

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE**

METRO DEMOLITION CO., INC., PHANTOM
DEMOLITION CORP., CIRCLE INTERIOR
DEMOLITION, INC., WORLD CLASS
DEMOLITION CORP., Alter Egos

and

Case Nos. 29-CA-27317
29-CA-27375
29-CA-27472

LOCAL 813, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS

Richard Bock, Esq., for the General Counsel
Mark Hankin, Esq., Mitchell Flachner, Esq., Gary Schultz, Esq.
(Hankin Handwerker & Mazel), NY and
Maurizio Bordone, President for Respondent,
World Class
Vincent Bordone, President for Respondent
Metro

DECISION

STATEMENT OF THE CASE

Steven Fish, Administrative Law Judge. Pursuant to charges filed by Local 813, International Brotherhood of Teamsters, herein called Local 813 or the Union, the Director for Region 29 issued an Order Consolidating Cases, and Consolidated Amended Complaint, on March 28, 2006, alleging that Metro Demolition Co., Inc., herein called Respondent Metro, Phantom Demolition Corp., herein called Respondent Phantom, Circle Interior Demolition, Inc., herein called Respondent Circle, and World Class Demolition Corp., herein called Respondent World Class, herein collectively called Respondents, violated Sections 8(a)(1), (3) and (5) of the Act.

Respondent World Class filed a timely answer to the above complaint, but no such timely answer was received from any of the other Respondents.

Accordingly, Counsel for the General Counsel filed a motion for partial summary judgment against Respondents Metro and Circle.¹ Respondent Circle filed a response to the motion, relying upon a late filed Answer. On September 27, 2006 the Board issued an Order denying General Counsel's motion, and remanding the case for trial. *Metro Demolition Co.*,

¹ No such motion was filed against Respondent Phantom, because as General Counsel explained, it appeared at the time of the filing of the motion that Respondent Phantom was not operating.

Inc., 348 NLRB #21 (2006). While the Board agreed with General Counsel, that Respondent Circle's late filed Answer, was without good cause, it concluded that Respondent World Class' timely filed Answer precluded the entry of a default judgment against the other Respondents, as World Class' liability is derivative and based upon its alleged single employer and alter ego status, with the other Respondents. Thus World Class' timely filed Answer is sufficient to deny summary judgment against the other Respondents, although these Respondents failed to file timely Answers.

Thereafter Counsel for Respondent Circle withdrew as its attorney, and the hearing commenced before me on March 13 and 14, 2007. Neither Respondent Circle nor its former attorney attended the hearing. Vincent Bordone appeared as a representative of Respondent Metro. Maurizio Bordone attended the trial as well, and appeared on behalf of Respondent World Class, who was also represented by Counsel. No one entered an appearance on behalf of Respondent Phantom.

A brief has been filed by General Counsel and has been carefully considered. Based upon the entire record,² including my observation of the demeanor of the witnesses, I make the following:

FINDINGS OF FACT

I. MOTION TO AMEND THE TRANSCRIPT

Incorporated in its brief, General Counsel filed a motion to amend the transcript. No objection has been filed to this motion. Accordingly the motion is granted, and the transcript is amended as follows:

Page 19, Line 16 – Substitute the word “whole’ for the word “full” at the end of the line

Page 42, Line 22 – Substitute the word “corroborated by” for cooberated but”

Page 43, Line 10 – Substitute the numeral “79” for “69”

Page 59, Line 20 – Substitute the word “you” for “your”

Page 60, Line 13 – Substitute the word “effectively” for the word “affectively”

Page 61, Line 5 – Substitute “Mr. Hankin” for “Mr. Bock”

Page 112, Line 21 – Substitute the word “seized” for “ceased”

Page 119, Line 117 – Substitute the word “girders” for “gurdies”

Page 119, Line 23 – Substitute “Are you a member of” for “You remember”

² After the trial closed, General Counsel made a motion to receive into evidence an arbitration award issued on December 16, 2006, which was referred to during the trial, and which all parties agreed should be part of the record. No objection was received from any of the Respondents to General Counsel's request. Accordingly, the motion is granted, and the document is received into evidence as General Counsel's Exhibit # 47.

- Page 137, Line 6 – Substitute “Joe A” for “Joey”
- Page 152, Line 1 – Change “notice” to “noticed”
- 5 Page 157, Line 11 – Substitute the word “formerly” for “formerly”
- Page 163, Line 14 – Substitute “still held” for “withheld”
- Page 165, Line 7 – Add the word “had” before “the new responsibility”
- 10 Page 177, Line 18 – Substitute the word “benefits” for the word “they”
- Page 184, Line 1 – Substitute “PDC” for “PBC”
- Page 200, Line 19 – Substitute a “.” for the “,” before the word “that”; capitalize the “T” in “that”
- 15 Page 216, Line 5 – Substitute the word “some” for “in the”
- Page 216, Line 12 – Substitute “john” for “Joe”
- 20 Page 218, Line 10 – Substitute the word “inviting” for “invited”
- Page 227, Line 17 – Add the word “a” before “stipulation” and “will” before “recognize”
- 25 Page 227, Line 21 – Substitute the word “is” for the second “it”
- Page 233, Line 20 – Substitute “Thus” for “The”
- Page 233, Line 22 – Delete the word “it” before “discretionary”
- 30 Page 236, Line 17 – Substitute the word “Whose” for “Who”
- Page 239, Line 15 – Substitute the word “sons” for the word “son”
- 35 Page 243, Line 7 – Substitute the words “instead of trying” for “in order to try”
- Page 251, Line 5 – Substitute the word “as” for “at”
- Page 255, Line 19 – Substitute the word “each” for “teach”
- 40 Page 255, Line 20 – Substitute the word “were” for “where”
- Page 255, Line 21 – Substitute the word “by” for “on”
- 45 Page 274, Line 20 – Substitute the word “pay” for “pays”
- Page 281, Line 8 – Delete the “s” from “Carlos”
- Page 293, Line 24 – Delete the word “union” before “responsibilities”
- 50 Page 298, Line 24 – Substitute the word “dubs” for the word “dumps”

Page 299, Line 2 – Substitute the word “dubs” for the word “dumps”

Page 307, Line 10 – Substitute “Angrisani” for “Andresoni”

5 Page 309, Line 11 – Substitute the word “effect” for “affect”

II. JURISDICTION AND LABOR ORGANIZATION

10 The timely filed answer by Respondent World Class, denied or denied knowledge and information sufficient to form a belief as to all of the jurisdictional allegations in the complaint, for all of the Respondents.

15 General Counsel served subpoenas on all of the Respondents, which were signed for and received, and which were returnable on the first day of the trial, March 13, 2007. Paragraphs 18 and 19 of each subpoena requested production of various books and records, including, but not limited to , invoices, ledgers, books of account and sales journals, as will show purchases made by, and services performed by, Respondents, both in and outside the state of New York.

20 On the morning of March 13, 2007, Respondent World Class produced some documents, responsive to other portions of the subpoena, including tax returns, a lease to property, and documents approving Respondent World Class' status as an “S” corporation. No documents showing purchases it made, or services it performed, or any other documents responsive to paragraphs 18 or 19 of the subpoena were produced. None of the other Respondents' produced any documents that were subpoenaed by General Counsel. As noted
25 above, Respondent Circle made no appearance. Respondent Metro was represented by its president, Vincent Bordone, but he produced no documents. No one appeared on behalf of Respondent Phantom, and no subpoenaed documents were received from that Respondent.³

30 All four Respondents have been engaged in essentially the same business, as a contractor in the demolition industry, performing services for various general contractors and construction managers.

35 General Counsel produced evidence of testimony and documents from a representative of 3D Laboratory, (3D) which performed services for all four Respondents. This evidence establishes that from March 31, 2005 through November 15, 2005, Respondent Metro performed services valued at \$41, 284 for 3D, from June 15, 2005 through December 6, 2005, Respondent Phantom performed services for 3D valued at \$60,500, from January 23, 2006 through April 3, 2006, Respondent Circle performed services for 3D valued at \$9,375, and on
40 December 20, 2005 Respondent World Class performed services for 3D valued at \$3,200.

45 The evidence also establishes that 3D is a domestic corporation located in New York, where it annually, purchases and received goods, products, and materials valued in excess of \$50,000 directly from points outside the state of New York. Thus 3D is an employer engaged in commerce, and meets the direct standard of the Board for the assertion of Jurisdiction.

50 ³ Maurizio Bordone, who was an officer of Respondent Phantom was present at the trial, and for part of the trial entered an appearance on behalf of Respondent World Class, when Respondent World Class had no attorney present. Maurizio Bordone never made an appearance on behalf of Respondent Phantom, and neither he nor Respondent Phantom, produced any subpoenaed documents.

Since the record reveals that Respondents have failed to comply with properly served Board subpoenas, calling for the production for Jurisdictional information, the Board will dispense with its application of the \$50,000 interstate discretionary standard and assert Jurisdiction, if a showing of *de minimus* commerce is shown. *Valentine Painting and Wallcovering*, 331 NLRB 883, 884-885 (2000); *Continental Packaging Corp.*, 327 NLRB 400, 401 (1998); *Tropicana Products*, 122 NLRB 121, 123-124 (1958); *Plant City Welding and Tank*, 123 NLRB 1146, 1152 (1959). The Board has held \$1500 of activity out of state is sufficient to meet the *de minimus* standard, *Marty Levitt*, 171 NLRB 739 (1968); see also, *NLRB v. Aurora City Lines Inc.*, 299 F.2d 229, 231 (7th Cir. 1962) (\$2000 out of state purchases not *de minimus*), *Somerset Manor Inc.*, 170 NLRB 1647 (Indirect inflow in excess of \$1800 not *de minimus*). Here the evidence discloses that each of the Respondents performed services for 3D, an Employer that meets the direct standard for Jurisdiction, well in excess of the amount necessary to establish *de minimus* activity.⁴

Accordingly, it is appropriate to exercise Jurisdiction over each Respondent, and I conclude that they all are employers engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act. *Valentine Painting, supra* at 885; *Continental Packaging, supra* at 402; *Tropicana, supra*.

Furthermore, it is clear that the assertion of Jurisdiction over one alter ego necessitates a finding of Jurisdiction over the others. *G.M. Trimming Inc.*, 279 NLRB 890, 892 (1986); *Universal Electric*, 227 NLRB 1790 (1977).

Indeed the Board will combine revenues of closely related companies in calculating their impact on commerce, even in the absence of a single employer or alter ego relationship. *Block Enterprises Inc.*, 172 NLRB 1678, 1679 (1968).

Here, the record establishes that during the 12 month period prior to the issuance of complaint, Respondent Phantom performed services in excess of the \$50,000 discretionary standard, for 3D, an entity that meets the direct standard of the Board for Jurisdiction. Thus even apart from the *Tropicana* analysis, Jurisdiction has been established over Respondent Phantom. Since, as I explain more fully below, I find all four Respondents to be alter ego's and single employers with each other, Jurisdiction attaches to all of the Respondents, on this basis as well.

