Nos. 15-1470, 15-1884

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

LEDERACH ELECTRIC, INC. & MORRIS ROAD PARTNERS, LLC

Petitioners/Cross-Respondents

v.

NATIONAL LABOR RELATIONS BOARD

Respondent/Cross-Petitioner

ON PETITION FOR REVIEW AND CROSS-APPLICATION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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GLOSSARY OF ABBREVIATIONS

Act	National Labor Relations Act
Board	National Labor Relations Board
LEI	Lederach Electric, Inc.
MRP	Morris Road Partners, LLC
Companies	LEI and MRP
Br.	Brief of Appellant
JA	Joint Appendix

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BRIEF FOR
THE NATIONAL LABOR RELATIONS BOARD

STATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION

This case is before the Court on the petition of Lederach Electric, Inc. ("LEI") and Morris Road Partners, LLC ("MRP") (collectively as "the Companies") to review, and the cross-application of the National Labor Relations Board ("the Board") for enforcement, of the Board's Decision and Order, which was issued on February 3, 2015, and reported at 362 NLRB No. 14. In this

compliance proceeding, the Board found that LEI and MRP constitute a single employer, making them jointly and severally liable for backpay owed as a result of LEI's unlawful discharge of Jeffrey Wallace, Christopher Rocus, Cameron Troxel and Christopher Breen five years ago.

The Board had subject matter jurisdiction over the proceeding below pursuant to Section 10(a) of the National Labor Relations Act ("the Act") (29 U.S.C. § 160(a)), which authorizes the Board to prevent unfair labor practices affecting commerce. This Court has jurisdiction under Section 10(e) and (f) of the Act (29 U.S.C. § 160(e) and (f)) because the unfair labor practices occurred in Lederach, Pennsylvania.

The Board's Order is final under Section 10(e) of the Act. The Companies filed their petition for review on March 16, 2015, and the Board filed its cross application for enforcement on April 9, 2015. Both are timely; the Act places no time limit on such filings.

STATEMENT OF THE ISSUE PRESENTED

Two nominally separate entities constitute a "single employer" when, in reality, they operate as a single integrated enterprise. The issue in this case is whether substantial evidence supports the Board's finding that the Companies constitute a single employer.

STATEMENT OF THE CASE

I. THE BOARD'S FINDINGS OF FACT

A. The Underlying Unfair Labor Practice Case

LEI was an electrical contractor in the construction industry. *Lederach Electric, Inc.*, 4-CA-37725, 2011 WL 2960879 (July 21, 2011). The Board found that LEI violated Section 8(a)(3) and (1) of the Act by laying off Jeffrey Wallace, Christopher Rocus, Cameron Troxel, and Christopher Breen because of their protected, concerted activities for filing claims with the Pennsylvania Department of Labor and Industry, and for their union membership. *Lederach Electric, Inc.*, 4-CA-37725, 2011 WL 3897987 (Sept. 2, 2011).[1] The Board ordered that LEI reinstate Breen, Wallace, Rocus, and Troxel, and make them whole for any loss of earnings or other benefits, and remove any reference from their files to the unlawful actions LEI had taken. The Board also ordered LEI to post a notice stating its compliance with the Act and its commitment to rectifying the wrongs discussed above. *Id.*

[1] LEI did not file any exceptions to the administrative law judge's recommended decision and order in the unfair labor practice proceeding. Therefore, the Board, pursuant to 29 U.S.C. § 160(c), adopted the administrative law judge's findings and order. *Lederach Electric, Inc.*, 4-CA-37725, 2011 WL 3897987 (Sept. 2, 2011).

B. The First Compliance Proceeding

The Board's Regional Director for Region 4 subsequently instituted compliance proceedings, pursuant to the Board's Rules and Regulations (29 C.F.R. § 102.52 et seq.), to determine the exact amount of backpay LEI owed under the Board's Order. An administrative law judge held a hearing and, on March 4, 2013, a three-member panel of the Board (Chairman Pearce and Members Griffin and Block) issued a Supplemental Decision and Order finding that LEI owed Breen $16,680.08, Wallace $28,645.03, Rocus $36,844.14, and Troxel $40,059.81, for a total of $122,229.06 in backpay plus interest. *Lederach Electric, Inc*., 359 NLRB No. 71 (Mar. 4, 2013).

