

ADRIAN ADVERTISING a/k/a ADVANCED ADVERTISING AND INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES, LOCAL 391, UP-2497 (11/6/86).

- 18. Employer
- 65.2 concerted activities
- 67.3 furnishing information
- 67.42 reneging on prior agreements
- 67.641 refusal to sign modification
- 67.67 refusal of successor employer to recognize union
- 82.11 back pay
- 82.13 reinstatement
- 82.3 status quo ante
- 91.13 mootness

Commissioners participating:

Paul T. Edgar, Chairman  
Maria C. Walsh, Commissioner

Appearances:

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|-----------------------------|---|
| Louis Guidry, Esq.          | - Representing International Brotherhood of Painters and Allied Trades, Local 391 |
| Armand Fernandes, Jr., Esq. | - Representing Alan Despres d/b/a Advanced Advertising                            |

DECISION

Statement of the Case

The International Brotherhood of Painters and Allied Trades, Local 391 (Union) filed a charge with the Labor Relations Commission (Commission) on December 28, 1983 alleging that Adrian Advertising a/k/a/ Advanced Advertising and Alan Despres d/b/a Advanced Advertising had engaged in unfair labor practices within the meaning of Sections 4(1), (2), (3) and (5) of Massachusetts General Laws Chapter 150A<sup>1</sup> (the Law).

<sup>1</sup>Chapter 150A Section 4 provides that "It shall be an unfair labor practice for an employer -- (1) To interfere with, restrain or coerce employees in the exercise of the rights guaranteed in section three. (2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it; provided, that, subject to rules and regulations made and published by the commission pursuant to section nine R of chapter twenty-three, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay. An employer shall not be prohibited from paying regular initiation fees, dues and assessments to any labor organization in which he is a member or is eligible for membership. (3) By discrimination in regard to hire or tenure of employment or any term or condition of employment, to encourage or discourage membership in any labor organization; provided, that nothing in this chapter (continued)



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The Commission investigated the Union's charge on March 6, 1984 pursuant to Section 6 of the Law and issued its own Complaint and Notice of Hearing on June 28, 1984.<sup>2</sup>

In substance, the Complaint alleged that Alan Despres d/b/a Advanced Advertising is the alter ego employer of Arthur Despres d/b/a Adrian Advertising. Alternatively, the complaint alleged that Alan Despres d/b/a Advanced Advertising is the legal successor to Arthur Despres d/b/a Adrian Advertising. Further, the complaint alleged that Adrian Advertising a/k/a Advanced Advertising had violated Sections 4(5) and (1) of the Law by repudiating its collective bargaining agreement with the Union and by failing to supply to the Union information which is reasonably necessary to its performance as bargaining agent. In addition, the complaint alleged that Adrian Advertising a/k/a Advanced Advertising discharged David Richard in retaliation for his concerted, protected activity, in violation of Sections 4(1) and (3) of the Law.<sup>3</sup>

1 (continued)

shall preclude an employer from making and carrying out, except as provided in subsection six hereof, an agreement with a labor organization (not established, maintained or assisted by any action defined in this chapter as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in subsection (a) of section five in the appropriate collective bargaining unit covered by such agreement when made, but no such agreement shall be deemed to apply to any employee who is not eligible for full membership and voting rights in such labor organization.

\* \* \* \* \*

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of subsection (a) of section five.

<sup>2</sup>By letter dated January 30, 1984, the Regional Director of Region One of the National Labor Relations Board declined to assert jurisdiction over Adrian Advertising or Advanced Advertising, stating that:

The investigation disclosed that the Employer does not meet any jurisdictional standard of the Board. In particular, the investigation disclosed that the Employer is engaged in a nonretail enterprise, and that the Employer does not have either outflow or inflow, either direct or indirect, across state lines in an amount of at least \$50,000 annually. Accordingly, the Regional Director has concluded that the Board would not assert jurisdiction over the Employer. Siemons Mailing Service, 122 NLRB 81 (1958).

Although Alan contested allegations that he was the employer during certain periods stated in the Commission's complaint, no party contested the jurisdiction of the Commission over this case pursuant to G.L. c.150A, Section 10(b), and we conclude that the employer is within the jurisdiction of the Commission.

<sup>3</sup>The Commission dismissed the allegation that the Respondents had violated Section 4(2) of the Law.



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Formal Hearings were held on September 26, November 2 and December 7, 1984, January 22 and March 20, 1985 before Hearing Officer Amy Laura Davidson. The Union and Alan Despres d/b/a Advanced Advertising were represented by counsel and had full opportunity to present evidence and examine and cross-examine witnesses. Although Arthur Despres d/b/a Adrian Advertising was served with a copy of the Commission's Complaint and Notice of Hearing, he notified the Commission on September 25, 1984 that he would neither retain counsel nor appear pro se in this matter.<sup>4</sup> Alan Despres and the Union timely filed post-hearing briefs. Having carefully considered all of the evidence and arguments presented by the parties, we conclude that Arthur Despres d/b/a Adrian Advertising and Alan Despres d/b/a Advanced Advertising constitute a single employer. We further conclude that the Respondents violated Sections 4(5) and (1) of the Law by repudiating their collective bargaining agreements with the Union and by failing to supply necessary and relevant information to the Union. In addition, we find that the Respondents violated Sections 4(1) and (3) of the Law by discharging Richard in retaliation for his protected, concerted activities.

#### Findings of Fact

##### I. Background

Arthur Despres (Arthur) founded "New Bedford Signcrafters, Inc." (Signcrafters) in approximately 1971. Signcrafters was in the business of designing and manufacturing signs. It was located at 327-329 Coffin Avenue in New Bedford in a building owned by Arthur.

On May 25, 1976, Arthur sold all of the stock of Signcrafters to his son Alan Despres (Alan) for \$1. This sale was memorialized in a written "Agreement to Purchase Stock" prepared by Alan's attorney, which specified that Arthur could continue to use any of the equipment of Signcrafters, Inc. and that "Signcrafters, Inc. would not sell any substantial amount of equipment without prior written permission of Arthur." In addition to the Agreement to Purchase Stock, Alan and Arthur entered into a written lease of the building at 327-329 Coffin Avenue. The lease was for a five-year term renewable at the option of Signcrafters for another three years at a rent of \$100 per month excluding utilities.

At the time Alan acquired Signcrafters, there was some metalworking, wood-working and printing equipment on the premises. In the course of owning Signcrafters, Alan acquired a truck with a crane, a dryer, a camera, and a couple of Filbar presses. Alan did business as Signcrafters from 1976 to 1982 at the Coffin Avenue address. Signcrafters was in the business of designing, manufacturing, and erecting

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<sup>4</sup> Arthur Despres' letter to the Commission dated September 24, 1984 acknowledged receipt of the Commission's Complaint and Notice of Hearing and stated in pertinent part, "I have no intention of carrying on this thing or hiring a lawyer to do so." Arthur Despres was subpoenaed by the Union and did appear as a witness in this matter.



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all types of signs. Signcrafters did some silkscreen printing but no offset printing.

From 1976 to 1981, Arthur was self-employed painting hand-lettered signs. Arthur did business under his own name but worked out of Signcrafters' office. Alan and Arthur split the utilities and costs of the Coffin Avenue building.

In April 1981, Arthur purchased a business known as "Adrian Advertising" from Manuel Freitas. "Adrian Advertising" was located in a building at 84 Bates Street, New Bedford. Its primary business was screen printing bumper stickers, posters and signs. Freitas d/b/a Adrian Advertising was party to a collective bargaining agreement with Local 391, International Brotherhood of Painters and Allied Trades (Union). Many of Freitas' customers were politicians who patronized Adrian Advertising because it offered political signs with a union label.<sup>5</sup> Prior to selling Adrian Advertising, Freitas contacted William Murphy, business manager of the Union, and notified him of the intended sale of the business. Freitas assured Murphy that the new owner intended to maintain the collective bargaining agreement between Adrian Advertising and the Union and wished to continue to employ David Richard, Adrian Advertising's sole employee.<sup>6</sup>

On March 31, 1981, Freitas entered into a written sales agreement to sell the Adrian Advertising business to Arthur Despres for \$10,000. Arthur also bought the Bates Street building, where Adrian was located, for \$20,000, and paid an additional \$20,000 for equipment owned by Adrian Advertising. The original inventory of equipment purchased from Freitas d/b/a Adrian Advertising consisted of the following:

- 1 35x45 Filbar Press
  - 1 35x45 Filbar Press with takeoff - need repair
  - 1 30" Hand Lever Paper Cutter
  - 1 30" Challenge Paper Cutter Model 305MCM #6983
  - 1 Cincinnati Dryer 4' x 27'
  - 1 Cincinnati Dryer 6' x 57' needs repair and installation
  - 1 General Press series 70 #34-13
  - 1 Pierce Slitter #SM146
  - 1 Alladin Press #67-1263-13
  - 1 VG Posteriter
  - 1 Blow-up Projector
  - 2 30x48 Drying Racks
  - 2 35x48 Drying Racks
  - 1 30x30 Jogger #541
- (continued)

<sup>5</sup>The union label or union "bug" is an insignia that displays the local union number, the name of the international and the shop number that is licensed to use that label. It is a registered trademark.

<sup>6</sup>Freitas also had employed his wife at Adrian Advertising prior to sale of the business.



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- 1 48x64 Jogger #6-6241
- 1 Water Pressure Screen Washer
- 2 Solvent Screen Washers
- 1 Metal Desk, Chair and 2 Matching Chairs
- 4 Paint Lockers

Arthur retained only a portion of the above inventory and sold or discarded the remainder of it shortly after acquiring Adrian Advertising. More specifically, of the list set forth above, Arthur retained only the following equipment:

- 1 30 inch Challenge Paper Cutter 305MCM-698
- 1 Pierce Slitter #SM146
- 2 30x48 Drying Racks
- 2 35x48 Drying Racks
- 1 30x30 Jogger #541
- 1 48x64 Jogger #6-6241
- 1 Metal Desk, Chair and 2 Matching Chairs<sup>7</sup>

The rest of the equipment on the original inventory which Arthur bought was either sold or discarded shortly after Arthur acquired the business.<sup>8</sup>

About three months after acquiring Adrian Advertising, Arthur moved the business and what remained of the inventory of equipment from 84 Bates Street to 327-329 Coffin Avenue, the locale of Signcrafters. The following equipment was moved from Bates Street to Coffin Avenue: the 30 inch Challenge Paper Cutter, the Pierce Slitter, a general press, a dryer and a Filbar press.

