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Raymond Interior Systems *and* Southern California Painters and Allied Trades District Council No. 36, International Union of Painters and Allied Trades, AFL–CIO

United Brotherhood of Carpenters and Joiners of America, Local Union 1506 *and* Southern California Painters and Allied Trades District Council No. 36, International Union of Painters and Allied Trades, AFL–CIO *and* Southwest Regional Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, Party in Interest. Cases 21–CA–37649 and 21–CB-14259

September 30, 2009

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBER SCHAUMBER

On November 10, 2008, Administrative Law Judge Burton Litvack issued the attached decision. Respondent Raymond Interior Systems (Raymond) and Respondent Carpenters Local Union 1506 (the Carpenters) each filed exceptions and a supporting brief. The General Counsel and Painters District Council No. 36 (the Painters) each filed an answering brief. Raymond and the Carpenters each filed a reply brief. The Painters filed cross-exceptions and a supporting brief. The General Counsel, Raymond, and the Carpenters each filed an answering brief, and the Painters filed a reply brief.

The Board[1] has considered the decision and the record in light of the exceptions, cross-exceptions, and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions and to adopt the recommended Order as modified and set forth in full below.[3]

We agree with the judge's unfair labor practice findings in this case, although with two modifications:

(1) The judge found that, on October 2, 2006,[4] Raymond violated Section 8(a)(2) and (3) of the Act by unlawfully assisting the Carpenters in obtaining authorization cards from Raymond's drywall finishing employees. Specifically, the judge found that Raymond warned those employees that there would be no work for them if they failed to sign with the Carpenters "that day." The judge found that those statements coerced the drywall finishing employees into signing authorization cards, upon which Raymond immediately granted 9(a) recognition to the Carpenters as the drywall finishing employees' representative. Accordingly, the judge found that Raymond further violated Section 8(a)(2) on October 2, by granting that recognition at a time when the Carpenters did not represent an uncoerced majority of those employees, and that the Carpenters violated Section 8(b)(1)(A) by accepting that recognition. We agree with those findings for the reasons set forth in the judge's decision.[5] We, therefore, find it unnecessary to pass on the judge's additional findings that Raymond unlawfully granted 9(a) recognition to the Carpenters on October 1, and that the Carpenters unlawfully accepted 9(a) recognition on that day. Those findings would be cumulative of the findings of unlawful conduct occurring on October 2, and would not materially affect the remedy in this proceeding.

(2) The judge also found that Raymond and the Carpenters violated Section 8(a)(3) and 8(b)(2), respectively, by maintaining and applying the Carpenters Union 2006–2010 master agreement, including its union-security pro-

[1] Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act. See *Snell Island SNF LLC v. NLRB*, 568 F.3d 410 (2d Cir. 2009), petition for cert. filed __U.S.L.W.__ (U.S. September 11, 2009) (No. 09-328); *New Process Steel v. NLRB*, 564 F.3d 840 (7th Cir. 2009), petition for cert. filed 77 U.S.L.W. 3670 (U.S. May 22, 2009) (No. 08-1457); *Northeastern Land Services v. NLRB*, 560 F.3d 36 (1st Cir. 2009), petition for cert. filed 78 U.S.L.W. 3098 (U.S. August 18, 2009) (No. 09-213). But see *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, 564 F.3d 469 (D.C. Cir. 2009), petitions for rehearing denied Nos. 08-1162, 08-1214 (July 1, 2009).

[2] The Respondents have excepted to certain 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.

[3] We have modified the judge's recommended Order to conform with the violations found and to correct certain inadvertent errors.

[4] All dates are in 2006.

[5] In adopting the judge's finding that Raymond made the "that day" statements described above, we observe that the judge's credibility resolutions on this point were based on his specific assessment and explanation of the witnesses' demeanor. See *Atlantic Veal & Lamb, Inc.*, 342 NLRB 418, 420 (2004), enfd. mem. 156 Fed.Appx. 330 (D.C. Cir. 2005). Member Schaumber notes he has previously expressed his view of the importance for a judge to give specific, demeanor-based reasons for crediting and discrediting witnesses to provide an adequate basis for meaningful review by the Board. Id. at 421–422 (2004) (Member Schaumber dissenting in part). See also *St. Francis Medical Center*, 347 NLRB 368, 369 fn. 9 (2006). He finds that the judge's credibility resolutions here give sufficient detail to provide an adequate basis for review.

vision, to the drywall finishing employees at a time when the Carpenters did not represent an uncoerced majority of those employees. The judge tied those violations to Raymond's October 1 recognition of the Carpenters. As stated, we are not passing on the legality of that recognition. We nevertheless affirm the findings, as it is undisputed that the parties were applying that same agreement to the drywall finishing employees on October 2, when Raymond unlawfully recognized the Carpenters as the 9(a) representative of those employees. See *Duane Reade, Inc.*, 338 NLRB 943, 944 (2003), enfd. mem. 99 Fed.Appx. 240 (D.C. Cir. 2004).

ORDER[6]

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

A. Respondent, Raymond Interior Systems, Orange and San Diego, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Recognizing and bargaining with Southwest Regional Council of Carpenters on behalf of its affiliated local unions, including Respondent Carpenters Local Union 1506, as the 9(a) collective-bargaining representative of its drywall finishing employees at a time when those unions do not represent an uncoerced majority of those employees.

(b) Maintaining, enforcing, or giving effect to the Carpenters Union 2006–2010 master collective-bargaining agreement, including the union-security clause, so as to cover its drywall finishing employees, or any extensions, renewal, or modifications thereof, unless or until Respondent Carpenters Local Union 1506 has been certified by the Board as the exclusive collective-bargaining representative of those employees; provided that nothing in this Order shall authorize, allow, or require the withdrawal or elimination of any wage increase or other benefits that may have been established pursuant to said agreement.

(c) Assisting Respondent Carpenters Local Union 1506 in obtaining authorization cards by warning its drywall finishing employees that, if they did not sign with Respondent Carpenters Local Union 1506 that day, there would be no more work for them.

(d) 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) Withdraw and withhold all recognition from Respondent Carpenters Local Union 1506 as the collective-bargaining representative of its drywall finishing employees unless and until it has been duly certified by the Board as the collective-bargaining representative of those employees.

(b) Jointly and severally with Respondent Carpenters Local Union 1506, reimburse its past and present drywall finishing employees, who joined Respondent Carpenters Local Union 1506 on or after October 2, 2006, for any initiation fees, periodic dues, assessments, or any other moneys, which they may have paid or which may have been withheld from their pay pursuant to the Carpenters Union 2006–2010 master agreement, with interest as set forth in the remedy section of the judge's decision.

(c) To the extent that coverage was provided under Carpenters Union plans, provide alternate benefits coverage equivalent to the coverage that its drywall finishing employees possessed under the Carpenters Union 2006–2010 master agreement, including pension coverage and medical, hospitalization, prescription drug, dental, optical, life, and other insurance benefits, and ensure that there be no lapse in coverage.

(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 to be reimbursed under the terms of this Order.

(e) Within 14 days after service by the Region, post at its Orange facility and worksites in Southern California copies of the attached notice marked "Appendix A."[7] Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by Respondent Raymond's authorized representative, shall be posted by Respondent Raymond immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent Raymond 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,

[6] Chairman Liebman observes that the judge's remedy and recommended Order accord with Board precedent, and she adopts them on that basis. See, e.g., *Garner/Morrison, LLC*, 353 NLRB No. 78 (2009).

[7] 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."

Respondent Raymond has gone out of business or closed the facility involved in these proceedings, Respondent Raymond shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former drywall finishing employees employed by Respondent Raymond at any time since October 2, 2006.

(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.

B. Respondent, United Brotherhood of Carpenters and Joiners of America, Local Union 1506, Los Angeles and Orange, California, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Accepting assistance from Respondent Raymond in obtaining union authorization cards from Raymond's drywall finishing employees.

(b) Accepting recognition from Respondent Raymond as the 9(a) collective-bargaining representative of its drywall finishing employees at a time when Carpenters Local Union 1506 does not represent an uncoerced majority of those employees.

(c) Maintaining and enforcing the Carpenters Union 2006–2010 master agreement, including the union-security clause, so as to cover Respondent Raymond's drywall finishing employees, and any extensions, renewal, or modifications thereof, unless and until it has been certified by the Board as the collective-bargaining representative of those employees.

(d) Failing to inform Respondent Raymond's drywall finishing employees, when it first sought to obligate them to pay dues and fees under a union-security clause, of their rights under *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963), to be and remain nonmembers of Respondent Carpenters; and of the rights of nonmembers under *Communications Workers v. Beck*, 487 U.S. 735 (1988), to object to paying for union activities not germane to the Union's duties as collective-bargaining representative, and to obtain a reduction-in-dues and fees for such activities.

(e) In any like or related manner 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) Jointly and severally with Respondent Raymond, reimburse all of the latter's past and present drywall finishing employees, who joined Respondent Carpenters Local Union 1506 on or after October 2, 2006, for initiation fees, periodic dues, assessments, or any other moneys, which they may have paid or which may have been withheld from their pay pursuant to the Carpenters Union 2006–2010 master agreement, with interest as set forth in the remedy section of the judge's decision.

(b) 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 to be reimbursed under the terms of this Order.

(c) Within 14 days after service by the Region, post at its union office in Orange, California, copies of the attached notice to members, marked "Appendix B."[8] Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by Respondent Carpenter's authorized representative, shall be posted by Respondent Carpenters immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent Carpenters Local Union 1506 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 Respondent Carpenters Local Union 1506 has ceased its representational activities or has become defunct, Southern California Regional Council of Carpenters shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former drywall finishing employees, employed by Respondent Raymond at any time since October 2, 2006.

(d) Forward to the Regional Director of Region 21 signed copies of the attached notice, marked "Appendix B," for posting by Respondent Raymond at its Orange facility and worksites in Southern California for 60 consecutive days in places where notices to employees are customarily posted.

(e) 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 found.

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[8] 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."

Dated, Washington, D.C. September 30, 2009

Wilma B. Liebman, Chairman

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX A

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

The National Labor Relations Board has found that we violated 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 recognize and bargain with Southwest Regional Council of Carpenters on behalf of its affiliated local unions, including Respondent Carpenters Local Union 1506, as the 9(a) collective-bargaining representative of our drywall finishing employees at a time when those unions do not represent an uncoerced majority of those employees.

WE WILL NOT maintain, enforce, or give effect to our Carpenters Union 2006–2010 master collective-bargaining agreement, including the union-security clause, so as to cover our drywall finishing employees, or any extensions, renewal, or modifications thereof, unless or until Respondent Carpenters Local Union 1506 has been certified by the Board as the exclusive collective-bargaining representative of those employees; provided that nothing herein shall authorize, allow, or require us to withdraw or eliminate any wage increase or other benefits (pension or insurance plans) that may have been established pursuant to said agreement.

WE WILL NOT assist Respondent Carpenters Local Union 1506 in obtaining authorization cards by warning our drywall finishing employees that, if they did not sign with Respondent Carpenters Local Union 1506 that day, there would be no more work for them.

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

WE WILL withdraw and withhold all recognition from Respondent Carpenters Local Union 1506 as the collective-bargaining representative of our drywall finishing employees unless and until it has been duly certified by the Board as the collective-bargaining representative of those employees.

WE WILL jointly and severally with Respondent Carpenters Local Union 1506, reimburse our past and present drywall finishing employees, who joined Respondent Carpenters Local Union 1506 on or after October 2, 2006, for any initiation fees, periodic dues, assessments, or any other moneys, which they may have paid or which may have been withheld from their pay pursuant to the Carpenters Union 2006–2010 master agreement, with interest.

WE WILL, to the extent that coverage was provided under Carpenters Union plans, provide alternate benefits coverage equivalent to the coverage that our drywall finishing employees possessed under the Carpenters Union 2006–2010 master agreement, including pension coverage and medical, hospitalization, prescription drug, dental, optical, life, and other insurance benefits, and ensure that there be no lapse in coverage.

RAYMOND INTERIOR SYSTEMS

APPENDIX B

NOTICE TO MEMBERS
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 accept assistance from Respondent Raymond in obtaining union authorization cards from Raymond's drywall finishing employees.

WE WILL NOT accept recognition from Respondent Raymond as the 9(a) collective-bargaining representative

of our drywall finishing employees at a time when we do not represent an uncoerced majority of those employees.

WE WILL NOT maintain and enforce the Carpenters Union 2006–2010 master agreement, including the union-security clause, so as to cover Respondent Raymond's drywall finishing employees, and any extensions, renewal, or modifications thereof, unless and until we have been certified by the Board as the collective-bargaining representative of those employees.

WE WILL NOT fail to inform Respondent Raymond's drywall finishing employees, when we first seek to obligate them to pay dues and fees under a union-security clause, of their rights under *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963), to be and remain nonmembers of Respondent Carpenters; and of the rights of nonmembers under *Communications Workers v. Beck*, 487 U.S. 735 (1988), to object to paying for union activities not germane to the Union's duties as collective-bargaining representative, and to obtain a reduction-in-dues and fees for such activities.

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

WE WILL jointly and severally with Respondent Raymond, reimburse all of the latter's past and present drywall finishing employees, who joined Respondent Carpenters Local Union 1506 on or after October 2, 2006, for initiation fees, periodic dues, assessments, or any other moneys, which they may have paid or which may have been withheld from their pay pursuant to the Carpenters Union 2006–2010 master agreement, with interest.

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1506

Patrick J. Cullen, Esq., for the General Counsel.

James A. Bowles, Esq. and *Richard S. Zuniga, Esq. (on brief) (Hill, Farrer & Burrill LLP),* of Los Angeles, California, on behalf of Respondent Raymond Interior Systems.

Kathleen M. Jorgenson, Esq. (Decarlo, Connor & Shanley), of Los Angeles, California, on behalf of Respondent United Brotherhood of Carpenters and Joiners of America Local Union No. 1506.

Ellen Greenstone, Esq. and *Richa Amar, Esq. (Rothner, Segall, & Greenstone),* of Pasadena, California, on behalf of the Charging Party.

DECISION

STATEMENT OF THE CASE

BURTON LITVACK, Administrative Law Judge. The original and the first amended unfair labor practice charge in Case 21–CA–37649 were filed by Southern California Painters and Allied Trades District Council No. 36, International Union of Painters and Allied Trades, AFL–CIO (the Painters Union) on February 8 and April 30, 2007, respectively. The original unfair labor practice charge and the first amended unfair labor practice charge in Case 21–CB–14259 were filed by the Painters Union on February 8 and April 30, 2007, respectively. After investigating the above-described unfair labor practice charges, on January 30, 2008, the Regional Director for Region 21 of the National Labor Relations Board (the Board) issued an order consolidating cases and a consolidated complaint, alleging that Respondent Raymond Interior Systems (Respondent Raymond) engaged in unfair labor practices within the meaning of Section 8(a)(1), (2), and (3) of the National Labor Relations Act (the Act), and that Respondent United Brotherhood of Carpenters and Joiners of America, Local Union No. 1506 (Respondent Carpenters) engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) of the Act. Respondent Raymond and Respondent Carpenters each filed an answer, essentially denying the commission of any of the alleged unfair labor practices. Pursuant to a notice of hearing, on April 28 through 30 and May 1, 2008, in Los Angeles, California, a trial on the merits of the above unfair labor practice allegations was held before the above-named judge. At the hearing, each of the parties was afforded the opportunity to examine and to cross-examine witnesses, to offer into the record any relevant documentary evidence, to argue legal positions orally, and to file posthearing briefs. The latter documents were filed by counsel for the General Counsel, counsel for the Painters, counsel for Respondent Raymond, and counsel for Respondent Carpenters, and each brief has been carefully considered. Accordingly, based upon the entire record herein, including the posthearing briefs and my observation of the testimonial demeanor of the several witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

At all times material, Respondent Raymond, a California corporation, with its principal place of business located in the Orange, California (the Orange facility), and another place of business in San Diego, California (San Diego facility), has been engaged in the building and construction industry as a contractor performing drywall, lathing, and plastering work. During the calendar year 2006, a representative period, in conducting its business affairs, Respondent Raymond purchased and received at its State of California jobsites goods, valued in excess of $50,000, directly from suppliers located outside the State of California. At all times material, Respondent Raymond has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATIONS

At all material times, the Painters Union has been a labor organization within the meaning of Section 2(5) of the Act.

At all material times, Respondent Carpenters has been a labor organization within the meaning of Section 2(5) of the Act.

III. THE ISSUES

The consolidated complaint alleges that Respondent Raymond engaged in acts and conduct violative of Section 8(a)(1), (2), and (3) of the Act, on or about October 2, 2006, by granting

recognition to and, since then, maintaining and enforcing an existing collective-bargaining agreement with the Southwest Regional Council of Carpenters and its affiliated local unions, including Respondent Carpenters, as the exclusive representative of its drywall finishing employees at a time when Respondent Carpenters did not represent an uncoerced majority of the above bargaining unit employees nor was the lawfully recognized exclusive collective-bargaining representative of the employees; by maintaining and enforcing a union-security clause in the collective-bargaining agreement thereby encouraging its drywall finishing employees to join Respondent Carpenters; by warning its drywall finishing employees that they had to join or sign up with the Carpenters that day or they could no longer work for Respondent Raymond and by telling said employees they had to sign with the Carpenters that day if they wanted to work for Respondent Raymond the following day thereby rendering assistance and support to Respondent Carpenters and not adhering to the terms of the contractual union-security provision; and by rendering assistance and support to Respondent Carpenters by entering into a recognition agreement, acknowledging Respondent Carpenters as the representative of all its employees under an existing collective-bargaining agreement at a time when Respondent Carpenters did not represent an uncoerced majority of Respondent Raymond's drywall finishing employees.