I also find that the record establishes that Local 813 is a labor organization within the meaning of Section 2(5) of the Act.

III. FACTS

Respondent Metro is a contractor in the interior demolition industry, and provides demolition and removal of construction debris, as well as container service primarily to general contractors. Vincent Bordone and his son Carlo Bordone V are the shareholders and officers of Respondent Metro. It maintains its office facility at 55-14 Grand Avenue, Maspeth, New York and a neighboring garage at 56-00 Grand Avenue, also in Maspeth, New York, herein collectively called the Grand Avenue facility.

⁴ Respondent Metro performed services for 3D valued at \$41,284, Respondent Phantom \$60,500, Respondent Circle \$9,375, and Respondent World Class \$3,200.

Edward Detweiler was employed by Respondent Metro as a supervisor of its drivers, until his departure in September of 2005, at which time Vincent's son Maurizio took over Detweiler's supervisory responsibilities, which included supervising the dispatcher, ordering materials for jobs, and generally overseeing the employees. Maurizio Bordone was also employed as an estimator and foreman, along with two other sons of Vincent Bordone, John and Carlo V, and Dennis Halpern. The estimator would go out to a potential job, and prepare an estimate of what Respondent Metro would bid to perform the particular job. The estimator would then sign a written bid on behalf of Respondent Metro. All three of Vincent's sons, Maurizio, Carlo V, and John, had authority to and did in fact sign checks on behalf of Metro Demolition.

On July 2, 2004 Respondent Metro posted the following notice at its Maspeth facility.

As of Thursday, July 1, 2004, Vincent Bordone is no longer a decision maker of Metro Demolition Contracting Corporation. The following are now decision makers on behalf of Metro Demolition Contracting Corporation.

1. Carlo Bordone
2. John Bordone
3. Maurizio Bordone

Banking and accounting will be done through Maurizio and Marisa Bordone.

Thank you.

Marisa Mangione (Bordone) and Desiree Baretto (Bordone), wives of Maurizio and John Bordone, were employed as clerical employees in the office, along with Joanne Dibiase, who was a relative of Mangione.

At all material times, Respondent Metro employed approximately six drivers, who drive trucks and transported the debris to dump sites throughout New York City, and delivered empty containers and transported full ones, to and from various customer jobsites. Respondent Metro employed Carlo III Bordone, Vincent Bordone's nephew as one of its six drivers.

Respondent Metro also employed a number of laborers, who performed demolition work at various jobsites, including the dismantling of any give space, knocking down walls, burning steel girders and loading containers. The number of laborers employed by Respondent Metro varied considerably, depending upon the work load at the time. Respondent Metro's laborers were represented by General Laborers Local 79, a constituent of the Mason Tenders District Council (MTDC). Respondent Metro's drivers were represented by Local 813.

Carlo Bordone V, in addition to his employment at Respondent Metro, ran his own company, Circle Carpentry LLC, out of the same address, and this company was a party to an independent collective bargaining agreement with MTDC.

Respondent Metro is a member of the Interior Demolition Contractor's Association (IDCA), a multi employer group, consisting of 12 or 13 contractors. Local 813 and MTDC are each party to separate collective bargaining agreements with IDCA, with Respondent Metro bound to each. With respect to the Local 813 unit, the IDCA negotiates the contract, with each

association member then signing its own, identical agreement.⁵

On June 17, 2004 MTDC notified Respondent Metro in writing, of its intention to strike based upon Respondent Metro's failure to make required benefit fund contributions.⁶ At around the same time, Jack Baiamonte, who was employed by Respondent Metro as a dispatcher, overheard John and Maurizio Bordone discussing with Detweiler the formation of Respondent Phantom. Shortly thereafter, several of Respondent Metro's trucks and containers were sanded down and repainted with Respondent Phantom's logo at their sides, all at Respondent Metro's Grand Avenue facility. Initially, when Respondent Phantom started operating late June or early July, the shares of the Company were put in the names of the wives of Maurizio and John Bordone (Marisa and Desiree). However, after Respondent Phantom ran into a problem with the Business Integrity Commission (BIC), they decided to transfer ownership to themselves. Thus on August 12, 2004, the stock certificates were issued to Maurizio and John Bordone, representing all of the shares of Respondent Phantom. Maurizio and John were also the sole directors of Respondent Phantom.

When Respondent Phantom first began operating, sometime in June of 2004, Baiamonte would dispatch employees employed by Respondent Metro both to jobs for Respondent Metro and for Respondent Phantom. If it was a job for Respondent Metro, Baiamonte would call Local 79 and ask for Laborers, Local 79 would refer laborers, who worked with some regular employees designated as foreman to perform the demolition work. Baiamonte would also dispatch the drivers, who were covered under the Local 813 contract.

If it was a job for Respondent Phantom, Baiamonte would not call Local 79 for laborers, since Local 79 had no contract with Respondent Phantom, but would dispatch the foremen who were also employed by Respondent Metro, and these foremen would obtain laborers, from sources other than from Local 79. The drivers employed by Respondent Metro would also perform driving tasks on Respondent Phantom's jobs.

On or about June 27, 2004, MTDC called a strike as promised in its prior letter, and Local 79 pulled all its members off all jobs for Respondent Metro. The very next day, Maurizio and John Bordone asked to meet with MTDC officials. They met at the office of Joseph Bianco, Field Representative of the MTDC. Maurizio and John Bordone informed Bianco that they were representatives of Respondent Phantom, and wanted to sign a collective bargaining agreement with the MTDC, enabling Respondent Phantom to perform demolition work on the same Respondent Metro jobs that MTDC had struck, and that Respondent Phantom intended to hire all of Respondent Metro's employees and supervisors, and to use Respondent Metro's equipment. Bianco began to discuss with the Bordone's Respondent Metro's obligations to pay their bills to the Funds. Maurizio and John initially would respond by referring to Respondent Metro as "we", before realizing the inconsistency of their position and switching to "they" when referring to Respondent Metro. Maurizio and John insisted that Respondent Phantom had nothing to do with their father's company but merely intended to hire Respondent Metro's employees and supervisors and use their equipment.

⁵ The latest contract between Respondent Metro and Local 813 runs from July 1, 2005 to June 23, 2008. The contract between the IDCA and the MTDC to which Respondent Metro was bound, runs from July 1, 2004 to June 30, 2009.

⁶ According to the letter, Respondent Metro last paid benefits to the Fund for the period ending September 17, 2003.

Bianco responded that MTDC was not interested in signing a contract with Respondent Phantom, because it was the Union's position that "Phantom was Metro", and Metro was trying to circumvent the agreement and its obligations to Local 79. Bianco told the Bordone's that the MTDC wanted to solve its problem with Respondent Metro, and if Respondent Metro paid its bills, the men would go back to work. Bianco asked the Bordone's to have their father call to set up a meeting to resolve their differences.

The very next morning, Bianco received a call from Carlo Bordone V. Carlo asked Bianco if Circle Carpentry, which was already under contract with Local 79, could begin to perform demolition work utilizing employees of Respondent Metro, at the same jobsites that Respondent Metro had been working at, prior to the strike. Bianco replied that MTDC would not permit such an arrangement, since in Bianco's view, Circle Carpentry would be assisting Respondent Metro in circumventing their obligations to the Union. Carlo V responded that he did not wish to get involved with his father's company, but that he (Carlo V) had a stand alone company for years. Carlo V added that he "was doing what any good son would do and try to help his father."

Notwithstanding MTDC's refusal to permit Respondent Phantom to perform Respondent Metro's work, the record establishes that Respondent Phantom began to operate on that basis, with Local 813 employees driving the repainted, former Respondent Metro Trucks for Respondent Phantom. Respondent Phantom performed numerous jobs throughout the fourth quarter of 2004, using employees of Respondent Metro. Additionally, Respondent Phantom's administrative and clerical staff including the Bordone brothers, Marisa Bordone (Mangione), and Joanne Dibiase were all employed by Respondent Metro. Dennis Halpern who as noted was employed by Respondent Metro as an estimator, performed that same function for Respondent Phantom, starting in June of 2004. In this regard, on October of 2004, Salavat Khusianov, an estimator employed by 3D, who is responsible for bidding out portions of jobs, on behalf of 3D, had a conversation with Halpern. Khusianov had previously dealt with Halpern as an estimator on behalf of Respondent Metro. On this occasion, Halpern handed Khusianov a business card reading Respondent Phantom, and containing Halpern's name. Khusianov asked Halpern why he was now working for Phantom. Halpern replied, "some business with unions."

The record also establishes that virtually all of Respondent Phantom's Laborers during the third and fourth quarter of 2004, were also employees of Respondent Metro.⁷

Additionally, Respondent Phantom is located at the same Grand Avenue facility as Respondent Metro, but pays no rent to Respondent Metro, although Respondent Metro owns the office portion of the facility.⁸ Respondent Metro pays for Respondent Phantom's utilities, such as gas, electric and water. Respondent Metro also gave Respondent Phantom "as a gift" Respondent Metro containers, trucks, and vans. Furthermore, Respondent Metro continued to furnish Maurizio and John Bordone health coverage, although they were co-owners of Respondent Phantom, Respondent Phantom paid for at least two vehicles leased to Respondent Metro, and Maurizio Bordone continued to be paid by Respondent Metro, as late as October of 2004.

⁷ This list consists of approximately 19 laborer employees, who worked for both companies.

⁸ The garage portion of the facility is owned by FB Realty, which is a company owned by Carlo V, Maurizio, and John Bordone, and another brother Fabio Bordone. Respondent Phantom pays no rent to and has no lease with FB Realty for use of the garage.

In the summer of 2004, Sean Campbell, business agent for Local 813, learned from his shop steward, that Respondent Metro painted several of its trucks black. Upon further investigation, Campbell learned that the name of Respondent Phantom had been painted on several of Respondent Metro's trucks. He then dropped off a copy of a Local 813 contract at Respondent's facility, for Respondent Phantom to sign. After Campbell left, Baiamonte observed John and Maurizio Bordone and Detweiler read the contract, laugh about it and place the contract in the paper shredder.

On July 22, 2004, Local 813 called a one day strike, and placed a picket line at Respondent Metro and Respondent's Phantom's Grand Avenue facility. On that same day, Donald Moss the attorney for Respondent Metro and Phantom telephoned Sylvester Needham, president of Local 813, and informed Needham that Vincent Bordone agreed to sign the contract on behalf of Respondent Phantom that afternoon. Needham notified Campbell of this conversation, and Campbell spoke to Vincent Bordone about the matter. Vincent Bordone told Campbell that he could not sign on behalf of Respondent Phantom, because his daughter-in-law, Desiree Barretto (John Bordone's wife) was the principal of that company and would have to sign the document. Baretto signed the contract, in the presence of Vincent Bordone and Campbell. Needham signed on behalf of Local 813 on July 23, 2004. The contract, by its terms, ran from July 1, 2002 to June 30, 2004, and was the identical contract, previously signed by Respondent Metro.

