

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

PDK INVESTMENTS, LLC

and

Case No. 16–CA–26292

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL UNION 20

Linda M. Reeder, Esq., and Kelly Pagan, Esq.,
for the General Counsel.
Bruce E. Buchanan, Esq., for the Respondent.
Duane R. Nordick, Esq., for the Charging Party.

BENCH DECISION

Statement of the Case

MICHAEL A. MARCIONESE, Administrative Law Judge. I heard this case in Ft. Worth, Texas, on December 3, 2008.¹ International Brotherhood of Electrical Workers, Local Union 20 (the Union) filed the charge in this case on June 30, and an amended complaint and notice of hearing issued on November 24. The amended complaint alleged that PDK Investments, LLC, the Respondent, violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish the Union, upon request, with relevant information that was necessary for the Union to perform its duties as exclusive collective-bargaining representative of the Respondent's employees. On November 24, the Respondent filed its answer to the amended complaint, denying the unfair labor practice allegations and asserting, as an affirmative defense, that its collective bargaining relationship with the Union was governed by Section 8(f) of the Act and that the Respondent had given timely notice of its intent not to be bound to any subsequent collective bargaining agreement with the Union.²

After hearing the testimony of the witnesses, reviewing the documentary evidence, and considering the arguments made by counsel for the parties at the hearing, I rendered a bench decision in accordance with Section 102.35(a)(10) of the Board's Rules and Regulations. There is no dispute that the Union, on April 4, 2008, sent the Respondent a letter with an attached questionnaire seeking answers to 79 questions regarding the relationship between the Respondent and another entity. On June 9, the Union, by letter, renewed this request and asked for additional information, including "whether tools have been retagged." I found that the General Counsel and the Union met their burden of showing that the Union had a reasonable and objective basis for believing that an alter ego, single employer or other relationship existed between the Respondent and several other entities that might have an effect on the bargaining unit of the Respondent's employees that the Union represented. There being no dispute that the Respondent has failed and refused to furnish any of the information requested by the Union, I concluded that the Respondent had violated the Act as alleged. See *Shoppers Food*

¹ All dates are in 2008 unless otherwise indicated.

² The General Counsel agreed that the parties have a Section 8(f), rather than 9(a) relationship.

Warehouse, 315 NLRB 257 (1994). See also *Pulaski Construction Co.*, 345 NLRB 931 (2005) and cases cited in my bench decision.

5 I hereby certify the accuracy of the portion of the transcript, pages 142 through 162, containing my bench decision. A copy of that portion of the transcript is attached to this decision as "Appendix A".

Conclusions of Law

10 By failing and refusing, since June 24, 2008, to furnish the Union with the information requested in the Union's April 4 and June 9, 2008 letters, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

15 Remedy

20 Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, the Respondent will be ordered to provide the Union with the requested information, and to post an appropriate notice.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended³

25 ORDER

The Respondent, PDK Investments, LLC, Balch Springs, Texas, its officers, agents, successors, and assigns, shall

30 1. Cease and desist from

(a) Refusing to bargain collectively with International Brotherhood of Electrical Workers, Local Union 20, by failing and refusing to provide the Union with relevant and necessary information requested by the Union in its April 4, 2008 and June 9, 2008 letters.

35 (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.

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

(a) Furnish the Union with the information requested in its April 4, 2008 letter and advise the Union whether the Respondent's tools had been retagged, as requested in the Union's June 9, 2008 letter.

45 (b) On request, bargain collectively and in good faith with the Union with regard to the wages, hours, and other terms and conditions of employment of employees in the appropriate

50 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.

unit specified in the collective bargaining agreement between the Respondent and the Union which is in effect through November 30, 2010.

5 (c) Within 14 days after service by the Region, post at its facility in Balch Springs, Texas, copies of the attached notice marked "Appendix B."⁴ Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, 10 defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 24, 2008.

15 (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 Respondent has taken to comply.

20 Dated, Washington, D.C., December 29, 2008.

25 Michael A. Marcionese
Administrative Law Judge

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

APPENDIX A

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5 JUDGE MARCIONESE: Okay. Now that I've had a chance to
21 hear all of the evidence in this case and consider the arguments
10 22 that the parties have made in closing and reviewed the evidence,
23 including the documentary evidence, I'm prepared to issue my
24 decision as I had indicated previously pursuant to Section
15 25 102.35(a)(10) of the Board's Rules and Regulations.

