

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
ATLANTA BRANCH OFFICE

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A.J. MECHANICAL, INC.,  
WILLIAM A. GREENE a/k/a  
10 ARNOLD GREENE and  
CYNTHIA D. GREEN

and

CASES      15-CA-15350  
                 15-CA-15388  
                 15-CA-15598  
                 15-CA-15618

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CARPENTERS AND MILLWRIGHTS,  
LOCAL UNION # 2471, affiliated with  
20 UNITED BROTHERHOOD OF CARPENTERS  
AND JOINERS OF AMERICA

25 *Stephen C. Bensinger, Esq.,*  
New Orleans, LA ,  
for General Counsel.  
*Eric J. Holshouser, Esq.,*  
30 Jacksonville, FL,  
for Respondent.

SUPPLEMENTAL DECISION

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This matter was heard in Pensacola, Florida on October 30, 2002. On April 14, 2000, the National Labor Relations Board issued a decision and order in this proceeding.<sup>1</sup> The Order directed Respondent A.J. Mechanical, Inc., inter alia, to make whole employees who was unlawfully denied a pay increase; that were unlawfully laid off and not recalled; that were unlawfully discharged; and that Respondent unlawfully refused to consider for hire and to hire; and limited backpay<sup>2</sup> because Respondent closed its facility without bargaining with the Union

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<sup>1</sup> 330 NLRB No. 178 (2000).

<sup>2</sup> The remedy for employees terminated by Respondent's unlawful refusal to bargain over the effects of its decision to close its facility, should be similar to that in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968). The Board in *Transmarine* directed that Respondent shall pay its employees terminated by closing its facility, backpay "at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until occurrence of the earliest of the following conditions: (1) the

about the effects of its decision to close its facility. On October 23, 2000, the United States Court of Appeals for the Eleventh Circuit entered its judgment enforcing in full the Board's order.

5 A controversy having arisen over the amount of backpay due under the Board's Order and as to whether William A. Greene a/k/a Arnold Greene and Cynthia D. Greene are liable for backpay,<sup>3</sup> the Acting Regional Director for Region 15 on October 1, 2002, issued a compliance specification<sup>4</sup> and notice of hearing. The compliance specification sets forth the alleged liability for wages and benefits of Respondents A.J. Mechanical, Inc., William A. Greene, and Cynthia D. Greene. Although copies of the compliance specification and notice of hearing were duly served on Respondent A.J. Mechanical, Inc. by certified mail, A.J. Mechanical, Inc. failed to answer and A.J. Mechanical, Inc. did not appear at the hearing held in Pensacola.

15 The Compliance Specifications alleged that among other things, the underlying decision directed A.J. Mechanical, Inc., to perform affirmative action including making 12 employees it terminated in violation of Section 8(a)(1) and (3) whole for loss of pay or benefits, and making its former employees whole because of its failure to bargain with the Union over its decision to cease operations.

20 The Compliance Specification alleged that the following amounts, plus interest, are due the following discriminatees:

James R. Adams	\$11,836.97
Darryl L. Henderson	\$ 6,613.00
Eddy Lee Jordan	\$ 6,410.04
William G. Krajewski	\$ 4,950.46
Jeremy P. McCall	\$ 1,797.00
Ronald W. Morrell	\$ 8,431.99
David J. North	\$ 9,093.60
John P. Schiffko	\$ 7,734.93
Scottie B. Steele	\$ 2,736.40
Frank Tournabene	\$ 3,080.00
Matthew R. Weaver	\$12,913.41
Garry B. West	\$12,575.60

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date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the closing of its facility on its employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 business days after receipt of this Decision and Order, or to commence negotiations within 5 business days after receipt of the Respondent's notice of its desire to bargain with the Union; (4) the Union's subsequent failure to bargain in good faith, but in no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date on which the Respondent terminated its operations, to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner; provided, however, that in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ."

<sup>3</sup> In apparent error, the third paragraph of the Compliance Specification failed to state the full nature of the controversy regarding William A. and Cynthia D. Greene. However, the full Compliance Specification as well as matters included in the record of the hearing, show that a matter at issue is whether the Greens should be liable for backpay.

<sup>4</sup> General Counsel's motion to substitute pages in the Compliance Specification was granted during the hearing (see ALJExh. 1 and 2).