On the morning of the day of the strike, Detweiler telephoned Baiamonte, who was a member of the Local 813 unit, advising him that there was a strike and directed him to cross the picket line and go directly to the office. Baiamonte replied "I can't do that." Baiamonte drove to Respondent's premises, and joined his fellow workers on the picket like. During the one day of picketing, Maurizio, John and Carlo V, made comments to the striking drivers such as referring to them as "pieces of shit", and telling them that "good screwing us why are you doing this", and "we got money you don't. We can afford to stay out, you can't".

The next day, after the strike was settled, by Respondent Phantom signing the contract, the employees, including Baiamonte reported to work. Vincent Bordone informed Baiamonte that he would no longer be a dispatcher or work in the office, but that he would go back to becoming a driver.⁹ Vincent Bordone explained Respondent's decision to Baiamonte as follows" "you made you decision, you picked the team. You're out. You're back on the truck."

Thereafter, Baiamonte and the Local 813 unit members drove trucks for both Respondent Phantom and Respondent Metro. Supervisor Detweiler would inform unit drivers which company they were performing a job for, Respondent Phantom or Respondent Metro. The vehicles used for Phantom jobs, which had been repainted with Phantom's name on them, and except for one vehicle, all were previously owned by Respondent Metro.

Although Respondents Metro and Phantom settled their differences with Local 813, their dispute with MTDC continued. On August 13, 2004, the Trustees of MTDC Funds, and the MTDC itself, filed an action in District Court against Respondent Metro, based upon its failure to make fringe benefit contributions to the various Funds, and the failure to remit dues checkoffs, for the period from January 1, 2003 to June 30, 2004. The complaint alleges amounts due in excess of \$500,000, plus attorneys fees. On October 7, 2004, MTDC filed an amended complaint in that action, adding Respondent Phantom as a defendant, alleging in substance that Respondent Phantom and Respondent Metro are affiliated business and constitute a single

⁹ Baiamonte has previously worked as a driver, prior to being promoted to dispatcher.

employer.

5 On January 5, 2005, Carlo Bordone V, formed a new company, Respondent Circle to perform demolition services, out of the same Grand Avenue facility, where Respondents Metro and Phantom were located, as well as where Circle Carpentry, owned by Carlo Bordone V had its place of business. Within two months, by March of 2005, MTDC began to see an increasing number of requests for laborers by Carlo Bordone V's Circle Carpentry. Two employees employed by Respondent Metro, Phantom and Circle, Bogdan Tyborowski and Andrzej Chojnowski came to see Bianco, complaining about having lost their medical coverage, because Respondent Metro had not paid into the Funds. These employees told Bianco that they had worked for Respondent Circle. MTDC documents, such as work histories, show that a number of individuals who worked for Respondents Metro and Phantom, including Tyborowski, and Chojnowski, also worked for Circle Carpentry on or about March of 2005.¹⁰

15 During his conversations with the Respondent Metro employees, who told Bianco about their performing work for Respondent Circle, the employees showed Bianco pay stubs from Circle Carpentry which showed that they received only a "B" rate, which was significantly lower in terms of wages and benefits than Circle Carpentry's contract required to be paid.¹¹ Bianco then telephoned Carlo Bordone V, and asked him why he was paying these employees the "B" rate. Carlo V responded that he thought that he could pay the employees "B" rate, because the employees were performing demolition work. Bianco informed Carlo V that his contract between Circle Carpentry and the MTDC did not allow the "B" rate to be paid, and that he was underpaying the employees in both wages and benefits. At some point, undisclosed in the record, the Trust Funds sued Respondent Circle and Circle Carpentry in Federal Court, for the failure to pay proper benefits and wages to its employees under the contract between Circle Carpentry and MTDC. The Funds obtained a judgment against Circle Carpentry and Respondent Circle for over \$100,000.

30 Respondent Circle continued to perform demolition work throughout 2005, using Respondent Metro employees, and at least one truck, owned by Respondent Metro. Baiamonte testified credibly that he began to receive orders from Carlo Bordone V to dispatch workers employed by Respondent Metro, to work on jobs for Respondent Circle, performing demolition functions.

35 By April of 2005, the MTDC strike against Respondent Metro, had impacted Respondent Metro's operations, so that was relegated to performing merely carting work; i.e., transporting debris and other refuse from a customer's place of business to a waste station, rather than also performing actual demolition work.

40 In or about May of 2005, Local 813 and the IDCA began negotiations for a successor contract. By June of 2005, the parties reached an agreement. Initially, Respondent Metro refused to sign the new contract with Local 813. Thus, on August 8, 2005, Local 813 conducted a one day strike at Respondent Metro. This strike resulted in Vincent Bordone signing the new contract on behalf of Respondent Metro. This contract which was signed by Bordone on August 8, 2005, and by Local 813 on August 10, 2005, was effective from July 1, 2005 to June 30,

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¹⁰ General Counsel subpoenaed payroll records concerning the identity of Respondent Circle's principals, managers, employees, interchange of vehicles between it and other Respondents, jobs it performed, sources of its start up capital and other information. No documents were provided by Respondent Circle.

50 ¹¹ The B rate was part of Respondent Metro's contract with MTDC.

2008. On the same date that Local 813 obtained Vincent Bordone's signature on a contract for Respondent Metro, Campbell furnished Bordone a copy of an identical contract to be signed by Respondent Phantom. Campbell asked Vincent Bordone to sign this contract as well, but Vincent Bordone stated that Desiree Baretto (John Bordone's wife), who signed the prior
 5 contract on behalf of Respondent Phantom, needed to sign this contract as well, but she was allegedly not there at the time. I note that as of this date, ownership of Respondent Phantom has been transferred to John and Maurizio Bordone. Vincent Bordone did not disclose this fact to Campbell. Vincent Bordone did say to Campbell however, "Why should I sign this anyway, the company may be going out of business and you know what if I don't want to be a part of the Union any more?" Campbell reminded Bordone that union membership is a decision for
 10 employees to make. Bordone responded, "Well, it's not fair, you know, I can't make any money this way and you know, what's the difference." Respondent Phantom failed to sign the new contract as submitted to it by Campbell.

On July 2, 2005 Bianco sent a letter to Carlo Bordone V. The letter, which was
 15 subsequently signed by Carlo Bordone V, dated 7/7/05, confirmed that Respondent Circle and Circle Carpentry are a single employer, that Respondent Circle is performing work within the Union's Jurisdiction, and that both companies are jointly and severally liable for each others obligations and liabilities, under the contract between Circle Carpentry and the MTDC.

Meanwhile, the MTDC action against Respondents Metro and Respondent Phantom continued. On October 21, 2005, United States District Court Judge Richard Berman entered a Consent Judgment against Respondent Metro, in the amount of \$732,631.15 which covered unpaid fringe benefit contributions, interest, liquidated damages, audit fees, and attorney's fees. The Court retained jurisdiction over Respondent Phantom, and subsequently on January 30,
 25 2006, issued a default judgment against Respondent Phantom for the same amount of \$732,631.15. Concurrent with the issuance of the October 2005 Consent Judgment, Baiamonte began to see as many as 100 of Respondent Metro's containers being repainted, each with Respondent Circle's logo on the side.

On or about November 14, 2005, Vincent Bordone announced to employees that Respondent Metro was suspending operations. Employees Baiamonte and Angrisani contacted Campbell, who promptly drove over to the Grand Avenue facility. Vincent Bordone informed Campbell that he had to shut the company down because he had no money, and that the IRS and the Laborers had seized his bank accounts, causing his check to his insurance company to
 30 bounce, leaving his trucks uninsured.

Within a few days, Angrisani and Baiamonte were recalled to work, but were now told by Maurizio Bordone that they now work for Respondent Phantom. Prior thereto, the employees had been paid by Respondent Metro, although as noted above, at times they would be
 40 performing work for Respondent Phantom. After their return to work in mid November, they received checks from Respondent Phantom. At the time, the employees were servicing essentially the same customers as they had when they worked for and were paid by Respondent Metro.

At the conclusion of the pay period for the next week, Thanksgiving week, employees again received paychecks from Respondent Phantom, but without their contractually required holiday pay, and without deducting dues for Local 813. Angrisani and Baiamonte spoke to Vincent and John Bordone about the issue, a conversation that subsequently was joined by Carlo Bordone V. Vincent Bordone told the employees that Respondent Metro was out of
 50 business and had no money, that the employees now work for Respondent Phantom, and the decision on whether to give employees holiday pay was to be made by his sons. John Bordone

informed the employees that Respondent Phantom is a non union company, was not paying holidays, but would continue to pay them union scale. John Bordone also told the employees to call Campbell and he would explain the situation to them. Baiamonte then complained to Vincent Bordone about the matter and showed Vincent Bordone his paycheck. Vincent stated
 5 "Whatever my son says, it is." Vincent added, "If you're not happy with the situation go call the Union and go find another job." Carlo Bordone V at that point told Baiamonte to keep his mouth shut, and not cause problems, if he wanted to work for Respondent Circle. Baiamonte replied that he wasn't causing any problems, and he liked working for the Bordone's. Carlo Bordone V responded "In the past and certain things, the way you handle yourself and speak about ...you know, you're a union man, you always had the union behind you, you're causing more problems
 10 than good."¹²

Angrisani and Baiamonte called Campbell to report what had happened. Campbell contacted Vincent Bordone and complained to him about what he had been told by the employees. Vincent Bordone replied that he had nothing to do with Respondent Phantom.
 15 Campbell replied that they had been down this road before, and that both of them know that Respondent Metro and Respondent Phantom are the same company doing the same work, and operating the same trucks. Campbell added that if he closed Respondent Metro, and continued to operate under Respondent Phantom, the employees should be paid their holiday pay and have their benefits continued. Vincent Bordone replied again that he had nothing to do with
 20 Respondent Phantom.

On or about December 7, 2005 Angrisani, received a call from Vincent Bordone over the radio in his vehicle. Vincent Bordone began the conversation by calling Angrisani and Baiamonte "pieces of shit because you want to call the Union and sign a contract. That's it now,
 25 were going to go out of business." Vincent Bordone added that the Union had come down and "broke his balls", and that "Now were going out of business, there's going to be no more, that's it. Phantom is going out of business". Angrisani protested that it was not nice to call the employees "pieces of shit". Vincent Bordone replied, "Well, you guys want to call the Union, you did it to yourself, that's it, that's it we're going out of business." When Angrisani reminded
 30 Vincent Bordone that management had told the employees to call the Union, Vincent Bordone asked, "Who told you to call the Union?" Angrisani answered that John had informed the employees to call Campbell and that Campbell "knows all about this", and that Vincent Bordone was standing there at the time. Angrisani added, "So Vinnie we were doing what we were told to do, call the Union." Vincent Bordone concluded the conversation by reiterating that "We're
 35 out of business", and adding "No more work".

