

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12

APEX ELECTRIC SERVICES, INC. AND
APEX INDUSTRIAL SERVICES, INC.

and

Cases 12-CA-24200
12-CA-24237

INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS, LOCAL
UNION NO. 177, AFL-CIO

**ORDER CONSOLIDATING CASES, CONSOLIDATED
COMPLAINT AND NOTICE OF HEARING**

International Brotherhood of Electrical Workers, Local Union No. 177, AFL-CIO (the Union) has charged in Cases 12-CA-24200 and 12-CA-24237 that Apex Electric Services, Inc., and Apex Industrial Services, Inc. (collectively called Respondent), have been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. § 151 et seq., (the Act). Based thereon, and in order to avoid unnecessary costs or delay, the General Counsel, by the undersigned, pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board), ORDERS that these cases are consolidated.

These cases having been consolidated, the General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, issues this Order Consolidating Cases, Consolidated Complaint and Notice of Hearing and alleges as follows:

1.

(a) The original charge in Case 12-CA-24200 was filed by the Union on December 6, 2004, and a copy was served by regular mail on Respondent on December 8, 2004.

(b) The original charge in Case 12-CA-24237 was filed by the Union on December 30, 2004, and a copy was served by regular mail on Respondent on January 3, 2005.

(c) The first amended charge in Case 12-CA-24237 was filed by the Union on January 6, 2005, and a copy was served by regular mail on Respondent on January 10, 2005.

(d) The first amended charge in Case 12-CA-24200 was filed by the Union on February 18, 2005, and a copy was served by regular mail on Respondent on February 23, 2005.

(e) The second amended charge in Case 12-CA-24237 was filed by the Union on February 22, 2005, and a copy was served by regular mail on Respondent on February 24, 2005.

2.

(a) At all material times, Apex Electric Services, Inc., a Florida corporation, with an office and place of business located in Jacksonville, Florida, (Respondent's facility) has been engaged in the non-retail business of electrical contracting.

(b) At all material times, Apex Industrial Services, Inc., a Georgia corporation, with an office and place of business located in Jacksonville, Florida, (Respondent's facility) has been engaged in the non-retail business of electrical contracting.

3.

(a) At all material times, Apex Electric Services, Inc. and Apex Industrial Services, Inc., have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for each other; have interchanged personnel with each other; and have held themselves out as a single, integrated business enterprise.

(b) Since on or about December 7, 2004, Respondent has asserted that Apex Electric Services, Inc. is out of business, although it remains an active corporation.

(c) Since on or about December 7, 2004, Apex Industrial Services, Inc. has been a disguised continuation of Apex Electric Services, Inc.

(d) Based on the operations described above in paragraph 3(a), Apex Industrial Services, Inc. and Apex Electric Services, Inc. are, and have been at all material times, a single integrated business enterprise and a single employer within the meaning of the Act.

(e) Based on the operations and conduct described above in paragraphs 3(a) through 3(c), Apex Industrial Services, Inc. and Apex Electric Services, Inc. have been, since on or about December 7, 2004, alter egos and a single employer within the meaning of the Act.

4.

(a) During the 12 month period ending July 31, 2004, Respondent, in conducting its business operations described above in paragraphs 2(a) and 2(b), purchased and received at its Jacksonville, Florida sites, goods and supplies valued in excess of \$50,000 directly from other enterprises, including from Consolidated Electric Distributors, Inc., located inside the State of Florida, each of which other enterprises had received those goods and supplies directly from outside the State of Florida.

(b) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

5.

At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

6.

At all material times, Kenneth B. Holmes, Sr. has held the position of President and Chief Executive Officer of both Apex Electric Services, Inc. and Apex Industrial Services, Inc., and has been a supervisor of Respondent within

the meaning of Section 2(11) of the Act and an agent of Respondent within the meaning of Section 2(13) of the Act.

7.

(a) The following employees of Respondent, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All electricians, electrician's helpers, apprentices, laborers, truck drivers, warehousemen, delivery personnel, equipment operators, leadmen, and working foremen employed by the Respondent in the greater Jacksonville, Florida area, excluding all office clerical employees, professional employees, guards, and supervisors as defined in the Act, as amended.

(b) On September 23, 2004, the Union was certified as the exclusive collective-bargaining representative of a unit of employees of Apex Electric Services, Inc., as described above in paragraph 7(a).

(c) At all times since September 23, 2004, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit described above in paragraph 7(a).

8.

