A.J. Mechanical, Inc., William A. Greene a/k/a Arnold Greene and Cynthia D. Greene *and* Carpenters and Millwrights, Local Union #2471, affiliated with United Brotherhood of Carpenters and Joiners of America. Cases 15–CA–15350, 15–CA–15388, 15–CA–15598, and 15–CA–15618

August 26, 2005

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

On January 23, 2003, Administrative Law Judge Pargen Robertson issued the attached supplemental decision. Respondents William A. and Cynthia D. Greene filed exceptions and a supporting brief. The General Counsel filed cross-exceptions with a supporting brief and an answering brief to the Respondents' exceptions**.** The Respondents filed an answering brief to the General Counsel's cross-exceptions and a reply brief to the General Counsel's answering brief**.** The General Counsel filed a reply brief to the Respondents' answering brief.

The National Labor Relations Board has considered the supplemental decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions only to the extent consistent with this Supplemental Decision and Order.

This is a proceeding in the compliance phase of an unfair labor practice case to determine the amount of backpay due employees who suffered financial consequences as a result of the unfair labor practices of the now-defunct Respondent A.J. Mechanical, Inc., and whether the Respondent's co-owner, William A. (Arnold) Greene,[2] and his wife, Cynthia D. Greene, alleged in this proceeding as additional Respondents, should be held personally liable for such backpay.[3]

In the underlying unfair labor practice proceeding,[4] the Board found that Respondent A.J. Mechanical, Inc. violated Section 8(a)(5), (3), and (1) of the Act and ordered it, its officers, agents, successors, and assigns, inter alia, to provide limited backpay to make whole the employees for losses suffered as a result of the Respondent's unlawful conduct. On October 23, 2000, the United States Court of Appeals for the Eleventh Circuit issued an unpublished judgment enforcing the Board's Order in full.

A dispute arose over the amount of backpay due under the Board's Order and whether the Greenes are personally liable for Respondent A.J. Mechanical's backpay obligations. On October 1, 2002, the Acting Regional Director for Region 15 issued a compliance specification and notice of hearing setting forth the wages and benefits for which Respondents A.J. Mechanical, Arnold Greene, and Cynthia Greene are alleged to be liable. Respondent A.J. Mechanical, Inc. failed to answer the compliance specification and did not appear at the hearing. Both Arnold and Cynthia Greene appeared and testified at the compliance hearing.[5]

Based on testimonial and documentary evidence dealing largely with Arnold Greene's manner of corporate governance and his relationship to A.J. Mechanical, Inc., the judge imposed personal liability on the Greenes. Applying the Board's two-part test for "piercing the corporate veil" as set forth in *White Oak Coal Co*.,[6] the judge determined that (1) Arnold Greene failed to maintain a legal identity separate from Respondent A.J. Mechanical Inc., and (2) adherence to the corporate shield would unjustly result in the evasion of the defunct A.J. Mechanical, Inc.'s backpay obligations incurred through unfair labor practices that the Respondent, through Arnold Greene and others, committed. The judge concluded that the allegations set forth in the compliance specification are true and that both Arnold and Cynthia Greene are personally liable, jointly and severally with Respondent A.J. Mechanical, Inc., for the established backpay obligation**.** We disagree.

White Oak Coal, supra, sets forth the appropriate test for determining whether adherence to the corporate form should be maintained to insulate individual stockholders from a corporation's backpay liability. We find that the judge misapplied that test to the evidence in this case**.** Under the two-prong *White Oak Coal* test, both prongs must be satisfied before the corporate veil will be pierced and individual liability imposed. Here we find, particularly with regard to the second prong of that test, that the judge erred in concluding that adherence to the corporate structure would unjustly result in the evasion of legal obligations. Contrary to the judge, we find that the Gen-

[1] The Respondents William A. and Cynthia Greene have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] William A. Greene will be referred to hereafter either as "Arnold Greene" or "A. Greene."

[3] Respondent A.J. Mechanical, Inc.'s other co-owner, James Sanders, and his wife entered into a $112,500 financial settlement agreement with the Board in February 2002.

[4] 330 NLRB No. 178 (2000) (not reported in Board volumes). Respondent A.J. Mechanical filed no answer to the complaint alleging a variety of violations and the Board issued a summary judgment decision.

[5] The compliance specification covered 118 employees and totaled $441,229.40, plus interest.

[6] 318 NLRB 732 (1995), enfd. mem. 81 F.3d 150 (4th Cir. 1996).

eral Counsel has failed to substantiate with convincing evidence that the distribution of corporate assets would unjustly result in the evasion of the Respondents' legal obligations. For the reasons set forth below, we reverse the judge's decision and dismiss the compliance specification insofar as it applies to Arnold and Cynthia Greene.

Factual Background

Arnold Greene and James Sanders incorporated the mechanical contracting business, A.J. Mechanical, Inc., in Florida in January 1993. They each contributed about $20,000 in initial capital and were the sole stockholders and directors.

Beginning in February 1999, Respondent A.J. Mechanical began distributing substantial shareholder payments to shareholders Sanders and Arnold Greene. Such distributions were neither alleged nor found to be unlawful. From February through November 1999, Sanders and Arnold Greene each received nine equal payments, in amounts varying from $50,000 to $500,000. Most of the checks were issued between February and April 1999, with some additional checks issued in June and November 1999. On December 2, 1999, A. Greene and Sanders met and executed a resolution to liquidate the corporation.[7] At about the same time, they received a tenth and final payment of $16,345.73. Each received distributions totaling $1,858,845.73.

During the period in 1999 when Respondent A.J. Mechanical was distributing payments to its shareholders**,** Respondent A.J. Mechanical was working under contract on a job that was scheduled to be completed in late June 1999. Because the project was not finished at that point, the Respondent entered into another contract, allowing the work to be completed several weeks thereafter, at approximately the end of July 1999. Respondent A.J. Mechanical, Inc. ceased all operations on about September 11, 1999.[8] Immediately thereafter, its property and equipment were offered for public auction.

While the foregoing was taking place, the Union was organizing the employees of A.J. Mechanical. In late 1998, Carpenters and Millwrights, Local Union #2471, a/w United Brotherhood of Carpenters and Joiners of America (the Union) began its organizing campaign**.** On April 19, 1999, the Union filed a petition for an election and, on July 9, 1999, was certified as representative of a unit[9] of Respondent A.J. Mechanical's employees.

