JD(NY)–05–14
West Orange, NJ

UNITED STATES OF AMERICA
BEFORE THE NAITONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE

ENVIRONMENTAL CONTRACTORS, INC.,
AND KIELCZEWSKI CORP., ALTER EGOS
AND A SINGLE EMPLOYER

and **Case No. 22-CA-089865**

LOCAL 78, LABORERS INTERNATIONAL
UNION OF NORTH AMERICA

***Bert Dice-Goldberg, Esq.,* for the General Counsel.**

DECISION

Statement of the Case

STEVEN DAVIS, Administrative Law Judge: Based on a charge and a first amended charge filed on September 21, 2012 and August 28, 2013, respectively, by Local 78, Laborers International Union of North America (Union), a complaint was issued on July 31, 2013 against Environmental Contractors, Inc., (ECI) and Kielczewski Corp. (KC), Alter Egos and a Single Employer, herein called ECI, KC or Respondents.

The complaint alleges and the answer admits that, at all material times, ECI and KC have had substantially identical management, business purposes, operations, equipment, customers, supervision and ownership. The complaint also alleges and the answer also admits that in about September, 2011, KC was established by ECI as a disguised continuation of ECI.

The complaint further alleges and the Respondents deny that ECI established KC for the purpose of evading its responsibilities under the Act, that both companies are alter egos and a single employer within the meaning of the Act, and that they are a single-integrated business enterprise and a single employer within the meaning of the Act.

The complaint also alleges that following the Board's certification of the Union as the exclusive collective-bargaining representative of ECI's unit employees, the Respondents refused the Union's request to recognize and bargain with it. It is alleged that, at the same time, the Respondents changed the wages and benefits they paid to unit employees by reducing such wages and benefits without notice to the Union and without affording it an opportunity to bargain with the Respondents and without first bargaining with the Union to a good-faith impasse.

The Respondents' answer denied the material allegations of the complaint, other than those which they admitted, including those set forth above, and on September 24, 2013, a hearing was held before me in Newark, NJ.[1] Upon the evidence presented in this proceeding, and my observation of the demeanor of the witnesses, and after consideration of the brief filed

[1] Following the close of the hearing I received GC Exhibits 24 and 24, a video recording and transcript of a conversation between Union organizer Leonardo Naranjo and Respondent supervisor Peter Cybura. They are hereby received in evidence.

by the General Counsel,[2] I make the following:

Findings of Fact

I. Jurisdiction and Labor Organization Status

The Respondents, having an office and place of business in West Orange, New Jersey, have been contractors in the construction industry doing residential and commercial demolition, asbestos removal, mold and lead removal. The complaint alleges, and the answer admits, that during the 12-month period ending September 30, 2012, the Respondents performed services valued in excess of $50,000 in states outside the State of New Jersey. I therefore find and conclude that the Respondents have been employers engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

The Respondents' answer denied knowledge that the Union is a statutory labor organization. Abraham Hernandez, a Union Business Agent and organizer, testified that it represents employees working in the environmental industry, including the removal of asbestos, lead and hazardous waste. Hernandez stated that the New Jersey Building Laborers District Council is a board comprised of representatives of all the Laborers' locals of the Laborers International Union in New Jersey. The Union is a member of that organization. Hernandez further stated that, prior to September, 2008, Local 1030, Laborers International Union, represented employers in New Jersey, but subsequent to that date, the International Union transferred the representational rights of Local 1030 to Local 78, the Charging Party. Moreover, in a Stipulated Election Agreement approved by the Regional Director on March 20, 2012, ECI agreed, and I so find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. The Request for Postponement

The Respondents were advised in the complaint which was issued on July 31, 2013, that the hearing was scheduled for September 24. In the late afternoon of September 23, Respondents' attorney, Waldo Carkhuff, called General Counsel Dice-Goldberg and said that he could not be present at the hearing due to an unspecified "conflict." General Counsel advised him that at that late hour he could not consent to an adjournment and gave him Associate Chief Administrative Law Judge Biblowitz' contact information.