On or about December 6, 2005, Baiamonte was driving a truck, but was unable to make the delivery, because Respondent owed money. Baiamonte called the office and reported these developments to Maurizio Bordone. Maurizio informed Baiamonte to punch out and go
 40 home. Baiamonte asked if he did anything wrong. Maurizio Bordone replied, "Have a nice day." Three days later, Baiamonte went to the Grand Avenue facility to pick up his paycheck. Maurizio Bordone told Baiamonte that he would not be working any longer, since Respondent Phantom is a "non union" company, and that he wanted to give other drivers a chance to work. Maurizio Bordone added "If you're not happy with the situation go call the Union and find
 45 another job". Baiamonte also spoke with Vincent Bordone, who was wearing a Circle Jacket at the time. Vincent Bordone stated, "you make your bed, you have to lie in it and the company is out of business and you should move on and go find another job". Baiamonte then went

50 ¹² During this conversation, both Carlo Bordone V and Vincent Bordone were wearing Circle Jackets.

upstairs and asked Carlo Bordone V about working for Respondent Circle, Carlo Bordone V replied "We'll be in touch. Don't call us, we'll call you, adding that he (Carlo V) does not know if he's "going to sign a Union contract".¹³

5 Several weeks after the terminations of Baiamonte and Angrisani, Carlo Bordone V wrote to Bianco, in a letter dated 12/22/05, asking for a meeting to discuss Respondent Circle entering into a contract with MTDC, enabling Respondent Circle to utilize the lower demolition "B" rate. Bianco and Carlo Bordone V met to discuss Carlo Bordone V's request. Carlo V told Bianco that his core business was still carpentry, but he had started Respondent Circle to get into the demolition business. He indicated to Bianco that he was just "funding" Respondent
10 Circle, and the day to day operations were being handled by three or four "Polish" employees who had been foreman for Respondent Metro. Carlo added that he had grown up in the demolition business while working for his father,¹⁴ and that he knew the demolition business. However, Carlo V stated to Bianco that needed a "B" rate on his contract, in order to be competitive in the industry. Bianco replied that it was clear to him that Carlo V was merely
15 assisting his father and Respondent Metro avoid its obligations to the Union. Bianco added that although Circle Carpentry had a contract with the MTDC for many years, it utilized very little of the Union's labor. However, after the MTDC work stoppage, Carlo V formed Respondent Circle, and began to use employees from Respondent Metro to perform demolition work. Carlo
20 Bordone V insisted that he had nothing to do with the father's business and that Respondent Circle was a separate company. However, Carlo Bordone V conceded that he is a "good son" and "It was difficult to say no to my father". Bianco told Carlo V that the Union would not sign a contract with Respondent Circle, with a "B" rate, unless Respondent Metro paid its obligations to the MTDC under its contract.

25 In late December of 2005, Angrisani observed Carlo III Bordone, who had previously driven for Respondent Metro and Phantom, driving a truck with the name of Respondent Circle on it. On or about December 30, 2005, Angrisani saw Frank Lapis, another former driver for Respondent Metro, driving a former Metro truck (which Angrisani used to drive), now painted over with the Circle Logo on it. In January of 2006, Angrisani saw another former driver for
30 Respondent Metro, Daniel Jerez driving another former Respondent Metro truck, which had also been repainted with the Circle logo. Angrisani stopped Jerez and asked if he could retrieve his sunglass case which Angrisani had left in the glove compartment, when he had previously driven that truck, prior to his discharge from Respondent Metro. Jerez agreed and Angrisani found his sunglass case in the glove compartment. Further, Campbell after the discharges of
35 Angrisani and Baiamonte observed former employees of Respondent Metro and Phantom, Jerez, Lapis and Carlo Bordone III driving trucks for Respondent Circle.

40 In February of 2006, Vincent Bordone telephoned Angrisani and asked if he was working. Angrisani replied "here and there", but nothing steady. Vincent Bordone replied, "we were going to consider taking you back, but you went to call the Union now and you want to have a lawsuit against Circle, and now we decided we're not going to call you back". Vincent then called Angrisani a "mother fucker". Angrisani then hung up the phone. Vincent Bordone called back a few minutes later, and after Angrisani stated that he would not talk to Bordone, if he was going to curse, Bordone began to talk nice and explained that he is a million dollars in
45 debt, and that now that he (Angrisani) had sued Respondent Circle,¹⁵ that would not happen.

¹³ Vincent Bordone admitted during a conversation with Campbell in 2006 that both Angrisani and Baiamonte had been terminated by Respondent Phantom.

¹⁴ In fact Carlo V had been Vice President and a 50% shareholder of Respondent Metro.

50 ¹⁵ Angrisani never sued any of the Respondents or filed any charges. However, on January
Continued

(Angrisani's reinstatement). Vincent Bordone also brought up the August 8, 2005 strike in which Angrisani participated. Bordone stated, "You like to stand on that picket line, huh? You like to have the sign against Metro Demolition and everything." Angrisani protested that he was not the only one standing on the picket line. Bordone responded, "you were the one—you had a big smile on your face. You want to be a Union?...You want to take part in all that Union thing, I don't like that". The conversation then turned to Respondent Circle. Vincent Bordone stated that it's a different company from Respondent Metro. Angrisani replied that its all "one company, everybody on the street knows that Circle took over Metro and you sent letters to all your contractors stating that it changed names and this is the new phone number". Vincent Bordone did not deny any of Angrisani's assertions, and simply answered, "Oh, I see you know everything, Joe".

As I have related above, MTDC's litigation against Respondent Phantom resulted in a default judgment on January 30, 2006. In December of 2005, Respondent Phantom had bid for a job for 3D Laboratory at a townhouse on 24th Street in Manhattan. 3D's Khusianov awarded the job to Respondent Phantom. Shortly thereafter, Dennis Halpern came to the jobsite. Halpern informed Khusianov that Respondent Phantom was changing its name to Respondent World Class and that they were changing the name of the company due to problems related to the Union. On December 12, 2005, Halpern presented another bid to 3D for the same job that had been previously awarded to Respondent Phantom, on behalf of Respondent World Class. The address on the letterhead for Respondent World Class was 11-99 47th Avenue, in Long Island City, New York. The contract was awarded to Respondent World Class, who performed the job on December 20, 2005.

Shortly thereafter, from February through April of 2006, Angrisani and Baiamonte saw trucks formerly used by Respondent's Metro and Phantom, repainted with Respondent World Class logo on them. In February of 2006, Baiamonte saw one such truck, parked at the intersection of Steinway Street and 20th Avenue in Astoria, New York. In April of 2006, Angrisani saw John Bordone driving a truck with a World Class logo on the side, and that this truck had previously been driven by Angrisani when he was employed by Respondent Metro, and by Respondent Phantom.

In March of 2006, Baiamonte saw Vincent Bordone driving a Respondent Circle truck and wearing a Circle jacket. Baiamonte recognized this truck as one that had been driven by Angrisani while working for both Respondent's Metro and Phantom. On or about May 9, 2006, Angrisani saw former co-worker Frankie Lapis at a dump site, driving a truck with no name on the side, but with a container with a Circle logo. Angrisani recognized this truck as one that he drove while employed by Respondent Metro. Angrisani spoke to Lapis, who informed Angrisani that he (Lapis) was a foreman for Respondent World Class, but was upset that on that morning, Vincent Bordone had told him that he (Lapis) was going to drive for Respondent Circle that day, while Vincent Bordone would be the foreman on Respondent World Class job.

Sometime in the spring of 2006, Angrisani heard from some friends that Respondent Circle's name had been removed from the trucks at the Respondent's Grand Avenue facility. When he arrived at the facility, he noticed that the canopy above the office, which originally had the name of Respondent Metro on it, and then subsequently had been changed to Respondent Circle, was now changed once more, this time to Respondent World Class.

17, 2006, Local 813 filed charges in Case No. 29-CA-27375 against all four Respondents, alleging them to be single employer's and alter ego's, and alleging the unlawful discharges of Angrisani and Baiamonte.

Respondent World Class was incorporated on November 17, 2005, with Joanne Dibiase as the sole shareholder. However on July 26, 2006 all the shares of Respondent World Class were transferred to Maurizio Bordone. Respondent World Class filed an application for an exemption from licensing requirement with the Business Integrity Commission, (BIC), which listed Respondent World Class's address as the Grand Avenue facility, and lists Maurizio Bordone as the Company's president and the 100% owner of all of Respondent's shares. The document also lists Dibiase as the former president and sole shareholder from November 17, 2005 to July 26, 2006, when it was located in Long Island City.

On or about August 26, 2006, Campbell was at the Grand Avenue facility, having a discussion with another employer located at that facility. He observed Vincent Bordone talking to some workers on a truck formerly owned By Respondent Metro, with no logo on it. Campbell approached Bordone, and asked "What are you doing?", since Bordone had previously informed Campbell that he wasn't operating. Bordone replied that he was just trying to get his containers off the street, so he could pay his creditors, including Local 79, Local 813 and the IRS.

About a month later, on September 21, 2006, Campbell was at the Grand Avenue facility, once again, and this time he saw Vincent Bordone next to the very same former Respondent Metro truck, that Campbell had seen a month before. However, now the truck read Respondent World Class on its side. Campbell heard Bordone giving instructions to the employees regarding a job site. Campbell again approached Bordone, and reminded him that he had told Campbell that he wasn't operating a business, and now "I see you here with World Class". Vincent Bordone answered, "I got nothing to do with this company, this is my son's company. I'm just trying to help out". Campbell then proceeded to follow this truck and photograph it while the truck was at a gas station. The photographs taken by Campbell show the license plate to be 90891-JV and the World Class logo on the side of the truck. Auto Track documents for the vehicle show it as registered to Respondent World Class, as well as a vehicle identification number as IFV3EFAD1TL716058. A review of the roster of vehicles submitted to the BIC by Respondent Metro, shows that this vehicle once belonged to Respondent Metro. No evidence was adduced by Respondents to explain this transfer, despite the fact that production of such information was requested by General Counsel in subpoenas to the Respondents. Further, of the seven trucks or trailers that were registered to Respondent World Class, three of them were listed as owned by Respondent Metro in their report to the BIC, signed on December 7, 2004 by Carlo Bordone V on behalf of Respondent Metro.¹⁶ The record also establishes that a truck with a Vin number of 1WUCCJEOHU30285 was registered to Respondent Phantom on September 21, 2006, but had previously been listed as owned by Respondent Metro as of December 7, 2004.

Angrisani, who obtained another job in the industry, over the last few months prior to the trial, observed former Respondent Metro employees Frankie Lapis and Mike Puccio, driving Respondent Phantom and Respondent World Class trucks, which Angrisani recognized as trucks formerly driven by Angrisani while he was employed by Respondent Metro.

In February of 2007, Baiamonte was at the Grand Avenue facility. He observed that the awning at the facility now said "World Class". He also noticed at that time, a truck being driven by Vincent Bordone. Baiamonte recognized this vehicle as one that he had previously seen with Metro and Circle logo's on it, at various times, in the past.

¹⁶ Vehicle Vin numbers 4V25CBJE3JU501641, IM2AG11C25M015755, IFV3EFAD1TL716058.

