United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: November 19, 2013

TO: Ronald K. Hooks, Regional Director
Region 19

FROM: Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Seattle-Snohomish Mill Co. and its alleged alter ego Riverside Lumber Co., LLC
Cases 19-CA-100357, 104844

177-1633-7500
530-4825-3300

The Region submitted this case for advice as to whether an alter ego relationship exists between two businesses, despite the lack of common ownership, because of the unique nature of their leasing agreement and business relationship. We conclude that no alter ego relationship exists because the two businesses do not have substantially identical ownership and the evidence fails to show that the old business maintains substantial control over the alleged alter ego. Because these necessary elements of the alter ego test are absent, the Region should dismiss the charge, absent withdrawal.

FACTS

Prior to closing its business in March 2012, Seattle-Snohomish Mill Co. ("Sea-Sno") operated a lumber mill in Snohomish, Washington, for over 70 years. Sea-Sno was family owned and operated. Carpenters Industrial Council ("the Union") represented Sea-Sno's production and maintenance employees at the mill for decades. The parties' most recent collective-bargaining agreement had a term of July 1, 2008 through June 30, 2012.

Sea-Sno's operation had three components, or "phases." The first involved acquiring timber by either purchasing it from timber suppliers or purchasing the rights to standing timber. The second phase involved the actual operation of the lumber mill. Sea-Sno specialized in cutting Douglas fir and hemlock timber to produce lumber for use in the construction industry. The third phase involved selling cut lumber and reselling any uncut timber that Sea-Sno had obtained.

Since about 2001, Sea-Sno's timber purchaser was an individual who had worked in the lumber industry for almost 40 years. In that position, he was involved in the first and third phases of Sea-Sno's business. Thus, he would negotiate the purchase of either cut or standing timber and would resell any uncut timber. Prior to its closure, Sea-Sno also had a production manager who oversaw its mill operation.

In January 2011, Sea-Sno's owners announced that they wanted to sell their mill due to continuing financial hardships caused by the downturn in the housing industry. In March 2011, Sea-Sno stopped bidding on standing timber, although its existing contracts for standing timber provided a supply of timber to produce in the near future. In July or August 2011, Sea-Sno asked the Union for mid-contract concessions so that it could reduce its operating expenses and potentially save the business. The Union had an outside accountant audit Sea-Sno's financial records to assess Sea-Sno's claim of financial hardship. The Union's audit revealed that Sea-Sno was in financial trouble, and it agreed to take Sea-Sno's concession offer to a membership vote. In late 2011, the membership rejected Sea-Sno's mid-contract concession offer.

In January 2012, Sea-Sno announced the permanent closure of its lumber mill and began to layoff unit employees. After the Union requested effects bargaining, the parties held several negotiation sessions but were unable to reach an agreement. Sea-Sno's timber purchaser asserts that based on certain experience he had obtained while working for Sea-Sno, he began to consider opening a custom-cut cedar operation after his employment ended.

In March 2012, the Sea-Sno mill stopped operating. Several management employees worked at the mill after production stopped, including the timber purchaser, who continued reselling Sea-Sno's uncut timber, and the production manager, who cleaned the equipment and kept the mill in saleable condition. Months passed without buyers showing any interest in purchasing the mill.

In June 2012, representatives from an auction house came to the mill to prepare to auction off some of the equipment. Around this time the timber purchaser began discussing with the production manager the idea of forming a partnership to lease the mill and convert it to produce a new product line of custom-cut cedar lumber. On June 30, 2012, the most recent contract between Sea-Sno and the Union expired.

In August 2012, the timber purchaser approached one of Sea-Sno's owners with his idea of leasing the mill and producing a new product line. The timber purchaser stated that he would form a new company with the production manager and they would lease the mill to produce the new custom-cut cedar products. The timber purchaser stated that the benefit to Sea-Sno's owners was that the new company would pay the mill's property taxes and insurance, prevent the auctioning off of any equipment, and allow the mill to remain operational while Sea-Sno sought buyers.[1] The parties also discussed the idea of structuring the lease so that the new company would pay the rent by milling at cost timber that Sea-Sno continued to receive from its existing contracts for standing timber. This would permit Sea-Sno to continue operating the first and third phases of its business while the new company would operate the second phase, i.e., the mill.