On or about August 2, 2004, Respondent, by Kenneth B. Holmes, Sr., at its Bethel Baptist Church jobsite:

- (a) Threatened to discharge employees involved in union activities.
- (b) Threatened to close its doors before becoming unionized.

9.

In or about early August 2004, a more precise date being unknown to the undersigned, Respondent, by Kenneth B. Holmes, Sr., at its Bethel Baptist Church jobsite, impliedly threatened employees with discharge because of their union activities.

10.

On or about August 6, 2004, Respondent, by Kenneth B. Holmes, Sr., at its Bethel Baptist Church jobsite:

- (a) Coercively interrogated employees about their union activities.
- (b) Threatened to close its doors before becoming unionized.
- (c) Conveyed the impression that any attempt to unionize would be futile.
- (d) Instructed employees not to talk about the Union or working conditions.

11.

On or about August 11, 2004, Respondent, by Kenneth B. Holmes, Sr., at its Bethel Baptist Church jobsite :

- (a) Subjected employees to closer scrutiny because of their union activities.
- (b) Impliedly threatened employees with unspecified reprisals because of their union activities.

12.

On or about August 26, 2004, Respondent, by Kenneth B. Holmes, Sr., at its Westbrook Branch Library jobsite:

(a) Accused employees of misconduct and disloyalty because of their union activities.

(b) Impliedly threatened employees with discharge because of their union activities.

(c) Conveyed the impression that any attempt to unionize would be futile.

13.

On or about August 30, 2004, a more precise date being unknown to the undersigned, Respondent, by Kenneth B. Holmes, Sr., while traveling from the Bethel Baptist Church jobsite to the Cuba Hunter Park jobsite:

(a) Threatened to close its doors before becoming unionized.

(b) Disparaged the work of employees because of their union activities.

(c) Impliedly threatened employees with unspecified reprisals because of their union activities.

14.

On various dates in or about August, 2004, more precise dates being unknown to the undersigned, Respondent, by Kenneth B. Holmes, Sr., at the Bethel Baptist Church jobsite, impliedly threatened employees with unspecified reprisals because of their union activities.

15.

On or about October 15, 2004, Respondent, by Kenneth B. Holmes, Sr., at the Bethel Baptist Church jobsite:

(a) Accused employees of misconduct because of their union activities.

(b) Impliedly threatened to discipline employees because of their union activities.

16.

(a) On or about August 26, 2004, Respondent discharged its employee Ervin A. Paden.

(b) Respondent engaged in the conduct described above in paragraph 16(a) because Paden had supported and assisted the Union, and engaged in concerted activities, and to discourage employees from engaging in these activities.

17.

(a) On or about September 10, 2004, Respondent laid off its employee Steve Gibbs.

(b) Respondent engaged in the conduct described above in paragraph 17(a) because Gibbs had supported and assisted the Union, and engaged in concerted activities, and to discourage employees from engaging in these activities.

18.

(a) On or about October 15, 2004, Respondent laid off its employee Edward J. Cromedy.

(b) Respondent engaged in the conduct described above in paragraph 18(a) because Cromedy had supported and assisted the Union, and engaged in concerted activities, and to discourage employees from engaging in these activities.

19.

(a) On or about October 18, 2004, Respondent laid off its employee Arthur F. Tierney II.

(b) Respondent engaged in the conduct described above in paragraph 19(a) because Tierney had supported and assisted the Union, and engaged in concerted activities, and to discourage employees from engaging in these activities.

20.

(a) The layoffs set forth above in paragraphs 18(a) and 19(a) relate to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

(b) Respondent engaged in the conduct described above in paragraphs 18(a) and 19(a) without prior notice to the Union and without affording the Union

an opportunity to bargain with Respondent with respect to the conduct and the effects of this conduct.

21.

(a) Since on or about October 27, 2004, the Union, by letter, has requested that Respondent furnish the Union with the following information:

- A list of all employees of Apex Electric Services and the date in which they were hired.
- A list of all addresses and telephone numbers of each employee.
- A list of wage rates and classifications of each employee.

(b) The information requested by the Union, as described above in paragraph 21(a) is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

(c) Since about October 27, 2004, Respondent has failed and refused to furnish the Union with the information requested by it as described above in paragraph 21(a).

22.

(a) Since on or about December 7, 2004, Respondent has asserted that Apex Electric Services, Inc. is out of business.

(b) The effects of the asserted closure of the business, as described above in paragraph 22(a), if the asserted closure is in fact true, relate to wages, hours, and other terms and conditions of employment of the Unit and constitute a mandatory subject for the purposes of collective bargaining.