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20 1 Now, the Board requires, even though that it is a bench
2 decision, that I still include much of the standard things that
3 you would find in a written decision, so I will go through a
25 4 statement of the case, jurisdiction. I have to make those
5 factual findings.

30 6 And we'll start off with the way this case was initiated,
7 and that was by the filing of a charge by the International
8 Brotherhood of Electrical Workers, Local Number 20, the union
35 9 herein, on June 30 of 2008. Based upon that charge, the General
10 Counsel has issued first a complaint and notice of hearing on
40 11 September 30, 2008, and then an amended complaint on November
12 24, 2008.

45 13 The amended complaint alleged that the Respondent, PDK
14 Investments, LLC, had violated Section 8(a)(5) and (1) of the
15 Act by failing and refusing to furnish the union with
50 16 information requested by the union. The complaint further
17 alleged that the requested information is necessary for and

18 relevant to the union's performance of its statutory duties as
19 exclusive collective-bargaining representative of the
5 20 Respondent's employees.

21 The Respondent filed its answer to the amended complaint
10 22 on November 24, 2008, as well, essentially denying the unfair
23 labor practice allegations and raising several affirmative
24 defenses, including that the parties had an 8(f) bargaining
15 25 relationship and that Respondent had already served timely

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20 1 notice under the contract of its intent not to be bound by any
2 subsequent agreements.

3 And I don't think that's really an issue in this case.
25 4 There's no dispute the parties seem to agree that it is an 8(f)
5 relationship, and General Counsel isn't seeking any relief or
30 6 remedy beyond the expiration of the current agreement, so I
7 don't need to address those defenses here.

8 With respect to jurisdiction, Respondent has also admitted
35 9 in its amended answer that it is a Texas limited liability
10 corporation with offices and a place of business in Balch
40 11 Springs, Texas, where it is engaged in the construction industry
12 as an electrical contractor.

13 Respondent further admitted that it annually provided
45 14 services valued in excess of \$50,000 to commercial office
15 buildings within Texas, and that it derived gross revenues in
50 16 excess of a million dollars from these operations, and based
17 upon these admissions, I find that the Respondent is an employer

18 engaged in commerce within the meaning of Section 2,
19 subparagraphs (2), (6) and (7) of the Act, and Respondent has
5 20 further admitted that the union is a labor organization within
21 the meaning of Section 2(5) of the Act.

10 22 Now, with respect to the specific ULP, there's really no
23 dispute. Respondent is a member of NECA, the North Texas
24 chapter, and as such, has recognized the union as the exclusive
15 25 collective-bargaining representative of its employees performing

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20 1 electrical work within the union's trade jurisdiction and
2 geographic jurisdiction, and that it is, in fact, a party to the
3 current collective-bargaining agreement that has been negotiated
25 4 between NECA and the union, which is effective until November 30
5 of 2010.

30 6 The only issue raised by the pleadings, the only real
7 dispute here is whether the Respondent had a duty under the Act
8 to furnish the union with the information that it requested, and
35 9 that falls into two types of information, although having heard
10 all the evidence, it's really all one category.

40 11 But the first allegation is that the union requested
12 answers to a list of 79 questions, probing the relationship
13 between the Respondent and several other entities, and the
45 14 request was initially made on April 4 of 2008 by letter, which
15 is in evidence, and the Respondent replied initially, also by
50 16 letter on April 18, 2008, not furnishing the information at that
17 time, but I'll get into the contents of the correspondence when

18 I get into the facts in more detail.

5 19 The second item of information is contained in a letter
20 dated June 9, which the letter reiterated the request for the
21 initial 79 pieces of information but also asked several
10 22 additional specific questions, one of which was an answer to the
23 question whether the Respondent tools had been retagged, and
24 we'll get into that as I pursue this, and the Respondent did
15 25 reply to that information request.

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20 1 As General Counsel pointed out, it answered some of the
2 questions. The only one it did not answer is the one regarding
3 the retagging of tools, and it also did not provide any answers
25 4 to those 79 questions in the questionnaire attached to the first
5 letter. And it was shortly thereafter -- that was June 24, the
30 6 employer's response -- that the union actually filed the instant
7 charge.