In August 2012, the timber purchaser and production manager incorporated Riverside Lumber Co., LLC ("Riverside"). On September 30, they each officially ended their employment with Sea-Sno.

On October 4, 2012, Riverside and Sea-Sno executed a preliminary lease agreement for the Sea-Sno mill. The agreement had a two-year term but permitted early termination for good cause by either party with 60 days' written notice.[2] Riverside agreed to pay for its own internal operating expenses, including labor costs, various payroll taxes, and liability insurance. Sea-Sno agreed to pay for the mill's operating and maintenance expenses, including utilities, supplies, parts, equipment maintenance, property taxes, and casualty insurance. The parties agreed that for the first 90 days of the lease, Sea-Sno would pay Riverside at cost for the timber that it milled for Sea-Sno. When Riverside milled timber for third parties, it would pay Sea-Sno the pro-rated value of the operating and maintenance expenses for the days on which it performed such work, plus a 20% mark up of the total expenses. Sea-Sno retained the right of first refusal to purchase uncut timber that suppliers offered to Riverside. If Sea-Sno exercised that right, it would pay Riverside a finder's fee. The preliminary lease concludes by stating that it is "not intended to be binding, but when executed it will serve as the basis for Sea-Sno's lawyer to draft a proposed Agreement."

On October 17, 2012, Riverside hired its first employee. It had placed ads with online employment agencies. Subsequently, it hired about 80 production workers, 20 of whom were former Sea-Sno bargaining unit members. During this period, Riverside received a "float" of its internal operating expenses from Sea-Sno. Thus, Sea-Sno paid Riverside's labor costs and other production expenses, while Riverside reimbursed Sea-Sno with the equivalent dollar value in timber milled at cost. Sea-Sno listed the "float" as an account receivable and Riverside listed it as an account

[1] The timber purchaser asserts that Sea-Sno would obtain a larger return from selling an operating mill than from either selling a mothballed mill or auctioning off the mill's equipment.

[2] The early-termination clause stated that if Sea-Sno terminated the lease within the first three months because it sold the mill, it would pay Riverside $20,000 in liquidated damages.

payable. Sea-Sno began to pay Riverside immediately for the timber that it milled at cost because Riverside's business plan was dependent on this cash flow to pay for its production expenses. Although the timber purchaser had obtained a $250,000-$300,000 line of credit for Riverside using his personal assets, he did not want to draw on this credit for start-up costs because he anticipated Riverside losing money during its initial months of operation. By mutual agreement, the parties repeatedly extended the 90-day period in the preliminary lease during which Sea-Sno would pay Riverside at cost for the timber that it milled for Sea-Sno.

In fall 2012, Union-signatory employers in the area who operated in the cedar products market began to ask the Union if Sea-Sno had resumed production. Union members working for these employers also began to inform the Union that they were seeing Sea-Sno brand products arriving again. The Union then contacted members who had worked at Sea-Sno before it closed, and they confirmed that Riverside was now operating the Sea-Sno mill.

Between October 2012 and February 2013, Riverside operated at a loss. During this period, its primary business was milling timber at cost for Sea-Sno. By Riverside's own estimates, this comprised about 85% of the mill's production. Sea-Sno's total payments to Riverside during this period were about $1.3 million. The remaining 15% of the mill's production represented work on Riverside's new custom-cut cedar products, which Sea-Sno had never offered to its customers.