The consolidated complaint also alleges that Respondent Carpenters engaged in conduct violative of Section 8(b)(1)(A) and (2) of the Act, on or about October 2, 2006, by obtaining recognition from Respondent Raymond and maintaining and enforcing its existing collective-bargaining agreement with Respondent Raymond as the exclusive collective-bargaining representative of Respondent Raymond's drywall finishing employees at a time when it neither represented an uncoerced majority of the employees nor was recognized as the exclusive collective-bargaining representative of them; by maintaining and enforcing a union-security provision in the above-collective-bargaining agreement thereby causing Respondent Raymond to encourage its drywall finishing employees to become members of Respondent Carpenters; by telling employees they had to sign up with the Carpenters that day or they could no longer work for Respondent Raymond; and by receiving assistance and support from Respondent Raymond when the latter entered into a recognition agreement, acknowledging Respondent Carpenters as the exclusive representative of all of its employees under an existing collective-bargaining agreement at a time when Respondent Carpenters did not represent an uncoerced majority of Respondent Raymond's drywall finishing employees. The consolidated complaint further alleges that Respondent Carpenters engaged in acts and conduct violative of Section 8(b)(1)(A) of the Act on or about October 2, 2006, by failing to inform Respondent Raymond's drywall finishing employees of the following information prior to obtaining completed membership applications from them and thereby obligating the said employees to pay dues and fees to the labor organization—that they had the right to be or remain a nonmember, that they have a right as a nonmember to object to paying for nonrepresentational activities and to obtain a reduction in fees for such nonrepresentational activities, that they have the right to be given sufficient information to enable them to intelligently decide whether to object, and that they have the right as a nonmember to be apprised of any internal union procedures for filing objections.

In their respective answers to the consolidated complaint, Respondent Raymond and Respondent Carpenters both denied the above-described unfair labor practice allegations. Further, both deny that a unit limited to Respondent Raymond's drywall finishing employees constitutes a unit appropriate for the purposes of collective bargaining and argue that, upon the expiration of Respondent Raymond's collective-bargaining agreement with the Painters Union on September 30, 2006, by operation of law and the provisions of the existing collective-bargaining agreement between Respondent Raymond and the Southwest Regional Council of Carpenters on behalf of its affiliated local unions, including Respondent Carpenters, effective from July 1, 2006, through June 30, 2010, Respondent Carpenters was the exclusive collective-bargaining representative of the employees covered by the agreement, including Respondent Raymond's drywall finishing employees, within the meaning of Section 9(a) of the Act. Alternatively, they argue that the parties' existing collective-bargaining agreement was a lawful prehire agreement, privileged by Section 8(f) of the Act, covering Respondent Raymond's drywall finishing employees and their work. In this regard, during the hearing, Respondent Raymond and Respondent Carpenters alleged that a confidential settlement agreement, dated September 12, 2006, between the parties also constituted a prehire collective-bargaining agreement, privileged by Section 8(f) of the Act, covering Respondent Raymond's drywall finishing employees and their work. Next, each asserts that, on October 2, 2006, Respondent Raymond lawfully advised its drywall finishing employees that the existing Carpenters collective-bargaining agreement was operative covering them and their work and that they would have to join Respondent Carpenters pursuant to the agreement. Finally, the Respondents contend that they entered into a recognition agreement on October 2, 2006, which agreement lawfully recognized Respondent Carpenters as the Section 9(a) of the Act majority representative of Respondent Raymond's drywall finishing employees.

IV. THE ALLEGED UNFAIR LABOR PRACTICES

A. The Facts

Respondent Raymond is a specialty wall and ceiling contractor in the building and construction industry, performing drywall, metal stud framing, drywall finishing, lathe, plastering, and specialty finishing work, in several States, including California and Nevada, whose work generally encompasses new and existing commercial projects, such as retail, educational, healthcare, and institutional structures, and some high density residential projects. Respondent Raymond performs work in each of the 11 southern California counties, and as of October 2006, employed 579 construction employees working out of its Orange and San Diego facilities, with 224 framing and drywall hanging employees and 55 drywall finishing employees employed at the Orange facility and 127 framing and drywall hanging employees and 55 drywall finishing employees em-

ployed at its San Diego facility. At least since the early 1960s, Respondent Raymond has been an employer-member of the Western Wall and Ceiling Contractors Association, Inc. (WWCCA), a multiemployer association composed of companies performing work in the building and construction industry similar to that of Respondent Raymond, and the latter's former president and current CEO, Travis Winsor,[1] is currently a member of the executive board of the WWCCA and has served in each of the association's officer positions including president. The record reveals that the WWCCA is structurally divided into several "conferences," each of which negotiates, executes, and enforces collective-bargaining agreements with a particular labor organization on behalf of the WWCCA employer-members, who belong to the conference. In this regard, since, at least, the1960s and through September 2006, Respondent Raymond had been an employer-member of the respective WWCCA conferences, which have negotiated successive collective-bargaining agreements with the Painters Union (the California Finishers Conference), the Southwest Regional Council of Carpenters on behalf of its affiliated local unions, including Respondent Carpenters (the Drywall/Finishers Conference), the Plasterers Union, and the Plaster Tenders Union.

The most recent of the successive collective-bargaining agreements between the WWCA California Drywall Finishers Conference and the Painters Union, to which Respondent Raymond was signatory through its membership in the WWCCA conference, was the Southern California Drywall Finishers joint agreement, effective from October 1, 2003, through September 30, 2006. The agreement covered the employer-members', including Respondent Raymond's, drywall finishing employees, who performed the work of covering up screws and joints in drywall after the drywall sheets have been hung and smoothing out the walls and preparing the material for painting. There is no dispute that the successive Painters Union collective-bargaining agreements were entered into by the parties pursuant to the provisions of Section 8(f) of the Act.

The most recent collective-bargaining agreements between the WWCCA Drywall/Finishers Conference and the Southwest Regional Council of Carpenters on behalf of its affiliated local unions, including Respondent Carpenters, to which Respondent Raymond was signatory through its membership in the WWCCA conference, are the July 1, 2002, through June 30, 2006, and the July 1, 2006, through June 30, 2010 Southern California Drywall/Lathing master agreements. The collective-bargaining agreements contain the following identical language:

> *VOLUNTARY RECOGNITION AGREEMENT*
>
> . . . .
>
> (a) On behalf of each Contractor signatory hereto, the Association, having received from the Union a demand or request for recognition as the majority representative of the unit employees covered by this collective bargaining agreement; and having been presented or having been offered to be presented with, by the Union, proof that the Union has the support of, or has received authorization to represent, a majority of the unit employees covered by this collective bargaining agreement; hereby expressly and unconditionally acknowledges and grants, on behalf of each of its members in their individual capacities, recognition to the Union as the sole and exclusive collective bargaining representative of the unit employees covered by this collective bargaining agreement, pursuant to Section 9(a) of the National Labor Relations Act, as amended, and agrees not to make any claim questioning or challenging the representative status of the Union.

Until 1988, the successive Carpenters Union master agreements basically covered the work of the employer-members', including Respondent Raymond's, framing and drywall hanging employees, whose work includes metal stud framing, drywall hanging, and lathing work. Then, in the above year, the parties negotiated a master agreement, which extended the bargaining unit description and work coverage of the agreement to include those employees who performed drywall finishing work.[2] Subsequently, in 1992, as a result of the concerns of WWCCA employer-members, including Respondent Raymond, who were signatory to both the Painters Union collective-bargaining agreements and the Carpenters Union master agreements, regarding conflicting enforcement of the overlapping work jurisdictions of their agreements by the Painters Union and by the Southwest Regional Council of Carpenters, the Drywall/Finishers Conference and the latter negotiated and inserted the following language in that year's and their successive master agreements:

> The Union understands and recognizes that the WWCCA and its members are signatory to a collective bargaining agreement with the Painters . . . covering drywall work . . . . The Parties agree that [the coverage of the work of drywall finishing employees] shall apply only to those signatory employers who are not already signatory to a collective bargaining agreement with the Painters . . . covering the drywall finishing . . . work . . . and who choose to assign that work to the Painters . . . . The Union agrees not to invoke or enforce [the coverage of this agreement] or to create any jurisdictional dispute concerning [the above] work against any signatory employer that is also signatory to an agreement with the Painters . . . covering the drywall finishing . . . work and who chooses to assign that work to the Painters . . . . as long as such contract remains in effect.

Winsor understood the foregoing language to mean that Respondent Carpenters would not claim jurisdiction over the work of Respondent Raymond's drywall finishing employees while it was signatory to a collective-bargaining agreement with the Painters Union.

[1] Prior to employment with Respondent Raymond, Winsor practiced law.

[2] In practice, there remained a distinction between the work performed by Respondent's drywall finishing employees and those performing framing and drywall hanging. Thus, each of Respondent Raymond's former drywall finishing employees, who testified at the hearing, testified without contradiction that he or she never performed framing or drywall hanging work and that the employees, who performed drywall hanging work, never performed drywall finishing work.

The genesis of the instant dispute was Respondent Raymond's decision in May 2006 to terminate its collective-bargaining relationship with the Painters Union. In this regard, according to Travis Winsor, as he wanted to align his company with a labor organization which would provide better work acquisition and preservation strategies and higher wages and better health insurance and pension plans for the drywall finishing employees and would assure the "stability of our existing work force" and place Respondent Raymond in a better position to recruit skilled workers, he decided it was in the best interests of Respondent Raymond to terminate its existing collective-bargaining agreement with the Painters Union. Thus, on May 24, he sent the following letter to the Painters Union and a copy to the WWCCA California Finishers Conference. In pertinent part, the letter stated:

> Raymond Interior Systems . . . is signatory to the Southern California Finishers joint agreement. We hereby give you and your labor organization notice that it is the Company's intention to terminate the above-mentioned agreement and any addenda or other agreement with your union on its expiration date, September 30, 2006.
>
> By copy of this letter, the Company is resigning from the [WWCCA] California Finishers Conference and withdrawing any bargaining authority from that organization. The Company is no longer a part of any multi-employer group, and will not be bound by any agreement reached between the union and such a group. . . .

Thereafter, Winsor, who understood that Respondent Raymond was bound to the terms and conditions of employment, embodied in the existing Painters Union contract until September 30, 2006, testified, the fact that Respondent Raymond intended to terminate its bargaining relationship with the Painters Union soon became "well known" throughout the industry, and ". . . we were aware that the Carpenters had expressed their intentions to enforce [the] provisions of [their existing master agreement]" so as to assert bargaining representative status for drywall finishing employees. Specifically, according to him, between May 24 and September 12, 2006, two representatives of the Southwest Regional Council of Carpenters, Mike McCarron, the executive secretary, and Gordon Hubel, the contract administrator, ". . . expressed their intentions to fully enforce all provisions of their contract upon the expiration of the Painters Union contract . . . which could apply to our existing [drywall finishing employees] or another potential outcome would be to require us to receive employees to perform this work dispatched from the Carpenters' hall." On this point, Gordon Hubel testified that, during bargaining over the Carpenters Union 2002–2006 master agreement, he and Winsor engaged in a conversation regarding the above-quoted so-called Painters contract exception language in the collective-bargaining agreement and that he told Winsor, if a signatory contractor, which performed drywall finishing work, terminated its contract with the Painters Unioin, ". . . we believed [our] contract kicked in immediately, that there wasn't any transition period . . . ." He told Winsor that the Carpenters Union would "griev" it if a signatory contractor failed or refused to give the drywall finishing work to the Carpenters Union. Likewise, Winsor believed that, upon expiration of the Painters Union contract, Respondent Raymond could not unilaterally implement its own terms and conditions of employment for its drywall finishing employees rather than adopting those of the Carpenters Union 2006–2010 master agreement without facing a lawsuit or grievance by the Carpenters Union

Apparently, in order to obviate a potential contractual grievance, representatives of the Regional Council of Carpenters and Respondent Raymond held discussions over a period of several weeks during the summer of 2006. While Hubel placed the conversations in the context of the Southwest Regional Council of Carpenters pursuit of its demand that, upon expiration of its collective-bargaining agreement with the Painters Union, Respondent Raymond acknowledge that its drywall finishing employees and their work were covered by the existing Carpenters Union 2006–2010 master agreement, Travis Winsor placed the negotiations in a different context. According to him, the negotiations, which the parties intended to keep confidential,[3] concerned a dispute over how to provide wages and benefits to Respondent Raymond's drywall finishers without any disruptions or other eligibility, vesting, and coverage issues resulting from differences between the provisions of the Painters Union and Carpenters Union collective-bargaining agreements. While such may have been Respondent Raymond's concern, Winsor admitted that McCarron continually expressed the Carpenters Union's intention "to fully enforce all provisions of their contract upon expiration of the Painters' [collective-bargaining agreement]" and specifically threatened to file a grievance against Respondent Raymond if the latter did not comply. Further, when asked if any document exists providing for the exact vesting and eligibility terms worked out with the Southwest Regional Council of Carpenters, Winsor averred, "I believe those provisions are contained in the various trust fund documents;" however, neither Respondent Raymond nor Respondent Carpenters offered any corroboration for his assertion.

In any event, the result of the aforementioned conversations was a September 12, 2006 document, between the parties, entitled *CONFIDENTIAL SETTLEMENT AGREEMENT*. The document states in part:

> WHEREAS, disputes and grievances have arisen between the parties about proper assignment of drywall finishing and other work to the proper trade, craft, and group of employees, and the parties desire to settle said disputes through a confidential settlement agreement
>
> NOW, THEREFORE, for and in consideration of the mutual promises and agreements set forth, the parties agree as follows:
>
> 1. Raymond agrees to sign the Southern California Drywall/Lathing memorandum agreement 2006–2010.

[3] Gordon Hubel stated that "[I]t's usually the employer who wants to keep [such talks] confidential so other employees don't know about the resolution." In this regard, it is obvious that the instant discussions were kept confidential from Respondent Raymond's drywall finishers in order to avert the possibility of a work stoppage. While initially denying being concerned about a strike, Winsor admitted, "I was worried that the Painters Union would call a strike against Raymond projects."

> 2. At the expiration of Raymond's agreement with Painters District Council No. 36 on September 30, 2006, Raymond agrees that to the fullest extent permitted by law it will apply the Southern California Drywall/Lathing Agreement to its drywall finishing work and employees.[4]

In addition, pursuant to paragraph 3 of the document, the Southwest Regional Council of Carpenters agreed to indemnify, defend, and hold harmless Respondent Raymond for any contractual grievance and/or lawsuit filed by the Painters Union or any related trust fund. While, at the hearing, Hubel maintained that the confidential settlement agreement was a collective-bargaining agreement[5] as it established terms and conditions of employment and referred to the Carpenters Union's memorandum agreement, which binds a signatory contractor to the existing Carpenters Union master agreement,[6] he conceded that the document itself does not contain a bargaining unit description[7] or an expiration date, and, on this point, Winsor admitted that, during the discussions "we never used the term bargaining unit."

Respondent Raymond's collective-bargaining agreement with the Painters Union, covering its drywall finishing employees, expired by its terms on September 30, 2006, and, presumably, as early as the next day, Respondent Raymond began complying with the terms of the above-described September 12, 2006 confidential settlement agreement and its existing Carpenters Union 2006–2010 master agreement[8] with Southwest Regional Council of Carpenters on behalf of its affiliated local unions, including Respondent Carpenters, and extended recognition to the latter as the bargaining representative of the above employees. In a position statement to Region 21, dated December 18, 2006, Respondent Raymond's attorney stated that the 2006–2010 Carpenters Union master agreement ". . . is a full-fledged Section 9(a) agreement, unlike the former agreement with the Painters, which was a Section 8(f) prehire agreement" and that ". . . pursuant to its Section 9(a) collective bargaining agreement with the Carpenters, which . . . covered drywall finishing work, Raymond complied with the requirements of that agreement and assigned the drywall finishing work to Carpenters." In these regards, according to Gordon Hubel, if Respondent Raymond had refused to assign the drywall finishing work to Respondent Carpenters, ". . . we would have argued the overall unit was a 9(a) unit." Continuing, he added, "I mean we were prepared to argue that there was one overall Section 9(a) unit."[9] Winsor and Carpenters Union representatives realized that the demise of the Painters Union's bargaining representative status, the transferring of such status to Respondent Carpenters, and the necessity for signing forms for continued health insurance and pension coverage would have to be explained to Respondent Raymond's drywall finishing employees, and, during their discussions regarding the confidential settlement agreement, Winsor and McCarron also developed plans for meeting with those employees to explain the foregoing subjects.

