Carole Ann Paolicelli, Paul Paolicelli, and Carole Ann and Paul Paolicelli and West Dixie Enterprises, Inc., Alter Egos, and a Single Employer *and* International Brotherhood of Electrical Workers Local Union 728. Case 12–CA–16716

November 8, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

On December 16, 1996, Administrative Law Judge D. Barry Morris issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has considered the decision and record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions[1] only to the extent consistent with this Decision and Order, and to adopt the recommended Order as modified.[2]

The judge found that the Respondent violated Section 8(a)(3) by refusing to hire John Ranken, David Svetlick, and Roger Whetstone. The judge also found that the Respondent violated Section 8(a)(1) by unlawfully interrogating employees about their union membership, creating the impression of surveillance, prohibiting employees from discussing the Union, and threatening to assign union supporters more onerous duties. We adopt pro forma these findings, to which the Respondent did not except.

The judge further found that the Respondent's president and owner, Carole Ann Paolicelli, and her husband Paul Paolicelli—who oversaw the daily operation of the Respondent, West Dixie Enterprises, Inc., and held himself out as its owner—were alter egos of, and a single employer with the Respondent. Citing *Weldment Corp.*, 275 NLRB 1432, 1433 (1985), the judge found that, as alter egos, the Paolicellis were individually liable for remedying West Dixie's unfair labor practices, including any make-whole remedy. The judge premised this personal liability on Carole Ann Paolicelli's ownership and (as to Paul) actual operational control of the Respondent, and on the fact that they intermingled their finances with those of the Respondent. Id. See also *O'Neill, Ltd.*, 288 NLRB 1354, 1356 (1988), enfd. 965 F.2d 1522, 1530–1531 (9th Cir. 1992).

The Respondent excepts. Although it does not dispute the corporation's liability, the Respondent argues that the Paolicellis should not be held personally liable for remedying the violations. The Respondent argues that an alter ego finding—and the resultant imposition of personal liability on the Paolicellis—is inappropriate here since it is premised solely on the corporation's failure to file an annual report, an oversight that was remedied immediately upon discovery.[3] The Respondent additionally asserts that the imposition of personal liability is contrary to Florida law concerning corporations. In this regard, the Respondent argues that Florida statute 607.1421(4) imposes personal liability on directors, officers, or agents only where they had actual knowledge of the dissolution when it occurred. The Respondent argues that the Paolicellis lacked this knowledge.[4]

For the following reasons, we reject the Respondent's arguments and find that personal liability should be imposed on the Paolicellis to remedy the unfair labor practices. We do so, however, on legal bases different from those the judge relied on.

1. Subsequent to *Weldment*, supra, and the other cases on which the judge relied, the Board reexamined the circumstances under which it would ''pierce the corporate veil'' and impose personal liability on a respondent corporation's shareholders or other individuals otherwise shielded by its corporate form. In *White Oak Coal*, 318 NLRB 732 (1995), the Board adopted a two-part test for determining when personal liability would be imposed on shareholders for unfair labor practices committed by their corporations.[5] Specifically, the Board held that it would pierce the corporate veil and impose such liability when: ''(1) the share-

[1] For the reasons stated by the judge, we agree that the Respondent meets the Board's discretionary standards for asserting jurisdiction over it.

[2] We have modified the judge's recommended Order in accordance with our decision in *Indian Hills Care Center*, 321 NLRB 144 (1996).

[3] While not dispositive to our analysis, we note that the Respondent incorrectly argues that West Dixie was dissolved as a corporate entity after the unfair labor practice charge was filed in this case. Rather, the corporation dissolved on August 26, 1994, and the charge was filed on October 31, 1994. Similarly, the Respondent incorrectly asserts that it was an active corporation as of the ''date of the alleged complaint.'' On the contrary, the original complaint against the Respondent issued in February 1995, during the period of West Dixie's corporate dissolution. After West Dixie reemerged as a corporation in October 1995, the complaint was twice amended to name the Paolicellis personally as respondents.

