

Weldment Corporation and/or R. C. White Co., and/or Ralph C. White Jr., d/b/a Yankee Roller Guide and Shopmen's Local Union No. 527, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO.
Case 6-CA-16664

21 August 1985

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
HUNTER AND DENNIS

On 16 April 1985 Administrative Law Judge Wallace H. Nations issued the attached decision. The Respondent filed exceptions, and the General Counsel filed a response to the Respondent's exceptions to the judge's decision.

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 record¹ in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,² and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Weldment Corporation and/or R. C. White Co., and/or Ralph C. White Jr., d/b/a Yankee Roller Guide, Bethel Park, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

¹ The General Counsel filed a motion to strike certain portions of the Respondent's exceptions. The General Counsel requests that we strike specified factual representations made by the Respondent in its exceptions. We find that these representations were not presented as evidence at the hearing or subjected to cross-examination and, therefore, they are not part of the record in this proceeding. See Sec. 102.45(b) of the Board's Rules and Regulations. Accordingly, we grant the General Counsel's motion to strike. See *Today's Man*, 263 NLRB 332, 333 (1982), *Fiesta Publishing Co.*, 268 NLRB 660 fn. 1 (1984).

² We agree with the judge's finding that the Respondent companies and Ralph C. White Jr., an individual, are alter egos of each other. We rely on our decision in *Advance Electric*, 268 NLRB 1001 (1984), which is consistent with the judge's analysis.

DECISION

STATEMENT OF THE CASE

WALLACE H. NATIONS, Administrative Law Judge. Shopmen's Local Union No. 527, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO (the Union) filed an original charge dated October 24 and amended same on October 5, 1983. Based on the charge and the amended charge, the Regional Di-

rector issued a complaint and notice of hearing dated October 5, 1983, against Weldment Corporation (Weldment) and/or R. C. White Company (White Company), and/or Ralph C. White Jr., d/b/a Yankee Roller Guide alleging that Respondents are a single integrated business enterprise and single employer and/or alter ego of each other and further alleging that they violated Section 8(a)(1), (3), and (5) of the Act. Answer filed on behalf of Respondents denies any violation of the Act. A hearing was held before me in Pittsburgh, Pennsylvania, on February 17, 1984. Briefs or memorandums of position were received from the General Counsel and Respondents.

Based on the entire record, including my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

I. RESPONDENTS' BUSINESSES AND THE UNION'S LABOR ORGANIZATION STATUS

A. Jurisdiction

It is admitted that at all times material, Respondent Weldment Corporation, a Pennsylvania corporation, with an office and place of business in Bethel Park, Pennsylvania, has been engaged in the business of steel fabrication. At all times material herein, R. C. White Company, a Pennsylvania corporation with an office and place of business in Bethel Park, Pennsylvania, has been engaged in, inter alia, the business of engineering and steel fabrication. At all times material herein, Respondent Yankee Roller Guide, a sole proprietorship, with an office and place of business in Bethel Park, Pennsylvania, has been engaged in, inter alia, the businesses of design contract consulting, purchasing services, and materials and subcontracting out, inter alia, engineering and steel fabrication for jobs it secures.

All Respondents admit that during the 12-month period ending September 30, 1983, they have done business and provided services in excess of \$50,000 with employers who were directly engaged in interstate commerce. Based on the foregoing, I find and conclude that at all times material herein, Respondents, Weldment, White Company and R. C. White Jr., d/b/a Yankee Roller Guide have been employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

B. Labor Organization Status

The complaint alleges, Respondents admit, and I find and conclude that the Shopmen's Local Union No. 527, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

C. The Relationships Between Respondents

Ralph C. White Jr. purchased all the stock of the Weldment Corporation in 1975. As of the date of this hearing, Ralph C. White Jr. was chairman of the board of Weldment, its president was his wife Doris White, vice president was John F. Heslin, and Barbara Palaski

was secretary of the corporation. All the stock of Weldment is owned by R. C. White. R. C. White Company was formed as a closed corporation by R. C. White in 1972. The officers of Weldment hold the same offices in R. C. White, with an additional vice president being Paul McMahon Heslin resigned as vice president of R. C. White Company on December 31, 1983. R. C. White owns 950 of the 1000 shares of common stock in the corporation and is the sole proprietor of Yankee Roller Guide. At all times, Ralph C. White has been responsible for the financial decision affecting the companies, their relationships with one another, and their labor policies. White and his wife personally guaranteed various loans granted by the Small Business Administration (SBA) on behalf of the companies and at one point sought approval of the SBA to formally tie the three named businesses in this proceeding into a single integrated business unit. The companies, when all were operational, shared common facilities and some common employees.