Such meetings were scheduled for Monday October 2, 2006, at Respondent Raymond's Orange facility in the morning and at its San Diego facility in the afternoon; according to Winsor, "the purpose . . . was to explain the decisions and the actions we had taken, why we had done so, and to let the employees

[4] The memorandum agreement, referred to in par. 1, is a short form collective-bargaining agreement, is usually executed by a new employer in the industry, and binds the signatory contractor to abide by the terms and conditions of employment of the existing Carpenters Union master agreement except as specifically excluded by the terms of the memorandum agreement. As with the master agreement, the memorandum agreement purports to be 9(a) collective-bargaining agreement. Thus, in the seventh paragraph, "the contractor and the Carpenters Union expressly acknowledge that on the contractor's current jobsite work, the Carpenters Union has the support of a majority of the employees performing the work covered by this agreement. The Union has demanded and the contractor has recognized the Carpenters Union as the majority representative of its employees performing work covered by this Agreement." Further, the parties to the memorandum agreement agree that "this Memorandum Agreement will be effective when signed and will remain in full force and effect for the term of the [existing master agreement]. . . ." Finally, Gordon Hubel explained that the memorandum agreement differs from the existing master agreement in that, pursuant to par. 6, the former does not contain the above-quoted Painters Union exclusion language and admitted that Respondent Raymond has never executed a copy of the memorandum agreement.

Winsor asserted that the preamble language in the confidential settlement agreement recites his concerns regarding the continuity of wages and health and pension benefits for Respondent Raymond's drywall finishing employees.

[5] Hubel conceded that the parties never discussed the confidential settlement agreement in terms of creating an 8(f) bargaining relationship.

[6] During cross-examination, Hubel insisted that the confidential settlement agreement somehow bound Respondent Raymond to both the memorandum agreement and to the 2006–2010 Carpenters Union master agreement.

[7] Hubel, who practiced as an attorney in the field of labor relations, argued that the bargaining unit description is contained in the memorandum agreement and the existing master agreement. While the Carpenters Union 2006–2010 master agreement seemingly does refer to drywall taping and finishing and successive master agreements since 1988 have covered such work, the parties stipulated that Respondent Raymond's bargaining relationship with the Painters Union has existed since, at least, 1966, covering such work for 20 years prior to the Carpenters Union's claim upon the work and the employees performing the work. Hubel, in fact, conceded that Respondent Raymond's drywall finishers constituted a historically separate bargaining unit from those employees represented by the Carpenters Union.

[8] Art. IV, sec. 1 of this agreement provides in part:

> Every . . . person performing work covered by this Agreement shall be required, as a condition of continued employment, to apply for and become a member of and to maintain membership in good standing in the appropriate Local Union of the Union which has territorial jurisdiction of the area in which such person completes his eighth (8th) day of employment. Such application shall be made within eight (8) days after the beginning of such employment for any contractor in the State of California and employment for any or all contractors shall be accumulated for purposes of determining the running of the eight (8) day period.

[9] According to Hubel, Respondent Carpenters recognized that it would be difficult convincing the Board that there was one appropriate unit herein, an overall carpenters unit, and "that's why we went and got cards." He also averred that Respondent Carpenters would have argued alternative theories—that the drywall finishers might be considered to constitute a separate bargaining unit, "and were prepared alternatively to accept the 8(f) contract."

know of the new wage packages and benefits."[10] The instant consolidated complaint allegations concern the meeting at the Orange facility, which was scheduled for 7 a.m., and there is no dispute about the sequence of events. Thus, on the night before (Sunday evening), Hector Zorrero, Respondent Raymond's general superintendent, and, at least, one other company official made telephone calls to all of the company's drywall finishing employees, directing them to be at the Orange facility's yard[11] at approximately 6 o'clock in the morning for a meeting. As each employee arrived in his or her car or truck the next morning, he or she was met by three company officials, who were standing by the outer gate and checking names on a sheet of paper. Upon his or her name being checked on the list, the employee was permitted to enter the parking area and to park his or her vehicle.[12] At the gate entrance into the yard, a company office worker also checked each employee's name on a list of names. Then, at 7 a.m., the doors to the facility were opened and the 85 to 90 drywall finishing employees were ushered into the center warehouse section, in which tables and chairs were arranged and the employees were served breakfast. After an hour, the employees were instructed to enter the training room, which is 37-feet wide and 60 feet in length and which was arranged with rows of chairs, a stage, on which were tables and a podium, in the front of the room, and two dropdown projection screens on either side of the room. Spanish speaking employees were told to enter first and directed to seats on which head phones, necessary for English to Spanish translation, had been placed.[13] Travis Winsor and Hector Zorrero attended the meeting for Respondent Raymond, and McCarron, Hubel, Ron Schoen, the administrator of the Carpenters Union trust funds, Marty Dahlquist, and other representatives attended on behalf of the Southwest Regional Council of Carpenters and of Respondent Carpenters.[14] The initial speaker at the meeting was Winsor, who spoke for several minutes utilizing PowerPoint slides and a document, which was distributed to the employees. The document, Respondent Raymond's Exhibit 1, reads, in part, as follows:

> Raymond has terminated its collective bargaining agreement with Painters and Allied Trades District Council No. 36, effective September 30, 2006. This was a difficult decision which has come after much thought and analysis. This decision was made in the best interests of the employees and company. While Raymond has terminated the [above] agreement, *Raymond continues to be a union company*.
>
> Pursuant to Raymond's agreement with the Southwest Regional Council of Carpenters, if the company is not bound to an agreement with the Painters covering the drywall finishing work, this work is covered under the Carpenters Southern California Drywall/Lathing Master Agreement. Raymond is bound by its labor agreement with the Carpenters and will apply this agreement to employees performing drywall finishing work in Southern California from October 1, 2006 forward.
>
> The Carpenters agreement provides ***higher wages and better benefits*** for the employees. *Higher wages, better benefits and the support of the Carpenters will improve the working conditions for everyone.*
>
> Drywall finishing employees who were not previously members of the Carpenters must join the Carpenters Union under the union security provision of the Carpenters labor agreement. In addition, the Carpenters have agreed to special provisions regarding pension and health and welfare benefits which are only available to Raymond drywall finishing employees. . . .

When Winsor finished, he introduced Marty Dahlquist of the Carpenters Union, and, utilizing another PowerPoint presentation, the latter compared and contrasted the wage packages contained in the existing Painters Union and Carpenters Union collective-bargaining agreements. After Dahlquist, Ron Schoen spoke, in detail, about the Carpenters Union health and pension plans and explained the trust funds' vesting arrangement with Respondent Raymond for the latter's drywall finishing employees. When Schoen concluded his remarks, Hector Zorrero spoke to the employees for a few moments, and, when he finished, employees were permitted to ask questions to which Winsor, Zorrero, and the Carpenters Union representatives responded.[15] Upon the conclusion of the question and answer portion, the employees were instructed to go back into the warehouse area.[16] There, two tables were set up. Clerical employees of Respondent Carpenters were at one table, and they distributed copies of General Counsel's Exhibit 3, a three page document consisting of identical white, yellow, and pink pages[17] The document itself is in four parts, two being English

[10] Later, in his December 18, 2006 position letter, Respondent Raymond's attorney argued that " . . . the [October 2 meeting] was privileged by the fact that [the existing Carpenters Union 2006–2010 master agreement] covered the work and Raymond already recognized Carpenters as the Section 9(a) representative of its drywall employees (both hangers and finishers)."

[11] Apparently, the Orange facility's yard area is enclosed by an outer fence, with a sliding gate permitting entry into a parking area, and the parking area is separated from the yard by an inner fence, with an entry gate. The Orange facility building is divided into three areas—a gym and storage room, a center warehouse and a training center.

[12] The obvious purpose was to keep nonemployees, especially Painters Union officials out of the facility that morning. One such official, Jim Dunleavy, had been informed of the meeting by a drywall finishing employee. He arrived at the Orange facility yard entrance on Monday morning, found the entrance gate closed, and was told by Zorrero that he could not enter the facility that day.

[13] A representative of the Southwest Regional Council of Carpenters, David Cordero, performed the translation.

[14] The Carpenters representatives wore shirts or jackets on which the Carpenters Union logo was imprinted.

[15] While unclear at exactly what point, R. Exh. 2, a form entitled *Resignation from Painters Union*, and an attached sample resignation letter, was distributed to the employees during the meeting.

[16] The record reveals that many employees lingered in the meeting room, speaking among themselves about what they had just been told. Apparently, Winsor, Zorrero, and Carpenters Union representatives spoke to individuals and groups regarding signing with Respondent Carpenters.

[17] Presumably, by writing on the top or white copy, the writer's words appeared on the bottom yellow and pink copies.

and Spanish versions of Respondent Carpenters' application for membership form, the third a document entitled *Supplemental Dues and CLIC Authorization*, and the fourth being an English language Southwest Regional Council of Carpenters authorization for representation form. When Respondent Raymond employees completed and returned the entire document to the Respondent Carpenters representatives, the employees were given copies of the Carpenters Union magazine entitled *Carpenter*.[18] At the other table were representatives of the Carpenters Union trust funds, who were distributing trust fund forms to the employees. Finally, at the conclusion of the meeting, rather than going into the warehouse area, many employees either lingered in the back of the training room or left the building and congregated in the yard. In both places, groups of employees discussed amongst themselves what they had heard and their options and were approached by representatives of Respondent Carpenters, who answered questions.

What is in dispute herein are alleged comments during the meeting to the assembled drywall finishing employees by Respondent Raymond's Winsor and Zorrero and by representatives of Respondent Carpenters regarding becoming members of the latter. In this regard, Richard Myers, who had been employed by Respondent Raymond for approximately 28 years and was the drywall finishing foreman in October 2006, testified that he sat in the rear of the training room and that, at the outset of the meeting, Travis Winsor moved to the podium and said, ". . . that he'd been thinking about it for a while and that he'd . . . decided to sign . . . with just the Carpenters and not the Painters." Also, ". . . he told us [that] if we did not sign with the Carpenters . . . we wouldn't have a job." Next, Dahlquist and Schoen of the Carpenters Union spoke. While not naming either official, Myers recalled that the first speaker told the drywall finishing employees he was "proud" that the company had "signed" with his union and the other ". . . spoke about the financial benefits, medical, what have you." Then, according to Myers, employees were permitted to ask questions, and several, including him, did so. He asked whether his pension would be affected by switching union representation,[19] and another employee asked whether they would continue to perform taping work, or would they begin hanging drywall. To the latter, the response was "they would just be tapers." Myers recalled that most of the questions pertained to the employees' continued employment, and Winsor "repeated" several times that ". . . if you didn't sign, you didn't have a job . . . we were told we weren't fired, we just couldn't have a job." Then, Myers testified, at the conclusion of the meeting, as employees were standing and speaking to each other, Carpenters Union representatives began handing out "the paperwork"[20] and the "pamphlets"[21] for joining the Carpenters Union. When the forms were offered to him by a representative, ". . . I told him I didn't want one." For the next 20 to 30 minutes, Myers observed Carpenters Union agents speaking to employees and offering papers for their signatures. At one point, he recalled, Travis Winsor approached and asked if he was going to sign the membership document, and Myers said, no. Winsor responded that he would like Myers to do so and stay working for Respondent Raymond. Myers replied that would not happen because it wasn't about the money, it was about integrity.

During cross-examination, Myers denied that his memory of the events of that day was hazy and testified that, as the meeting progressed, he became "upset" because of the way the transition from the Painters Union to the Carpenters Union had been "pulled off" and that he recalled Winsor utilizing a PowerPoint display but could not recall if the latter spoke from it. Further, while recalling Winsor saying that, from then on, the employees would be performing their work under the Carpenters Union contract and Carpenters finishers would be doing drywall finishing work, Myers could not recall whether Winsor said, "[I]f we didn't sign with the Carpenters, we wouldn't have a job" before or after he introduced the Carpenters Union representatives but ". . . I know that it was brought up during questioning afterwards." Then, asked to repeat what Winsor said in his opening remarks, Myers said he was unable to recall "everything" but "[Winsor] just got up and said he'd been mulling it over some time, that he . . . wasn't going to sign with the Painters, he was going to sign with the Carpenters . . . and . . . then he introduced [the Carpenters representatives] and I wasn't paying that close of attention." While he was not sure exactly when Winsor uttered the comment regarding employees having to join the Carpenters in order to keep their jobs, Myers recalled that Winsor specifically said, "[Y]ou're not fired" and recalled that Winsor made the statement in response to an employee's question—". . . do we have to join the Carpenters?" Finally, while denying that he quit his job with Respondent

[18] The copy of the magazine, which was distributed on October 2, was dated January–March 2006. On p. 47 of this magazine, after 4 pp.of obituary notices, the next to the last page, printed in English and in a print size smaller than that used throughout the rest of the magazine, is a document entitled *Procedures for Objecting Non-members to File with the Union Objections to the Expenditure of Dues for Purposes Not Germane to Collective Bargaining*.

There is no dispute that, during the meeting the Carpenters Union representatives failed to verbally inform the attending employees that each had a right not to join the Carpenters Union and continue working for Respondent Raymond, that each had the right to object to paying the portion of dues that went to nonrepresentational expenditures, or that there was an internal union procedure for employees to challenge the amount they would have to pay in dues. Finally, in these regards, close scrutiny of the Carpenters Union PowerPoint discloses that, while the obligation to pay dues is discussed in detail, there was nothing shown to the employees regarding the rights of nonmembers or regarding objecting to paying for union activities not germane to the labor organization's obligation as bargaining agent.

[19] During direct examination, Myers averred that he actually asked two questions but could specifically recall only one; however, during cross-examination, he was able to recall his second question, which concerned the Carpenters Union's "voting practices," and he was informed ". . . that they didn't vote en mass, they had delegates for their voting . . . ."

[20] During cross-examination, Myers denied that this was inside the room in which the employees had been served breakfast.

[21] During cross-examination, Myers said, by packet, he meant a document consisting of several sheets of paper.

Raymond,[22] Myers admitted he accepted a job with another contractor the next day.[23]

Janet Pineda, who had been working for Respondent Raymond as a drywall finishing employee for 2 years, testified that she sat towards the back of the training room during the meeting that Travis Winsor spoke first, thanking everyone for coming and saying there were some speakers from the Carpenters Union after him. Pineda neither could recall anything else Winsor said nor could she recall anything the Carpenters Union representatives said except that one spoke about ". . . financial issues, wages, benefits from the Carpenters Union."[24] According to Pineda, after the Carpenters Union representatives finished, employees asked questions. "I asked a couple of questions. . . . I asked if switching over . . . as a Carpenter taper was going to make us look bad because Carpenter tapers are known to do bad work. . . . Their [response] was no, it wouldn't make us look bad." Then, she commented that it would be nice for them to have more time to contemplate working as members of the Carpenters Union; to this, Winsor responded, saying, ". . . we had plenty of time to think about it throughout the day." Next, another employee spoke, saying he had recently worked as a member of the Carpenters Union ". . . but there wasn't a lot of work with [that union], so that was one of the reasons why he switched to the Painters Union. So he thought that switching to the Carpenters Union wasn't a very good idea because lack of work. Pineda could not recall a response to this remark and could recall just one other question and response. An employee asked a question, ". . . if we didn't sign up with the Carpenters were we going to be able to work the following day." Winsor responded, saying, ". . . no, we could not work the following day if we didn't sign up with the Carpenters." Pineda next testified that, after the question and answer period, for approximately 40 minutes, employees were permitted to discuss what they had heard amongst themselves. At one point, according to her, "a representative from the Carpenters approached me and told me that he wanted to convince me to sign . . . because it looked like I was the hardest person to convince. . . . I just laughed."[25] After speaking to other employees and attempting to dissuade them from joining the Carpenters Union, Pineda walked through the warehouse area[26] and outside into the yard where she encountered more employees many of whom had executed the membership forms for Respondent Carpenters.

During cross-examination, Pineda[27] testified that she could not recall Winsor either speaking from slides, speaking about Respondent Raymond's values, or saying he had signed a Carpenters Union collective-bargaining agreement. However, "he did mention something about the contract expiring from the Painters," and she did recall him saying from that point forward, all drywall finishing work would done under the Carpenters Union contract and employees performing drywall finishing work would receive Carpenters Union benefits "if we signed with the Carpenters Union." Immediately after so testifying, Pineda changed her testimony, stating that, while Winsor spoke about employees signing with the Carpenters Union, he did not say this until "towards the end" of the meeting when ". . . he encouraged us to sign over with the Carpenters Union when we were asking questions . . . . that was toward the end of the meeting, not in the introduction." On this point, she remembered Winsor saying, ". . . I encourage you guys to think it over and to sign . . . with the Carpenters Union." Also, during cross-examination, Pineda recalled that most of the meeting concerned the description of the Carpenters Union's fringe benefits, but she could not recall Winsor saying it was important for employees to sign up for benefits in order to be immediately covered by the Carpenters Union health plan.[28] Pineda conceded that her recollection of the meeting was not good and that, while the question regarding what would happen if they didn't sign up today with the Carpenters Union was asked just once, she could not recall whether she or another person asked the question. She did, however, reiterate Winsor responding ". . . no, we cannot work the following day if we did not sign over with the Carpenters Union."[29] Finally, with regard to her direct examination testimony that Winsor said the employees had plenty of time until the end of the day to think about their decision, after reiterating the foregoing, Pineda admitted she was not quoting the former and averred that ". . . he did mention that we had plenty of time to think about it."[30]

Ruben Mejia Alvarez, who worked for Respondent Raymond as a drywall finisher from August through November 2006, testified that, after he and the other employees finished eating breakfast, they were ushered into a larger room in which the meeting was to occur. Travis Winsor and Hector Zorrero

[22] Myers maintained that he could not continue working for Respondent Raymond as Winsor said he would no longer have a job if he didn't sign with Respondent Carpenters.

[23] According to Myers, upon driving his vehicle out from Respondent's facility, he encountered Painters Union representatives, who were waiting outside the gate. They told him he could begin working for another contractor KHS&S, and he accepted their offer.