[4] We note that the issue of the Paolicellis' personal liability may have considerable practical significance in this case. As found by the judge, the Respondent West Dixie Enterprises, Inc., an electrical contracting business, existed as a corporation when all but one of the 8(a)(1) and (3) violations occurred in July and August 1994. (The remaining 8(a)(1) violation occurred in September 1994). On August 26, 1994, West Dixie was administratively dissolved as a corporation under Florida law because it failed to file an annual report. As discussed more fully below, after this dissolution, the Paolicellis continued to operate their electrical contracting business under the name of the Respondent. However, it was not until October 25, 1995, after the unfair labor practice charge and initial complaint were filed, that West Dixie was reinstated as a corporation under Florida law. Following this reinstatement, West Dixie has existed as a shell corporation and has not operated as a business.

[5] This test was based on the two-pronged analysis the Tenth Circuit Court of Appeals applied in *NLRB v. Greater Kansas City Roofing*, 2 F.3d 1047 (1993).

holder and corporation have failed to maintain separate identities; and (2) adherence to the corporate structure would sanction a fraud, promote injustice, or lead to an evasion of legal obligations.'' Id. at 735. In assessing the first prong of this test, the Board stated in *White Oak Coal* that it would consider both the degree to which corporate formalities had been maintained and the degree to which individual and corporate affairs had been commingled.[6] As to the second prong, the Board further held that ''the showing of inequity necessary to warrant the equitable remedy of piercing the corporate veil must flow from the misuse of the corporate form.'' Id. Stated differently, the ''second prong of the test must have some causal relationship to the first prong of the test.''[7]

Applying this test, the Board imposed personal liability on the husband and wife owners and officers of White Oak Coal[8] because they had misused the corporate identities and assets for personal purposes. The effect of this misuse, the Board found, was to diminish the ability of the corporate alter egos to satisfy White Oak Coal's remedial obligation.[9]

Applying the two-pronged *White Oak* Coal test to the facts in this case, we find that the ''corporate veil'' of Respondent West Dixie should be pierced and the Paolicellis held jointly and severally liable with it for remedying the unfair labor practices. Under the first part of the test, we find ample record evidence that the Paolicellis failed to maintain the corporate formalities of West Dixie. Thus, both before and after the August 26, 1994 dissolution of that corporation: the Paolicellis, on numerous instances, paid the corporation's employees with checks drawn on their personal accounts; Paul Paolicelli made personal loans to the corporation and used his personal credit cards for corporate purchases; and Carole Ann Paolicelli lent her personal vehicle to employees for corporate use. By virtue of this conduct, the Paolicellis clearly failed to maintain an arm's-length relationship with West Dixie with the result that ''the personalities and assets of [West Dixie] and the [Paolicellis] effectively have been blurred.'' *White Oak Coal*, supra, 318 NLRB at 735.

We further find that the second prong of the *White Oak Coal* test similarly has been satisfied. The record establishes that West Dixie corporate funds were used to pay for Paul Paolicelli's apartment for approximately 6 months. This payment constitutes a diversion of corporate funds which—were the Paolicellis shielded from personal liability—is precisely the type of fraud, injustice, or evasion of legal obligations that the *White Oak Coal* test was designed to prevent. Moreover, the evidence reflects that the corporation has little or no ability to satisfy its remedial obligation.[10]

Accordingly, applying the *White Oak Coal* test, we find that the corporate veil should be pierced and the Paolicellis held personally liable for remedying the unfair labor practices.

2. We additionally find, under a second legal theory, that the Paolicellis are personally liable for remedying the unfair labor practices for the period of West Dixie's corporate dissolution.

From August 26, 1994 until October 25, 1995, West Dixie did not exist as a legal corporation. During this period, however, the Paolicellis held themselves out as the corporation by, among other things, continuing

[6] Among the specific factors the Board said it would consider under the first prong were:

> (1) whether the corporation is operated as a single entity; (2) the commingling of funds and other assets; (3) the failure to maintain adequate corporate records; (4) the nature of the corporation's ownership and control; (5) the availability and use of corporate assets, the absence of same, or under capitalization; (6) the use of the corporate form as a mere shell, instrumentality or conduit of an individual of another corporation; (7) disregard of corporate legal formalities and the failure to maintain an arm's-length relationship among related entities; (8) diversion of the corporate funds or assets to noncorporate purposes; and, in addition, (9) transfer or disposal of corporate assets without fair consideration. 318 NLRB at 735 (footnote omitted).

[7] *AAA Fire Sprinkler, Inc.*, 322 NLRB 69, 74 (1996).

[8] The couple were also directors of other corporations found to be White Oak Coal's alter egos.