Both White Company and Weldment performed various metal fabricating assembly and related jobs, many of which overlapped. The companies would separately bid on various jobs and perform them themselves, with each other and sometimes with outside companies. Yankee Roller Guide operated purely as a broker for the jobs with Ralph White soliciting work to be performed by Yankee Roller Guide and farming out all the actual work to other companies, some of which went to Weldment and some to R. C. White. Yankee Roller Guide has never had any employees other than R. C. White on its payroll; however, it has utilized the services of employees of the other two White-owned companies.

In *Truck & Dock Services*, 272 NLRB 592 fn. 2 (1984), the Board concisely summarized Board and court law with respect to single employers status, as follows:

To determine whether two entities are sufficiently integrated so that they may fairly be treated as a single employer, the Board and the Courts examine four principal factors. (1) common management; (2) centralized control of labor relations, (3) interrelation of operation; and (4) common ownership.

The General Counsel and the Union contend, and I agree, that application of these standards requires a conclusion that the three Respondents constitute a single employer.

All three companies are owned almost in their entirety by R. C. White. Similarly, all three shared common management and each was clearly run in almost every significant aspect by R. C. White. Financial control of all businesses rested solely in White as did control over labor relations and virtually every other decision that required top management approval.

Although all three companies operated separately, their businesses are intertwined. Yankee Roller Guide would supply business for each of the other two companies and those two companies would supply business for each other. Records produced in the hearing indicate that much of the work done between R. C. White and Weldment did not carry a purchase price or costing information as did those companies' work performed for

outside companies or work performed by outside companies for them.

Given the common ownership, common management, centralized control of labor relations, and interrelationship of their operations, I find and conclude that Weldment Corporation and/or R. C. White Co., and/or Ralph C. White Jr., d/b/a Yankee Roller Guide constitute a "single employer."

The General Counsel further asserts that the three companies and White as an individual are but alter egos of one another. In order to find an alter ego relationship the Board must consider, in addition to the factors similar to those establishing single employer, "whether the purpose behind the creation of the alleged alter ego was legitimate or whether, instead, its purpose was to evade responsibilities under the Act." Alter ego status generally requires that enterprises have "substantially identical management, business purpose, operation, equipment, customers . . . supervision as well as ownership." The term "disguise continuance" is another way of describing an alter ego. In *Howard Johnson Co. v. Detroit Joint Board*, 417 U.S. 249, 259 fn. 5 (1974), the Supreme Court pointed out that an alter ego disguise continuance case as "involving a mere technical change in the structure or identity of the employer and entity, frequently to avoid the effect of labor laws, with no substantial change in its ownership or management."

The Board has held that an individual respondent, along with business entity respondents, will be held personally liable for remedying unfair labor practices, particularly the make-whole remedies because of the individual's actual operational control over and individual's financial control and/or ownership interest in the integrated enterprises. See *Campo Slack, Inc.*, 266 NLRB 492 (1983); *Bryar Construction Co.*, 240 NLRB 102 (1979), *Ogle Protection Service*, 149 NLRB 545, 546 (1947). I find and conclude from the evidence that Ralph C. White is the alter ego of his business enterprises. He operates them in an interrelated manner soliciting business for one or the other of the businesses at his discretion. White contends on brief that Yankee Roller Guide is not the alter ego of the other two as this business involves substantially more and different types of services than the White Company or Weldment have ever provided. Though this may be true of Yankee Roller Guide, it certainly is not true of R. C. White as an individual. Business is evidently juggled between the White Company and Weldment at virtually the sole discretion of White himself. Further, White, in his operation of Yankee Roller Guide, has solicited work that, at least in part, requires the services offered by the White Company and Weldment as work has been funneled to these companies. In fact, as will be established later, White attempted to put into business one or more of the employees of Weldment as entrepreneurs to perform work that they had been traditionally performing, and doing so on behalf of Yankee Roller Guide. The Board has properly made service on White as an individual and, as noted, he appeared in his own behalf at the hearing held in this proceeding. Therefore, I find that each of the named Respondents and Ralph C. White as an individual are

proper Respondents in this proceeding and are jointly responsible for remedying any of the unfair labor practices which may be found to exist.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Collective-Bargaining Relationship*