LEI petitioned this Court for review of that order. (3d Cir. No. 13-4068). On December 4, 2013, the Court placed that case in abeyance pending resolution of *Noel Canning v. NLRB*, 705 F.3d 490 (D.C. Cir. 2013), *cert. granted*, 133 S. Ct. 2861 (June 24, 2013).

On June 26, 2014, the Supreme Court issued its decision in *NLRB v. Noel Canning*, 134 S. Ct. 2550 (2014), which held that three recess appointments to the Board in January 2012 were invalid under the Recess Appointments Clause, including the appointment of Members Block and Griffin. On June 30, 2014, this Court, granting the Board's motion, vacated the 2013 Decision and Order, and remanded the case to the Board for further consideration in light of the Supreme

Court's decision in *Noel Canning*. On August 19, 2014, a properly constituted Board panel (Chairman Pearce and Members Johnson and Hirozawa) issued a new Decision and Order (361 NLRB No. 21), which adopted and incorporated the 2013 Decision and Order, and again found that the discriminatees were owed $122,229.06 in backpay plus interest.

C. The Instant Compliance Proceeding

On September 24, 2013, the Regional Director for Region 4 issued a compliance specification asserting that LEI and MRP were a single employer. An administrative law judge held a hearing where the following facts were established:

LEI was an electrical contracting company that was formed in 1985 and, as of late 2012, was no longer in business. (JA 3; 21, 59.)[2] MRP is a commercial realty company that was formed in 1986. It owns the Lederach Commons Building and two adjacent undeveloped properties in Lederach, Pennsylvania. (JA 3, 5-6; 59-60.) LEI leased space in the Lederach Commons Building from MRP from 1986 to its dissolution. (*Id*.) In addition to LEI, MRP over the years has had a variety of commercial tenants in the Lederach Commons Building. (JA 2; 20, 36-37.) James and his wife, Judy, Lederach jointly owned LEI until January 1,

[2] "JA" references are to the joint appendix. References preceding a semicolon are to the Board's findings; those following are to the supporting evidence. "Br." references are to the brief of petitioners Morris Road Partners, LLC and Lederach Electric, Inc.

2010, when Judy transferred her shares to James. (JA 3; 16, 59.) MRP is owned jointly by James and Judy Lederach. (JA 3; 16, 60.) Judy served as Secretary and Treasurer of LEI, and keeps the financial records for MRP. (JA 3; 16, 59-60.) Judy signed all checks for LEI and signs all checks for MRP. (JA 3; 59-60.) James managed the day-to-day operations of LEI, and manages the day-to-day operations of MRP. (JA 3; 16, 59-60.) James occasionally used LEI's phones to conduct MRP business. (JA 3; 15.) MRP uses an office in James and Judy's home; MRP's tenants sometimes paid their rent by bringing it to the LEI office. (JA 3; 15-16.) LEI and MRP shared a post office box. (JA 3; 59-60.) MRP at no time had any employees. (JA 3; 60.)

The last lease between LEI and MRP required LEI to pay $3000 to MRP every month. (JA 3; 62-73.) LEI's financial situation began to deteriorate in 2008, and MRP stopped enforcing this lease against LEI. (JA 3; 16-17.) From January to August 2009, LEI did not pay any rent. (JA 6; 18-19.) It then paid $2,000 in September; $3,000 in October; zero in November; and $3,000 in December. (*Id.*) Thus, for the calendar year 2009, LEI paid MRP $28,000 less than it owed. (*Id.*)

In 2010, LEI did not pay rent to MRP from January to March; LEI paid $1,500 in April and May; it made three payments totaling $8,000 in June and then did not pay rent again until December. (*Id.*) In December 2010, LEI paid MRP

$25,000. (*Id.*) Thus, at the end of the year, LEI had paid all the rent due for the year except for $1,000. (*Id.*)

In 2011, LEI paid $2,000 in rent to MRP in January and then did not pay any rent again until November. (*Id.*) In that month, LEI paid $10,000, but did not pay rent in December. (*Id.*) Thus, for calendar year 2011, LEI was $24,000 in arrears. (*Id.*)

LEI did not pay any rent to MRP for January to March 2012, thus leaving it $9,000 in arrears for this period. (*Id.*) When LEI vacated their offices in March or April 2012, they owed MRP $62,000 in unpaid rent. (JA 3; 18-19, 60, 75-78.) MRP took no steps to recover those funds. (JA 3; 16, 60.)

