

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

BAILEY ELECTRIC INC., and
CB ELECTRIC LLC, ALTER EGOS

and

19-CA-146474

INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS,
LOCAL UNION 112, AFL-CIO-CLC

Richard Fiol, Esq.

for the General Counsel.

*Kristina Detwiler, Esq.; Aurora Wilson, Esq.*¹

for the Charging Union

Daniel Robbins Case, Esq.

for the Respondent.

DECISION

STATEMENT OF THE CASE

CHRISTINE E. DIBBLE, Administrative Law Judge. This case was tried in Yakima, Washington on October 27 and 28, 2015. The International Brotherhood of Electrical Workers (IBEW) Local 112 (Union) filed a charge on February 13, 2015 and an amended charge on March 26, 2015. The General Counsel issued the complaint and notice of hearing on June 30, 2015. Bailey Electric Inc. (Respondent Bailey) and CB Electric LLC (Respondent CB) jointly filed a timely answer denying all material allegations. (GC Exhs. 1(a) to 1(j)).²

The complaint alleges that Respondents Bailey and CB are alter egos within the meaning of the National Labor Relations Act (NLRA/Act). Consequently, the complaint alleges that since about September 15:

¹ The attorneys for the Union did not appear at the hearing.

² Abbreviations used in this decision are as follows: "Tr." for transcript; "GC Exh." for General Counsel's exhibit; "R. Exh." for Respondent's exhibit; "CU Exh." for Charging Union's exhibit; "ALJ Exh." for administrative law judge's exhibit; "Jt. Exh." for joint exhibit; "GC Br." for General Counsel's brief; "R. Br." for Respondent's brief; and "CU Br." for Charging Union's brief. My findings and conclusions are based on my review and consideration of the entire record.

(1) Respondents Bailey and CB have failed to continue in effect the terms and conditions of employment of the Unit contained in the collective-bargaining agreement (CBA) by failing and/or refusing to:

- 5 - make payments to the Union’s Inland Empire Electrical Trust, the Retirement Trust NECA/IBEW, the IBEW 9th District Pension Plan, and the National Electrical Benefit Plan
- deduct and forward working dues to the Union’s Financial Secretary
- comply with the Union’s Inside Referral Procedure

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(2) Since about September 15, 2014, Respondents Bailey and CB have repudiated the CBA.

(3) Since about February 2, 2015, the Union has requested in writing that Respondent Bailey furnish the Union with a variety of information relating to its business, compliance with the CBA and its relationship with Respondent CB.

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(4) Since about February 2, 2015, the Union has requested in writing that Respondent CB furnish the Union with a variety of information relating to its business, compliance with the collective-bargaining agreement and its relationship with Respondent Bailey.

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(5) Since about February 4, 2015, Respondent Bailey, by Robert Bailey, in writing, has failed and refused to furnish the Union with the information requested by it.

(6) Since about February 5, 2015, Respondent CB, by Christopher Bailey, in writing, has failed and refused to furnish the Union with the information requested by it.

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On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, the Union, and Respondents Bailey and CB, I make the following

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FINDINGS OF FACT

I. JURISDICTION

35 Respondent Bailey is a corporation and has maintained, at all material times, an office and place of business in Yakima, Washington. During the past 12 months referenced in the complaint, Respondent Bailey provided services in excess of \$50,000 to public utilities, commercial buildings and educational institutions. Respondent CB is a limited liability company with an office and place of business in Yakima, Washington. During the past 12 months, which is representative of all times material, Respondent CB in conducting its business operations has provided services in excess of \$50,000 to public utilities, commercial buildings and educational institutions. Consequently, I find that at all material times, they have been employers engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act.³

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³ In their joint answer to the complaint, Respondents Bailey and CB denied that they have been engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act. However,

At all material times the Union has been a labor organization within the meaning of Section 2(5) of the Act.

