

**Safety Electric Corporation and San Joaquin Pacific Corporation and International Brotherhood of Electrical Workers, Local No. 100. Case 32-CA-449**

October 20, 1978

**DECISION AND ORDER**

BY MEMBERS JENKINS, MURPHY, AND TRUESDALE

On July 13, 1978, Administrative Law Judge Richard J. Boyce issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed a reply letter and a brief in support of the Administrative Law Judge's findings.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,<sup>1</sup> and conclusions of the Administrative Law Judge and to adopt his recommended Order.

**ORDER**

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Safety Electric Corporation and San Joaquin Pacific Corporation, Fresno, California, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

<sup>1</sup> The Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an Administrative Law Judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

The Administrative Law Judge inadvertently found that for state licensing purposes Gust Youngberg is the designated "Responsible Managing Official ("RMC)" of Safety Electric Corporation. The proper designation is Responsible Managing Officer (RMO) and Gust apparently occupies this position for both Safety Electric Corporation and San Joaquin Pacific Corporation.

**DECISION**

**STATEMENT OF THE CASE**

RICHARD J. BOYCE, Administrative Law Judge: This matter was heard before me in Fresno, California, on May 16 and 17, 1978. The charge was filed on October 7, 1977, by International Brotherhood of Electrical Workers, Local No. 100 (Union). The complaint issued on November 30, 1977, alleging that Safety Electric Corporation (Safety) and San Joaquin Pacific Corporation (San Joaquin), as a single employer, have violated Section 8(a)(5) and (1) of the National Labor Relations Act (Act).

The parties were permitted during the hearing to introduce relevant evidence, examine and cross-examine witnesses, and argue orally. Post-hearing briefs were filed for the General Counsel and for Respondent.

**I. JURISDICTION**

Safety and San Joaquin are California corporations headquartered in Fresno and engaged in the installation of street lights and traffic signals. Safety annually takes delivery in California, directly from outside the State, of materials valued in excess of \$50,000. The complaint alleges, the answer admits, and it is concluded that Safety is an employer engaged in and affecting commerce within Section 2(2), (6), and (7) of the Act.

As is later developed, Safety and San Joaquin are a single employer for purposes of the Act. It follows, in light of Safety's status under Section 2(2), (6), and (7), that the two, jointly, are an employer engaged in and affecting commerce within those provisions.

**II. LABOR ORGANIZATION**

The complaint alleges, the answer admits, and it is concluded that the Union is a labor organization within Section 2(5) of the Act.

**III. ISSUE**

The General Counsel contends that Safety and San Joaquin violated Section 8(a)(5) and (1) by failing to apply the terms of Safety's bargaining agreement with the Union to the electrical workers on San Joaquin's payroll.

Safety and San Joaquin contend that the San Joaquin employees are not an accretion to the existing Safety bargaining unit, and therefore that San Joaquin was under no obligation to apply the contract to those on its payroll.

**IV. THE ALLEGED UNFAIR LABOR PRACTICE**

**A. Facts**

As mentioned, Safety is engaged in the installation of street lights and traffic signals, and has been for a number of years. It does other types of industrial and public-works electrical contracting, as well. Its address is 4957 East Lansing Way, Fresno. Its electrical-worker complement

generally consists of about seven people, including supervisory foremen, comprising two or so crews. These people are covered by a labor agreement between the Union and the National Electrical Contractors Association, of which Safety is a member.<sup>1</sup>

San Joaquin emerged as a legal entity on November 16, 1976, when it was incorporated; and began doing business on January 7, 1977. Its address is 2612 North Clovis Avenue, Fresno, which is a mile or so away from the Safety address. It is engaged solely in the installation of street lights and traffic signals, generally with a single crew composed of three people, including one supervisory foreman. San Joaquin's and Safety's employees use much the same skills and equipment. The weight of evidence compels the conclusion that were San Joaquin's employees performing their customary tasks on Safety's rather than San Joaquin's payroll they would come under Safety's labor agreement.

