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

LEDERACH ELECTRIC, INC
and MORRIS ROAD PARTNERS, LLC
(single employers)

and Case 4-CA-037725

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 380

Elana Hollo, Esq.,
for the General Counsel.
Robert J. Krandel, Esq., (Flamm Walton, PC), Blue Bell, Pennsylvania,
for the Respondent.

DECISION

STATEMENT OF THE CASE

Arthur J. Amchan, Administrative Law Judge. This case was tried in Philadelphia, Pennsylvania on March 24, 2014. The issue at this stage of the proceedings is whether Lederach Electric, Inc. (LEC) and Morris Road Partners, LLC (MRP) are a single employer.[1] The consequence of finding that LEC and MRP are single employers is that MRP would be jointly and severally liable for the backpay owed to four of LEC's former employees, Chris Breen, Cameron Troxel, Jeffrey Wallace and Christopher Rocus.

On July 21, 2011, Administrative Law Judge Robert Giannasi issued a decision in which he found that LEC violated Section 8(a)(3) and (1) by permanently laying off these four employees because of their union membership and activities. He also found that LEC violated Section 8(a)(1) in laying off Wallace, Troxel and Rocus because they engaged in protected concerted activities in connection with complaints about improperly withheld payments.

No exceptions were filed to the decision which then became a final order of the Board pursuant to Section 102.48 of the Board's Rules of Procedure. Thereafter the Regional Director

[1] I have used LEC for Lederach Electric Company as the caption on the transcript reads, rather than LEI for Lederach Electric, Inc.

for Region 4 issued a compliance (backpay) specification on January 19, 2012, which he amended on April 26, 2012. Administrative Law Judge Earl Shamwell conducted a hearing on the compliance specification on May 22, 2012. He issued a decision on September 10, 2012, finding that LEC owed the following amounts to the discriminatees: Wallace, $28,645.03; Rocus, $36,844.14; Troxel, $40,059.81 and Breen $16,680.08. The total backpay owed by LEC to the 4 employees is $122,229.06.

On March 4, 2013, the Board affirmed Judge Shamwell's findings and conclusions, 359 NLRB No. 71. On September 24, 2013, the Regional Director for Region 4 issued the instant compliance specification asserting that LEC and MRP are a single employer, jointly and severally liable for the backpay amount.

The Relationship between LEC and MRP

The General Counsel's contention that LEC and MRP are a single employer is predicated on the following facts. Between 1986 and 2010, James Lederach, and his wife Judy Lederach, jointly owned 100% of LEC. After January 1, 2010, James Lederach owned 100% of the shares of LEC. He was LEC's president; Judy Lederach was the Secretary and Treasurer. LEC operated from 1986 until 2012.

Since 1986, Lederach Electric operated out of an office building, the Lederach Commons Building, owned by Morris Road Properties.[2] James and Judy Lederach are the sole owners of MRP, each owning 50% of the shares. MRP has never had employees. The mailing address of both LEC and MRP is the same P.O. Box and tenants generally communicate with MRP by calling James Lederach's personal cellphone. Before LEC closed down, MRP's tenants at times paid their rent at LEC's office in Lederach Commons. Judy Lederach kept the financial records for MRP and possibly for LEC, as well. Both LEC and MRP were managed solely by James Lederach.

There are ten units in the Lederach Commons Building; 7 on the first floor; three on the second floor. The two units at the ends of the first floor, units # 1 and 7, are 2,000 square feet. The five interior units on the first floor are 800 square feet. The units on the 2d floor are 400, 450 and 475 square feet respectively.

Between 2008 and 2012, Lederach Electric's financial situation deteriorated markedly. It lost its bonding capacity and as a result lost its ability to bid on public projects as a prime contractor. LEC did not bid on work after November 2011 and had no employees after February or April 2012.

Pursuant to its most recent lease, LEC's rent, owed to MRP for unit 7 in Lederach Commons, was $3,000 per month. In 2009, from January to August, LEC did not pay any rent for this unit to MRP. It paid $2,000 in September; $3,000 in October; zero in November and $3,000 in December. For the calendar year 2009, LEC paid MRP $28,000 less than it owed.

[2] MRP also owns 2 plots of undeveloped land.

The 9 other tenants of Lederach Commons paid their monthly rent in full for the entire year, apparently on time.[3]

In 2010, LEC did not pay rent to MRP from January to March; LEC paid $1,500 in April and May; it made 3 payments totaling $8,000 in June and then did not pay rent again until December. In December 2010, LEC paid MRP $25,000. At the end of the year LEC had paid all the rent due for the year except for $1,000. One other tenant did not pay one months' rent; otherwise all the other tenants paid their rent on time and in full. Unit 1 was empty for 7 months.

In 2011 LEC paid $2,000 in rent to MRP in January and then did not pay any rent again until November. In that month LEC paid $10,000, but did not pay rent in December. For calendar year 2011 LEC was $24,000 in arrears. Several other tenants missed a month or two of rent for reasons not reflected in the record. Unit 1 was leased to the Paradise Spa in January 2011. MRP allowed the Paradise Spa to occupy unit 1 rent free from March to July while renovations were done to the unit.

LEC did not pay any rent to MRP for January – March 2012, thus leaving it $9,000 in arrears for this period.[4] For the period January 1, 2009 to March 31, 2013, LEC accumulated a debt of $62,000 to MRP. MRP never took any action to enforce the terms of its lease with LEC. LEC apparently was not under any obligation to pay rent to MRP after March 31. Six months later, MRP was able to lease unit 7 to another business.

