to negotiating about the fund delinquency. Morino told him that they were only there to talk about the money owed to the fund and that they were not going to bargain about a new collective-bargaining agreement inasmuch as the Union was already bargaining with the Association.

By letter dated March 29, 2004, Frank stated; "This letter is to confirm that negotiations are scheduled for Wednesday March 31 . . . at your offices." With respect to this letter, Marino testified that this does not represent any agreement by the Union to negotiate and that during the March 26, 2004 meeting he merely said that he would be coming back from Washington and would be available to talk. He states that he never made any agreement to bargain separately for a collective-bargaining agreement.

By letter dated March 29, 2004, the Union's attorney, Wendell Shepherd, wrote to Frank as follows:

> This letter is to inform you that Local 2947 does not consent to the withdrawal of your client, Independent Steel Products, LLC, from the Hollow Metal Door and Buck Association multi-employer bargaining unit. However, the Union and the Funds of course wish to reach an agreement concerning the delinquencies due the Funds.

By letter dated March 31, 2004, Frank stated:

> As you know, Hollow Metal Trust Fund has advised Independent Steel Products, LLC and its employees that it will not provide health insurance coverage past March 31, 2004. Further, I was advised on March 30, 2004, that you have cancelled negotiations scheduled for March 31, 2004 . . . at which time we were prepared to discuss and negotiate all matters in dispute between the parties, including the payment of an initial deposit towards the past due payment. In light of the cancellations, Independent Steel Products, LLC has arranged to cover its employees with an alternative health plan, which includes the basic elements of the Fund's health plan beginning April 1, 2004.
>
> We remain available to discuss all issues involving the CBA, including the welfare plan and resolution of past delinquencies. . . .

Morino testified that he and other representatives of the Union met with Frank on April 1, 2004, for the purpose of talking about the fund delinquencies. He states that Frank insisted on linking discussion of those delinquencies with negotiations for a new collective-bargaining agreement. Morino testified that the Union rejected this and that Frank said that the Company had made arrangements to provide health services through HIP.

Later on April 1, 2004, Frank faxed a letter to the Union that offered a new health plan through HIP. The letter went on to state; "Absent your agreement to negotiate all the items in dispute between the parties, including terms of a collective-bargaining agreement, the company intends to implement the above plan on Friday, April 9, 2004. We are prepared to negotiate at any time, and await your call to schedule a meeting."

Frank sent another letter to Shepherd on April 1, 2001, that stated; "An excellent discussion of withdrawal from an association is found in the 1986 case of Jo-Vin Dress., 279 NLRB 525. I am sure you will conclude after review, our client's withdrawal is permissible."

On April 2, 2004, Morino attempted to visit and talk to the employees of the Respondent at the shop. He was denied access.

By letter dated April 6, 2004, Shepherd wrote to Frank and reiterated the Union's position that it did not consent to the Respondent withdrawing from the Association.

By letter dated April 9, 2004, Frank responded by stating:

> Our client's withdrawal from association bargaining and our request to bargain individually for a renewed contract with the union is well supported by "unusual circumstances" recognized by the National Labor Relations Board and appropriate case law.
>
> We are intent on completing negotiations for a contract and have every intention of dealing with the union toward that end.
>
> In view of your April 6, 2004 letter in which you absolutely and unequivocally refuse to bargain with our client, our client has no choice but to implement the terms of our written offer to you dated April 1, 2004.

On April 20, 2004, Frank sent another letter in response to Shepherd's April 6 letter in which he disagreed with her legal conclusions and again offered to bargain on an individual basis. In addition, he stated:

> Our objective has been and continues to be: 1) Continued representation of the employees by the union, as this relationship has worked well for over fifty years; 2) Providing the employees with an immediate and reasonable wage increase, their first in over fourteen months; 3) Allowing the employer to overcome its current dire circumstances by replacing the outrageously priced Hollow Metal Health and Welfare Plan with the HIP plan we have previously described; and 4) Finding a reasonable way to deal with the o/s welfare deficiency of over $2,000,000 so the fund will eventually be paid.
>
> Continuing in the Hollow Metal Health Fund would eliminate all possibility of objectives two through 4 from occurring. With those goals in mind, we have offered $420,000 over the term of three year renewed contract to pay down the Welfare Fund deficiency. Independent Steel would pay the Fund $50,000 at the beginning of each contract year for a total of $150,000. Further it would pay an additional $7,500 monthly for 36 months for a total of $270,000. At the end of this contract, we would negotiate additional payments and so on. In order to provide a realistic chance of ultimately retiring the debt, we ask the Trustees to suspend interest, penalties, and liquidated damages for the term of the agreement, subject to prompt payment of the agreed to settlement sums by our client during the contract term.