II. THE BOARD'S CONCLUSIONS AND ORDER

Based on the above facts, the Board (Chairman Pearce and Members Johnson and Hirozawa) found, contrary to the administrative law judge, that LEI and MRP constitute a single employer. (JA 4.) The Board therefore concluded that MRP is jointly and severally liable for the unfair labor practices previously found to have been committed by LEI. (*Id.*) The Board ordered the Companies to pay $122,229.06 in backpay plus interest to the four employees who had been unlawfully laid off by LEI. (JA 5.)

SUMMARY OF ARGUMENT

The only issue before this Court is whether substantial evidence supports the Board's finding that LEI and MRP constitute a single employer. Two nominally separate entities constitute a "single employer" when they operate as a single integrated enterprise. LEI and MRP shared ownership, management, and other aspects of their business. James Lederach was the head of both Companies, and owned LEI and shared ownership of MRP with his wife. Lederach did not identify any other person who made decisions regarding the operation of the Companies. The Companies had a financial relationship that would be inexplicable if they were truly separate entities. For example, LEI owed MRP thousands of dollars in rent for several years, but MRP never sued to collect. The Board's determination that these two companies constitute a single employer is well supported.

ARGUMENT

SUBSTANTIAL EVIDENCE SUPPORTS THE BOARD'S FINDING THAT LEI AND MRP CONSTITUTE A SINGLE EMPLOYER

A. General Principles and Standard of Review

Where the Board finds two or more nominally separate entities to be a single employer for purposes of the Act, the entities are jointly and severally liable for remedying unfair labor practices committed by any of them. *Grane Health Care v. NLRB*, 712 F.3d 145, 150 (3d Cir. 2013) (citing *NLRB v. Browning–Ferris Indus. of Pa., Inc.*, 691 F.2d 1117, 1122 (3d Cir. 1982), and *NLRB v. Emsing's*

Supermarket, Inc., 872 F.2d 1279, 1283 (7th Cir.1989)). In determining whether single-employer status exists, the Board considers four factors: (1) interrelation of operations, (2) common management, (3) centralized control of labor relations, and (4) common ownership or financial control. *Radio Union v. Broadcast Serv. of Mobile, Inc.*, 380 U.S. 255, 256 (1965); *Browning-Ferris Indus. of Pa., Inc.*, 691 F.2d at 1122; *Grane Health Care*, 712 F.3d at 150. This Court has stated that "where businesses are under common ownership, control and management, they may be considered as a single employer." *Suburban Transit Corp. v. NLRB*, 499 F.2d 78, 80 n.1 (3d Cir. 1974) (citing *NLRB v. Stowe Spinning Co.*, 336 U.S. 226, 227 n.2 (1949)); *NLRB v. City Yellow Cab Co.*, 344 F.2d 575, 577-78 (6th Cir. 1965); *NLRB v. National Shoes, Inc.*, 208 F.2d 688, 691 (2d Cir. 1953).

It is well established that not all of these factors need to be present before the Board can find single-employer status, and no one factor is controlling. *NLRB v. Al Bryant*, 711 F.2d 543, 551 (3d Cir. 1983) (citing *Radio Union v. Broadcast Service of Mobile, Inc.*, 380 U.S. at 256); *see also NLRB v. Jordan Bus Co.*, 380 F.2d 219, 222 (10th Cir. 1967). "Ultimately, single employer status depends on all the circumstances of the case and is characterized by absence of an arm's-length relationship found among unintegrated companies." *Al Bryant*, 711 F.2d at 551 (citing *Local No. 627 International Union of Operating Engineers v. NLRB*, 518 F.2d 1040, 1045-46 (D.C. Cir. 1975), *aff'd on this issue per curiam sub nom. South*

Prairie Construction Co. v. Local No. 627, International Union of Operating Engineers, 425 U.S. 800 (1976)); *NLRB v. Don Burgess Construction Corp.*, 596 F.2d 378, 384 (9th Cir. 1979).