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II. ALLEGED UNFAIR LABOR PRACTICES

A. OVERVIEW OF RESPONDENT BAILEY'S OPERATION

10 In 1998, Respondent Bailey was incorporated in the State of Washington as a business engaged in electrical contracting for the construction industry. Respondent Bailey primarily performed electrical work on medium to large-scale industrial and commercial projects in Yakima County, Kittitas, Wenatchee and the tri-state cities region (Richland, Pasco, Kennwick). Robert Bailey (Robert) and his wife, Sally Bailey (Sally), are the owners and only shareholders of the company.⁴ Robert, who began work as an electrical contractor in Washington State in July 15 1985, is also a master electrician.

Robert and Sally owned a building in Yakima that was used by Respondent Bailey for its office space. They also owned an 8000 square foot storage facility and warehouse for storing electrical equipment, vehicles, and other supplies. They rented the facility to Respondent Bailey 20 for \$4000 a month. In addition, the corporation had several telephone and facsimile numbers, two banking accounts with U.S. Bank, and used American Contractor for its accounting program. As owner and president of the corporation, Robert made job site visits, oversaw the day-to-day operations of the corporation, made the final decisions regarding hiring and firing, and determined the staffing levels for various projects.

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In about 2005, Christopher Bailey (Christopher) began working for Respondent Bailey as an electrical trainee with job duties that included preparing project bids, delivering parts to and assisting workers in the field, and data entry. He was also responsible for keeping the shop clean. During an unknown period of time, Danny Gartier (Gartier) worked for Respondent 30 Bailey conducting bookkeeping, performing minor estimating, and delivering parts to workers in the field. In August 2014, Respondent Bailey employed the following employees: Timothy Hammermeister (journeyman electrician), April Hastings (electrical apprentice), Scott Johnson (electrician), Heather Price (electrician), Corey Shreiner (electrician), Kip Schwimman (electrician), Enrique Valerio (electrician), Justin Davis (cleaner), Amelia Bailey (office 35 assistant) and Christopher Bailey (electrician trainee).⁵

Respondents failed to present an argument or proof refuting the evidence of record on this point. Consequently, I find that it has been established that during the relevant period, both Respondents have been engaged in commerce within the meaning of the Act.

⁴ Since the primary parties (Robert and Sally Bailey, Christopher and Amelia Bailey) are related and have the same surname, I will refer to them by their first names in order to avoid confusion.

⁵ A trainee is an electrician who has not amassed sufficient hours to take and pass the journeyman test; and works under the direction of a journeyman level electrician and master electrician. A journeyman electrician has completed the requisite hours of training and has the experience to work on his/her own under the general direction of the master electrician. A master electrician is the most experienced of the electricians; oversees the work of the trainee and journeyman; and ensures the project is being completed according to applicable code. An administrator is not required to be an electrician but

B. Respondent Bailey's Efforts to Terminate the CBA

5 Since 1995, the Union and Respondent Bailey have maintained a bargaining relationship.
 (GC Exh. 3). The bargaining unit constitutes "All employees performing inside electrical work
 within the Union's jurisdiction." (GC Exh. 1(e)). On January 23, 1995, Respondent Bailey and
 the Union signed a letter of assent which according to its terms, the CBA can only be terminated
 by *mutual* agreement of the parties. The party seeking to terminate the CBA must submit a
 notification of intent to terminate at least 150 days prior to the expiration of the CBA. The most
 10 recent CBA between Respondent Bailey and the Union is effective from June 1, 2013 through
 May 31, 2016. (GC Ehxs. 4, 5, 6, 7).

15 In June 2011, Respondent Bailey stopped paying into the Union's fringe benefit trust
 fund for its bargaining unit employees. As a result of the non-payment, the Union sent
 Respondent Bailey notification that due to the delinquent payments, it now owed liquidated
 damages and interest on the late payments. Consequently, Respondent Bailey was not allowed to
 hire electrical apprentices and was required to hire only journeyman-level technicians. Robert,
 however, was displeased with the quality of some of the journeyman electricians sent by the
 Union to work on Respondent Bailey projects. He provided undisputed testimony that because
 20 of the actions of one of the electricians sent to him by the Union, Respondent Bailey lost a
 longtime customer.