Gust and Laura Youngberg, husband and wife, are Safety's sole shareholders, owning coequally. They also are corporate president and vice president, respectively; and with Glen Rust, corporate secretary-treasurer, comprise the board of directors. Gust is in charge of the firm's day-to-day management, and is the designated Responsible Managing Official ("RMO") for state licensing purposes. Laura does bookkeeping and billing functions, aided on occasion by the Youngberg's 23-year-old daughter, Millise Lunt. Rust does most of the bid preparation. Millise, until she recently became involved in a personal house-remodeling project, also did janitorial work at Safety's facility. She has been on Safety's payroll at most, if not all, relevant times.

San Joaquin was established by Gust and Laura, assertedly for their son, Blake, who was 17 years old at the time of the trial and resides with his parents. Gust testified that Blake had wanted to leave school and that after he had assured the parents of his interest in working it was decided that "a company for him was the best way to go." So it was that on January 6, 1977, the senior Youngbergs put up \$1,000, ostensibly as an interest-free loan, to pay the expenses of incorporating; and that on January 17 they put up another \$5,000, again in the form of an interest-free loan, to capitalize the venture.

It is doubtful that repayment in kind of these so-called loans was ever contemplated. As Gust testified, a like amount had been given to Millise, to enable her and her husband to buy a house—"we felt as far as an inheritance-type of thing for our children, it was equal money and let us do something now . . . while we were alive, not dead." Beyond that, Gust was vague and unconvincing concerning repayment of the \$1,000 "loan"; and the \$5,000 "loan" was "satisfied" on March 25, 1977, by the issuance to him and Laura of 5,000 shares in San Joaquin, each having a face value of \$1. Gust promptly relinquished his interest in the shares to Laura, and she has been San Joaquin's sole shareholder ever since.

<sup>1</sup> It is concluded that those performing electrical work for Safety, excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act, comprise an appropriate unit for purposes of the Act.

Further in aid of San Joaquin's launching, Gust entered into a lease agreement with it on January 3, 1977, whereby he was to receive \$4,000 per year in exchange for San Joaquin's use of three trucks, hydraulic conduit benders, and other equipment that were in his name; and, on the same date, Safety and San Joaquin entered into a lease agreement whereby Safety was to receive \$500 per year in exchange for San Joaquin's use of various of Safety's tools. San Joaquin later purchased the three trucks involved in the one lease, in transactions evidently inspired and engineered by Gust.

San Joaquin received its first billing concerning the \$4,000 lease, discounted to reflect the purchase of the trucks, shortly before the trial, and its first billing concerning the \$500 lease on March 31, 1978. The record leaves in substantial doubt whether any payments have been made. Gust testified that Safety loans and leases tools and equipment to firms other than San Joaquin, including rivals, but that more documentation is used vis-a-vis San Joaquin because "we did not want to give any appearance at all that there was closeness . . . if it could be avoided."

At about the time of San Joaquin's birth, one Earl Collins was hired to be its nominal chief executive officer. Collins was totally without management experience, but had been a rank-and-file employee in the installation of street lights and traffic signals since 1963. He had been talking to Gust for a time about becoming part of the Safety crew. It was understood between Gust and Collins, when Collins was hired, that Collins was to train Blake in the technical side of the work, and that Gust was to teach Collins how to manage the business. Collins was paid \$200 per week until San Joaquin "had some work going"—a figure arrived at by him and Gust—after which he worked mainly in the field, supervising Blake and another employee and receiving foreman's scale.

Collins was fired a few weeks before the hearing, Gust having learned of his affiliation with a competing firm. In a transparent attempt to depict himself as without decision-making authority as concerns San Joaquin, Gust testified that he recommended to Laura, as the sole shareholder, that Collins be fired and that she adopted the recommendation. A termination letter issued over Laura's signature, which Gust hand delivered to Collins.

Upon Collins hire, the Youngbergs named him San Joaquin's corporate president and placed him on the board of directors. Although Collins had authority to hire and fire, at least in the field, and to make some purchases, the record affords no basis for inferring that he was other than a figurehead as president and board member. He made major purchases only after obtaining Gust's advice and permission; was largely bypassed regarding San Joaquin's purchase of the three trucks, mentioned above; and on at least one occasion did not learn of a board meeting until after the fact, when Gust told him about it and that "somebody sat in" for him. His discharge notwithstanding, Collins is yet to be officially removed as president and director, apparently because the Youngbergs simply have not bothered to change that state of affairs—a further sign that Collins' occupancy of those positions was and is without operational significance.