The Compliance Specification also alleged that net backpay in the amount of \$2,992.00, plus interest, is due to each of the following employees as a result of Respondent closing its facility without bargaining with the Union over the effects of its decision to close:

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Abernathy, Jerry Ken	Grantland, John	Mayton, Deborah L.	Steeverson, Gregory J.
Adams, James R. <sup>5</sup>	Green, Ronald A.	Miller, George M.	Stough, David A.
Adams, Timothy E.	Hall, Michael W.	Millins, Phillip O.	Stroud, Robert K.
Baker, James B.	Harper, Michael C.	Millwood, Robert M.	Taylor, Paul
Baker, Jason L.	Harrelson, Cecil Jr.	Morrell, Ronald W. <sup>6</sup>	Tournabene, Frank S. <sup>7</sup>
Barahona, Rolando L.	Harrison, Robert D.	Mosley, Ronald R.	Tyra, Ron
Best, Tracey C.	Hawthorne, James L.	Nguyen, Su Van	Vick, Armon R.
Black, Joel L.	Henderson, Darryl L. <sup>8</sup>	Nichols, Christopher S.	Walker, Christina J.
Bradshaw, Randall S.	Henriquez, Juan F.	Nix, Randall S.	Walker, Lisa M.
Brooks, Byron S.	Hicks, Kenneth S.	North, David J. <sup>9</sup>	Walker, Michael
Brumley, Bradley S.	Hill, Marshal D.	Nunnally, Patrick E.	Ward, Ivy
Caraway, Robert B.	Holley, Junior	Nunnally, Troy A.	Ward, Tim
Cameron, Andrew	Jackson, Darryl J.	Odom, Curtis L.	Weaver, Matthew R. <sup>10</sup>
Carnley, James C.	Johnson, Glen, Jr.	Odom, Jakie E.	West, Garry B. <sup>11</sup>
Carnley, Sherral P.	Joiner, Charles W.	Owen, Cecil R.	Whitson, Carl R.
Chessher, Jerry D.	Jordan, Eddy Lee <sup>12</sup>	Pedicord, Brian K.	Williams, Clinton S.
Chessher, Terry L.	Judson, Shane P.	Pennington, David E.	Williams, Donald
Cleary, William R.	Kirchharr, James E.	Petty, Jimmy D.	Willis, James R.
Cooley, Clay W.	Knight, James E.	Phillips, Donald W.	Wolfe, Theodore D.
Copeland, Barry E.	Krajewski, William G. <sup>13</sup>	Phillips, Douglas W.	Woods, Kelly B.
Cowart, Douglas R.	Lambert, Raymond T.	Phillips, Gail A.	Wynn, Edward L.
Crow, Terry C.	Land, W. Roger	Phillips, Jason C.	Young, Cornelius L.
Davidson, Wade N.	Lazar, Harry J.	Raines, Mary R.	
Davis, Diane W.	Lee, James H.	Revill, Charles W.	
Dick, Richard J.	Lee, Roger M.	Roberts, Glenn	
Durdin, Quillie	Lee, Ronald W.	Rodrigues, Julio Ceasa	
Ellis, Pamela A.	Lukkar, Mark T.	Scarborough, Daniel E.	
Evans, Marcus D.	McCall, Jeremy P. <sup>14</sup>	Shachle, Paul F.	
Ford, Christopher	Madden, Stephen	Schachle, Vincent C.	
Foster, Aaron D.	Maddox, Frankie	Schifko, John P. <sup>15</sup>	
Graham, Luther	Mason, John W.	Shields, Douglas A.	
Graham, Marvin	Maxson, Dennis M.	Steele, Scottie B. <sup>16</sup>	

<sup>5</sup> This is in addition to the \$11,836.97 Adams is entitled to as a discriminatee under Section 8(a)(1) and (3).  
<sup>6</sup> This is in addition to the \$8,431.99 Morrell is entitled to as a discriminatee under Section 8(a)(1) and (3).  
<sup>7</sup> This is in addition to the \$3,080.00 Tournabene is entitled to as a discriminatee under Section 8(a)(1) and (3).  
<sup>8</sup> This is in addition to the \$6,613.00 Henderson is entitled to as a discriminatee under Section 8(a)(1) and (3).  
<sup>9</sup> This is in addition to the \$9,093.60 North is entitled to as a discriminatee under Section 8(a)(1) and (3).  
<sup>10</sup> This is in addition to the \$12,913.41 Weaver is entitled to as a discriminatee under Section 8(a)(1) and (3).  
<sup>11</sup> This is in addition to the \$12,575.60 West is entitled to as a discriminatee under Section 8(a)(1) and (3).  
<sup>12</sup> This is in addition to the \$6,410.04 Jordan is entitled to as a discriminatee under Section 8(a)(1) and (3).  
<sup>13</sup> This is in addition to the \$4,950.46 Krajewski is entitled to as a discriminatee under Section 8(a)(1) and (3).  
<sup>14</sup> This is in addition to the \$1,797.00 McCall is entitled to as a discriminatee under Section 8(a)(1) and (3).  
<sup>15</sup> This is in addition to the \$7,734.93 Schifko is entitled to as a discriminatee under Section 8(a)(1) and (3).  
<sup>16</sup> This is in addition to the \$2,736.40 Steele is entitled to as a discriminatee under Section 8(a)(1) and (3).