35 8 Now, generally the parties -- at least General Counsel
9 went through a very long recitation of the case law, and the
10 Respondent has also cited several cases. There really isn't any
40 11 legal dispute in this case as to what the law is. Everybody
12 knows that under Board law, an employer has the duty to provide
13 a union upon request with information that is relevant to the
45 14 performance of its statutory duties. Acme Industrial is the
15 lead case, and that's 385 U.S. 432, a 1967 Supreme Court
50 16 decision.

17 And the duty extends not only to negotiations, but to

18 administration and enforcement of the collective-bargaining
19 agreement. It's also pretty well established that in
5 20 determining relevance, the Board applies a very liberal
21 discovery-type standard, and essentially the Board has indicated
10 22 if the information is of any potential or probable relevance or
23 can be of use to the union in the administration of the
24 contract, then it meets the standard of relevance to supply
15 25 information in the collective-bargaining relationship.

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20 1 Now, the particular type of information requested here
2 does not directly relate to unit employees' wages, hours or
3 terms and conditions of employment which are presumptively
25 4 relevant. Everyone agrees on that.

5 And everyone also agrees that where the union does request
30 6 information concerning matters outside the bargaining unit, such
7 as information regarding the existence of a possible single
8 employer, double-breasted or alter ego relationship, the union
35 9 has the burden of demonstrating relevance, and in addition to
10 the cases cited by the General Counsel, I would cite Shoppers
40 11 Food Warehouse, 315 NLRB 257, a 1994 case; Contract Flooring
12 Systems, Inc., 344 NLRB 925 (2005); and Cannelton Industries,
13 339 NLRB 996 (2003).

45 14 And everyone agrees here as well that the standard for
15 relevance in these types of cases is whether the union has a
50 16 reasonable belief supported by objective evidence. I've heard
17 that from both sides in their closing arguments. So essentially

18 what we're left with is a factual dispute as to whether, in
19 fact, such an objective basis for a reasonable belief exists in
5 20 this case.

21 Now, the General Counsel went on to cite a number of cases
10 22 where the Board has addressed that very issue and the types of
23 evidence that they found sufficient, and I won't repeat all of
24 those cases. And as General Counsel has pointed out, the union
15 25 doesn't need to prove the actual existence of any such

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20 1 relationship. It doesn't have to prove that any potential
2 grievance filed under the collective-bargaining agreement would
3 have merit. It doesn't have to show that the information it
25 4 relies upon is accurate or ultimately reliable, and it can
5 reasonably rely on hearsay evidence.

30 6 Now, in the closing argument, Respondent indicated that
7 the language regarding the information not having to be accurate
8 or reliable was mere dicta, but if it is dicta, it's been
35 9 repeated so many times in so many Board cases that it must have
10 the force of law at this time, and I have not come across a
40 11 single case where the Board has dealt with this type of
12 information where they have not used that phrase. So they must
13 mean it when they say that the information doesn't have to be
45 14 accurate or ultimately reliable for the union to rely upon it in
15 making such a request. Otherwise, why would they repeat it so
50 16 frequently?

17 As the parties all agree, something more than a mere

18 suspicion or speculation must be shown in order to establish
19 that the union is entitled to this type of information. Now,
5 20 the only current dispute which seems to exist in this area of
21 the law, which none of the parties have really addressed -- I
10 22 don't think it's really even of issue in this case -- is at what
23 point a union has to disclose these facts upon which it relies
24 in making a request for information regarding the existence of
15 25 an alter ego, single employer or double-breasted relationship.

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20 1 The Board historically has said that the union does not
2 need to produce -- to disclose the facts it's relying upon. It
3 merely needs to state the reason it's requesting this
25 4 information. Recently, based on some disagreement with the
5 Circuit Courts, two Board members indicated that they think that
30 6 the union does have to disclose the reasons. One of those Board
7 members is no longer on the Board, so I don't know if the Board
8 will ever adopt that position.

35 9 But in any event, as I will indicate previously, in this
10 case the union did disclose not only its reason for requesting
40 11 the information, but also a summary or a statement of the
12 evidence it was relying upon. And I'll address whether that
13 evidence is, in fact, supported here, but at least the letter,
45 14 the last letter that was sent to the employer, did disclose a
15 recitation of facts that would meet even that standard that
50 16 Board member Schaumberg would require.

17 Now, in terms of the actual factual evidence, what the

18 General Counsel offered essentially in this case was the
19 testimony of one witness, the union's business manager and
5 20 financial secretary and the author of the information request,
21 Mr. A.C. McAfee.