Beginning in May 1999, and continuing until through November 1999, the Union filed a series of unfair labor practice charges alleging that A.J. Mechanical violated Section 8(a)(5), (3), and (1) of the Act. The General Counsel issued complaints against A.J. Mechanical in July and December 1999. In April 2000, in the absence of an answer to the complaint, the Board issued a summary judgment decision finding that Respondent A.J. Mechanical had engaged in a variety of unfair labor practices. Neither Arnold nor Cynthia Greene was named as a respondent in the Board's Order, which Order was subsequently court enforced.

Analysis

Because Respondent A.J. Mechanical, Inc. ceased operations prior to the Board's Order, the General Counsel seeks**,** in this compliance proceeding, to satisfy the backpay A.J. Mechanical owed to employees based on its unfair labor practices by "piercing the corporate veil" of A.J. Mechanical, Inc. and attaching the backpay obligation to the Greenes. In determining whether the corporate veil should be pierced, the proper analytical framework, articulated in *NLRB v. Greater Kansas City Roofing*,[10] and set forth by the Board in *White Oak Coal Co*., is as follows:

> Under Federal common law, the corporate veil may be pierced when: (1) there is such unity of interest, and lack of respect given to the separate identity of the corporation by its shareholders, that the personalities and assets of the corporation and the individuals are indistinct, *and* (2) adherence to the corporate form would sanction a fraud, promote injustice, or lead to an evasion of legal obligations.[21]
>
> When assessing the first prong to determine whether the shareholders and the corporation have failed to maintain their separate identities, we will consider generally (a) the degree to which the corporate legal formalities have been maintained, and (b) the degree to which individual and corporate funds, other assets, and affairs have been commingled.[22] Among the specific factors we will consider are: (1) whether the corporation is operated as a separate entity; (2) the commingling of funds and other assets; (3) the failure to maintain adequate corporate records; (4) the nature of the corporation's ownership and control; (5) the availability and use of corporate

[7] Formal papers dissolving the corporation were filed with Florida's Department of State on June 16, 2000.

[8] The judge discredited A. Greene's testimony that in late 1998, he and Sanders decided to wind up A.J. Mechanical's business upon completion of the contract then underway.

[9] The unit consisted of "[a]ll full-time and regular part-time employees including millwrights, millwright helpers, carpenters, carpenter helpers and laborers employed by the employer at its Pensacola, Florida Docks facility, including such employees who work in the field, excluding all office clerical employees, sandblasters, painters, and guards and supervisors as defined in the Act."

[10] 2 F.3d 1047 (10th Cir 1993), denying enf. in pertinent part of 305 NLRB 720 (1991).

assets, the absence of [same] or undercapitalization; (6) the use of the corporate form as a mere shell, instrumentality or conduit of an individual or another corporation; (7) disregard of corporate legal formalities and the failure to maintain an arm's-length relationship among related entities; (8) diversion of the corporate funds or assets to noncorporate purposes,[23] and, in addition, (9) transfer or disposal of corporate assets without fair consideration.

When assessing the second prong, we must determine whether adhering to the corporate form and not piercing the corporate veil would permit a fraud, promote injustice, or lead to an evasion of legal obligations. The showing of inequity necessary to warrant the equitable remedy of piercing the corporate veil must flow from misuse of the corporate form. Further, the individuals charged personally with corporate liability must be found to have participated in the fraud, injustice, or inequity that is found.[11]

[21] *NLRB v. Greater Kansas City Roofing,* supra at 1052.
[22] Id.
[23] Id.

For the purposes of this decision, we accept arguendo the judge's conclusion that the General Counsel has presented evidence sufficient to establish that the separate legal identity of Respondent A.J. Mechanical, Inc. had not been maintained under the first prong of the *White Oak Coal* standard.[12]

Regarding the second prong of the *White Oak Coal* standard, however, we find that the judge improperly concluded that the General Counsel established that adhering to the corporate form would "permit a fraud, promote injustice, or lead to an evasion of legal obligations." In his analysis of the *White Oak Coal* second prong**,** the judge focused sharply on the distribution of Respondent A.J. Mechanical, Inc.'s assets through payments to shareholders Arnold Greene and Sanders from the period of February though December 1999. The judge compared the timeline of these payments with the timeline of conduct later adjudged to have violated the Act (during the period of December 1998 to September 1999)—some of which involved Arnold Greene, and concluded that the distributions were made fraudulently and to evade legal obligations for unfair labor practices not yet found. Having concluded that both elements of the *White Oak Coal* standard had been me**t**, the judge determined that Arnold Greene is personally liable for the backpay under the Board's Order. Further, finding that Arnold and Cynthia Greene, as husband and wife, shared equally in the proceeds of Respondent A.J. Mechanical, the judge also determined that Cynthia Greene**—**who was neither an officer nor shareholder of A.J. Mechanical—likewise was jointly and severally responsible for A.J. Mechanical's remedial backpay obligations.

We find that the judge failed to analyze properly the chronology of events and, without adequate record support, conflated the disbursement of corporate funds with the unfair labor practice allegations and findings. Specifically, we find that the timing of the corporate distributions does not support the judge's conclusion that adherence to the corporate form would lead to the evasion of legal obligations. Thus, evidence falls short of satisfying the second aspect of the *White Oak Coal* standard.

The unfair labor practice charges were filed in May 1999 and the complaint was issued in July 1999. Thus, it was not until these dates that Arnold Greene was aware that the Respondent's actions were being challenged and that monetary liability could result. As noted above, the process of closing down (and the attendant distribution of assets to shareholders) began before those dates.[13] Early in 1999, the Respondent ceased pursuing new work and decided to complete only projects already underway. The distribution of assets to shareholders began in mid-February 1999, more than 3 months prior to the filing of the charges and over 5 months before the complaint was issued. By April 24, 1999, a full month before the first charge was filed against the Respondent, A. Greene and Sanders had each received seven cash payments totaling over $1 million dollars apiece. The bulk of the assets were paid out before A. Greene had any notice that the Respondent might be facing future liability. The post-charge, postcomplaint payments were simply a continuation and completion of a process that had began *before* those dates. Consistent with that chronology, the General Counsel does not even allege, and the evidence does not establish, that this process and these payments were unlawful.