As shown above, A.J. Mechanical, Inc. did not answer the compliance specifications and it did not appear at the hearing. General Counsel’s motion for a finding that A.J. Mechanical, Inc., admitted the pleadings in the Compliance Specifications was granted.

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The remaining issues deal with whether William A. Greene and Cynthia D. Greene<sup>17</sup> are liable for back wages. General Counsel contended that the applicable principles are those which were applied in *White Oak Coal Co., Inc.*, 318 NLRB 732 (1995). There, the Board concluded that the corporate veil may be pierced when (1) the shareholder 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.

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***The record evidence:***

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A.J. Mechanical, Inc. was a corporation and its only shareholders were William A. Greene and James Sanders.<sup>18</sup> Several witnesses including William A. Greene and Cynthia D. Greene testified during the hearing.<sup>19</sup>

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A union organizing campaign started among the A.J. Mechanical, Inc. employees and a representation petition was filed with the NLRB in early 1999. Several unfair labor practice charges were filed against A.J. Mechanical, Inc. beginning in May 1999.

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William A. Greene testified that in 1999 A.J. Mechanical, Inc. was in the process of dissolving.<sup>20</sup> He testified that he made the decision to dissolve the corporation sometime late 1998. Among other things A.J. Mechanical agreed in a written resolution to meet its debts. As to vendors of its equipment and consumable supplies, A.J. Mechanical paid those bills. William A. Greene admitted that he has not paid anything on the unfair labor practice charges or the complaint or judgment that eventually resulted from the unfair labor practice charges.

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A.J. Mechanical, Inc. held a public auction of September 11. The announcement of that auction indicated it was a complete liquidation. William Greene admitted that he attached the following note to that announcement and mailed the announcement and the note to the NLRB about September 13, 1999:

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*This sale was made possible by Millwright Local 2471 and The National Labor Relations Board. Both parties should feel very proud of their efforts in putting a small independent contractor out of business and costing a lot of people a chance to make a decent living.*

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William A. Greene testified that A.J. Mechanical<sup>21</sup> was incorporated in Florida and that

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<sup>17</sup> Respondents William A. Greene is sometimes referred to as Arnold Greene.  
<sup>18</sup> James Sanders is referred to as Jim Sanders in the underlying Board decision (330 NLRB No. 178 (2000)).  
<sup>19</sup> Additionally, I received transcripts of earlier testimony and accompanying exhibits of William A. Greene, Cynthia D. Greene and others.  
<sup>20</sup> A.J. Mechanical worked on a turbine project in Pensacola, Florida from October 1998.  
<sup>21</sup> A.J. Mechanical is sometimes referred to as the corporation.

he and James Sanders were each 50% owners (shareholders). Both he and James Sanders paid working capital to start up the corporation.<sup>22</sup> The corporation was dissolved through a joint meeting of the stockholders on December 2, 1999. Greene testified that he and James Sanders met with the corporation's attorney to discuss dissolution on July 6, 1999. He testified the corporation was directed to close its Pensacola, Florida job by June 25, 1999 at 4:00 p.m. However, according to Greene, A.J. Mechanical acquired a 2 month contract with Enron to finish up that Pensacola job and the corporation completed that work in about four or five weeks after June 25.

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Greene testified that he loaned money to A.J. Mechanical and that the corporation never loaned money to him. A.J. Mechanical had its own separate credit cards and Greene never charged personal items to those company credit cards. He used his own funds to make incidental expense payments occasionally on behalf of the corporation but he was reimbursed for those payments. Both William A. Greene and James Sanders had A.J. Mechanical trucks. Greene's truck was leased to him but the corporation made the lease payments. Greene testified that he used the truck for business.

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William A. Greene testified that he normally deposited all funds received from the corporation in his joint checking account. He and his wife Cynthia D. Greene shared that checking account. That and their other assets including home, automobiles and investments are all shared. The funds he received from the corporation dissolution were also shared between William A. and Cynthia D. Greene.

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Cynthia D. Greene<sup>23</sup> testified that she formerly worked as a mechanic for A.J. Mechanical. She did some part-time bookkeeping and clerical work for the corporation in 1998 and 1999 and was not paid for that work. She wrote checks for bill payment but she normally did not write checks for shareholder distributions. However, she did write one check for shareholder distribution at the direction of her husband. Cynthia Greene testified that none of the shareholder distribution checks were made out to her. She testified that she never discussed the unfair labor practice proceedings with her husband.