10 22 And Mr. McAfee testified that shortly before he sent the
23 first letter on April 4, he received a report from one employee,
24 Rudy Ayala, that this individual had been approached by the
15 25 employer, PDK Investments, and offered the opportunity to work

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20 1 for the nonunion side of the company and that a company called
2 Guild Commercial and Tenant Services was operating out of the
3 same location with the same officers as PDK Investments.

25 4 Now, Mr. McAfee testified that this report led him to be
5 concerned whether the Respondent was operating an alter ego, and
30 6 he cited the contract recognition clause as well as the
7 jurisdictional language in the contract, defining the union's
8 work as indicating that it would be violated if the Respondent
35 9 had, in fact, set up an alter ego to avoid its obligations under
10 the contract and not pay the wages and benefits required.

40 11 As a result, Mr. McAfee sent the April 4 letter, and the
12 letter -- I'll quote it for the record. He addressed it to Mr.
13 Zagar at PDK Investments' Balch Springs, Texas, address.

45 14 It says, "IBEW Local Union 20 has become aware that your
15 company has been operating Guild Commercial and Tenant Services
50 16 as a nonunion company. As part of IBEW Local Union 20
17 investigations of this matter, we are contacting you directly

18 for pertinent information. We require that you supply us with
 19 information concerning PDK Investments, LLC, relationship with
 20 nonunion company for the purpose of administering the inside
 21 agreement.

22 "Please respond to the attached questionnaire which is
 23 directed at the time period of the most recent labor agreement.
 24 Please provide all information. To determine the
 25 appropriateness of a grievance and/or determine whether these

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1 matters can be resolved in negotiations in a timely fashion,
 2 IBEW Local 20 requires a response within two weeks from the date
 3 of this letter."

4 So the letter, while stating a reason as I think indicated
 5 previously, did not set forth what the union was relying upon in
 6 making the request. Attached to the letter is a 16-page
 7 questionnaire consisting of 79 questions, asking for detailed
 8 information regarding the Respondent and the purposed nonunion
 9 company, and this is a questionnaire, either identical or
 10 similar to one which the Board has dealt with in other cases,
 11 cited -- I think General Counsel has cited some of the cases
 12 where this questionnaire has come up.

13 And all of the information seems to relate to what the
 14 Board would normally look to if it were evaluating an alter ego
 15 case in terms of the multitude of factors that the Board has
 16 indicated it considers in determining whether an employer is an
 17 alter ego or a single employer, and the Board has also in alter

18 ego cases said no one factor is determinative.

5 19 Although some factors, such as common ownership and
20 control of labor relations, are more important than others,
21 certainly all of the items in the questionnaire would relate to
10 22 those types of factors that the Board would look at if it were
23 evaluating alter ego case.

15 24 Now, Mr. McAfee testified further that he didn't stop with
25 the sending of the letter, but that, in fact, he continued to

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20 1 investigate. He assigned an official or someone from his
2 office, Chris Williams, to observe personally what was going on
3 at the company's facility, as well as at various work sites.

25 4 He testified that he also checked out a website, and as
5 Mr. Buchanan correctly points out, he did not identify the exact
30 6 website he looked at, and he really did not -- Mr. McAfee did
7 not tell us what he saw on the website, other than that there
8 were a number of Guild companies or companies with the Guild
35 9 name operating out of the same address with common offices, but
10 that is, at least, information that he did address and identify
40 11 personally having observed.

12 In addition, while awaiting a response from the Respondent
13 to the April 4 letter, he received a handwritten statement from
45 14 another employee of the Respondent and a member of the union,
15 Mr. Terrell, and that's in evidence as General Counsel's Exhibit
50 16 6. And the statement which I will read in its entirety states
17 that:

18 "At 3:25 p.m. on April 9, '08, Paul Prachyl came to the
19 Crescent office complex to deliver a breaker for Tom McMann. At
5 20 that time, he informed Tom and I that Guild Commercial and Guild
21 Electric would be splitting up and not share the same office
10 22 space. Guild Commercial would keep the shop in Balch Springs,
23 and the union side would find new office space. After he made
24 the delivery, he was to look at a new location.

15 25 "Paul also made the statement that we, the union side,

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20 1 would be taking direction from him and him only, and not from
2 anyone from someone from the Guild Commercial side. Paul
3 instructed us to start painting over the Guild name on our
25 4 ladders and tools and mark PDK on all the tools and ladders.
5 The Guild name would remain with the open shop, and the union
30 6 side would maybe get a new name, PDK.