(c) Respondent engaged in the conduct described above in paragraph 22(a) without prior notice to the Union that it was going to close and without affording the Union an opportunity to bargain with Respondent with respect to the effects of the purported closure.

(d) After being informed by Respondent that Apex Electric Services, Inc. had closed, the Union, by letter dated December 17, 2004, requested that Respondent bargain with it about the effects of the purported closure of Apex Electric Services, Inc.

(e) Since on or about December 20, 2004, by letter and otherwise, Respondent has failed and refused to bargain with the Union about the effects of the purported closure of Apex Electric Services, Inc. or any other subject.

23.

(a) Since on or about December 17, 2004, the Union, by letter, has requested that Respondent furnish the Union with the following information:

- What steps have been taken to close Apex Electric Services?
- Has there been any sale of company equipment, tools, material or other company assets?
- Has there been any cancellation of any other contracts besides with Price Contracting?
- Has Apex Electric Services notified any customers, suppliers, general contractors or anyone else of interest that Apex Electric Services is no longer in business?

(b) The information requested by the Union, as described above in paragraph 23(a) is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

(c) Since about December 20, 2004, Respondent, by Kenneth B. Holmes, Sr., has failed and refused to furnish the Union with the information requested by it as described above in paragraph 23(a).

24.

By the conduct described above in paragraphs 8(a), 8(b), 9, 10(a) through 10(d), 11(a), 11(b), 12(a) through 12(c), 13(a) through 13(c), 14, 15(a) and 15(b), Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

25.

By the conduct described above in paragraphs 16(a), 16(b), 17(a), 17(b), 18(a), 18(b), 19(a), and 19(b), Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, in violation of Section 8(a)(1) and (3) of the Act.

26.

By the conduct described above in paragraphs 18(a), 19(a), 20(b), 21(c), 22(a), 22(c), 22(e) and 23(c), Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees, in violation of Section 8(a)(1) and (5) of the Act.

27.

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

WHEREFORE, as part of the remedy for Respondent's unfair labor practices alleged above in paragraphs 18(a), 19(a), 20(b), 21(c), 22(a), 22(c), 22(e) and 23(c), the General Counsel seeks an Order requiring Respondent to bargain in good faith with the Union, on request, for the period required by Mar-Jac Poultry Co., 136 NLRB 785 (1962), as the recognized bargaining representative of the Unit described above; and as part of the remedy for the unfair labor practices alleged above in paragraphs 18(a), 19(a), 20(b), 22(a), 22(c), and 22(e), the General Counsel seeks an order requiring that Respondent make whole the Unit in the manner set forth in Transmarine Navigation Corp., 170 NLRB 389 (1968). The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

PLEASE TAKE NOTICE that commencing on **May 9, 2005**, at 10:30 a.m., at a location in Jacksonville, Florida to be designated, a hearing will be conducted before an Administrative Law Judge of the Board on the allegations in this consolidated complaint, at which time and place any party within the meaning of Section 102.8 of the Board's Rules and Regulations will have the right to appear and present testimony.

Respondent is further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, Respondent shall file with the

undersigned, an original and four (4) copies of an answer to this consolidated complaint on or before **March 14, 2005**, and that, unless Respondent does so, all of the allegations in the consolidated complaint shall be considered to be admitted to be true and shall be so found by the Board. Respondent is also notified that pursuant to said Rules and Regulations, Respondent shall serve a copy of its answer on each of the other parties.

Form NLRB-4338 and Form NLRB-4668, Summary of Standard Procedures in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice Proceedings Pursuant to Section 10 of the National Labor Relations Act, are attached.

DATED at Tampa, Florida, this 28th day of February, 2005.

A handwritten signature in cursive script that reads "Rochelle Kentov". The signature is written in black ink and is positioned above a horizontal line.

Rochelle Kentov, Regional Director
National Labor Relations Board, Region 12
201 E. Kennedy Blvd., Suite 530
Tampa, FL 33602-5824

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

NOTICE

APEX ELECTRIC SERVICES, INC. AND APEX INDUSTRIAL
SERVICES, INC., AS A SINGLE EMPLOYER AND/OR ALTER EGO

Cases 12-CA-24042
12-CA-24237

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end. An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing.

However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements **will not be granted** unless good and sufficient grounds are shown **and** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds thereafter must be set forth in **detail**;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; **and**
- (5) Copies must be simultaneously served on all other parties (*listed below*), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

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Edwin D. Hill, International President
1125 15th Street, N.W., Suite 1108
Washington, DC 20005

APEX ELECTRIC SERVICES, INC.