Gerald Kraft, a representative of Local 79, while investigating the relationship between Respondent Phantom and Respondent World Class, took a video and photographs of events, describing activities of trucks at various jobsites in Manhattan. Kraft also testified to his observation on that day. This evidence established that on a truck with the name of Respondent World Class on it, the letters spelling out Respondent Metro's name have been peeled off. Further, a driver in the course of an hour on one day, first drove a Respondent Phantom truck and then a Respondent World Class truck to and from the same jobsite. Kraft had a conversation with this driver, and asked if the driver drove for Respondent Phantom or Respondent World Class. The driver responded "They are the same company". The evidence also showed a Respondent Phantom demolition truck, dumping Respondent World Class containers, and other Respondent Phantom trucks driving around with Respondent World Class containers on the back of the Respondent Phantom truck.

Further, on February 28, 2007, a letter was sent to Local 79, by the attorney for Capital Builders Group (BGI). This letter states that Local 79 had placed a rat on Lexington Avenue, in front of the main entrance to the Marriott Hotel, where CBG was the general contractor for a renovation project. The letter states that two representatives for Local 79 had visited the jobsite, and "threatened labor activity if Local 79 was not used to perform the demolition work".

The letter also indicates that a Reserved Entrance had been established at 140 E. 49th Street, where in said location is used by Respondent World Class and or Respondent Phantom. The letter adds that Respondent's World Class and Phantom do not use any other Marriott entrances, and states that activity on behalf of Local 79 in furtherance of its dispute with said sub-contractors must be limited to that entrance.

Finally, the MTDC filed an arbitration against Respondent Circle, (as well as Circle Carpentry and Carlo Bordone V individually), alleging that these entities are liable as successors and or alter egos to Respondent Metro, for all obligations to MTDC including the amounts due from Respondent Metro under the consent judgment signed and approved by Judge Richard Berman on October 12, 2005.

The hearing before arbitrator Joseph Harris opened on June 12, 2006. Respondent Circle was represented by counsel, Carol Sigmond, Esq., at the hearing.¹⁷ On that day the Union presented the bulk of its case, calling one witness and introducing 19 exhibits. Sigmond cross-examined. The hearing was then adjourned, and after several scheduling conflicts, the parties agreed on a date of December 12, 2006 to resume. On November 7, 2006, attorney Sigmond notified the arbitrator that she was withdrawing as counsel, due to "lack of cooperation" from Respondent Circle.

Although the arbitrator urged Carlo Bordone V to attend the resumption of the hearing on December 12, 2005, Carlo Bordone V chose not to do so. The hearing resumed on that date, the Union presented three additional exhibits and presented closing arguments. Arbitrator Harris issued his decision on December 16, 2006, finding that Respondent Circle Carpentry and Respondent Metro were alter egos of each other. His decision was based on the following evidence, as set forth in his decision as follows:

¹⁷ Sigmond was also the attorney for Respondent Circle in the instant case, and filed an untimely answer on behalf of Respondent Circle to the Complaint herein.

Evidence

5 The Parties stipulated that 55-14 Grand Avenue, Maspeth, NY is the address for Metro Demolition Contract Corp. The address for Circle Carpentry LLC is 56-20 Grand Avenue, Maspeth, NY. The two are next door to each other. The entire property is owned by Carlo Bordone's father, Vincent, who is the president of Metro Demolition.

10 Carlo Bordone V is President of Circle Carpentry and Vice President of Metro Demolition. As Vice President of Metro Demolition Contracting Corp., Carlo Bordone V signed a New York City Trade Waste Commission "Application for Exemption from Licensing Requirements for Removal of Demolition Debris" on August 30, 1996 (U-7). He also signed a "Roster of Vehicles" for Metro Demolition on December 7, 2004 (U-8). That roster has ten Class II vehicles on it, including one with a New York City Business Integrity Commission (BIC) plate no: R-3345. However, that truck is registered to Circle Interior Demolition, BIC (U-19). However, Circle (sic)

20 Circle Carpentry LLC's superintendent, Andrej Chojnowski, consistently worked for Metro Demolition (U-10, U-11, U-12, and U-22) during the past several years.

25 As seen above, the undisputed evidence shows common ownership and supervision of Circle Interior Demolition and Metropolitan Demolition. It also shows common use of permits, licenses, and equipment. The companies operate as alter egos.

30 The arbitrator therefore found Respondent Circle, as well as Circle Carpentry and Carlo Bordone V jointly and severally liable for the consent judgment against Respondent Metro of \$782,631.15, plus attorney fees, and interest.

IV. ANALYSIS

A. ALTER EGO AND OR SINGLE EMPLOYER STATUS OF RESPONDENT METRO AND RESPONDENT PHANTOM

35 In assessing whether two facially independent employers are alter egos, the Board considers whether the two entities have substantially identical ownership, management, supervision, business purposes, operations, equipment, premises and customers. *Liberty Source W, LLC*, 344 NLRB No. 137 ALJD Slip op. at 10 (2005); *enfd.* 181 LRRM 2449 (3rd Cir. 2007); *Advance Electric*, 268 NLRB 1001, 1002 (1984), as well as the nature and extent of the negotiations surrounding the transaction. *Fugazy Continental Co.*, 265 NLRB 1301, 1302 (1982), *enfd.* 725 F.2d 1416 (D.C. Cir. 1984). The Board also considers whether the second company was created in order to allow the old company to evade responsibility under the Act. *Cadillac Asphalt Paving Co.*, 349 NLRB No. 05, Slip op. at 3 (2007); *CoFab, Inc.*, 322 NLRB 162, 163 (1996), *enfd. sub nom NLRB v. DA Clothing Co.*, 159 F.3d 1352 (3rd Cir. 1998); *Fugazy, supra*, at 1302, 725 F2d at 1419. Also of significance is whether there was a minimal hiatus between the cessation of one entity and the formation or commencement of another. *CoFab, supra*, at 163. No single one of these factors is determinative of alter ego status and not all the indicia need be present for the Board to conclude that a finding of alter ego status is appropriate. *Liberty Source, supra*; *Fugazy, supra*; *Cadillac Asphalt, supra*. If an employer is found to be an alter ego of another employer that has a contract with a Union, the alter ego is

bound by that Union contract. *Cadillac Asphalt, supra; Standard Commercial Cartage, Inc.*, 330 NLRB 11, 14 (1999).

5 In applying the above criteria to the facts herein, I conclude that the evidence is compelling that Respondent Phantom is an alter ego of Respondent Metro. Here Vincent Bordone and his son Carlo Bordone V were owners of the Respondent Metro. Respondent Phantom was owned by Vincent's sons Maurizio and John. However, it is well settled that substantially identical ownership is established where the two enterprises are owned by members of the same family. *Liberty Source, supra; Cadillac Asphalt, supra; Industrial Turnaround Corp.*, 321 NLRB 181, 187 (1996); *enfd. in relev. part.* 115 F.3d 248, 252 (4th Cir. 10 1977); *Goldin-Feldman, Inc.*, 295 NLRB 359, 372 (1989); *Fugazy, supra*, 725 F2d at 1420.

The record also establishes that Vincent Bordone, although not an owner of Respondent Phantom, continued to maintain a high level of control of the operations of Respondent Phantom, notwithstanding the fact that his sons were the owners of that company. Thus it was 15 Respondent Metro's attorney who informed Local 813's representative, that Vincent Bordone would sign the Local 813 contract on behalf of Respondent Phantom. When Campbell confronted Vincent Bordone about this matter, Vincent told Campbell that his daughter-in-law Desiree Baretto (John Bordone's wife), was the principal of the company and would have to sign on behalf of Respondent Phantom. Vincent Bordone instructed Baretto to sign the contract on 20 behalf of Respondent Phantom, and she did so in Vincent's presence.

Further, in August of 2005, after the expiration of the contracts with Local 813, Vincent Bordone signed on behalf of Respondent Metro, after a one day strike by Local 813. When 25 Campbell asked Vincent to sign the contract on behalf of Respondent Phantom, Vincent again informed Campbell that Baretto would have to sign on behalf of Respondent Phantom, but she wasn't there at the time.¹⁸ Vincent did inform Campbell as follows, "Why should I sign this anyway, the company may be going out of business and you know what I don't want to be part of the union any more." When Campbell reminded Vincent that union membership is a decision for employees to make, Vincent retorted "well, it's not fair, you know, I can't make any money 30 and you know, what's the difference".

Additionally, when the one day strike ended in 2004, it was Vincent Bordone who informed Baiamonte that he would no longer be a dispatcher for Respondents, and would go 35 back to becoming a driver for both entities. Furthermore, shortly after Baiamonte and Angrisani complained to Local 813, about Respondent Phantom's failure to adhere to the terms of the contract, Vincent Bordone terminated Angrisani and informed him that Respondent Phantom was going out of business, and there would be no more work, because the employees had complained to Local 813. It is obvious from the above evidence, that Vincent Bordone retained 40 substantial control over the operations of Respondent Phantom, although his sons were the nominal owners of that entity. *Liberty Source, supra*, Slip at 10; *All County Electric*, 332 NLRB 863, 867 (2000); *Industrial Turnaround, supra*, at 187; *Advance Electric, supra*, at 1003.

Moreover, even apart from Vincent Bordone's control over both entities, the supervision and management of both companies were identical. In June of 2004 Vincent Bordone posted a 45 memorandum to employees of Respondent Metro stating that his sons Maurizio, John and Carlo V were all "decision makers" for Respondent Metro. The evidence discloses that employees were directly supervised by Maurizio and John Bordone while they were employed by

50 ¹⁸ I note that by that time, Baretto was no longer owner of Respondent Phantom, since ownership had been transferred to John and Maurizio Bordone.

Respondent Metro, as well as when they worked for Respondent Phantom. At that time and thereafter, Local 813 drivers were also supervised by Detweiler for both companies, drive trucks for both companies, but were paid in accordance with the Local 813 contract, while they were on Respondent's Metro's payroll.

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Turning to the factors of business purposes, operations, equipment and premises, it is clear that both entities were engaged in the identical business of performing demolition work, shared the same facilities, for which Respondent Phantom paid no rent, and Respondent Phantom operated using trucks given to it as a "gift" from Respondent Metro. These trucks were sanded down and repainted with Respondent Phantom's logo. *Advance Electric, supra* at 1003. Thus the failure to observe any business formalities in connection with these transactions, demonstrates a lack of arms-length relationship between the companies, and is a substantial indication of alter ego status. *Advance Electric, supra, Fugazy, supra* at 1302. Further, the only employees employed by Respondent Phantom also worked or previously worked for Respondent Metro. Finally, the evidence discloses that Respondent Phantom served the same customers, previously serviced by Respondent Metro.