Upon my arrival at the hearing the following day, I was advised by Judge Biblowitz that he received a phone message from Carkhuff at 4:00 p.m. the previous afternoon in which Carkhuff advised that he could not appear at the hearing due to a "conflict." Carkhuff sent a fax to Judge Biblowitz at that time, as follows:

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[2] I was administratively advised that on December 13, 2013, a Consent Order Granting Interim Injunction was entered into between the Respondents and the General Counsel pursuant to Section 10(j) of the Act. Pending the disposition of the proceeding before the Board, the Order enjoined the Respondents from refusing to recognize and bargain with Local 78, making unilateral changes to terms and conditions of employment of their employees, and ordered the Respondents to recognize and bargain with the Union at the request of the Union, and restore any or all of the terms and conditions of employment of the unit employees as established by the collective-bargaining agreement which expired on April 30, 2012. I have received the Order in evidence as General Counsel's Exhibit 1(h).

> Re: Adjournment
> Pursuant to my telephone calls of 9-23-13 to your Honor and our adversary, I will be unable to appear tomorrow morning in the above matter. ECI 22-CA-089865. Thank you.

Various subpoenas were issued by General Counsel to the Respondents for the appearance of Slawomir Kielczewski on September 24 at this hearing. A notice attached to the charge states that the hearing will be held on the date and hour indicated and that postponements will not be granted unless good and sufficient grounds are shown and the formal requirements are met, including that the request must include the grounds for the request, and the tentative dates for the rescheduled hearing. In addition, the positions of all parties must be ascertained and set forth in the request and copies must be simultaneously served on the other parties. The notice sates that "except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing."

Neither Respondents' attorney Waldo Carkhuff nor his clients, the Respondents, appeared at the hearing. The hearing opened at 10.34 a.m. at which time I denied the Respondents' request for postponement. The General Counsel's first witness, Hernandez, testified briefly. At about 11:00 a.m., I asked the General Counsel to phone Carkhuff and advise him that his request for a postponement was denied and that I would adjourn the hearing for one hour to permit him to attend the hearing if he wished.

During the recess, the General Counsel phoned Carkhuff and so advised him. He stated that Carkhuff said that it was "impossible" for him to attend the hearing because he was "doing something medical." The General Counsel sent him a fax and e-mail confirming their conversation. The hearing resumed at 12:16 p.m. Neither Carkhuff nor his clients appeared.

I affirm my ruling denying the Respondents' request for postponement. No details were given of the alleged "conflict" Carkhuff had with the hearing date. Presumably, he would have been able to resolve the alleged conflict earlier since he had been advised of the hearing date nearly two months before. When given the opportunity to appear at the hearing, Carkhuff claimed that "something medical" made it impossible for him to appear. Again, no details were provided. The request for postponement lacks merit and is denied.

III. The Facts

A. Background

On May 1, 2007, the Building Contractors Association of New Jersey (Association) which represented ECI and other employers in the construction industry, entered into a collective-bargaining agreement with the New Jersey Building Laborers District Council which was effective until April 30, 2012. That agreement was a pre-hire Section 8(f) contract.

ECI's answer admits that at all times prior to December 29, 2011, it was an employer-member of an Association which represented it and other employers in the construction industry, and that it authorized the Association to represent it in negotiating and administering collective-bargaining agreements with the Union. ECI's answer further admits that on about December 29, 2011, it gave timely notice that it was revoking its authorization to the Association to negotiate on its behalf, and terminating the collective-bargaining agreement.

On March 7, 2012, the Union filed a petition seeking to represent the employees of ECI. The Union won an election held on April 11, 2012, and thereafter, on April 23, the Union was

certified as the exclusive collective-bargaining representative of the employees of ECI in the following unit:

> All full-time and regular part-time building and construction laborers employed by the Employer in the State of New Jersey but excluding all office clerical employees, managers, guards and supervisors as defined in the Act.

The complaint alleges that, at all times since about April 23, 2012, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit employees.