The complaint alleges, and Weldment admits, the following constituted a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees employed by Respondent Weldment at its Bethel Park, Pennsylvania and vicinity facilities; excluding all other employees, office clerical, draftsmen, janitors, watchmen and guards, engineering employees, professional employees and supervisors as defined in the Act.

The complaint alleges and Weldment admits that, since approximately March 1965 and at all times material herein, the Charging Party has been the designated exclusive collective-bargaining representative of the unit and, since approximately March 1965, the Charging Party has been recognized as such representative by Respondent Weldment. Such recognition was embodied in a collective-bargaining agreement which was effective by its terms for the period August 1, 1980, to August 1, 1983.

B. *Alleged Request and Inducement to Employees to Reject the Union*

As noted above, the Union's contract with Respondent Weldment was due to expire on July 31, 1983. Consistent with its policy, on May 5, 1983, the Union, through James Puglin, business agent, sent a letter to Weldment informing it that it was ready to bargain and negotiate a new collective-bargaining agreement to become effective at the expiration of the current agreement. Puglin testified that on a number of occasions thereafter, before the expiration of the contract, he attempted to contact Ralph White about negotiations. On one occasion he did meet with White briefly but nothing was accomplished. There were no serious negotiations for a new contract.

White denies that a conversation with Puglin ever occurred between May and the time of closing of Weldment. He believes that the conversation mentioned by Puglin took place some time after the charge was filed in this proceeding. White does admit, however, that absolutely no bargaining took place on the contract because at some point in the early summer, because of financial pressure from the SBA, White decided he had to try to find a way to make his business viable or the Weldment Corporation would be forced into bankruptcy. To this end, he apparently decided to close the operation of Weldment and conduct all of the type business that Weldment had conducted under the banner of R. C. White Company.

In May or early June White had a meeting with Weldment employees where he explained the company's financial difficulties and stated that he had to make a proposal to SBA to keep them from foreclosing on the se-

cured assets of Weldment. The proposal to the employees was introduced in this record as General Counsel's Exhibit 3 and, in summary, consisted of a request that the employees of Weldment become the employees of R. C. White Company on a nonunion basis, at roughly the same salary and benefit level that they had with the Union. According to the credible testimony of John Heslin, a working foreman for the company, one or more of the employees asked White, that, since as the wages and benefits that he proposed for their employment at the White Company were similar to those being paid under the union contract, why could not he just sign another union contract? To this comment, White replied that he did not want to be committed. Heslin indicated that the employees would be willing to perhaps make concessions with respect to the contract, to which White replied he did not want to talk about it and did not want to be committed. White approached working Foreman Helsin around July 4 and offered Helsin the opportunity to provide Weldment-type services on work he obtained either under the R. C. White Company banner or as Yankee Roller Guide. Under the arrangement proposed, Helsin would only provide services for the White Company or Yankee Roller Guide and would be financially responsible for the unit of employees providing the Weldment type services. Helsin rejected this proposal.

After the employees indicated their unwillingness to work on a nonunion basis for the White Company, and after Heslin had turned down the proposal to, in effect, set him up in business, White sent employee John Weston a letter on August 9 making him an offer somewhat similar to that made to Helsin. In discussing the proposal with White, Weston learned that the job would be a nonunion one and he declined it. During the discussions doubt the proposal, White said to Weston, in response to a question whether the Union would be involved, "No, because the R. C. White employees are not members of the Union and Weston's job as a supervisor or whatever you want to call it would not necessarily be a union job."