In January 2013, based on the information that it had obtained from its members, the Union sent a letter to Riverside in which it requested recognition as the employees' bargaining representative and requested information regarding those employees. Riverside did not respond to that letter. On March 13, 2013, the Union filed a charge in Case 19-CA-100357 alleging that Riverside had violated Section 8(a)(5) by not recognizing and bargaining with the Union as its employees' exclusive bargaining representative.[3]

In March and April 2013, Riverside began to operate at a small profit. In May 2013, the parties entered into a regular lease.[4] The main terms of this agreement track those in the October 2012 preliminary lease. Riverside currently has increased the amount of custom-cut cedar work that it performs from 15 to 20 percent

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[3] On May 10, 2013, the Union filed the charge in Case 19-CA-104844 alleging that Sea-Sno had violated §§ 8(a)(3) and (5) by refusing to recognize and bargain with the Union as its employees' exclusive bargaining representative.

[4] It is not clear exactly when the parties executed the regular lease. Riverside provided the Region with an undated copy of the regular lease, and it is retroactive to November 15, 2012.

of its overall mill production and has decreased the amount of timber that it mills for Sea-Sno from 85 to 80 percent.

Sea-Sno continues to operate the first and third phases of its business. In doing so, it employs two salespersons, an accountant, and a secretary.[5] These employees use the main office space at the mill, which is an open area with cubicles. To one side of this area is a short hallway with three private offices. The timber purchaser and a bookkeeper, who also works as shipping and receiving clerk, perform Riverside's office work. They perform most of this work on the production floor in the mill, but the bookkeeper/clerk now uses the last private office in the hallway to process payroll for Riverside. This office is separated from the other two by a conference room, and it has a separate entrance. Riverside occasionally uses this office for customer or employee meetings. The parties agreed on the use of this office when they negotiated the preliminary lease. Riverside and Sea-Sno maintain separate computer networks, business files, and other office equipment.

ACTION

We conclude that Riverside is not the alter ego of Sea-Sno. Sea-Sno does not have an ownership interest in Riverside, and the evidence fails to establish that Sea-Sno maintains substantial control over Riverside. Because these necessary elements of the alter ego test are absent, the Region should dismiss the charge, absent withdrawal.

In determining whether two facially independent employers constitute alter egos for purposes of the Act, the main question to be answered is "whether the two employers are the same business in the same market."[6] The Board answers this question affirmatively if the two employers have "substantially identical management, business purpose, operation, equipment, customers, and supervision, as well as ownership."[7] Evidence showing that the alleged alter ego was created to evade responsibilities under the Act is another factor that supports an alter ego finding.[8] Not all of these factors, however, must be present to establish an employer's

[5] One of Sea-Sno's co-owners works as a salesperson.

[6] *Sobeck Corp.*, 321 NLRB 259, 266 (1996) (quoting *Stardyne, Inc. v. NLRB*, 41 F.3d 141, 151 (3d Cir. 1994)).

[7] *Advance Electric*, 268 NLRB 1001, 1002 (1984) (quoting *Denzil S. Alkire*, 259 NLRB 1323, 1324 (1982), enf. denied 716 F.2d 1014 (4th Cir. 1983)).

[8] *Fugazy Continental Corp.*, 265 NLRB 1301, 1302 (1982) (noting that old business's union animus was significant factor in finding that new business was alter ego), enfd. 725 F.2d 1416 (D.C. Cir. 1984).

alter ego status and none of them, alone, is determinative of the issue.[9] The General Counsel has the burden of establishing an employer's alter ego status.[10]

At the same time, the lack of substantially identical common ownership precludes an alter ego finding unless the old and new companies are either "wholly owned by members of the same family or nearly entirely owned by the same individual, or where the older business exerted substantial control over the business supposedly sold to the new company."[11] "Absent those limited circumstances, 'the lack of substantially identical common ownership precludes a finding' of alter ego status."[12] In the current case, Sea-Sno's owners do not have an ownership interest in Riverside.[13] There is also no evidence of either a familial relationship between the owners of Sea-Sno and those of Riverside or of the same individual having a substantial ownership interest in both companies. Thus, to find that Riverside is the alter ego of Sea-Sno, the evidence must demonstrate that Sea-Sno maintains "substantial control" over Riverside so that the latter is actually the same business in the same market.