25 Sometime in 2012, Robert expressed to the union's business manager and financial
 secretary, Darrold "Pete" Marsh (Marsh), that Respondent Bailey wanted to terminate the CBA,
 which was effective from June 1, 2012 through May 31, 2013. Marsh refused to agree to the
 request because it was untimely. Consequently, Respondent Bailey had to adhere to the contract
 until the next open period (which would have been at least 150 days prior to the expiration of the
 CBA on May 31, 2013). Subsequently, Respondent Bailey made a timely request to terminate
 the CBA. The Union refused to agree to Respondent Bailey's request. Pursuant to the terms of
 30 the CBA, the matter was referred to the Council on Industrial Relations (CIR) for a decision on
 whether the CBA should be voided. By decision issued on May 14, 2013, the CIR determined
 that Respondent Bailey was bound by the successor agreement which is effective from June 1,
 2013 through May 31, 2016. In his capacity as co-owner of Respondent Bailey, on May 23,
 2013, Robert wrote an email to CIR objecting to its decision. He informed CIR that Respondent
 35 Bailey was not going to accept CIR's decision and it would "begin operating as an open shop on
 June 1, 2013." (GC Exh. 6). The CIR responded that its decision was supported by the evidence,
 binding upon the parties, and counseled Respondent Bailey against operating as an "open shop"
 effective June 1, 2013.

40 *C. Bankruptcy of Respondent Bailey*

In approximately 2012, Respondent Bailey began to have financial difficulty operating.
 Therefore, it filed for Chapter 11 bankruptcy in December 2012, but continued to operate with
 the intention of repaying its creditors and becoming solvent. Nonetheless, in July 2014, Robert

is responsible for guaranteeing the work performed by the electricians.

determined that the bankruptcy was not helping the corporation so he consulted with counsel about converting Respondent Bailey's bankruptcy to a Chapter 7 filing. Because his attorney missed a filing deadline, Respondent Bailey's petition to the bankruptcy court to convert to a Chapter 7 bankruptcy was denied in January 2015. Consequently, Respondent Bailey began liquidating its assets including a storage facility/warehouse, company vehicles, and equipment. As part of the liquidation process, in July or August 2015, the warehouse was sold with the revenue going to Respondent Bailey's first mortgage holder, Homestreet Bank. Homestreet Bank also sold the equipment and materials in the storage facility and kept the profits. Although Respondent Bailey continues to exist, it is only for the purpose of resolving the bankruptcy matters. Since August 2014, Respondent Bailey has not been licensed to perform electrical work.

D. Respondent Bailey's Projects from January 1, 2014 through October 1, 2015

Although Respondent Bailey filed for bankruptcy in December 2012, the company continued to bid on contracts through late 2014. For example, the evidence shows that for the period of January 1, 2014 through October 1, 2015, Respondent Bailey received \$3,267,127 for projects it worked. (GC Exh. 12).⁶ Normally, Respondent Bailey would perform five or more jobs at a time; and several of the projects performed during this period were for local municipalities. Despite its bankruptcy, in August or September 2014, Respondent Bailey was awarded a contract by the City of Cle Elum to install pipe and electrical wiring for lights.⁷ Robert, however, later called the officials overseeing the Cle Elum project to inform them that he would be unable to perform the job because Respondent Bailey was permanently closing. He offered them suggestions on companies, including Respondent CB, which might be able to take over the job. There is no substantive evidence that Respondents Bailey and CB agreed to jointly work on the project.

During this period, Respondent Bailey also bid and was awarded a contract for the Buffalo Wild Wings renovation project. The company was contracted to provide electrical services for the restaurant's remodel. However, Robert had a discussion with Buffalo Wild

⁶ Robert testified that the accounts receivable transaction report for the period January 1, 2014 to October 1, 2015, shows that the money was received during this period but not necessarily for work performed during the same timeframe. I, however, do not credit his testimony on this point. There is no substantive or objective evidence to contradict the plain reading of the document listing the date, customer, and amount received. (GC Exh. 12).