B. The Request to Bargain

Hernandez and Business Agent Radosaw Korek testified that on April 11, the day of the election, after the ballots were counted and the Tally of Ballots was distributed to the parties, they attempted to speak to Slawomir Kielczewski, the president of ECI. [3] They approached him and offered a handshake, and said "so let's talk; let's open and follow up our future relationship." Slawomir "wrestled with us… pushed us out of the office," telling them twice, "get the fuck out of my office." Later, Korek entered the office and told Slawomir that the Union won the election. Slawomir stepped outside, and "kicked us out on the sidewalk," telling them to "get the fuck out of my property." [4]

Korek testified that, following the election, he attempted to speak to the employees to learn if their working conditions had changed. He left several phone messages and visited their homes, but received no response from the workers.

Korek called Slawomir at least three times in June to ask him about a new company, Kielczewski Corp., that the Union believed had been formed and had begun performing jobs. He also attempted to speak to Slawomir's brother, Wesley Kielczewski. On each occasion, Slawomir and Wesley refused to speak about the Union, Slawomir saying "we have nothing to discuss in this matter about the union issue between my company and me." Wesley told him he had to speak to Slawomir.

Union organizer Oscar Borreo testified that he and organizer Leonardo Naranjo visited a jobsite at 133 Summit Avenue in Summit, New Jersey on June 21, 2012. Naranjo recorded his conversation with supervisor Peter Cybura.[5] Apparently, Naranjo posed as an employee seeking work. Cybura identified himself as the supervisor and asked Naranjo if he was "union." Naranjo denied being "union." Cybura said that the Employer "is not with the Union" because union workers were lazy and earn about $30 per hour, whereas non-union employees earn $10 or $15 per hour.

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[3] In various documents filed in 2010 through 2012 by ECI with the New Jersey Department of Labor, and documents issued by that agency, Slawomir Kielczewski is listed as the president of ECI. Because several of the Respondents' officials have the same last name, I will refer to them by their first names.

[4] Inasmuch as the Respondent made no appearance at the hearing and presented no witnesses, the testimony of all the witnesses who testified in behalf of the General Counsel are uncontradicted. I credit their testimony.

[5] Cybura is listed on KC payroll documents as being "NJ Supervisor" and a website maintained by KC states that he is the "project manager/estimating Environmental Services."

Naranjo asked for the name of the company, adding that he could not see the name of the company on the truck. Cybura said "because we paint this. Because that was union company, we not union company anymore." He added that prior to that time the name of the company was Environmental, but it was now called Kielczewski Corporation. Cybura added that the owner of Kielczewski is the same owner of Environmental – "the same owner. He just change the name." Cybura told the Union agents that when they work in New York "we are with the Union in New York, Local 78" but the company no longer works in New York.

A "Notification of Asbestos Abatement" signed by Slawomir for that job listed KC as the abatement contractor. However, the vehicle used by KC on that job is registered to ECI but bore no KC logo. Moreover, a notebook in the cab of the truck entitled "asbestos abatement project log book" bore the notations "Summit Parmely Apt. Building, 133 Summit Avenue, ECI Project Number 12023-AR."

Organizer Borreo testified that he visited ECI's office at 235 Watchung Avenue and photographed the vehicles there. Some of the trucks bore an ECI logo, and others did not.

Organizer Saverio Samarelli and Vila testified that they visited Blair Academy on October 4, 2012. They asked in the office for "ECI." The receptionist, David S., [6] said "you mean the abatement contractor." They said "yes," and the receptionist said "he's under Kielczewski Corp.," Vila spoke with Wesley about ECI, with Wesley saying that there were issues with employees making personal phone calls at work and not being productive. Wesley said that "any issues regarding the union should be directed to his brother, the owner."Samarelli left his business card with Wesley, and asked that his brother call him. Received in evidence was a photograph of a sign bearing Kielczewski Corp's name at the site and a truck. Samarelli stated that he saw a man wearing a shirt bearing an ECI logo at the jobsite.