[24] She did remember the Carpenters Union representatives speaking from slides, which were projected upon the two screens.

[25] Gordon Hubel testified that he was the Carpenters Union representative who spoke to Pineda. "I specifically sought her out and said that you [look] like you're going to be a hard person to convince because she'd asked several pointed questions. . . . she expressed he loyalty to the Painters Union and I said I understand that but . . . there's a lot of opportunities here, you should keep an open mind . . . ."

[26] In this room, there were tables set up with Carpenters Union representatives at the tables. On the tables, "there were papers, I believe. Applications. There were papers on the tables. . . . some employees were asking questions . . . to the representatives and some of them were signing in and getting some information, paperwork." Pineda was unable to identify GC Exh. 3 as the "paperwork."

[27] Pineda admitted that she is currently being paid by the Painters Union for teaching "CPR First Aid" at the Painters Union Apprenticeship school.

[28] She did remember a PowerPoint presentation about the Carpenters Union's benefits and wages.

[29] Pineda conceded that these may not have been Winsor's exact words. Further, in her pretrial affidavit, she stated that she and other employees questioned Winsor about being terminated if they did not sign with the Carpenters Union. His quoted response in Pineda's affidavit is virtually identical to her testimony during the trial.

[30] In her pretrial affidavit, Pineda quotes Winsor as merely saying that the employees had plenty of time to decide and that they should think about it.

were present on behalf of Respondent Raymond, and four or five Carpenters Union officials were also present. Winsor spoke first, and he said that the Company was changing from the Painters Union to the Carpenters Union ". . . because they want better future for us" and ". . . because they going to gent paid more money with the Carpenters and so more benefits and more future for us." Next, Zorrero spoke, and he echoed Winsor, saying the Carpenters Union represented a "better future for us and they need us." Then, each of the Carpenters Union representatives "spoke some," with ". . . some of them [speaking] for everyone and others . . . speaking individually." He recalled one speaker telling the employees that it was "better" working for the Carpenters and, in particular, "that it was better to sign with them because they had better benefits, better pay, and . . . their retirement was better." Further, Alvarez testified that Zorrero and a Carpenters Union representative each said. "[T]hat in order to continue working with Raymond Company we had to sign up with them.[31] According to this witness, after the speakers finished, the employees were permitted to ask questions. Alvarez asked if they would give the employees some time to think about what they had just been told about having to sign with the Carpenters Union;[32] Hector Zorrero responded, in English, "No. . . . that it was either today or that there wasn't any time to think about it, that it was at that moment."[33] Another employee asked what was going to happen to their Painters Union pension plan money, and a Carpenters Union representative answered this question. When the questioning ended, Alvarez testified, "[A] raffle was made" and the Carpenters Union representatives distributed paperwork in the form of "a sheet like [GC Exh. 3] that I signed in order to be able to continue working."[34]

During cross-examination, Alvarez could not recall Respondent's Exhibit 1 being distributed during the meeting but could recall that there was information projected onto screens in English, "but I don't remember what that was, but it was representing the Carpenters." With regard to what Zorrero said, he recalled that Zorrero said, "very little" speaking from the podium. On stage, ". . . he said almost the same thing [Winsor said], that they had already signed with the Carpenters . . . and they want a better future for us and they . . . will pay us more money to go with [the Carpenters Union]." As to the statement "that we needed to sign with them if we wanted to continue working," Zorrero said this while ". . . amongst the people[35] trying to convince them . . . to sign" with the Carpenters Union. Finally, Alvarez confirmed that a large portion of the meeting was devoted to an explanation of the Carpenters benefits plans. Specifically with regard to health insurance, the employees were told "they were going to give it to us automatically just for being members of the Carpenters Union even though we didn't have the number of hours." He could not recall whether someone said it was important to sign that day in order to receive health insurance coverage starting that day.

Jose Ramos was hired by Respondent Raymond as a drywall finishing employee in March 2006 and ceased working for Respondent at the conclusion of the meeting on October 2. According to him, upon being instructed to enter the training room for the meeting that day, he recognized Winsor for Respondent Raymond and observed between six and eight Carpenters Union representatives also in the room. Winsor spoke first, and Ramos listened to the Spanish translation. The former ". . . thanked us for being present and he told us that the company was big due to the workers and that the company didn't have a contract any more with the Painters Union, that they had signed already with the Carpenters Union . . . that he wanted us to also sign with the Carpenters and that soon a representative from the Carpenters would be talking to us." Then, according to Ramos, two or three Carpenters Union representatives spoke to the employees, and ". . . one of them explained to us what the Carpenters Union was about, the benefits we could obtain through them and on a screen they showed us all of the entitlements and the benefits one could obtain through the Carpenters. Also, they explained we would not be losing any benefits by joining the Carpenters." Winsor then solicited questions, and one person, whose name Ramos did not know, ". . . asked what would happen if we didn't sign with the [Carpenters Union]," and both Winsor and a Carpenters Union representative responded. Winsor said, ". . . that they could continue working but that they needed to sign with the Carpenters,"[36] and the Carpenters Union representative's response in English was the same—". . . that they could continue working but they had to sign up with the Carpenters Union." At this point, Ramos' brother David spoke, saying he had once been a member of the Carpenters Union and ". . . that what they promise, they wouldn't fulfill . . . ." A Carpenters Union representative denied what David Ramos asserted and said everything was "fine" with his labor organization. Then, someone again asked if they didn't sign, could they continue working, and Winsor this time replied ". . . that if they didn't sign, there wouldn't be any work."[37] At this point, according to the witness, "they started distributing these papers like applications for affiliation to the Carpenters Union" inside the meeting room.[38] Ramos

[31] Zorrero made his comment in English, and the Carpenters Union representative spoke Spanish.

[32] Alvarez recalled that a "majority" of the employees were making this same request. He and the others shouted together, and Zorrero gave just one answer—"There's no time to think about it. Either sign for us today or you cannot work tomorrow for us."

[33] According to Alvarez, he understands spoken English but reads very little in that language.

[34] Alvarez testified that, after the meeting, "nobody wanted to sign" to join the Carpenters Union; however, all the drywall finishing foremen were called into a meeting. When they returned, all said they had signed with the Carpenters Union and, from then on, it'll depend upon whether you sign. They added, they all signed and would continue working.

[35] "[Zorrero] was walking all over the room there."

[36] As to what Winsor said, Ramos testified that he listened to the Spanish translation of Winsor's words.

[37] During direct examination by the attorney for the Painters Union, Ramos reiterated what Winsor said to the employees. Thus, asked whether Winsor ever said, "when" the employees had to sign with the Carpenters Union, the witness replied, "First he said that they could continue working and sign later but then someone asked again and he said that if we didn't sign on that day, we weren't working any more."

[38] According to Ramos, Winsor remained in the meeting room while GC Exh. 3 was being distributed.

identified the document, which he received, as General Counsel's Exhibit 3,[39] and said, as he had no intention of signing, he folded the bottom portion of the document and walked outside into the yard area where other drywall finishing employees were talking amongst themselves. Finally, asked whether he reported for work the next day, Tuesday, Ramos replied, "No. . . . Because of what they told us since we didn't sign. . . . That if we didn't sign we weren't working any more."

During cross-examination, Ramos denied that any literature, bearing a company letterhead, was distributed to the employees, and he denied being given a copy of Respondent Raymond's Exhibit 1. Asked if anyone said that employees who were not previously members of the Carpenters Union would have to join that labor organization, while not recalling who spoke, Ramos replied, "Yes, they did say that. We had to become part of the Carpenters Union." He added that the latter's representatives ". . . only said that they wanted us to sign" and that one said it was important that they sign up for the Carpenters benefits. However, he could not recall anyone saying it was important for the employees to do so that same day. As to Winsor's statement that employees had to sign with the Carpenters Union in order to continue working, a Carpenters Union representative made the same statement. Asked precisely what Winsor said through the translator, Ramos replied, "The only thing I remember precisely is . . . when he was asked what happen[s] if somebody would refuse to sign, he said . . . if you don't sign now this day, there's no more work." Further, Ramos, who stated he was sitting towards the rear of the room, did not recall whether, when he was given a copy of the Carpenters Union membership document, Winsor remained in the front of the room ". . . since by then many people had gotten up to leave. I don't remember if he was still there or not." Finally, during cross-examination by counsel for Respondent Carpenters, while stating that no one said they would be fired, Ramos reiterated that he did not report for work on the day after the meeting based upon what Winsor said, ". . . that if we didn't sign that day we wouldn't be working." While conceding that his brother David told him that, based upon Winsor's comment, he could no longer work for Respondent Raymond, Ramos stated that, rather than his brother telling him he could no longer work for Respondent Raymond, he made his own decision in that regard.

Travis Winsor specifically denied all of the alleged unlawful statements attributed to him by the above four witnesses including if the employees did not sign with the Carpenters, they would not have a job; if they didn't sign with the Carpenters, they couldn't work the following day; and if employees did not sign today, there won't be any work for the Company. During his direct examination, he stated he was the first speaker, and, while he spoke, he referred to PowerPoint slides, which he projected onto the two viewing screens. First, he welcomed the drywall finishers to the meeting, acknowledged that some of them had not any occasion to be at the Orange facility prior to this meeting, and stressed the importance of what they would be told during the meeting. Then, Winsor spoke about the "values" and "ideas" at the core of Respondent Raymond's organization including the Company's relationship with the unions, which act as the bargaining representatives of its employees, and his "decisions" relative to the existing collective-bargaining agreements. Further, he spoke about the circumstances which preceded the meeting and their impact upon the drywall finishing employees and said that, while the Company would remain a union shop and would not operate on a nonunion basis, as of September 30, ". . . Raymond's contract with the [Painters Union] had expired and . . . we were no longer signatory . . . with [the] union, that, as a result, all our drywall finishing work needed to be done through the Carpenters agreement; and that, as a result, Raymond was able to negotiate on behalf of all of its employees . . . with the Carpenters . . . ." He added that, accordingly, every aspect of the employees' terms and conditions of employment would be improved—specifically, higher wages and better and increased benefits. On the latter point, Winsor assured the employees that, because they were immediately covered under the existing Carpenters Union collective-bargaining agreement, their health insurance coverage would not lapse nor would there be any loss of vested benefits but that the benefits of one group of employees would be at risk—those who had less than 5 years employment with Respondent Raymond and were not vested in their pension plan benefits, and ". . . I admonished [the latter group] . . . if they were committed to the trade and remained with the Carpenters for a short period of time they would easily make back and exceed the value in their pension plan . . . ." With regard to Respondent's Exhibit 1, Winsor denied that he discussed its contents with any specificity, "but the topic and information contained in the document were verbally relayed during my presentation."

Asked, by the attorney for Respondent Raymond, whether he referred to the union-security provisions in the existing Carpenters Union's master agreement, Winsor stated that what he said was in response to an employee's question, which came after the Carpenters Union representatives' presentations, and "I don't recall the exact words but questions to the effect of are we being fired? Are we going to have a job? And I reaffirmed multiple times that I wanted everybody in the room to continue to work with Raymond, that nobody was being fired, that we had put a situation in place where it was better benefits wages for all employees and encouraged them to take that option and continue to work for Raymond but no one was being fired and everyone had a job." According to Winsor, given his audience, he did not mention the words "union security clause" as the term was "not well understood" by them, but he stressed that no worker would be fired, that they all would continue in their jobs, but that ". . . I would like you to make a decision that's in your best interests . . . ." Asked if any employees asked if they had to make a decision that day, Winsor replied, "[P]eople did ask whether or not they had to make a decision that day" about "whether or not they needed to enroll for the benefits afforded by the Carpenters." Moments later, after being asked by me whether the employees were specific as to about what they needed to make a decision, Winsor changed his testimony, averring "I can't speak as to what they were specific about" and stating, "I was asked whether or not they needed to make a

[39] Ramos was unable to identify the person, who gave him the document, as a Carpenters Union representative.

decision today." To this, he replied, "No. They could take the time to consider it" but he wanted the employees to protect themselves from the possibility of "any fines or penalties" imposed by the Painters Union. Asked by me what subject he and his employees were talking about, Winsor replied that the Carpenters Union representatives were standing next to him, and "they were asking for the employees to enroll in the various [health insurance and pension plan packages]." Winsor maintained that he was referring to a "stack of paperwork," and, while ". . . I did not review or examine any of the documents being handed out by the Carpenters," the papers appeared, to him, to be "pension and health and welfare benefits" documents. He denied he was referring to membership forms—"I did not see that." Winsor denied that his PowerPoint presentation had anything to do with membership and asserted that the "entire essence of the meeting" concerned the Carpenters Union benefits plans. However, he added that ". . . there were questions about our obligations under the Carpenters agreement and after affirming that we want all of these employees to continue working for Raymond, it was pointed out that it was their decision. It was voluntary, however, if they chose not to go back to work, then Raymond would be obligated under the existing contract to put employees out there from the Carpenters' hall . . . ." He added that, while there were questions about union membership, such were in reference to whether or not employees could hold card in both the Painters Union and the Carpenters Union, and ". . . I said . . . they need to enroll for the Carpenters' benefits because . . . that is the way Raymond is providing the benefits." Then, according to Winsor, came the general questions about whether they had to decide today to which he replied, "No. You do not need to decide today."[40] Finally, during his direct examination, Winsor admitted that, at the conclusion of the meeting, he did approach Richard Myers, and . . . I acknowledged his demeanor and asked him if there's any questions that I could answer for him. . . . I believe he made statements that I'm not signing and something about the fact he didn't like the way the meeting was held. Winsor denied asking if Myers had signed with the Carpenters.

During cross-examination, Winsor stated that the drywall finishing employees were paid for attending the October 2 meeting pursuant to the terms of the existing Carpenters Union master agreement. With regard to Respondent Raymond's Exhibit 1, he maintained that "I did not discuss this specific memorandum with [the employees]," but "the information contained in it was provided verbally through my PowerPoint presentation." Asked by counsel for the General Counsel whether there was anything in the document which he did not discuss that day with the employees, Winsor replied, "No." Asked by counsel for the Painters Union if he told employees they did not have to become members of the Carpenters Union, Winsor replied, "I told them that they had time to make up their minds . . . ," but he admitted not telling them they had 7 days in which to do so.[41] Under further questioning by counsel for the Painters Union, Winsor admitted that he did reference the union-security provision of the existing Carpenters Union master agreement but denied explaining what it meant. Likewise, he acknowledged referring to the first sentence of the penultimate paragraph of Respondent Raymond's Exhibit 1; however, "I did not discuss it during my presentation." Specifically, he denied conveying any information regarding the contractual union-security provision during his presentation. When asked what provisions of Respondent Raymond's Exhibit 1 he did discuss in detail, Winsor said he conveyed that the company had terminated its collective-bargaining agreement with the Painters Union, that such was a "difficult" decision but one made "in the best interests of the employees and the Company, that the Company continued to be a union contractor, that, pursuant to Respondent Raymond's existing agreement with the Carpenters Union, all drywall finishing work was covered under the terms of the agreement, that the collective-bargaining agreement provides for higher wages and better benefits, and that "drywall finishing employees who were not presently members of the Carpenters must join the Carpenters Union under the union-security provision of the [CBA]. I conveyed that we would be obligated to dispatch employees [from] the Carpenters hall according to our agreement." Once again, asked if he, therefore, conveyed all the information in Respondent Raymond's Exhibit 1 as written except for the first sentence of the penultimate paragraph, Winsor responded, "I did not use the term union security provision. The employees would not know necessarily." As to whether he mentioned the remainder of the sentence, "I conveyed what is stated there."

Hector Zorrero testified that he spoke "at the very end" of the meeting, initially thanking the employees for attending and for politely listening to Winsor and the Carpenters Union representatives. He said both Respondent Raymond and Respondent Carpenters are "class acts;" that he ". . . couldn't stand up here before them without assurance from [the company] that no one would suffer any type of loss in pay or benefits . . . . that, effective today all of their contributions were going to be paid into the Carpenters' plan and [he] encouraged them to [examine all of the information which they would receive from the Carpenters]." Zorrero ". . . concluded by saying tomorrow Raymond is still obligated to man our jobs and if no one in this room shows up on our jobsites that they're no longer signatory with the Painters and I would have to man . . . our drywall finishers through the Carpenters." With regard to the question and answer session, Zorrero denied telling the employees that, in order to continue working for Respondent Raymond, they had to sign up with the Carpenters Union or that they had to sign at that moment or that day or they couldn't work for Respondent Raymond. However, while essentially corroborating Winsor's denials, Zorrero contradicted Winsor, denying any employee asked whether employees had to make a decision that day concerning anything. Further, while denying that Winsor warned

[40] Winsor said he emphasized this as "I wanted to reinforce the 'what's-in-it-for-me' consideration as I anticipated everyone in that room was sitting there and thinking . . . ."

[41] Winsor believed he did tell someone he had 8 days in which to decide but "I don't recall" who and said he did so "usually in conjunction with this decision in order to help them understand what their rights are."

about employees having to sign up for anything, he did believe that, during the meeting, a Carpenters Union representative spoke about the importance of employees signing up for benefits—". . . I think it was that they had to sign up . . . if they wanted the benefits they would have to sign that day . . . so they'd be paid into the Carpenters." Finally, Zorrero denied that, at any point during the meeting, he or any other manager met in private with the foremen of the drywall finishers and stated that the meeting ended with the drywall finishers going into the warehouse area,[42] which was set up with Carpenters' fringe benefits information on tables—employees either went into that area or ". . . just went outside and hung outside for a little of the time."

