

**Rodney and Judith Adams, d/b/a Adams Insulation Company and Orange County District Council of Carpenters, AFL-CIO. Case 21-CA-13176**

FINDINGS OF FACT

July 17, 1975

I. JURISDICTION

DECISION AND ORDER

BY MEMBERS FANNING, KENNEDY, AND PENELLO

Rodney Adams d/b/a Adams Insulation Company, hereinafter called Rodney Adams, and Judith Adams d/b/a Adams Insulation Company, hereinafter called Judith Adams, are engaged in business as insulation and weather-stripping subcontractors in the building and construction industry.

Rodney Adams rents trucks and equipment and purchases supplies and materials from Judith Adams. During the past 12-month period, Judith Adams purchased and received supplies and materials valued in excess of \$50,000 directly from suppliers located outside the State of California.

We find that Rodney Adams and Judith Adams are, and at all material times have been, employers engaged in commerce and in operations affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Orange County District Council of Carpenters, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

III. THE UNFAIR LABOR PRACTICES

A. *Facts*

Rodney Adams, an individual, began an insulation and weather-stripping subcontracting business, as sole proprietor, in December 1972. He applied for and received from the State of California Contractor's License No. 280595, under the name Adams Insulation Company.<sup>1</sup> From December 1972 to January 28, 1974, Adams Insulation Company operated as a subcontractor engaged in installing insulation and weather stripping in residential and commercial buildings. During this time, Judith Adams, the wife of Rodney Adams, performed secretarial and bookkeeping duties for the Adams Insulation Company business, but received no salary.

Also in December 1972, Rodney formed a corporation called Rod Adams Co., Inc., of which he was president, his wife was vice president and secretary, his attorney was treasurer, and all of the stock was owned by Rodney and Judith.

On January 23, 1974, Adams Insulation Company was awarded a contract for the installation of insulation and weather stripping on a project on which the

<sup>1</sup> Hereinafter called Adams Insulation Company

Upon a charge filed by Orange County District Council of Carpenters, AFL-CIO, hereinafter called Carpenters or the Charging Party, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 21, issued a complaint dated January 3, 1975, against Rodney and Judith Adams, d/b/a Adams Insulation Company, hereinafter called the Respondent, alleging that the Respondent, a sole proprietorship conducted by a husband and wife, violated Section 8(a)(5) and (1) of the Act by refusing to furnish the Union with payroll and job location records for carpenters, including insulation installers and weather-stripping installers, employed by the Respondent in that portion of its operations conducted pursuant to Contractor's License No. 290613. Copies of the charge, complaint, and notice of hearing were served on the Respondent and the Charging Party. On January 23, 1975, the Respondent filed its answer to the complaint, denying the commission of any unfair labor practices. The Respondent filed a motion for a bill of particulars on January 15, 1975. On January 17, 1975, the General Counsel furnished the Respondent with a bill of particulars.

On February 21, 1975, the Respondent, General Counsel, and the Charging Party entered into a stipulation of the testimony of all witnesses pertinent to the dispute. These parties also waived a hearing before an Administrative Law Judge and agreed that the charge, complaint, and stipulation shall constitute the entire record in the case. They further agreed to submit the stipulated record directly to the Board for findings of fact, conclusions of law, and a Decision and Order. By an order dated March 10, 1975, the Board approved the stipulation and transferred the case to itself. Thereafter, the General Counsel, the Respondent, and the Charging Party filed briefs.

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

Upon the basis of the stipulation, the briefs, and the entire record in this case, the Board makes the following:

general contractor told Rodney that he would have to have a collective-bargaining agreement with the Carpenters in order to perform such contract. As most of Rodney's customers desired that he perform contracts for them with "nonunion" labor, Rodney and Judith jointly decided to establish two businesses, one for the performance of contracts with contractors who required a collective-bargaining agreement with the Carpenters, and another for the performance of work for contractors who did not.