On October 15, 2012, Samarelli visited a jobsite in Newark where he spoke to and recorded his conversation with Wesley who recognized Samarelli from his visit on October 4. Samarelli identified himself as being from the International Union, but working in behalf of Local 78. He attempted to learn what type of work the company was doing at the jobsite and how many employees worked there. Wesley was generally noncommittal, advising Samarelli to speak with his brother who was the boss of Environmental Contracting and remarking "since you're union and I'm not union … I really can't disclose too much information."

Wesley complained about the high labor cost when the company was a union contractor, paying his employees over $50 per hour including benefits. He admitted that he was now paying his employees perhaps $20 less per hour since he did not pay them any benefits. Wesley conceded that compared to the wages he previously paid, there was a "big difference," estimating that if employees worked 1,000 hours, the company would save $20,000. Wesley added "that answers your question…. If you have a job, if you're talking about millions, if somebody wishes to go non-union then you get an even bigger difference. You know what I'm saying?"

When asked if stiff competition was the reason his company went "non-union", Wesley answered "well yes, yes and no. I don't even know what's the main reason. I'm not going there. I don't want to speak about something…." Wesley also complained that he believed that his competitors who do prevailing wage work do not pay their employees the proper wage, but his

[6] No further identification of the man was made.

company does – "my problem is my competition is in the position [that] their numbers are lower."

C. The Alter Ego and Single Employer Status of the Respondents

The Respondents admit that they have had substantially identical management, business purposes, operations, equipment, customers, supervision and ownership. The Respondents also admit that in about September, 2011, KC was established by ECI as a disguised continuation of ECI.

ECI applied for an asbestos license in February, 2011. The application states that ECI was incorporated in December, 1993, and lists Slawomir Kielczewski as its president. Numerous jobs were listed as having been done in 2010 with the following scope: asbestos abatement, demolition, mold remediation and asbestos remediation,

Kielczewski Corporation filed an application for an asbestos license in May, 2012. It stated that it was incorporated on December 22, 2010, and listed its president as Slawomir Kielczewski. A website maintained by KC states that KC "is a company that is comprised of former employees of EC" and then directs the reader to ECI's website for the credentials of those workers.

Both ECI and KC's applications list their address as 235 Watchung Avenue, West Orange, New Jersey. That location is owned by Mariola Kielczewski, the ex-wife of Slawomir, who leased it to ECI in August, 2010.

The KC application contains a letter dated May 8, 2012, in which Slawomir advises the New Jersey Asbestos Control & Licensing department that certain equipment will be sold to KC "in the future." The lengthy list of equipment to be sold, according to Hernandez, includes "pretty much all of the equipment that he possess at ECI." On May 24, 2013, KC was issued an asbestos license which permitted it to "perform any type of asbestos work."

Certain unit employees of ECI were retained by KC. They include Nathaniel Couram, Serhiy Drozdyak, Henryk Maciorowski, Jacek Marosz, Piotr Piecuch, and Wieslaw Piecuch. ECI clerical employees Mariola Kielczewska, Barbara Reed, and Rafal Skrzypcak also continued their employment with KC.

Bids for work and proposals for both companies were prepared by Slawomir and Cybura. ECI continued to bid on work in its name. In January, 2012 and thereafter, it bid on certain work. ECI's proposals noted that "work performed after April 30, 2012 will be open shop only" or stated that "work is priced to be completed non-union after May 1, 2012."

Certain of KC's proposals for jobs dated April, 2012 and later also stated that "work performed after April 30, 2012 will be open shop only." Also, exclusions noted are "union labor" and "union harmony."

Both ECI and KC use the same vendors. For example, both use Circle Recycling, Inc., Circle Rubbish Removal, Inc., and Sky Environmental Services, Inc. Both companies have the same account number at Home Depot Credit Services, American Express and Valley National Bank.