[9] Subsequently, in *AAA Fire Sprinkler*, supra, the Board applied the *White Oak Coal* test and reiterated that it would no longer apply an alter ego analysis when assessing whether the corporate veil should be pierced to reach individuals otherwise protected by its form. In *AAA Fire Sprinkler*, the Board imposed personal liability on that corporation's major stockholder and CEO on the basis that he had created shell corporations to evade the respondent's obligations to the union and had exploited the resources of each corporation for his personal benefit.

[10] Thus, we do not agree with our colleague that the second prong of *White Oak Coal* requires more evidence than is presented in this case. For instance, we do not find it determinative that there is no evidence that the benefits received by the Paolicellis, i.e., the rental payments, exceeded the value of personal assets used by them to conduct the corporation's business. Such balancing is not required by *White Oak Coal* and we find that the diversion of corporate funds for personal purposes affecting the discriminatees' remedial rights satisfies the second prong.

Chairman Gould finds that adherence to the corporate structure in this case would promote injustice and lead to an evasion of legal obligations by allowing the Paolicellis to evade their obligations under the Act. In failing to maintain a separate identity for the corporation, by using personal assets to service corporate debts and maintain corporate activities, as well as by using corporate property for their own use, the Paolicellis maintained a direct, personal interest in the operation, profitability, and cash-flow of the corporation. Thus it was to the Paolicellis' personal advantage to refuse to hire union supporters; an advantage which Paul Paolicelli sought to enhance by informing a foreman of West Dixie Enterprises that ''he didn't want to employ union people'' and by directly informing discriminatees that ''he wasn't hiring at this time.'' Finally, as noted above, the corporation has little or no ability to meet its remedial obligations. In such circumstances, Chairman Gould finds that allowing the Paolicellis to use the corporate form as a shield to protect themselves from unlawful conduct performed for their personal benefit, including the unlawful conduct engaged in by Paul Paolicelli, would promote injustice and allow an evasion of their legal obligations.

their electrical contracting business as West Dixie Enterprises, Inc., paying employees on West Dixie checks, bidding for work in the corporation's name, and corresponding with contractors as West Dixie. Indeed, the Paolicellis, who owned and operated the corporation, gave no indication by word or deed that it had ceased to exist.[11]

In comparable circumstances in *Urban Laboratories*, 308 NLRB 816 (1992), the Board imposed personal liability on individuals who continued to operate a dissolved corporation as if that entity still existed. See also *Total Property Services*, 317 NLRB 975, 979 (1995). Here, because the Paolicellis personally operated West Dixie Enterprises, Inc. as an ongoing enterprise during the period when that corporation did not legally exist, we find that they are personally liable for the period of its dissolution.

3. Finally, we reject the Respondent's argument that the Paolicellis are not personally liable for remedying the unfair labor practices based on Florida statute 607.1421(4).[12] As the Board made clear in *White Oak Coal*, ''personal liability for remedial obligations arising from corporate unfair labor practices under the National Labor Relations Act is a question of Federal law because it arises in the context of a *Federal labor* dispute.'' 318 NLRB at 734 (emphasis added, footnote omitted).

Further, even were the Florida statute applicable, we find that on its face it offers the Paolicellis no refuge from personal liability. The reason for West Dixie's dissolution was its failure to file an annual report. As this obligation rested exclusively with the corporation, and not the state or any other entity, the Paolicellis as owner, officer, and effective operators of the corporation cannot claim lack of knowledge; nor, indeed, is there any record evidence that they were unaware of the dissolution. Further, assuming arguendo that the evidence reflects that the Paolicellis had not known of the dissolution, we note that the Florida statute expressly provides that owners escape personal liability only upon a showing that the corporation's board of directors or shareholders ratified their actions following reinstatement of the corporation. There is no claim or evidence that such a ratification occurred in the present case.

Accordingly, we find that Paul and Carole Ann Paolicelli are personally liable with the Respondent West Dixie Enterprises, Inc. for remedying the above-referenced 8(a)(1) and (3) violations.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, West Dixie Enterprises, Inc., Oakland Park, Florida, its officers, agents, successors, and assigns, and Respondent Carole Ann Paolicelli and Paul Paolicelli, as individuals, their officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

Substitute the following for paragraphs 2(b) through (d).