From the spring of 1981 to the end of 1982, the Coffin Avenue building housed both Adrian Advertising and Signcrafters. Signcrafters continued as a corporation; Adrian was a sole proprietorship owned by Arthur. Alan ran Signcrafters acting as its salesman and truck driver. For a time, Signcrafters had two other employees plus Alan's wife, Carol Despres (Carol), who acted as Signcrafters' secretary. Although Signcrafters and Adrian had separate phone lines, Carol answered both business phones. Also, Carol did simple bookkeeping for Adrian Advertising, such as placing orders, and tracking and receiving bill payments. Carol received no compensation from Arthur for this work. Arthur paid all the Adrian Advertising bills, and Alan and Arthur shared equally the cost of utilities at Coffin Avenue.

<sup>7</sup> Arthur also kept one Cincinnati Dry 4'x27' and one General Press Series 70 34-13. However, neither piece of equipment was operational.

<sup>8</sup> More specifically, shortly after acquiring Adrian Advertising, Arthur sold two pieces of equipment, a Cincinnati Dryer 6' x 57' and a 35x45 Filbar Press, to a Rhode Island corporation named "Blount." The remaining inventory was discarded by Arthur prior to moving the business to Coffin Avenue in the spring of 1981.



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Signcrafters' equipment was still housed at the Coffin Avenue building and was available for Arthur's use under the lease agreement entered into between Arthur and Alan on May 25, 1976. The Signcrafters' equipment consisted of a "one-armed squeegee table" for silkscreening, a washroom, pressure washers, a dryer, an electric dryer and a few Filbar presses. David Richard, an employee of Adrian, used Signcrafters' equipment to do silkscreening for Adrian customers.

When Richard first started working for Adrian Advertising in 1981, Arthur gave him work assignments. Gradually, Alan began to assign work to Richard. On occasion, Alan gave Richard assignments for both Signcrafters and Adrian Advertising.

2. The Collective Bargaining Relationship between Adrian Advertising and the Union

On April 18, 1981, shortly after acquiring Adrian Advertising, Arthur entered into a successorship agreement with the Union. The agreement provided in pertinent part that:

The employer party...being the successor employer to Adrian Advertising agrees to assume and honor all of the terms and conditions of the collective bargaining agreement by and between the above "Union" party and Adrian Advertising as though the employer had actually signed same.

Freitas was a signatory to the collective bargaining agreement referred to in the successor agreement. That collective bargaining agreement had an expiration date of March 31, 1982.

In addition, on April 8, 1981, Arthur d/b/a Adrian Advertising and the Union entered into a union label agreement which provided:

1. In consideration of the fact that the undersigned Employer has entered into a collective bargaining agreement containing a union shop provision with the undersigned Union, the Union hereby grants the Employer permission to use the official union label of the International Brotherhood of Painters and Allied Trades (herein "IBPAT"), subject to the terms and conditions of this Agreement.

2. The union label is, and at all times shall remain, the property of the IBPAT.

3. The use of the union label is granted only for the period in which the Employer is signatory to a collective bargaining agreement as described in paragraph 1, and continues to adhere to and comply with the union shop provision thereof.

4. The use of the union label shall be limited to its being affixed to goods or products on which work or labor was performed by employees



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represented by the Union under the collective bargaining agreement referred to in paragraph 1.

5. The Employer will not grant permission to any other Employer to use the union label.

6. The Union or the IBPAT may revoke this Agreement, and the permission granted herein, at any time for violation of any of the requirements or conditions set forth herein, or for any other reason deemed by them as sufficient, and no liability shall accrue to the Union or the IBPAT as a result of such revocation.

7. The Employer shall return the union label to the Union or the IBPAT at either of their requests.

8. In addition to other remedies set forth herein, or provided by law, the Union or the IBPAT shall have the right to take whatever steps are necessary to secure compliance with this Agreement, and the Employer shall be liable for all costs, including attorneys fees and court costs, which may accrue in connection therewith. The Employer's liability and obligation for compliance under this Agreement shall not be subject to or covered by any grievance or arbitration procedure or any "no-strike" clause which may be set forth in the collective bargaining agreement referred to in paragraph 1.

When Arthur began Adrian Advertising in the spring of 1981, he had two employees, David Richard (Richard), who had been formerly employed at Adrian Advertising by Dreitas, and Donna Souza (Souza), Arthur's niece. Souza worked on a part-time basis doing layout work and making screens. Richard's main duties involved screen printing.<sup>9</sup>

Although the 1979-1982 collective bargaining agreement between Adrian Advertising and the Union specified in Article 1 that:

All bargaining unit employees<sup>10</sup> shall become members of the Union on the thirty first (31st) day of employment, which provision shall apply

<sup>9</sup>There was some dispute as to whether Murphy had complained to Arthur in the spring of 1981 about his son Alan working in the same building as Adrian Advertising and whether Murphy had offered to replace Richard with a tradesperson from Boston. The resolution of these issues is unnecessary to the disposition of this case.

<sup>10</sup>The recognition clause of the collective bargaining agreement provided that:

The Employer recognizes and acknowledges that the Union is the exclusive bargaining representative of all employees, excluding Professional, Managerial, Supervisory and/or Clerical employees (as defined by the NLRA), wherever such employees may be employed, covered by this Agreement for the purpose of Collective Bargaining, and  
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to all new employees as well as all employees employed at the time of execution of this Agreement or its effective date, whichever is later.

Souza never became a Union member or paid Union dues during her employ at Adrian Advertising.<sup>11</sup>

Shortly after Richard began working for Arthur d/b/a Adrian Advertising in the spring of 1981, he complained to Arthur that he was not being paid certain benefits to which he was entitled under the contract. More specifically, Richard complained about his rate of pay, vacation, sick leave, health benefits, and holidays. Arthur told Richard, "Well, I can't afford this, and I'm not...obligated to give you all these things that are in [the contract]." Arthur promised to rectify all the problems later, after the business got off the ground.

In 1982, Arthur spoke with Richard and told him that business was not going too well and that it would be better if Richard did not receive a raise that year. Richard agreed to work without any raise. On April 28, 1982, Union representative Robert Kennedy and Arthur met to sign a successor collective bargaining agreement to the one which had expired March 31, 1982. Kennedy told Richard and Arthur that as long as they successfully worked out the pay raise issue, there was nothing he could do about it. Arthur d/b/a Adrian Advertising and Kennedy signed a collective bargaining agreement effective May 1, 1982 through April 30, 1985. The agreement specified wage rates for the period from May 1, 1982 to April 30, 1983 and contained a reopener provision for the 1983-84 and 1984-85 years of the agreement.

### 3. Phase-Out of Signcrafters; Alan's Employment at Adrian

In 1982, Alan decided to phase out Signcrafters due to poor business and problems collecting monies owed him. Alan went to work for Arthur at Adrian Advertising in late 1982. Alan stopped paying rent for the building and certain equipment after January 1983.

In December 1982, Alan contacted Murphy in order to join the Union. Alan and Murphy met at the Coffin Avenue building in January 1983 to discuss Alan's application for membership in the Union.<sup>12</sup> Following that meeting, Murphy sent Alan the following letter dated January 17, 1983:

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10 (continued)

more specifically in the following classifications of work: Sign, Pictorial, Display, Screen Process and all similar or related classifications of work.

<sup>11</sup>The Union first became aware of Souza's failure to pay Union dues in May 1983, when Richard brought this fact to Murphy's attention. See p. 1243, *infra*.

<sup>12</sup>There was some dispute about the conversation between Alan and Murphy in January 1983. According to Murphy, he questioned Alan about the status of Signcrafters which Murphy believed was a non-union company. Alan responded that

(continued)





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Dear Alan:

Pursuant to our recent meeting, the following should answer your questions:

1./ Your initiation fee is \$175.00. Monthly union dues is [sic] \$25.50.

2./ The Rhode Island (area) screen process contract requires the employer to provide each covered employee with Rhode Island Blue Cross. We have a group plan with Rhode Island Blue Cross, our rates are: \$52.00 per month for individual members and \$133.35 per month for a family plan. You could, in the alternative, participate in RIGHA through us. RIGHA costs \$146.23 per month. Enclosed is a RIGHA brochure.

3./ If you are to be considered an employee under the union contract you are also entitled to a pension plan which Adrian Advertising must pay for. However, since your father owns the company and you are his heir apparent I think you should really be considered an owner in fact and thus Adrian Advertising should not pay into the pension fund in your behalf as it does for Dave Richard.<sup>13</sup>

Since you have a copy of the union contract I expect you are now familiar with the union wage scales and benefits detailed in the contract. If, however, you still have some questions feel free to contact me. Enclosed is a membership application in triplicate. Please complete the application -- sign all four (4) spaces marked "X" and return same to me with your check for \$200.50 payable to "LU 391." The \$200.50 is your initiation fee and one (1) months [sic] dues.

I will notify you if the membership accepts your application. In the unlikely event that they do not we will of course refund in full your \$200.50.

On February 1, 1983, Alan applied for and was admitted to membership in the Union. The effective date of Alan's Union membership was February 7, 1983. Alan paid dues to the Union until June of 1983. Thereafter, his membership was terminated.<sup>14</sup>

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12 (continued)

Signcrafters had been phased out of business. Murphy also testified that Alan told him that Arthur was too old to run the business and that Alan would be running Adrian Advertising from now on. Alan denied having many any statement in January 1985 to the effect that he would be running Adrian Advertising.