Thereafter, on January 28, 1974, Rodney sold Adams Insulation Company to his wife, Judith Adams, for approximately \$10,000. Judith gave Rodney two promissory notes totaling \$32,000, payable without interest 5 years from the date of sale. Also, Rodney sold to Rod Adams Co., Inc., all the trucks and equipment owned by Adams Insulation Company, in exchange for stock in Rod Adams Co., Inc. At this same time, Rod Adams Co., Inc., assumed the existing lease on the building in which Adams Insulation Company had its office and warehouse and became responsible for the payment of the utility bills in the building.

Judith Adams commenced operations on January 28, 1974, under the name Adams Insulation Company with employees formerly employed by Adams Insulation Company. Also, Judith applied for and received from the State of California Contractor's License No. 290613. Since Judith had not taken the state contractor test, she qualified to do business in California by listing Rodney on her license as the "responsible managing employee."

During this same period, Rodney formed a new company, Adams Insulation Company (Rodney Adams), under his existing Contractor's License No. 280595 on January 29, 1974. On the same date, Rodney Adams, on behalf of that company executed a collective-bargaining agreement with the Carpenters.<sup>2</sup>

Both Rodney Adams and Judith Adams occupy the same building which was previously occupied by the original company, and they share the same telephone listing under Adams Insulation Company. The 1974 edition of the Yellow Pages lists only Adams Insulation Company, Contractor's License No. 280595. However, the Rod Adams Co., Inc., pays the telephone bills.

Judith Adams leases all trucks and equipment from Rod Adams Co., Inc., on a monthly basis. When Rodney Adams requires trucks or equipment, it rents such items from Judith Adams at a daily rate of \$10, including gasoline. All payments for repairs

and gasoline for all equipment leased from Rod Adams Co., Inc., are assumed by Judith Adams, but the former makes the insurance premium payments for the trucks and equipment, and the rental fee on the building. Rodney Adams pays \$70 per month to Rod Adams Co., Inc., as rental fee on the building. Rodney Adams purchases supplies and materials from Judith Adams at cost, plus 5 percent.

Judith Adams and Rodney Adams have separate accounting records, bank accounts, and banks, but each hires the same accounting firm. The two companies also have different state workmen's compensation fund accounts and separate state unemployment insurance accounts. Judith Adams and Rodney Adams do not compete with one another in bidding for jobs. Rodney Adams bids only on jobs which require performance of work pursuant to a collective-bargaining agreement with the Union. The two companies do not employ the same employees and do not regularly interchange employees, although on several occasions one company has hired an employee who had been laid off by the other company.

As the responsible managing employee, required by the contractor's license, and consultant to Judith Adams, Rodney visits the work locations of that company. However, although he was employed in this capacity in January 1974, Rodney did not start receiving his consultant salary of \$100 per month until December 1974. When Rodney is dissatisfied with the work at Judith Adams' work locations, he notifies Judith or Barry Hoyt, her job supervisor.

Rodney Adams has employed Judith as a secretary since its beginning on January 29, 1974, at a salary of \$50 per month. Neither Judith nor Rodney has authority to sign the payroll checks of the other's company. Each company separately hires, fires, and disciplines its employees and each separately formulates, determines, and effectuates all decisions with respect to labor relations matters.

While the employees of Rodney Adams receive the wages and fringe benefits contained in its collective-bargaining agreement with the Union, the employees of Judith Adams do not and their wages are on a piece rate rather than hourly basis. Judith Adams employs, on the average, four or five employees, whereas Rodney Adams employs two employees.

John Hutton was employed by Adams Insulation Company as a weather-stripping installer from September 1973 to January 28, 1974, at which time he commenced working for Judith Adams, continuing to do so until the end of March 1974. Hutton was unaware of the formation of Judith Adams. However, two other employees, who are presently employed by Judith Adams and have been so employed since September or October 1974, were aware at all times

<sup>2</sup> Both Rodney and Judith published fictitious business name statements in accordance with California law.

that two separate companies were engaged in business. Hutton was not aware that two separate companies had been formed or that Rodney Adams had signed a contract with the Union. Prior to January 28, 1974, either Judith or Rodney signed Hutton's paychecks. After January 28, 1974, Judith was the only person who signed Hutton's paychecks.