In discerning whether substantial control is present absent common ownership, the Board considers the totality of the circumstances, focusing on "actual control" of the new business, to determine whether the differences between two employers are a "'mere technical change in the structure or identity' of an employer that is prescribed

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[9] See, e.g., *El Vocero de Puerto Rico*, 357 NLRB No. 133, slip op. at 1 n.3, 21 (2011) ("no single factor is determinative and the Board does not require the presence of each factor to conclude that alter ego status should be applied"); *Fugazy Continental Corp.*, 265 NLRB at 1302 (stating that no one factor "is the *sine qua non* of alter ego status").

[10] See, e.g., *US Reinforcing*, 350 NLRB 404, 404 (2007).

[11] *Summit Express*, 350 NLRB 592, 595 (2007) (quoting *Hill Industries,* 320 NLRB 1116, 1116 n.1 (1996)). See also *El Vocero de Puerto Rico*, 357 NLRB No. 133, slip op. at 1, n.3.

[12] See, e.g., *US Reinforcing*, 350 NLRB at 405; *Morton's I.G.A. Foodliner*, 240 NLRB 1246, 1246 n.1 (1979), affd. sub nom. *Meat Cutters Local 567 v. NLRB*, 663 F.2d 223, 227 (D.C. Cir. 1980).

[13] The certificate of formation that Riverside filed with the State of Washington lists only the timber purchaser and production manager as the company's shareholders. Also, the fact that only minimal capital may have been needed to create Riverside does not alter the outcome. See *US Reinforcing*, 350 NLRB at 407 (no alter ego status absent common ownership or substantial control where "only minimal capital was necessary to start the new business").

by the alter ego doctrine."[14] Facts showing the "absence of arm's-length dealing between the parties" may demonstrate that the new company is merely a "disguised continuance" of the old, and therefore still under the old company's control.[15] Several indicia that constitute evidence of the lack of an arm's-length relationship include: a lack of formality in the sale of the old business to the alleged alter ego[16]; the old business initiating the formation and capitalization of the new business[17]; the old business controlling the daily operation and work product of the new business[18]; managers of the old business either concurrently holding the same positions for the new business or placing their trustees in management positions at the new

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[14] *Sobeck Corp.*, 321 NLRB at 266 (quoting *NLRB v. Omnitest Inspection Services*, 937 F.2d 112, 118, 120 (3d Cir. 1991)).

[15] *Citywide Service Corp.*, 317 NLRB 861, 874 (1995) (alter ego's start-up capital provided by loan from wife of original employer's owner and loan was not evidenced by a writing).

[16] See *Sobeck Corp.*, 321 NLRB at 267 (transaction between old business and alter ego "for all practical purposes" was president of old business dealing with himself where alter ego paid "no meaningful consideration" for old business's assets); *Marbro Co.*, 310 NLRB 1145, 1150 (1993) (alter ego used premises and equipment of old business without lease or change in title of equipment); *McAllister Bros.*, 278 NLRB 601, 601 n.2, 607, 617 (1986) (loan transaction by which old business allegedly sold equipment to alter ego was "paper shuffling device" that did not result in change of ownership), enfd. 819 F.2d 439 (4th Cir. 1987); *All-Kind Quilting*, 266 NLRB 1186, 1194 (1983) (no bookkeeping records kept of transactions between two businesses; alter ego not required to pay balance on purchase of old business's equipment).

[17] See, e.g., *El Vocero de Puerto Rico*, 357 NLRB No. 133, slip op. at 12, 22 (president of old business incorporated alter ego, concurrently served as president of alter ego, and had old business's managers serve in same capacity for alter ego); *All-Kind Quilting*, 266 NLRB at 1194 (old business retained "rights, title, and interest" to business allegedly sold to alter ego); *Fugazy Continental Corp.*, 265 NLRB at 1302 (old business "directed and managed both ends of the transaction and continues to retain a financial interest" in alter ego; old business also dictated who would be partners in alter ego).