The resolution of this factual dispute is unnecessary to the disposition of this case.

<sup>13</sup> Murphy testified that many employers belong to the Union, although they do not necessarily receive the benefits of the collective bargaining agreement. Of some eighteen employers in southeastern Massachusetts and Rhode Island which had contracts (continued; 14, see page 1242)



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While he was working at Adrian Advertising, Alan supervised Richard and assigned work to Richard. Alan also ordered materials for Adrian's business. Arthur continued to sign paychecks for Richard until August 1983.

4. Relationship between Adrian Advertising and the Union -- Spring and Summer 1983

On March 28, 1983, Murphy sent a letter to Arthur concerning a supplemental wage agreement to the collective bargaining agreement for the period from April 1, 1983 to March 31, 1984. Murphy enclosed copies of the wage agreement and noted that the major Rhode Island screen process shops agreed to a 4% wage increase. Murphy urged Arthur to accept the same increase. Murphy did not get a written response to his March 28 letter, so he telephoned Alan in April 1983 to inquire about the status of the supplemental wage agreement. Alan said he would sign it and return it to Murphy.<sup>15</sup> Neither Alan nor Arthur signed the agreement or returned it to Murphy.

Sometime between March and May 1983, Richard called Murphy to tell the Union he was not getting what he was entitled to under the collective bargaining agreement. Richard complained that he was not receiving the contractual pay rate, holiday pay, vacation pay, health insurance benefits, and other benefits of the agreement. From May 1, 1982 to April 30, 1983, Richard received the screen printers' rate of pay of \$6.55 per hour, while performing the job of a Filbar operator. A Filbar operator's rate of pay for that period would have been \$7.05 per hour. Although Adrian Advertising was obligated under the terms of the collective bargaining agreement to provide a health plan for its employees, it failed to comply with this provision.<sup>16</sup> Instead, every month Richard sent his own check into the Union for his health benefits.

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13 (continued)

with the Union, only five did not have owners and/or partners who were also members of the Union. Murphy also stated that the Internal Revenue Service and the Union's International prohibited employer-owners from paying into pension plans.

14 (from page 1241)

No pension payments ever were made to the Union on behalf of Alan.

<sup>15</sup> Because Arthur had a hearing impairment, Alan often dealt with Murphy over the phone.

<sup>16</sup> Article 10 of the agreement provides:

SECTION 1. The employer shall provide a hospitalization plan similar to or better than the semi-private plan of the Hospital Service Corporation of Rhode Island (Blue Cross). The employer shall also provide surgical-medical benefits and services for each employee under the Rhode Island Medical Society (Physicians Service Plan 100 plus Major Medical).

SECTION 2. Nothing herein shall preclude the parties from entering into an agreement mutually, to provide Health and Welfare through a per hour contribution to a Health and Welfare Fund, as the parties may desire.



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He was not reimbursed by the employer for this payment.<sup>17</sup> Richard also informed Murphy in the spring of 1983 that Donna Souza was working at Adrian Advertising and had not become a member of the Union.<sup>18</sup>

Murphy called Alan to discuss the issues Richard raised in late April, Early May 1983. Murphy personally visited Alan on May 9 to discuss the Richard matter. Alan told Murphy that he had a number of problems with Richard. Alan told Murphy that Richard's work was sloppy and that he thought Richard "messed up" jobs purposely. Murphy told Alan that those were not good reasons for depriving Richard of what was due him under the contract. Murphy also raised similar issues with respect to employee Donna Souza, who had been involved in layout, design and screenmaking, all bargaining unit work covered under the collective bargaining agreement. Murphy told Alan that the company was obligated to pay Souza the wage rates specified in the contract. In addition, Murphy said Souza was obligated to join the Union. Alan responded that Souza was a part-time employee. Murphy said that part-time employees were covered under the contract.<sup>19</sup> Alan told Murphy that the company could not afford to live up to the terms of the collective bargaining agreement. Murphy responded that he would need to know what modifications the company was seeking in order to respond.

Murphy had other similar conversations with Alan in May and June 1983. Murphy insisted that the company "live up" to the contract. Alan responded that the company could not afford to do so. In May 1983, Adrian Advertising ceased making pension contributions to the Union on Richard's behalf.

On June 20, 1983, Murphy sent the following letter addressed to Arthur and Alan Despres at Adrian Advertising:

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<sup>17</sup> When Richard had worked for Freitas d/b/a Adrian Advertising, he had paid his own health benefits but was reimbursed by Freitas for such payments.

<sup>18</sup> Richard interviewed for a new job around the same time period that he contacted the Union to complain about job benefits. He missed approximately a half work day in the process of looking for a new job. Richard spoke with Alan when he thought he had a possibility of getting the job. Richard wanted to know how much notice to give in the event that he got another job. Alan told Richard that he did not have to give any notice. Richard informed Alan when he did not receive the job offer.

<sup>19</sup> Article 4 Section 2B specifically addresses the rights of part-time employees and provides, in pertinent part, that:

Part Time Employees shall be paid: (i) no less than the current minimum rate listed for Trainee, 7th to 13th Month Classification; (ii) time and one half for any work in excess of eight (8) hours in the normal work day and/or forty hours in the normal work week and double time for work performed on Sundays or Holidays.



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By your own admission your company is in violation of the following clauses of the union contract; Recognition; Security; Hours, Conditions & Fringes; Wages; Vacations; Health and Welfare; Pension and Sick Days. Inasmuch as the aforescribed [sic] violations amount to a total repudiation of the union contract the union will immediately file charges against Adrian Advertising at the National Labor Relations Board.

The union is willing to arbitrate any or all of the matters we have recently discussed, although the nature and extent of the violation does put them in a category not conducive to arbitration (i.e.: there seems to be no dispute that the violations have occurred [sic] and continue to occur, rather the "dispute," if one exists at all, centers around what the union ought to do about the violations).

Adrian Advertising and Local 391 both have obligations under the union contract. We take our obligations seriously and wish that you would do the same. However, since you seem to be unwilling to do so we have no choice but to revoke (per Article 6 of the attached "Union Label Agreement")<sup>20</sup> Adrian Advertising's right to use the union label. If you continue to use our union label, any facsimile thereof and/or represent Adrian as a "Union shop" we will take appropriate legal action against Adrian. This will include a suit for damages pursuant to Chapter 897 of the Mass. General Laws (governing the registration and protection of trademarks) as enacted [sic] and signed into law on September 27, 1983.<sup>21</sup>

As you well know Adrian has an established reputation throughout Massachusetts and Rhode Island as a union shop. Your predecessor in fact built Adrian Advertising around the union label. Because of this somewhat unique situation we ask that you take the affirmative [sic] action of informing prospective [sic] customers that Adrian is no longer a union shop.

You should not interpret this letter as an indication that the union is relinquishing its claim to representation and/or its collective bargaining agreement at Adrian. We are not. We are saying that Adrian Advertising is blatantly violating its [sic] collective bargaining agreement

<sup>20</sup> See pp. 1238-1239, *infra*.

<sup>21</sup> Chapter 897 of the Acts of 1973 as codified in M.G.L. c.110B applies to civil damages for misuse of trademarks. In addition, M.G.L. c.266, Section 69 states:

Whoever, not being a member of a society, association or labor union, for the purpose of representing that he is a member thereof, willfully wears or uses the insignia, ribbon, badge, rosette, button or emblem thereof, if it has been registered in the office of the state secretary, shall be punished, by a fine of not more than twenty dollars or by imprisonment for not more than one month, or both.



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with the union; therefore, the union will seek redress through the courts, the National Labor Relations Board and possibly through arbitration. During the interim of resolution, since Adrian is not operating a union shop and living up to the union contract, the union hereby disallows Adrian the use of the union label.

(Footnotes added).

5. Richard Quits; Charges Filed at NLRB

On July 2, 1983, Richard's wife called him at work. Richard was not told that she had called. When he arrived at home, his wife told him that she had called him that day at the shop.

Richard spoke with Alan when he arrived at work on July 3, 1983. Richard was angry. He told Alan that it was important that he receive his wife's call on time since it dealt with reservations. In addition, Richard noted everyone else used the phone quite frequently, especially Souza. Richard asked Alan not to do it again because it could be important. Alan responded that Richard was busy at the time of the phone call.

After the conversation ended, Richard went back to work. After about an hour, Alan's wife, Carol, came to Richard's worksite. She said in a loud voice, "Who are you to tell me how to run my job?" Carol said that at the time of the call Richard was busy. Richard told Carol, "You should have notified me." Richard threw what he was working on down and said, "I quit." Richard went home and called Murphy that day to inform him what had occurred.

As a result of his conversation with Richard, Murphy filed an unfair labor practice at the National Labor Relations Board by mail on July 6. The charge was docketed on July 11 and alleged violations of Sections 8(a)(1), (3) and (5) of the NLRA. It stated:

Since on or about May 1 and continuing, the above captioned employer has totally repudiated its contract with the union by:

1. Refusing to recognize the union as the exclusive bargaining representative of all of its employees, notwithstanding the clear and unambiguous language of the union recognition clause et al:
2. Paying bargaining unit employees less than the rates of pay specified in the contract:
3. Failing to provide the employees with the health and welfare benefits provided in the agreement:
4. Failing to make pension contributions for all bargaining unit employees:



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5. Failing to provide full time employee, Dave Richard, with the weekly guarantee provided in the agreement and/or accord Mr. Richard the lay-off notice evidenced in the agreement:
6. Failing to comply with sick day, vacation and holiday provisions of the agreement:
7. Refusing to adjust with the union the aforescribed [sic] "grievances" and
8. On or about Friday, July 1, 1983 constructively discharging employee David Richard because of his activity on behalf of the union.<sup>22</sup>

6. Request for Souza's Dues

On July 6, 1983, Murphy sent a letter to Souza demanding that she tender her Union dues and initiation fees. The letter concluded by warning Souza that her failure to tender such payments would result in termination of her employment at Adrian Advertising pursuant to the union security provisions of the collective bargaining agreement.