It is not disputed that William A. Greene as well as James Sanders, received cash distributions from A.J. Mechanical beginning on February 16, 1999. Those distributions to William A. Greene<sup>24</sup> were as follows:

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February 16, 1999	\$225,000.00
February 24, 1999	\$50,000.00
March 5, 1999	\$100,000.00
March 26, 1999	\$100,000.00
April 13, 1999	\$100,000.00 <sup>25</sup>

<sup>22</sup> Respondent pointed out that Greene and Sanders each paid in approximately \$20,000.00 in working capital when A.J. Mechanical was formed in 1993 (Tr. 86, 100, GCEXh. 11(a), p. 35).

<sup>23</sup> Respondent pointed out that Cynthia Greene was never an officer, director or shareholder of A.J. Mechanical.

<sup>24</sup> Except as specifically noted, James Sanders received the same amounts on the same dates noted for Greene.

<sup>25</sup> Sanders did not receive a distribution on April 13. He did receive a \$100,000.00 distribution on April 16, 1999.

April 21, 1999	\$ 250,000.00
April 22, 1999	\$300,000.00 <sup>26</sup>
June 10, 1999	\$500,000.00
November 4, 1999	\$217,500.00 <sup>27</sup>
December 2, 1999	\$16,345.73 <sup>28</sup>

**TOTAL DISTRIBUTION** **\$1,858,845.73<sup>29</sup>**

5 Ralph Carr testified that he was employed as an inspector deputy United States Marshal in July 2001. He went to the home of Arnold and Cynthia Greene in order to serve a subpoena. As Carr approached he noticed that Greene was manually cutting wood on a horizontal band saw. Carr saw Greene manually lay one board on a tractor with forklifts after cutting it with the saw.

10 Carr approached Arnold Greene at the back of Greene’s house and identified himself. Greene identified himself as Mr. Woodcutter. Subsequently Greene admitted that he was Arnold Greene. Carr then returned to Greene’s house where Cynthia Greene accepted the subpoena after being told by Arnold Greene to take the paper.

15 Sue Crochet is a field examiner with the NLRB in New Orleans. She worked on a representation case involving A.J. Mechanical. On April 21, 1999 she phoned William A. Greene. Crochet asked Greene if A.J. Mechanical would recall laid off employees. Greene replied that most of the people that would be recalled would not be union people, because they only cause trouble. Greene said that he was going to fight to the bitter end and he did not want an  
20 election. Greene said that the Department of Labor was against him. He said that he could move the job, that the job was portable, that he didn’t need any union people. Greene said that he could shut down the business and sell it.

25 Annie Archie is the compliance officer with the New Orleans regional office of the NLRB. Archie testified to the accuracy of the Compliance Specification computations.

***Conclusions:***

***Credibility:***

30 William A. Greene testified in the October 30 hearing. Additionally, earlier testimony by Greene was admitted in evidence.

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<sup>26</sup> Sanders did not receive a distribution on April 22. He did receive a \$300,000.00 distribution on April 23, 1999.

<sup>27</sup> Sanders did not receive a distribution on November 4. He did receive a \$217,500.00 distribution on November 5, 1999.

<sup>28</sup> Sanders did not receive a distribution on December 2. He did receive a \$16,345.73 distribution on December 6, 1999.

<sup>29</sup> James Sanders also received a total distribution of \$1,858,845.73.

Former inspector deputy U.S. Marshall, Ralph Carr, testified without rebuttal that Greene misrepresented himself to Carr after Carr identified himself to Greene. Greene initially identified himself as Mr. Woodcutter but subsequently admitted to Carr that he was Arnold Greene.

5           Moreover, there was testimony by William A. Greene that could have been corroborated  
by others including his former business associate James Sanders. Arnold Greene admitted that  
James Sanders was in the hearing room during his testimony. Among other things, Greene  
testified that he and Sanders decided in late 1998, to wind up the A.J. Mechanical, Inc. business  
after their existing contract. That testimony was seriously contested by among other things,  
10           evidence that the corporate business was not terminated after the late 1988 contract (see below).  
Additionally Greene admitted there was no existing documentary evidence of that meeting and  
decision. Nevertheless, Sanders was not called to corroborate Greene.