[18] See, e.g., *McAllister Bros.*, 278 NLRB at 616-17 (finding alter ego status where sales agreement required new business to work almost exclusively for old business, to give priority to old business's customers, to accept old business's fee schedule for services, and where owner of new business was subordinate to managers of old business); *All-Kind Quilting*, 266 NLRB at 1194 (finding alter ego status where same employees performed work for old and new business under managers of old business); *Fugazy Continental Corp.*, 265 NLRB at 1302-03 (finding alter ego status where purchase agreement specified operating hours for new business and new business worked almost exclusively for old business).

business[19]; the old business providing administrative services, facilities, and equipment to the new business[20]; and, the old business representing to customers or the public that it had not ceased operating.[21]

These factors are typically found in a context where the principals of the old business have gone to great lengths to either breach a bargaining obligation so as to reduce their labor costs or otherwise evade their obligations under the Act.[22] On the other hand, the Board will not find that an old business maintains substantial control over a new business absent such indicia. In this latter situation, the two entities have

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[19] See, e.g., *El Vocero de Puerto Rico*, 357 NLRB No. 133, slip op. at 21, 22 (after president of old business concurrently served as president of alter ego and staffed new business with managers from old business, he then "handpicked" his successor); *Citywide Service Corp.*, 317 NLRB at 874 (president and vice-president of old business concurrently held management positions with alter ego they created for first two months of new operation); *All-Kind Quilting*, 266 NLRB at 1191, 1194 (friend of old business's owners purchased equipment at auction, but did not know anything about running old business; friend then hired manager from old business, who was son of one of owners, to run alter ego while working for old business; friend had no involvement in running alter ego); *Fugazy Continental Corp.*, 265 NLRB at 1302-03 (old business gave appearance of selling operation to supervisors who had committed unfair labor practices for it; old business dictated who would be partners in alter ego).

[20] See, e.g., *El Vocero de Puerto Rico*, 357 NLRB No. 133, slip op. at 22 (old business provided rent-free office space, equipment, supplies to new business; president of old business also created third entity that provided accounting, human resources, and payroll services to old business and alter ego); *Citywide Services Corp.*, 317 NLRB at 874 (old business purchased fax machine, air conditioners, and installed computer program for alter ego); *All-Kind Quilting*, 266 NLRB at 1194 (alter ego used old business's clericals, office facilities, trucks, and telephone; old business continued providing worker's compensation insurance for alter ego's employees); *Fugazy Continental Corp.*, 265 NLRB at 1302 (old business remained responsible for alter ego's secretaries, guards, bill collectors, and electric bill).

[21] See, e.g., *Sobeck Corp.*, 321 NLRB at 267 (old business also represented to customers it was still operating, but under a different name); *McAllister Bros.*, 278 NLRB at 617 (old business represented to its customers and public that it was still running harbor tugboat operation and that new business did not exist).

[22] See, e.g., *El Vocero de Puerto Rico*, 357 NLRB No. 133, slip op. at 22 (old business creating new business to handle newspaper circulation shortly before collective-bargaining agreement to expire was "culmination of [old business president's] 2-year long effort to reorganize the circulation department" to lower costs under agreement); *Citywide Service Corp.*, 317 NLRB at 874 (finding old business created alter ego to avoid contractual obligations because it "owed enormous sums of money" to incumbent union's benefit funds and had stopped making payments); *McAllister Bros.*, 278 NLRB at 617 (alter ego "was in reality carrying out a joint understanding that [it] would operate nonunion, and thereby effectuate [old business's] goal" of reducing costs attributable to collective-bargaining agreement).

adhered to transactional formalities that demonstrate they have maintained an arm's-length business relationship, thereby precluding the finding of alter ego status.[23]

