

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

DIAMOND TRUCKING, INC.

Case 25-CA-144424

and

**TEAMSTERS JOINT COUNCIL NO. 69,
a/w INTERNATIONAL BROTHERHOOD OF TEAMSTERS**

Raifael Williams, Esq.,

for the General Counsel.

*James H. Hanson and Alaina C. Hobbs, Esqs. (Scopelitis, Garvin, Light,
Hanson & Feary, P.C.),*

for the Respondent.

Geoffrey Lohman, Esq. (Fillenwarth, Dennerline, Groth & Towe),
for the Charging Party.

DECISION

STATEMENT OF THE CASE

SUSAN A. FLYNN, Administrative Law Judge. This case was tried in Indianapolis, Indiana, on August 25, 2015. The Union filed the charge on January 15, 2015, and the General Counsel issued the complaint on May 29, 2015.

The complaint alleges that the Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act) when it refused to furnish certain information requested by the Union. The Respondent filed an answer, denying all material allegations.

After the trial, the General Counsel and the Respondent filed briefs, which I have read and considered. Based on the entire record in this case, including my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent operated its business out of 2653 South 400 West, Peru, Indiana, at the relevant time period. In the 12 months before May 29, 2015, the Respondent purchased and received at that facility goods valued in excess of \$50,000 from other enterprises located within the State of Indiana, each of which had received these goods directly from points outside the

State of Indiana. Accordingly, I find, and Respondent admits, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

5 The Respondent also admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Background

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The Respondent, Diamond Trucking, Inc., hauls stone and asphalt for highway construction projects for the State of Indiana. (Tr. 12.) Teresa Pendleton is the owner and president of the Company. (GC Exh. 1(c).) There are no other Board members. (Tr. 11.) Pendleton and Ted Peters, field supervisor and dispatcher, worked at the office at 2653 South 15 400 West, in Peru, Indiana. The Company employed approximately 50 truckdrivers.

Pendleton's brother is Mike Bowyer. He operates Kokomo Gravel, a nonunionized trucking company that hauls stone and gravel, and that has an office at the same location as Diamond Trucking.¹ (Tr. 24, 26.) Bowyer is not an officer of Diamond Trucking, but he did 20 participate in contract negotiations between Diamond Trucking and the Union, along with Pendleton, Peters, and the Respondent's attorney. (Tr. 17.) Pendleton had requested his presence to advise her, since she had never negotiated a contract before. (Tr. 25-26.)

Diamond Trucking used Kokomo as a subcontractor on certain jobs in the past. 25 Normally, in situations where Diamond Trucking had insufficient trucks to fulfill a contract, it would subcontract with a unionized company, and it had a list of 15-20 such companies for that purpose. However, when none were available, it did subcontract with Kokomo. (Tr. 34-35.)

The Respondent's employees are unionized. The Respondent is a signatory to the 30 Highway, Heavy, Railroad and Underground Utility Contracting Agreement between the Highway, Heavy and Utility Division of the Indiana Contracting Association, Inc., and the Union. The most recent collective-bargaining agreement was effective April 1, 2008 through March 31, 2014. (GC Exh. 2.) Danny Barton is the president and James Wilkinson is the vice president of Union Local 69.

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Negotiations for a new contract began in May 2014. The parties were unsuccessful in reaching an agreement. The Respondent presented its best and final offer to the Union. Membership voted it down and authorized a strike on August 20, 2014. Picketing at the Respondent's office then began. The parties resumed negotiations thereafter, and in September 40 the Respondent made another best and final offer. That offer was likewise rejected by the Union in October so the strike continued.

¹ Other companies are also located at that address, including a recycling business and an excavating company. (Tr. 32.)

The Respondent's Actions After the Strike

5 Diamond Trucking kept most of its 50 trucks at the 2653 South 400 West location. Some
 were parked at other locations, at plants where they were performing work, or drivers might take
 the trucks home overnight. (Tr. 36.) The Union set up picket lines at each of the business
 locations where the trucks were parked, including the jobsites. (Tr. 63, 68-69, 77.) After the
 strike started, all trucks were returned to the office location, and the Respondent conducted no
 further business.² On or about August 25, within a week of the beginning of the strike, the
 10 Respondent closed the office and moved the trucks to leased space on Grissom Air Force Base,
 in a fenced-in lot owned by the County located on Hoosier Boulevard. On August 25, the
 Respondent's attorney notified Wilkinson by email that the Peru office had been closed and the
 trucks moved to Kokomo.³ (GC Exh. 3.) He further stated that, for those reasons, picketing was
 no longer permitted at that location as it would be unlawful secondary picketing. The Union
 15 then picketed in front of the Hoosier Boulevard lot.