Our dissenting colleague asserts that the corporate veil should be pierced because Arnold Greene continued to accept distributions from the Company "well after he knew of the outstanding allegations of unlawful con-

[11] *White Oak Coal, Inc*., supra at 735.
[12] While Member Schaumber accepts arguendo the judge's conclusion that the General Counsel has presented evidence sufficient to establish the first prong of *White Oak Coal,* supra—a failure to maintain separate corporate identities—the evidence on this point was not overwhelming. For example, it is hardly surprising that a small, closely held corporation like A.J. Mechanical did not rigidly observe all corporate formalities, such as maintaining corporate meeting minutes.

[13] The process of shutting down meant that all new contracts would be short term and would be limited to jobs already underway.

duct—in which, of course, he himself engaged." We disagree. The distributions were consistent with the dissolution of the corporation. The process of dissolution began prior to any determination of wrongdoing.

The dissent states that the relevant issue is not whether Arnold Greene was entitled to close its business, but whether he was free to strip A.J. Mechanical of its assets, thereby defeating the Board's Order. As explained above, we do not agree that A. Greene stripped the Company of its assets in order to defeat a Board Order. We reiterate that the process of distribution began prior to the filing of the unfair labor charges and to any issuance of a complaint by the Board and, therefore, was unrelated to the Board's Order.

We recognize that the second prong of the *White Oak* test does not necessarily depend on a finding of unlawful intent. However, the test, in relevant part, does require a finding that adherence to the corporate form would lead to an evasion of legal obligations. The term "evade" means "to elude by stratagem."[14] In the instant case, the process of liquidation was begun for lawful reasons, prior to the making of any claim. Although the process continued after unfair labor practice charges were filed, the General Counsel has not shown that the process would have ended in the absence of those charges. Thus, so far as this record shows, the process of liquidation would have continued irrespective of the presence or absence of an unfair labor practice claim. In these circumstances, we cannot say that there has been an evasion of legal obligations.

Our dissenting colleague also concludes, but does not really demonstrate, that A. Greene told the Board that the distributions made were part of a strategy to defeat the Board's remedies. This is premised on an annotated copy of the notice of auction of A.J. Mechanical's property sent to the Board's Regional Office by A. Greene. A. Greene wrote on the notice that the sale was made possible by Millwright Local 2471 and the Board, both of whom should feel very proud of their efforts in putting a small, independent contractor out of business and costing a lot of people a chance to make a decent living. While the note obviously indicates anger and perhaps antiunion animus, it neither states nor implies that the decision to close the Company and make distributions to its owners was a stratagem for defeating the Board's remedies. Again, the decision to close, which triggered the distributions, took place long before any unfair labor practice charges were filed or a complaint issued.

Accordingly, we reverse the judge's finding concerning the allegations set forth in the compliance specification insofar as they apply to William A. Greene and Cynthia D. Greene.

[14] Webster's New Collegiate Dictionary (1977).

ORDER

The compliance specification is dismissed against Respondents William A. Greene and Cynthia Greene.

MEMBER LIEBMAN, dissenting.

This is a textbook case for piercing the corporate veil to prevent injustice. Instead, the majority rewards a business owner who committed a series of unfair labor practices in a failed attempt to defeat a union organizing drive and who then sought a final victory by making sure there was no money left in the corporate treasury to pay his victims. My colleagues justify their decision by pointing out that the process of draining funds from the Company began before unfair labor practice charges actually were filed. What they gloss over, however, is that the process was clearly part of a strategy to defeat the Union and the Board's remedies—as the owner essentially told the Board. If that were not enough, the evidence establishes: (1) that most of the backpay owed to employees stems from the Company's shutdown *after* the Union was certified and the Company unlawfully refused to bargain with it; and (2) that the funds distributed to the owner *after* the first unfair labor practice charge was filed exceed the monetary liability involved. That the Board would sanction the result here is incomprehensible.

I.

In the underlying unfair labor practice proceeding, the Board found that beginning in December 1998, Respondent A.J. Mechanical, Inc.—of which William A. Greene (A. Greene) was a joint owner—embarked on a course of unlawful conduct in violation of Section 8(a)(5), (3), and (1) of the Act. The Respondent engaged in a litany of threats, interrogations, and other unlawful statements. It also discriminated against union supporters: imposing more onerous working conditions, firing two employees, laying off six employees, and refusing to hire or consider for hire union supporters 23 times. Ultimately, the Respondent unlawfully refused to bargain with the Union following its July 1999 certification, including refusing to bargain over the effects of the cessation of its operations.

The Board found that A. Greene himself engaged in many of these unlawful acts. They included warning employees of the futility of unionizing, threatening plant closure, job loss, loss of benefits, and business relocation if employees did not end their union activities; discarding employment applications of union supporters, and threatening to shut down operations and reopen with employees who did not support the Union.

Simultaneous with the commission of these unfair labor practices, A. Greene and the Respondent's coprincipal, James Sanders, began draining the Respondent's financial resources through an unprecedented series of "shareholder distributions."[1] They accomplished this by writing checks to themselves on A.J. Mechanical, Inc.'s account. In the first 4 months of 1999, A. Greene recouped well over $1 million in this manner and by the end of 1999, the Respondent corporation had its assets fully depleted.[2] There was no attempt to characterize these payments as sale of stock, current or deferred compensation, or return of capital. Nor was there documentation or credible evidence that this process was in keeping with a corporate decision to wind down operations in anticipation of closing. Rather, A. Greene simply began diverting the Respondent's finances to his (and his wife's) personal account coincident with his campaign of threats that the Respondent would shut down and employees would lose their jobs if they chose union representation.

Over $700,000 in assets—more than the $441, 229.40 at stake here—were distributed to A. Greene in the months following the first unfair labor practice charge in May 1999. A. Greene's conduct following notice of the unfair labor practice charges and receipt of the complaint are telling. After seeking legal advice, A. Greene did not merely fail to answer the complaint, but instead forwarded to the Board's Regional Office a copy of the notice of auction of the Respondent's property annotated as follows:

> This sale was made possible by Millwright Local 2471 and the National Labor Relations Board. Both parties should feel very proud of their efforts in putting a small, independent contractor out of business and costing a lot of people a chance to make a decent living.

When this rebuke to the Board was made, the Respondent still held sufficient assets to cover the amounts ultimately claimed in the compliance specification, and A. Greene had yet to receive the final, almost $250,000 in distributions.

II.