As the Court has noted, the Board's finding that two nominally separate entities constitute a single employer "is primarily factual, and the Board's conclusion must be upheld if supported by substantial evidence." *Al Bryant*, 711 F.2d at 551 (citing *Suburban Transit Corp.*, 499 F.2d at 80 n.1, *NLRB v. Lantz*, 607 F.2d 290, 295 (9th Cir. 1979)). The Board's construction of the Act is entitled to deference and this Court will enforce it as long as it is rational and consistent with the Act. *Grane Health Care*, 712 F.3d at 149 (citing *NLRB v. Curtin Matheson Scientific, Inc.*, 494 U.S. 775, 787 (1990)). In addition, this Court will not overturn the Board's credibility findings unless they are "inherently incredible or patently unreasonable." *Grane Health Care*, 712 F.3d at 149 (citing *St. George Warehouse, Inc. v. NLRB*, 420 F.3d 294, 298 (3d Cir. 2005)).

B. LEI and MRP Constitute a Single Employer

The record fully supports the Board's finding that LEI and MRP constitute a single employer. Indeed, the links between the Companies bore the classic earmarks of a single employer relationship.

Two of the factors, common ownership or financial control, and common management, are indisputable. James Lederach was the owner of LEI, and he

shared ownership with his wife Judy of MRP. (JA 3; 16, 60.) James managed the day-to-day operations of LEI and currently manages MRP. (JA 3; 16, 59-60.) James failed to identify any other person who made decisions regarding the operation of either company. This evidence is indicative of single-employer status and the Companies do not argue to the contrary. *Suburban Transit Corp.*, 499 F.2d at 80 n.1; *see also Emsing's Supermarket*, 872 F.2d at 1288 (common management shown where same individuals were the sole managers and made all management and personnel decisions at both stores); *Sakrete of Northern Cal., Inc. v. NLRB*, 332 F.2d 902, 906 (9th Cir. 1964) (single-employer relationship where "the management of both resides virtually in one man" and "both are commonly owned and financially controlled"); *RBE Electronics of S.D.*, 320 NLRB 80, 80 (1995) (common management established where one individual controlled day-to-day operations of both companies; common ownership established where both entities owned by an individual and his spouse).

Ample evidence also supports the Board's finding that interrelation of operations favors a single-employer finding. This is assessed by examining whether these two supposedly separate companies had an arm's-length relationship, which here they did not. *See Browning-Ferris Indus. of Pa.*, 691 F.2d at 1122; *Al Bryant*, 711 F. at 551; *Vance v. NLRB*, 71 F.3d 486, 490 (4th Cir. 1995); *Bolivar-Tees, Inc.*, 349 NLRB 720, 721 (2007), *enforced*, 551 F.3d 722

(citing *Lebanite Corp.*, 346 NLRB 748, 748 n.5 (2006)) ("The presence of non-arm's length transactions at reduced prices or without payment entirely is . . . probative of interrelation of operations.") (citations omitted). A number of factors are indicators of operational interrelation including shared use of bookkeeping (*NLRB v. Carson Cable TV*, 795 F.2d 879, 883 (9th Cir. 1986); *Don Burgess Construction Corp.*, 596 F.2d at 385), office resources (*Carson Cable TV*, 795 F.2d at 883; *Lantz*, 607 F.2d at 295-96; *Hydrolines, Inc.*, 305 NLRB 416 (1991)), and unrecovered loans or rent from one company to another (*Carnival Carting, Inc. v. NLRB*, 455 F. App'x 20, 23 (2d Cir. 2012); *Vance*, 71 F.3d at 493; *NLRB v. Rockwood Energy & Mineral Corp.*, 942 F.2d 169, 174 (3d Cir. 1991); *Associated Constructors*, 325 NLRB 998, 999 (1998), *enforced*, 193 F.3d 532 (D.C. Cir. 1999)). All are present here. Judy was the secretary and treasurer for LEI, and keeps the financial records for MRP. (JA 3; 16, 59-60.) In addition, she signed the checks for LEI and signs the checks for MRP. (JA 3; 16, 59-60.) While LEI and MRP had separate offices, LEI and MRP used the same post office box. (JA 3; 59-60.) Further, James occasionally used LEI's phones to conduct MRP business and MRP tenants sometimes paid their rent by bringing it to the LEI office. (JA 3; 15.) And, although MRP's sole function was renting out the building where LEI had its office, MRP took no action when LEI did not pay most of its rent for twenty