In November, the Respondent determined it could no longer afford to rent that lot or keep
 the trucks. The Diamond Trucking Company signage was removed from the doors of 44 of
 those trucks. Those trucks were then returned to 2653 South 400 West and turned back over to
 20 the leasing company, DT Trucking. (Tr. 38, 39.) The other six trucks were moved to another lot
 on Grissom, at 1801 Thunderbolt Avenue; a week later, those six trucks were moved
 approximately 50 feet, to 1701 Thunderbolt. The Union picketed each of these locations, when
 the trucks were parked there.

25 On November 7, the union attorney sent Respondent's attorney an email stating that they
 had noticed that some of the trucks were returned to the Peru office, and since the Respondent
 had returned to its old office, the Union intended to resume picketing that location. (GC Exh. 4.)

30 The Respondent's attorney replied on November 10, acknowledging that some trucks had
 been returned to that location. He stated that the Respondent does not own those trucks, that the
 signage had been removed so the trucks could be leased to someone else or sold, and that the
 Respondent had not used the trucks in 2 months. He reiterated that picketing was therefore not
 permitted at that location. (GC Exh. 5.)

35 Union President Barton wrote Pendleton on November 13, requesting the Respondent's
 new business address. (GC Exh. 6.)

The Respondent's attorney responded on November 20. He stated that trucks were parked
 at 1701 Thunderbolt Avenue in Peru. (R. Exh. 1)

² The strike is ongoing, as the parties have not engaged in any further negotiations since September 2014.

³ He did not indicate the specific location or street address.

Union Request for Information

That same day, Union Vice President Wilkinson wrote Pendleton, requesting further information, in order to “determine the scope of the Company’s business operations and its various locations.”

1. Identify the owners of Diamond Trucking including any individual or entity which has a minority ownership share from January 1, 2014 to present.
2. Identify the entity/individual which owns the trucks which have been used by Diamond Trucking, Inc. in its operations from January 1, 2014 to present.
3. For the trucks referenced in Request No. 2, provide the following information for each truck:
 - a. Model and year of each truck
 - b. Owner of each truck
 - c. Vehicle identification number of each truck
 - d. Indiana license plate number for each truck
4. For the trucks referenced in Request No. 2, provide the following information for each truck:
 - a. The entity/individual in whose name the trucks are registered with the Indiana Bureau of Motor Vehicles from January 1, 2014, to present
 - b. The entity/individual who purchased and/or obtained license plates used for the trucks from January 1, 2014 to present.
5. Provide a copy of all contracts, memoranda of understanding, purchase agreements or other documents which reflect the leasing of trucks by Diamond Trucking, Inc.
6. Provide the names, business addresses and business phone numbers of all Diamond Trucking’s directors, stockholders, owners, corporate officers and management personnel.
7. Provide the names, business addresses and phone numbers of all directors, stockholders, owners, corporate officers and management personnel of any individuals/entities which have leased vehicles to Diamond Trucking, Inc. from January 1, 2014 to present.
8. Identify each location (street address, city and state) where Diamond Trucking has conducted business and/or where the trucks used in its operations were and/or dispatched from January 1, 2014 to present.

[GC Exh. 7.]

The Respondent’s attorney emailed Wilkinson on December 3, responding to Request No. 8. He stated that “until on or about August 22, 2014, Diamond Trucking conducted business and dispatched its trucks from an office located at 2653 S 400 W Peru, Indiana. After the strike began, Diamond Trucking has not conducted business or dispatched its trucks from any location, and the trucks have been parked at Grissom Air Force Base, 1701 Thunderbolt Ave, Peru, Indiana 46970.” He indicated that the Respondent refused to provide the other requested information, because the Union had not established its relevance. (GC Exh. 8.)

