

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

DIAMOND TRUCKING INC.

and

Case 25-CA-144424

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

GENERAL COUNSEL'S BRIEF IN SUPPORT OF EXCEPTIONS
TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

Respectfully submitted,

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Comes now Counsel for the General Counsel and respectfully submits to the Board this Brief in Support of Exceptions to the Decision of the Administrative Law Judge issued in the above-captioned cases on November 24, 2015.

I. STATEMENT OF THE CASE

Pursuant to a charge filed by Teamsters Joint Council No. 69, a/w International Brotherhood of Teamsters, hereinafter referred to as the Union, a complaint was issued on May 29, 2015. The complaint alleged that Diamond Trucking, Inc., hereinafter referred to as the Respondent, violated Section 8(a)(1) and (5) of the Act by failing and refusing, in writing, to furnish the Union with information requested by it pursuant to its November 20, 2014 information request.¹ Specifically, the Union requested the following information:

(1) the identity of Respondent's owners including individuals or entities with minority ownership share from January 1, 2014 to the present; (2) the identity of individuals or entities which own trucks which have been used by Respondent in its operations from January 1, 2014 to the present; (3) for the trucks referenced in Request No. 2, the model, year, owner, vehicle

identification number, and Indiana license plate number for trucks in current use by Respondent;

(4) for the trucks referenced in Request No. 2, the entity/individual in whose name each such truck is registered with the Indiana Bureau of Motor Vehicles from January 1, 2014, to the present and the entity/individual who purchased and/or obtained license plates used for each such truck from January 1, 2014 to the present; (5) a copy of all contracts, memoranda of understanding, purchase agreements, or other documents reflecting the leasing of trucks by Respondent;

(6) the names, business addresses and business phone numbers of all of Respondent's directors, stockholders, owners, corporate officers and management personnel; (7) the names, business addresses and phone numbers of all directors, stockholders, owners, corporate officers and management personnel of any individuals or entities which have leased vehicles to Respondent from January 1, 2014 to the present; and (8) each location (street address, city, and state) where the Respondent has conducted business and/or where the trucks used in its operations were and/or dispatched from January 1, 2014 to present (TR 53-59; GC Ex 7).

A hearing was held regarding the allegations contained in the complaint before Administrative Law Judge Susan Flynn on August 25, 2015. On November 24, 2015, Judge Flynn issued her decision dismissing the complaint in its entirety. In her decision, the Judge's incorrectly found and concluded that the Union did not have an objective, factual basis to believe that an alter-ego relationship existed concerning the Respondent (GC Exceptions 1). Also, the Judge incorrectly found and concluded that the Counsel for the General Counsel had not shown that the Union's November 20, 2014 information request would support an alter-ego theory, even if there were a reasonable basis for such belief, nor that it would in any assist the Union in

¹ All dates herein refer to 2014 unless otherwise specified.

determining appropriate additional locations to picket (GC Exceptions 2). Furthermore, the Judge failed to find and conclude that the Respondent violated Section 8(a)(1) and (5) of the Act by failing and refusing, in writing, to provide the Union, with information that the Union had requested pursuant to its November 20, 2014 information request since about January 9, 2015. Additionally, the Judge also failed to provide for an appropriate remedy and Notice provision regarding the above violation of the Act (GC Exceptions 3).

II. QUESTIONS PRESENTED

1. Whether the Judge's findings and conclusions that the Union did not have an objective, factual basis to believe that an alter-ego relationship existed concerning the Respondent, is contrary to Board policy and existing law?

2. Whether the Judge's findings and conclusions that the CGC has not shown that the Union's November 20, 2014 information request would support an alter-ego theory, even if there were a reasonable basis for such belief, nor that it would in any assist the Union in determining appropriate additional locations to picket, is contrary to Board policy and existing law?