⁷ Robert testified that he was unsure of whether Respondent Bailey was ever awarded a contract for the Cle Elum project. (Tr. 75). I do not credit his testimony on this point. It is not plausible that the owner of a company which has been in business for almost 20 years and has millions in revenue would not know something as basic as whether the company was awarded a contract. He admitted that the Respondent Bailey was supposed to install the piping for the job but because of a delay on the part of the general contractor only supplied the piping. He also acknowledged that the general contractor sent him an email about the Cle Elum project because he "was the first contact on the job under [Respondent] Bailey." (Tr. 96-97.) However, Robert ultimately forwarded the email to Respondent CB; this is additional evidence that at some point Respondent Bailey was contracted to perform work on the Cle Elum job. Moreover, there is objective evidence that Respondent Bailey received payment from the contractor, Belsaas & Smith, for work performed on the Cle Elum project.

Wings' project manager to inform him that Respondent Bailey was unable to perform the work and suggested other companies that could perform the job. Again, I do not credit Respondent Bailey's denials that it was awarded a contract to work on the Buffalo Wild Wings project. It would make absolutely no sense for Robert to inform the project manager that his company could not complete work on the project if it had not been given the contract. Ultimately, Respondent CB was awarded the contract after Respondent Bailey withdrew from the project; and Robert worked on the job as the master electrician. Christopher supervised the job and Chris Bush (Bush) and April Hastings (Hastings) worked as electricians on the project.

E. Establishment of Respondent CB and an Overview of its Operation

In high school, Christopher began working for Respondent Bailey cleaning the shop and running deliveries. By training in the field as a trainee electrician with journeymen electricians, in 2004 he became a permanent employee of the company. In his role, about once a month Christopher helped the electricians in the field. Gradually, he acquired more responsibilities such as bidding for contracts and "helping out in the office." (Tr. 127).

In summer 2014, Robert informed Christopher that he could no longer maintain the business and was going to file in bankruptcy court to dissolve it. Consequently, Christopher began applying for positions, outside of the electrical contracting field, with other companies but was not successful. Since Christopher could not find other employment, he and Robert had a conversation about Christopher forming an electrical contracting business. Robert and Christopher "came up with the idea that [Robert] would use [his] master license, and [Christopher] would open up a shop." (Tr. 76).⁸ Robert and Sally gave Christopher the "seed money" to start the company. Consequently, Respondent CB, a limited liability company, was established on September 19, 2014 to perform electrical work for residential and small commercial projects. Respondent CB was established as a non-union company. Christopher and his wife, Amelia Bailey (Amelia) are the owners. While Christopher is still a trainee electrician, he and Amelia are responsible for the overall management of the company. Additionally, Amelia performs payroll, accounting, and other duties that are required of a co-owner of the company. Respondent CB also employs Robert who is the master electrician and holds the administrator's license for the company. The following employees round out Respondent CB's staff: Christian Bush (journeyman), Hastings (trainee), Matthew Bush, and Justin Davis. Hastings, who previously worked for Respondent Bailey in the same capacity but as an employee of Respondent CB, is also responsible for maintaining the company van. Although Respondent CB was established on September 19, 2014, Chris continued to receive a paycheck from Respondent Bailey until December 24, 2014.⁹

⁸ Robert insisted that he and Christopher did not come up with the idea of Christopher opening an electrical company and using his administrator's license. I do not credit his testimony on this point. Although he attempted to minimize the conversation, he acknowledged that in his affidavit to the Board he attested that he spoke with Christopher about the idea of him opening his own electrical contracting firm and using Robert's master license. His attempt to dismiss his statement as inartfully worded by a non-attorney is not credible.