In addition, on July 6, Murphy sent a letter addressed to Alan stating that he had demanded Souza's dues and "reminding" Alan that he was obligated to increase Souza's hourly pay to \$8.95, the minimum rate for a designer under the terms of the collective bargaining agreement.

Murphy never received Souza's dues or her application for Union membership. In addition, Alan never responded to Murphy's July 6 letter.

7. The Transition from Adrian Advertising to Advanced Advertising

In June 1983, Alan became aware that his father wished to retire from the printing business due to failing health. In June, Alan contacted Murphy and asked if a meeting could be arranged to re-negotiate the collective bargaining agreement. Alan wished to work out an arrangement with Arthur and the Union to keep the business going.

In July, Arthur and Alan began discussing transfer of the business to Alan. They discussed a purchase price of \$175,000 to be financed in weekly installments of \$175.<sup>23</sup> Arthur wished to condition the sale of the business on Alan assuming

<sup>22</sup> This charge was withdrawn by the Union on August 3, 1983 before the Regional Director of the NLRB had ruled on whether to assert jurisdiction over Adrian Advertising. Another charge was later filed. See p. 1249, fn. 29, *infra*.

<sup>23</sup> Alan and Arthur never discussed segregating the cost of the Coffin Avenue building from the cost of the business.



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liability for an \$80,000 lawsuit filed against Adrian<sup>24</sup> and Alan assuming any liability arising out of the Union's charges against the company at the NLRB. Alan told Arthur that he would not be interested in buying the business unless the Union problem and the lawsuit were resolved. No formal agreement was ever reached between the two.

In July 1983, Attorney Armand Fernandes, Jr. contacted Murphy to discuss the unfair labor practice charge filed at the NLRB by the Union against Adrian Advertising. Fernandes told Murphy that he had represented Freitas in the past but did not currently represent Adrian Advertising. Fernandes said that he was calling Murphy as a matter of courtesy. Fernandes said that the Despres' owed his client money. He said that he believed that the Despres' were not financially sound and that they owed money to the IRS and that they were involved in a lawsuit concerning a piece of equipment that had been purchased. Fernandes repeatedly said that his interests were with Freitas and that he did not represent Adrian. However, he stated that he knew about the unfair labor practice charge at the National Labor Relations Board. He wanted to know if something could be worked out and arranged a meeting with Murphy on July 27.

On July 27, Murphy, Richard, Alan and Arthur attended a meeting in Fernandes's office. Alan and Arthur were in one room and Murphy and Richard were in another room. Murphy told Fernandes that the Union would be willing to try to accommodate Adrian and grant relief. The Union wanted to make sure that the Despres' understood that they would have to honor any agreement reached and would have to put it in writing. In addition, Murphy told Fernandes that the Despres' must agree to reinstate Richard with back pay.

At Fernandes's office, Alan spoke with Murphy in some detail about his interest in taking over his father's business. Alan told Murphy that Arthur wanted too much money for the business and that he had problems inheriting Adrian's legal problems. In addition, Alan told Murphy that he believed Adrian's responsibility to its Union contract to be "too stringent." Alan told Murphy that before he could speak to his father about buying the business, a new Union contract had to be negotiated and the \$80,000 lawsuit had to be settled.

According to Alan, on July 27, the Union agreed to withdraw the charges against Adrian at the NLRB and to re-negotiate the collective bargaining agreement on the condition that Richard be reinstated to his former position at Adrian Advertising. The following day, July 28, 1983, Murphy sent Fernandes a letter containing proposed revisions to the collective bargaining agreement under the following cover letter:

Pursuant to our 7/27/83 meeting, attached is the union's absolute bottom line. Please do not consider this attachment an official

<sup>24</sup> In September 1982, AM International Leasing Company sued Arthur d/b/a Adrian Advertising for approximately \$80,000. The suit concerned three pieces of equipment -- a printing press, a camera, and a computer typesetter.



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proposal from Local 391 to Adrian Advertising. In point of fact, the union will not even consider renegotiating the collective bargaining agreement until all pending grievances and ULPs are amicably resolved, this includes returning Dave Richard to his former position with full back pay.

Richard was reinstated to his job at Adrian Advertising in early August 1983. He did not receive full back pay. Instead, he was paid what he should have collected while on unemployment compensation.<sup>25</sup> On August 3, 1983, the Union withdrew its charges against Adrian Advertising at the NLRB. The company never entered into the proposed revised agreement sent by Murphy on July 28.

In August 1983, Arthur tried to resolve the pending lawsuit against Adrian Advertising by AM International Leasing Company but was unable to do so. It is undisputed that the sale of Adrian from Arthur to Alan was never consummated.

In August 1983, Arthur had a "falling out" with Alan and Alan's wife Carol, who was acting as the bookkeeper at the time. Arthur believed that there was a discrepancy in the way they were handling the accounts. On August 21, 1983, Arthur cancelled Adrian Advertising's checking account at Old Colony Bank. According to Arthur, he stopped doing business as Adrian Advertising in the latter part of August. Arthur continued to work at Adrian Advertising after August in order to ensure that all outstanding debts and other matters were "straightened out."<sup>26</sup> After August 21, Arthur paid Adrian Advertising's employees in cash.

#### 8. Relationship with the Union during Transitional Phase.

On August 24, 1983, Union attorney Louis Guidry sent a letter to Alan and Arthur at Adrian Advertising. Guidry informed Alan and Arthur that he represented the Union and that Adrian Advertising entered into a union label agreement with his client on April 8, 1981, but that on June 20, 1983, the Union revoked Adrian Advertising's right to use the Union label. In addition, Guidry noted that, to date, the company had persisted in using the label without the Union's permission. The letter further stated:

Your conduct in using the Local 391 trade label when you have been expressly forbidden to do so does not merely violate the contract...but it also violates the criminal laws of the Commonwealth of Massachusetts,

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<sup>25</sup> Richard had difficulty collecting unemployment benefits after he left Adrian Advertising in July 1983.

<sup>26</sup> Arthur paid the outstanding debts and bills out of his personal checking account after August 21.





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namely Chapters 110 and 110B of the General Laws.<sup>27</sup> If you use the Union label of Local 391 for any purpose whatsoever, I will, in behalf of the Local, file a criminal complaint against you and your son for violation of the Massachusetts laws cited above. Furthermore, the Union has not reached the decision of whether or not it will file a criminal complaint against you anyway for the prior violations that occurred after June 20, 1983. This is a matter we have not fully discussed and have not, as of this date, reached a decision.

In conjunction with the criminal complaint filed, I also intend to file a civil complaint seeking damages from both of you for your violation of the Massachusetts trademark law... .

On September 7, 1983, Murphy sent a letter addressed to both Alan and Arthur requesting that Souza be terminated for her failure to pay Union dues and initiation fees in accordance with the collective bargaining agreement.<sup>28</sup> In addition, because the Despres' never responded to Murphy's "bottom line" proposal for revisions to the collective bargaining agreement, the Union filed a second unfair labor practice charge with the NLRB which was docketed on September 14. The second NLRB charge re-alleged the allegations contained in the Union's July 11 NLRB charge and contained a request for injunctive relief.<sup>29</sup>

On September 13, 1983, Alan called Murphy. Alan told Murphy that his father was officially getting completely out of the business and that he was going to be the sole owner of the company. Alan said that he wanted to clear up the whole union problem that existed and that he wanted to know what the Union's bottom line was. He reiterated his position that he was not able to live up to the contract. Murphy said that the Union was amenable to revising the collective bargaining agreement and the parties discussed specific revisions to the contract. Alan objected to the clause contained in Murphy's July 28 proposed revisions to the contract which prohibited a working supervisor or owner from performing bargaining unit work which would

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<sup>27</sup> See p. 1244, fn. 21, supra.

<sup>28</sup> Souza was not terminated by Adrian Advertising for failure to pay Union dues or initiation fees.

<sup>29</sup> The charge which was docketed by the NLRB on September 14 stated in pertinent part:

This is essentially a refile of [Case number] 1-CA-21,170 (attached). That case was originally filed on 11 July 1983. On 8/3/83 the union withdrew 1-CA-21,170 conditioned upon the employer's agreement to take specific steps to remedy the union's allegations evidenced under 1-CA-21,170. Notwithstanding, the employer has not taken those agreed upon steps and continues to effectively repudiate its contract with the union. The union requests injunctive relief.



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diminish work opportunities for certain bargaining unit employees.<sup>30</sup> At the conclusion of the discussion, Murphy sent Alan a letter, dated September 13, which set forth the revisions which were agreed to that day.<sup>31</sup> Murphy's letter concluded with a suggestion that the parties meet to sign the revised agreement on September 16. Murphy never received a reply to his September 13 letter.

Sometime in September 1983, prior to September 19,<sup>32</sup> the Union filed a criminal charge against Adrian in New Bedford District Court alleging fraudulent and unauthorized use of the union label. On September 19, Murphy called Alan and said, "I sent you a memorandum that I thought we agreed to. What's going on?" Alan got upset and responded, "You blew it. There's not going to be a union here. You blew it by filing that thing in court and at the Labor Board, and I'll see you in court."<sup>33</sup>

#### 9. Arthur "Quits"

On Thursday, October 6, 1983, Arthur called a meeting at work with Alan, Richard and Souza. At that time, Arthur announced, "I've had it. I quit. I give it up."<sup>34</sup> Arthur also told Richard and Souza they were fired and gave them their pay

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<sup>30</sup>The clause at issue, Article 5.1, provided in pertinent part that:

"Nor will a working supervisor or owner perform bargaining unit work that will similarly diminish work opportunities for any full time screen printer."

<sup>31</sup>The September 13 proposed revisions decreased wages below the amounts proposed in the July 28 revisions. In addition, Article 5.1 of the agreement was amended to add that: "The foregoing will not be construed by the Union party hereto as a limitation on the employer's right to lay off any employee for lack of work." It is undisputed that the September 13 revisions drafted by Murphy represented the agreement reached between the parties.