Under these circumstances, failing to pierce the corporate veil clearly "would permit a fraud, promote injustice, or lead to an evasion of legal obligation," the controlling standard to which the majority pays lip service. *White Oak Coal, Inc*., 318 NLRB 732, 735 (1995). The Board, thus, should impose personal liability on A. Greene and his wife.[3]

A. Greene showed that he was determined not only to thwart employees' rights under the Act, but also to make sure they never got the remedy due them. While A. Greene began taking his "shareholder distributions" before any charges were filed, he continued to tap the Respondent's till well after he knew of the outstanding allegations of unlawful conduct—in which, of course, he himself engaged. While A. Greene was entitled to close his business in response to employees' union activities, see *Darlington Mfg. Co.*, 380 U.S. 263 (1965), he was not free to strip the company of its assets and thereby effectively defeat the Board's order. According to my colleagues, he was indeed. Ambrose Bierce defined a corporation as "an ingenious device for obtaining individual profit without individual responsibility."[4] Today, the majority proves Bierce right. I dissent.

Stephen C. Bensinger, Esq., for the General Counsel.
Eric J. Holshouser, Esq., of Jacksonville, Florida, for the Respondent.

SUPPLEMENTAL DECISION

PARGEN ROBERTSON, Administrative Law Judge. This matter was heard in Pensacola, Florida, on October 30, 2002. On April 14, 2000, the National Labor Relations Board (the Board) issued a decision and order in this proceeding.[1] The Order directed Respondent A.J. Mechanical, Inc., inter alia, to make whole employees who was unlawfully denied a pay increase; that were unlawfully laid off and not recalled; that were unlawfully discharged; and that Respondent unlawfully refused to consider for hire and to hire; and limited backpay[2] because

[1] The record shows that the longstanding practice had been for A. Greene and Sanders each to draw $4000 per month from the Respondent and at the end of each year, an additional sum as financial conditions warranted.

[2] Sanders, who with his wife, reached a financial settlement with the Board concerning their personal liability for backpay, received a like amount.

[3] In addition, I would grant the General Counsel's cross-exception and find that the Greenes are also derivatively liable for providing backpay. As the judge explained in his decision, Cynthia D. Greene shared equally with her husband in the fruits of his financial pillage of the Respondent.

[4] Ambrose Bierce, *The Devil's Dictionary* (1881–1906).

[1] 330 NLRB No. 178 (2000) (not reported in Board volumes).

[2] The remedy for employees terminated by Respondent's unlawful refusal to bargain over the effects of its decision to close its facility, should be similar to that in *Transmarine Navigation Corp.,* 170 NLRB 389 (1968). The Board in *Transmarine* directed that respondent shall pay its employees terminated by closing its facility backpay "at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the closing of its facility on its employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5-business days after receipt of this Decision and Order, or to commence negotiations within 5-business days after receipt of the Respondent's notice of its desire to bargain with the Union; (4) the Union's subsequent failure to bargain in good faith, but in no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date on which the Respondent termi-

Respondent closed its facility without bargaining with the Union about the effects of its decision to close its facility. On October 23, 2000, the United States Court of Appeals for the Eleventh Circuit entered its judgment enforcing in full the Board's Order.

A controversy having arisen over the amount of backpay due under the Board's Order and as to whether William A. Greene a/k/a Arnold Greene and Cynthia D. Greene are liable for backpay[3] the Acting Regional Director for Region 15 on October 1, 2002, issued a compliance specification[4] and notice of hearing. The compliance specification sets forth the alleged liability for wages and benefits of Respondents A.J. Mechanical, Inc., William A. Greene, and Cynthia D. Greene. Although copies of the compliance specification and notice of hearing were duly served on Respondent A.J. Mechanical, Inc. by certified mail, A.J. Mechanical, Inc. failed to answer and A.J. Mechanical, Inc. did not appear at the hearing held in Pensacola.

The compliance specifications alleged that among other things, the underlying decision directed A.J. Mechanical, Inc., to perform affirmative action including making 12 employees it terminated in violation of Section 8(a)(1) and (3) whole for loss of pay or benefits, and making its former employees whole because of its failure to bargain with the Union over its decision to cease operations.

The compliance specification alleged that the following amounts, plus interest, are due the following discriminatees:

James R. Adams	$11,836.97
Darryl L. Henderson	6,613.00
Eddy Lee Jordan	6,410.04
William G. Krajewski	4,950.46
Jeremy P. McCall	1,797.00
Ronald W. Morrell	8,431.99
David J. North	9,093.60
John P. Schifko	7,734.93
Scottie B. Steele	2,736.40
Frank Tournabene	3,080.00
Matthew R. Weaver	12,913.41
Garry B. West	$12,575.60

The compliance specification also alleged that net backpay in the amount of $2,992, plus interest, is due to each of the following employees as a result of Respondent closing its facility without bargaining with the Union over the effects of its decision to close:

Abernathy, Jerry	Henriquez, Juan F.
Adams, James R.[5]	Hicks, Kenneth S.
Adams, Timothy E.	Hill, Marshal D.
Baker, James B.	Holley, Junior
Baker, Jason L.	Jackson, Darryl J.
Barahona, Rolando L.	Johnson, Glen, Jr.
Best, Tracey C	Joiner, Charles W.
Black, Joel L.	Jordan, Eddy Lee[7]
Bradshaw, Randall S.	Judson, Shane P.
Brooks, Byron S.	Kirchharr, James E.
Brumley, Bradley S.	Knight, James E.
Caraway, Robert B.	Krajewski, William G.[8]
Cameron, Andrew	Lambert, Raymond T.
Carnley, James C.	Land, W. Roger
Carnley, Sherral P.	Lazar, Harry J.
Chessher, Jerry D.	Lee, James H.
Chessher, Terry L.	Lee, Roger M.
Cleary, William R.	Lee, Ronald W.
Cooey, Clay W.	Luklar, Mark T.
Copeland, Barry E.	McCall, Jeremy P.[9]
Cowart, Douglas R.	Madden, Stephen
Crow, Terry C.	Maddox, Frankie
Davidson, Wade N.	Mason, John W.
Davis, Diane W.	Maxson, Dennis M.
Dick, Richard J.	Mayton, Deborah L.
Durdin, Quillie	Miller, George M.
Ellis, Pamela A.	Millins, Phillip O.
Evans, Marcus D.	Millwood, Robert M.
Ford, Christopher	Morrell, Ronald W.[10]
Foster, Aaron D.	Mosley, Ronald R.
Graham, Luther	Nguyen, Su Van
Graham, Marvin	Nichols, Christopher S.
Grantland, John	Nix, Randall S.
Green, Ronald A.	North, David J.[11]
Hall, Michael C.	Nunnally, Patrick E.
Harper, Michael C.	Nunnally, Troy A.
Harrelson, Cecil Jr.	Odom, Curtis L.
Harrison, Robert D.	Odom, Jakie E.
Hawthorne, James L.	Owen, Cecil R.
Henderson, Darryl L.[6]	Pedicord, Brian K.

nated its operations, to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner; provided, however, that in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ."