1/26/00	Florida corporation established (P00000010806)	Articles of Incorporation (dated 1/24/00) (a) Deborah Holmes, Director (later deleted 2003) (b) Kenneth Holmes, President/Director (since 2001)
3/29/01	Annual Report filed	Deborah Holmes
5/1/02	Annual Report filed	Kenneth Holmes
4/29/03	Annual Report filed	Kenneth Holmes
10/3/03	Application to GA Corporation Division to transact business as <i>foreign corporation</i> in State of Georgia	Certificate of Authority to Transact Business in Georgia effective 10/3/03 (Control No. 0358378)
4/30/04	Annual Report filed	Kenneth Holmes
7/29/04	12-RC-9067 filed by IBEW Local 177	Electricians, helpers, apprentices, laborers, truck drivers, warehousemen, delivery personnel, equipment operators, lead men, and working foremen employed in greater Jacksonville, FL area
8/27/04	NLRB Election	Stipulation approved 8/10/04
9/23/04	Certification of Representative issued	No objections or determinative challenges (9-0 tally)
10/20/04	General contractor terminates its subcontract agreement with Apex Electric Services, Inc. on JAX projects	
12/6/04	12-CA-24199 filed against Apex Electric Services, Inc.	Test of Certification (8a1, 5 allegation)
12/20/04	CNOH issued (test of cert)	No answer filed
1/13/05	Motion to Transfer/Summary Judgment	
1/25/05	Order to Show Cause issued	
3/31/05	Board Order (344 NLRB No. 47)	<i>Mar-Jac</i> remedy
6/30/05	Enforcement Recommended	
9/16/05	Judgment (No. 05-14193-D)	Default Entry (11 th Circuit) – test of cert case
	Compliance investigation re viable business operations	Holmes pulling permits under Apex Industrial Services, Inc. electrical contractor license; did small job electrical work (residential), and some electrical work for Rommel Electric (Rommel Staples former Apex employee). However, insufficient evidence to establish Rommel Electric was successor, or assumed bargaining obligation

APEX INDUSTRIAL SERVICES, INC.

4/24/97	Georgia corporation established (K31658)		
6/10/97	EC0001799 issued by State of Florida Department of Business and Professional Regulation Electrical Contractors Licensing Board	Kenneth Holmes Apex Industrial Services, Inc. (copy of license card in file)	
? date	1999 Corporation Annual Registration	Kenneth Holmes, CEO	
? unknown date	Application to FL Corporation Division to transact business as <i>foreign corporation</i> in State of Florida	Florida Foreign Profit Corporation (F97000002177)	
2/16/98	Annual Report filed w/Florida	Kenneth Holmes, President/Director	
5/3/99	Annual Report filed w/Florida	Deborah Holmes, Secretary/Director	
4/24/00	Annual Report filed w/Florida	Deborah Holmes, Secretary/Director	
2/28/01	Annual Report filed w/Florida	Kenneth Holmes, President/Director	De
9/10/01	Kenneth Holmes, Apex Industrial Services, Inc., mailing address change filed with GA Secretary of State	corporation registration form gives Smyrna, GA address for Kenneth and Deborah Holmes	
5/1/02	Annual Report filed w/Florida	Kenneth Holmes, President/Director	
9/19/03	Administrative revocation of corporate status by FL Secretary of State, Division of Corporations	Revoked for failure to file Annual Report	
12/6/04	12-CA-24200 filed against Apex Electric Services, Inc.	8a1 Threats etc. 1 employee discharge (8/26/04) 3 employee layoffs (9/10, 10/15, 10/18/04) Unilateral changes; RFI (8a1, 3, 5 allegations)	
12/30/04	12-CA-24237 filed against Apex Electric Services, Inc. and Apex Industrial Services, Inc., as single employer/alter ego	Initial K bargaining; RFI (8a1, 5 allegations)	

CONT'D APEX INDUSTRIAL SERVICES, INC.