Pedro Loera, a special representative for the Southwest Regional Council of Carpenters, testified that he attended the October 2 meeting at Respondent Raymond's Orange facility in order to answer questions posed by any of the Spanish-speaking drywall finishers, who were employed by Respondent Raymond. According to Loera, "I was on my own speaking to [the employees]" in the warehouse area and outside in the yard area after the employees left the meeting room. While also recalling the documents were on a table, he remembered that "some" of those to whom he spoke were filling out the membership application forms but was unable to remember if the documents were distributed by other Carpenters Union representatives. Loera denied telling any employee, to whom he spoke, he or she needed to make an immediate decision regarding joining the Carpenters Union or telling any employee he or she needed to join the Carpenters Union that day in order to continue working for Respondent Raymond.

Gordon Hubel testified that he was involved in the October 2 meeting "only to the extent that they had the Carpenters Union magazine, which contained the so-called *Beck* notice, at the union's table."[43] With regard to the meeting itself, Hubel recalled that Winsor spoke first, utilizing a PowerPoint presentation. Asked if Winsor warned that, if employees did not sign with the Carpenters, they wouldn't have a job or they couldn't work the following day, Hubel replied, "No. To the contrary, he said specifically that no one was being fired." Asked if Winsor was asked for more time to consider switching to the Carpenters Union, Hubel contradicted Winsor and responded that there was a question about having to decide that day, and Winsor replied, ". . . no, you don't have to make a decision today but you should sign up for benefits today." According to Hubel, during his remarks to the employees, McCarron did talk about ". . . our partnership with Raymond and he hoped that all of the people would join the Carpenters Union," but this was the only comment made about joining the union during the "whole" presentation.[44] As to Hector Zorrero, Hubel denied that the former employees had to decide that day or at that moment about joining the Carpenters Union, and "the only thing he said was that we have to man our jobs tomorrow and, if you employees . . . choose to leave Raymond, we'll have to call the Carpenters Union to man the jobs." When the meeting ended, Hubel testified, employees congregated into small groups inside the warehouse area and outside, and three employees approached him and ". . . specifically asked me do we have to join the Carpenters today, and . . . I told them no. I said the Carpenters agreement does have a union-security clause within eight days you'd have to join, but you don't have to decide today." Hubel denied telling the employees that the Carpenters Union would not enforce the union-security clause and did not know whether the latter would, in fact, enforce the clause. Finally, Hubel testified that employees were completing all of the paperwork "in different areas" of the facility but that "there was nothing being distributed by the Carpenters Union anywhere except in the warehouse at this table."[45]

Melinda Carlton, an office administrative assistant for Respondent Carpenters, testified that she attended the October 2 meeting in order "to have the employees fill out the membership applications to join Respondent Carpenters." According to her, tables were set up along the wall adjacent to the gym and storage areas, and, "after the presentation, [the employees] were sent to the table where we had the membership applications for them to fill out." She sat at the table along with another clerical, Margaret Armenta, who was able to speak Spanish. Besides the membership application forms (GC Exh. 3), at the table were pencils, stickers, envelopes, and a stack of "the Carpenters magazine."[46] According to Carlton, "[O]nce they brought us back the membership application, we handed them the magazine,[47] stickers . . . and the envelope," which was to be used for "their dues payment." According to Carlton, Armenta dealt with more than half of the employees, who came to Respondent Carpenters table, speaking Spanish. Because there were so many employees coming to her table, the Carpenters Union agents, who were at the meeting, spoke to some of them. However, Carlton denied seeing these representatives giving out membership forms during the meeting and knew this was not possible as ". . . Margaret and myself were the only ones

[42] Zorrero said this was the room in which employees were supposed to execute any forms

[43] One table was for Respondent Carpenters and the other table was utilized by representatives of the Carpenters Union trust funds.

[44] Hubel denied hearing any representative of the Carpenters Union tell employees they needed to join that day or they could no longer work for Raymond.

[45] The individual, who translated from English to Spanish for the listening employees, was David Cordero. For this, he did both contemporaneous and subsequent translation. He denied anything being said about having to join the Carpenters Union that day. Testifying that there was a question and answer session after the formal presentations, Cordero was unable to recall anything "specific;" however, "I don't recall anybody asking a question about joining the Union that time." He added that such did not seem to be a major concern; rather, most of the employees' questions concerned benefits and insurance. While, according to Cordero, there were questions "about being part of the Carpenters per se," employees were told there was a "form" which they needed to fill out. However, he denied employees were told they had to sign anything that day or there would be no work. Specifically, he denied Winsor uttered such a remark.

[46] Upon publication on a quarterly basis, the magazine is mailed to every Carpenters Union member.

[47] The magazine is given to all new members as ". . . we are letting them know that they will be receiving this in the mail. . . ." Carlton admitted not being instructed to direct anyone's attention to the *Beck* statement, contained in the magazine on p. 47.

that had the membership applications. They had to come to us to get them. After employees signed, "I was in charge of collecting all of the applications along with the apprenticeship paperwork and taking them back to the office . . . . We had a list that we checked off when they brought us back the application."[48] When asked if her testimony was if returned signed and returned unsigned application forms were added together, the total equaled the exact number she and Armenta distributed that day, Carlton replied, "I did not count them at the end . . . . we had a set number of forms. I did not have an extra stack that someone could have taken from because I only had a certain amount to hand out." She conceded it was possible employees, to whom she handed forms, failed to return them. During cross-examination, Carlton confirmed that she would not give out a magazine unless an employee returned signed paperwork.

Finally, there is no dispute that, later on October 2 at Respondent Raymond's San Diego facility, on behalf of the latter, Travis Winsor executed a document, entitled *Recognition Agreement*, recognizing the Southwest Regional Council of Carpenters on behalf of its affiliated local unions, including Respondent Carpenters, as the majority representative, pursuant to Section 9(a) of the Act, of all full-time and regular part-time employees performing work covered by the Southwest Regional Council of Carpenters Drywall/Lathing memorandum agreement.[49] In this regard, Gordon Hubel testified that, during the time he was at Respondent Raymond's Orange facility on October 2, he was aware that the Carpenters Union agents were soliciting the company's drywall finishing employees to execute the authorization cards, which are part of General Counsel's Exhibit 3, and that Winsor was not informed of these activities. Also in this regard, Winsor testified that, later in the day at approximately 5 p.m. at the close of the meeting at the Company's San Diego facility, McCarron and his attorney, Dan Shanley, approached and McCarron ". . . informed me that they had received representation from the majority of our employees of their decision to have the Carpenters be their representative and that he was prepared to present evidence of that decision at which time I was shown a stack of papers," the authorization cards which had been attached to General Counsel's Exhibit 3. According to Winsor, he had no idea that Carpenters Union agents had been soliciting the cards, and, after looking through the documents, he acknowledged McCarron's representation that the signatures were authentic and executed the recognition agreement. On this point, in his December 18, 2006 position statement to Region 21, Respondent Raymond's attorney wrote, "Carpenters later presented signed authorization cards to Raymond and on the basis of those cards, Raymond signed an additional voluntary recognition agreement . . . recognizing that union as the exclusive representative of Raymond's drywall finishing and drywall hanging employees."[50]

B. Legal Analysis

The twin centerpieces of the instant consolidated complaint concern Respondent Raymond's attempts to recognize Respondent Carpenters as the exclusive bargaining representative of its drywall finishing employees initially by virtue of the language of the Carpenters Union 2006–2010 master agreement and subsequently by virtue of a purported majority showing by Respondent Carpenters and Respondent Carpenters acceptance of said recognition attempts. At the outset, I shall consider whether, on or about October 1, 2006, Respondent Raymond engaged in acts and conduct, violative of Section 8(a)(1), (2), and and (3) of the Act, by extending recognition to the Southwest Regional Council of Carpenters on behalf of its affiliated local unions, including Respondent Carpenters, as the exclusive collective-bargaining representative, within the meaning of Section 9(a) of the Act, of its drywall finishing employees and maintaining and enforcing the Carpenters Union 2006–2010 master agreement as covering the employees and whether Respondent Carpenters engaged in acts and conduct, violative of Section 8(b)(1)(A) and (2) of the Act, by obtaining such recognition from Respondent Raymond and maintaining and enforcing the Carpenters Union 2006–2010 master agreement as covering Respondent Raymond's drywall finishing employees. In these regards, there is no dispute that, by virtue of their September 12, 2006 confidential settlement agreement, on or about October 1, immediately upon expiration of its collective-bargaining agreement, privileged by Section 8(f) of the Act, with the Painters Union,[51] Respondent Raymond and the Southwest Regional Council of Carpenters, on behalf of its affiliated local unions, including Respondent Carpenters, commenced covering the former's drywall finishing employees under the existing Carpenters Union 2006–2010 master agreement, which recognizes the Carpenters Union as the 9(a) majority representative of the bargaining unit employees and to which Respondent Raymond is a party. Thus, counsel for Respondent Raymond in his December 18, 2006 position statement to the Board, admitted that, as the parties' existing master agreement covered drywall finishing work, "on October 2 . . . pursuant to its Section 9(a) collective-bargaining agreement with the Carpenters . . . Raymond complied with the requirements of that agreement and assigned the drywall finishing work to Carpenters," with the latter acting ". . . as the Section 9(a) representa-

[48] Carlton maintained that there was "a set amount of applications," and she received back the same number she handed out. All were returned, even the forms, which had not been filled out.

[49] Notwithstanding the wording of the document, as stated above, there is no record evidence that Respondent Raymond ever actually entered into the Carpenters Union's so-called memorandum agreement.

[50] Hubel testified that the only authorization cards, which were solicited that day, were signed by Respondent Raymond's drywall finishing employees.

[51] Sec. 8(f) of the Act permits labor organizations and employers in the building and construction industry to enter into collective-bargaining agreements without the former being established as the majority representative of the employees in the covered bargaining unit. Unlike a bargaining relationship within the meaning of Sec. 9(a) of the Act, an 8(f) relationship may be terminated by either the labor organization or the employer at the expiration of a collective-bargaining agreement. *John Deklewa & Sons*, 282 NLRB 1375, 1386–1387 (1987), enfd. 843 F.2d 770 (3d Cir. 1988), cert denied 488 U.S. 889 (1988).

tive of its drywall employees (both hangers and finishers)." Likewise, at the hearing, Gordon Hubel conceded that, as of October 1, the "overall unit" of Respondent Raymond's drywall employees included both drywall hangers and drywall finishers. Counsel for the General Counsel, joined by counsel for the Painters Union, argues that, in these circumstances, Respondent Raymond and Respondent Carpenters clearly considered the former's drywall finishing employees as having been accreted into the contractual wall-to-wall Carpenters' 9(a) bargaining unit and that as Respondent Raymond's drywall finishing employees had been historically excluded from the bargaining unit, represented by the Carpenters Union, and as, demonstrated by the drywall finishing employees' long bargaining history as an independent bargaining unit, the *only* appropriate unit herein is, therefore, *not* a wall-to-wall bargaining unit, accretion herein was unlawful; for, by their actions, Respondent Raymond and Respondent Carpenters deprived the former's drywall finishing employees of their statutory right to select the bargaining representative of their choice.

I agree that the concessions by Respondent Raymond's attorney and by Hubel, who practiced as an attorney in the field of labor law, seemingly describe an accretion. Pursuant to applicable Board law, accretion is the ". . . incorporation of employees into an already existing larger unit when such a community of interests exists among the entire group that the additional employees have no separate unit identity. Thus, they are properly governed by the larger group's choice of bargaining representative." *Reliable Trailer & Body*, 295 NLRB 1013 (1989), quoting *NLRB v. Security Columbian Banknote Co.*, 541 F.2d 135, 140 (3d Cir. 1976). Essentially, the act of accretion is designed to preserve industrial stability by allowing adjustments to bargaining units without requiring representation elections whenever new jobs are created or incorporated into the workforce. *Brooklyn Hospital Center,* 309 NLRB 1163, 1182 (1992). However, the Board has traditionally followed a "restrictive policy" in determining accretions to existing units as ". . . employees accreted to such units are not accorded a self-determination election, and the Board seeks to insure the employees' right to determine their own bargaining representative." *Passavant Retirement & Health Center,* 313 NLRB 1216, 1218 (1994). Therefore, ". . . previously unrepresented employees may not be lawfully accreted to an existing bargaining unit where ". . . the group sought to be accreted . . . . has been in existence and historically excluded" from the larger unit and ". . . where the employee group sought to be [accreted] . . . is so composed that it may separately constitute an appropriate bargaining unit." *Teamsters Local 89 (United Parcel Service)*, 346 NLRB 484, 484 (2006); *Passavant Retirement & Health Center*, supra. In such circumstances, whenever the parties to an existing collective-bargaining agreement attempt to include previously unrepresented employees within the existing contractual bargaining unit without an "expression of the desire of the majority of said employees to be so represented," a violation of the Act must be found. *Teamsters Local 89*, supra. Further, "it is the fact of historical exclusion that is determinative and not whether the union has acquiesced in that exclusion or whether the excluded group has some common job-related characteristic distinct from unit employees. *United Parcel Service,* 303 NLRB 326, 327 (1991). In the cited cases involving unlawful accretion, by granting recognition to a labor organization as the representative of the previously unrepresented employees, the offending employer violates Section 8(a)(1), (2), and (3) of the Act, and, by accepting exclusive recognition as the representative of the previously unrepresented employees, the offending labor organization violates Section 8(b)(1)(A) and (2) of the Act. Finally, unlawful accretion only exists in the context of a 9(a) bargaining relationship, and, as a finding of majority status is immaterial, such does not apply in the context of an 8(f) contract. *IBEC Housing Corp.*, 245 NLRB 1282, 128 (1979).

In agreement with counsel for the General Counsel and counsel for the Painters Union, I find that the General Counsel has established that Respondent Raymond and Respondent Carpenters acted unlawfully. At the outset, the language of the Carpenters Union 2006–2010 master agreement clearly meets the requirements prerequisite for a 9(a) bargaining relationship between the contracting parties as set forth by the Board in *Staunton Fuel & Material,* 335 NLRB 717 (2001).[52] Thus, the voluntary recognition agreement provision of the Carpenters Union 2006–2010 master agreement recites the Carpenters Union's demand for recognition, upon each contracting employer, including Respondent Raymond, as the majority representative of the bargaining unit employees; the Carpenters Union's show of, or offer to show, proof of its majority support amongst the employees covered by the collective-bargaining agreement; and each contracting employer's, including Respondent Raymond, grant of recognition to the Carpenters Union as "the sole and exclusive" bargaining representative of its bargaining unit employee within the meaning of Section 9(a) of the Act. Id. at 720. Moreover, the provision of the September 12 confidential settlement agreement, wherein Respondent Raymond agreed that, at the expiration of the Painters Union collective-bargaining agreement, it would apply the existing Carpenters Union master agreement to its drywall finishing employees "to the fullest extent permitted by law"[53] and the admissions of Respondent Raymond's attorney and of Gordon Hubel are demonstrative of the parties' intent to establish a 9(a) bargaining relationship, encompassing a unit of Respondent Raymond's drywall framing and drywall finishing employees,

[52] Therein, the Board decided how a labor organization, whose status as a bargaining representative is privileged by Sec. 8(f) of the Act, may acquire, through agreement with the employer, the status of a majority bargaining representative within the meaning of Sec. 9(a) of the Act. It stated that "a recognition agreement or contract provision will be independently sufficient to establish a Section 9(a) representation status where the language unequivocally indicates that (1) the union requested recognition as the majority or 9(a) representative of the unit employees; (2) the employer recognized the union as the majority or 9(a) representative; and (3) the employer's recognition was based upon the union's having shown, or having offered to show, evidence of its majority support." Id. at 719–720.

[53] In my view, in the context of the earlier warning from Hubel to Winsor with regard to coverage of the drywall finishing employees at the expiration of the Painters Union collective-bargaining agreement, the quoted language can only refer to a 9(a) relationship, and any ambiguity, in this regard, must be resolved against each Respondent.

immediately upon expiration of Respondent Raymond's collective-bargaining agreement with the Painters Union. Indeed, such must be the case as, given the legal training of the principals of each contracting party, they most certainly would have been aware of the possibility of a representation petition, filed by the Painters Union, and the resultant legal consequences and that only a collective-bargaining agreement with a 9(a) representative would bar such a petition. *Deklewa*, supra at 1387. In these circumstances, absent the filing of a representation petition and subsequent certification, I believe that the only method by which Respondent Raymond and Southwest Regional Council of Carpenters, on behalf of its affiliated local Unions, including Respondent Carpenters, could have assured the latter's majority representative status for Respondent Raymond's drywall finishing employees, a historically separate appropriate unit,[54] was through the process of accretion, and that, therefore, it is manifestly certain that the parties meant to accrete Respondent Raymond's existing drywall finishing employees bargaining unit to the existing Carpenters Union master agreement's bargaining unit, which ostensibly covers employees, who perform drywall finishing work. However, since, at least the 1960s, given the drywall finishing employees' status as an historical separate appropriate bargaining unit, clearly, a wall-to-wall unit, comprised of drywall framers and drywall finishers, is not the only appropriate unit herein, and the record evidence establishes that Respondent Raymond and Respondent Carpenters had historically excluded the former's drywall finishing employees from their master agreement bargaining unit.[55] Accordingly, I think that the parties attempted accretion of Respondent Raymond's drywall finishing employees to the existing Carpenters Union master agreement bargaining unit was unlawful, and it follows that Respondent Raymond's recognition of Respondent Carpenters as the majority representative of the former's drywall finishing employees and Respondent Carpenters' acceptance of such recognition must have been violative of the Act. *Teamsters Local 89,* supra; *Brooklyn Hospital Center,* supra.