15           Additionally, a transcript of earlier testimony by Greene during a representation case  
hearing was admitted in evidence. Greene testified on May 6, 1999. There he testified among  
other things, that his Pensacola contract that existed from November 1998 had ended about 2  
months before his May 1999 testimony when Turbine Technologies was removed from the  
project. When Turbine Technologies was removed from the project A.J. Mechanical, Inc.  
contracted with IBC Turbo. That contract lasted until the end of April 1999 and on May 1, 1999  
20           A.J. Mechanical, Inc. started a third contract. That one was with Enron and the job, as both jobs  
before, was located at Pensacola docks. Greene testified the Enron job was scheduled to end at  
7:00 o'clock on the day after the May 6 hearing.

25           William A. Greene's testimony during the instant hearing conflicted with his testimony on May  
6, 1999. For example, Greene testified that he received a fax from IBC Turbo directing him to  
close their Pensacola job by June 25, 1999. At the May 1999 hearing Greene testified the IBC  
Turbine contract was completed at the end of April and that he started another contract with Enron  
on May 1, 1999. He also testified in the instant hearing that he acquired a two-month contract  
with Enron after the IBC Turbo job ended on June 25. That conflicted with his May 6, 1999  
30           testimony that he started the Enron contract eight or nine days before that hearing.

35           Nevertheless, it is apparent under either of Greene's version of events that A.J.  
Mechanical, Inc. entered into at least two additional contracts after the end of 1998. That does  
not square with Greene's testimony to the effect that he and James Sanders decided in late 1998  
to dissolve A.J. Mechanical at the completion of the then existing contract.

40           Additionally, there is evidence that conflicts with Greene's testimony that he and Sanders  
decided to dissolve A.J. Mechanical, Inc. before he learned the employees were involved in  
Union organizing activity. For example, Greene admitted<sup>30</sup> that he mailed a copy of the  
announcement of the public auction of A.J. Mechanical, Inc. property, to the NLRB along with a  
pasted note stating:

*This sale was made possible by Millwright Local 2471 and The National Labor Relations  
Board. Both parties should feel very proud of their efforts in putting a small independent*

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<sup>30</sup> Greene evaded Counsel for General Counsel's question of did he mail GCEX. 10 to the NLRB regional office by answering "I may have" on several occasions. Eventually after the administrative law judge asked whether he recalled mailing the document, Greene admitted that he had mailed the document.

*contractor out of business and costing a lot of people a chance to make a decent living.*  
 (GCExh. 10)

5 That note by Greene showed that he felt both the Union and the NLRB were at fault in  
 the dissolution of the corporation. Even though Greene testified that he above statement was  
 untrue, several matters are apparent. One, Greene testified in conflict with his note to the NLRB.  
 Two, at one time Greene held out that the Union, as well as the NLRB, caused the demise of the  
 corporation. Three, there is a serious doubt surrounding Greene's testimony that he and Sanders  
 10 decided to dissolve the corporation before learning of the employees' Union organizing  
 activities.

In view of all the above, the full record and Greene's demeanor, I find that Greene was  
 not credible. I shall not credit any of his testimony, except that which other, credited, evidence  
 corroborates or that which constitutes an admission against interest.

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***Findings:***

Counsel for General Counsel argued that the compliance specifications were proven in  
 regard to gross backpay, interim earnings and interim expenses. In regard to Respondent A.J.  
 20 Mechanical, Inc., General Counsel's motion to the effect that A.J. Mechanical, Inc. be deemed to  
 have admitted the pleadings and for judgment against A.J. Mechanical, Inc., was granted during  
 the October 30, 2002 hearing. As to Respondents William A. Greene and Cynthia Greene,  
 General Counsel's motion for a finding that William A. Greene and Cynthia Greene admitted the  
 Compliance Specifications gross backpay pleadings and precluding receipt of evidence disputing  
 25 gross backpay, was also granted at the hearing.<sup>31</sup> Additionally, the compliance specifications  
 when coupled with the Greens' answer and the full record proved the interim earnings and  
 interim expenses.<sup>32</sup>

The Compliance Specifications included allegations that William A. Greene and Cynthia  
 30 D. Greene are jointly and severally liable for backpay to the same extent as Respondent A.J.  
 Mechanical, Inc.

Respondent argued that where, as here, a newly added party was not shown to be an alter  
 ego, successor or single employer at the time of the service of the initial unfair labor practice  
 35 complaint and underlying proceedings, that party is not afforded due process because the party's  
 individual interests were not represented in those proceedings (*Viking Indus. Sec., Inc. v.*  
*NLRB*, 225 F.3d 131, 134 (2<sup>nd</sup> Cir. 2000)). In that regard, the record shows that neither William  
 A. Greene nor Cynthia D. Greene, were alleged as party in the unfair labor practice proceeding  
 before issuance of the Compliance Specification.