<sup>32</sup>It is unclear from the record whether the Union filed criminal charges before or after Murphy's September 13 conversation with Alan regarding revisions to the collective bargaining agreement. Murphy believed that the charges were filed prior to September 13 and that he notified Alan of the charges during the September 13 conversation. Alan appears to have first learned of the criminal action on or about September 19.

<sup>33</sup>This is Murphy's version of the September 19 telephone conversation. Alan did not dispute that he was angered that the Union had filed a criminal action against the company and testified that he told Murphy, "You blew it. I don't even want to talk to you anymore...End of negotiations." The two versions are not markedly different.

<sup>34</sup>Arthur stated that he decided to "quit" on October 6 because his doctor had advised him to do so and because he was not being paid for his work.



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in cash. Then Alan addressed Richard and Souza, stating that he was going to "take the business over" and make a "go of it." Alan asked the two employees if they wished to stay on and both agreed to do so. At the conclusion of the discussion, Souza and Richard returned to work. Richard continued to work on the same project, a plastic sign, which he had been working on prior to the meeting with Alan and Arthur. On Friday, October 7, Richard reported to work and continued doing the same type of work with the same materials and equipment which he had used prior to October 6.<sup>35</sup>

10. Hearing on Criminal Complaint, Termination of Dave Richard, Request for Information

A hearing was scheduled on the Union's criminal complaint against Adrian Advertising for unauthorized use of the Union label at 10 a.m. Tuesday, October 11, 1983 at the New Bedford District Court. Alan stopped at work on October 11 at 8:30 a.m. Richard did not report to work in the morning on October 11.

Alan and Arthur arrived at the courthouse with counsel at about 9:30 a.m. Present at the courthouse on behalf of the Union were Murphy, Richard, and Union attorney Guidry. At about 11:30 a.m., the Clerk of Court called Murphy and the attorneys for each party into chambers. Richard, Alan and Arthur waited in the corridor. No hearing was held on the Union's complaint. Instead, after discussion in chambers, the parties left the courthouse about noontime. Richard got a ride back from the courthouse with Murphy. Murphy dropped Richard off at home where Richard had lunch, changed and left for work.

Richard arrived at 328-329 Coffin Avenue at about 12:30 p.m. The sign on the outside of the Coffin Avenue building still read "Adrian Advertising." When Richard entered the building, Carol Despres stopped him and said, "Hold it right there." A few moments later Carol returned with Alan, who was angry and upset. According to Richard, Alan called him "an asshole" and said, "You're crazy for going down there. You don't know what you're getting into. Mr. Murphy's trying to screw you up. You're fired. Get out."<sup>36</sup> Richard then exited the building. That same afternoon Richard called Murphy and informed him that he had been fired.

<sup>35</sup> Monday, October 10, 1983 was a Columbus Day Holiday and Adrian Advertising was closed.

<sup>36</sup> Alan's version of the events of October 11 differed from the above version. According to Alan, Richard did not arrive back to work until 2 p.m. Alan's testimony concerning his confrontation with Richard was as follows:

I called him a chosen word. And I said I was aggravated that he didn't show up for work. I was aggravated in the morning, when I didn't see him there, because he hadn't told me he wasn't coming in. And until I had gotten to the courthouse, I didn't realize where he was. But then I came back, and I'm waiting for him and waiting for him, and he doesn't come back for a

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As a result of his phone conversation with Richard on October 11, Murphy sent the following letter addressed to Arthur and Alan on October 12:

It has come to my attention that following the 10/11/83 clerk-magistrate's hearing you fired Dave Richard. If your decision to fire Dave Richard was motivated by his union activity (i.e. attending the clerk-magistrate's hearing) Dave's discharge is a violation of Article 1, Section 3 of the union contract<sup>37</sup> and is also a violation of Federal Labor Laws. Please call me at your earliest convenience so that we can agree on a time and place to meet and attempt to resolve this issue, pursuant to Article 3, Section 1 of the union contract.<sup>38</sup> In the interim please furnish me with all the particulars as to why you discharged Mr. Richard.

36 (continued)

couple of hours later. So I was upset, and I hollered at him. And I called him a name, and he walked out.  
(Tr. IV. 138-139).

Based upon the record as a whole, we credit Richard's version of the events of October 11 for several reasons. Immediately following the incident in question, Richard contacted Murphy and informed him that he had been fired. This "fresh" complaint coupled with Alan's failure to respond to Murphy's October 12 letter (see text *infra*), which accused Alan of firing Richard and sought Richard's reinstatement, convince us that Richard did not voluntarily quit, as Alan claimed, but was fired. We additionally note that at no time after October 11 did Alan offer to allow Richard to return to work. Given these facts, we discredit Alan's version of his conversation with Richard on October 11 and rely, instead, upon Richard's testimony of the incident.

Our conclusion in this regard is buttressed by Alan's admission that he was angered by the Union's pursuit of a criminal charge against the company and by Alan's statements to Murphy on September 19 to the effect that Murphy had "blown it" by filing the criminal charge and that he would no longer recognize the Union or negotiate with it. Finally, we note that the record disclosed other discrepancies in Alan's testimony with regard to whether certain work for politicians had been performed by Advanced Advertising which lead us to conclude that Alan's recollection of events is not entirely reliable.

<sup>37</sup>Article 1, Section 3 of the collective bargaining agreement provides in pertinent part:

There shall be no discrimination on the part of the Employer against any employee for union activity.

<sup>38</sup>Article 3, Section 1 of the collective bargaining agreement provides:

All grievances and disputes involving the application or interpretation of this Agreement shall be adjusted by a Business Representative of the Union and the Employer or his representative. If a satisfactory adjustment of the dispute is not made, then the parties shall jointly engage an impartial arbitrator to adjust the dispute. In  
(continued)



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In addition, the union requests the following information in order to process specific grievances:

- 1./ A list detailing all signs, bumper stickers, printed material, and the like to which your firm affixed [sic] or printed our union label since June 20, 1983,
- 2./ A detailed breakdown showing dates of payments, gross and net amounts of all wages and/or other amounts paid to Ms. Donna Souza since and including the month of April 1981,
- 3./ A detailed breakdown of all paid sick time, whether paid in accordance with Article 14 of the union contract or not, paid to Dave Richard and Donna Souza since and including the month of April 1981,
- 4./ A detailed breakdown of all paid vacation time, whether in accordance with Article 14 of the union contract or not, paid to Dave Richard and Donna Souza since and including the month of April 1981.

Neither Alan nor Arthur responded to Murphy's October 13 letter. Murphy never received any of the information that he had requested in the letter. Richard was not reinstated.

#### 11. Advanced Advertising

In October 1983, Alan began doing business under the name Advanced Advertising. During October, November and December 1983, Alan d/b/a Advanced Advertising continued to fill customer orders which had been placed with Arthur d/b/a Adrian Advertising. Alan also continued to use Adrian Advertising's sales slips with "Advanced Advertising" typed onto the slip until late November 1983. In November 1983, Alan began using new invoices with "Advanced Advertising" printed on them. The new invoices had a logo of a crown which resembled the crown logo on Adrian Advertising invoices.<sup>39</sup>

Since Richard's termination, Alan d/b/a Advanced Advertising has hired one employee.<sup>40</sup> Alan's wife Carol has continued to work as a bookkeeper for Advanced

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#### 38 (continued)

the event the parties are unable to select an impartial arbitrator within five (5) days after the Business Representative of the union and the employer or his representative meet and fail to adjust the dispute, then either party may file for arbitration with the American Arbitration Association. The decision of the arbitrator shall be final and binding on both parties.

<sup>39</sup>At some point after Arthur "quit" in October 1983, he had the phone at 327-329 Coffin Avenue with Adrian Advertising's phone number disconnected.

<sup>40</sup>Souza was terminated sometime shortly after October 1983. The record did not disclose the reasons for Souza's termination.



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Advertising. In addition, from October 1983 to the dates of hearing in this case, Arthur has hand painted signs for Advanced Advertising on an "as needed" basis about nineteen times. Arthur testified that he is paid for this work by Alan and performs it at the Bates Street building.

On October 11, 1983, Alan applied for and was granted a building permit from the City of New Bedford granting Alan permission to "change use to printing shop on 327-329 Coffin Avenue." Alan opened a checking account for Advanced Advertising at "Bay Bank" in New Bedford in late October, early November 1983.<sup>41</sup> According to Alan, he began paying rent to his mother<sup>42</sup> at a rate of \$175 a week in October 1983.<sup>43</sup> As noted above, the sale of the business from Arthur to Alan was never consummated and the record is unclear as to what these weekly payments represent.

Since October 1983, Alan has continued to use all the equipment housed at 327-329 Coffin Avenue once used by Arthur d/b/a Adrian Advertising.<sup>44</sup> The only pieces of inventory which Arthur removed from Coffin Avenue after August 1983 were a metal desk and two chairs which are housed at the Bates Street building, some drying racks and lockers, and the printing press which was the subject of the lawsuit against Adrian Advertising by AM International Leasing.<sup>45</sup> Since Alan began doing business as Advanced Advertising he has financed over \$90,000 worth of new equipment and building alterations. The record is unclear as to when this new equipment was purchased.

According to Alan, he originally intended to manufacture political bumper stickers as Adrian Advertising had in the past. In an effort to obtain political clientele, Alan sought and received permission from Teamsters, Local 59 to use the Teamsters' union bug in the fall of 1983. For a short time thereafter Alan printed

<sup>41</sup> The record does not disclose where monies obtained from Adrian Advertising or Advanced Advertising were deposited from August to November 1983.

<sup>42</sup> Arthur had transferred ownership of the Coffin Avenue building to his wife in 1982.

<sup>43</sup> According to the answer filed by Arthur Despres, "the building and equipment [of Adrian Advertising] is being rented on a weekly basis. My son pays his mother (when he is able to)."