The Union’s attorney then emailed the Respondent’s attorney on December 29, stating that the Union was “entitled to know the physical locations where Diamond Trucking is doing business including the storage of vehicles used in its operations.” He said that, since the Respondent asserted that the trucks located at the old office location are not owned by

Respondent, and that Diamond's trucks are at Grissom, the information was necessary in order to confirm the accuracy of the Respondent's assertions as to the ownership and leasing of the trucks. He further stated that

5 the Union has reason to suspect that the (sic) Diamond Trucking is part of a group of entities under common control. The Board has ruled that unions are entitled to information regarding such possible alter ego/double breasted relationships. (citation omitted) To the extent that Diamond Trucking does not own certain vehicles, the Union believes that related third parties are the owners of these trucks through various leasing entities. These third parties have ownership and management roles with Diamond
10 Trucking. The Union's November 20 request has thus sought relevant information regarding these business relationships between Diamond Trucking and third parties.

[GC Exh. 9.]

15 The Respondent's attorney replied on January 9, 2015, reiterating his position that the Respondent would not provide the information requested in Requests No. 1-7 since it was not relevant. He stated that

20 the trucks Diamond Trucking used were parked at 2653 S 400 W, Peru IN until approximately August 22, 2014. At that point, the trucks were moved to Grissom Air Reserve Base as I notified James Wilkinson in my letter of December 3, 2014. In mid-November, Diamond Trucking determined it could no longer afford to pay the lease on some of the trucks. It therefore returned the trucks to the lessors at 2653 S 400 W, Peru, IN. The trucks Diamond Trucking continued to lease were then moved to 1701 Thunderbolt Avenue, Peru, IN as Ms. Pendleton informed Danny Barton in her letter of November 20, 2014.

25 The union is not entitled to the other information requested about Diamond Trucking's business relationships. Although you quote a decision requiring the union to request information that would be of use "in carrying out its statutory duties and responsibilities," you do not identify which statutory duty or responsibility the requested information will help the union fulfill. (citation omitted) You only allege that Diamond Trucking "is part
30 of a group of entities under common control," but there is no control group concept in federal labor law.

To the extent you instead meant to request this information because of any alleged alter ego relationship, you still have not demonstrated "a reasonable objective basis for believing that" such a relationship exists nor have you demonstrated why that would be
35 relevant in this particular case. . . .

[GC Exh. 10.]

III. LEGAL STANDARDS AND ANALYSIS

40 The General Counsel contends that the information requested is relevant and necessary. He asserts that each request is necessary in order for the Union to determine where it could lawfully picket the Respondent. Specifically, he argues that Requests No. 1, 2, 4, 6, and 7 are relevant and necessary for the Union to determine whether an alter-ego relationship exists; Request No. 3 is relevant and necessary for the Union to determine and confirm appropriate
45 picketing locations; and Request No. 5 is relevant and necessary for the Union to confirm that the Respondent was in fact leasing its trucks as represented in Respondent's attorney's November 10 email.

5 The Respondent agrees that the Union is entitled to the information in Request No. 8, regarding the location of Diamond Trucking, for purposes of determining the appropriate location for picketing, and it provided that information. It contends, however, that the remaining requests are irrelevant to determining where to picket, and that there is no reasonable basis for an alter-ego theory.

10 Pursuant to Section 8(a)(5) of the Act, it is an unfair labor practice for an employer to refuse to bargain collectively with the representative of its employees. The duty to bargain includes the duty to provide information that is necessary for the union to perform its functions as representative of the bargaining unit. Information pertaining to mandatory subjects of bargaining is presumptively relevant to the union's role. *Southern California Gas Co.*, 344 NLRB 231 (2005); *NLRB v. Item Co.*, 220 F.2d 956 (5th Cir.), cert. denied 350 U.S. 836 (1955).

15 Where, as here, a union requests information that does not involve the bargaining unit, there is no presumption of relevance. Rather, the union must establish the relevance and necessity of the information. *Trim Corp.*, 349 NLRB 608 (2007) (information request concerning the existence of an alleged alter-ego operation is not presumptively relevant). Further, the union must have a reasonable objective factual basis for the information requested. *Piggly Wiggly Midwest LLC*, 357 NLRB 2344 (2012). A union cannot meet its burden based on a mere suspicion that an alter-ego or single employer relationship exists; it must have an objective, factual basis for believing that the relationship exists. *Cannelton Industries*, 339 NLRB 996 (2003); see *M. Scher & Son, Inc.*, 286 NLRB 688, 691 (1987), citing *Bohemia Inc.*, 272 NLRB 1128 (1984). On the other hand, if a union has a reasonable objective basis for its belief that several companies constitute a single employer, or a company is an alter-ego, it has met its burden of showing relevance. *Blue Diamond Co.*, 295 NLRB 1007 (1989); *Shoppers Food Warehouse*, 315 NLRB 258 (1994); *Contract Flooring Systems, Inc.*, 344 NLRB 925 (2005).