7 "He also said the trucks would still have the Guild name
8 no them. The union side would sub work from the open shop side
35 9 as needed. Tom McMann and I were told this information together
10 on April 9, 2008."

40 11 And Mr. McAfee indicates that this is information that, in
12 fact, he did receive and rely upon in pursuing the information
13 request that he initially made on April 4. Now, Mr. McAfee also
45 14 testified that he received reports from Mr. Williams, indicating
15 that another company, Guild Commercial and Tenant Services, was
50 16 observed performing electrical work at commercial buildings
17 where the Respondent was or previously had worked as a union

18 contractor, and that a vehicle with the word "Guild" on the
19 side -- and he did not identify any other logo or language on
5 20 the truck other than that -- had been seen delivering material
21 to both union and nonunion jobs.

10 22 Now, while this investigation was going on, the Respondent
23 did finally reply to the April 4 letter with a letter from Mr.
24 Zagar dated April 18, which acknowledged receipt of the union's
15 25 request and the accompanying questionnaire and stated that, "In

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20 1 order to evaluate your request for this voluminous information,
2 please explain the particular relevance of each question and
3 subpart of the question."

25 4 Now, Mr. McAfee admittedly did not respond to that request
5 until June 9 of 2008, and he testified that that was because he
30 6 was continuing to investigate and receive this information that
7 he described before preparing his response. Now, in this
8 response which was dated June 9, Mr. McAfee, at paragraph 2,
35 9 answers, in fact, the question from Mr. Zagar as to the
10 explanation for the relevance of the information.

40 11 In the letter, Mr. McAfee states, "Local 20 formulated its
12 information request after it was brought to Local 20's attention
13 that furloughed union members were being encouraged to perform
45 14 work for the nonunion side of the shop." And that apparently
15 relates to Mr. Ayala's statement to him about someone offering
50 16 him employment opportunity with the nonunion company.

17 "Upon further investigation," the letter continuing,

18 "Local 20 learned, among other things, that Guild Electric,
19 Guild Technologies, PDK Investments, and/or GCATS Investments
5 20 have been sharing the same office, mailing address, website,
21 warehouse, equipment and personnel." And this apparently refers
10 22 to what Mr. McAfee observed on the website, although as Mr.
23 Buchanan points out, he only identified in his testimony having
24 seen that they shared the same office and officers.

15 25 "Moreover, the alleged nonunion side has been performing

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20 1 work that in the past had been performed union." And this is in
2 reference to the reports that Mr. McAfee had received from Mr.
3 Williams, as well as the handwritten statement from Mr. Terrell.

25 4 And then Mr. McAfee goes on in his letter, quoting, "Since
5 my letter of April 4, 2008, it has come to my attention that
30 6 Guild, Guild Technologies, PDK, and GCATS have made several
7 operational changes. In addition to answering my letter of
8 April 4, 2008, please describe in detail each operational change
35 9 made by Guild, Guild Technologies, PDK, and/or GCATS since April
10 4, 2008, including but not limited to whether tools have been
40 11 retagged, offices have been moved, supervisors have been
12 reassigned, and changes have been made to payroll practices."
13 And these are clear references to items that have been
45 14 highlighted in Mr. Terrell's statement that was faxed to Mr.
15 McAfee in April.

50 16 Okay. Now, the reply that Mr. McAfee received is the June
17 24, 2008, letter from Mr. Zagar in which he acknowledges receipt

18 of the June 9 letter and states that -- claims that the union --
19 and I'll quote -- "failed to provide any justification or
5 20 explanation of the relevance of the 79 questions submitted in
21 early April. Your failure to do so confirms that this
10 22 burdensome questionnaire is nothing more than a fishing
23 expedition."

24 Then Mr. Zagar purports to go on and respond to each of
15 25 the specific questions that were asked in the June 9 letter, and

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20 1 in answering those questions, in fact, Mr. Zagar confirms at
2 least one of the reports that Mr. McAfee had received from Mr.
3 Terrell, which is that, in fact, PDK Investments, LLC, did move
25 4 its office recently.