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Finally, and perhaps most significantly, the evidence discloses compelling evidence that the formation of Respondent Phantom was motivated by a desire of Respondent Metro to avoid its union obligations. This in 2004, Respondent Metro fell substantially behind in its contractual obligations to MTDC, resulting in a strike by MTDC against Respondent Metro on June 27, 2004. The very next day, Maurizio and John Bordone met with officials of MTDC on behalf of Respondent Phantom, requesting the opportunity to sign a contract with MTDC and use Respondent Metro's employees and equipment to perform work on Respondent Metro jobs, struck by MTDC. During this conversation, Maurizio and John Bordone several times, referred to Respondent Metro as "we", before realizing the inconsistency of their position that the companies were separate, and switching to "they" when referring to Respondent Metro.¹⁹ This evidence, as well as the timing of Respondent Phantom's formation, in the midst of Respondent's Metro's dispute with MTDC, over Respondent Metro's failure to adhere to its contractual obligations to MTDC, is substantial proof of alter ego status between the two companies. *CoFab Inc., 322 NLRB 162, 163-164 (1996); Fugazy, supra at 1301; Advance Electric, supra, at 1003.*

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Further evidence of unlawful motive in connection with the activation of Respondent Phantom, can be found in Respondents' actions in November of 2005, when they purportedly "shut down" Respondent Metro. In August of 2005, after a one day strike, Respondent Metro executed a renewal contract with Local 813, which by its terms ran from July 1, 2005 to June 30, 2008. However, Respondent Phantom did not sign the new contract, although requested to do so by Campbell, and despite the fact that Respondent Phantom had executed the prior contract with Local 813. It is significant then when Campbell requested that Vincent Bordone sign the contract on behalf of Respondent Phantom, Vincent falsely told Campbell that Desiree Baretto, who had signed the prior contract, needed to sign this contract as well, and was not there at the time. This statement was untrue, since the ownership of Respondent Phantom had been transferred to Vincent's sons Maurizio and John, back in 2004. Vincent's further comments to Campbell, questioning why Respondent Phantom should sign the contract, and stating that Respondent Phantom "can't make any money this way", i.e. under the terms of the contract, is a prelude to Respondent Metro's decision 3 months later, to announce that Respondent Metro was shutting down, and transferring Respondent Metro's employees and

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¹⁹ See, *Johnstown Corporation*, 313 NLRB 170, 171 (1993) (Board relies on the use of word "we" by principals of entities in establishing alter ego status).

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equipment to Respondent Phantom. It is therefore clear, and I find that this action was motivated by Respondent Metro's desire to avoid its contractual obligations to Local 813, and is further demonstrative of the alter ego status of Respondents Metro and Respondent Phantom.

5 Finally, I also rely upon the statements made by Dennis Halpern to Salavat Khusianov, a representative of 3D, a customer of both Respondent Metro and Respondent Phantom. In October of 2004, Halpern who was employed by Respondent Metro as an estimator,²⁰ and had previously dealt with Khusianov, handed Khusianov a business card reading Respondent Phantom and containing Halpern's name. Khusianov asked Halpern why he was now working for Respondent Phantom. Halpern replied, "Some business with Unions". I conclude that this statement of Halpern constitutes an admission against Respondents, that the motivation behind the change from Respondent Metro to Respondent Phantom, was to avoid Respondent Metro's union obligations, and supportive of my previous findings, that the obligations involved were Respondents dispute with MTDC.

15 Although Halpern was not an officer, owner or a supervisor of Respondent Metro, his duties and responsibilities as an estimator, include estimating prices on jobs, and signing and negotiating bids on behalf of Respondent. He is therefore a managerial employee. *Aeronica, Inc.*, 221 NLRB 326, 328 (1975); *General Dynamics*, 213 NLRB 851, 862 (1974); *Enclosure Corp.*, 225 NLRB 629 fn.2, 641 (1976). As a managerial employee, Respondent Metro is responsible for his conduct and his statements, as long as these activities occurred in connection with his normal functions, which is clearly the situation here.

25 Further, even apart from Halpern's status as a managerial employee, I find him to be an agent based on the doctrine of apparent authority. The Board applies the ordinary common law principles of agency, and it has been held that "when applied to labor relations, however, agency principles must be broadly construed in light of the legislative policies embedded in the Act". *Longshoremen ILA (Coastal Stevedoring Co.)*, 311 NLRB 412, 415 (1993); *Longshoremen Local 1814 v NLRB*, 735 F.2d 1384, 1394 (D.C. Cir. 1984). The applicable standard is detailed in *Allegany Aggregates*, 311 NLRB 1165 (1993).

30 In determining whether a person is acting as the agent of another, the Board applies the common law principles of agency as set forth in the Restatement 2d of Agency. See *Dentech Corp.*, 294 NLRB 924 (1989); *Service Employees Local 87 (West Bay Maintenance)*, 291 NLRB 82 (1988). Thus, agency may be established, inter alia, under the doctrine of apparent authority, when the principal's manifestations to a third party supply a reasonable basis for the third party to believe that the principal has authorized the alleged agent to do the acts in question. *Id.* As the Board observed in *West Bay Maintenance*, "either the principal must intend to cause the third person to believe that the agent is authorized to act for him, or the principal should realize that this conduct [the manifestation] is likely to create such belief". 291 NLRB at 83.

45 In applying this standard here, Respondent Metro by authorizing Halpern to estimate, bid and negotiate jobs on its behalf, supplied a reasonable basis for 3D to believe that Halpern's statements as to why Respondent had changed it's name from Respondent Metro to Respondent Phantom were accurate, and authorized by Respondents.

50 ²⁰ In that connection, the record reveals that Halpern estimated the cost of job, and prepared, signed and negotiated bids on behalf of Respondent Metro with customers.

Accordingly, I conclude that Halpern's comments to Khusianov were admissions against Respondents, and constitutes further support for my conclusion that Respondent Phantom and Respondent Metro were and are alter egos of each other.

5 Based upon that finding, I further conclude that since on or about December 7, 2005, Respondents withdrew recognition from Local 813 as the collective bargaining representative of its employees and ceased complying with its collective bargaining agreement with Local 813, and has therefore violated Section 8(a)(1) and (5) of the Act.²¹

10 The Complaint alleges and General Counsel also contends alternatively, that Respondents Metro and Phantom are a single employer. However, in view of my findings above that these companies are alter egos, a finding of single employer status between the corporations is unnecessary and superfluous. Therefore, since there would be no substantial affect on the remedy, should I decide the single employer issue, I shall make no finding as to that complaint allegation. *Crossroads Electric*, 343 NLRB 1502 (2004); *Johnston Corp.*, *supra*,
15 at 170 (1993).

B. ALLEGED UNLAWFUL COERCION OF AND TERMINATIONS OF EMPLOYEES ANGRISANI AND BAIAMONTE

20 In the late November of 2005 employees Angrisani and Baiamonte, who had been transferred from Respondent Metro to Respondent Phantom's payroll, complained to Vincent and John Bordone, about Respondent's failure to pay them for holiday pay for the Thanksgiving holiday, as required in the Local 813 contract. The employees were told they were now working for Respondent Phantom, which is a non-union company, and would not pay employees for
25 holidays. Vincent Bordone added: "If you're not happy with the situation, go call the Union and go find another job". A similar comment was made by Maurizio Bordone to Baiamonte, after the latter complained about the lack of work, when Maurizio told Baiamonte that "If you're not happy with the situation go call the Union and find another job". It is well settled that such statements to employees, inviting union adherents to quit or seek other employment are coercive, and
30 violative of Section 8(a)(1) of the Act. *North Atlantic Medical Services*, 329 NLRB 85, 93 (1999); *Tualatin Electric*, 312 NLRB 129, 134 (1993); *Rolligon Corp.*, 254 NLRB 22 (1981); *Intertherm Inc.*, 235 NLRB 693, fn.6 (1978). I so find.

35 During the same late November conversation, wherein Angrisani and Baiamonte were unlawfully told to find another job, if they were not happy working for Respondents, Carlo Bordone V told Baiamonte to keep his mouth shut and not cause problems, if he wanted to work for Respondent Circle.²² Carlo V then added that Baiamonte had been a union man with the union behind him, and by such conduct, he was "causing more problems than good". Such
40 comments by Carlo Bordone V represent unlawful threats of reprisals against employees, in retaliation for their union activities, in violation of Section 8(a)(1) of the Act. *Palagonia Bakery*, 339 NLRB 515, 524 (2003); *Meisner Electric*, 316 NLRB 597, 599 (1995).

45 ²¹ The fact that Respondent Phantom never signed the renewal contract with Local 813 is of no consequence. Since Respondent Metro did sign such agreement, said alter ego contract is binding upon Respondent Phantom, as an alter ego of Respondent Metro.

50 ²² Respondent Circle had also begun to perform some work previously performed by employees of Respondent Metro and Respondent Phantom. As detailed more fully below, I also find that Respondent Circle was an alter ego to Respondents' Metro and Phantom.

Further, the evidence discloses that in early December of 2005, Vincent Bordone telephoned Angrisani, called him a “piece of shit”, because he had called the Union, and informed Angrisani that Phantom was going out of business, because “you guys”, had called the Union, and the Union came down and “broke his balls”. These comments of Vincent Bordone constitute clear threats to close, in retaliation for employees’ union activities, and are violative of Section 8(a)(1) of the Act. *Palagonia Bakery, supra*.

Finally, I have found that in February of 2006, Vincent Bordone again telephoned Angrisani. During this conversation, Bordone informed Angrisani, (who had been terminated two months earlier), that Respondents were considering taking him back to work, but since he had called the Union and had a lawsuit against Respondent Circle,²³ we decided we’re not going to call you back. This remark by Vincent Bordone to Angrisani constitutes another blatant violation of Section 8(a)(1) of the Act, by threatening not to reinstate Angrisani because of his union activities and because of charges filed with the NLRB.

Turning to the terminations of Angrisani and Baiamonte, it is necessary to first determine whether General Counsel has established that union animus was a substantial or motivating factor in the terminations. *Wright Line*, 251 NLRB 1083 (1980) *enfd.* 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 489 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983).

The evidence here is overwhelming that General Counsel has met its burden of proof in this regard. I note initially that in the summer of 2004, during Local 813’s one day strike, Baiamonte refused to cross the picket line, contrary to instructions of officials of Respondents, and in fact joined the picket line. The next day, after the strike was settled, Vincent Bordone told Baiamonte that he would no longer be a dispatcher and would go back to working as a driver. Bordone further explained the reason for Respondents decision, as follows: “You made your decision, you picketed the team. You’re out. You’re back on the truck”. This incident clearly demonstrates Respondents’ animus towards the Union activities of its employees in general, and of Baiamonte, in particular. The evidence establishes that Respondents’ decision to demote Baiamonte from dispatcher to driver was motivated by his union activities, and would be considered violative of the Act, but for the fact that it is time barred. However, notwithstanding the 10(b) issue, and my inability to find and or remedy this violation of the Act, it is appropriate to rely on such actions as reflective of Respondents animus towards Baiamonte, as well as other employees, because of their activities on behalf of the Local 813, and to shed light on and give meaning to events within the limitations period, such as the terminations of Baiamonte and Angrisani. *Farr Co.*, 309 NLRB 203, 224-225 (1991); *Storer Communications*, 295 NLRB 72 fn. 3 (1987).