[3] In apparent error, the third paragraph of the compliance specification failed to state the full nature of the controversy regarding William A. and Cynthia D. Greene. However, the full compliance specification as well as matters included in the record of the hearing, show that a matter at issue is whether the Greens should be liable for backpay.

[4] The General Counsel's motion to substitute pages in the compliance specification was granted during the hearing (see ALJ Exhs. 1 and 2).

[5] This is in addition to the $11,836.97 Adams is entitled to as a discriminate under Sec. 8(a)(1) and (3).

[6] This is in addition to the $6,613 Henderson is entitled to as a discriminate under Sec. 8(a)(1) and (3).

[7] This is in addition to the $6,410.04 Jordan is entitled to as a discriminate under Sec. 8(a)(1) and (3).

[8] This is in addition to the $4,950.46 Krajewski is entitled to as a discriminate under Sec. 8(a)(1) and (3).

[9] This is in addition to the $1,797 McCall is entitled to as a discriminate under Sec. 8(a)(1) and (3).

[10] This is in addition to the $8,431.99 Morrell is entitled to as a discriminate under Sec. 8(a)(1) and (3).

[11] This is in addition to the $9,093.60 North is entitled to as a discriminate under Sec. 8(a)(1) and (3).

Pennington, David E.	Taylor, Paul
Petty, Jimmy D.	Tournabene, Frank S.[14]
Phillips, Donald W.	Tyra, Ron
Phillips, Douglas W.	Vick, Armon R.
Phillips, Gail A.	Walker, Christina J.
Phillips, Jason C.	Walker, Lisa M.
Raines, Mary R.	Walker, Michael
Revill, Charles W.	Ward, Ivy
Roberts, Glenn	Ward, Tim
Rodregues, Julio Ceasa	Weaver, Matthew R.[15]
Scarborough, Daniel E.	West, Garry B.[16]
Shachle, Paul F.	Whitson, Carl R.
Schachle, Vincent C.	Williams, Clinton S.
Schifko, John P.[12]	Williams, Donald
Shields, Douglas A.	Willis, James R.
Steele, Scottie B.[13]	Wolfe, Theodore D.
Steeverson, Gregory J.	Woods, Kelly B.
Stough, David A.	Wynn, Edward L.
Stroud, Robert K.	Young, Cornelius L.

As shown above, A.J. Mechanical, Inc. did not answer the compliance specifications and it did not appear at the hearing. The General Counsel's motion for a finding that A.J. Mechanical, Inc. admitted the pleadings in the compliance specifications was granted.

The remaining issues deal with whether William A. Greene and Cynthia D. Greene[17] are liable for back wages. The General Counsel contended that the applicable principles are those which were applied in *White Oak Coal Co.,* 318 NLRB 732 (1995). There, the Board concluded that the corporate veil may be pierced when (1) the shareholder and corporation have failed to maintain separate identities; and (2) adherence to the corporate structure would sanction a fraud, promote injustice, or lead to an evasion of legal obligations.

The Record Evidence:

A.J. Mechanical, Inc. was a corporation and its only shareholders were William A. Greene and James Sanders.[18] Several witnesses including William A. Greene and Cynthia D. Greene testified during the hearing.[19]

A union organizing campaign started among the A.J. Mechanical, Inc. employees and a representation petition was filed with the NLRB in early 1999. Several unfair labor practice charges were filed against A.J. Mechanical, Inc. beginning in May 1999.

William A. Greene testified that in 1999 A.J. Mechanical, Inc. was in the process of dissolving.[20] He testified that he made the decision to dissolve the corporation sometime late 1998. Among other things A.J. Mechanical agreed in a written resolution to meet its debts. As to vendors of its equipment and consumable supplies, A.J. Mechanical paid those bills. William A. Greene admitted that he has not paid anything on the unfair labor practice charges or the complaint or judgment that eventually resulted from the unfair labor practice charges.

A.J. Mechanical, Inc. held a public auction of September 11. The announcement of that auction indicated it was a complete liquidation. William Greene admitted that he attached the following note to that announcement and mailed the announcement and the note to the Board about September 13, 1999:

> This sale was made possible by Millwright Local 2471 and The National Labor Relations Board. Both parties should feel very proud of their efforts in putting a small independent contractor out of business and costing a lot of people a chance to make a decent living.

William A. Greene testified that A.J. Mechanical[21] was incorporated in Florida and that he and James Sanders were each 50-percent owners (shareholders). Both he and James Sanders paid working capital to start up the corporation.[22] The corporation was dissolved through a joint meeting of the stockholders on December 2, 1999. Greene testified that he and James Sanders met with the corporation's attorney to discuss dissolution on July 6, 1999. He testified the corporation was directed to close its Pensacola, Florida job by June 25, 1999, at 4 p.m. However, according to Greene, A.J. Mechanical acquired a 2-month contract with Enron to finish up that Pensacola job and the corporation completed that work in about 4 or 5 weeks after June 25.

Greene testified that he loaned money to A.J. Mechanical and that the corporation never loaned money to him. A.J. Mechanical had its own separate credit cards and Greene never charged personal items to those company credit cards. He used his own funds to make incidental expense payments occasionally on behalf of the corporation but he was reimbursed for those payments. Both William A. Greene and James Sanders had A.J. Mechanical trucks. Greene's truck was leased to him but the corporation made the lease payments. Greene testified that he used the truck for business.

William A. Greene testified that he normally deposited all funds received from the corporation in his joint checking account. He and his wife Cynthia D. Greene shared that checking account. That and their other assets including home, automo-

[12] This is in addition to the $7,734.93 Schifko is entitled to as a discriminate under Sec. 8(a)(1) and (3).

[13] This is in addition to the $2,736.40 Steele is entitled to as a discriminate under Sec. 8(a)(1) and (3).