Contrary to the General Counsel, Respondent Raymond and Respondent Carpenters contend that the former's extension of recognition to the latter on or about October 1, 2006, was lawful. Initially, counsel for Respondent Raymond argue that, even if the parties meant to accrete the drywall finishing employees to the overall Carpenters Union bargaining unit, the act was not unlawful. Citing *Central Soya Co.*, 281 NLRB 1308 (1986), counsel assert that ". . . the Board will find an accretion where the employees in the represented group outnumber the employees in the unrepresented group." However, unlike the situation herein, *Central Soya* involved an employer, whose employees were represented by a union, purchasing another company, whose bargaining unit employees were unrepresented, and then consolidating the two business operations at the location of the latter enterprise with no substantial change in operations. The crucial factor herein, one not present in the cited decision, is the parties' "historical exclusion" of drywall finishing employees from Respondent Raymond's carpenters bargaining unit, and, as pointed out above, the factor is, of course, paramount in alleged unlawful accretion situations. *United Parcel Service,* supra at 327.

The crux of Respondent Raymond's and Respondent Carpenters' defense is that, as of October 1, 2006, Respondent Raymond's drywall finishing employees were covered by a preexisting 8(f) collective-bargaining agreement, between the parties—either the existing Carpenters Union 2006–2010 master agreement and/or the parties' September 12 confidential settlement agreement.[56] With regard to coverage under the former agreement, relying upon *Western Pipeline, Inc.*, 328 NLRB 925, 927 (1999), and *Deklewa*, supra at 1385 fn. 41, counsel for Respondent Raymond and counsel for the Carpenters argue that "the drywall finishing employees were a separate bargaining unit and, in the construction industry, the Board presumes that a bargaining relationship is a nonmajority Section 8(f) relationship."[57] Recognizing that this presumption is only valid absent evidence to the contrary and noting the existence of language in the master agreement, which satisfies the *Staunton Fuel* test for the existence of a 9(a) bargaining relationship, counsel for Respondent Raymond nevertheless argue such does not mean that the contracting parties intended such a bargaining relationship with respect to the "separate unit" of drywall finishing employees and assert "an analysis of the parties' intent limited solely to the [*Staunton Fuel* language] would be inappropriate and in error." In this regard, citing *Madison Industries,* 349 NLRB 1306 (2007), counsel argue that "whether the parties intended a Section 9(a) relationship vis-à-

[54] While in their answers, Respondent Raymond and Respondent Carpenters deny that a bargaining unit limited to the former's drywall finishing employees constitutes an appropriate unit within the meaning of Sec. 9(a) of the Act, neither offered any evidence to establish that said historical unit was no longer appropriate. Each, of course, had the burden of proof in this regard. *Paramus Ford*, 351 NLRB 1019 (2007). In these circumstances, I reject the Respondents' contention and find that a unit of Respondent Raymond's drywall finishing employees constituted a historically separate and appropriate unit within the meaning of Sec. 9(a) of the Act.

[55] In this regard, I note that drywall finishing employees have only recently been included in the Carpenters Union master agreement's bargaining unit and, even after the employees were included, they had been specifically excluded whenever a contracting employer, such as Respondent Raymond, had an existing bargaining relationship with the Painters Union.

[56] Counsel for Respondent Carpenters argues that the General Counsel's consolidated complaint allegations with regard to the Carpenters Union 2006–2010 master agreement are time-barred by Sec. 10(b) of the Act inasmuch as they were filed more than 6 months after the execution of the document. Counsel's contentions seem to be based upon her perception of the consolidated complaint as attacking the validity of the 9(a) character of the agreement. Contrary to counsel, the General Counsel neither argues nor seeks a finding that the master agreement is not what it appears to be—a collective-bargaining agreement within the meaning of Sec. 9(a) of the Act. Rather, it appears that, notwithstanding the recognition language of the master agreement, the General Counsel is only attacking the validity of Respondent Raymond's and Respondent Carpenters' attempt to bring the former's drywall finishing employees within the coverage of the master agreement. Accordingly, I reject counsel's contention that the above consolidated complaint allegations are time-barred by Sec. 10(b) of the Act.

[57] The presumption is a rebuttable one with the Board challenging ". . . the party asserting a 9(a) relationship to prove it." *Deklewa*, supra.

vis the drywall finishing employees requires an examination of the parties' entire agreement." However, counsels' assertion that the parties were concerned with a separate unit consisting of Respondent Raymond's drywall finishing employees is belied by the record evidence, and their reliance upon the cited decision is misplaced. Thus, the Carpenters Union Representative Hubel told Travis Winsor during bargaining for the 2002–2006 master agreement that the language, excluding drywall finishers from the contract bargaining unit, became void immediately upon a signatory contractor terminating his bargaining relationship with the Painters Union. Also, Respondent Raymond's attorney admitted that, as of October 2, 2006, ". . . Raymond already recognized Carpenters as the 9(a) representative of its drywall employees (both hangers and finishers)," and Hubel confirmed that his labor organization likewise intended to assert such status in one overall Carpenters unit. Further, unlike the Carpenters Union 2006–2010 master agreement, which specifies recognition of the labor organization as the exclusive bargaining representative pursuant to Section 9(a) of the Act,[58] the contractual recognition clause, at issue in *Madison Industries*, failed to specify that the employer recognized the union pursuant to Section 9(a) of the Act, and it was this lack of such specificity that caused the Board to examine the entire agreement in order to ascertain the intent of the parties—a task unnecessary herein. Moreover, to the extent such may be necessary, as noted above, extrinsic evidence reveals that the parties herein meant to establish a 9(a) bargaining relationship covering one overall carpenters bargaining unit.

Nevertheless, continuing to expound upon their illusory separate bargaining unit contention and coverage for the unit pursuant to Section 8(f) of the Act, counsel for Respondent Raymond and counsel for Respondent Carpenters argue that, inasmuch as the Board, in *Deklewa*, supra, rejected the so-called merger doctrine, under which an employer's separate bargaining unit was deemed to have become merged into a multiemployer bargaining association's 9(a) bargaining unit, such ". . . can only mean that coverage of the separate unit of Raymond's drywall finishing employees did not merge those employees into the larger Carpenters' represented framing and hanging bargaining unit . . . ." Therefore, they argue that Respondent Carpenter's representation of the drywall finishing employees bargaining unit must have been on an 8(f) basis and that the Board's decision in *Comtel Systems Technology, Inc.*, 305 NLRB 287 (1991), is dispositive on this point. In the cited decision, a representation matter, the question presented by the Board was ". . . whether, in the construction industry, [a Section 9(a) collective-bargaining agreement] will bar an election in a unit consisting of the employees of an individual employer-member of a multiemployer association if it is not established that a majority of the employees in the classifications covered by the agreement had expressed a desire for union representation at the time recognition was extended by the multiemployer association." Id. at 288. Therein, a construction industry electrical contractor was a member of the multiemployer association but failed to signify its assent to be bound by the association's collective-bargaining agreement with the involved labor organization until after the former had extended recognition to the latter as the majority 9(a) bargaining representative of the employees in the multiemployer bargaining unit and after the ratification of a collective-bargaining agreement between the parties. Further, at no point prior to receiving recognition as the 9(a) bargaining representative did the labor organization establish that it represented a majority of the employer's employees, who were working in the bargaining unit job classifications. In these circumstances, the Board held, the employer's relationship with the labor organization was an 8(f) relationship and if a labor organization desires to achieve status as a 9(a) bargaining representative of employees in a multiemployer association, ". . . it must have the manifest support of a majority of the employees of any individual employer whose employees it seeks to merge into the unit under a Section 9(a) agreement." Id. at 291. From the foregoing, counsel for Respondent Raymond and counsel for Respondent Carpenters extrapolate that, when Respondent Raymond's collective-bargaining agreement with the Painters Union expired, until Respondent Carpenters established its majority status as the representative of Respondent Raymond's drywall finishing employees, the parties' existing 2006–2010 master agreement covered the employees on an 8(f) basis.

Pursuant to *Comtel*, supra, when a building and construction industry employer joins a multiemployer bargaining association after a labor organization has been recognized as the 9(a) bargaining representative of the employees in the multiemployer bargaining unit but prior to having achieved majority status amongst the new employer's bargaining unit employees, a 8(f) bargaining relationship exists between the employer and the labor organization until such time as the latter establishes its majority status amongst the employer's bargaining unit employees. Contrary to counsel for each Respondent, I do not believe that *Comtel* has any broader meaning, and neither counsel has cited any contrary Board case authority. Indeed, the instant matter is factually distinguishable from *Comtel*. Thus, unlike in the cited decision, Respondent Raymond is not seeking to join a multiemployer association, Respondent Raymond and Respondent Carpenters have an extant 9(a) bargaining relationship memorialized in successive collective-bargaining agreements, including the existing Carpenters Union 2006–2010 master agreement, and Respondent Raymond's drywall finishing employees represent an historically separate bargaining unit. In my view, the contentions of counsel for Respondent Raymond and counsel for Respondent Carpenters appear to distort *Comtel* to mean that, in the building and construction industry, the same collective-bargaining agreement may establish an 8(f) bargaining relationship for one bargaining unit and a 9(a) bargaining relationship for another bargaining unit. While, apparently under *Comtel*, in a multiemployer context, a collective-bargaining agreement may be considered to be an 8(f) privileged agreement until the labor organization establishes its 9(a) representative status in the bargaining unit job classifications, it appears axiomatic that the single-employer's bargaining unit job classifications must be the same as those of the multiemployer bargaining unit. Further, there exists no language in *Comtel*, suggesting that the agreement may also

[58] Such wording is "independently sufficient" to establish 9(a) status. *Staunton Fuel*, supra at 720.

constitute an 8(f) agreement, covering a completely separate bargaining unit, and neither counsel for Respondent Raymond nor counsel for Respondent Carpenters has cited any case authority for a contrary view of the law. Perhaps recognizing this, counsel for Respondent Carpenters argues that requiring the parties to have drafted a separate collective-bargaining agreement, setting forth the identical terms and conditions of employment but describing the bargaining unit and governing provision of the Act differently, would have elevated form over substance and would not have effectuated the intent of the parties. While in a different context, one not involving a historically separate bargaining unit, I might view counsel's argument in a more favorable light, given the admission of Respondent Raymond's attorney that the parties intended to establish a 9(a) relationship covering the drywall finishing employees, I agree with counsel for the General Counsel that giving credence to Respondents' belated defense would allow them to escape the consequences of a 9(a) bargaining relationship after they have been permitted to enjoy the benefits of the status. Moreover, contrary to counsel for Respondent Carpenters, I do not believe ensuring industrial stability trumps the drywall finishing employees' Section 7 right to choose their own bargaining representative. Finally, counsel for Respondent Carpenters argues the fact that her client solicited authorization cards from Respondent Raymond's drywall finishing employees and then entered into a separate recognition agreement with the latter demonstrates that the parties had intended a 8(f) bargaining relationship immediately following Respondent Raymond's termination of its contract with the Painters Union. However, said contention is rendered utterly nugatory by Gordon Hubel's admission that Respondent Carpenters solicited authorization cards herein solely to buttress its legal argument that, upon expiration of Respondent Raymond's contract with the Painters Union, a valid 9(a) bargaining unit existed, encompassing all of the former's drywall employees, including the finishers.

Turning to the second aspect of Respondent Raymond's and Respondent Carpenters' defense, counsel for each asserts that, assuming the Carpenters Union 2006–2010 master agreement was not a valid 8(f) prehire agreement, to the extent that a separate collective-bargaining agreement, between the parties, was necessary to create an 8(f) bargaining relationship, the parties considered their September 12, 2006 confidential settlement agreement to have been such a collective-bargaining agreement, covering Respondent Raymond's drywall finishing employees, since it incorporated the terms and conditions of employment set forth in the above master agreement. At the outset, contrary to counsel, I have previously concluded that, by the phrase "to the fullest extent permitted by law," the parties clearly signified their intent to establish a 9(a) bargaining relationship covering the drywall finishing employees, and the collective-bargaining agreements, to which Respondent Raymond agreed to bind itself, are 9(a) agreements. Next, I do not accept that the September 12 document may be viewed as constituting a collective-bargaining agreement. Initially, I note that, while not dispositive, rather than bearing any title commensurate with collective-bargaining agreement, the document is entitled *"Confidential Settlement Agreement."* Further, nothing in the document's preamble suggests the parties intended to create a collective-bargaining agreement or even meant to establish terms and conditions of employment; rather, the language therein describes their intent to settle disputes and grievances, which had arisen between them. Next, while in *Madelaine Chocolate Novelties,* 333 NLRB 1312, 1312 (2001), the Board concluded, in a "contract-bar" context, that to be considered a collective-bargaining agreement, a document ". . . must contain substantial terms and conditions of employment deemed sufficient to stabilize the bargaining relationship," there is no record evidence herein that the parties intended their settlement agreement to constitute a collective-bargaining agreement,[59] the term bargaining unit is not mentioned, and the document bears no expiration date. Moreover, the document apparently binds Respondent to two separate and different collective-bargaining agreements—the Carpenters Union memorandum agreement, which Respondent Raymond agreed to execute, and the existing Carpenters Union master agreement, which Respondent Raymond agreed to abide by upon expiration of its existing Painters Agreement. Also, in the second numbered paragraph, the reference to Respondent Raymond's drywall finishing employees is tenebrous—did the parties refer to said employees as a separate bargaining unit or as, I believe, included in the overall carpenters represented unit of the existing master agreement? Finally, as counsel for the Painters Union persuasively argues, if, as argued, the parties did enter into a collective-bargaining agreement via the confidential settlement agreement, such would have been an unlawful act. Thus, pursuant to *Deklewa*, supra, a collective-bargaining agreement, privileged by Section 8(f) of the Act, is enforceable under Section 8(a)(1) and (5) of the Act during its term, and a labor organization, which enters into such a contract with an employer, enjoys a limited 9(a) status during the duration of the the agreement. *Gem Management Co.*, 339 NLRB 489, 501 (2003). Further, an employer engages in acts and conduct, violative of Section 8(a)(1) and (2) of the Act, if, during the term of such an agreement, it unlawfully offers assistance to another labor organization in contravention of its existing bargaining relationship. Id. Specifically, in *Oil Field Maintenance Co.,* 142 NLRB 1384, 1386 (1963), the Board held that contracting with a labor organization while bound to maintain recognition of another during the term of a collective-bargaining agreement "falls outside the purpose and protection of Section 8(f)." Herein, there is no dispute that Respondent Raymond's collective-bargaining agreement with the Painters Union was not due to expire until September 30, 2006. Accordingly, if as argued, by entering into their September 12, 2006 confidential settlement agreement Respondent Raymond and Respondent Carpenters actually entered into an 8(f) prehire collective-bargaining agreement, such would have constituted an unfair labor practice, and the putative collective-bargaining agreement would have been unlawful as would have been Re-

[59] Counsel for Respondent Raymond cite to the Board's decision in *Carthage Sheet Metal Co.*, 286 NLRB 1249 (1987), for the proposition that an employer may be held bound to an 8(f) agreement pursuant to the terms of a settlement agreement. However, from the record therein, although unclear, it does not appear that the settlement agreement and purported 8(f) agreement were the same document.

spondent Raymond's recognition of Respondent Carpenters as the bargaining representative of its drywall finishing employees and the latter's acceptance of such recognition.

In the above circumstances, I reject Respondent Raymond's and Respondent Carpenters' defenses that either their existing 2006–2010 master agreement or their September 12, 2006 confidential settlement agreement was a valid Section 8(f) of the Act privileged collective-bargaining agreement covering Respondent Raymond's drywall finishing employees. Therefore, I find that, on or about October 1, 2006, in the context of a 9(a) bargaining relationship, Respondent Raymond unlawfully recognized Respondent Carpenters as the majority representative of its drywall finishing employees and Respondent Carpenters unlawfully accepted such recognition, and Respondent Raymond and Respondent Carpenters unlawfully enforced and applied their existing 2006–2010 master agreement as to the former's drywall finishing employees, who constituted a historically separate appropriate unit, by accreting the employees to the existing carpenters bargaining unit. By their actions, each Respondent deprived Respondent Raymond's drywall finishing employees of their statutory right to select their own bargaining representative. Accordingly, Respondent Raymond engaged in acts and conduct violative of Section 8(a)(1), (2), and (3) of the Act and Respondent Carpenters engaged in acts and conduct violative of Section 8(b)(1)(A) and (2) of the Act. *Teamsters Local 89*, supra; *Brooklyn Hospital Center*, supra.