''(b) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Within 14 days after service by the Region, post at their facility in Oakland Park, Florida, copies of the attached notice marked ''Appendix.''[13] Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Respondents' authorized representative, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents 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 Respondents have gone out of business or closed the facility involved in these proceedings, the Respondents shall mail, at their own expense, a copy of the notice to all current and former West Dixie Enterprise, Inc., employees employed by the Respondents at any time since August 5, 1994.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondents have taken to comply.''

---

[11] Indeed, in March 1995 ,''West Dixie Enterprises, Inc.'' filed an answer to the initial complaint as such.

[12] This statute provides, in relevant part, that:

> 607.1421. Procedure for and effect of administrative dissolution(1) If the Department of State determines that one or more grounds exist under s. 607.1420 for dissolving a corporation, it shall serve the corporation with written notice of its determination under s. 607.0504(2) stating the grounds therefor.
>
> . . . .
>
> (4) A director, officer, or agent of a corporation dissolved pursuant to this section, purporting to act on behalf of the corporation, is personally liable for the debts, obligations, and liabilities of the corporation arising from such action and incurred subsequent to the corporation's administrative dissolution only if he has actual notice of the administrative dissolution at the time such action is taken; but such liability shall be terminated upon the ratification of such action by the corporation's board of directors or shareholders subsequent to the reinstatement of the corporation under ss. 607.1401-607.14401.

[13] 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.''

MEMBER HIGGINS, concurring and dissenting.

I agree with my colleagues pro forma conclusions that the Respondent violated Section 8(a)(1) and (3). I also agree that, under *Urban Laboratories*, 308 NLRB 816 (1992), Paul and Carole Ann Paolicelli are personally liable for remedying these violations for the period of August 26, 1994, to October 25, 1995, when West Dixie Enterprises, Inc. was dissolved as a corporation under Florida law. Thus, once the corporate entity ceased to exist, so too did the Paolicellis' protection from personal liability. This is particularly true where, as here, the Paolicellis continued to operate the defunct corporation without interruption, and without informing employees, contractors, customers,—indeed—the Board, that the corporation had been dissolved. Id. See also *Total Property Services*, 317 NLRB 975 (1995).

I also agree with the majority that *White Oak Coal*, 318 NLRB 732 (1995), sets forth the appropriate test for determining whether to ''pierce the corporate veil'' and hold the Paolicellis personally liable for *fully remedying* the unfair labor practices (i.e., not merely during the period when West Dixie was defunct). Unlike my colleagues, however, I find that the Paolicellis are not liable under *White Oak Coal's* two-prong test.

Under *White Oak Coal*, two elements must be satisfied before individuals will be held liable for a corporation's unfair labor practices:

> ''(1) there is such unity of interest, and lack of respect given to the separate identity of the corporation by its shareholders, that the personalities and assets of the corporation and the individual are indistinct; *and* (2) adherence to the corporate form would sanction a fraud, promote injustice, or lead to an evasion of legal obligations.'' 318 NLRB 735. (Emphasis in original.)

I assume arguendo that the first prong is satisfied, based on the numerous instances in which the Paolicellis intermingled their funds with those of corporation. However, the second prong is not satisfied because the conduct of the Paolicellis did not result in fraud, injustice, or inequity. To the extent that the Paolicellis intermingled funds, it was mostly for the benefit, and not the detriment, of West Dixie. They used their personal funds to pay West Dixie employees, loaned money to the corporation, and made Carole Ann Paolicelli's personal vehicle available for corporate use. While, in so doing, they blurred the distinctions between individuals and the corporation, this did not result in an injustice necessitating the equitable remedy of piercing the corporate veil. Cf. *White Oak Coal*; *AAA Fire Sprinkler, Inc.*, 322 NLRB 69 (1996).

I recognize that, in one instance, the corporation paid Paul Paolicellis' rent for an unspecified 6-month period in 1994 or 1995. I do not agree, however, that this single action satisfies *White Oak Coal's* second prong. First, if the rental payment was between August 26, 1994, and October 25, 1995, it was at a time when the corporation had no legal existence. Second, there is no showing as to how much was paid in rent. Third, there is no suggestion that the rental payment was for any illegal or evasive purpose.

Based on all the above, I am unwilling to find that this limited benefit to Paul Paolicelli—who effectively ran the corporation without remuneration—constitutes a fraud or a misuse of corporate assets so as to warrant the piercing of the corporate veil.