⁹ Chris testified that he could not recall when he stopped working for Respondent Bailey, but admits that he was working for the company in August 2014. Since he cannot recall when his employment ended with Respondent Bailey, I must rely on the evidence, his paychecks from the company, which

Respondent CB maintains its office in a portion of Robert's and Sally's home but does not pay them rent. Respondent CB also uses Christopher's brother's garage to store miscellaneous electrical and other equipment. Additionally, in December 2014, Respondent CB
 5 acquired possession of some of Respondent Bailey's equipment and vehicles, while negotiating with the bank to purchase the items at a fair market value. On February 13, 2015, Respondent CB paid Respondent Bailey \$15,700 for a truck and van. In addition, on February 2, 2015, it purchased various tools and equipment of Respondent Bailey for \$4945. (R Exh. 2.) It is undisputed that Respondents Bailey and CB did not share the same business telephone numbers,
 10 facsimile numbers, accounting payroll software, department of revenue (DOR) number, labor and industries number, insurance, bond, or unified business identification (UBI) number.

F. Respondent CB's Projects since Its Inception

15 Since its inception, Respondent CB has been awarded contracts totaling \$766,737.03. In order to grow the business, Christopher began advertising on the internet, accepting referrals from family and friends, and bidding on jobs from the Yakima Plan Center's website. Respondent CB was also modestly successful in winning bids for projects from some of Respondent Bailey's former customer base. An example is when Respondent Bailey's former
 20 employee, Gartier, was contacted by a customer trying to get in touch with it to work on a project. Gartier informed the customer that Respondent Bailey was out of business but suggested that the customer contact Respondent CB to perform the project.

Respondent CB also successfully bid on at least two contracts that Respondent Bailey
 25 had been awarded, Buffalo Wild Wings and the Cle Elum Railroad Street projects. Around October 2014, Respondent CB was awarded the Buffalo Wild Wings contract to install the regular voltage. The contract was for about \$147,908.22. D.A. Bentley Construction, LLC was the general contractor on the project and Respondent CB's customer. Bids were also awarded to other electrical contractors to perform different aspects of the electrical work for the Buffalo
 30 Wild Wings project. Respondent CB also received a contract to install street lights and "pull the wire" for the Cle Elum Railroad Street project. Belsaas & Smith was the general contractor and Respondent CB's customer. (Tr. 152, GC Exh. 13). Respondent CB was paid \$28,378.49 for completing its portion of the project. While serving as a subcontractor on the Cle Elum project, Christopher continued to be employed by Respondent Bailey. As noted earlier in this decision,
 35 Respondent Bailey had initially been awarded a contract on the Cle Elum project before withdrawing. Respondent Bailey provided piping and conduit, some of which was later installed by the general contractor.¹⁰

show that his employment with Respondent Bailey ended on December 24, 2014.

¹⁰ Respondents Bailey and CB denied that they worked on the Cle Elum project together. I credit their testimony on this point because the General Counsel failed to provide evidence sufficient to contradict them. Although GC Exh. 12 does show numerous payments to Respondent Bailey for a period beginning in June 2014, there is nothing to indicate with any specificity that the payments were for the Cle Elum project that Respondent CB was also working. Christopher provided undisputed testimony that there was a gap in time between Respondent Bailey notifying the general contractor that it was withdrawing from the job and Respondent CB taking on the work.

G. Union's February 2, 2015 Request to Respondent Bailey for Information

5 In the fall of 2014, Marsh was told by several union members that Respondent Bailey told them they were going to be “laid off” because it was permanently closing. One of the Union’s business representatives drove past Respondent Bailey’s office and confirmed the closing. Subsequently, the Union learned that Respondent CB had been established. Consequently, by letter dated February 2, 2015, Marsh sent Respondent Bailey a letter on behalf of the Union requesting that it respond to a series of attached questions. The Union informed Respondent Bailey that it needed the specific information to assist it in “determining whether CB Electric is an alter ego of Bailey Electric . . .” (GC Exh. 8). Marsh requested that Respondent Bailey provide the information by February 20, 2015. By letter to Marsh dated February 4, 2015, Robert responded on behalf of Respondent Bailey noting the company was no longer licensed to operate and was closed for business. Moreover, Robert, on behalf of Respondent Bailey, denied any knowledge regarding the operation of Respondent CB and refused to respond to the attached questionnaire. As of the date of the hearing in this matter, Respondent Bailey has failed and refused to provide the Union with the requested information.