This letter went on to state, inter alia, that the Respondent could not pay off the past deficiencies and survive; that if the health plan remained unchanged, the Company would have to lay off more employees; that the Fund obtained a judgment of $1,950,000 plus interest and froze the Company's payroll account; that due to nonpayments the employees were without health coverage; and that the Fund will "end up shutting down the company unless a less expensive health plan is put into place immediately."

On April 29, 2004, Frank faxed a letter to Shepherd stating that the Respondent would no longer enforce the arbitration, check off or union security clauses of the agreement until negotiations were completed and a revised contract was signed. He again offered to negotiate.

Moses Majett Jr., the Union's shop steward, testified that in April 2004, he and the employees were told by the Glasers that they were getting new health insurance and were issued HIP eligibility cards. He also testified that the employees were told that there was no more union.

Morino testified that at some point after April 1, 2004, the Company ceased making all payments to the Welfare Fund. He also testified that at some point after that date, the Company ceased making payments to the Pension Fund.

On August 24, 2004, the Union and the Association entered into a new contract to run for the period from August 1, 2003, to July 31, 2007. This was in the form of a handwritten memorandum setting forth the various terms, including new rates of pay and new rates for fund contributions. The document was signed by Morino and various other people on behalf of the Union and by Jack Teicher, the president of the Association.

By letter dated September 14, 2004, the new agreement was sent to David Glaser of Independent Steel. The Union has not received any response, and according to the testimony of Moses Majett, it is evident that the terms of this agreement have not been implemented by the Company. I note however, that the September 14 letter did not explicitly request the Respondent to sign, adopt, or implement the August 24 agreement.

III. ANALYSIS

The evidence shows that after reacquiring this business, the Glasers, in 2001, entered into a contract with the Union covering the employees of Independent Steel at the Farmingdale facility. That contract was set to expire on July 31, 2003. The evidence also shows that in June 2003, union representatives met with the Hollow Metal Door and Buck Association, a multiemployer association set up to negotiate collective-bargaining agreements on behalf of its employer-members. At the first meeting, the president of the Association notified the Union as to which employers it was negotiating on behalf of and listed the Respondent as one of them. During at least 9 or 10 of the bargaining sessions that took place between July 1 and March 2004, either David or Steven Glaser was present at the negotiations. Therefore, there is no question but that the principles of the Respondent unequivocally authorized the Association to bargain on their behalf. *Retail Associate, Inc.,* 120 NLRB 388 (1959).

In *Charles D. Bonanno Linen Service v. NLRB,* 454 U.S. 404, 410–411 (1982) the Supreme Court noted that the *Retail Associates* rules "permit any party to withdraw prior to the date set for negotiation of a new contract or the date on which negotiations actually begin, provided that adequate notice is given. Once negotiations for a new contract have commenced, however, withdrawal is permitted only if there is 'mutual consent' or 'unusual circumstances." The "unusual circumstances" exception has historically been limited to only the most extreme situations, such as where the employer is subject to extreme financial pressures or where the multiemployer unit has dissipated to the point where the unit is no longer a viable bargaining entity. Id. at 410–411.

In *Hi-Way Billboards*, 206 NLRB 22, (1973), enfd. denied 500 F.2d 181 (5th Cir. 1974), the Board held that an employer may withdraw from multiemployer bargaining even after negotiations have begun in the following circumstances. For example, the Board has held that an employer may withdraw from group negotiations after they have begun where (1) the employer is subject to extreme economic difficulties resulting in an arrangement under the bankruptcy laws. *U.S. Lingerie Corp*., 170 NLRB 750 (1968); (2) where the employer is faced with the imminent prospect of closing, *Spun-Jee Corp*., 171 NLRB 557 (1968); and (3) where the employer is faced with the prospect of being forced out of business for lack of qualified employees and the union refuses to assist the employer by providing employees. *Atlas Electrical Service Co*., 176 NLRB 827 (1969). However, an assertion of dire economic circumstances will not justify withdrawal from the unit after an agreement is reached. *Co.-Ed Garment Co*., 231 NLRB 848, (1977); *Arco Elec Co., v. NLRB,* 618 F.2d 698, (10th Cir. 1980).