[14] This is in addition to the $3,080 Tournabene is entitled to as a discriminate under Sec. 8(a)(1) and (3).

[15] This is in addition to the $12,913.41 Weaver is entitled to as a discriminate under Sec. 8(a)(1) and (3).

[16] This is in addition to the $12,575.60 West is entitled to as a discriminate under Sec. 8(a)(1) and (3).

[17] Respondents William A. Greene is sometimes referred to as Arnold Greene.

[18] James Sanders is referred to as Jim Sanders in the underlying Board decision (330 NLRB No. 178 (2000) (not reported in Board volumes).

[19] Additionally, I received transcripts of earlier testimony and accompanying exhibits of William A. Greene, Cynthia D. Greene, and others.

[20] A.J. Mechanical worked on a turbine project in Pensacola, Florida, from October 1998.

[21] A.J. Mechanical is sometimes referred to as the corporation.

[22] Respondent pointed out that Greene and Sanders each paid in approximately $20,000 in working capital when A.J. Mechanical was formed in 1993 (Tr. 86, 100; GC Exh. 11(a), p. 35).

biles and investments are all shared. The funds he received from the corporation dissolution were also shared between William A. and Cynthia D. Greene.

Cynthia D. Greene[23] testified that she formerly worked as a mechanic for A.J. Mechanical. She did some part-time bookkeeping and clerical work for the corporation in 1998 and 1999 and was not paid for that work. She wrote checks for bill payment but she normally did not write checks for shareholder distributions. However, she did write one check for shareholder distribution at the direction of her husband. Cynthia Greene testified that none of the shareholder distribution checks were made out to her. She testified that she never discussed the unfair labor practice proceedings with her husband.

It is not disputed that William A. Greene as well as James Sanders, received cash distributions from A.J. Mechanical beginning on February 16, 1999. Those distributions to William A. Greene[24] were as follows:

February 16, 1999	$ 225,000.00
February 24, 1999	50,000.00
March 5, 1999	100,000.00
March 26, 1999	100,000.00
April 13, 1999	100,000.00[25]
April 21, 1999	250,000.00
April 22, 1999	300,000.00[26]
June 10, 1999	500,000.00
November 4, 1999	217,500.00[27]
December 2, 1999	16,345.73[28]
TOTAL DISTRIBUTION	$1,858,845.73[29]

Ralph Carr testified that he was employed as an inspector deputy U.S. marshal in July 2001. He went to the home of Arnold and Cynthia Greene in order to serve a subpoena. As Carr approached he noticed that Greene was manually cutting wood on a horizontal band saw. Carr saw Greene manually lay one board on a tractor with forklifts after cutting it with the saw.

Carr approached Arnold Greene at the back of Greene's house and identified himself. Greene identified himself as Woodcutter. Subsequently Greene admitted that he was Arnold Greene. Carr then returned to Greene's house where Cynthia Greene accepted the subpoena after being told by Arnold Greene to take the paper.

Sue Crochet is a field examiner with the NLRB in New Orleans. She worked on a representation case involving A.J. Mechanical. On April 21, 1999, she phoned William A. Greene. Crochet asked Greene if A.J. Mechanical would recall laid-off employees. Greene replied that most of the people that would be recalled would not be union people, because they only cause trouble. Greene said that he was going to fight to the bitter end and he did not want an election. Greene said that the Department of Labor was against him. He said that he could move the job, that the job was portable, that he didn't need any union people. Greene said that he could shut down the business and sell it.

Annie Archie is the compliance officer with the New Orleans regional office of the NLRB. Archie testified to the accuracy of the compliance specification computations.

Conclusions

Credibility

William A. Greene testified in the October 30 hearing. Additionally, earlier testimony by Greene was admitted in evidence.

Former Inspector Deputy U.S. Marshall Ralph Carr testified without rebuttal that A. Greene misrepresented himself to Carr after Carr identified himself to A. Greene. Greene initially identified himself as Woodcutter but subsequently admitted to Carr that he was Arnold Greene.

Moreover, there was testimony by William A. Greene that could have been corroborated by others including his former business associate James Sanders. Arnold Greene admitted that James Sanders was in the hearing room during his testimony. Among other things, A. Greene testified that he and Sanders decided in late 1998, to wind up the A.J. Mechanical, Inc. business after their existing contract. That testimony was seriously contested by among other things, evidence that the corporate business was not terminated after the late 1988 contract (see below). Additionally, A. Greene admitted there was no existing documentary evidence of that meeting and decision. Nevertheless, Sanders was not called to corroborate A. Greene.

Additionally, a transcript of earlier testimony by A. Greene during a representation case hearing was admitted in evidence. Greene testified on May 6, 1999. There he testified among other things, that his Pensacola contract that existed from November 1998 had ended about 2 months before his May 1999 testimony when Turbine Technologies was removed from the project. When Turbine Technologies was removed from the project A.J. Mechanical, Inc. contracted with IBC Turbo. That contract lasted until the end of April and on May 1, 1999, A.J. Mechanical, Inc. started a third contract. That one was with Enron and the job, as both jobs before, was located at Pensacola docks. Greene testified the Enron job was scheduled to end at 7 o'clock on the day after the May 6 hearing.

William A. Greene's testimony during the instant hearing conflicted with his testimony on May 6, 1999. For example, Greene testified that he received a fax from IBC Turbo directing him to close their Pensacola job by June 25, 1999. At the May 1999 hearing, A. Greene testified the IBC Turbo contract was completed at the end of April and that he started another contract with Enron on May 1, 1999. He also testified in the instant hearing that he acquired a 2-month contract with Enron after the IBC Turbo job ended on June 25. That conflicted with his May 6, 1999 testimony that he started the Enron contract 8 or 9 days before that hearing.

[23] Respondent pointed out that Cynthia Greene was never an officer, director, or shareholder of A.J. Mechanical.

[24] Except as specifically noted, James Sanders received the same amounts on the same dates noted for A. Greene.

[25] Sanders did not receive a distribution on April 13. He did receive a $100,000 distribution on April 16, 1999.

[26] Sanders did not receive a distribution on April 22. He did receive a $300,000 distribution on April 23, 1999.

[27] Sanders did not receive a distribution on November 4. He did receive a $217,500 distribution on November 5, 1999.

[28] Sanders did not receive a distribution on December 2. He did receive a $16,345.73 distribution on December 6, 1999.