3. Whether the Judge's failure to find and conclude that Respondent violated Section 8(a)(1) and (5) of the Act by failing and refusing, in writing, to provide the Union, with information that the Union had requested pursuant to its November 20, 2014 information request since about January 9, 2015 and the Judge's concomitant failure to provide for an appropriate remedy and Notice provision regarding the above violation of the Act is contrary to Board policy and existing law?

III. STATEMENT OF THE FACTS

A. Background

The Respondent is a corporation with an office and place of business located 2653 South 400 West, Peru, Indiana (Respondent's office) and is engaged in the business of trucking and hauling construction materials (TR 21; GC Ex 1(c)). The Respondent employs around 50 drivers and owns around 50 trucks (TR 13, 19-20). Teresa Pendleton is the Owner and President (TR 11; GC Ex 1(c)). Ted Peters is the Field Superintendent and Dispatcher (TR 17; GC Ex 1(c)). Mike Bowyer is the brother of Pendleton (TR 17). Even though Bowyer is not an officer of Respondent, he participated in contract negotiations with the Union and advised Pendleton regarding issues concerning contract negotiations. Bowyer is also affiliated with Kokomo Gravel, a non-Union trucking company that hauls stone and gravel, which operates an office and place of business at 2653 South 400 West, Peru, Indiana, which is the same location of Respondent's office and place of business. The Respondent has also used Kokomo Gravel as a subcontractor to perform work (TR 24-26, 31, 40).

B. Contract Negotiations and Strike

About April 1, the collective-bargaining agreement between the parties expired. The collective-bargaining agreement was effective from April 1, 2008 through March 31. About May, the parties began negotiations for a new collective-bargaining agreement (TR 15, 43; GC Ex 2). However, the parties were unable to reach an agreement. On August 20, the employees began picketing at the Respondent's office. The employees had voted to reject the Respondent's best and final offer (TR 18-19, 44-45).

About a week after the strike, the Respondent moved its trucks from Respondent's office to a facility located on Hoosier Boulevard in the Grissom Air Force Base in Kokomo, Indiana in response to the picketing (TR 20-22). On August 25, Respondent's Attorney James Hanson sent an email to Local Union Vice President James Wilkinson stating that the Respondent's trucks had been moved from the Respondent's office to Kokomo, Indiana. The email did not state a specific address. The email also stated that the Respondent would file an unfair labor practice charge against the Union if the picketers were not removed from the Respondent's office (TR 29-30: GC Ex 3) .

About November, the Respondent removed its signage from all of its trucks, which stated "Diamond Trucking, Inc." and moved 44 of its trucks back to the Respondent's office. At that time, Kokomo Gravel also had trucks located there. Six of the Respondent's trucks were moved to a location at 1801 Thunderbolt Avenue at the Grissom Airforce Base in Peru, Indiana. About one week later, the six trucks were moved to a location at 1701 Thunderbolt Avenue at the Grissom Airforce Base in Peru, Indiana. (TR 22-25, 37-38, 46-48, 50-51).

On November 7, Union Attorney Neil Gath sent an email to Respondent Attorney Hanson stating that the Union had recently observed that the Respondent had returned to Respondent's office by moving trucks to that location. The email also stated that, since the Respondent had returned to its office, the Union intended to resume picketing at that location (TR 48-50; GC Ex 4).

On November 10, Respondent Attorney Hanson sent an email to Union Attorney Gath stating that some trucks have been moved back to Respondent's office. The email also stated that the Respondent did not own those trucks. The email further stated that signs were being

removed from the trucks so that they could be sold or leased to another company. Additionally, the email stated that the Respondent has not used those trucks for over two months. Finally, the email stated that, if the Union established any picket lines, Respondent would file unfair labor practice charges (TR 51-52; GC Ex 5). On November 13, Local Union President Danny Barton sent a letter to Respondent's President Pendleton requesting Respondent's new address (TR 52-53; GC Ex 6).