The consolidated complaint next alleges that Respondent Raymond engaged in acts and conduct violative of Section 8(a)(1) and (3) of the Act and that Respondent Carpenters engaged in acts and conduct violative of Section 8(b)(1)(A) and (2) of the Act by subjecting the former's drywall finishing employees to the union-security provision of the Carpenters Union 2006–2010 master agreement. I have found that, upon expiration of its collective-bargaining agreement with the Painters Union, pursuant to the terms of their September 12 confidential settlement agreement, Respondent Raymond and Respondent Carpenters unlawfully extended the coverage of their existing master agreement to include representation of the former's drywall finishing employees. The collective-bargaining agreement contains a common building and construction industry union-security provision, requiring membership in the labor organization after an employee's eighth day of employment. The Board has long held that, in such circumstances, by entering into, maintaining, and enforcing a collective-bargaining agreement, which includes a union-security clause, an employer and a labor organization engage in conduct violative of Section 8(a)(1) and (3) and Section 8(b)(1)(A) and (2) of the Act, respectively, and, therefore, I find such violations in the instant matter. *Duane Reade, Inc.*, 338 NLRB 943, 944 (2003); *Polyclinic Medical Group*, 315 NLRB 1257 (1995).

Next, I consider Respondent Raymond's recognition of Respondent Carpenters as the exclusive representative of its drywall finishing employees, by virtue of the latter's purported majority showing, late in the afternoon on October 2, 2006. In this regard, the consolidated complaint alleges that, at the time, Respondent Carpenters did not represent an uncoerced majority of said employees and that, therefore, Respondent Raymond engaged in acts and conduct violative of Section 8(a)(1), (2), and (3) of the Act by extending such recognition and Respondent Carpenters engaged in acts and conduct violative of Section 8(b)(1)(A) and (2) of the Act by accepting such recognition. Concerning these allegations, there is no dispute, and I find, that, on the above date, subsequent to the formal presentations to the drywall finishing employees by representatives of Respondent Raymond and the Carpenters Union during the meeting at the Orange facility, Respondent Carpenters distributed a form (GC Exh. 3), which included a membership application and a representation authorization, to the the employees for completion and execution; that Respondent Carpenters collected signed copies of these forms; that, later at approximately 5 p.m. at Respondent Raymond's San Diego facility, agents of the Carpenters Union, demanded recognition by Respondent Raymond as the majority representative of the employees in the bargaining unit set forth in the Carpenters Union memorandum agreement and, as evidence of its majority status, permitted Travis Winsor to examine the authorization forms, which Respondent Carpenters had obtained earlier during the day, and that, after examining the authorization forms, Winsor entered into a recognition agreement, by which Respondent Raymond recognized Respondent Carpenters as the majority representative, within the meaning of Section 9(a) of the Act, of the latter's drywall framing and finishing employees. Urging that Respondent Raymond's recognition of Respondent Carpenters as the above employees' majority bargaining representative and that Respondent Carpenters acceptance of such recognition be found unlawful, counsel for the General Counsel argues that such was tainted by statements made during the employee meeting earlier that day by agents of Respondent Raymond. Thus, he asserts that, by warning its employees that they must immediately join Respondent Carpenters if they wished to continue working for the Company, Respondent Raymond unlawfully assisted Respondent Carpenters by conditioning continued employment on immediate membership in a union, thereby denying employees their statutory grace period. *Acme Tile & Terrazzo Co.,* 318 NLRB 425, 427–428 (1995).[60]

In his posthearing brief, in arguing that Respondent Raymond unlawfully coerced its drywall finishing employees and unlawfully assisted Respondent Carpenters,[61] counsel for the

[60] In *Acme Tile*, what the Board found unlawful were employer statements to employees, conditioning continued employment upon "immediate membership" in the assisted labor organization. Id. Thus, in my view, to be considered unlawful herein, statements, attributed to agents of Respondent Raymond, must clearly condition continued employment with it upon employees becoming members of Respondent Carpenters prior to the conclusion of the statutory 80-day grace period, as set forth in the master agreement's union-security clause. Apparently recognizing this, the General Counsel has alleged as unlawful only statements made at the October 2 by agents of Respondent Raymond that employees had to sign with the Carpenters *that day* in order to continue working for it.

[61] The consolidated complaint also alleges that similar statements were made by unnamed Southwest Regional Council of Carpenters representatives. However, the record evidence attributes no such statements to any Carpenters Union representative. Rather, according to witnesses Alvarez and Ramos, Carpenters Union officials, at most, told the listening employees that, in order to continue working, they would have to sign with the Carpenters Union, a statement not inconsis-

General Counsel relies solely upon statements attributed to Travis Winsor and Hector Zorrero.[62] As such is directly at issue, I must, at the outset, assess the credibility of the several witnesses, and, in this regard, the most trustworthy was Jose Ramos. In my view, his demeanor, while testifying, was that of a veracious witness, one who, unlike others, clearly exhibited his comprehension of the meaning, gravity, and consequences of the oath, to which he swore prior to testifying. That Ramos forthrightly recounted Travis Winsor's alleged threat to the listening drywall finishers and that he understood Winsor as being utterly serious seem unmistakably clear given his indelible decision, based upon what Winsor said and reached without the immediate prospect of another job, not to report for work the next day.[63] Although enigmatical, given the candid testimonial demeanor of each and their corroboration by the candid Ramos, I likewise believe that Janet Pineda[64] and Ruben Mejia Alvarez[65] were honest witnesses, testifying to the best of their respective recollections.[66] Moreover, with regard to each of the above witnesses, I note that neither had any pecuniary, employment, or other interest in the outcome of this matter.

In contrast, while portions of his testimony, regarding what he told the listening employees on October 2, were uncontroverted and probably truthful, Travis Winsor, whose demeanor, on the whole while testifying, was hardly that of a guileless witness, appeared to be testifying particularly disingenuously concerning his colloquy with the employees as to the subject about which they had to reach a decision that day. On this, he was contradictory, stating, at one point, he was referring to benefit enrollment forms and, later, stating he was referring to Painters Union membership withdrawal forms so that the employees could protect themselves against the possibility of fines or penalties imposed by that labor organization. Further, I found both his testimony, as to the underlying purpose for the September 12, 2006 confidential settlement agreement, and his testimony, pertaining to what he said regarding the master agreement's union-security clause during the October 2 employee meeting at the Orange facility, adroitly labored and vague. Accordingly, I do not credit his specific denials of the unlawful threats attributed to him by the above witnesses. Next, Hector Zorrero failed to impress me as exhibiting any candor, and, particularly as compared to Alvarez, I found the latter to have been a more compelling and frank witness. Moreover, I note that Zorrero and Winsor were contradictory as to whether, during the question and answer session, employees questioned Winsor regarding having to reach a decision that day about any subject. In these circumstances, I do not credit his specific denials of unlawful statements, which were attributed to him or to Winsor. Finally, with regard to the respective testimony of Gordon Hubel, David Cordero, and Pedro Loera and their denials of statements attributed to Winsor and Zorrero, I note such testimony tracked the specific denials of Winsor and Zorrero. However, inasmuch as neither Winsor nor Zorrero convinced me as to the candor of said denials,[67] I shall place no reliance upon the putative corroborating testimony of Hubel, Cordero, or Loera.

In the foregoing circumstances, I find that, at the October 2 morning employee meeting at Respondent Raymond's Orange facility, during the question and answer session, which followed the formal presentations of Travis Winsor on behalf of Respondent Raymond and Marty Dahlquist and Ron Schoen on behalf of the Carpenters Union, an employee asked, if employees did not sign with the Carpenters, could they continue working, Travis Winsor replied that, if they did not sign, there would be no more work, and that, if you don't sign, you will not have a job but that no one would be fired. Then, one or more employees asked if they had to reach a decision that day about signing with the Carpenters Union, and Winsor responded, ". . . that if we didn't sign on that day, we weren't working any more." I further find that, at the conclusion of the question and answer session, while Hector Zorrero stayed with the employees in the training room and answered their questions, several employees shouted to Zorrero, asking if the Company would give them some time to decide about signing with the Carpenters Union. He replied, "There's no time to think about it. Either sign . . . today or you cannot work tomorrow for us." Given the circumstances, Winsor's and Zorrero's warnings obviously were heard by numerous employees and are virtually identical to those which the Board found unlawful in *Acme Tile*, supra.

In defense, counsel for Respondent Raymond point out that neither Winsor nor Zorrero solicited nor directed the drywall finishing employees to execute authorization for representation forms and that the warnings, which are attributed to each, concern the signing of Respondent Carpenters' application for membership forms. Therefore, they argue, the alleged violations of the Act may taint the latter forms but not the former, which formed the basis for the request for recognition later that day. On this point, counsel for Respondent Carpenters argues

tent with the union-security clause and not requiring immediate action. Accordingly, I recommend dismissal of par. 19(a) of the consolidated complaint.

[62] Counsel for the Painters Union argues that I should also find that the totality of Raymond's statements and conduct during the meeting constitutes unlawful assistance. Such is not an allegation of the consolidated complaint, and I shall make no finding in this regard.

[63] *Acme Tile*, supra at 428.

[64] I recognize that Pineda admitted that her memory of the October 2 meeting was "not good;" however, Respondent Raymond's attorney's attempted impeachment of her only served to corroborate her testimony with regard to Winsor's threat that employees could not work the following day if they did not sign with the Carpenters.

[65] I recognize that Alvarez testified regarding an asserted meeting to which all of Respondent Raymond's drywall finishing foremen were called and that there was no corroboration for such a meeting. However, whether said meeting did or did not occur does not detract from my belief that Alvarez was basically an honest witness.

[66] While Richard Myers also impressed me as testifying truthfully, I note that he recalled Winsor as repeatedly warning the listening employees that, if they did not sign with the Carpenters, they would not have a job. As I stated above, said comment was not inconsistent with the language of the master agreement's union-security clause and did not demand that the employees act prior to the end of the statutory grace period. Accordingly, I shall not rely upon his testimony herein.

[67] I note that Hubel contradicted Winsor as to whether any employee asked if the employees had to decide that day about becoming a member of Respondent Carpenters.

that the desire to be represented and the desire to be a member of a labor organization constitute separate and distinct issues and that ". . . any alleged comments urging the employees to become members of the Carpenters Union that day should not negate the employees stated desire to have Carpenters Union represent them for the purposes of negotiating terms and conditions of employment . . . ." In support, counsel cites the Board's decision, *Highlands Regional Medical Center,* 347 NLRB 1404 (2006), in which the Board considered an employer's reliance upon a petition, assertedly signed by half of its bargaining unit employees, for withdrawing recognition from a labor organization. Noting that shortly after signing and dating the petition, an employee joined the union and began paying dues, the Board stated, ". . . where an employee who has signed a decertification petition then voluntarily joins the union and begins paying dues, the employer may no longer count the employee as opposing union representation." Id. at 1407 at fn. 16. Contrary to both attorneys, I understand the Board as equating membership in a labor organization with supporting representation by the labor organization, and, therefore, I believe that becoming a member of a labor organization signifies one's desire to be represented by it for the purpose of collective bargaining. Accordingly, the inevitable result of Winsor's and Zorrero's coercive warnings upon the listening drywall finishing employees, most of whom, I believe, desired to retain their jobs with Respondent Raymond, was a tropism to execute Respondent Carpenters' membership forms immediately after the October 2 morning meeting, and it follows that the threats undoubtedly had the equally coercive effect upon the employees, who also executed authorization cards on behalf of Respondent Carpenters. In this regard, I note that General Counsel's Exhibit 3 contains both Respondent Carpenters' application for membership and authorization for representation forms and believe that employees, who were instructed to complete the membership application, undoubtedly completed and executed every form on the large document without regard to the differences between them. In the foregoing circumstances, Respondent Raymond's and Respondent Carpenters' defense is without merit, and I find that, in violation of Section 8 (a)(1), (2), and (3) of the Act, by the above warnings of Travis Winsor and Hector Zorrero, Respondent Raymond unlawfully coerced its employees into executing authorization cards on behalf of Respondent Carpenters and, thereby, rendered unlawful assistance to the latter. *Acme Tile*, supra.

An employer violates Section 8(a)(1) and (2) of the Act when it extends recognition to a labor organization that does not represent an uncoerced majority of its bargaining unit employees, and the labor organization violates Section 8(b)(1)(A) of the Act by accepting such unlawful assistance from the employer. *Ladies Garment Workers v. NLRB,* 366 U.S. 731 (1961). In this regard, the General Counsel need not show, "with mathematical precision," that the labor organization lacks the support of an uncoerced majority of the bargaining unit employees. *Dairyland USA Corp.*, 347 NLRB 310, 311 (2006); *SMI of Worcester*, 271 NLRB 1508, 1520 (1984). Rather, the General Counsel must show only that a "pattern" of employer assistance exists. *Dairyland USA*, supra; *Famous Castings Corp.,* 301 NLRB 404, 408 (1991). Such misconduct includes an employer's direction to its employees to sign cards. *Famous Castings*, supra at 407. Herein, I have concluded that the signed authorization cards, which Respondent Carpenters collected subsequent to the October 2 morning meeting at Respondent Raymond's Orange facility and relied upon in demanding recognition as the uncoerced majority representative of Respondent Raymond's drywall finishing employees later that day, were tainted by the warnings uttered by Respondent Raymond's Winsor and Zorrero. Also, in my view, the acts and conduct demonstrate a pattern of unlawful assistance to Respondent Carpenters sufficient to taint the latter's asserted showing, by authorization cards, of majority support. Accordingly, as there exists insufficient record evidence to establish that Respondent Carpenters represented an uncoerced majority of Respondent Raymond's drywall finishing employees at the time Respondent Raymond granted such recognition, the latter engaged in acts and conduct violative of Section 8(a)(1) and (2) of the Act. *Ladies Garment Workers*, supra.[68] Similarly, by accepting recognition from Respondent Raymond as the majority representative of the latter's drywall finishing employees at a time when it did not represent an uncoerced majority of the employees, Respondent Carpenters engaged in acts and conduct violative of Section 8(b)(1)(A) of the Act. *Dairyland USA*, supra at 312.[69]

Finally, I consider the consolidated complaint allegations that, during the October 2 meeting at Respondent Raymond's Orange facility, Respondent Carpenters failed to properly inform Respondent Raymond's drywall finishing employees of their *General Motors*[70] and *Beck*[71] rights in violation of Section 8(b)(1)(A) of the Act. Briefly stated, in *General Motors*, supra, the Supreme Court held that, whenever a labor organization's collective-bargaining agreement with an employer contains a union-security clause, whereby continued employment is conditioned upon membership in the *former*, the labor organization must inform bargaining unit employees they have a right to be or remain nonmembers and that the term "union membership" may be "whittled down to its financial core" so that nonmembers are only required to pay an amount equivalent to union initiation fees and dues. Id. at 742. In *Beck*, supra, the Court held that Section 8(a)(3) of the Act does not permit a collective-bargaining representative, over the objections of dues-paying nonmember employees, to expend funds, which are collected pursuant to a collective-bargaining agreement, on activities which are not germane to collective bargaining, contract administration, or grievance adjustment. While the Court believed that nonmember employees, who enjoyed the benefits

[68] While the October 2 recognition agreement seemingly bound Respondent Raymond to the Carpenters Union memorandum agreement, the latter only becomes effective upon an employer's signature, and the record evidence is that Respondent Raymond never entered into the agreement. Accordingly, the union-security clause of the agreement never became binding upon Respondent Raymond's drywall finishing employees, and, therefore, I can not find that the latter engaged in acts and conduct violative of Sec. 8(a)(1) and (3) of the Act.

[69] For the reasons set forth in fn. 68, supra, I can not find that Respondent engaged in conduct violative of Sec. 8(b)(2) of the Act.

[70] *NLRB v. General Motors Corp.*, 373 U.S. 734, 742 (1963).

[71] *Communications Workers v. Beck*, 487 U.S. 735 (1988).

of representation by a labor organization, should bear their fair share of the costs incurred by the bargaining representative for such representation, it also concluded that ". . . the expenditure of dues and fees on activities outside the [labor organization's] role as collective-bargaining representative violate[s its] duty of fair representation to nonmember employees who objected to such expenditures." Id. at 752–754; *California Saw & Knife Works,* 320 NLRB 224 (1995). Therefore, in *California Saw*, the Board interpreted *Beck* and formulated the following rules

> [B]efore a union seeks to obligate an employee to pay fees and dues under a union-security clause, the union should inform the employee that he has the right to be or remain a nonmember and that nonmembers have the right (1) to object to paying for union activities not germane to the union's duties as bargaining agent and to obtain a reduction in fees for such activities; (2) to be given sufficient information to enable the employee to intelligently decide whether to object; and (3) to be appraised of any internal union procedures for filing objections.

In the view of the Board, a "close connection" exists between these rights of nonmember employees and the right, under *General Motors*, to be and remain a nonmember subject only to the duty to pay union initiation fees and periodic dues, and, "simply stated, an employee cannot *exercise Beck* rights without exercising the *General Motors* right." *Paperworkers Local 1033 (Weyerhaeuser Paper Co.),* 320 NLRB 349, 349 (1995). Therefore, in order to fully inform nonmember bargaining unit employees of their *Beck* rights, a labor organization must also inform said employees of their right, pursuant to *General Motors*, to be or remain nonmembers, and, "basic obligations of fairness" require the labor organization to notify all bargaining unit employees of their rights under *Beck* and *General Motors* at the time it initially seeks to subject them to the obligations of a contractual union-security clause. Id. at 349–350; *California Saw*, supra at 233 and 235 at fn. 57. Finally, the Board views a labor organization's failure to properly give employees the *General Motors* and *Beck* notices as a breach of its fair duty of representation in violation of Section 8(b)(1)(A) of the Act. *Weyerhaeuser Paper Co*., supra.