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***Viking Indus. Sec., Inc. v. NLRB*** involved an issue of derivative liability based a single  
 employer theory. Two corporations, Viking New York and Viking New Jersey, were formed and  
 operated as a single business for a time. At some time in 1988 or 1989, the two corporations split

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<sup>31</sup> The Greene's answer to the compliance specification formed the basis for Counsel for General Counsel's  
 motion and the order granting that motion (Tr. 19; GCExh. 2).

<sup>32</sup> Including especially the testimony and supporting documentation, of Compliance Officer Annie B. Archie.

into two separate businesses. Before the split Viking New York unlawfully fired an employee, Marrero, on September 23, 1989, because of his protected conduct. An unfair labor practice complaint issued on December 29, 1989 alleging only that Viking New York engaged in unlawful conduct by among other things, discharging Marrero. When a compliance specification  
 5 issued on July 2, 1994, Viking New Jersey was added for the first time and it was alleged that Viking New York and Viking New Jersey constituted a single employer. The Court denied enforcement against Viking New Jersey. It held that in “order for Viking New Jersey to be bound by an unfair labor practice proceeding brought only against Viking New York, the affiliation  
 10 between the two companies must be shown to have existed at the time of the proceeding, or at least at the time that the complaint was served.”

Here, there is no question as to whether the Greenes severed their ties with A.J. Mechanical, Inc. at some time before the unfair labor practice proceedings or before the complaint was served. William A. Greene and James Sanders were the only stockholders  
 15 throughout the existence of A.J. Mechanical, Inc. Each held 50% of the stock. Here, the question is not one of due process but one of whether there ever was a corporate entity that should provide protection for the Greenes against a finding of liability. That question was considered in *White Oak Coal Co.*, 318 NLRB 732, 734 (1995)<sup>33</sup> where the Board considered the principle of “piercing the corporate veil.”<sup>34</sup>

The Board stated the precedent relied on by the administrative law judge in *White Oak Coal Co.* did not properly resolve the personal liability issue. Instead, the Board decided to adopt the 10<sup>th</sup> Circuit Court’s two-pronged analytical framework for piercing the corporate veil in  
 20 *NLRB v. Greater Kansas City Roofing*.<sup>35</sup> The corporate veil may be pierced when: (1) the shareholder 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.

The Board stated in *White Oak Coal*, when “assessing the first prong to determine  
 30 whether the shareholders and the corporation have failed to maintain their separate identifies, we will consider generally (a) the degree to which the corporate legal formalities have been maintained, and (b) the degree to which individual and corporate funds, other assets, and affairs have been commingled. Among the specific factors we will consider are: (1) whether the corporation is operated as a separate entity; (2) the commingling of funds and other assets; (3)  
 35 the failure to maintain separate 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 or 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  
 40 without fair consideration.” (318 NLRB 732, 735)

<sup>33</sup> See also *Reliable Electric Company*, 330 NLRB No. 111 (2000).

<sup>34</sup> Respondent argued that the General Counsel has not shown that the corporate veil should be pierced as required in *White Oak Coal Co.*, 318 NLRB 732, 734 (1995).

<sup>35</sup> *NLRB v. Greater Kansas City Roofing*, 2 F.3d 1047 (10<sup>th</sup> Cir. 1993), denying enf. In pertinent part of 305 NLRB 720 (1991)

Here, as to (1) there were no records of corporate meetings such as meetings of the shareholders, the Board of Directors or officers, with the exception of the December 2, 1999 meeting to dissolve the corporation. There was no evidence of corporate decision-making. In fact the evidence revealed that the two shareholders made individual decisions on a job or shift without consulting the other shareholder when either Greene or Sanders, respectively, was directly involved in a particular job or shift. That applied regardless of whether the decision-maker was William A. Greene or James Sanders. As to (2) the funds and assets were commingled. The owners made loans to the corporation without documentation. Assets including pickup trucks were treated as individual property. Sanders's pickup truck was titled in his name and Greene's pickup was leased to him. However, the corporation paid for both trucks. Regarding (3), A.J. Mechanical, Inc. did not routinely maintain separate corporate records such as minutes of corporate meetings or records of loans to the corporation. As to (5), A.J. Mechanical was under capitalized from its initiation and its payroll was satisfied through undocumented loans from its shareholders. Regarding (6) the evidence showed that at most, A.J. Mechanical, Inc. was a partnership between Sanders and Greene. As to (7) there was an almost complete disregard of corporate legal formalities until December 2, 1999 when Sanders and Greene met to dissolve the corporation. As shown herein a representation petition was filed and a hearing was held on May 6, 1999. Unfair labor practices were filed against A.J. Mechanical, Inc. on May 24, June 11, 16, and 26, August 30, October 28 and November 12, 1999. Therefore, the only documented corporate meeting occurred after Greene and Sanders knew of the employees' Union organizing activity.