D. The Change in the Employees' Terms and Conditions of Employment

The complaint alleges that following the Board's certification of the Union as the

exclusive collective-bargaining representative of ECI's unit employees, the Respondents changed the wages and benefits they paid to unit employees by reducing such wages and benefits without notice to the Union and without affording it an opportunity to bargain with the Respondents and without first bargaining with the Union to a good-faith impasse. The evidence supports that allegation.

The Respondents' payroll records in evidence show that ECI's unit employees were paid according to the Association-Union contract, but then when they were employed by KC after June, 2012, their wages and benefits changed.

For example, Wieslaw Piecuch was classified as a Laborer Class A when employed by ECI, and earned $29.05 per hour. He received pension, health and "other" benefits of $77.20, .40, and $109.36, respectively.[7] At KC in July, 2012, however, he received a wage rate of $29.85 per hour, and health benefits only.

Similarly, Piotr Piecuch, classified as a cleaner and Laborer Class A at ECI, earned a wage rate of $29.05 and pension, health and "other" benefits of $77.20, .40, and $109.36.[8] However, at KC, in May, 2012, he earned $35.00 per hour, but no benefits.

Further, Nathaniel Couram, a cleaner and asbestos handler, received $29.00 per hour at ECI, and pension, health and "other" benefits of $62.64, .40, and $118.88, respectively. [9] However, in June, 2012, he received a wage rate of $35.00 per hour and no benefits at KC.

Analysis and Discussion

I. The Alter Ego and Single Employer Status of the Respondents

When the General Counsel alleges that an entity is the alter ego of another company, subject to the latter's legal and contractual obligations, the General Counsel has the burden of establishing that status. *U.S. Reinforcing, Inc.*, 350 NLRB 404, 404 (2007). The determination of alter ego status is a question of fact for the Board, resolved by an examination of all of the attendant circumstances.

The Board generally will find an alter ego relationship when two entities have substantially identical ownership, management, business purposes, operations, equipment, customers and supervision. Not all of these indicia need be present, and no one of them is a prerequisite to finding an alter ego relationship. Unlawful motivation is not a necessary element of an alter ego finding, but the Board also considers whether the purpose behind the creation of the suspected alter ego was to evade responsibilities under the Act. *McCarthy Construction Co.,* 355 NLRB 50, 52 (2010), adopted in 355 NLRB 365 (2010); *U.S. Reinforcing,* above.

The Respondents admit that they have had substantially identical management, business purposes, operations, equipment, customers, supervision and ownership. In addition, some of the same employees of ECI were retained by KC to perform the same work. The same clerical staff was employed. The same vendors and certain vendor account numbers continued to be used by KC. The Respondents also admit that in about September, 2011, KC was established by ECI as a disguised continuation of ECI.

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[7] Those benefits were received for the payroll dated January 4, 2012.
[8] Those benefits were received for the payroll dated January 4, 2012.
[9] Those benefits were received for the payroll dated February 27, 2012.

In *Southport Petroleum Co. v. NLRB*, 315 U.S. 100, 106 (1942), the Supreme Court said that "[w]hether there was a *bona fide* discontinuance and a true change of ownership … or merely a disguised continuance of the old employer ... is a question of fact ... ." The Supreme Court noted that if "there was merely a change in name or in apparent control ... there is added ground for compelling obedience." In such cases, where there is only a technical change in the structure or identity of the employing entity, "without any substantial change in its ownership or management," it has been held that the new employer "is in reality the same employer" and subject to the same legal and contractual obligations. *Howard Johnson v., Detroit Joint Board,* 417 U.S. 249, 252 fn. 5, 262 fn. 9 (1974).

The Respondents deny that ECI established KC for the purpose of evading its responsibilities under the Act, that both companies are alter egos and a single employer within the meaning of the Act, and that they are a single-integrated business enterprise and a single employer within the meaning of the Act.

The evidence is clear that ECI and KC are alter egos. First, as set forth above, they admit to the facts establishing an alter ego relationship, but deny the conclusion that must be drawn therefrom. They also admit that KC was established by ECI as a disguised continuance of ECI.