<sup>44</sup> This equipment included the portion of Freitas' original inventory which Arthur retained when he started Adrian Advertising on Coffin Avenue and the equipment which Arthur had once leased to Signcrafters and which still remained at Coffin Avenue. In addition, there was equipment which had been purchased by Signcrafters when that company was operational. See pp. 1236-1237, *supra*.

<sup>45</sup> Although counsel for Alan Despres attempted to make it appear that Arthur disposed of ninety percent of the equipment that he had purchased from Freitas when he left Adrian Advertising in 1983, a review of the record reveals that Arthur disposed of most of that equipment at the time he initially acquired Adrian Advertising from Freitas in March of 1981.



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political bumper stickers. Alan also began negotiations for a collective bargaining agreement with the Teamsters in the fall of 1983. In January 1984, Murphy became aware of the use of the Teamsters' bug by Advanced Advertising. On January 11, 1984, Murphy contacted a representative of the Teamsters and notified him of the Painters Union's charges against Adrian Advertising. Thereafter, the Teamsters notified Alan that it was revoking permission to use the Teamsters' union bug and terminating collective bargaining with Advanced Advertising pursuant to a "no raid" pact it had with the Painters Union.

Due to the loss of the union bug, Advanced Advertising's political clientele declined. Thus, while Adrian Advertising had derived about fifty percent (50%) of its income from silk-screened political bumper stickers,<sup>46</sup> Advanced Advertising only derived approximately nine percent (9%) of its business income from political clientele. The remainder of Advanced Advertising business from October 1983 through December 1984 was divided into the following categories: signs (32%); offset (26%); specialty items<sup>47</sup> (22%); and labels and decals (11%). According to Alan,<sup>48</sup> Arthur d/b/a Adrian Advertising did not do the kind of work Advanced Advertising does such as bindery work, plastic illuminated signs, outside vinyl signs and advertising specialties.

#### Opinion

This case presents several issues: 1) whether Alan Despres d/b/a Advanced Advertising is the alter ego or the successor employer of Arthur Despres d/b/a Adrian Advertising; 2) whether the Respondents violated the Law by repudiating collective bargaining agreements with the Union; 3) whether David Richard was discharged in retaliation for his concerted, protected activity; and 4) whether Alan Despres d/b/a Advanced Advertising failed to supply relevant and reasonably necessary information to the Union.

#### 1. The Relationship Between Adrian Advertising and Advanced Advertising

Alan Despres d/b/a Advanced Advertising contends that his business is a separate entity from Arthur Despres d/b/a Adrian Advertising and, therefore, that he bears no liability for the unfair labor practice committed by Arthur d/b/a Adrian Advertising. In addition, Alan asserts that Advanced Advertising is not a successor to Adrian Advertising and had no responsibility to maintain any collective bargaining relationship with the Union.

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<sup>46</sup> Arthur d/b/a Adrian Advertising had used the business slogan "The Bumpa Sticka King."

<sup>47</sup> "Specialty items" are gift items with a logo printed on them such as pens, portfolios and mugs.

<sup>48</sup> Alan was the only witness called to testify about what work Advanced Advertising has performed since October 1983.



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The Commission finds on the basis of the evidence presented that Advanced Advertising is a continuation of Adrian Advertising, and that the ostensibly separate entities constitute a single employer. Therefore, Alan d/b/a Advanced Advertising and Arthur d/b/a Adrian Advertising are jointly and severally liable for all unfair labor practices committed by the single employer.

None of the evidence presented regarding the name, ownership, or operation of the business is sufficient to warrant a finding that Adrian Advertising and Advanced Advertising are separate business entities. The fact that Alan changed the name of the business from Adrian to Advanced does not support a finding that Advanced was a separate business from Adrian Advertising. The change in name does not signify a change in the business from one enterprise to another, but instead was merely the renaming of an on-going concern.

Moreover, there was never a sale of Adrian Advertising from Arthur to Alan. Although Arthur discussed selling Adrian Advertising to Alan, no sales agreement was ever consummated between the two.<sup>49</sup>

Because of the extensive evidence presented regarding the continuity of operations, neither the fact that in August, 1983, Arthur closed out a checking account in Adrian's name, nor the fact that in October, 1983, Arthur announced that he "quit" and Alan that he was "tak[ing] over" is dispositive of the issue of whether the operations are separate entities. Since 1982, when Alan joined his father at Adrian Advertising, Alan has gradually assumed greater management responsibilities. Although Arthur was ostensibly the "sole proprietor" of Adrian Advertising during 1982-1983, Alan helped to manage the business, assigning work to Richard and dealing with the union. During the summer of 1983, Alan assumed a more active management role, including negotiating with the union for revisions in the collective bargaining agreement. Moreover, in July 1983, Alan spoke at some length regarding his interest in taking over the business. Later, in September, 1983, Alan called Murphy and told him that Arthur was getting out of the business and that Alan was going to become the sole owner of the company. He then proceeded to discuss with Murphy possible revisions of the collective bargaining agreement. Finally, in October, 1983, this gradual transition culminated in Arthur's announcement that he "quit" and Alan's announcement that he was "tak[ing] over."

However, because there was no sale of the business, and in view of Alan's gradual assumption of management responsibilities, it is clear that this October meeting did not signal the end of one business and the beginning of another, but instead the continuation of a single business, whose management had gradually passed from father to son.

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<sup>49</sup> It is important to note that neither Adrian Advertising nor Advanced Advertising are, or were, incorporated businesses. On the basis of this record we conclude that Arthur initially operated as a sole proprietor, and later, as an informal partnership with Alan. Subsequently, Alan apparently operated as a sole proprietor.





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That Adrian Advertising and Advanced Advertising are a single employer is most clear from the evidence presented regarding the business' operations. There was no hiatus in operations either between the time that the business allegedly passed from Arthur to Alan or when the name of the business was changed to Advanced Advertising shortly thereafter. In fact, the day Arthur officially announced that he was "quit[ting]" and Alan stated that he was "tak[ing] over," the two "former" employees of Adrian Advertising returned to their work stations and continued to work on the very same projects on which they had been working prior to the alleged change of business. Arthur also continued to work on certain projects even after he announced that he "quit."

Advanced Advertising continued at the same location, utilizing much of the equipment used by Adrian Advertising.<sup>50</sup> Although Alan attempted to characterize certain changes in customers and types of printing performed by Advanced Advertising as radically different from Adrian Advertising, the essential nature of the business was not altered. The vast majority of Advanced Advertising's business continues to be printing -- bumper stickers, offset, signs, labels and decals. The only items produced by Advanced Advertising which were not produced by Adrian Advertising are "specialty items" which represent twenty-two percent (22%) of Advanced Advertising's business. The change in customers and the variance in types of printed products produced by Advanced Advertising as compared to Adrian did not result from any decision to restructure the business, but instead, were occasioned by the failure of the business to abide by the terms of the collective bargaining agreement resulting in revocation of the Union label and the subsequent loss of political clientele.<sup>51</sup>

Advanced Advertising filled and completed work orders which had been placed with Adrian Advertising and even used Adrian Advertising's old sales slips for a period of time.<sup>52</sup> When Advanced Advertising printed its own sales slips, it continued to use a modified version of Adrian Advertising's crown logo. Alan's wife, Carol, continued to work as a bookkeeper and to answer phones at Coffin Avenue as she had for Adrian Advertising. The only significant change in the workforce employed by Advanced Advertising resulted from Alan's termination of Adrian's sole full-time employee.<sup>53</sup>

<sup>50</sup> As noted above, this equipment included equipment which Arthur leased to Signcrafters, Inc. but continued to use when Adrian Advertising was operative.

<sup>51</sup> We note that revocation of the Union label would have resulted in the loss of political clientele regardless of whether the business continued as Adrian Advertising or Advanced Advertising.

<sup>52</sup> It also appears that, for a period of time undisclosed by the record, Adrian Advertising's phone remained connected at the Coffin Avenue building.

<sup>53</sup> At some point in time undisclosed by the record, Adrian's part-time employee, Donna Souza, was terminated from Advanced Advertising.



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Therefore, on the basis of all of the evidence presented in the record, we conclude that Adrian Advertising and Advanced Advertising constitute a single continuing business entity. While there appears to have been a change in the name of the employing enterprise and some fluidity in the identity of the primary manager, we cannot discern any material change in the identity of the employing entity. Therefore we conclude that Adrian and Advanced constitute a single employer. The product differences which have developed, such as the purchase of new equipment by Alan and the shift away from production of bumper stickers to other types of printing -- are insufficient to detract from our conclusion that Adrian Advertising and Advanced Advertising are a single employer.

The determination that Adrian Advertising and Advanced Advertising constitute a single employer requires that Arthur and Alan are jointly and severally liable for the unfair labor practices committed by the single employer.

In reaching this decision, the Commission is guided by the doctrines of corporate "alter ego" and successorship developed and articulated by the National Labor Relations Board and the federal courts. The alter ego doctrine "was developed to prevent employers from evading obligations under the National Labor Relations Act merely by changing or altering their corporate form. N.L.R.B. v. AllCoast Transfer, \_\_\_ F.2d \_\_\_, 121 LRRM 2393, 2395 (6th Cir. 1986). The doctrine has been applied to "treat two nominally separate business entities as if they were a single continuous employer." Id., at \_\_\_, 121 LRRM at 2395, citing Alkire v. N.L.R.B., 716 F.2d 1014, 1018 (4th Cir. 1983). The related doctrine of successorship applies to an operation which continues, despite a change of ownership, and retains essential identity with the predecessor corporation. Charles T. Reynolds, Sr. d/b/a Charles T. Reynolds Box Company and Reynolds Pallet and Box Co., 139 N.L.R.B. 519 (1962); Flite Chief, Inc.; Richard Miller and Karen Miller, et. al. and Culinary Workers, Local 535, 229 N.L.R.B. 968 (1977).