12/30/04	12-CA-24237 filed against Apex Electric Services, Inc. and Apex Industrial Services, Inc., as single employer/alter ego	Initial K bargaining; RFI; Single employer/alter ego alleged (8a1, 5)
2/28/05	Consolidated CNOH issued	(12-CA-24200; 12-CA-24237)
4/6/05	Motion to Transfer/Summary Judgment	
4/11/05	Order to Show Cause issued	
7/9/05	Automated Administrative dissolution/revocation of corporate status by Georgia Secretary of State, Corporation Division	
7/05-6/07	Apex Industrial Services, Inc. operates as unincorporated business. Identified as contractor on electrical permits	Holmes pulls electrical permits for various jobs in JAX area listing Apex Industrial Services, Inc. as contractor and qualifying agent
10/13/06	Holmes submits bid in amount of \$420,000 to Cecil Properties, LLC seeking to perform electrical installation on Best Western Hotel construction project in JAX	Bid submitted by Holmes as Estimator/Project Manager for Rommel Electric No arm's length transaction, or contractual relationship between Rommel Electric, Apex Industrial Services, Inc. and/or Holmes
Pre 12/18/06	Cecil Properties, LLC awards electrical installation work to Rommel Electric	Cecil Properties, LLC unable to produce copy of any service agreement with any contractors on Best Western Hotel project, including Rommel Electric, Apex Industrial Services, Inc., and/or Kenneth Holmes
12/18/06	Kenneth Holmes obtains building permit identifying Apex Industrial Services, Inc. as doing business on Cecil Properties, LLC - Best Western Hotel project	Cecil Properties, LLC unable to produce copy of any service agreement with Apex Industrial Services, Inc., and/or Kenneth Holmes. Cecil Properties, LLC does acknowledge that Holmes/Apex Industrial Services, Inc. did the electrical installation work on hotel project
Post 12/18/06	Work on Best Western Hotel project commences and underway	Holmes/Apex Industrial Services, Inc. receives payments for services by Cecil Properties, LLC

CONT'D APEX INDUSTRIAL SERVICES, INC.

3/22/07	Apex Industrial Services, Inc. contracts with Progressive Employer Service V to provide payroll services beginning 4/5/07	<p>1-year service agreement executed by Holmes/Apex Industrial Services, Inc.</p> <p>Paychecks issued to employees working for Apex Industrial Services, Inc. on Best Western Hotel (payroll registers 4/5/07-4/11/07)</p> <p>Holmes, and wife Denise Meyers (Holmes) listed on Progressive payroll (check) registers</p>
4/19/07	General liability insurance and workers compensation insurance documents submitted to Cecil Properties, LLC by Kenneth Holmes, Apex Industrial Services, Inc.	
6/21/07	Board Order (350 NLRB No. 7)	Apex Industrial Services, Inc. found to be <i>alter ego</i> disguised continuance of Apex Electric Services, Inc., single employer
7/24/07	Initial compliance letter sent	
2007-2/27/2008	Progressive continues to issue paychecks to employees working on Best Western Hotel project under Apex Industrial Services, Inc.	

KHC, INC.

7/30/07	Florida corporation established (P07000086086)	Articles of Incorporation (dated 7/27/07, but effective 7/24/07) (a) Kenneth Holmes, President/Director (b) Denise Meyers (Holmes), Secretary/Director
8/9/07	SunTrust business account opened (by 2009, account closed by)	\$105.00 initial deposit (\$23,884.12 balance on 8/24/07)
8/10/07	Compliance letter sent to Holmes	No response
8/27/07	Deposit into SunTrust bank account	\$23,879.12 deposit amount coincides with draw amount paid to Kenneth Holmes/Apex Industrial Services, Inc. on Best Western hotel project
9/28/07	Subpoena <i>duces tecum</i> issued	Compliance investigation re viable business operations and new <i>alter ego</i>
1/23/08	ULP charge 12-CA-25703 filed	Alleging <i>alter ego</i> KHC, Inc.
1/31/08	KHC, Inc. retains legal counsel	Atty Dickinson represents KHC, Inc. entity only
2/12/08	Holmes subpoena to give deposition	
3/7/08	Holmes subpoena hand-delivered	
3/14/08	Holmes deposed in JAX	Atty Dickinson in attendance
3/26/08	KHC, Inc. contracts with Progressive Employer Service V LLC to provide payroll services,	1-year service agreement (retroactive to 2/19/08) Same employees who had been working on Best Western Hotel begin receiving paychecks identifying KHC, Inc. as employer as of 2/28/08 (payroll registers 2/28/08 – 3/5/08)
3/31/08	Enforcement recommended	
4/3/08	Application for Summary Entry filed	
4/24/08	Annual Report filed w/Florida	Denise Meyers (Holmes), Director
5/15/08	Judgment (No. 08-11563-H)	11 th Circuit (12-CA-24200 and 12-CA-24237)
5/21/08	Compliance Agenda	
5/22/08	Initial compliance letter	No response
5/29/08	KHC, Inc. charge amended (12-CA-25703)	Broader allegations re liability/ <i>alter ego</i>