Also, it is clear that KC was formed for the purpose of evading its responsibilities under the Act. The Respondents believed that operating as a union company hindered its ability to be competitive in the marketplace. Thus, supervisor Cybura and Slawomir's brother Wesley complained about the high cost of Union wages and benefits, whereas, as a non-union company, the workers were paid less since they received no benefits. Cybura admitted that ECI's name was obliterated from its trucks because "we not union company anymore."

Similarly, the Respondents' proposals for jobs stated that after April 30, 2012, bids for work would be "open shop only" and priced "non-union."

The Respondents thus had a plan to reduce labor costs. Pursuant to that plan, after their contract with the Association expired, they refused to recognize the Union, withdrew recognition from it and refused to bargain with it following its certification, and changed the compensation paid to its employees.

The timing of the undisputed events herein and the Respondents' actions confirm this plan. In late December, 2011, the Respondents gave timely notification that it was withdrawing from the Association and did not authorize it to bargain in its behalf following the expiration of its contract with the Association on April 30, 2012. They notified their prospective customers that following April 30, 2012, their bids would be based on non-union rates, and the Respondents chose to ignore the Union's certification on April 23, 2012.

Thus, ECI made clear its intent to operate KC as a non-union contractor with lower labor costs and thereby avoid its obligation to bargain with the Union which was certified as their employees' exclusive collective-bargaining representative. *E.L.C. Electric, Inc*., 359 NLRB No. 20, slip op. at 9 (2012).

I also find that the Respondents are a single employer. Two or more ostensibly separate entities may be found to constitute a single employer where they constitute a single integrated enterprise. In determining whether such a relationship exists, the Board and courts consider four factors: common ownership, common management, interrelated operations, and centralized

control of labor relations. *Radio Local 1264, IBEW v. Broadcast Service of Mobile,* 380 U.S. 255, 256 (1965). None of the four factors is controlling, and not all factors need be present to support a single employer finding. Rather, single employer status depends on all the circumstances and is characterized by the absence of an arm's-length relationship between unintegrated companies. *Flat Dog Productions, Inc*., 347 NLRB 1180, 1181-1182 (2006).

Here, Slawomir was the main actor of both companies. He owned and was the president of both, he filed documents with regulatory agencies on behalf of both, was viewed by supervisors of KC as being in charge of that company. Those supervisors told the Union agents to speak to Slawomir for information regarding KC. The supervisors and managers were the same for both companies. Their operations wee interrelated. Both did the same type of work and Swalomir bid on projects for both. They used the same location, certain of the same unit employees, the same clerical workers, vehicles owned by ECI were used by both companies, KC took over the same equipment used by ECI, the same vendor account numbers were used, and there was no evidence that anyone other than Slawomir determined the labor relations of the two companies.

I accordingly find and conclude that ECI and KC were a single integrated enterprise, and a single employer.

II. The Refusal to Bargain

The complaint alleges that following the Board's certification of the Union, the Respondents refused the Union's request to recognize and bargain with it. As set forth above, the Union's request to bargain, even immediately following its election victory on April 11, was met with curses and eviction from the Respondents' office. No clearer message could be sent.

Thereafter, following the April 23 certification, Union agent Korek phoned president Slawomir at least three times. Each time, Slawomir refused to speak with him about the Union's relationship with the Respondents. Other attempts to speak with Wesely, Slawomir's brother, were similarly unproductive, with the Union's agents being told to speak to Slawomir. Union business cards were left with Slawomir's brother Wesley, who was asked to have Slawomir call him, but he did not.

Union agent Naranjo's June 21 conversation with supervisor Cybura is reflective of the Respondents' motivation. At a jobsite, Cybura told him they ECI's name was removed from the truck because "we not union company anymore."

Having found that the Respondents are a single employer, the bargaining unit remained intact. I find that, as a single employer, the Respondents had a continuing obligation to recognize and bargain with the Union as the exclusive bargaining representative of the unit employees, and that the bargaining unit remained an appropriate unit following the establishment of KC. I find that the Respondents violated Section 8(a)(5) and (1) of the Act by refusing to recognize and bargain with the Union.