My colleagues point to the alleged facts that the Respondent corporation cannot meet its remedial obligations, that Paul Paolicelli personally instigated the corporate misconduct, and that the Paolicellis reaped personal advantages from the corporate misconduct. As discussed below, these points are not dispositive under *White Oak Coal*.

As to the first point, the inability of a corporation to meet its obligations does not itself provide a basis for going after the individual assets of shareholders and officers. Further, as noted above, Respondent Corporation's apparent lack of assets does not stem from any plundering by the Paolicellis of corporate assets. Rather, to the extent that corporate lines were blurred, the money went substantially in the other direction.

As to culpability and the advantages reaped by the Paolicellis, those factors are not even mentioned as elements in the *White Oak Coal* tests set forth above. The relevant issue is not whether corporate agents have instigated misconduct or will be advantaged thereby, but rather whether there is a basis for the extraordinary step of piercing the corporate veil. In closely held corporations, it may often be the case that principal stockholders instigate the corporate misconduct, and they may profit therefrom as stockholders. However, under *White Oak*, those factors are not a basis for piercing the corporate veil.

Jennifer Burgess-Solomon, Esq., for the General Counsel.
Howard Bernstein, Esq., of Staten Island, New York, for the Respondents.

DECISION

STATEMENT OF THE CASE

D. BARRY MORRIS, Administrative Law Judge. This case was heard before me in Miami, Florida, on October 24 and 25, 1996. Upon a charge filed on October 31, 1994, and amended on February 21, 1995, a complaint was issued on February 28, 1995, amended on April 11, 1996, and further amended on August 22, 1996, alleging that Carole Ann Paolicelli, Paul Paolicelli, and Carole Ann and Paul Paolicelli and West Dixie Enterprises, Inc., Alter Egos, and a Single Employer (the Respondents) violated Section 8(a)(1) and (3) of the National Labor Relations Act, as amended (the Act). Respondents filed answers denying the commission of the alleged unfair labor practices.

The parties were given full opportunity to participate, produce evidence, examine and cross-examine witnesses, argue orally, and file briefs. Briefs were filed by General Counsel and by Respondents on November 26, 1996.

Upon the entire record of the case, including my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, West Dixie Enterprises, Inc. (West Dixie), a Florida corporation with an office and place of business located in Oakland Park, Florida, has been engaged in business as an electrical contractor in the construction industry. The record establishes that during each of the calendar years of 1994 and 1995 West Dixie purchased and received goods and materials in excess of $50,000 annually from outside the State of Florida. Respondents contend that the complaint utilized an inappropriate 12-month period to measure annual purchases. In their brief Respondents maintain that the ''jurisdictional prerequisite must exist at the time of the filing of the complaint or within twelve months prior to the date of filing.'' At another point in their brief Respondents state, citing *J & S Drywall*, 303 NLRB 24, 29–30 (1991), that the Board has approved the use of the ''most recent calendar year preceding the year of the hearing and decision.'' As stated in *Reliable Roofing Co.*, 246 NLRB 716 fn. 1 (1979), citing *Mine Workers District 2 (Mercury Mining & Construction Corp.)*, 96 NLRB 1389, 1390–1391 (1951), ''the Board stated that its jurisdictional criteria expressed in terms of annual dollar volume of business do not literally require evidentiary data respecting any certain 12-month period of operation.'' The complaint was issued on February 28, 1995. The record shows that the jurisdictional requirements were met for the calendar years of 1994 and 1995. Accordingly, I find that Respondent West Dixie is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. In addition, it has been admitted, and I find, that International Brotherhood of Electrical Workers Local Union 728 (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

West Dixie operated as an electrical contractor in the State of Florida from 1993 until 1995. From August 26, 1994, until October 25, 1995, the corporation had been administratively dissolved and remained inactive with the Department of State, Division of Corporations. As of the date of the hearing West Dixie remained as a shell corporation without any operating business. Carole Ann Paolicelli has been president and owner of West Dixie from August 30, 1993, until the date of the hearing.

Leonard Schlecker, a past employee of West Dixie, appeared to me to be a credible witness. He credibly testified that Carole Paolicelli was at the West Dixie office approximately 1 week each month but that Paul Paolicelli, her husband, was there almost every day. Schlecker also credibly testified that he was hired by Paul, that Paul was an owner of West Dixie, and that Paul paid for office supplies using his own personal credit card.

