

Advanced Construction Services, Inc. and United Brotherhood of Carpenters & Joiners of America, Local No. 444. Case 17-CA-19506

December 23, 1999

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN
AND BRAME

On February 19, 1999, Administrative Law Judge Steven M. Charno issued the attached decision. The Respondent filed exceptions and a supporting brief, and the Charging Party filed an answering brief in opposition to the Respondent's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions,² and to adopt the judge's recommended Order as modified.³

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and orders that the Respondent, Advanced Construction Services, Inc., Lenexa, Kansas, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified below.

Substitute the following for paragraph 2(b).

"(b) Within 14 days after service by the Region, post at its Lenexa, Kansas facility copies of the attached notice marked 'Appendix C.'² Copies of the notice, on forms

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

² In its exceptions, the Respondent contends, inter alia, that it has no duty to supply information to the Charging Party, Local 444, because the Respondent has not entered into any collective-bargaining agreement to which Local 444 is a party. We find no merit in this exception. It is undisputed that the Respondent is signatory to two collective-bargaining agreements with the United Brotherhood of Carpenters and Joiners of America, and that these agreements require the Respondent to adhere to the terms and conditions of employment established by "bona fide local area agreements," notwithstanding the fact that the Respondent is not signatory to such local area agreements. It is also clear from the record that the Charging Party is party to a local area agreement covering the geographic area in which Advanced Office Interiors, the suspected alter ego of the Respondent, does business. Because, as the judge found, the Charging Party had a reasonable belief supported by objective evidence that the Respondent and Advanced Office Interiors were alter egos, the Respondent was obligated to supply the Charging Party with the requested information that was relevant and necessary for the policing of its local area agreement.

³ We shall modify the judge's recommended Order in accordance with our decisions in *Indian Hills Care Center*, 321 NLRB 144 (1996), and *Excel Container, Inc.*, 324 NLRB 17 (1997).

provided by the Regional Director for Region 17, after being signed by the Respondent's authorized representative, shall be posted by the Respondent 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 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 and former employees employed by the Respondent at any time since November 26, 1997."

Richard C. Auslander, Esq., for the General Counsel.
Malcom D. Young, Esq. and *Duncan A. Young, Esq.* (Young & White), of Omaha, Nebraska, for the Respondent.
Charles C. Schwartz, Esq. (Blake & Uhlig, P.A.), for the Charging Party.

DECISION

STEVEN M. CHARNO, Administrative Law Judge. This case was tried before me in Overland Park, Kansas, on January 27-28, 1999. After oral argument, I issued a bench decision pursuant to Section 102.35(a)(10) of the Board's Rules and Regulations. Appendix A is the portion of the transcript containing my decision, while appendix B contains corrections to that transcript [omitted from publication]. In accordance with Section 102.45 of the Board's Rules and Regulations, I certify the accuracy of the amended transcript containing my decision. Based on the findings of fact and conclusions of law contained therein and upon the entire record in this case, I issue the following recommended¹

ORDER

The Respondent, Advanced Construction Services, Inc., Lenexa, Kansas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to provide the United Brotherhood of Carpenters & Joiners of America, Local No. 444 (the Union), with relevant information which is necessary to permit it to perform its representative functions.

(b) 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 policies of the Act.

(a) Supply the information requested by the Union's November 26, 1997 questionnaire.

(b) Post at its Lenexa, Kansas facility copies of the attached notice marked "Appendix C."² Copies of the notice, on forms

¹ 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.

² 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 Na-

provided by the Regional Director for Region 17, after being signed by Respondent's authorized representative, shall be posted by Respondent 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 Respondent to ensure that the notices are not altered, defaced or covered by any other material.

(c) 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 Respondent has taken to comply.

APPENDIX A

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(Off the record.)

JUDGE CHARNO: On the record. Pardon my keeping you waiting for a few moments. This is the bench decision.

BENCH DECISION

Except as indicated the following findings are based on the record before me and on probative uncontested evidence. In response to a charge timely filed by the United Brotherhood of Carpenters and Joiners of America, Local No. 444, hereinafter the Local, service of which charge was stipulated, a Complaint was issued on May 4, 1998, which alleged that Advanced Construction Services, Inc., hereinafter ACS, had violated section 8(a)1 and 5 of the National Labor Relations Act as amended, hereinafter the Act, by refusing and failing to provide certain information requested by the Local.

Sometime during 1996 the Local became suspicious that ACS and Advanced Office Interiors, Inc., hereinafter Advanced, were alter egos. In order to explore these suspicions the Local submitted a questionnaire to ACS.

ACS, a Corporation with offices in Lenexa, Kansas, is engaged in the design and construction of office interiors. During the year ending March 31, 1998, ACS performed services valued in excess of fifty thousand dollars in States other than

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Kansas. It is admitted, and I find that ACS is an Employer within the meaning of the Act.

The Local is admitted to be, and I find is, a labor organization within the meaning of the Act. I further find that the Local is an affiliate of the United Brotherhood of Carpenters and Joiners of America, hereinafter the Union.

AOI, Inc., hereinafter AOI, which was ACS's direct predecessor, was incorporated in Nebraska on July 28, 1986. On April 26, 1989, AOI, giving a Kansas address and telephone number, entered a contract recognizing the Union, and agreeing to comply with the contractual terms and conditions of employment established between Union affiliates and Employers in those locations where AOI worked within the Union's jurisdiction.

On June 3, 1996, AOI changed its name to ACS. On September 16, 1996, ACS entered an agreement with the Union which contained recognition and compliance language compa-

tional 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."

nable to that in its 1989 agreement. Pursuant to the 1996 agreement ACS agreed to be bound, first, by the terms of the collective bargaining agreement between the Union and the Ceilings and Interiors Systems Contractors Association, which had been in effect since November 8, 1980, and second, by the terms of any future agreement between the Union and the Association unless timely notice was given. That agreement was in effect for three years from the date of its execution.