I also find that the Respondents unilaterally changed the wages and benefits it paid to its employees. As set forth above, the unit workers at ECI were paid the wage rate, pension, health and "other" benefits pursuant to the Association contract, but when employed by KC, they were paid only wages without any other benefits. I understand that the wage rate at KC was slightly higher than at EC, but employees were receiving much less in compensation since no contributions were made to any benefit funds.

Regardless of the amount of the wages received by the employees, the violation is the Respondents' making unilateral changes in employees' compensation and their failure to notify the certified Union of those changes, and their failure to offer the Union an opportunity to bargain with them concerning those changes.

I also find that since KC is the alter ego of ECI, KC, and to the extent that ECI is still operating, they are obligated to comply with the terms of the collective-bargaining agreement that ECI entered into with the Association on May 1, 2007, and which expired on April 30, 2012. The evidence supports a finding that since about June 1, 2012, ECI and KC failed and refused to apply the terms and conditions of that collective-bargaining agreement, including the contractual and fringe benefit provisions therein, which are mandatory subjects of bargaining, and did so without the Union's consent. Accordingly, ECI and KC, as its alter ego, violated Section 8(a)(5) and (1) of the Act by failing and refusing to apply the terms of the collective-bargaining agreement that ECI entered into with the Association, and by failing and refusing to bargain collectively with the Union as the exclusive collective-bargaining representatives of the bargaining unit employees of ECI and KC.

Conclusions of Law

1.The Respondents, Environmental Contractors, Inc., and Kielczewski Corp., are employers engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. Local 78, Laborers International Union of North America, is a labor organization within the meaning of Section 2(5) of the Act.

3. At all times material herein, Environmental Contractors, Inc., and Kielczewski Corp., have been alter egos and a single employer.

4. By establishing Kielczewski Corp. as a disguised continuation of Environmental Contractors, Inc. for the purpose of evading its responsibilities under the Act, the Respondents have violated Section 8(a)(5) and (1) of the Act.

5. By refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees of Environmental Contractors, Inc., employed in the following appropriate collective-bargaining unit, the Respondents have violated Section 8(a)(5) and (1) of the Act:

> All full-time and regular part-time building and construction laborers employed by the Employer in the State of New Jersey but excluding all office clerical employees, managers, guards and supervisors as defined in the Act.

6. By changing the wages and benefits of unit employees by reducing such wages and benefits without notice to the Union and without affording it an opportunity to bargain with the Respondents and without first bargaining with the Union to a good-faith impasse, the Respondents violated Section 8(a)(5) and (1) of the Act.

Remedy

Having found that the Respondents have engaged in certain unfair labor practices, I find that they must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondents will be ordered to recognize and, on request, bargain with Local 78, Laborers International Union of North America, as the exclusive collective-bargaining representative of the unit employees with respect to wages, hours, and other terms and conditions of employment and, if an agreement is reached, embody it in a signed document. The Respondents shall also be required to rescind, on the Union's request, any or all of the unilateral changes to the unit employees' terms and conditions of employment made on or after April 23, 2012, and to make the unit employees whole for any loss of earnings and other benefits attributable to its unlawful conduct. The make-whole remedy shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).

The Respondents will be ordered to restore any or all of the terms and conditions of employment of its unit employees as established by the collective-bargaining agreement which expired on April 30, 2012. They shall also be required to make all contractually required contributions to the Union's benefit funds that it failed to make, including any additional amounts due the funds on behalf of the unit employees in accordance with *Merryweather Optical Co*., 240 NLRB 1213, 1216 fn. 7 (1979), and to make the employees whole for any expenses they may have incurred as a result of the Respondents failure to make such payments, as set forth in *Kraft Plumbing & Heating,* 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, *New Horizons for the Retarded*, and *Kentucky River Medical Center*, above.