months. (JA 3; 16, 60.) Taken together these facts show that LEI and MRP did not have an arm's-length relationship.

The fourth and final consideration under the single-employer test is centralized control of labor relations. But centralized control of labor relations is less important in cases where one of the companies has no employees. *Carnival Carting, Inc.*, 455 F. App'x at 23; *Bolivar-Tees, Inc.*, 349 NLRB at 722, *enforced*, 551 F.3d 722 (8th Cir. 2008). There is no indication that MRP had any employees. Therefore, according to Board precedent, this factor is given less weight.

As the above discussion makes clear, the Companies had common ownership, common management, and interrelation of operations. Therefore, the Board reasonably found the Companies constitute a single employer and MRP becomes jointly and severally liable for LEI's debt to the discriminatees. As this Court has stated, "[w]hen the Board finds that two nominally separate entities are a single employer, they are jointly and severally liable for remedying unfair labor practices committed by either of them." *Grane Health Care*, 712 F.3d at 150; *see also Lihli Fashions Corp. v. NLRB*, 80 F.3d 743, 748 (2d Cir. 1996).

C. The Companies' Arguments Have No Merit Because They Are Based on Misstatements of Fact and Irrelevant Caselaw

1. The Board properly considered LEI's failure to pay rent to MRP as evidence of interrelationship

The Companies argue (Br. 20-22) that LEI's failure to pay rent regularly to MRP, and MRP's failure to try to collect from LEI, is not evidence of interrelationship between the Companies. This is a misstatement of law; this Court and other circuits have held that the failure of one company to pay back its rent or loans to another is evidence of their interrelationship. *Rockwood Energy & Mineral Corp.*, 942 F.2d at 174; *Carnival Carting, Inc.*, 455 F. App'x at 23; *Vance*, 71 F.3d at 493.

Nevertheless, the Companies contend that *NLRB v. Fullerton Transfer & Storage Ltd., Inc.*, 910 F.2d 331 (6th Cir. 1990), stands for the proposition that the failure of one company to pay the rent owed another is not evidence of interrelationship of operations between the two. As an intial matter, *Fullerton Transfer* is distinguishable because there the Sixth Circuit analyzed whether several entities were alter egos. The court explicitly acknowledged the Board had not found the entities were a single employer. 910 F.2d at 338 n.11. The court rejected the Board's finding that the companies were alter egos, principally because the companies were not engaged in the same business as the original company that was made subject to the Board's order. 910 F.2d at 337. Of course,

that is not even an element of the single-employer analysis, so the Sixth Circuit's holding has little application to the Board's single-employer analysis that is before this Court for review.

While the *Fullerton Transfer* court's holding may not have application here, the court in dicta did acknowledge that, if the Board had found that the companies were so intermingled as to make one enterprise, the court also would have rejected that finding. 910 F.2d at 338 n.11. But in rejecting such a hypothetical single-employer analysis, the court highlighted a key difference between *Fullerton Transfer* and this case. In *Fullerton Transfer*, the court noted the lease arrangements between the two companies were "apparently adhered to except for the failure to pay rent in the final period in which Fullerton Transfer was insolvent." 910 F.2d at 338 n.11. Here, the failure of LEI to adhere to its obligation to pay MRP rent extended over a four-year period, from 2009 through 2012, and amounted to $62,000.[3] This, along with the other evidence of interrelationship cited above (pp. 5-6) demonstrates, to a far greater extent than *Fullerton Transfer*, the absence of an arm's-length relationship here.