The facts set out above, with which White indicates are essentially correct, clearly indicate that White had no intention of meeting with the Charging Party or of bargaining and negotiating over a new contract. It clearly shows that he intended to terminate the operations at Weldment and attempt to continue those operations on a nonunion basis. To this end, the facts reveal that White entirely bypassed the Charging Party Union and dealt directly with his Weldment employees to accept employment either at the R. C. White Company or in a new venture on a nonunion basis. Under the new venture proposals, the equipment building and overhead for the operation would be provided by White. By these actions, I find that Respondents have violated Section 8(a)(1) and (5) of the Act.

C. *Alleged Refusal to Bargain Over Closing Weldment and Refusal to Hire Union Members in White Company*

About August 1, 1983, the Weldment employees presented to White an agreement they wanted signed which

would continue in effect the contract between Weldment and the Union on a day-to-day basis. As presented, the agreement would require White to agree to bargain and negotiate for a new contract. After some give and take, White agreed to sign the agreement, but only if all portions of it indicating any future intent to bargain were stricken from it. As signed, on August 1, White only agreed to extend the agreement on a day-to-day basis so that there would be no work stoppage on August 1, 1983. On August 19, 1983, the employees of Weldment were notified that they were being permanently laid off and that the Weldment Corporation's operations were to be terminated. No notification of the termination was given directly to the Charging Party Union and there has been no willingness on the part of White or any of the other Respondents to bargain with the Union over the effects of the decision to terminate the Weldment operations.

After August 19, management employees of Weldment began to be paid by the R. C. White Company. A small amount of work that was in progress on August 19 at Weldment was transferred and finished at R. C. White Company. R. C. White Company hired employee Carlos Barnette on August 22, and approximately 1 month later another employee Sam Rafael. These two employees were employed on a nonunion basis by R. C. White Company and performed tasks which are essentially similar to those performed by the employees in the Weldment bargaining unit. From August 19 to the date of this hearing, there have been no further operations at Weldment, and R. C. White Company has continued to stay in business, providing, at least in part, work that had previously been done at Weldment. However, as of the date of this hearing, it did not appear that there was any work presently being done by the R. C. White Company of the type that had been done previously by the bargaining unit at Weldment.

I find from the evidence presented, that R. C. White intended to, and by his actions did, reject the Charging Party Union as the bargaining agent for the members of the bargaining unit at Weldment. I also find that he intended to, and by his actions did, transfer bargaining unit work from the Weldment Corporation to R. C. White Company without bargaining over the effects of the decision to transfer such work with the Charging Party Union. I additionally find from the evidence that R. C. White refused to offer employment to the members of the bargaining unit if the Charging Party Union continued to represent them. I, therefore, conclude that R. C. White's actions as a single employer and/or alter ego of all Respondents in these regards constitute violations of Section 8(a)(1), (3), and (5) of the National Labor Relations Act. As of the date of this hearing, the violations were continuing.

CONCLUSIONS OF LAW

1. Weldment Corporation and/or R. C. White Co., and/or Ralph C. White Jr., d/b/a Yankee Roller Guide constitute a single employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Weldment Corporation and/or R. C. White Co., and/or Ralph C. White, Jr., d/b/a Yankee Roller Guide and Ralph C. White Jr., an individual, are alter egos of one another.

3. All production and maintenance employees employed by Respondent Weldment Corporation at its Bethel Park, Pennsylvania and vicinity facilities; excluding all other employees, office clerical, draftsmen, janitors, watchmen and guards, engineering employees, professional employees and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since approximately March 1965, and at all times material herein, the Charging Party Union has been the duly designated collective-bargaining representative of Weldment Corporation employees in the above-described unit.

5. Since about May 5, 1983, Respondents refused and continued to refuse to bargain with the Union over the terms and conditions of employment of the employees in the unit set out in paragraph 3, above, have bypassed the Union and bargained directly with members of the unit, and have attempted to induce the members of the unit to reject the Union as its collective-bargaining representative in violation of Section 8(a)(1) and (5) of the Act.

6. Since about August 19, 1983, Respondents have rejected the Union as the collective-bargaining representative of the members of the unit described above, have refused to bargain with the Union over the effects of the decision to close the Weldment Corporation, have refused to offer employment to members of the Union and its surviving company, R. C. White, if the Union continued to represent them and has transferred bargaining unit work from the Weldment Corporation to R. C. White Company without bargaining over the transfer of such work with the Union, in violation of Section 8(a)(1), (3), and (5) of the Act.