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It is clear from the plain language of these agreements that an affiliate need not execute a separate collective bargaining agreement with a signatory Employer in order to enforce collective bargaining obligations.

Based on these agreements I find that all Journeymen Carpenters, Apprentices and Trainees performing work for ACS within the Local's geographical jurisdiction constitute a unit appropriate for the purpose of collective bargaining within the meaning of section 9(b) of the Act.

Further, based on these agreements I find that ACS, which is an Employer in the building and construction industry, granted recognition to the Local as the exclusive collective bargaining representative of the unit without regard to whether the majority status of the Union or its affiliates had ever been established pursuant to section 9(a) of the Act.

I therefore conclude that at all times since September 16, 1996, the Local has been and is the limited exclusive collective bargaining representative of the unit.

Beginning in approximately June of 1995, R.L. Peterson, the Local's Business Representative and Financial Secretary, began to have conversations with Advanced's management officials, Richard Jensen and Mr. Wiebelhaus, in an attempt to secure Advanced recognition of the Local for work being performed in

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the Local's geographic jurisdiction.

Over the following year Jensen and Wiebelhaus repeatedly declined the opportunity to sign a collective bargaining agreement. In late May of 1996 Peterson was told that Advanced had a contract with the Union. Peterson approached Jensen and was told that there were two totally separate companies at issue: AOI, which had recognized the Union, and Advanced, which did not.

Peterson thereafter began an investigation of the relationship between Advanced on the one hand and ACS and AOI on the other hand. He determined that Advanced had been incorporated in Nebraska on October 1, 1985. He also determined that since at least 1962, and continuing until at least 1997, Advanced and ACS, or its predecessor, have shared a common address of record in Omaha, Nebraska, and that Richard Jensen and Martin McCormick have, first, held the principal officer-ships of both Advanced and ACS or its predecessor, second, been owners of both companies, and third, comprised occasionally in concert with their assumed spouses, the Boards of Directors of both entities.

In addition, Peterson found that Advanced reported its business in 1997 as "design and construction of office interiors" while ACS contemporaneously reported itself as engaged in the "building and design of office interiors."

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Peterson was able to document contributions by Advanced during 1995 to the Union's benefit plans in Iowa. While such payments could have been made by Advanced on behalf of ACS's predecessor, a surmise for which no additional evidence exists, they could also have been required of Advanced as a non signatory subcontractor.

Photographs taken by Peterson during 1997 show vehicles with Nebraska vanity license plates bearing the legend "AOI" and a number, garaged at both Advanced's Omaha Office and ACS's Lenexa, Kansas location.

Peterson did not attempt to discover facts relating to the use or ownership of these vehicles. The same photographs demonstrate that Advanced was using an AOI logo at its Omaha headquarters.

In late 1996 or early 1997 Peterson obtained a copy of a volume titled "Advanced Office Interiors, Inc., Employee Telephone Book." This volume contains the telephone numbers for the offices and employees of ACS's predecessor as well as the numbers for Advanced's offices and employees.

In passing, I should note that Peterson also unearthed certain data of no rational significance to the outcome of his investigation. The 1992 and 1994 newspaper accounts which quote Advanced officials describing Kansas City operations, are of little value given Peterson's knowledge that, first, Advanced

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was licensed to do business in Kansas during that period, and second, Advanced was reporting actual operations in Kansas during that period.

Checks bearing ACS's Kansas address drawn by ACS's Des Moines office on ACS's payroll account with an Iowa bank for ACS's payments to the Union's benefit fund, did not provide a rational basis for suspecting that ACS and Advanced are alter egos.

Information concerning AOI of Des Moines is outside the scope of this proceeding, was not a subject of Peterson's request for information, and is so scanty is to be without probative value. Thus, Peterson had no reason to believe that this entity was engaged in the same business as Advanced or ACS or that it had ever hired a unit employee.

Based on his investigation Peterson prepared a November 26, 1997 letter addressed to ACS's President, Richard Jensen, at his Omaha address of record, enclosing a questionnaire which sought information concerning the relationship between ACS and Advanced. I find first, this request was properly delivered to ACS, and second, the Local was not required to submit the request to either ACS's Lenexa or Des Moines offices.

It appears uncontested that Jensen actually received the letter and that ACS has not supplied the information requested by the Local.

The question before me is whether the Local's request for

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information was based on a reasonable belief supported by objective evidence that ACS and Advanced were alter egos. See *Shoppers Food Warehouse Corp.*, 315 NLRB 258, 259 (1994).

Given the facts set out previously I conclude that the Local has demonstrated such a reasonable belief. I further find that the information requested by the Local is necessary for and relevant to the performance of its duties as limited exclusive collective bargaining representative of the unit.

Accordingly, I conclude that ACS's failure and refusal to provide the requested information is an unfair labor practice in violation of section 8(a)1 and 5 of the Act.

Upon receipt of the transcript and record in its entirety I will issue the appropriate order. Time for appeal runs from the issuance of that order.

The hearing in this matter is closed. Thank you very much for your cooperation and patience.

(Whereupon, the hearing in the above entitled matter was closed.)

APPENDIX C

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.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail or refuse to provide the United Brotherhood of Carpenters & Joiners of America, Local No. 444 (the Union), with relevant information which is necessary to permit it to perform its representative functions.

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

WE WILL supply the information requested by the Union's November 26, 1997 questionnaire.

ADVANCED CONSTRUCTION SERVICES, INC.