On November 20, Local Union Vice President Wilkinson sent a written information request to Respondent's President Pendleton listing eight items necessary to determine the scope of the Respondent's business operations and its various locations. Specifically, Wilkinson requested the following information:

- (1) the identity of Respondent's owners including individuals or entities with minority ownership share from January 1, 2014 to the present;
- (2) the identity of individuals or entities which own trucks which have been used by Respondent in its operations from January 1, 2014 to the present;
- (3) for the trucks referenced in Request No. 2, the model, year, owner, vehicle identification number, and Indiana license plate number for trucks in current use by Respondent;
- (4) for the trucks referenced in Request No. 2, the entity/individual in whose name each such truck is registered with the Indiana Bureau of Motor Vehicles from January 1, 2014, to the present and the entity/individual who purchased and/or obtained license plates used for each such truck from January 1, 2014 to the present;
- (5) a copy of all contracts, memoranda of understanding, purchase agreements, or other documents reflecting the leasing of trucks by Respondent;

(6) the names, business addresses and business phone numbers of all of Respondent's directors, stockholders, owners, corporate officers and management personnel;

(7) the names, business addresses and phone numbers of all directors, stockholders, owners, corporate officers and management personnel of any individuals or entities which have leased vehicles to Respondent from January 1, 2014 to the present; and

(8) each location (street address, city, and state) where the Respondent has conducted business and/or where the trucks used in its operations were and/or dispatched from January 1, 2014 to present (TR 53-59; GC Ex 7).

On December 3, Respondent Attorney Hanson sent an email to Wilkinson, which responded to Item 8 of his information request. However, the email stated that the Respondent was refusing to provide the remaining requested information because the Union had not established relevancy (TR 59-60; GC Ex 8). On December 29, Union Attorney Gath sent an email to Hanson stating that the information sought was to confirm the accuracy of the Respondent's assertion about the ownership and leasing of the trucks to third parties and the Respondent's assertion that the Union could not picket certain locations. The email also stated that the Union had reason to suspect that the Respondent is part of a group of entities under common control and that, to the extent that the Respondent does not own certain vehicles, the Union believed that related third parties are the owners of those trucks through various leasing entities. The email further stated that the Union believed that these third parties also have ownership and management roles with the Respondent and that the Union sought information regarding those business relationships (TR 61; GC Ex 9). On January 9, 2015, Hanson sent an email to Gath stating that the Respondent was refusing to provide the Union with information

because the Union had not demonstrated a reasonable objective basis for believing that an alter ego relationship existed (TR 61-62; GC Ex 10).

IV. ARGUMENT

A. The Judge Erred By Finding and Concluding that Respondent's Failure to Provide The Union With Relevant and Necessary Information Did Not Violate Section 8(A)(1) and (5) of the National Labor Relations Act.

In her decision, the Judge incorrectly found and concluded that the Union did not have an objective, factual basis to believe that an alter-ego relationship existed concerning Respondent (GC Exceptions 1). Also, the Judge incorrectly found and concluded that the Counsel for the General Counsel had not shown that the Union's November 20, 2014 information request would support an alter-ego theory, even if there were a reasonable basis for such belief, nor that it would in any assist the Union in determining appropriate additional locations to picket (GC Exceptions 2). Furthermore, the Judge failed to find and conclude that the Respondent violated Section 8(a)(1) and (5) of the Act by failing and refusing, in writing, to provide the Union, with information that the Union had requested pursuant to its November 20, 2014 information request since about January 9, 2015. Additionally, the Judge also failed to provide for an appropriate remedy and Notice provision regarding the above violation of the Act (GC Exceptions 3).

Despite the Judge's findings and conclusions, record evidence and Board law demonstrate that Respondent violated Section 8(a)(1) and (5) of the Act by failing and refusing, to furnish the Union with information requested by it pursuant to its November 20, 2014 information request.