[29] James Sanders also received a total distribution of $1,858,845.73.

Nevertheless, it is apparent under either of A. Greene's version of events that A.J. Mechanical, Inc. entered into at least two additional contracts after the end of 1998. That does not square with A. Greene's testimony to the effect that he and James Sanders decided in late 1998 to dissolve A.J. Mechanical at the completion of the then existing contract.

Additionally, there is evidence that conflicts with A. Greene's testimony that he and Sanders decided to dissolve A.J. Mechanical, Inc. before he learned the employees were involved in union organizing activity. For example, A. Greene admitted[30] that he mailed a copy of the announcement of the public auction of A.J. Mechanical, Inc. property, to the NLRB along with a pasted note stating:

> This sale was made possible by Millwright Local 2471 and The National Labor Relations Board. Both parties should feel very proud of their efforts in putting a small independent contractor out of business and costing a lot of people a chance to make a decent living. [GC Exh. 10.]

That note by A. Greene showed that he felt both the Union and the NLRB were at fault in the dissolution of the corporation. Even thought A. Greene testified that the above statement was untrue, several matters are apparent. One, A. Greene testified in conflict with his note to the NLRB. Two, at one time A. Greene held out that the Union, as well as the NLRB, caused the demise of the corporation. Three, there is a serious doubt surrounding A. Greene's testimony that he and Sanders decided to dissolve the corporation before learning of the employees' union organizing activities.

In view of all the above, the full record and A. Greene's demeanor, I find that A. Greene was not credible. I shall not credit any of his testimony, except that which other credited evidence corroborates or that which constitutes an admission against interest.

Findings

Counsel for the General Counsel argued that the compliance specifications were proven in regard to gross backpay, interim earnings, and interim expenses. In regard to Respondent A.J. Mechanical, Inc., the General Counsel's motion to the effect that A.J. Mechanical, Inc. be deemed to have admitted the pleadings and for judgment against A.J. Mechanical, Inc. was granted during the October 30, 2002 hearing. As to Respondents William A. Greene and Cynthia Greene, the General Counsel's motion for a finding that William A. Greene and Cynthia Greene admitted the compliance specifications gross backpay pleadings and precluding receipt of evidence disputing gross backpay was also granted at the hearing.[31] Additionally, the compliance specifications, when coupled with the Greenes' answer and the full record, proved the interim earnings and interim expenses.[32]

The compliance specifications included allegations that William A. Greene and Cynthia D. Greene are jointly and severally liable for backpay to the same extent as Respondent A.J. Mechanical, Inc.

Respondent argued that where, as here, a newly added party was not shown to be an alter ego, successor, or single employer at the time of the service of the initial unfair labor practice complaint and underlying proceedings, that party is not afforded due process because the party's individual interests were not represented in those proceedings (*Viking Industrial Security v. NLRB,* 225 F.3d 131, 134 (2d Cir. 2000)). In that regard, the record shows that neither William A. Greene nor Cynthia D. Greene, were alleged as party in the unfair labor practice proceeding before issuance of the compliance specification.

Viking Industrial Security v. NLRB, supra, involved an issue of derivative liability based a single-employer theory. Two corporations, Viking New York and Viking New Jersey, were formed and operated as a single business for a time. At some time in 1988 or 1989, the two corporations split into two separate businesses. Before the split Viking New York unlawfully fired an employee, Marrero, on September 23, 1989, because of his protected conduct. An unfair labor practice complaint issued on December 29, 1989, alleging only that Viking New York engaged in unlawful conduct by, among other things, discharging Marrero. When a compliance specification issued on July 2, 1994, Viking New Jersey was added for the first time and it was alleged that Viking New York and Viking New Jersey constituted a single employer. The court denied enforcement against Viking New Jersey. It held that in "order for Viking New Jersey to be bound by an unfair labor practice proceeding brought only against Viking New York, the affiliation between the two companies must be shown to have existed at the time of the proceeding, or at least at the time that the complaint was served."

Here, there is no question as to whether the Greenes severed their ties with A.J. Mechanical, Inc. at some time before the unfair labor practice proceedings or before the complaint was served. William A. Greene and James Sanders were the only stockholders throughout the existence of A.J. Mechanical, Inc. Each held 50 percent of the stock. Here, the question is not one of due process but one of whether there ever was a corporate entity that should provide protection for the Greenes against a finding of liability. That question was considered in *White Oak Coal Co.,* 318 NLRB 732, 734 (1995),[33] where the Board considered the principle of "piercing the corporate veil."[34]

The Board stated the precedent relied on by the administrative law judge in *White Oak Coal Co.,* supra, did not properly resolve the personal liability issue. Instead, the Board decided to adopt the 10th Circuit Court's two-pronged analytical

[30] A. Greene evaded counsel for the General Counsel's question of did he mail GC Exh. 10 to the NLRB Regional Office by answering, "I may have," on several occasions. Eventually, after the administrative law judge asked whether he recalled mailing the document, A. Greene admitted that he had mailed the document.

[31] A. Greene's answer to the compliance specification formed the basis for counsel for the General Counsel's motion and the order granting that motion (Tr. 19; GC Exh. 2).

[32] Including especially the testimony and supporting documentation of Compliance Officer Annie B. Archie.

[33] See also *Reliable Electric Co.,* 330 NLRB 714 (2000).

[34] Respondent argued that the General Counsel has not shown that the corporate veil should be pierced as required in *White Oak Coal Co.,* supra.

framework for piercing the corporate veil in *NLRB v. Greater Kansas City Roofing.*[35] The corporate veil may be pierced when: (1) the shareholder and corporation have failed to maintain separate identities, and (2) adherence to the corporate structure would sanction a fraud, promote injustice, or lead to an evasion of legal obligations.

The Board stated in *White Oak Coal:*

> When assessing the first prong to determine whether the shareholders and the corporation have failed to maintain their separate identifies, we will consider generally (a) the degree to which the corporate legal formalities have been maintained, and (b) the degree to which individual and corporate funds, other assets, and affairs have been commingled. Among the specific factors we will consider are: (1) whether the corporation is operated as a separate entity; (2) the commingling of funds and other assets; (3) the failure to maintain separate corporate records; (4) the nature of the corporation's ownership and control; (5) the availability and use of corporate assets, the absence of same, or under capitalization; (6) the use of the corporate form as a mere shell, instrumentality or conduit of an individual or another corporation; (7) disregard of corporate legal formalities and the failure to maintain an arm's-length relationship among related entities; (8) diversion of the corporate funds or assets to noncorporate purposes; and in addition (9) transfer or disposal of corporate assets without fair consideration." [318 NLRB at 735.]