Respondents conduct within the 10(b) period is consistent with the above animus towards employees’ union activities. Both Angrisani and Baiamonte complained to Respondents officials about their failure to apply Local 813’s contract *vis á vis* holiday pay, and further complained to Local 813 Business agent Campbell concerning this action of Respondents.²⁴ This evidence establishes knowledge of the union activities of these two employees. Both employees were terminated within two weeks of these complaints. Such timing represents substantial evidence that the terminations were motivated by union animus

²³ Although there was no lawsuit against Respondent Circle, Local 813 had filed charges in case No. 29-CA-27375, against all four Respondents as alter egos, on January 17, 2006.

²⁴ The record also reveals that Campbell complained to Vincent Bordone about Respondents violating the contract by failing to pay holiday pay.

towards these employees. *Weldon Williams & Lick, Inc.*, 348 NLRB #45 Slip op. at 5 (2006); *National Steel Supply, Inc.*, 344 NLRB # 121, Slip op. at 2 (2005).

Further, my above findings of violations of Sections 8(a)(1) of the Act by Respondents, particularly the unlawful threats of job loss and closing the business, directed to the discriminatees, provides additional support for the conclusion that the terminations were unlawfully motivated.

Finally and most importantly, statements made by the Bordone's to the discriminatees concerning their discharges, represent virtual admissions, that their discharges were unlawful. Thus Vincent Bordone told Angrisani that there was no more work for him, and that Respondent Phantom was going out of business. During this conversation Vincent Bordone called both Baiamonte and Angrisani "pieces of shit" for calling the Union, and stated that the Union had come down and "broke his balls". Vincent added, "You guys want to call the Union, you did it to yourself, that's it, we're going out of business".

Similarly, Baiamonte was informed by Maurizio Bordone that he would no longer be working any more, since Respondent Phantom was a "non union" company. Maurizio added, "If you're not happy with the situation, call the Union and find another job". Baiamonte then spoke to Vincent Bordone, who expressed similar sentiments. Vincent told Baiamonte, "you make your bed, you have to lie in it, and the company is out of business and you should move on and find another job". Furthermore, Baiamonte also spoke to Carlo Bordone V about the possibility of working for Respondent Circle. Carlo V replied that Respondent Circle would call Baiamonte if they wanted to employ him, adding that he (Carlo V) did not know if he was "going to sign a union contract".

I further note that although the employees were told that Respondent Phantom was "going out of business", this statement was not accurate, since other employees continued to work for Respondent Phantom thereafter, and as will be described more fully below, Respondent's Circle and World Class began performing the work.

Therefore, the above facts constitutes compelling evidence, that a substantial and motivating factor in Respondent's decision to terminate both Angrisani and Baiamonte,²⁵ was their activities on behalf of Local 813. Thus, under *Wright Line*, the burden then shifts to Respondents to prove that they would have terminated these employees, absent their protected conduct. Since Respondents adduced no testimony or any other evidence in this proceeding, it has failed to meet its burden of proof in this regard.

Accordingly, I conclude that Respondents have violated Section 8(a)(1) and (3) of the Act by their termination of Angrisani and Baiamonte.

C. THE ALTER EGO STATUS OF RESPONDENT CIRCLE AND RESPONDENT WORLD CLASS

The Complaint also alleges, and the General Counsel contends, that Respondents Circle and World Class are alter egos with Respondents Metro and Phantom. I agree.

²⁵ I note that Vincent Bordone admitted to Campbell during conversation in 2006, that both employees Angrisani and Baiamonte had been terminated by Respondent Phantom.

Similar to the situation *vis á vis*, Respondents Metro and Phantom, the evidence establishes common ownership, management, business purpose and equipment between Respondents Metro, Phantom and Circle. Carlo Bordone V, the president and owner of Respondent Circle was also the vice-president and owner of Respondent Metro, and also was designated as a “decision maker” for Respondent Metro by his father Vincent. As noted in arbitrator Harris’s decision, Carlo V signed various documents filed with BIC on behalf of Respondent Metro, including a “Roster of Vehicles”, which shows a truck purportedly used by Respondent Metro, to be registered to Respondent Circle. Therefore, as related above, substantially identical ownership is established when the two enterprises are owned by members of the same family. *Liberty Source, supra; Cadillac Asphalt, supra; Industrial Turn Around, supra.*

Common management is established, by virtue of Carlo Bordone V’s involvement in supervising employees of Respondent Metro and Phantom, as well as running Respondent Circle. Further, the evidence revealed the Baiamonte dispatched employees for Respondent Circle, out of the Grand Avenue facility as far back as the summer of 2004, while answering to supervisor Detweiler, who also supervised employees of Respondent Phantom and Respondent Metro. Although Respondent Circle may have existed prior to the demise of either Respondent Metro or Phantom, that is not dispositive. Evidence of events after Respondent Circle was formed is relevant to the alter ego issue. *Crossroads Electric*, 343 NLRB 1502, 1506 (2004); *All County Electric, supra*, at 869; *CEK Industrial*, 295 NLRB 635, 636 (1989). Furthermore, Vincent Bordone remained involved in the management of Respondent Circle, as he had been with respect to both Respondents Metro and Phantom. On several occasions, Vincent Bordone was seen wearing Respondent Circle’s jacket and giving directions to Respondent Circle employees. More importantly, in February of 2006, several months after the terminations of employees Angrisani and Baiamonte, Vincent Bordone telephoned Angrisani. They discussed Angrisani being hired by Respondent Circle, and Vincent informed Angrisani that he would not be hired by Respondent Circle, because of the charges filed against Respondent Circle and Angrisani’s prior Union activities. Thus Vincent Bordone was clearly speaking to Angrisani on behalf of Respondent Circle, thereby demonstrating his prominent role in managing Respondent Circle, along with his son Carlo Bordone V. It is also significant that during that conversation, Angrisani contradicted Vincent’s assertion, that Respondent Circle was a different company from Respondent Metro. Angrisani replied that its all “one company, everybody on the street knows that Circle took over Metro and you sent letters to all your contractors stating that it changed names and this is the new phone number”. Vincent did not deny these assertions by Angrisani, and simply replied “Oh I see you know everything, Joe”. I find this failure of Vincent Bordone to deny Angrisani’s comments, as well as his comment that Angrisani knows everything, to be an implicit admission against Respondents that the comments of Angrisani were accurate, and further supportive of an alter ego finding as between Respondents Metro, Phantom and Circle.

Common business purpose is clear, as Respondent Circle was performing the same demolition work as Respondent’s Metro and Phantom, using the same premises, some of the same employees, and some of the same equipment.

Respondent Circle was formed in January of 2005, at the time that Respondent Metro was engaged in its dispute with MTDC, and while Respondent Phantom was already beginning to and continuing to perform work of Respondent Metro, as I have detailed above. Respondent Circle began performing demolition work in early 2005, by using its related company, Circle Carpentry, to obtain laborers from the MTDC. However, Respondent Circle unilaterally decided to pay these employees a lower rate than provided in the contract with Circle Carpentry, concluding that since the employees were performing demolition work, which does provide for a

lower “B” note in Local 79’s contract with Employers. I therefore conclude that the formation of Respondent Circle in January of 2005, was another attempt by the Bordone family, (In addition to the formation of Respondent Phantom), to circumvent Respondent Metro’s substantial obligations under its MTDC contract.

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When Respondent Circle’s scheme unraveled, by virtue of the MTDC suing and recovering \$100,000 for underpayment under its contract with Circle Carpentry, from both Circle Carpentry and Respondent Circle,²⁶ Respondent Circle tried another tactic in December of 2005, to receive permission from MTDC to perform Respondent Metro’s work. On December 22, 2005, Carlo Bordone V asked for a meeting with Bianco. Carlo informed Bianco that he was operating Respondent Circle and performing demolition work, with former employees of Respondent Metro, and asked Bianco to sign a contract, including a “B” rate, in order to be competitive in the industry. Bianco turned down Carlo’s request, stating that it was clear to him that Carlo V was merely assisting his father and Respondent Metro to avoid its obligations to the Union. While Carlo V protested that Respondent Circle was a separate company and he had nothing to do with his father’s business, Carlo V added that he is a “good son”, and “It was difficult to say no to my father”. I find that these latter comments by Carlo V, that it was difficult to say no to his father, also constitute implicit admissions that at least one of the purposes of Respondent Circle was to assist his father’s company, (Respondent Metro) in avoiding its obligations to the Union, by performing work that ordinarily Respondents Metro and or Respondent Phantom would be performing, but were unable to do so, due to problems with Unions. I note that by this time, December of 2005, Respondents Metro and Phantom were in the midst of a dispute with Local 813, and that Respondent Metro had effectively shut down, and transferred workers and equipment to Respondent Phantom. I find therefore that Respondents dispute with Local 813 over Respondents failure to sign and adhere to the contract with Local 813, motivated Respondent Circle’s performance of work ordinarily performed by Respondents Metro and Phantom, and further supports an alter ego finding *vis á vis* these three companies.

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While Bianco, on behalf of MTDC refused to sign a contract with Respondent Circle with a “B” rate, Respondent Circle nonetheless continued to operate in early 2006, using several former drivers of Respondent Metro and Respondent Phantom, who were driving the same trucks previously used by Respondents Phantom and Metro. I also note that in January of 2006, MTDC obtained a default judgment against Respondent Phantom for the amounts due and payable by Respondent Metro. It is thus clear, and I find that Respondent Circle’s continuing to perform work using former Metro and Phantom employees and equipment was simply another step in the scheme of Respondents to avoid obligations to unions, (both Local 813 and MTDC) and is supportive of my finding that Respondent Circle is an alter ego of Respondents Metro and Phantom.

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Finally, I also rely upon the arbitration decision, which was decided in December of 2006, and which found, relying on some of the same facts detailed above, that Respondent Circle is an alter ego to Respondent Metro.

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I also conclude, in agreement with General Counsel, that the formation of Respondent World Class, was but another step in the scheme of the Bordone family to avoid the union obligations, incurred by Respondents Metro and Phantom. Respondent World Class was

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²⁶ Respondent Circle had signed a document in July of 2005, admitting that Respondent Circle and Circle Carpentry are a “single employer”, and jointly responsible for each other’s obligations.

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incorporated on November 17, 2005, under the name of Joanne Dibiase, clerical employee and a family relation of Maurizio Bordone's wife. There is no evidence that Dibiase had any expertise or ability to operate a business, and I find that as was the case, when Respondent Phantom was initially incorporated in the names of the wives of Maurizio and John Bordone, this was merely a clumsy attempt to shield the Bordone family from liability. Similar to the situation with Respondent Phantom, ownership of Respondent World Class was changed to Maurizio Bordone in July of 2006. Therefore, the criteria for common ownership is established. The fact that the transfer of ownership was many months after the company started is inconsequential, since the Board frequently considers events subsequent to the formation of the entity, in assessing alter ego status. *Crossroads Electric, supra; All County Electric, supra*. I also note that although Respondent World Class, initially operated out of a Long Island City facility, this fact is also not dispositive. *Cofab Inc.*, 322 NLRB 162 (1996) (Alter ego operated out of separate facility 12-15 minutes away from the first company). In any event as noted above, Respondent World Class began operating out of the same Grand Avenue facility used by the other Respondents, by July 2006, using the same canopy that had been changed to read Respondent World Class, which had previously included the names of the other Respondents. Throughout 2006, employees and union representatives observed former Metro-Phantom-Circle employees driving trucks previously used by these companies, but now painted over with the Respondent World Class logo.