The Board has held that, when a union requests information pertaining to a suspected alter-ego relationship, the union must establish the relevance of the requested information, and have an objective, factual basis for believing that the relationship exists. Piggly Wiggly Midwest,

LLC, 357 NLRB No. 191 (Jan. 3, 2012) (citing M. Scher & Son, Inc., 286 NLRB 688, 691 (1987); Contract Flooring Systems, Inc., 344 NLRB 925 (2005)). The Board, however, has held that the union is not obligated to disclose those facts to the employer at the time of the request. Cannelton Industries, 339 NLRB 996, 997 (2003). Moreover, the Board has held that it is sufficient that the General Counsel demonstrate at the hearing that the union had, at the relevant time, a reasonable belief. Id.

Record evidence demonstrates that, on November 20, Local Union Vice President Wilkinson sent the Respondent a written request for information pertaining to a suspected alter-ego relationship because the Union had an objective, factual basis for believing that the alter-ego relationship existed. First, as noted above, Bowyer is the brother of Pendleton (TR 17). Even though Bowyer is not an officer of Respondent, he has participated in contract negotiations with the Union and advised Pendleton regarding issues concerning contract negotiations. Bowyer is also affiliated with Kokomo Gravel, a non-Union trucking company that hauls stone and gravel, which operates an office and place of business at 2653 South 400 West, Peru, Indiana, which is the same location of Respondent's office and place of business. The Respondent has also used Kokomo Gravel as a subcontractor to perform work (TR 24-26, 31, 40). It is clear that Respondent clearly had a business relationship with Kokomo Gravel. This relationship played a part in raising the Union's suspicions regarding the existence of an alter-ego relationship.

Second, the Respondent met with the Union in May to bargain over a new collective-bargaining as it was obligated by law to do. Bowyer was also present during bargaining (TR 15, 24-26, 43; GC Ex 2). However, the parties were unable to reach an agreement. On August 20, the employees began picketing at the Respondent's (TR 18-19, 44-45). Thus, it is clear that the Respondent was obligated to meet and bargain with Union regarding a new collective-bargaining

and the picketing resulted from the parties' failure to reach a new collective-bargaining agreement.

Third, in response to the picketing activities, the Respondent moved its trucks from Respondent's office to the Grissom Air Force Base. In fact, Respondent's President Pendleton testified that she moved the Respondent's trucks because she wanted the picketing to move (TR 21). Also, on August 25, Respondent's Attorney James Hanson asserted in an email to Local Union Vice President James Wilkinson that the Respondent's trucks had been moved from the Respondent's office to Kokomo, Indiana. However, the email did not state a specific address (TR 29-30: GC Ex 3) .

About November, the Respondent removed its signage from all of its trucks, which stated "Diamond Trucking, Inc." and moved 44 of its trucks back to the Respondent's office. At that time, Kokomo Gravel also had trucks located at the Respondent's office. Six of the Respondent's trucks were moved to a location at 1801 Thunderbolt Avenue at the Grissom Airforce Base in Peru, Indiana. About one week later, the six trucks were moved to a location at 1701 Thunderbolt Avenue at the Grissom Airforce Base in Peru, Indiana (TR 22-25, 37-38, 46-48, 50-51).

On November 7, Union Attorney Neil Gath sent an email to Respondent Attorney Hanson stating that the Union had recently observed that the Respondent had returned to Respondent's office by moving trucks to that location. The email also stated that, since the Respondent had returned to its office, the Union intended to resume picketing at that location. Gath's email dated November 7 demonstrates that the Union was clearly suspicious of the Respondent's actions (TR 22-25, 37-38, 46-51; GC Ex4).

Fourth, on November 10, Respondent Attorney Hanson sent an email to Union Attorney Gath stating that some trucks have been moved back to the Respondent's office. The email also stated that the Respondent did not own those trucks. The email further stated that signs were being removed from the trucks so that they could be sold or leased to another company (TR 51-52; GC Ex 5). It is clear that Hanson's November 10 email further raised the Union's suspicions. Thus, in response to Hanson's November 10 email, Local Union Vice President Wilkinson sent a written information request to Respondent's President Pendleton listing eight items necessary to determine the scope of the Respondent's business operations and its various locations on November 20 (TR 53-59; GC Ex 7).