In regard to (8) and (9), as shown herein, corporate funds were diverted to Greene and Sanders.

There was no showing of fair consideration for distribution of the corporate funds to Greene and Sanders. Instead, as shown herein, there were outstanding unfair labor practice charges pending from May 24, 1999. After that date Greene and Sanders each received \$733,845.73 from the corporation. After December 2, 1999 the corporation had no money to distribute to creditors, shareholders or anyone else.

The Board in *White Oak Coal Co., Inc.*, also stated:

*When "assessing the second prong, we must determine whether adhering to the corporate form and not piercing the corporate veil would permit a fraud, promote injustice, or lead to an evasion of legal obligations. The showing of inequity necessary to warrant the equitable remedy of piercing the corporate veil must flow from misuse of the corporate form. Further, the individuals charged personally with corporate liability must be found to have participated in the fraud, injustice, or inequity that is found. (318 NLRB 732, 735)*

The evidence showed that all the A.J. Mechanical assets were distribution to William A. Greene and James Sanders. Greene, Sanders and their spouses simply wrote checks for the

distribution of the assets. Greene and, except as noted with a footnote, Sanders, received funds as noted herein:

February 16, 1999	\$225,000.00	April 21, 1999	\$ 250,000.00
February 24, 1999	\$50,000.00	April 22, 1999	\$300,000.00 <sup>36</sup>
March 5, 1999	\$100,000.00	June 10, 1999	\$500,000.00
March 26, 1999	\$100,000.00	November 4, 1999	\$217,500.00 <sup>37</sup>
April 13, 1999	\$100,000.00 <sup>38</sup>	December 2, 1999	\$16,345.73 <sup>39</sup>

5           The evidence is undisputed that William A. and Cynthia D. Greene as husband and wife, shared equally in the funds distributed by A.J. Mechanical, Inc. By applying the two-pronged analytical framework, I recommend that the corporate veil be pierced and that William A. Greene and Cynthia D. Greene are jointly and severally liable for the remedial and backpay obligations of A.J. Mechanical, Inc. The Greens have disregarded the separate identifies of their corporate alter ego, A.J. Mechanical, Inc. Adherence to the corporate form would result in  
10 injustice and would lead to an evasion of legal obligations.<sup>40</sup>

15           Moreover, as shown in the Board decision in the underlying unfair labor practice case,<sup>41</sup> William A. Greene personally engaged in action in violation of the National Labor Relations Act by threatening employees on December 20 and 23, 1998, and January 28, 1999 that he would shut down the job and reopen using employees who did not support the Union; by threatening employees that he would move its business if the employees did not cease their activities on behalf of the Union; by threatening employees in April and on May 6, 1999 with a loss of benefits if they selected the Union as their bargaining representative; and on January 16, 1999 he  
20 discarded numerous applications because those applications indicated support for the Union.

25           Moreover, as shown above, Sue Crochet is a field examiner with the NLRB in New Orleans. On April 21, 1999 she phoned William A. Greene. Crochet asked Greene if A.J. Mechanical would recall laid off employees. Greene replied that most of the people that would be recalled would not be union people, because they only cause trouble. Greene said that he was going to fight to the bitter end and he did not want an election. Greene said that the Department of Labor was against him. He said that he could move the job, that the job was portable, that he didn't need any union people. Greene said that he could shut down the business and sell it.

30           By their actions the Greens along with James Sanders, engaged in blurring the separate corporate entity of A.J. Mechanical, Inc. and their misuse of the corporate assets and form, is unfair, unjust, and has resulted in an evasion of A.J. Mechanical's remedial and backpay obligations for unfair labor practices that William A. Greene and others, committed.

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<sup>36</sup> Sanders did not receive a distribution on April 22. He did receive a \$300,000.00 distribution on April 23, 1999.  
<sup>37</sup> Sanders did not receive a distribution on November 4. He did receive a \$217,500.00 distribution on November 5, 1999.  
<sup>38</sup> Sanders did not receive a distribution on April 13. He did receive a \$100,000.00 distribution on April 16, 1999.  
<sup>39</sup> Sanders did not receive a distribution on December 2. He did receive a \$16,345.73 distribution on December 6, 1999.  
<sup>40</sup> *White Oak Coal Co., Inc.*, 318 NLRB 732 (1995).  
<sup>41</sup> *A.J. Mechanical, Inc.*, 330 NLRB No. 178 (2000).

I find the allegations contained in the Compliance Specifications are true and I recommend that the Respondents A.J. Mechanical, Inc., William A. Greene and Cynthia D. Greene be ordered to pay these amounts to the below listed employees, plus interest accrued to the date of payment.