Based on these principles, we conclude that Sea-Sno does not maintain substantial control over Riverside, and, as a result, that Riverside is not Sea-Sno's alter ego. First, the two employers' business arrangement has not been marked by a lack of formality that would suggest the absence of an arm's-length relationship. The timber purchaser and production manager officially ended their employment with Sea-Sno in late September 2012. Then in early October 2012, before Riverside began operating, the two businesses memorialized their new arrangement in a written preliminary lease that set forth what each of them expected to gain from their new relationship.[24] Sea-Sno obtains the benefit of having its timber milled at cost and of having an operational mill, which ostensibly will generate a higher sale price for the mill than if it was mothballed.[25] Riverside obtains the benefit of paying Sea-Sno for the "float" of its start-up expenses by barter, i.e., milled timber, rather than cash payments drawn from the timber purchaser's line of credit. This arrangement also permits Riverside to generate cash flow from Sea-Sno that it uses to promote its new custom-cut cedar product line, which Sea-Sno has never been in the business of selling. Both parties are following business formalities because Sea-Sno records the "float" as an account receivable and Riverside records it as an account payable. Although this is a convenient arrangement for each party because neither incurs significant financial risk by pursuing this business opportunity, it is clear that the arrangement does not inure solely to Sea-Sno's benefit, as would be the case if Riverside was its alter ego.[26] In short, these facts fail to show that Sea-Sno is either

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[23] See, e.g., *US Reinforcing*, 350 NLRB at 405-07 & n.12 (finding no alter ego status absent common ownership where owners of old and new businesses were in non-marital relationship; no evidence couple shared financial arrangements; new owner independently incorporated and capitalized new business and retained final authority over job bids and hiring employees); *Summit Express*, 350 NLRB at 595 (finding no alter ego status absent common ownership where no evidence old business maintained financial interest in, controlled daily operations of, or had role in hiring employees for new business); *Hill Industries*, 320 NLRB at 1116 n.1, 1119-20 (finding no alter ego status given "materially different ownership" of old and new businesses and new business working on highly specialized product unrelated to products of old business).

[24] In May 2013, the parties entered a permanent lease. That lease essentially continued the terms of the October 2012 preliminary lease.

[25] Selling an operational mill would also obtain a higher return for Sea-Sno's owners than auctioning the mill's equipment piecemeal.

[26] See, e.g., *All-Kind Quilting*, 266 NLRB at 1194 (old business that created alter ego "alone ha[d] assumed the risks and derived the benefits"); *McAllister Bros.*, 278 NLRB

sitting on both sides of this business relationship or that it otherwise orchestrated a sham transaction to create a disguised continuance of its mill operation.[27]

Second, Sea-Sno lacks substantial control over Riverside because it does not dictate the latter's daily operation or work product. Riverside is attempting to develop a new line of custom-cut cedar products for which it already has acquired several customers. The parties' lease does not preclude Riverside from either pursuing or attempting to increase the size of that product line. For instance, there is no requirement that Riverside must limit production for its own new products so that it can mill a certain minimum amount of timber for Sea-Sno.[28] Indeed, Riverside has currently increased the percentage of custom-cut cedar work that it produces from 15 to 20 percent and has reduced the percentage of timber that it mills for Sea-Sno from 85 to 80 percent. While this is not a drastic change over the course of about eight months, it does show that Riverside is free to pursue its own business model. Similarly, the parties' lease does not place any restrictions on how Riverside can operate and manage the mill. Thus, Riverside is not obligated to mill timber only for Sea-Sno.[29] Sea-Sno also has no role in managing Riverside's daily operation and is not involved in staffing Riverside's mill operation.[30] It is also significant that either party may remove itself from this business arrangement by terminating the lease with 60-days' written notice.

Third, the two businesses do not share administrative functions or offices. Sea-Sno's remaining office employees at the mill do not perform any administrative work for Riverside, which employs its own office worker to perform bookkeeping and

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at 617 (principals of alter ego "enjoyed few of the benefits and bore few of the risks" of business relationship).

[27] See *US Reinforcing*, 350 NLRB at 407 (no alter ego status despite old and new business owners being "committed couple" where new owner independently incorporated and capitalized new business and was only person authorized to conduct business on it behalf). Compare to the cases cited at footnotes 15 and 16, above.