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[3] In a number of cases, this Court and others have found that one company's unrecovered loan to another is evidence of interrelationship and thus a single-employer relationship. *Rockwood Energy & Mineral Corp.*, 942 F.2d at 174 (one company transferred money to another as it needed); *Vance*, 71 F.3d at 493 (one company provided unrecovered loans to another to meet its payroll obligations); *Associated Constructors*, 325 NLRB at 999 (1998) (evidence of interrelation of operations included loans by one company to another that were not shown to have

2. The fact that LEI and MRP are engaged in different businesses is irrelevant

The Companies also argue (Br. 18, 28-29) that they cannot be a single employer because MRP was not engaged in the same business as LEI. The Board properly rejected this argument as it reflects a misunderstanding of the law.

The Board has many times found a single-employer relationship where supposedly separate companies did not perform the same work. *See Impressive Textiles, Inc.*, 317 NLRB 8, 11-12 (1995) (finding companies that manufactured tablecloths and bedding to be a single employer with company that made women's clothing and gold watches); *Mini-Togs, Inc.*, 304 NLRB 644, 646 (1991) (finding company that made children's clothing, company that made baby bottles, and company that provided embroidery services, all to be a single employers with one another); *D&S Leasing, Inc.*, 299 NLRB 658, 665-66 (1990) (finding trucking company and an employment agency to be single employers with a dockwork company), *enforced*, 954 F.2d 366 (6th Cir. 1992); *Geo. V. Hamilton, Inc.*, 289 NLRB 1335, 1335-36 (1998) (finding insulation company to be a single employer with company that owned a public commercial warehouse).

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been paid back), *enforced*, 193 F.3d 532 (D.C. Cir. 1999). Further, Board precedent is also clear, holding that, "[t]he absence of any effort by [company A] to compel the payment of rent by [company B] is evidence of the lack of an arm's-length relationship between the two entities." *Carnival Carting, Inc.*, 355 NLRB at 300, *enforced*, 455 F. App'x 20; *see also Bolivar-Tees, Inc.*, 349 NLRB at 721, *enforced*, 551 F.3d 722.

For example, in *Three Sisters Sportswear Co.*, on which the Board here relied (JA 3), the Board found that a real estate management company and several companies engaged in the manufacture of knitted clothing constituted a single employer. 312 NLRB 853 (1993), *enforced*, 55 F.3d 684 (D.C. Cir. 1995). The employer in *Three Sisters* made the same argument the Companies make here: "Respondent urges that since Spencer is involved in real estate ownership and management, a business 'totally and completely' removed from that of the other companies, a single employer relationship cannot be found." *Three Sisters*, 312 NLRB at 863. But the Board rejected this argument: "Notwithstanding the different business purposes between real estate companies and other types of businesses, a single employer relationship can be found particularly where there is evidence of a lack of an arm's-length relationship between the entities." *Id.* The Board's decision in that case was so unremarkable that the D.C. Circuit enforced the order in a three sentence opinion. *Three Sisters Sportswear Co.*, 55 F.3d at 684; *see also Carnival Carting, Inc.*, 455 F. App'x at 24.

As shown above, although MRP did not engage in electrical contracting, it was so entwined with LEI that it is liable for LEI's unfair labor practices. The fact that MRP was not engaged in electrical contracting is irrelevant.

3. The Board properly found that MRP's lack of employees was irrelevant to a single-employer finding

The Companies argue (Br. 16-7, 30-1, 34-52) that the Board erred in discounting the centralized control of labor relations as a factor because it is the most critical factor in determining a single-employer relationship between companies. They assert (*id.*) that years of precedent support this contention, and that the Board here made an unexplained departure from this precedent.