Herein, the record evidence is that, during the October 2 meeting at Respondent Raymond's Orange facility, Travis Winsor, speaking on behalf of Respondent Raymond placed the its drywall finishing employees, none of whom was a member of Respondent Carpenters at the time, on notice that the Carpenters Union 2006–2010 master agreement's union-security clause would be applicable to them, and the Carpenters Union officials, who followed him, spoke about the employees' obligation to pay monthly union dues. The uncontroverted record evidence is, and I find, that no Carpenters Union official ever informed the employees that they did not have to become members of Respondent Carpenters; that they had the right to object to that portion of their dues going to nonrepresentational expenses; or that there was an internal union procedure for challenging the amount of their monthly dues payment. In this context, the Carpenters Union then distributed General Counsel's Exhibit 3, which contained the membership application forms and a supplemental dues-checkoff form for Respondent Carpenters, to the drywall finishing employees. Further, the record also establishes that, while Respondent Carpenters employee, Melinda Carlton, distributed copies of the quarterly Carpenters Union magazine, which contained a *Beck* notice, to bargaining unit employees, she did so only after employees returned completed and executed copies of the membership applications and supplemental dues-checkoff forms. In these circumstances, I find that, prior to enforcing its contractual union-security clause and obligating them to pay monthly dues, Respondent Carpenters failed to inform Respondent Raymond's drywall finishing employees, none of whom were members of the labor organization, that they were not obligated to join Respondent Carpenters subject only to the duty to pay union initiation fees and periodic dues and that, as nonmembers, they had the rights to object to paying for union activities not germane to the union's duty as bargaining representative and to obtain a reduction in fees for such activities, to be given sufficient information to enable them to object; and to be appraised of any internal union procedure for filing objections. Based upon the foregoing, there can be no doubt that Respondent Carpenters failed to meet the requirements of *California Saw*, supra, and *Weyerhaeuser Paper Co.*, supra.

In defense, counsel for Respondent Carpenters asserts that her client never actually sought to obligate nonmembers working for Respondent to pay dues or fees and that, in such circumstances, the instant matter is distinguishable from *California Saw*. However, contrary to counsel, as in the cited decision,[72] Carpenters Union employees distributed membership applications and supplemental dues-checkoff forms for Respondent Carpenters to Respondent Raymond's drywall finishing employees, none of whom were members of Respondent Carpenters, moments after they were informed the existing Carpenters Union master agreement and its union-security provision would be applicable to them and they would be required to pay union dues. I find that, in these circumstances, presentation of the two forms to these nonmembers effectively caused them to believe that membership in Respondent Carpenters, including the obligation to pay full dues, was required at that time.[73] *California Saw,* supra at 235. That this is, indeed, true, is seen from the fact that, along with a copy of the *Carpenters* magazine, Melinda Carlton handed each employee an envelope for the payment of dues. Accordingly, in the foregoing circumstances, as Respondent Carpenters failed to give the required *General Motors* and *Beck* notices to Respondent Raymond's drywall finishing employees prior to giving them membership applications and supplemental dues-checkoff forms, Respondent Carpenters breached its duty of fair representation, owed

[72] In *California Saw*, the Board was concerned with newly hired employees. Here, while obviously not new hires, Respondent Raymond and Respondent Carpenters were treating the former's drywall finishing employees in the same manner for purposes of covering them under a new and different collective-bargaining agreement. Thus, the distinction is without a difference.

[73] Herein, of course, the record evidence is that Respondent Raymond's officials, Winsor and Zorrero, warned the employees that such was, indeed, required that day.

Whether Respondent Carpenters thereafter sought to enforce its union-security provision is irrelevant.

to Respondent Raymond's drywall finishing employees, in violation of Section 8(b)(1)(A) of the Act.[74]

CONCLUSIONS OF LAW

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

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

3. Respondent Carpenters is a labor organization within the meaning of Section 2(5) of the Act.

4. By, on or about October 1, 2006, recognizing Southwest Regional Council of Carpenters on behalf of its affiliated local unions, including Respondent Carpenters, as the 9(a) majority bargaining representative of its drywall finishing employees and maintaining and enforcing the Carpenters Union 2006–2010 master agreement, to which it and Respondent Carpenters are parties and which contains a union-security provision, as covering its drywall finishing employees, Respondent Raymond engaged in acts and conduct violative of Section 8(a)(1), (2), and (3) of the Act..

5. By, on or about October 1, 2006, accepting recognition from Respondent Raymond as the 9(a) majority bargaining representative of the latter's drywall finishing employees and maintaining and enforcing the Carpenters Union 2006–2010 master agreement, to which Respondent Raymond and it are parties and which contains a union-security provision, as covering Respondent Raymond's drywall finishing employees, Respondent Carpenters engaged in acts and conduct violative of Section 8(b)(1)(A) and (2) of the Act.

6. By, on or about October 2, 2006, warning its drywall finishing employees that, if they fail to sign with Respondent Carpenters that day, there will be no more work for them, Respondent Raymond conditioned employment upon immediate membership in Respondent Carpenters and rendered assistance to said labor organization in violation of Section 8(a)(1), (2), and (3) of the Act.

7. By, on or about October 2, 2006, extending recognition to Southwest Regional Council of Carpenters on behalf of its affiliated local unions, including Respondent Carpenters, as the 9(a) majority bargaining representative of its drywall finishing employees at a time when Respondent Carpenters did not represent an uncoerced majority of its drywall finishing employees, Respondent Raymond engaged in acts and conduct violative of Section 8(a)(1) and (2) of the Act.

8. By, on or about October 2, 2006, accepting recognition from Respondent Raymond as the 9(a) majority bargaining representative of the latter's drywall finishing employees at a time when it did not represent an uncoerced majority of the employees, Respondent Carpenters engaged in acts and conduct violative of Section 8(b)(1)(A) of the Act.

9. By, on or about October 2, 2006, failing to inform Respondent Raymond's drywall finishing employees, whom it sought to obligate to pay dues and fees under a union-security provision, of their rights under *General Motors*, supra, to be and remain nonmembers and of the rights of nonmembers under *Beck*, supra, to object to paying for union activities not germane to its duties as bargaining agent and to obtain a reduction in dues and fees for such activities, Respondent Carpenters engaged in acts and conduct violative of Section 8(b)(1)(A) of the Act.

10. By their activities, in violation of the Act, Respondent Raymond and Respondent Carpenters engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

11. Unless specified above, Respondent Raymond and Respondent Carpenters engaged in no other unfair labor practices.

REMEDY

I have found that, by its acts and conduct, Respondent Raymond engaged in serious unfair labor practices within the meaning of Section 8(a)(1), (2), and (3) of the Act and that, by its and conduct, Respondent Carpenters engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) of the Act. Therefore, I shall recommend that each be ordered to cease and desist from the acts and conduct and to take certain affirmative actions designed to effectuate the purposes and policies of the Act. Initially, with regard to Respondent Raymond, I shall recommend that it be required to withdraw recognition from Respondent Carpenters as the collective-bargaining representative of its drywall finishing employees until the labor organization has been has been certified by the Board as their exclusive collective-bargaining representative. In accord with standard Board practice in similar circumstances,[75] I shall further recommend that, jointly and severally with Respondent Carpenters, Respondent Raymond be required to reimburse all its past and present drywall finishing employees, who joined Respondent Carpenters on or after October 2, 2006,[76] for any initiation fees, periodic dues, assessments, or any other moneys, which they may have paid or which may have been withheld from their pay pursuant to the Carpenters Union 2006–2010 master agreement, together with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). In addition, while nothing in the Order herein should be construed as permitting Respondent Raymond to withdraw or eliminate any benefit, including, but not limited to, pension plans and medical, dental, prescription drug, optical, hospitalization, and/or life insurance, which it may have implemented pursuant to the above collective-bargaining agreement for its drywall finishing employees, to the extent that such insurance and pension coverage was by or through a Carpenters Union plan, I shall recommend that it be required to provide an equivalent substitute.[77] As to Respondent Carpenters, in accord with standard prac-

[74] In these circumstances, as Respondent Carpenters failed to give the required notices prior to obtaining signed membership applications, I need not and do not reach the issue of the sufficiency of the *Beck* notice, which is printed in Respondent Carpenters quarterly magazine.

[75] *Duane Reade, Inc.*, supra at 945.

[76] While there is record evidence that some employees signed membership applications for Respondent Carpenters subsequent to October 2, there is no evidence that any received the necessary *General Motors* and *Beck* notices before doing so.

[77] *Brooklyn Hospital Center*, supra at 1163; *Mego Corp.*, 254 NLRB 300 (1981).

tice,[78] I shall recommend that it be required, jointly and severally with Respondent Raymond, to reimburse all of the latter's past and present drywall finishing employees, who joined it on or after October 2, 2006, for any initiation fees, periodic dues, assessments, or other moneys, which they may have paid or which may have been withheld from their pay pursuant to the Carpenters Union 2006–2010 master agreement, with interest as set forth above. Finally, I shall recommend that each Respondent post an appropriate notice, setting forth its obligations.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[79]

ORDER

A. The Respondent, Raymond Interior Systems, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Recognizing and bargaining with Southwest Regional Council of Carpenters on behalf of its affiliated local unions, including Respondent Carpenters, as the exclusive bargaining representative of its drywall finishing employees until Respondent Carpenters has been certified as their exclusive collective-bargaining representative by the Board.

(b) Maintaining, enforcing, or giving effect to the Carpenters Union 2006–2010 master agreement, including the union-security clause, so as to cover its drywall finishing employees, or any extensions, renewal, or modifications thereof unless or until Respondent Carpenters has been certified by the Board as the exclusive collective-bargaining representative of the employees; provided that nothing in this Order shall authorize, allow, or require the withdrawal or elimination of any wage increase or other benefits (pension or insurance plans) that it may have been established pursuant to the agreement.

(c) Assisting Respondent Carpenters by warning its drywall finishing employees that, if they did not sign with Respondent Carpenters that day, there would be no more work for them.

(d) Recognizing Respondent Carpenters as Section 9(a) of Act exclusive bargaining representative of its drywall finishing employees when it does not represent an uncoerced majority of said employees.

(e) 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) Withdraw recognition from Respondent Carpenters as the exclusive bargaining representative of its drywall finishing employees unless and until it has been certified by the Board as the exclusive collective-bargaining representative of the employees.

(b) Jointly and severally with Respondent Carpenters, reimburse its past and present drywall finishing employees, who joined Respondent Carpenters on or after October 2, 2006, for any initiation fees, periodic dues, assessments, or any other moneys, which they may have paid or which may have been withheld from their pay pursuant to the Carpenters Union 2006–2010 master agreement, together with interest as set forth above.

(c) To the extent that coverage was provided under Carpenters Union plans, provide alternate benefits coverage equivalent to the coverage that its drywall finishing employees possessed under the Carpenters Union 2006–2010 master agreement including pension coverage and medical, hospitalization, prescription drug, dental, optical, life, and other insurance benefits and ensure that there be no lapse in coverage.

(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 to be reimbursed under the terms of this Order.

(e) Within 14 days after service by the Region, post at its Orange facility and worksites in Southern California copies of the attached notice marked "Appendix A."[80] Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by Respondent Raymond's authorized representative, shall be posted by Respondent Raymond immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent Raymond 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, Respondent Raymond has gone out of business or closed the facility involved in these proceedings, Respondent Raymond shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former drywall finishing employees employed by Respondent Raymond at any time since October 2, 2006.

(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.

B. The Respondent, United Brotherhood of Carpenters and Joiners of America, Local Union 1506, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Receiving assistance and accepting recognition from Respondent Raymond as the exclusive bargaining representative of the latter's drywall finishing employees unless and until it has been certified by the Board as the exclusive collective-bargaining representative of the employees.

[78] *Duane Reade, Inc.*, supra at 946.

[79] 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.

[80] 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."

(b) Maintaining and enforcing the Carpenters Union 2006–2010 master agreement, including the union-security clause so as to cover Respondent Raymond's drywall finishing employees, and any extensions, renewal, or modifications thereof unless and until it has been certified by the Board as the exclusive collective-bargaining representative of the employees.

(c) Failing to inform Respondent Raymond's drywall finishing employees, whom it sought to obligate to pay dues and fees under a union-security provision, of their rights, under *NLRB v. General Motors Corp*., 373 U.S. 734 (1963), to be and remain nonmembers of Respondent Carpenters and of the rights of nonmembers, under *Communications Workers v. Beck*, 487 U.S. 735 (1988), to object to paying for union activities not germane to the labor organization's duties as collective-bargaining representative and to obtain a reduction in dues and fees for such activities.

(d) Seeking and obtaining 9(a) recognition from Respondent Raymond as the majority representative of its drywall finishing employees when it does not represent an uncoerced majority of said employees.

(e) In any like or related manner 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) Jointly and severally with Respondent Raymond, reimburse all of the latter's past and present drywall finishing employees, who joined Respondent Carpenters on or after October 2, 2006, for initiation fees, periodic dues, assessments, or any other moneys, which they may have paid or which may have been withheld from their pay pursuant to the Carpenters Union 2006–2010 master agreement.

(b) 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 records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of money to be reimbursed under the terms of this Order.

(c) Within 14 days after service by the Region, post at its union office in Los Angeles, California, copies of the attached notice to members, marked "Appendix B."[81] Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by Respondent Carpenter's authorized representative, shall be posted by Respondent Carpenters immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent Carpenters 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, Respondent Carpenters has ceased its representational activities or has become defunct, Southern California Regional Council of Carpenters shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former drywall finishing employees, employed by Respondent Raymond at any time since October 2, 2006.

(d) Forward to the Regional Director of Region 21 signed copies of the attached notice, marked "Appendix B," for posting by Respondent Raymond at its Orange facility and worksites in Southern California for 60 consecutive days in places where notices to employees are customarily posted.

(e) 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. November 10, 2008

APPENDIX A

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

The National Labor Relations Board has found that we violated 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 recognize and bargain with Southwest Regional Council of Carpenters (SWRCC) on behalf of its affiliated local unions, including United Brotherhood of Carpenters and Joiners of America. Local Union 1506 (Carpenters 1506), as the exclusive bargaining representative of our drywall finishing employees until Carpenters 1506 has been certified as their exclusive representative by the Board.

WE WILL NOT maintain, enforce, or give effect to our Carpenters Union 2006–2010 master agreement, including the union-security clause, as covering our drywall finishing employees, or any extensions, renewal, or modifications thereof unless or until Carpenters 1506 has been certified by the Board as the exclusive collective-bargaining representative of the employees, provided that nothing herein shall authorize, allow, or require us to withdraw or eliminate any wage increases or other benefits that we established pursuant to the agreement.

WE WILL NOT assist Carpenters 1506 by warning our drywall finishing employees that, if they did not sign with Carpenters 1506 today, there would be no work for them.

WE WILL NOT recognize Carpenters 1506 as 9(a) exclusive bargaining representative of our drywall finishing employees when it does not represent an uncoerced majority of the employees.

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

[81] See fn. 80, supra.

WE WILL withdraw recognition from Carpenters 1506 as the exclusive bargaining representative of our drywall finishing employees unless and until it has been certified by the Board as the exclusive collective-bargaining representative of the the employees.

WE WILL, jointly and severally with Carpenters 1506, reimburse our past and present drywall finishing employees, who joined Carpenters 1506 on or after October 2, 2006, for any initiation fees, periodic dues, assessments, or any other moneys, which they may have paid or which may have been withheld from their pay pursuant to our Carpenters Union 2006–2010 master agreement, together with interest.

WE WILL, to the extent that coverage was provided under Carpenters Union plans, provide alternate benefits coverage equivalent to the coverage that our drywall finishing employees possessed under our Carpenters Union 2006–2010 master agreement including pension coverage and medical, hospitalization, prescription drug, dental, optical, life, and other insurance benefits and ensure that there will be no lapse in coverage.

RAYMOND INTERIOR SYSTEMS

APPENDIX B

NOTICE TO MEMBERS
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 on your behalf with your employer

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT accept assistance or recognition from Raymond Interior Systems as the exclusive bargaining representative of its drywall finishing employees unless and until we has been certified by the Board as the exclusive collective-bargaining representative of said employees.

WE WILL NOT maintain and enforce the Carpenters Union 2006–2010 master agreement, including the union-security clause, as covering Raymond Interior Systems' drywall finishing employees, and any extensions, renewal, or modifications thereof unless and until we have been certified by the Board as the exclusive collective-bargaining representative of the employees.

WE WILL NOT fail to inform Raymond Interior Systems' drywall finishing employees, whom we sought to obligate to pay dues and fees under a union-security provision, of their rights under the Supreme Court's decision in *NLRB v. General Motors Corp.,* 373 U.S. 734 (1963), to be and remain nonmembers of this labor organization and of the rights of nonmembers under the Supreme Court's decision in *Communications Workers v. Beck*, 487 U.S. 735 (1988), to object to paying for union activities not germane to our duties as collective-bargaining representative and to obtain a reduction in dues and fees for such activities.

WE WILL NOT seek and obtain 9(a) recognition from Raymond Interior Systems as the majority representative of its drywall finishing employees when we do not represent an uncoerced majority of the employees.

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

WE WILL, jointly and severally with Raymond Interior Systems, reimburse all of the latter's drywall finishing employees, who joined this labor organization on or after October 2, 2006, for initiation fees, periodic dues, assessments, or other moneys, which they may have paid or which may have been withheld from their pay pursuant to the Carpenters Union 2006–2010 master agreement.

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1506