H. Union's February 2, 2015 Request to Respondent CB for Information

20 By letter dated February 2, 2015, Marsh sent Respondent CB a letter on behalf of the Union noting that Respondent CB was not paying into the Union’s fringe benefit trust fund; and requesting that it respond to a series of attached questions. The letter noted that it considered Respondent CB to be an alter ego of Respondent Bailey, and therefore bound by the CBA between the Union and Respondent Bailey. Marsh continued by demanding that Respondent CB provide the Union with “a listing of the names of all CB Electric employees from October 1, 2014 to date. For each individual, please state their dates of employment, rate of pay, and identify any benefit contributions made on their behalf.” (GC Exh. 10). Marsh informed Respondent CB that the information was needed to determine whether it was violating the CBA by failing to pay into the Union’s fringe benefit trust fund. By letter dated February 5, 2015, Respondent CB refused to provide the requested information or respond to the attached questionnaire. Respondent CB also denied that it was an alter ego of Respondent Bailey. The letter concluded by accusing the Union of harassment because of its request for information and questionnaire, and threatened to take “necessary action” to recover any expenses associated with “this matter.” (GC Exh. 11) . As of the date of the hearing in this matter, Respondent CB has failed and refused to provide the Union with the requested information.

DISCUSSION AND ANALYSIS

40 *A. ALTER EGO STATUS*

45 The General Counsel argues that an alter ego relationship exists between Respondents Bailey and CB within the meaning of the Act. To buttress its argument, the General Counsel contends that Respondent Bailey subsidizes Respondent CB; Respondent CB employs the same managers and most of the same employees that worked for Respondent Bailey; and Respondent Bailey’s “numerous” attempts to sever ties with the Union is proof of unlawful motivation. Respondents Bailey and CB counter that they do not meet the factors for establishing an alter ego

relationship because the scope of their businesses and operations are different; there is not common management; there are no common financial controls; Robert’s status as a master electrician/administrator is irrelevant; and there was no unlawful motivation behind the decision to establish Respondent CB.

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The Board has held that typical factors to consider when determining whether an alter ego relationship exists between entities are if the entities have substantially identical management, supervision, business purposes, operations, equipment, customers, and ownership. *E.L.C. Electric, Inc.*, 359 NLRB No. 20 (2012); *McCarthy Construction*, 355 NLRB 50, 51 (2010); *Deer Creek Electric, Inc.*, 362 NLRB No. 171 (2015). These factors alone are not determinative and not all the indicia have to exist for a finding that one entity is the alter ego of another. *Centinela Hospital Medical Center*, 363 NLRB No. 44, slip op. at 1 fn. 1 (2015); *Standard Commercial Cartage, Inc.*, 330 NLRB 11, 13 (1999). Unlawful motivation, while not a required factor, is considered in determining whether the reason for the establishment of the suspected alter ego relationship was to avoid obligations under the Act. *Deer Creek Electric*, supra.; *A.D. Conner, Inc.*, 357 NLRB 1770, 1785 (2011). A mere “technical change in the structure or identity of the employing entity, frequently to avoid the effect of the labor laws, without any substantial change in its ownership or management” gives rise to the inference that an alter ego relationship exists and “is subject to all of the legal and contractual obligations of the predecessor.” *Howard Johnson Co. v. Hotel & Restaurant Employees Detroit Local Joint Executive Board*, 417 U.S. 249, 259 fn. 5 (1974).