The Respondents additionally shall be ordered to (1) compensate the unit employees for any adverse income tax consequences of receiving their backpay in one lump sum and (2) file a report with the Social Security Administration allocating the backpay to the appropriate calendar quarters, as set forth in *Latino Express, Inc*., 359 NLRB No. 44 (2012).

Where employers, as here, have failed and refused to bargain in good faith with a certified union, the Board will ensure that such a union has at least 1 year of good faith bargaining during which its majority status cannot be questioned by extending the certification year. *Mar-Jac Poultry Co*., 136 NLRB 785 (1962). Under the circumstances here, I recommend that the 1-year extension shall commence to run from the date when good faith bargaining begins.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[10]

ORDER

The Respondents Environmental Contractors, Inc., and Kielczewski Corp, West Orange, New Jersey, their officers, agents, successors, and assigns, shall

1. Cease and desist from

[10] 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.

(a) Refusing to recognize and bargain in good faith with Local 78, Laborers International Union of North America, as the exclusive collective bargaining representative of their employees in the following appropriate bargaining unit:

> All full-time and regular part-time building and construction laborers employed by the Employer in the State of New Jersey but excluding all office clerical employees, managers, guards and supervisors as defined in the Act.

(b) Making unilateral changes to the terms and conditions of employment of their bargaining unit employees.

(c) 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) Recognize and upon request, bargain in good faith with Local 78, Laborers International Union of North America as the exclusive collective-bargaining representative of the unit employees with respect to wages, hours, and other terms and conditions of employment and, if an agreement is reached, embody it in a signed document, and continue to recognize the Union as the certified exclusive agent of their employees in the unit described below for one year commencing on the date good faith bargain begins with the Union.

(b) Rescind, on the Union's request, any or all of the unilateral changes to the unit employees' terms and conditions of employment made on or after April 23, 2012, and make the unit employees whole for any loss of earnings and other benefits attributable to the unilateral changes they have made.

(c) At the Union's request, restore any or all of the terms and conditions of employment of unit employees as established by the collective-bargaining agreement which expired on April 30, 2012.

(d) Make their unit employees whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at their facility in West Orange, New Jersey, copies in English, Spanish and Polish of the attached notice marked "Appendix."[11]

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[11] 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."

Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondents' authorized representative, shall be posted by the Respondents 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 Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondents have gone out of business or closed the facility involved in these proceedings, the Respondents shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since June 1, 2012.

Dated, Washington, D.C. January 13, 2014

_____
Steven Davis
Administrative Law Judge

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 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 recognize and bargain in good faith with Local 78, Laborers International Union of North America, as the exclusive collective bargaining representative of our employees in the following appropriate bargaining unit:

All full-time and regular part-time building and construction laborers employed by the Employer in the State of New Jersey but excluding all office clerical employees, managers, guards and supervisors as defined in the Act.

WE WILL NOT make unilateral changes to your terms and conditions of employment.

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 recognize and upon request, bargain in good faith with Local 78, Laborers International Union of North America as your exclusive collective-bargaining representative with respect to your wages, hours, and other terms and conditions of employment and, if an agreement is reached, embody it in a signed document, and WE WILL continue to recognize the Union as your certified exclusive agent for 1 year commencing on the date we begin to bargain in good faith with the Union.

WE WILL rescind, on the Union's request, any or all of the unilateral changes to your terms and conditions of employment made on or after June 1, 2012, and make you whole for any loss of earnings and other benefits attributable to the unilateral changes we have made.

WE WILL at the Union's request, restore any or all of your terms and conditions of employment as established by the collective-bargaining agreement which expired on April 30, 2012.

WE WILL make you whole for any loss of earnings and other benefits suffered as a result of our discrimination against you.

ENVIRONMENTAL CONTRACTORS, INC., AND KIELCZEWSKI CORP., ALTER EGOS AND A SINGLE EMPLOYER
(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.nlrb.gov.

20 Washington Place, 5th Floor

Newark, New Jersey 07102-3110

Hours: 8:30 a.m. to 5 p.m.

973-645-2100.

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, 973-645-3784