On the other hand, unusual circumstances were not found when (1) an employer asserted a good-faith doubt of the union's majority status among his own employees. *Sheridan Creations*, 148 NLRB 1503 (1964), enfd., 357 F.2d 245 (2d Cir. 1966); (2) where all the employer's unit employees were discharged. *John J. Corbett Press, Inc.*, 163 NLRB 154 (1967), enfd. 401 F.2d 673 (2d Cir. 1968); (3) where the Union executed separate individual contracts with individual employer-members of the Association; *We Painters, Inc.,* 176 NLRB 964 (1969); (4) where the employer had been suspended from the association for its failure to pay dues. *Senco Inc.*, 177 NLRB 882; (5) where the employer was subjected to a strike; *State Electrical Service* 198 NLRB 593 (1972), enfd. 477 F.2d 749 (1973); and (6) where the employer suffered a sharp decline in its business. *Serv-All Co.*, 199 NLRB 1131 (1972), enfd. denied on other grounds 491 F.2d 1273 (10th Cir. 1974).

In the present case, the Respondent's attempt to withdraw from multiemployer bargaining occurred after negotiations had started. Moreover, the evidence shows that despite its attempt to negotiate separately (while at the same time trying to resolve its past delinquencies for fund payments), this was specifically rejected by the Union which insisted on multiemployer bargaining. As the Employer did not appear at the hearing, it is self-evident that it presented no evidence to justify a contention that it was privileged to withdraw from multiemployer bargaining by virtue of "unusual circumstances."

In view of the above, I conclude that the Respondent violated Section 8(a)(1) and (5) of the Act by its attempt to withdraw

from multiemployer bargaining and insisting on bargaining on an individual basis.

Also, because the Respondent was obligated to continue to bargain through the Association, and as that bargaining had not resulted in an impasse, the Respondent was not free to unilaterally change the existing terms and conditions of employment that its employees enjoyed by virtue of the expired contract. Thus, in the absence of the Union's consent either to change the existing benefits and/or its consent to bargain on an individual basis, I also conclude that the Respondent violated Section 8(a)(1) & (5) of the Act by unilaterally changing the health plan that had previously been given to its employees by virtue of the expired contract. *Control Services, Inc*. 303 NLRB 481 (1991).

The complaint in this case alleges only that the Respondent violated the Act by; (1) its untimely withdrawal from multiemployer bargaining; and (2) by its unilateral change in the health benefit contained in the expired contract. The complaint does *not* allege and therefore the Respondent was not put on notice that the General Counsel was contending that the Respondent failed to execute the terms of the new contract that was executed on August 24, 2004, that was sent to the Respondent on September 14, 2004. Nor does the complaint allege that the Respondent has failed to implement the terms and conditions of the August 24, 2004 agreement or that it has failed to pay its employees the wages and/or benefits contained in that agreement. Further, the complaint does not allege that the Respondent has failed to make any contributions to the pension fund.

In light of the above, I cannot conclude that the Respondent has violated the Act in any manner other than what is alleged in the complaint because the Respondent was not put on notice that these allegations were being made. (Had it been advised of these allegations and the concomitantly greater potential liability, the Respondent might have made a greater effort to attend the hearing, assuming of course, that it is still in business.) I therefore shall limit my conclusions and the recommended remedy and Order to the allegations set forth in the complaint.[2]

[2] There would be nothing to prevent the Union from demanding that the Respondent execute the new association contract and filing a new charge in the event that the Respondent refused to do so. Of course, the Union has to be mindful of the 10(b) statute of limitations.

CONCLUSIONS OF LAW

1. By withdrawing from multiemployer bargaining and insisting on bargaining directly with Local 2947, United Brotherhood of Carpenters and Joiners of America, the Respondent, Independent Steel Products, LLC, has violated Section 8(a)(1) and (5) of the Act.

2. By unilaterally changing the employees Health care benefits, the Respondent has violated Section 8(a)(1) and (5) of the Act.

3. The aforesaid violations affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

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

With respect to the Welfare Fund, the Respondent should be required to resume payments to the Fund as required in its previous collective-bargaining agreement with the Union and make those contributions it failed to make from April 1, 2004.[3] Payments due to the fund under this decision shall be made with interest to be computed according to the practice set forth in *Merryweather Optical Co*., 240 NLRB 12l3, 1216 fn. 7 (l979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure, if any, to make such required payments or contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981).

[Recommended Order omitted from publication.]

[3] This is not meant to absolve the Respondent from any monetary obligations it had to make contributions to the Welfare Fund prior to April 1, 2004. But in the context of this complaint, those other delinquencies can be addressed in different forums.