Fifth, on December 3, Respondent Attorney Hanson sent an email to Local Union Vice President Wilkinson, which responded to Item 8 of his information request only. The email stated that the Respondent was refusing to provide the remaining requested information because the Union had not established relevancy (TR 59-60; GC Ex 8). In response to Hanson's December 3 email, Union Attorney Gath sent Hanson an email dated December 29 which clearly explained the relevancy and necessity of Local Union Vice President Wilkinson's written request for information. Specifically, on December 29, Union Attorney Gath sent an email to Hanson stating that the information sought was to confirm the accuracy of the Respondent's assertion about the ownership and leasing of the trucks to third parties and the Respondent's assertion that the Union could not picket certain locations. The email also stated that the Union had reason to suspect that the Respondent is part of a group of entities under common control and that, to the extent that the Respondent does not own certain vehicles, the Union believed that related third parties are the owners of those trucks through various leasing entities. The email further stated that the Union believed that these third parties also have ownership and management roles with

the Respondent and that the Union sought information regarding those business relationships (TR 61; GC Ex 9).

As noted above, it is clear based upon the events surrounding the Union's picketing activities that Local Union Vice President Wilkinson's November 20 written request for information is relevant and necessary. Specifically, Item 1 is relevant and necessary for the Union to determine whether an alter-ego relationship existed. Item 2 is also relevant and necessary for the Union to determine whether an alter-ego relationship existed. Item 3 is relevant and necessary for the Union to determine and confirm appropriate picketing locations. Item 4 is relevant and necessary for the Union to determine whether an alter-ego relationship existed. Item 5 is relevant and necessary for the Union to confirm that the Respondent was leasing its trucks pursuant to Respondent Attorney Hanson's November 10 email. Item 6 is relevant and necessary for the Union to determine whether an alter-ego relationship existed. Item 7 is relevant and necessary for the Union to determine whether an alter-ego relationship existed. Item 8 is relevant and necessary for the Union to determine and confirm appropriate picketing locations (TR 53-59; GC Ex 7).

Additionally, Local Union Vice President Wilkinson testified that he needed the information contained in his November 20 written request for information to determine whether the Respondent had any relationship with other companies. Wilkinson also testified that he needed the information to determine and confirm appropriate picketing locations for the Union. Wilkinson further testified that he needed the information to confirm that accuracy of Respondent Attorney Hanson's November 10 email asserting that the Respondent did not own the trucks located at the Respondent's office and that the trucks were going to be sold or leased to another company (TR 53-61, 79, 80, 81-83; GC Ex 7).

Based upon the foregoing, record evidence demonstrates that the Union has established that its November 20 written request for information is relevant and necessary to the Union's performance of its duties as the exclusive collective-bargaining representative of Respondent's employees. Record evidence also demonstrates that the Union has established that it had objective factual basis for its belief of a possible alter-ego relationship based upon the Respondent's assertions about picketing locations and ownership and leasing of the trucks. Thus, the Respondent's refusal to provide the Union with information pertaining to Items 1 through 7 of the Union's written request for information dated November 20 violates Section 8(a)(1) and (5) of the Act.

V. CONCLUSION

For the above-stated reasons, the Counsel for the General Counsel respectfully requests that General Counsel's Exceptions to the Decision of the Administrative Law be granted and that an appropriate order issue.

DATED at Indianapolis, Indiana, this 15th day of January 2016.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **GENERAL COUNSEL'S EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE AND BRIEF IN SUPPORT OF EXCEPTIONS** was filed with the Office of the Executive Secretary electronically and served upon the following persons on this 15th day of January 2016:

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