5 And although it states it was to get closer to its
30 6 longstanding customers and markets and hopefully grow its
7 business opportunities, certainly that's a confirmation that the
8 information that Mr. McAfee had received from Mr. Terrell was
35 9 more than a mere suspicion or speculation, and it also lends
10 some credence to whatever Mr. Terrell had reported he was told
40 11 by Mr. Prachyl.

12 Now, in response to -- and that essentially -- I mean,
13 General Counsel called 6(11)(c) Mr. Zagar, but really did not
45 14 offer much other evidence, other than Mr. McAfee's which is the
15 heart of the case.

50 16 In response to this evidence, the Respondents essentially
17 attempted to show that these reports that Mr. McAfee was relying

18 upon from the employees, Mr. Ayala, Mr. Terrell, and Mr. Bryant,
19 were unreliable, because each for his own reason had a grudge
20 against the employer and a reason not to tell the truth.

21 Respondent also attempted to show that the union was
22 mistaken in its belief that the companies were operating out of
23 a common facility or using the same trucks and equipment or
24 performing some work, but it's clear from the response of the
25 June 24 letter that at least until recently, they probably had

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1 been operating out of the same facility, and it was only
2 recently that PDK moved.

3 And the fact that -- even though Respondent claims that
4 the union may have been mistaken and offered to show that, in
5 fact, the companies were separate and not double-breasted or
6 single employer alter ego, the Respondent is attempting to rely
7 on evidence that it did not share with the union in the first
8 instance, and information that's peculiarly within the
9 possession of the Respondent, and certainly that does not negate
10 the evidence that the union had upon which it relied in forming
11 its belief that there was something going on that would impact
12 the collective-bargaining unit.

13 With respect to the claims that the employee reports could
14 not be relied upon, that the individuals were not credible
15 because they had been either demoted or terminated or there
16 might have been a criminal complaint against one of them,
17 certainly with respect to the criminal complaint, Mr. McAfee was

18 not even aware of it at the time that he received the report
19 from Mr. Ayala, so it certainly would not have played any role
5 20 in his thinking in terms of whether Mr. Ayala's report was
21 accurate or not.

10 22 And although they may have had some disagreements with the
23 company, that by itself does not indicate that their statements
24 could not be believed, certainly where subsequently the
15 25 Respondent confirmed at least one of the statements from Mr.

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20 1 Terrell indicating that there had been a change in the company,
2 i.e., a recent move, which tends to support that maybe some of
3 the other statements made to Mr. Terrell also were accurate.

25 4 And anyway even if, as the General Counsel points out,
5 even if these reports from these employees turned out to be
30 6 unreliable or inaccurate, if the information was fully
7 disclosed, the Board has held that the union can rely on
8 information, including hearsay and including information that
35 9 ultimately is unreliable or inaccurate, in making this request.

10 And also the union, in Shoppers Food Warehouse -- I'll cite that
40 11 again that stands for that proposition.

12 And also, too, I'll note that the actions that Respondent
13 took after the request for information on April 4 as related to
45 14 Mr. Terrell and reported to Mr. McAfee, including the recent
15 move of its office, showing an attempt to physically separate
50 16 the two companies would also lend support to the reasonableness
17 of the belief that, in fact, the companies were somehow related.

18 And I won't address again my earlier ruling that the
19 proffer of evidence by the Respondent in order to show that the
5 20 various Guild companies and the Respondent were, in fact,
21 separate entities is not relevant, because as I think it's
10 22 clear, it's not necessary in this case to determine whether
23 there was, in fact, a single employer or an alter ego, and by
24 making a finding with respect to the information request, that
15 25 does not indicate that there is, in fact, such a relationship

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20 1 that existed.

2 All it says is that the union has raised enough of a
3 question, enough of a concern, that the Respondent is required
25 4 as a party to the collective-bargaining relationship to share
5 the information that the union can determine whether or not
30 6 there is any basis to go forward with either a grievance or any
7 other complaint or claim.

8 And one other thing I'll point out with respect to the
35 9 Respondent's argument in closing, that none of the evidence that
10 the GC or the union offered was objective or an objective fact,
40 11 you know, Respondent argued that the mere fact that the name
12 Guild appeared on the side of a truck doesn't mean anything,
13 because there are so many different Guild companies, but
45 14 essentially that's one of the reasons why the union had cause to
15 be concerned, because the Respondent apparently over the years
50 16 has used various Guild names, even with respect to the rejected
17 exhibits for both the union signatory contractor and apparently

18 another company that existed.