San Joaquin's other officers are Gust and Blake, both

vice presidents, and Millise Lunt, secretary-treasurer. The board, in addition to Collins, consists of Laura and Millise. Gust was a director until resigning, for reasons untold on the record, on March 13, 1977. Gust at all times has been San Joaquin's RMO for state licensing purposes, just as he is Safety's, this supposedly being a stopgap measure pending Collins' designation.<sup>2</sup> Gust in addition serves as a "consultant" for San Joaquin, for which he receives \$100 per month. Laura receives a monthly \$100 from San Joaquin, too, reputedly for training Millise to do its bookkeeping and billing. As noted earlier, Laura does Safety's bookkeeping and billing, assisted at times by Millise.

Among Collins' San Joaquin duties, apart from field supervision, was bid preparation. Being without background in such matters, he relied heavily on Gust, particularly in the first 3 months or so. Gust also worked from time to time with Safety's estimator, Rust, in the preparation of bids. Gust testified that Safety and San Joaquin had bid in competition with each other about four times to the time of trial. With one exception, this testimony was vague, evasive, and altogether unconvincing. The exception concerned the installation of a flashing beacon in Sonora. Both Safety and San Joaquin bid, neither won, and Gust termed the affair "somewhat of a joke with my daughter."

After Collins' discharge, the resident engineer on a Santa Maria job being done by San Joaquin conditioned San Joaquin's continued performance upon its procuring responsible on-site supervision in Collins' place. Gust not only dealt with the resident engineer, but arranged for one Bob Adams to fill in, negotiating Adams' compensation and when he would report. In another transparent attempt to depict himself as devoid of authority concerning San Joaquin, Gust testified that he only recommended Adams, with Blake having final say in his hire. Further in that vein, Gust and Laura both testified that Laura, as sole shareholder, named Blake to be San Joaquin's chief executive officer when Collins left, Laura explaining that Blake was the "logical choice." Blake, for reasons untold on the record, did not testify.

After Collins' discharge, Gust made it a point to visit the San Joaquin jobsites more frequently than before, to be sure that jobs were being done properly; and to discuss the jobs with Blake, for the same reason and to ascertain Blake's level of development.<sup>3</sup> Gust in addition began interviewing job applicants for San Joaquin, discussing his impressions with Blake, who supposedly had final word; and picked up and delivered supplies for San Joaquin, as well.

Gust arranged for the lease of San Joaquin's office space, Laura promoting the illusion that he was merely a conduit by testifying: "I believe I asked Gust to find something." Millise signed the lease for San Joaquin. Gust also lined up a telephone answering machine for San Joaquin's office,<sup>4</sup> and either he or Millise made the arrangements for installation of an office telephone. Beyond that, Gust dealt

<sup>2</sup> Collins professed ignorance of this in his testimony. Laura applied for RMO designation in early 1978. That application is still pending.

<sup>3</sup> This process revealed that Collins had not been particularly diligent about training Blake.

<sup>4</sup> The San Joaquin office does not maintain regular hours.

with Bank of America "on behalf of my son" concerning a \$4,000 loan to enable San Joaquin to buy a trailer.

Safety and San Joaquin have separate contractor's licenses, payroll and business records, insurance policies, bank accounts, and tax identification numbers; and they file separate returns and reports with governmental taxing and other agencies. Gust, Laura, and Millise are authorized to draw checks on Safety's bank account, while Laura and Millise have that authority for San Joaquin. Until Collins' departure, the San Joaquin office had a combination lock, the combination for which was known to Gust, Blake, Millise, and Collins. A new lock has been installed, with Blake and Millise having keys.