Because under the alter ego doctrine two separate business entities with sufficient identity are considered to be a single employer, the National Labor Relations Act and the federal courts have held both entities jointly and severally liable for unfair labor practices committed by either entity. Charles T. Reynolds, Sr. d/b/a Charles T. Reynolds Box Co. and Reynolds Pallet Box Co., supra; Flite Chief, Inc., supra; Artcraft Ornamental Iron Co., Inc., 271 NLRB 829 (1984); Ramos Iron Works, Inc., 234 NLRB 896 (1978); Sturdevant Sheet Metal and Roofing Co., Inc., supra; Herman Pet Supply, 138 NLRB 1087 (1962). Under the doctrine of successorship, a successor who hires a majority of its predecessor's employees is required to recognize and bargain with the union which represented the predecessor's employees. If the successor hires employees at the same wages, hours and working conditions of the predecessor the successor may not alter such terms of employment without first bargaining with the union. Robert Wacks d/b/a Strand Theatre, 7 MLC 1320, aff'd, 7 MLC 1514 (1980); Wiley v. Livingston, 376 U.S. 543, 55 LRRM 2769 (1964); NLRB v. Burns Security Services, 406 U.S. 272, 80 LRRM 2225 (1972).

Here, because there was no sale of the business or other arm's length transfer of beneficial ownership, while the business continued uninterrupted, we conclude that



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Advanced Advertising must be considered a single enterprise with Adrian Advertising. Therefore we find that Advanced and Adrian constitute a single employer.<sup>54</sup>

#### 11. Repudiation of the Collective Bargaining Agreement

The complaint alleges that Adrian Advertising a/k/a Advanced Advertising repudiated its collective bargaining agreements with the Union in violation of Sections 4(5) and (1) of the Law. More specifically, the complaint alleges that Adrian and Advanced violated the Law by: 1) failing and refusing to abide by the terms of the collective bargaining agreement, including failing to terminate Souza for non-payment of dues; and 2) Alan's unilateral withdrawal of recognition from the Union and abrogation of the revised collective bargaining agreement.

The issue of "repudiation" is essentially a factual determination. The uncontroverted facts in the instant case demonstrate that Adrian Advertising a/k/a Advanced Advertising failed to abide by the terms of its collective bargaining agreements from the inception of its relationship with the Union.

On April 8, 1981, the Union entered into a successorship agreement with Arthur d/b/a Adrian Advertising which specified that Arthur d/b/a Adrian Advertising would "assume and honor all the terms of the (1979-82) collective bargaining agreement" which had been entered into between Freitas d/b/a Adrian Advertising and the Union. That contract was due to expire on March 31, 1982. Shortly after the successorship agreement was entered into, Richard complained to Arthur that he was not getting paid certain benefits he was entitled to under the agreement. More specifically, Richard was not getting the correct rate of pay, vacation time, sick time and holiday time. Arthur responded that he was not obligated to pay, nor could he afford to pay, all the benefits provided in the agreement, but promised to rectify the situation after the business got off the ground. Despite this promise, Arthur never paid Richard the benefits to which he was entitled under the collective bargaining agreement.

In 1982, Richard and Arthur agreed that Richard would waive the pay raise due him that year under the agreement, and a representative of the Union acquiesced in that waiver. However, neither Richard nor the Union ever agreed to waive other benefits due to Richard under the agreement. Nevertheless, Arthur failed to pay Richard's health insurance benefits and failed to accord Richard his vacation and holiday pay during the entire period of Richard's employ by the company.

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<sup>54</sup> Even assuming, *arguendo*, that the record supported a conclusion that Advanced and Adrian were separate legal entities, the evidence compels the conclusion that Advanced was a successor to Adrian because Advanced hired all of Adrian's employees and continued to produce the same products for the same customers from the same location and equipment used by Adrian. Alan d/b/a Advanced knew of the unfair labor practices committed by Adrian e.g., the unilateral abrogation of the terms of the collective bargaining agreement, the refusal to supply information, the discharge of Richard, etc., and therefore would be jointly liable for such practices. *Artcraft*  
(continued)



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On April 28, 1982, Adrian Advertising signed a successor collective bargaining agreement with the Union effective from May 1, 1982 through April 30, 1985. The agreement contained a wage reopener provision for the years 1983, 1984, and 1985.<sup>54</sup> Despite execution of that agreement, Adrian Advertising continued to fail to pay Richard and Souza the benefits to which they were entitled under the new agreement.<sup>56</sup> Richard brought these problems to the Union's attention in the spring of 1983 and the Union, in turn, raised these concerns with Alan and Arthur in March, April and June of 1983 to no avail. In May 1983, the Company ceased making pension contributions to the Union on Richard's behalf as required under the agreement. Because of this, in June 1983 the Union revoked its Union label agreement with the company. In addition, the Union requested that Souza be terminated for non-payment of Union dues. The company failed to comply with this demand.

On July 7, 1983, the Union filed charges against the company with the NLRB alleging repudiation of the collective bargaining agreement. On July 27, the Union agreed to re-negotiate the agreement and withdraw its charge on condition that Richard be reinstated with full back pay. Although the Union withdrew its charges before the Board and sent the company a written proposal containing re-negotiated wage rates covering the period from May 1983 to April 1986, the company never responded to the Union's proposal and did not accord Richard full back pay. Thereafter, on September 7, the Union re-filed its charge at the NLRB.

In August and September of 1983, Murphy and Alan discussed further revisions to the collective bargaining agreement and the two reached an agreement on September 13, 1983 revising certain contract benefits and setting forth wage rates for the period from September 1, 1983 to August 31, 1986.<sup>57</sup> Despite this, Alan d/b/a Advanced Advertising refused to sign or implement the terms of the newly-negotiated agreement. Finally, on September 19, after learning of the Union's suit for misuse of the Union label, Alan told Murphy that he had "blown it" and "there would be no union." Thereafter, Alan d/b/a Advanced attempted to enter into an agreement with another union, the Teamsters, which was not the exclusive bargaining representative of the company's employees.

<sup>54</sup> (continued)

Ornamental Iron Co., Inc., 271 NLRB at 842, citing, Golden State Bottling Co. v. NLRB, 414 U.S. 168 (1973); NLRB v. Winco Petroleum Co., 668 F.2d 973 (8th Cir. 1982).

<sup>55</sup> As related above, in March 1983 the Union had attempted to secure agreement for a supplemental wage increase under the wage reopener provision, but Arthur and Alan failed to respond to the Union's proposals. (See p. 1241-1242).

<sup>56</sup> Specifically, the company failed to pay Richard and Souza the correct pay rates, health and welfare benefits provided in the agreement.

<sup>57</sup> Although Alan never signed this agreement, he did not dispute that he had reached an oral agreement on revisions to the contract with the Union on September 13, nor did he dispute that the written agreement sent to him by the Union on September 13 reflected the oral agreement reached that day.



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It is clear from the foregoing that Adrian Advertising a/k/a Advanced Advertising repudiated the terms of its collective bargaining agreements with the Union. In addition, Adrian Advertising a/k/a Advanced Advertising unilaterally withdrew recognition from the Union and abrogated the revised agreement it reached with the Union in September 1983. We therefore conclude that the Respondents violated Sections 4(5) and (1) of the Law by 1) repudiating the terms of the successorship agreement entered into on April 8, 1981 and effective through March 31, 1982; 2) repudiating the terms of the 1982-85 agreement reached with the Union on April 28, 1982; and 3) withdrawing recognition from the Union and abrogating the terms of the revised agreement covering the period from September 1, 1983 through August 31, 1986 which was reached between Alan and Murphy on September 13, 1983.

### III. Discriminatory Discharge

The complaint alleges that Adrian Advertising a/k/a Advanced Advertising discharged Richard in retaliation for his protected activity in violation of Sections 4(3) and (1) of the Law.

To establish a violation of Section 4(3) of the Law, a charging party must first establish a prima facie case of unlawful discrimination by producing evidence that: 1) the employee was engaged in protected activity; 2) the employer knew of the activity; 3) the employer took adverse action against the employee; and 4) the adverse action was motivated by the employer's desire to penalize or discourage the protected activity. Trustees of Forbes Library v. Labor Relations Commission, 384 Mass. 559 (1981); see also Worcester Reg. Voc. School District v. Labor Relations Commission, 386 Mass. 414, 418-19 (1982); Clinton Services d/b/a Great Expectations, 9 MLC 1494, 1497 (1982); Boston City Hospital, 11 MLC 1065, 1071 (1984). With respect to the motivational element, the charging party must demonstrate in its prima facie case that protected activity played some role in causing the adverse action. Boston City Hospital, id.

An employer may rebut the prima facie case and dispel the presumption of discrimination by proffering a lawful reason for its decision and supporting facts to indicate that its stated reason(s) motivated the decision. The burden of persuasion rests with the employee who must prove by a preponderance of the evidence that the employer's asserted reason would not have caused the discharge absent the protected activity. Forbes Library, 384 Mass. 566; Boston City Hospital, 11 MLC at 1071.

In the present case, the Union established a prima facie showing on each element of the violation. Richard engaged in protected activity when he complained to Murphy about the company's failure to pay him certain contractual benefits and when he appeared at the courthouse on October 11 to assist the Union in its suit against the company for misuse of the Union label.<sup>58</sup> Alan knew of these activities because Murphy related Richard's complaints to Alan in the summer of 1983 and because Alan

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The fact that Richard did not testify on behalf of the Union does not detract from the protected nature of his activity.



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was present at the courthouse on October 11. In addition, we have found that the company took adverse action against Richard by discharging him on October 11.

There is ample evidence that Richard's discharge was unlawfully motivated. It is undisputed that Alan was angered by the Union's pursuit of a court action against the company for misuse of the Union label. He openly expressed his animosity on September 19, stating that the Union had "blown it" by filing the court action and that "there [would be] no union [at the company]." In addition, Alan discharged Richard immediately after Richard engaged in the protected activity of appearing on behalf of the union in court. The coincidence of events suggests that the discharge was motivated by the animus Alan felt toward the Court proceedings. Alan himself directly linked the discharge to Richard's protected activities, stating at the time of the termination that Richard was "crazy for going [to court]," that he was "fired," and to "get out."<sup>59</sup> Accordingly, a prima facie showing of unlawful discrimination has been established.