Salvatore Polera also appeared to me to be a credible witness. He credibly testified that Paul was involved in negotiations involved in awarding West Dixie certain jobs and that Paul initially represented himself as the ''owner'' of West Dixie. Similarly, John Stefanelli, who appeared to me to be a credible witness, testified that he was hired by Paul and that Paul represented himself as the ''owner of the business.''

Michael McLoughlin, a foreman and admitted supervisor of West Dixie, also appeared to me to be a credible witness. He was hired in May 1994[1] and was interviewed by Paul, who identified himself as the owner of West Dixie. McLoughlin credibly testified that Paul told him ''he didn't want to employ union people, he had had problems with them in the past.'' McLoughlin also credibly testified that Bobbie Brown, vice president and general manager of West Dixie, told him:

> West Dixie was under attack by union people. That three union people had come to the office requesting to fill out applications for employment. His instruction to me was to secure an employment application for a gentleman named Al Bennett and to read that application and indicate to Mr. Brown whether the name James Weldon appeared on that application as a reference.

McLoughlin testified that Bobbie Brown had told him that the three people who had come to the shop, Svetlick, Ranken, and Whetstone, had used Weldon's name as a reference on their job applications. Bobbie Brown had inquired as to the affiliation of Bennett and whether Bennett provided the same reference on his application. McLoughlin credibly testified that subsequently Paul interviewed Bennett and hired him.

McLoughlin also credibly testified that on August 4 Bobbie Brown told him that ''he had experience in dealing with union people . . . and that he knew how to deal with them.'' Brown also told him:

> We were going to have some jobsite rules and regulations that he would type up and deliver to the jobsite. They were to include items like no one was to discuss anything with anyone that came on the jobsite. ''Anyone'' being union representatives or agents. That no one was to leave the jobsite at lunchtime. They were to stay on the jobsite and eat their lunch. He had indicated that he had dealt with these union people on that other job and that he would handle the situation. If anyone approached myself, or my workers they were to be told to go to West Dixie Enterprise's office and speak to them, that they were not to speak to myself or the employees on the jobsite. I was directly told to fire anyone that violated the rule of not speaking to anyone that came on the jobsite and that he would, in the next day or so, generate this list of jobsite rules that I would have the employees sign and adhere to.

McLoughlin further credibly testified that Paul asked him whether he thought that Al Bennett was a ''union person.'' McLoughlin then ''called Mr. Bennett who was working probably 25–30 feet away from us and asked him directly

[1] All dates refer to 1994 unless otherwise specified.

was he a union person.'' Later that day Bennett asked why they had inquired about his union affiliation. Paul explained to him ''the union had been coming around and wanted to get on to the jobsite and that he didn't want that.'' McLoughlin also credibly testified that Al Bennett asked Paul about employment for his son, Colin. Paul asked Al Bennett whether he was sure he ''wasn't a union person.'' Al Bennett assured Paul that neither he nor his son were union people and Paul then hired Colin. McLoughlin also credibly testified that a newspaper advertisement which ran during August was ''pulled'' from the newspaper by Bobbie Brown who told McLoughlin that the ''advertisement was an open door for union people to come into the shop and apply for employment, so they were going to stop that.''

McLoughlin also credibly testified that his salary was paid by personal checks of Paul and Carole Ann Paolicelli. In addition, McLoughlin credibly testified that when discussing a raise with Paul, Paul told him that he was ''tired of going into his pocket . . . to keep the operations of the company afloat and that I should bear with them and that a pay raise would be forthcoming.'' McLoughlin also credibly testified that Bobbie Brown told him that he would not be issuing a written set of job rules but that ''I should adhere to what I had been instructed.''

Douglas Rice was hired by West Dixie on June 10 as a leadman. When he was being interviewed for the job by Bobbie Brown, Brown introduced Paul as the ''owner'' of West Dixie. Rice, who appeared to me to be a credible witness, testified that foremen meetings were conducted both by Paul and Bobbie Brown. Rice credibly testified that Bobbie Brown told him that ''we pulled the ad in the newspaper, the union is trying to get into West Dixie.'' He also credibly testified that at various times his salary was paid by personal checks of Paul and Carole Paolicelli. The record contains evidence that sometimes these personal checks were signed by Carole and sometimes they were signed by Paul.