[28] Compare, e.g., *McAllister Bros.*, 278 NLRB at 616 (sales agreement prohibited alter ego "from performing more than a token amount of its own business").

[29]When Riverside mills timber for a third party, it must pay Sea-Sno its pro-rated share of the mill's monthly operating expenses plus a 20 percent mark up. But if a third party is paying Riverside to mill its timber, this would not be a financial disincentive that causes Riverside to avoid acquiring such work.

[30] See *US Reinforcing*, 350 NLRB at 407 (no alter ego status where new business had final authority over job bids and hiring and only received assistance from owner of old business regarding these functions); *Summit Express*, 350 NLRB at 595-96 (no alter ego status where old business not involved in new business's hiring process or daily supervision of employees). Compare to the cases cited at footnote 18, above.

shipping and receiving duties. Riverside also negotiated with Sea-Sno for the use of an office at the mill that is separate from those used by Sea-Sno's office employees. The two businesses also maintain separate computer networks, business files, and other office equipment. These facts distinguish this case from those where a substantial control finding is bolstered by two businesses having common office operations.[31]

Fourth, there is also no evidence that Sea-Sno has represented to its customers that Riverside is merely a continuation of its prior operation under a different name.[32] Indeed, Sea-Sno could not make such a representation here. Riverside has been acquiring customers for its own custom-cut cedar products and, as stated above, Sea-Sno was never in that product market.[33]

Finally, the sequence of events here fails to establish that Sea-Sno was attempting to create a disguised continuance of its mill operation to get around its collective-bargaining agreement with the Union. Before closing its mill, Sea-Sno informed the Union of its financial problems, and the Union verified Sea-Sno's position by auditing its financial records. The Union then took Sea-Sno's mid-contract, concessionary offer to the unit employees, but they rejected the offer. As a result, Sea-Sno's owners resigned themselves to closing the mill and either mothballing it for sale or auctioning off the mill's equipment piecemeal. Sea-Sno then engaged in effects bargaining with the Union regarding the pending mill closure, but the parties' negotiations did not result in an agreement. There is no evidence that Sea-Sno's owners took any affirmative action to create Riverside to avoid their contractual obligation with the Union.[34] It was not until Riverside's owners approached Sea-Sno with the idea of leasing the latter's mill to create new custom-cut cedar products that the current business arrangement materialized. This occurred five months after Sea-Sno had closed and mothballed the mill while waiting for a purchaser to show an interest in the facility. Indeed, the evidence shows that Sea-

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[31] See *US Reinforcing*, 350 NLRB at 405, 407 (no alter ego status where, although on "flexible" basis, new business paid weekly rent for office space and equipment of old business); *Image Convention Services*, 288 NLRB 1036, 1038 (1988) (no alter ego status where, among other things, two businesses "maintained separate offices, furnished their own office supplies, and separate work forces, and followed separate payroll practices"). Compare to the cases cited at footnote 20, above.

[32] Compare to the cases cited at footnote 21, above.

[33] See *Hill Industries*, 320 NLRB at 1119 (no alter ego finding where new business made "highly specialized product" that was in sharp contrast to numerous products old business made for numerous customers).

[34] There is also no evidence that Riverside's owners created their business with an anti-union motive. See *US Reinforcing*, 350 NLRB at 408.

Sno remains interested in selling the mill and that the parties' lease includes an early-termination clause to permit that outcome. This background sharply contrasts with the typical alter ego fact pattern where the old business initiates the formation of a new business to which it then transfers all or part of its operation to evade its obligations under the Act.[35]

In sum, the evidence does not demonstrate that these businesses are alter egos and, accordingly, the Region should dismiss the charge, absent withdrawal.

/s/
B.J.K.

[35] See, e.g., *DuPont Dow Elastomers, LLC*, 332 NLRB 1071, 1071 & n.1, 1084 (2000) (no alter ego status where, among other things, no evidence old businesses formed new business to avoid collective-bargaining responsibilities), enfd. 296 F.3d 495 (6th Cir. 2002). Compare to the cases cited at footnote 22, above.