5 19 The fact that the Respondent chose to use a name that was
20 so similar certainly can't be a reason to deny the union's
21 request for information. Such a practice only tends to create
10 22 the type of confusion or suspicion or concern that would lead a
23 union to suspect that there was something amiss.

15 24 So having considered all of the evidence and considered
25 the arguments of the parties and not wanting to cite all of the

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20 1 cases that General Counsel has cited, I will find that the
2 General Counsel and the Union have met their burden of showing
3 that the union had a reasonable belief, based on objective
25 4 facts, that would be sufficient to warrant the request for the
5 information that was made to the Respondent, both in the April 4
30 6 letter and in the June 9 letter for the information regarding
7 the retagging of tools.

35 8 And what I will do is I will cite to a decision by my
9 colleague Judge Fish in a case called Dodger Theatrical
10 Holdings, Incorporated. that's 347 NLRB Number 94, a decision
40 11 which was adopted by the Board in which Judge Fish went through
12 a rather detailed history of the law in this area, and in
13 particular I'll cite -- this is a slip decision still; I don't
45 14 think it's bound volume yet.

15 And at page 16 of the slip decision, he goes through a
50 16 rather exhaustive review of the many cases where the Board has
17 determined whether the union satisfied this burden, and the

5 18 types of evidence in all these various cases that the Board has
19 found sufficient to meet the requirement of a reasonable belief
20 based on objective facts, and many of the things that are cited
21 in these cases by Judge Fish are very similar to the types of
10 22 information that the union and Mr. McAfee was relying upon in
23 making his request here. And I see no reason in this case to
24 depart from that long-established and well-settled Board
15 25 precedent.

161

20 1 Now, having found that the information was relevant to the
2 union and also necessary for it to evaluate whether there was a
3 contract violation or the possibility for a grievance if, in
25 4 fact, there turned out to be an alter ego or a single employer,
5 I will find that the complaint has been violated as alleged by
30 6 the General Counsel.

7 Now, I find, though, that the date of the violation would
8 occur on June 24 of 2008 and Mr. Zagar's last letter to the
35 9 union. The initial response to the April 4 request was not a
10 refusal to furnish information, but a request for a further
40 11 explanation. And certainly when information is requested that
12 goes beyond the bargaining relationship in these types of cases,
13 the Board has indicated that an employer that is not certain of
45 14 the reason for the request has a right to ask for a further
15 explanation.

50 16 But I find that the union did provide a sufficient further
17 explanation in the June 9 letter in which it also requested the

18 information regarding the retagging of tools, and that the
 19 Respondent's failure to answer those questions and continuing
 5 20 refusal to respond to the questionnaire as shown in the June 24
 21 letter constitutes the unfair labor practice under Section
 10 22 8(a)(5) of the Act.

23 Now, I will prepare, when I prepare my written order, a
 24 notice and an order that will be consistent with these types of
 15 25 cases. Under the Board's Rules and Regulations with a bench

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20 1 decision, essentially what I'm required to do now is upon
 2 receipt of the transcript containing the bench decision, I must
 3 certify the accuracy of the transcript pages, make any
 25 4 corrections if necessary, and then serve a copy of that with the
 5 recommended order on the parties, and from that date, the
 30 6 parties have their rights to file any exceptions to my decision,
 7 to any findings that I've made, and any rulings that I may have
 8 made at the hearing.

35 9 And I'll refer you to the Board's Rules and Regulations
 10 with respect to the procedure for how to go about filing any
 40 11 exceptions with the Board in Washington. So at this point,
 12 you'll have to await the transcript and my actual written order,
 13 certifying the bench decision, and attached to that will be the
 45 14 order that I will be recommending to the Board.

50

APPENDIX B

NOTICE TO EMPLOYEES

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

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

WE WILL NOT refuse to bargain collectively with International Brotherhood of Electrical Workers, Local Union 20 by refusing to furnish the Union, upon request, with information that is relevant and necessary to the Union's representation of you.

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 furnish the Union with the information it requested in its April 4, 2008 and June 9, 2008 letters to us.

PDK INVESTMENTS, LLC

(Employer)

Dated _____ By _____
(Representative) (Title)

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

819 Taylor Street, Room 8A24
Fort Worth, Texas 76102-6178
Hours: 8:15 a.m. to 4:45 p.m.
817-978-2921.

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

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 817-978-2925.