Thomas Camacho, who also appeared to me to be a credible witness, was hired by West Dixie on August 8. He was a working foreman who worked with his tools approximately 80 to 90 percent of the time. Camacho credibly testified that Paul introduced himself as the ''owner'' of West Dixie. Camacho also credibly testified that Bobbie Brown asked him if he was a union member and that Camacho replied he was not.

David Svetlick, Roger Whetstone, and John Ranken applied for jobs with West Dixie on August 5. Svetlick credibly testified that on August 5 he went with Ranken and Whetstone to West Dixie's office, obtained applications and put down on the applications both union employers and union references. He credibly testified that West Dixie never contacted him. He returned to West Dixie's office a week later and asked the secretary about the status of their applications and whether West Dixie was still hiring electricians. The secretary responded that, ''yes, they were.'' He then saw Paul and told him that they were looking for employment. Paul replied, ''they weren't hiring at that time.'' Svetlick's testimony was corroborated by Whetstone and Ranken. Ranken credibly testified that on August 12 when they reappeared at West Dixie's office, Paul told him, ''he wasn't hiring at this time.''

B. *Discussion and Conclusions*

1. Alter ego

In *Weldment Corp.*, 275 NLRB 1432, 1433 (1985), it was stated:

> The Board has held that an individual respondent along with business entity respondents, will be held personally liable for remedying unfair labor practices, particularly the make-whole remedies because of the individual's actual operational control over and individual's financial control and/or ownership interest in the integrated enterprises.

The Board has imposed individual liability where the individual dominated the corporate entity and where the individual's affairs and those of the corporation were so intermingled that no distinct corporate boundaries existed. *O'Neill, Ltd.*, 288 NLRB 1354, 1356 (1988). See also *Honeycomb Plastics, Corp.*, 304 NLRB 570, 574 (1991). Carole Ann Paolicelli has been president and owner of West Dixie from August 30, 1993. I find that Paul Paolicelli oversaw day-to-day operations, negotiated bid proposals and contracts and hired employees. Until recently he held himself out as the ''owner'' of West Dixie. Paul used his own personal credit card to order supplies for West Dixie and Paul had stated that he was ''tired of going into his pocket to keep the company afloat.'' The evidence shows that salaries were paid using personal checks from Paul and Carole Ann Paolicelli's joint checking account and that sometimes the checks were signed by Carole and sometimes the checks were signed by Paul. I find that Carole Ann Paolicelli and Paul Paolicelli are alter egos of Respondent West Dixie and a single employer with Respondent West Dixie, and are personally liable for any unfair labor practices which were engaged in, including any backpay due.

2. Alleged violations of Section 8(a)(1)

McLoughlin admitted that on or around August 5 he interrogated Al Bennett about his union affiliation by asking him directly if he was a union member. McLoughlin further stated that later that same day Paul questioned Bennett again about being sure that he was not affiliated with the Union. This constitutes interrogation in violation of Section 8(a)(1) of the Act. Rice credibly testified that during July his supervisor, Billy, told himself and Ray Nelson that ''I've made you, Mike McLoughlin, and Angelo . . . out to be union members.'' This created an impression among employees that their union activities were under surveillance by Respondents, in violation of Section 8(a)(1) of the Act. Camacho credibly testified that in September, Bobbie Brown asked him if he was a member of the Union. Camacho replied that he was not. I find that Bobbie Brown's statement constituted unlawful interrogation, in violation of Section 8(1) of the Act.

McLoughlin credibly testified that after Bobby Brown instructed him concerning the new work rules, he told Wade Ellis, an apprentice electrician, that he was not to talk to any ''union agents'' who came onto the jobsite. Similarly, Rice credibly testified that during the second week of August Bobby Brown told him that if Jim Weldon, a union organizer, ''ever came back again, not to talk to him but to run

him off the job.'' I find that by prohibiting its employees from talking to union agents, Respondents violated Section 8(a)(1) of the Act. In addition, Rice credibly testified that Bobby Brown told him ''he knew how to handle union people. He'd just give his foreman or leadmen, the union guy, and have him give them dirty jobs, or bad jobs, so that they would quit and leave.'' Rice was a leadman. As such, he was not a supervisor. *Aquatech, Inc.*, 297 NLRB 711, 716 (1990). I find that Brown's statement to Rice constituted a threat to assign more onerous job duties to employees who were union supporters, in violation of Section 8(a)(1) of the Act.