Analysis

The Board applies four factors in determining whether separate entities constitute a single employer: 1) interrelations of operations, 2) common management, 3) centralized control of labor relations, and 4) common ownership or financial control. No one factor is controlling, nor do all need to be present to support a single employer finding. However, the Board has held that the first three factors are more critical than the last, and further that centralized control of labor relations is of particular importance because it tends to demonstrate "operational integration." Single employer status is characterized by the absence of an arm's length relationship found among unintegrated companies, *RBE Electronics of S.D.,* 320 NLRB 80 (1995). *Hydrolines, Inc.,* 305 NLRB 416, 417-19 (1991)..

There is no question that Lederach Electric and Morris Road Properties had common management and common ownership and financial control. It is also true that the relationship between LEC and Morris Road Properties was not arm's-length, a factor sometimes described as the hallmark of single employer status. There is also some evidence of an inter-relationship of operations in that the two companies used the same mailing address and that some tenants of MRP deposited their rent at LEC's offices in the building owned by MRP.

[3] One of the tenants of this building is Pete Retzlaff, a star receiver for the Philadelphia Eagles between 1956 and 1965, who was later general manager of the Eagles.

[4] James Lederach testified that besides MRP, he did not pay the Walton Flamm law firm everything LEC owes it. However, there is no documentation in the record to support this contention and no evidence at all as to how much LEC was billed and did not pay.

However, what is missing in this case from situations in which employers are found to constitute a single employer is the fact that LEC and MRP were never in the same business. The General Counsel relies heavily on two cases in which the Board found single employer status even though one entity, like MRP, had no employees. In both these cases, however, the entities, unlike LEC and MRP, were in the same business.

In *Bolivar-Tees, Inc.,* 349 NLRB 720 (2007), enfd. 551 F. 32d 722 (8th Cir. 2008) , Bolivar, which was in the garment industry, ceased production and moved it to the other entities found to be part of the single employer. In *Three Sisters Sportswear Co.,* 312 NLRB 853, 862-63 (1993), enfd. 55 F. 3d 684 (D.C. Cir. 1995), all the entities found to be a single employer had also at one time been in the business of producing and selling garments. As Judge Fish noted in his *alter ego* analysis, the various companies were in "the same business in the same market."[5]

In *Lebanite Corp.,* 346 NLRB 748, 757-60 (2006) Lebanite and R. E. Service Company (RES) were found to be a single employer. The two entities, unlike LEC and MRP, were essentially in the same business. Lebanite produced material used in the electronics industry; RES was in a similar business relating to the production of circuit boards.

Although, I am unaware that the Board has applied the "same business" criterion in its single employer analysis, I am also unaware of any case in which the Board had found two entities operating in completely separate businesses, such as electrical contracting and real estate management, to be a single employer—with one exception. In *Carnival Carting, Inc.,* 355 NLRB 297 (2010) the Board found Carnival Carting and Romar Sanitation to be a single employer and thus jointly and severally liable for the backpay owed to discriminatee Frank Mendez.

Carnival Carting was in the trash removal business. It housed two garbage trucks at a location owned by Romar. Romar's only business was owning the building where Carnival stored its garbage trucks. Carnival was as lackadaisical in paying rent to Romar as LEC was in paying rent to MRP; the relationship between Carnival and Romar was not "arms-length."

However, there are distinctions between the Carnival case and the instant one. Mendez was paid by Romar. It appears that Carnival was out of business and was not able to pay the judgment outstanding against it. At some point assets were transferred from Carnival to Romar Sanitation, but Romar also was dissolved. The Board's order found that Carnival Carting, Inc and Romar Sanitation, Inc. constituted a single employer and were jointly and severally liable for the backpay. Frankly, I fail to understand the decision. Had Carnival paid rent to Romar as it

[5] *The Developing Labor Law,* citing *San Luis Trucking,* 352 NLRB 211, 228 (2008) and *Cadillac Asphalt Paving Co.,* 349 NLRB 6, 8 (2007), describes the difference between an *alter ego* employer and a *single employer* in the following manner. A single employer relationship may be found between two ongoing businesses; an *alter ego* relationship may exist where one entity ceases operation and the other begins the same or similar operation. The relationship between LEC and MRP seems to fall in the middle. They both operated at the same time, but the General Counsel seeks a finding of single employer status in part because LEC has ceased operations. One of the criterion for finding an *alter ego* is a substantially similar or common business purpose. While the Board has never explicitly stated that the entities constituting a single employer must have a common business purpose, I conclude that this is implicitly the case.

would have in an arms-length relationship, it would have fewer, not greater assets to satisfy its backpay obligation. Also, by the time of the Board decision, neither entity could satisfy the backpay obligation leaving me to wonder what the point of this decision may be.

I also do not see any public policy rationale for finding MRP and Lederach to be a single employer. This is not a case in which LEC depleted its assets by transferring them to MRP. The lack of an arm's length relationship between the two companies, if anything, caused LEC to be left with more assets to pay creditors other than MRP. In sum, I conclude that the General Counsel has not established that LEC and MRP are a single employer applying the four factors generally applied by the Board, see e.g., *Bryar Construction Company,* 240 NLRB 102, 103-04 (1979). There no evidence of a centralized control of labor relations. Given the fact that LEC and MRP operated in completely different businesses, I conclude that the General Counsel has also failed to establish the necessary interrelationship of their operations. The General Counsel did not allege that James Lederach was individually liable for the backpay. I have no opinion as to whether it could have done so.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[6]

ORDER

The complaint is dismissed.[7]

Dated, Washington, D.C. April 30, 2014

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Arthur J. Amchan
Administrative Law Judge

[6] 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.

[7] Of course, Lederach Electric, Inc. still owes the amounts set forth in the Board's Order of March 4, 2013 to the discriminatees.