Other incidents revealed various employees driving trucks reading Respondent Phantom, attached to containers reading Respondent World Class. In another incident, Gerald Kraft, a representative from Local 79, observed a driver in the course of an hour on one day, first drive a truck marked Respondent Phantom and then Respondent World Class to and from the same jobsite. Kraft confronted the driver and asked if he drove for Respondent Phantom or Respondent World Class. The driver responded, "They are the same company".

Finally, and perhaps, most importantly, on December 12, 2005, Dennis Halpern, who I have previously found to be an agent of Respondents, due to his position as an estimator, had another conversation with Khusianov of 3D, one of Respondent Metro and Phantom's customers. Halpern informed Khusianov that Respondent Phantom was changing its name to Respondent World Class, due to problems related to the Union. This action necessitated Halpern submitting a new bid for a job with 3D, which had previously been awarded to Respondent Phantom. A new bid was submitted by Halpern on behalf of Respondent World Class, which was awarded the job, and the work was performed by Respondent World Class on December 20, 2005. The timing of these transactions, coming in the midst of disputes by Respondents with both unions, is quite significant, and is highly supportive of the conclusion that I make, that the formation of Respondent World Class, was motivated by a desire of the other Respondents to avoid their various obligations to the Unions, and that Respondent World Class is an alter ego, to and with Respondents Metro, Phantom and Circle.

In sum, the evidence here reveals that the Bordone family had little use or respect for corporate formalities, and believed that it could simply form and utilize a new company, any time it had problems with Unions. It is notable that in the formation of two of these companies, Respondent Phantom and Respondent World Class, the family initially placed the ownership of the companies in the names of family clerical employees, who obviously had no management experience and were not involved in running the business. This transparent ploy constitutes significant evidence of an unlawful motive to avoid labor law obligations. *Liberty Source, supra*, ALJD Slip at 12 ("Transparent ploy" of designating wife of J. Wortley as owner. Employer provided no legitimate reason for ruse, and "it is hard to explain absent a desire to avoid the consequences that might follow from acknowledging that J. Wortley controlled both entities").

In reaching my conclusion that all four companies are alter egos of each other, I have considered General Counsel's contention that an adverse inference should be drawn against Respondents because of their failure to produce subpoenaed documents. *University Medical Center*, 335 NLRB 1318, 1334-1335 (2001); *Leslie Oldsmobile Inc.*, 276 NLRB 1314, 1317 (1985). In that connection the record discloses that General Counsel subpoenaed numerous documents from all four companies, requesting items such as articles of incorporation, managerial hierarchy, payroll records, documents showing interchange of goods, equipment and business between all four companies, jobs performed, customers, transfer of equipment, registration of vehicles, and commerce data. None of these items were produced by any of the Respondents. While I find sufficient evidence in the record to support an alter ego finding as to all four companies, without drawing the adverse inference requested by General Counsel, I do agree with General Counsel, that such an adverse inference is appropriate in these circumstances. I therefore find that Respondents' failure to supply the evidence which was subpoenaed creates an adverse inference that such evidence is not favorable to Respondents' case. *University Medical Center, supra*. Such an inference further supports my alter ego findings. *Leslie Oldsmobile, supra*.

General Counsel also asserts that Respondents Circle and World Class are single employers with each other, as well as with Respondents Metro and Phantom. However, as was the case with Respondents Metro and Phantom, I find it unnecessary to decide the single employer issue. *Crossroads Electric, supra; Johnston Co., supra*.

Accordingly, in view of my conclusion, detailed above, that Respondents Circle and World Class are alter egos recognize and bargain with Local 813, and of Respondents Metro and Phantom, Respondents Circle and World Class are obligated to continue to adhere to the contract signed by Respondent Metro with Local 813, and Respondents Circle and Respondent World Class have violated Section 8(a)(1) and (5) of the Act, by failing to abide by the terms of the agreement with Local 813. *Liberty Source, supra; Standard Commercial Cartage*, 330 NLRB 11, 14 (1999).

CONCLUSIONS OF LAW

1. Respondent Metro, Respondent Phantom, Respondent Circle and Respondent World Class, collectively, called Respondents, are employers within the meaning of Section 2(2), (6) and (7) of the Act.

2. Local 813 and Local 79 are labor organizations within the meaning of the Act.

3. Respondents Metro, Phantom, Circle, and World Class are alter egos.

4. The Respondents violated Section 8(a)(1) of the Act by, threatening employees with job loss, closing the facility, or other unspecified reprisals, because of their activities on behalf or in support of Local 813, and by informing employees that they will not be reinstated because they filed changes with the National Labor Relations Board or because they supported Local 813.

5. The Respondents violated Section 8(a)(1) and (3) of the Act, by discharging and refusing to reinstate its employees Joseph Angrisani and Jack Baiamonte, because of their activities on behalf of or support for Local 813.

6. The Respondents violated Section 8(a)(1) and (5) of the Act, by withdrawing recognition from and refusing to recognize and bargain with Local 813, and by refusing to

adhere to and apply the terms of their collective bargaining agreement with Local 813 to their unit employees.

5 7. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

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

15 Respondents must take actions that will fulfill their contractual obligations, including but not limited to, reimbursing employees for any loss of wages and benefits because of Respondents' failure to apply the terms and conditions of the collective-bargaining agreement, with interest, in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), and making contractually established payments to any trust funds established by the collective-bargaining agreement in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn.7 (1979).

20 I shall also recommend that Respondents offer reinstatement to Joseph Angrisani and Jack Baiamonte to their former positions of employment and make them whole for the discrimination against them, plus interest, as computed in *F.W. Woolworth*, 90 NLRB 289 (1950) and *Horizons for the Retarded*, 283 NLRB 1173 (1980).

25 Based upon the forgoing findings of fact and conclusions of law, and on the entire record, I issue the following recommended ²⁷

ORDER

30 The Respondents, Metro Demolition & Contracting Corp., Inc., Phantom Demolition Corp., Circle Interior Demolition Corp., and World Class Demolition Corp., Maspeth, New York, its officers, agents, successors and signs, shall

35 1. Cease and desist from

(a) Threatening their employees with job loss, closing their facility, or other reprisals because of their activities on behalf or in support of Local 813 International Brotherhood of Teamsters. (Local 813).

40 (b) Advising their employees to quit or find another job, if they continue to engage in activities on behalf of or in support of Local 813.

45 (c) Informing their employees that they will not be reinstated, because they filed charges with the National Labor Relations Board or because they engaged in activities on behalf of or in support of Local 813.

50 ²⁷ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(d) Discharging or refusing to reinstate their employees, because said employees engaged in activities on behalf of or in support of Local 813.

(e) Withdrawing recognition from or refusing to recognize and bargain with Local 813.

(f) Failing to abide by or apply all provisions of their collective bargaining agreement with Local 813 to their employees.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of the Board's Order, offer Joseph Angrisani and Jack Baiamonte full reinstatement to their former jobs or, if those jobs no longer exists, to a substantially equivalent position, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Angrisani and Baiamonte whole for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of the decision.

(c) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful discharges of Angrisani and Baiamonte, and within 3 days thereafter notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

(d) Make whole, with interest, all unit employees for any losses they may have suffered as a result of the Respondents' unlawful failure, to adhere to the collective-bargaining agreement with Local 813.

(e) Make all fringe benefit fund contributions, and make all unit employees whole for any expenses resulting from the Respondents' failure to make the required pension and other fringe benefit contributions, with interest, as required by the collective-bargaining agreement with Local 813.

(f) On request, recognize and bargain with Local 813 as the collective representative of their employees in the following appropriate unit, and abide by the collective-bargaining agreement currently in effect between Respondents and Local 813. The appropriate unit is:

All full time and regular part-time chauffeurs, mechanics and welders performing the loading and/or removing of waste materials resulting from building demolition, construction, alteration or excavation, employed by Respondents at their Maspeth, New York facility, excluding all supervisors and guards within the meaning of the Act.

(g) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(h) Within 14 days after service by the Region, post at its Maspeth, New York, copies of the attached notice marked "Appendix."²⁸ Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to [employees] [members] [employees and members] are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 28, 2005.

Dated, Washington, D.C., July 16, 2007.

Steven Fish
Administrative Law Judge

²⁸ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain on your behalf with your employer
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT Threaten our employees with job loss, closing our facility, or other reprisals because of their activities on behalf or in support of Local 813 International Brotherhood of Teamsters. (Local 813).

WE WILL NOT advise our employees to quit or find another job, if they continue to engage in activities on behalf of or in support of Local 813.

WE WILL NOT inform our employees that they will not be reinstated, because they filed charges with the National Labor Relations Board or because they engaged in activities on behalf of or in support of Local 813.

WE WILL NOT discharge or refuse to reinstate our employees, because said employees engaged in activities on behalf of or in support of Local 813.

WE WILL NOT withdraw recognition from or refuse to recognize and bargain with Local 813.

WE WILL NOT fail to abide by or apply all provisions of our collective bargaining agreement with Local 813 to our employees.

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

WE WILL within 14 days from the date of the Board's Order, offer Joseph Angrisani and Jack Baiamonte full reinstatement to their former jobs or, if those jobs no longer exists, to a substantially equivalent position, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Angrisani and Baiamonte whole for any loss of earnings and other benefits suffered as a result of the discrimination against them plus interest.

WE WILL within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges of Angrisani and Baiamonte, and within 3 days thereafter notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

WE WILL make whole, with interest, all unit employees for any losses they may have suffered as a result of our unlawful failure, to adhere to the collective-bargaining agreement with Local 813.

WE WILL make all fringe benefit fund contributions, and make all unit employees whole for any expenses resulting from our failure to make the required pension and other fringe benefit contributions, with interest, as required by our collective-bargaining agreement with the Local 813.

WE WILL on request, recognize and bargain with Local 813 as the collective representative of our employees in the following appropriate unit, and abide by the collective-bargaining agreement currently in effect between us and Local 813. The appropriate unit is:

All full time and regular part-time chauffeurs, mechanics and welders performing the loading and/or removing of waste materials resulting from building demolition, construction, alteration or excavation, employed by us at our Maspeth, New York facility, excluding all supervisors and guards within the meaning of the Act.

METRO DEMOLITION CO., INC., PHANTOM
DEMOLITION CORP., CIRCLE INTERIOR
DEMOLITION, INC., WORLD CLASS
DEMOLITION CORP., Alter Egos

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

One MetroTech Center (North), Jay Street and Myrtle Avenue, 10th Floor
Brooklyn, New York 11201-4201
Hours: 9 a.m. to 5:30 p.m.
718-330-7713.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 718-330-2862.