In March 1977, the Union's business representative, Fred Hardy, arranged a meeting with Gust and Safety's unit employees at the Safety facility. One of the employees had told Hardy that Gust had set up a "double-breasted operation," and Hardy sought the meeting "to get things out in the open and find out for sure if it was a rumor or a fact." When Hardy asked about the situation, Gust replied that he had set up the new company for his son. Hardy then asked if San Joaquin would become signatory to the labor agreement, and Gust said that Hardy would have to talk to Collins, San Joaquin's president, about that. Gust was at pains to stress that the "was not involved in [San Joaquin] whatsoever, and that [San Joaquin] had nothing to do with Safety Electric." One of the employees mentioned that Blake, although identified with San Joaquin, was then working on a job for Safety. Gust responded that that situation would cease, which it did in early April 1977. There has been no subsequent crew interchange between Safety and San Joaquin. As mentioned earlier, Gust resigned as a member of San Joaquin's board in March 1977, roughly coincident with this meeting, causing one to wonder if Hardy's scrutiny had something to do with it.

San Joaquin at no time has treated its employees as covered by the labor agreement covering Safety's electrical workers.

### B. Conclusion

It is concluded, in agreement with the General Counsel, that Safety and San Joaquin, as a single employer, violated Section 8(a)(5) and (1) by failing to treat the employees nominally on the San Joaquin payroll as part of the bargaining unit covered by Safety's agreement with the Union.

That Safety and San Joaquin are a single employer is manifest, among other things, from the centralization of ownership of both in the senior Youngbergs; from Gust's being the RMO of both for state licensing purposes, and his plainly being the functioning chief executive officer of both despite his and Laura's efforts to depict Collins, then Laura, then Blake, as occupying that role for San Joaquin; from the monopolization of the boards of directors and corporate officerships by the immediate Youngberg family; from the de facto performance of bookkeeping and billing for both by Laura and Millise, regardless of Laura's supposed teacher's role as concerns San Joaquin; from the sharing of tools and equipment, albeit under color of leases; and from the absence of persuasive evidence that they are in earnest competition with each other, even though

being in the same business in the same locality. E.G., *Crawford Door Sales Company*, 226 NLRB 1144 (1976).

Still to be decided is whether the so-called San Joaquin employees are an accretion to the Safety bargaining unit. As the Supreme Court stated in *South Prairie Construction Co. v. Operating Engineers [Peter Kiewit Sons' Co.]*, 425 U.S. 800, 805 (1976):

[A] determination that two affiliated firms constitute a single employer "does not necessarily establish that an employerwide unit is appropriate, as the factors which are relevant in identifying the breadth of an employer's operation are not conclusively determinative of the scope of an appropriate unit."<sup>5</sup>

Extracting from *Bryan Infants Wear Company*, 235 NLRB 1305 (1978), the test of accretion is whether the employees of the new firm "could constitute a separate appropriate unit" from those of the existing firm. In this connection, still quoting from *Bryan Infants Wear Company*, *supra*:

[T]he following factors are particularly relevant: the bargaining history; the functional integration of operations; the differences in the types of work and the skills of employees; the extent of centralization of management and supervision, particularly in regard to labor relations, hiring, discipline, and control of day-to-day operations; and the extent of interchange and contact between the groups of employees.<sup>6</sup>

Applying these factors to the situation at hand, there is no common bargaining history to consider. San Joaquin being a new undertaking. The employees of both do the same kinds of work, however, using the same skills, tools, and equipment. Overall management of the two resides in Gust; and, while the immediate supervision of the San Joaquin crew is distinct from that of the Safety crews, this is not all that significant since each Safety crew probably has its own immediate supervision as well. On the other hand, except for the early situation involving Blake, there has been a zealous avoidance of employee interchange between Safety and San Joaquin crews.

It is concluded on balance, and not without difficulty, that the factors suggestive of accretion override those to the contrary. Were Safety to add another crew to its payroll, accretion would be the unavoidable conclusion, and this situation is scarcely different in principle from that. To paraphrase *Appalachian Construction, Inc.*, 235 NLRB 685 (1978): "The only real difference, other than the name, between [Safety] working on the project[s] and [San Joaquin] was the absence of union labor."