3. Alleged refusals to hire

Respondents placed an advertisement for electricians in the newspaper on August 5. On that day Ranken, Svetlick, and Whetstone applied for jobs at West Dixie. They asked the secretary if the company was hiring electricians and were told that it was. The three applicants put down their union affiliation and union apprenticeship, former employers and union business agents, and references and they were never called for employment. McLoughlin admitted that on August 5 he received a telephone call from Bobbie Brown indicating that Respondent ''was under attack by union people, that three union people had come to the office requesting to fill out applications for employment.'' Svetlick and Ranken returned a week later. While the secretary said that the company was hiring, Paul told them that the company was ''not hiring.'' Camacho did not indicate any union affiliation on his application. He was hired on August 9. In addition, Robert Brown was hired as an electrician shortly after August 5. I find that Respondent refused to hire Svetlick, Whetstone, and Ranken on August 5 because they were union members. Respondents have not shown that the ''same action would have taken place even in the absence of the protected conduct.'' *Wright Line*, 251 NLRB 1083, 1089 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

CONCLUSIONS OF LAW

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

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

3. Carole Ann Paolicelli and Paul Paolicelli are alter egos and a single employer of West Dixie Enterprises, Inc.

4. By interrogating its employees about their union membership and by creating an impression among its employees that their union activities were under surveillance, Respondents have engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

5. By prohibiting employees from talking to Union agents and by threatening to assign more onerous job duties to employees who were union supporters, Respondents have engaged in unfair labor practices, in violation of Section 8(a)(1) of the Act.

6. By refusing to hire John Ranken, David Svetlick, and Roger Whetstone, Respondents have engaged in unfair labor practices in violation of Section 8(a)(3) and (1) of the Act.

7. The aforesaid unfair labor practices, constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondents have engaged in certain unfair labor practices, I find it necessary to order Respondents to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Respondents having unlawfully refused to hire John F. Ranken, David Svetlick, and Roger Whetstone, I find it necessary to order Respondents to offer them immediate employment to positions for which they had applied, or if those positions no longer exist, to substantially equivalent positions, and make them whole for any losses of earnings they may have suffered. Backpay shall be computed in accordance with the formula approved in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[2]

Upon the foregoing findings of fact, conclusions of law, and upon the entire record, pursuant to Section 10(c) of the Act, I hereby issue the following recommended[3]

ORDER

Respondent, West Dixie Enterprises, Inc., its officers, agents, successors and assigns and Respondents, Carole Ann and Paul Paolicelli, their agents, successors and assigns, shall

1. Cease and desist from

(a) Interrogating their employees concerning their union membership or creating the impression that their union activities are under surveillance.

(b) Prohibiting employees from talking to union agents or threatening to assign more onerous job duties to employees who are union supporters.

(c) Refusing to hire applicants for employment because they are union members.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act.

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

(a) Offer immediate employment to John Ranken, David Svetlick, and Roger Whetstone to positions for which they applied, or if those positions no longer exist, to substantially equivalent positions, and make them whole for any losses of earnings they may have suffered in the manner set forth in the remedy section of the decision.

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

(c) Post at their facility in Oakland Park, Florida copies of the attached notice marked ''Appendix''[4] and mail copies

---

[2] Under *New Horizons*, interest is computed at the ''short-term'' Federal rate for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § Sec. 6621.

[3] 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.

[4] 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

of the notice to employees employed by West Dixie Enterprises, Inc. during 1994.[5] Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Respondents' authorized representative, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

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

Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

[5] See *Brewery Products*, 302 NLRB 98 (1991).

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 the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT interrogate employees regarding their union membership or create the impression that their union activities are under surveillance.

WE WILL NOT prohibit employees from talking to union agents or threaten to assign more onerous job duties to employees who are union supporters.

WE WILL NOT refuse to hire applicants for employment because they are union members.

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

WE WILL offer immediate employment to John Ranken, David Svetlick and Roger Whetstone to positions for which they applied or if those positions no longer exist, to substantially equivalent positions, and make them whole for any losses of earnings they may have suffered, with interest.

CAROLE ANN PAOLICELLI, PAUL PAOLICELLI, AND CAROLE ANN AND PAUL PAOLICELLI AND WEST DIXIE ENTERPRISES, INC., ALTER EGOS, AND A SINGLE EMPLOYER