This is a misreading of precedent. There is no dispute that where companies have employees, centralized control of labor relations is arguably the most important factor to a determination of a single-employer relationship. However, the Board has stated, "this factor becomes less important where some of the companies have no employees." *Three Sisters Sportswear Co.*, 312 NLRB at 863. The Companies can point to no precedent that requires both companies to have employees and centralized labor relations in order to be found single employers. Instead, for decades the Board has found, in a number of circumstances, single-employer status where one of the companies does not have employees. *See Bolivar-Tees, Inc.*, 349 NLRB at 722, *enforced*, 551 F.3d 722; *Carnival Carting, Inc.*, 355 NLRB 297, 301, *enforced*, 455 F. App'x 20 ("The finding of single employer status is not undercut by the lack of specific evidence indicating centralized control of labor relations where one of the entities had no employees or no employees other than the owner of the company"); *Rogan Bros. Sanitation,*

Inc., 362 NLRB No. 61, slip op. at 7 (2015); *Hydrolines, Inc.*, 305 NLRB at 418; *Imco*, 304 NLRB 738, 740 (1991). The courts of appeal have also upheld such findings. *See Carnival Carting, Inc.*, 455 F. App'x at 23 (2d Cir. 2012); *Bolivar-Tees, Inc.*, 349 NLRB at 722, *enforced*, 551 F.3d 722 (8th Cir. 2008); *Three Sisters Sportswear Co.*, 55 F.3d 684 (D.C. Cir. 1995).[4]

Not satisfied with Board precedent, the Companies argue (Br. 52) that in order to find single-employer status, the employees of one company must serve the benefit of the company that has no employees. However, the Companies can point to no decisional language articulating such a principle, and this bare assertion must be rejected.[5]

* * *

As shown above, not all of the four factors need to be present before the Board can find single-employer status, and no one factor is controlling. *Al Bryant*,

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[4] Even the Companies cite (Br. 46-52) a variety of cases where companies were found to be a single employer even though one of the companies had no employees. *See Capital Theatre, Capital Rock, Inc.*, 231 NLRB 1370 (1977); *Carnival Carting, Inc.*, 355 NLRB 297, *enforced*, 455 F. App'x 20 (2d Cir. 2012); *Hydrolines, Inc.*, 305 NLRB at 416; *Bolivar-Tees, Inc.*, 349 NLRB at 722 (2007), *enforced*, 551 F.3d 722 (8th Cir. 2008); *Three Sisters Sportswear Co.*, 312 NLRB 853, 863 (1993), *enforced*, 55 F.3d 684 (D.C. Cir. 1995).

[5] The Companies additionally contend (Br. 52-55) that the Board denied it due process by ignoring facts that it asserts weigh against finding a single-employer relationship. But the Board considered all the evidence. The Companies simply disagree with the Board's conclusion that there was sufficient evidence to support the finding of a single-employer relationship.

711 F.2d at 551. The Board found that, "[c]onsidering all the circumstances in this case, we find that evidence of interrelated operations (including the lack of an arm's-length relationship), common management, and common ownership and financial control, establish that LEI and MRP constitute a single employer." (JA 4.) With these three factors present, and with the fourth of lesser importance because MRP had no employees, the record fully supports the Board's finding of a single-employer relationship between the Companies.

CONCLUSION

As the facts show, LEI and MRP constitute a single employer. The Board respectfully requests the Court dismiss the petition for review and grant the Board's application for enforcement in full.

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August 2015

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

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	*	
Petitioner/Cross-Respondent	*	Nos. 15-1470
	*	15-1884
v.	*	
	*	Board Case No.
NATIONAL LABOR RELATIONS BOARD	*	4-CA-037725
	*	
Respondent/Cross-Petitioner	*	

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C), the Board certifies that its brief contains 4,569 words of proportionally-spaced, 14-point type, and the word processing system used was Microsoft Word 2010. Board counsel further certifies that: the electronic version of the Board's brief filed with the Court in PDF form is identical to the hard copy of the brief that has been filed with the Court and served on opposing counsel; and the PDF file submitted to the Court has been scanned for viruses using Symantec Endpoint Protection version 12.1.2015.2015 and is virus-free according to that program.

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Dated at Washington, DC
this 19th day of August, 2015

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CERTIFICATE OF SERVICE

I hereby certify that on August 20, 2015, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Third Circuit by using the appellate CM/ECF system.

I certify foregoing document was served on all those parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not by serving a true and correct copy at the addresses listed below:

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