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30 A union generally has the right to picket at the site of the dispute or where the employer is engaged in normal business operations. See *Operating Engineers Local 150 (Harsco Corp.)* 313 NLRB 659 (1994), affd 47 F.3d 218 (1995). Therefore, in the instant case, the Union is entitled to information that would assist it in determining such locations. That is precisely the information requested in Request No. 8 - each location (street address, city, and state) where Diamond Trucking has conducted business and/or where the trucks used in its operations were and/or dispatched from January 1, 2014 to present. The Respondent provided that information and Request No. 8 is not at issue herein.

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40 In addition to the assertions in the correspondence between the parties, we have Wilkinson's testimony as to the reasons for his information requests. (Tr. 55-59.) He said he wanted the information in Request No. 1 to determine who actually owned Diamond Trucking. Request No. 2 was to learn who owned the trucks, because the Union had the right to picket the old office if Diamond Trucking still owned them. The same basis was given for Request No. 3, to determine ownership of each truck. Request No. 4 was intended to find out who the trucks were registered to, which would also explain who owned them. Request No. 5 would show whether they were, in fact, leased. Request No. 6 was to learn where Diamond Trucking was conducting its day-to-day business. The Union sought this, since the lots at Grissom where the trucks were parked had no offices, no telephones, no staff. Request No. 7 was to determine the

identity of the purported lessor. Request No. 8 was to determine where Diamond Trucking was operating from, since they weren't dispatching any trucks, and the old office was empty. Ultimately, his stated reasons for the requests are simply a restatement of the requests themselves.

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The General Counsel has failed to meet his burden as to the seven requests at issue. The Union knew that the Respondent was not conducting any business. The Respondent engaged in no business activity once the strike began. Since it had no drivers, it could not operate and it vacated its office. No explanation was given for what business operations the Union thought could possibly be going on under the circumstances. That left the location of the trucks as the only possible picketing option, which the Union seems to have considered unsatisfactory. Nonetheless, there are trucks in the Respondent's possession at Grissom Air Force Base; the Union was notified of their location and it picketed there. The Diamond Trucking signage was removed from some other trucks that were moved back to the old office location when the leases were terminated. The Union claims to have been suspicious, apparently suspecting that Pendleton's brother had some ownership stake in Diamond Trucking or owned the trucks used by Diamond Trucking, and hoped to justify picketing at 2653 South 400 West if it could establish a connection between Diamond Trucking and Bowyer and/or Kokomo. However, the Union provided no objective or reasonable or factual basis for such suspicion; it was merely speculation, at best. In fact, at the hearing, Wilkinson testified that he had no proof that Respondent's counsel's statements were true, attempting to shift the burden to the Respondent rather than demonstrate the Union's objective factual basis for its belief. Even if Bowyer or Kokomo owns those trucks, rather than DT Trucking, that does not provide support for the Union's position. There is not one iota of support for an alter-ego theory. The trucks were not used by the Respondent after August 2014, when the strike began. Kokomo did not perform any work previously performed by the Respondent; the Union conceded that all such work was performed by Union companies. The mere fact that the two companies had offices at the same location, that Pendleton and Bowyer are siblings, and that Bowyer attended contract negotiations with Pendleton is wholly insufficient to meet its burden. The General Counsel has not shown that the information requested would support an alter-ego theory, even if there were a reasonable basis for such belief, nor that it would in any way assist the Union in determining appropriate additional locations to picket.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁴

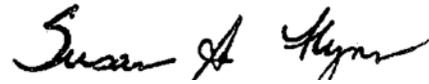
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⁴ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The complaint is dismissed.

5 Dated, Washington, D.C., November 24, 2015



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Susan A. Flynn
Administrative Law Judge