Here, as to (1) there were no records of corporate meetings such as meetings of the shareholders, the board of directors, or officers, with the exception of the December 2, 1999 meeting to dissolve the corporation. There was no evidence of corporate decisionmaking. In fact the evidence revealed that the two shareholders made individual decisions on a job or shift without consulting the other shareholder when either A. Greene or Sanders, respectively, was directly involved in a particular job or shift. That applied regardless of whether the decisionmaker was William A. Greene or James Sanders. As to (2) the funds and assets were commingled. The owners made loans to the corporation without documentation. Assets including pickup trucks were treated as individual property. Sanders' pickup truck was titled in his name and A. Greene's pickup was leased to him. However, the corporation paid for both trucks. Regarding (3), A.J. Mechanical, Inc. did not routinely maintain separate corporate records such as minutes of corporate meetings or records of loans to the corporation. As to (5), A.J. Mechanical was under capitalized from its initiation and its payroll was satisfied through undocumented loans from its shareholders. Regarding (6), the evidence showed that at most, A.J. Mechanical, Inc. was a partnership between Sanders and A. Greene. As to (7), there was an almost complete disregard of corporate legal formalities until December 2, 1999, when Sanders and A. Greene met to dissolve the corporation. As shown herein, a representation petition was filed and a hearing was held on May 6, 1999. Unfair labor practices were filed against A.J. Mechanical, Inc. on May 24, June 11, 16, and 26, August 30, October 28, and November 12, 1999. Therefore, the only documented corporate meeting occurred after A. Greene and Sanders knew of the employees' union organizing activity.

In regard to (8) and (9), as shown herein, corporate funds were diverted to Greene and Sanders.

There was no showing of fair consideration for distribution of the corporate funds to A. Greene and Sanders. Instead, as shown herein, there were outstanding unfair labor practice charges pending from May 24, 1999. After that date, A. Greene and Sanders each received $733,845.73 from the corporation. After December 2, 1999, the corporation had no money to distribute to creditors, shareholders, or anyone else.

The Board in *White Oak Coal Co.,* supra, also stated:

> When assessing the second prong, we must determine whether adhering to the corporate form and not piercing the corporate veil would permit a fraud, promote injustice, or lead to an evasion of legal obligations. The showing of inequity necessary to warrant the equitable remedy of piercing the corporate veil must flow from misuse of the corporate form. Further, the individuals charged personally with corporate liability must be found to have participated in the fraud, injustice, or inequity that is found. [318 NLRB at 735.]

The evidence showed that all the A.J. Mechanical assets were distribution to William A. Greene and James Sanders. A. Greene, Sanders and their spouses simply wrote checks for the distribution of the assets. A. Greene and, except as noted with a footnote, Sanders, received funds as noted herein:

February 16, 1999	$ 225,000.00
February 24, 1999	50,000.00
March 5, 1999	100,000.00
March 26, 1999	100,000.00
April 13, 1999	100,000.00[36]
April 21, 1999	250,000.00
April 22, 1999	300,000.00[37]
June 10, 1999	500,000.00
November 4, 1999	217,500.00[38]
December 2, 1999	16,345.73[39]

The evidence is undisputed that William A. and Cynthia D. Greene, as husband and wife, shared equally in the funds distributed by A.J. Mechanical, Inc. By applying the two-pronged analytical framework, I recommend that the corporate veil be pierced and that William A. Greene and Cynthia D. Greene are jointly and severally liable for the remedial and backpay obligations of A.J. Mechanical, Inc. The Greenes have disregarded the separate identifies of their corporate alter ego, A.J. Me-

[35] *NLRB v. Greater Kansas City Roofing,* 2 F.3d 1047 (10th Cir. 1993), denying enf. in pertinent part of 305 NLRB 720 (1991).

[36] Sanders did not receive a distribution on April 13. He did receive a $100,000 distribution on April 16, 1999.

[37] Sanders did not receive a distribution on April 22. He did receive a $300,000 distribution on April 23, 1999.

[38] Sanders did not receive a distribution on November 4. He did receive a $217,500 distribution on November 5, 1999.

[39] Sanders did not receive a distribution on December 2. He did receive a $16,345.73 distribution on December 6, 1999.

chanical, Inc. Adherence to the corporate form would result in injustice and would lead to an evasion of legal obligations.[40]

Moreover, as shown in the Board decision in the underlying unfair labor practice case,[41] William A. Greene personally engaged in action in violation of the National Labor Relations Act by threatening employees on December 20 and 23, 1998, and January 28, 1999, that he would shut down the job and reopen using employees who did not support the Union; by threatening employees that he would move its business if the employees did not cease their activities on behalf of the Union; by threatening employees in April and on May 6, 1999, with a loss of benefits if they selected the Union as their bargaining representative; and on January 16, 1999, he discarded numerous applications because those applications indicated support for the Union.

Moreover, as shown above, Sue Crochet is a field examiner with the Board in New Orleans. On April 21, 1999, she phoned William A. Greene. Crochet asked A. Greene if A.J. Mechanical would recall laid-off employees. A. Greene replied that most of the people that would be recalled would not be union people, because they only cause trouble. A. Greene said that he was going to fight to the bitter end and he did not want an election. A. Greene said that the Department of Labor was against him. He said that he could move the job, that the job was portable, that he didn't need any union people. A. Greene said that he could shut down the business and sell it.

By their actions the Greenes along with James Sanders, engaged in blurring the separate corporate entity of A.J. Mechanical, Inc. and their misuse of the corporate assets and form, is unfair, unjust, and has resulted in an evasion of A.J. Mechanical's remedial and backpay obligations for unfair labor practices that William A. Greene and others, committed.

I find the allegations contained in the compliance specifications are true and I recommend that the Respondents A.J. Mechanical, Inc., William A. Greene, and Cynthia D. Greene be ordered to pay these amounts to the below listed employees, plus interest accrued to the date of payment.

[Recommended Order omitted from publication.]

[40] *White Oak Coal Co.,* 318 NLRB 732 (1995).

[41] *A.J. Mechanical, Inc.,* 330 NLRB No. 178 (2000) (not reported in Board volumes).