Following Hutton's termination of employment with Judith Adams at the end of March 1974, Hutton began employment with another employer who subsequently informed Hutton that, to that employer's knowledge, "Adams Insulation Company" had a collective-bargaining agreement with the Union. Thereafter, Hutton asked Union Business Representative Robert Guthrie if Adams Insulation Company had made any contributions on behalf of Hutton into the trust funds pursuant to the collective-bargaining agreement with the Union. Guthrie presented the question to Robert Miller, an administrative assistant for the Union, and Miller contacted the Trust Funds Office. Miller was informed by the Trust Funds Office that it had searched its records and that Adams Insulation Company had not paid any contributions to the trust funds on behalf of Hutton.

After checking the listings in the "California State License Supplement," Miller found that two separate licenses had been issued, one to Rodney Adams, License No. 280595, and one to Judith Adams, License No. 290613, which listed Rodney as the responsible managing employee. When Miller discovered the two separate companies, he suspected that Adams Insulation Company, License No. 280595, had not been making contributions to the trust funds on behalf of employees covered by the collective-bargaining agreement between the Union and Rodney Adams. For this reason, Miller requested that the Trust Funds conduct an audit of the books and records of both Judith Adams and Rodney Adams.

On approximately June 10, 1974, Freddie Diaz, one of the auditors of the Trust Funds, visited the offices of Rodney Adams and Judith Adams located at 1639 Monrovia, Costa Mesa, California, to conduct the audit requested by Miller. Diaz requested and received all the books and records of Rodney Adams. After auditing the records, Diaz did not find Hutton listed as an employee of Rodney Adams, and he then requested orally of both Rodney and Judith that he be given all the books and records of Judith Adams. At no time did Diaz tell Rodney or Judith why he requested the books of Judith Adams. Both Rodney and Judith refused to comply with Diaz' request and stated that Judith Adams was a separate company owned by Judith and that such company had not executed a collective-bargaining agreement with the Union.

At Miller's request, on June 13, 1974, Rodney met with Miller and Dick Harkey, a field representative of the Trust Funds, at the Union's office. At this meeting, Miller and Harkey once again asked Rodney to present all the books and records of Judith Adams to the Trust Funds for purposes of conducting an audit. Rodney refused to do so on the grounds that Judith Adams was a separate company and that it did not have a collective-bargaining agreement with the Union. However, Rodney told Miller and Harkey that he would discuss the matter with his attorney and let them know.

Thereafter, on approximately October 7, 1974, Miller telephoned Rodney and again requested that Rodney permit the Trust Funds to conduct an audit of all the books and records of Judith Adams, but Rodney refused. On October 8, 1974, Miller telephoned Rodney and told him that if he didn't bring all the books and records of Judith Adams to Miller's office Miller would consider Rodney in violation of his collective-bargaining agreement with the Union and take economic action against Rodney. Rodney once again refused to comply with Miller's request.

#### B. Contentions of the Parties

The General Counsel contends that under the test for "single employer" developed by the Board it is clear that the formation of two businesses by Rodney and Judith was accomplished in order to enable them to bid on jobs which required a collective-bargaining agreement and at the same time remain competitive on nonunion jobs. Also, the General Counsel contends that, while the mere existence of such parallel businesses may not lead to a conclusion that they constitute a single employer, the manner in which the two businesses were formed and their relationship does lead to such a conclusion. The Respondent contends that, notwithstanding that the two companies are located in the same building, that they have a common telephone number, that Judith and Rodney perform routine office or managerial tasks for each other's business, and that Rodney Adams rents supplies and equipment from Judith Adams, the two companies are not a single employer for the purposes of the Act.

Finally, the Respondent contends that, even assuming, *arguendo*, that a request properly was made to a single employer for information concerning non-unit employees, the Union failed to communicate to the Respondent at the time of its request how its blanket request for "all books and records" related to its role as the collective-bargaining representative of the unit employees of Rodney Adams.

### Conclusion

We find merit in the Respondent's contention that the Union failed to adequately inform the Respondent as to the basis of its request for information or of the Respondent's obligation to honor such request. Thus, we find it unnecessary to resolve the issue pertaining to the alleged single-employer status of the two companies.