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**ORDER**

The Respondents A.J. Mechanical, Inc., and its alter egos and/or successors William A. Greene and Cynthia D. Greene, their officers, agents, successors and assigns, shall make whole the following individuals by paying each of them the sum of set forth opposite their name, plus interest minus tax withholdings, if any, required by Federal and state laws:

10

James R. Adams	\$14,828.97
Darryl L. Henderson	\$ 9,605.00
Eddy Lee Jordan	\$10,014.04
William G. Krajewski	\$ 7,942.46
Jeremy P. McCall	\$ 4,789.00
Ronald W. Morrell	\$11,423.99
David J. North	\$12,055.60 <sup>42</sup>
John P. Schifko	\$10,726.93
Scottie B. Steele	\$ 5,728.40
Frank Tournabene	\$ 6,072.00
Matthew R. Weaver	\$15,201.41
Garry B. West	\$15,567.60

The Respondents A.J. Mechanical, Inc., and its alter egos and/or successors William A. Greene and Cynthia D. Greene, their officers, agents, successors and assigns, shall make whole the following individuals by paying each of them the sum of \$2,992.00, plus interest minus tax withholdings, if any, required by Federal and state laws:

15

Abernathy, Jerry Ken	Henriquez, Juan F.	Phillips, Douglas W.
Adams, Timothy E.	Hicks, Kenneth S.	Phillips, Gail A.
Baker, James B.	Hill, Marshal D.	Phillips, Jason C.
Baker, Jason L.	Holley, Junior	Raines, Mary R.
Barahona, Rolando L.	Jackson, Darryl J.	Revill, Charles W.
Best, Tracey C.	Johnson, Glen, Jr.	Roberts, Glenn
Black, Joel L.	Joiner, Charles W.	Rodrigues, Julio Ceasa
Bradshaw, Randall S.	Judson, Shane P.	Scarborough, Daniel E.
Brooks, Byron S.	Kirchharr, James E.	Shachle, Paul F.
Brumley, Bradley S.	Knight, James E.	Schachle, Vincent C.
Caraway, Robert B.	Lambert, Raymond T.	Shields, Douglas A.
Cameron, Andrew	Land, W. Roger	Steeverson, Gregory J.

<sup>42</sup> Counsel for General Counsel pointed out at footnote 11 of his brief, that the specifications contain an arithmetic error showing David J. North with interim earnings of \$6,872.40 when those interim earnings should correctly be \$8,216.40. Therefore, North’s net entitlement should be as shown above rather than the \$10,407.60 plus \$2,992.00 (\$13,399.60) shown through the compliance specification.

Carnley, James C.	Lazar, Harry J.	Stough, David A.
Carnley, Sherral P.	Lee, James H.	Stroud, Robert K.
Chessher, Jerry D.	Lee, Roger M.	Taylor, Paul
Chessher, Terry L.	Lee, Ronald W.	Tyra, Ron
Cleary, William R.	Lukkar, Mark T.	Vick, Armon R.
Cooley, Clay W.	Madden, Stephen	Walker, Christina J.
Copeland, Barry E.	Maddox, Frankie	Walker, Lisa M.
Cowart, Douglas R.	Mason, John W.	Walker, Michael
Crow, Terry C.	Maxson, Dennis M.	Ward, Ivy
Davidson, Wade N.	Mayton, Deborah L.	Ward, Tim
Davis, Diane W.	Miller, George M.	Whitson, Carl R.
Dick, Richard J.	Millins, Phillip O.	Williams, Clinton S.
Durbin, Quillie	Millwood, Robert M.	Williams, Donald
Ellis, Pamela A.	Mosley, Ronald R.	Willis, James R.
Evans, Marcus D.	Nguyen, Su Van	Wolfe, Theodore D.
Ford, Christopher	Nichols, Christopher S.	Woods, Kelly B.
Foster, Aaron D.	Nix, Randall S.	Wynn, Edward L.
Graham, Luther	Nunnally, Patrick E.	Young, Cornelius L.
Graham, Marvin	Nunnally, Troy A.	
Grantland, John	Odom, Curtis L.	
Green, Ronald A.	Odom, Jakie E.	
Hall, Michael W.	Owen, Cecil R.	
Harper, Michael C.	Pedicord, Brian K.	
Harrelson, Cecil Jr.	Pennington, David E.	
Harrison, Robert D.	Petty, Jimmy D.	
Hawthorne, James L.	Phillips, Donald W.	

Dated at Washington, DC

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**Pargen Robertson**  
**Administrative Law Judge**

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