7. The above unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

It having been found that Respondents have engaged in certain unfair labor practices, I shall recommend that they be directed to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

As I have found that Respondents have violated the Act by withdrawing recognition from and refusing to bargain in good faith with the Union, transferring bargaining unit work from Weldment Corporation to R. C. White Company without bargaining with the Union over the effects of such a transfer, and conditioning continued employment of employees within the Union on rejection of the Union and refusing to employ such members of the unit because of their union membership, Respondents shall be required to offer members of the bargaining unit set out above, on the basis of seniority, positions with Respondents for which bargaining unit work exists, replacing, if necessary, nonbargaining unit employees hired after August 19, 1983 or, if no such positions exist, to

employ the members of the bargaining unit, on the basis of seniority, for any such positions which become available, and to make the members of the bargaining unit whole for any loss they may have suffered by reason of the unlawful discrimination against them. All backpay due under the terms of this order shall be computed, with interest, in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1960), and *Florida Steel Corp.*, 231 NLRB 651 (1977). See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹

ORDER

Respondents Weldment Corporation and/or R. C. White Co., and/or Ralph C. White Jr., d/b/a Yankee Roller Guide, and Ralph C. White Jr., an individual, Bethel Park, Pennsylvania, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Withdrawing recognition from and refusing to bargain in good faith with the Union.

(b) Bypassing the Union and dealing directly with their employees.

(c) Conditioning continued employment of employees on rejection of the Union

(d) Refusing to employ employees because of their union membership.

(e) 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 the policies of the Act

(a) On request, bargain collectively and in good faith with the Union as the exclusive bargaining representative of the employees in the above-described unit concerning any changes in wages, hours, working conditions, or other terms or conditions of employment.

(b) On request, bargain collectively and in good faith with the above-named Union over the effects of the decision to close Weldment Corporation and transfer bargaining unit work.

(c) Offer members of the above-described unit, on the basis of seniority, immediate employment with any of Respondents to which bargaining unit work was transferred, replacing, if necessary, any employees hired by Respondent, after August 19, 1983; or if no such positions exist at this time, to offer to members of said bargaining unit, on the basis of seniority, such positions as they become available

(d) Make members of the above-described bargaining unit whole for any losses they may have suffered by the unlawful refusal to offer positions with Respondents after the cessation of operations at Weldment Corporation, in

the manner described in the portion of this decision entitled "The Remedy."

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

(f) Post at its Bethel Park, Pennsylvania location, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by Respondents' authorized representative, shall be posted by Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondents to ensure that said notices are not altered, defaced, or covered by any other material.

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

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 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

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 do anything that interferes with these rights. More specifically:

WE WILL NOT withdraw recognition from and refuse to bargain in good faith with Shopmen's Local Union No. 527, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO

WE WILL NOT bypass and deal directly with our employees.

WE WILL NOT condition employment upon rejection of Shopmen's Local Union No. 527.

WE WILL NOT refuse to employ persons because of their union membership.

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.

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

WE WILL, on request, bargain collectively and in good faith with the Union as the exclusive bargaining representative of our employees in the unit described below:

All production and maintenance employees employed by Respondent Weldment Corporation and/or R. C. White Co., and/or Ralph C. White, Jr., an individual, at its Bethel Park, Pennsylvania and vicinity facilities; excluding all other employees, office clerical, draftsmen, janitors, watchmen and guards, engineering employees, professional employees and supervisors as defined in the Act

WE WILL, on request, bargain collectively and in good faith with the Union over the effects of the decision to

close Weldment Corporation and transfer bargaining unit work

WE WILL offer members of the above-described unit, on the basis of seniority, immediate employment with any of our companies to which bargaining work was transferred, replacing, if necessary, any employees hired by us after August 19, 1983, or, if no such positions exist at this time, offer to members of the bargaining unit, on the basis of seniority, such positions as they become available

WE WILL make members of the above-described bargaining unit whole for any loss they may have suffered by our unlawful refusal to offer positions of employment after cessation of operations at Weldment Corporation, with interest

WELDMENT CORPORATION AND/OR R. C. WHITE CO, AND/OR RALPH C. WHITE JR., D/B/A YANKEE ROLLER GUIDE