It is well settled that an employer is obligated to furnish, upon request, the employees' bargaining agent with information relevant and necessary to the intelligent discharge of its function as the employees' exclusive bargaining representative. Nor can an employer refuse to furnish requested information on the basis that the bargaining representative seeks information concerning employees outside of the unit who are also in the employer's employ.<sup>3</sup> Where a union, in good faith, believes that an employer is eroding the bargaining unit to the detriment of the employees the union represents, the standard of relevancy applied by the Board and the courts is that it is sufficient that the union's claim be supported by a showing of probable or potential relevance.<sup>4</sup>

However, the issue in this case is limited to whether the Respondent had an obligation to honor the Union's request for information, when such request was lacking in both specificity and clarity, and the Respondent could not have been aware of the intent and purpose of the Union's request as a result of negotiations.

The stipulated facts show that, upon the completion of the audit of the books of Rodney Adams, Diaz, the Union's Trust Funds auditor, did not find the name of Hutton listed as an employee of that company. At that time, Diaz requested orally of both Rodney and Judith that he be given all the books and records of Judith Adams. At no time did Diaz tell Rodney or Judith why he requested the books of Judith Adams. Both Rodney and Judith refused to comply with Diaz' request and told Diaz that Judith Adams, Contractor's State License No. 290613, was a separate company owned by Judith which had not executed a collective-bargaining agreement with the Union. Although at a later date Rodney met with the

union representatives at the Union's office and they renewed their request for the books of Judith Adams for purposes of conducting an audit, Rodney refused the request on the grounds that Judith Adams was a separate company and did not have a collective-bargaining agreement with the Union.<sup>5</sup>

On a later occasion, October 7, 1974, the Union telephoned Rodney and again requested that Rodney permit the Trust Funds to conduct an audit of all of the books and records of Judith Adams, and Rodney refused such request once more. On October 8, 1974, the Union telephoned Rodney and told him that if he did not bring all the books and records of Judith Adams to the Union's office the Union would consider Rodney Adams in violation of its collective-bargaining agreement with the Union and take economic action against Rodney Adams. Rodney refused to comply with the Union's request.

As set forth above, the Union did have a collective-bargaining agreement with Rodney Adams and it was entitled to an audit of the books of that company, a request which was duly complied with by Rodney Adams in view of its bargaining obligation under the bargaining agreement with the Union. However, no obligation attached to Rodney Adams or to Judith Adams to furnish the books and records of Judith Adams, absent a collective-bargaining agreement, or a specific request accompanied by the reasons and basis upon which such request was founded. Clearly, the Respondent's obligation to satisfy the Union's request could not attach until and unless the Union had made some showing of probable or potential relevance of the information to its performance of its representative functions respecting the employees of Rodney Adams. At no time, however, did the Union set forth the reasons or basis for its request. Accordingly, without finding that the Union has no right to such information under any circumstances, we find, upon the special facts of this record, that the Respondent's refusal to grant the Union's request for the payroll and job location records of Judith Adams d/b/a Adams Insulation Company was not a violation of Section 8(a)(5) and (1). For the above reasons, we conclude that the complaint should be dismissed in its entirety.

### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the complaint herein be, and it hereby is, dismissed in its entirety.

<sup>5</sup> At this time, Rodney also told the union representative that he would discuss the matter with his attorney and let him know

<sup>3</sup> *Curtiss-Wright Corporation, Wright Aeronautical Division v. N.L.R.B.*, 347 F.2d 61 (C.A. 3, 1965).

<sup>4</sup> *N.L.R.B. v. Acme Industrial Co.*, 385 U.S. 432 (1967). In *General Electric Company*, 199 NLRB 286 (1972), the Board rejected the respondent's contention that the union's request for information concerning employees in classifications excluded from the unit was neither necessary nor relevant, absent proof that there was a dispute over bargaining unit work, pending grievances, need for information for future contract negotiations, or a reduction of unit work through the hiring of outside contractors.