*Peter Kiewit Sons' Co.*, 231 NLRB 76 (1977), from which Safety and San Joaquin argue is distinguishable from the present case. Safety and San Joaquin literally comprise a "mom and pop" operation, with minimal delegation of central control and authority, whereas *Peter Kiewit Sons' Co.* involved massive construction firms whose effective

functioning necessitated multilayered delegations of authority, with an attendant dilution of communities of interest as between those at the rank-and-file level of the two firms in question. Moreover, as the Board observed in *Appalachian Construction, Inc.*, *supra* at sl. op. 5, in distinguishing *Peter Kiewit Sons' Co.*, "we are not faced with a 'double-breasted' operation: two companies operating in different economic climates, one union and one nonunion." (Emphasis supplied.)

It is arguable that, since the charge herein was filed more than 6 months after San Joaquin began doing business, Section 10(b) of the Act precludes the finding of a violation. But, as stated in *Don Burgess Construction Corp.*, 227 NLRB 765, 766 (1977):

The period of limitations prescribed by Section 10(b) does not begin to run on an alleged unfair labor practice until the person adversely affected is put on notice of the act constituting it.

It will be recalled that Gust not only failed to inform the Union of the nature of San Joaquin's relationship to him and to Safety, but misled the Union's Hardy in March 1977 that San Joaquin and he "had nothing to do with Safety Electric." See, also, *Alcan Forwarding Company*, 235 NLRB 994 (1978).

#### CONCLUSIONS OF LAW

1. Safety and San Joaquin are a single employer engaged in and affecting commerce within Section 2(2), (6), and (7) of the Act.

2. By failing to apply the terms and conditions of the collective-bargaining agreement between Safety and the Union to the electrical workers on San Joaquin's payroll as found herein, Safety and San Joaquin committed an unfair labor practice within Section 8(a)(5) and (1) of the Act.

#### ORDER <sup>7</sup>

The Respondents, Safety Electric Corporation and San Joaquin Pacific Corporation, their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to honor the terms and conditions of their collective-bargaining agreement with the International Brotherhood of Electrical Workers, Local No. 100.

(b) In any other manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them in Section 7 of the Act.

2. Take the following action necessary to effectuate the purposes of the Act:

(a) Make the appropriate individuals whole for any losses they may have suffered by reason of Respondents' failure and refusal to honor the collective-bargaining agree-

<sup>5</sup> The quotation within the quotation is from *Central New Mexico Chapter, NECA*, 152 NLRB 1604, 1608 (1975).

<sup>6</sup> Quoting from *Peter Kiewit Sons' Co.*, 231 NLRB 76 (1977).

<sup>7</sup> All outstanding motions inconsistent with this recommended Order hereby are denied. In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

ment, including all contributions the above union would have received in accordance with the agreement, together with interest as set forth in *Florida Steel Corporation*, 231 NLRB 651 (1977). See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts owing under the terms of this Order.

(c) Post at their offices in Fresno, California, and at all jobsites where they presently are working, copies of the attached notice marked "Appendix."<sup>8</sup> Copies of said notice, on forms provided by the Regional Director for Region 32, after being duly signed by Respondents' authorized representative, shall be posted by Respondents immediately upon receipt thereof, and shall be maintained by them for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees customarily are posted. Reasonable steps shall be taken by Respondents to ensure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 32, in writing, within 20 days from the date of this Order, what steps Respondents have taken to comply herewith.

<sup>8</sup> In the event that this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

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

A hearing in which we participated and had a chance to give evidence resulted in a decision that we had committed an unfair labor practice in violation of Section 8(a)(5) and (1) of the National Labor Relations Act. We have been ordered to post this notice and abide by it.

WE WILL NOT refuse to honor the terms and conditions of our collective-bargaining agreement with the International Brotherhood of Electrical Workers, Local No. 100.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form, join, or assist labor organizations, to bargain collectively through a representative agent chosen by our employees, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any such activities.

WE WILL make the appropriate individuals whole, with interest, for any loss of earnings suffered by reason of our failure to honor and abide by the collective-bargaining agreement, including all contributions the Union would have received in accordance with the agreement.

SAFETY ELECTRIC CORPORATION AND SAN JOAQUIN  
PACIFIC CORPORATION