The employer attempted to rebut the prima facie case by proffering two mutually exclusive defenses. First, Alan asserted that Richard was not fired but "walked out" on October 11 after Alan yelled at him. For the reasons stated above,<sup>60</sup> We find the evidence as a whole does not support the claim that Richard voluntarily quit. Moreover, we find Alan's alternative assertion that he discharged Richard because he failed to appear at work the morning of the court proceeding and appeared late after the court proceeding equally implausible.

The undisputed evidence demonstrates that Alan was angered by the Union's pursuit of the court action and that he terminated negotiations with the Union because of it. This, coupled with the contemporaneity of Richard's protected activity and the discharge, provide strong evidence that the discharge was unlawfully motivated. Even if Alan had been disturbed by Richard's failure to appear at work prior to the court hearing, his statements to Richard on October 11, linking the termination to Richard's assistance to the Union in the court action, make it clear that Richard would not have been fired "but for" his protected activities. Accordingly, we find the discharge violated Sections 4(3) and (1) of the Law.

#### IV. Failure to Provide Information

The final allegation of the complaint deals with the company's refusal to provide the Union with certain information regarding the particulars of Richard's discharge, the company's use of the Union label, and information concerning the wages and benefits paid to Richard and Souza since April 1981.<sup>61</sup>

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<sup>59</sup> See Findings of Fact, pp. 1251-1252.

<sup>60</sup> See footnote 36, infra.

<sup>61</sup> The Union's informational request was made in a letter dated October 12, 1983, which is reproduced at pp. 1252-1253, supra.



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It is well established that a union is entitled to obtain from an employer information that is relevant and necessary<sup>62</sup> to the union's responsibilities as exclusive bargaining agent. NLRB v. Truitt Mfg. Co., 371 U.S. 149, 38 LRRM 2042 (1956). The employer's obligation to provide such information arises both in the context of negotiations and contract administration. Boston School Committee, 10 MLC 1501, 1513 (1984); NLRB v. Truitt Mfg. Co., *supra*; NLRB v. Acme Industrial Co., 385 U.S. 432, 64 LRRM 2069 (1967); Board of Trustees, University of Mass., 8 MLC 1139 (1981).

An employer may justify its refusal to provide information by demonstrating that it has "legitimate and substantial" concerns about disclosure of the information and that it has made reasonable efforts to provide as much information as possible. The employer's concerns are then balanced against the union's need for the information. The refusal will be excused where the employer's concerns are found to outweigh those of the union. Detroit Edison v. NLRB, 440 U.S. 301, 100 LRRM 2728 (1979); Commonwealth of Mass., Chief Administrative Justice, 11 MLC 1440, 1442 (1985).

In the present case, there can be no question that, at the time of the request, the information sought by the Union was relevant and reasonably necessary to process grievances regarding Richard's discharge and the company's failure to accord Richard and Souza benefits to which they were entitled to under the agreement. In addition, the information sought concerning the company's use of the union label was necessary for the Union to monitor whether the company had honored the Union's revocation of permission to use the Union label. The company failed to raise any legitimate or substantial concerns which would justify its refusal to provide the information. Indeed, it raised no defense for its failure to provide the information and we find none. Accordingly, we conclude that Adrian Advertising a/k/a Advanced Advertising violated Sections 4(5) and (1) of the Law by refusing to provide the information requested by the Union in its letter dated October 12, 1983.

#### Conclusion and Remedy

Based upon the foregoing, we conclude that Advanced Advertising is the "alter ego" or disguised continuation of Adrian Advertising and the two Respondents constitute a single employer and, thus, are jointly and severally liable to remedy the above-described unfair labor practices.

By engaging in the acts described in Section 11, *supra*, both Respondents have unlawfully repudiated the terms of the successorship agreement entered into by the

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<sup>62</sup>The standard for determining relevancy is a liberal one. The National Labor Relations Board has stated:

"The test of the union's need for such information is simply a showing of probability that the desired information was relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities." Westinghouse Electric Corporation, 239 NLRB 106, 107 (1978).



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company on April 18, 1981, and the terms of the 1982-1985 collective bargaining agreement entered into on April 28, 1982. In addition, the Respondents unlawfully withdrew recognition from the Union and abrogated the terms of the renegotiated agreement covering the years 1983-86 which was reached with the Union on September 13, 1983. Accordingly, we order the Respondents to cease and desist from such conduct. Specifically, Respondents shall not refuse to bargain in good faith with the Union, make further unilateral changes in employee wages, hours and working conditions, and shall make Richard, Souza and any new employees whole, with interest, for any and all wages<sup>63</sup> and benefits<sup>64</sup> lost or unpaid as a direct result of the Respondents' repudiation and/or failure to implement the above-described agreements.<sup>65</sup>

We have also found that, by the conduct described in Section III, above, Advanced Advertising a/k/a Adrian Advertising discharged Richard in retaliation for his concerted, protected activity in violation of Section 4(3) and (1) of the Law. We therefore order that Richard be offered reinstatement and made whole, including interest, for any monetary loss incurred as a result of the unlawful discharge. School Committee of Newton v. Labor Relations Commission, 388 Mass. 557 (1983).

Because we have concluded that the company violated the Law by discharging Richard and have ordered that Richard be reinstated, the Union's request for information regarding the particulars of Richard's discharge is moot. We therefore do not order the company to provide that information. However, all of the other information requested by the Union in its October 12 letter continues to be relevant and necessary to the Union, albeit for a different reason now than when it was initially requested. More specifically, the wage and benefit data on Souza and Richard which the Union had requested to process grievances under the agreement is still relevant and necessary to the Union in order to monitor compliance with our make whole orders in this case. In addition, the Union continues to be entitled to the information concerning the company's use of the Union label. We therefore order that the Respondents provide that information to the Union.

<sup>63</sup>Because we have found the Union acquiesced in Richard's and Arthur's agreement to waive Richard's 1982 pay raise due under the 1979-82 agreement, our make whole order only covers the non-wage benefits of which Richard was deprived in 1982 under the 1979-82 agreement. Of course Richard is entitled to be made whole for both wages and benefits due him pursuant to the 1982-1985 collective bargaining agreement and the 1983-1986 agreement.

<sup>64</sup>"Benefits" includes vacations and holidays and vacation, holiday, and sick pay, hospitalization and other medical benefits, and pension benefits, with reimbursement for any expenses or obligations incurred by reason of any cancellation, withdrawal, lapse or non-payment of premiums.

<sup>65</sup>Because Souza is no longer employed by the Respondents, we need not address any remedy for the company's failure to enforce the Union security provision of the agreement as it applied to Souza.





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ORDER

WHEREFORE, based upon the foregoing, IT IS HEREBY ORDERED, pursuant to Section 4B of the Law, that Respondents Arthur Despres and Alan Despres, their respective officers, agents, successors and assigns, shall:

1. Cease and desist from:
  - a. Refusing to recognize the International Brotherhood of Painters and Allied Trades, Local 391 (Union) as the exclusive bargaining representative of the employees;
  - b. Repudiating the terms of the collective bargaining agreement between Adrian Advertising and the Union binding on the Respondents<sup>66</sup> from April 18, 1981 to March 31, 1982;
  - c. Repudiating the terms of the collective bargaining agreement between Adrian Advertising and the Union effective from May 1, 1982 through April 30, 1985;
  - d. Abrogating and refusing to implement the terms of the collective bargaining agreement reached between Alan Despres d/b/a Advanced Advertising and the Union effective September 1, 1983 to August 31, 1986;
  - e. Discriminating in regard to hiring, tenure or any term or condition of employment to encourage or discourage membership in a labor organization;
  - f. Refusing to provide information which is relevant and reasonably necessary to the Union;
  - g. In any like or similar manner, interfering with, restraining, or coercing its employees in the exercise of their rights under the Law.
2. Make whole employees David Richard and Donna Souza for all lost benefits they suffered as a result of the Respondents' repudiation of the collective bargaining agreements referred to in paragraphs 1(b) and (c), above, plus interest on any sums owing, at the rates specified in M.G.L. c.231,

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<sup>66</sup> More specifically, we refer to the 1979-82 agreement between Adrian Advertising and the Union which became binding on the Respondents for the period stated above by virtue of the successorship agreement entered into by Arthur Despres d/b/a Adrian Advertising on April 18, 1981.



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Section 6B with quarterly computation from the dates they were due such benefits.<sup>67</sup>

3. Make whole employees Richard, Souza and any other employees for all lost wages and benefits suffered as a result of the Respondents' failure to implement the collective bargaining agreement referred to in paragraph 1(d), plus interest on any sums owing at the rate specified in M.G.L. c.231, Section 6B with quarterly computation from the dates they were due such monies.
4. Immediately offer David Richard reinstatement to his former position and make him whole for any loss of benefits and wages he has suffered as a result of the Respondents' decision to discharge him, plus interest on any sums owing at the rate specified in M.G.L. c.231, Section 6B, with quarterly computation from the date of discharge.
5. Upon request, provide the Union with information concerning the wages and benefits paid to Souza and Richard.
6. Upon request, provide the Union with information concerning the company's use of the Union label.
7. Sign and post the attached Notice to Employees in conspicuous places where notices to employees are customarily posted, and allow the same to remain for a period of thirty (30) consecutive days.
8. Notify the Commission, in writing, within thirty (30) days of the service of this decision and order of the steps taken to comply herewith.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS  
LABOR RELATIONS COMMISSION

PAUL T. EDGAR, Chairman  
MARIA C. WALSH, Commissioner

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<sup>67</sup> Our make whole order for employee Richard does not require payment of the 1982 pay raise which we have found that Richard waived. See Footnote 63, supra.

[NOTE: NOTICE TO EMPLOYEES OMITTED]