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1. Lack of Substantially identical ownership

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The Board has consistently held that a family relationship alone is not sufficient to establish substantially identical ownership between two companies. A more important factor to consider is “the degree of financial control the owner of one company has over the other company.” *US Reinforcing, Inc.*, 350 NLRB 404, 404 (2007) (citing *Liberty Source W*, 344 NLRB 1127, 1136 (2005), quoting *Fallon-Williams, Inc.*, 336 NLRB 602, 602 (2001)). The Board stated:

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[A] finding of substantially identical ownership is not compelled merely because a close familial relationship is present between the owners of two companies. Rather, each case must be examined in light of all the surrounding circumstances. In particular, the Board focuses on whether the owners of one company retained financial control over the operations of the other. [Internal citations omitted.]

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The record establishes that Respondent Bailey was solely owned by Robert and Sally. Moreover, there is nothing in the record to prove that anyone other than Christopher and Amelia owned or had a financial interest in Respondent CB. None of the witnesses testified, nor was there any objective evidence to establish that the principals in Respondent Bailey owned stock or other financial interest in Respondent CB or the reverse. It is undisputed that Robert and Sally gave Chris “seed money” to form Respondent CB. However, there is no evidence to show the amount of the money they gave Chris or whether he repaid it. It is, therefore, impossible for me to determine if this investment was significant enough to constitute a financial interest in Respondent CB or was rather a gift of nominal value (enough money to cover the cost of filing for a certificate of formation with the state). The record is devoid of any persuasive evidence

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that there is common family ownership or that Respondents Bailey and CB are controlled by an individual owner (Robert or Chris). Consequently, I find that substantial identity of ownership has not been established.

5 2. Substantially Identical Business Purpose and Operations

Respondents Bailey and CB are electrical contractors. The primary difference in their operations concerns volume of business. During the period from approximately January 1, 2014 to October 1, 2015, Respondent Bailey performed jobs worth about \$3.2 million as opposed to Respondent CB's sales of \$766,737. Consequently, Respondent Bailey worked on more projects simultaneously than Respondent CB. Respondent CB also performs electrical projects for commercial projects and residential units, whereas Respondent Bailey primarily worked on commercial and industrial projects. Nonetheless, both Respondents perform electrical work for commercial customers and municipalities with significant overlap in their targeted market. There was also no evidence that the skills necessary to work on the projects differed significantly between the Respondents. I therefore find that there is substantial identity in the business purpose and operations of the two entities.

20 3. Lack of Substantially Identical Equipment

It is undisputed that Respondents did not share the same business telephone or facsimile numbers, UBI number, labor and industries number, bond, and insurance. Respondent CB operated out of a different office space and used a different storage space for equipment than those used by Respondent Bailey. However, Respondent CB purchased and used a significant amount of the same equipment previously owned by Respondent Bailey. As a result of its Chapter 7 bankruptcy filing, Respondent Bailey had to liquidate its assets which included equipment and company vehicles. The evidence shows that Respondent CB purchased from Respondent Bailey a van, truck, office equipment and tools. (R Exh. 3) . The purchase price was agreed on after Respondent CB's negotiations with Respondent's creditor bank, Homestreet Bank, over a fair market value for the items. Although Robert and Chris provided uncontroverted testimony that Homestreet Bank had to approve the price for the vehicles, equipment and tools, it should be noted that the cashiers' checks were made payable directly to "Bailey Electric." (R Exh. 3) . Nonetheless, I find that the purchases were arms-length transactions because they were purchased for a fair market value which was determined by a third-party seller, Homestreet Bank.

Based on the above, I find that vehicles and equipment transactions were made at arms-length; and therefore, the evidence does not establish that the Respondents owned substantially identical equipment. *Deer Creek Electric, Inc.*, at 2.

40 4. Lack of Substantially Identical Customers

Although Respondents performed most of their work in the same geographic location, their customer base differed in some areas. As previously noted, Respondent CB performed small commercial projects and residential work. There is, however, no testimony or other evidence that Respondent Bailey had residential customers. Despite these differences, Respondents served some of the same customers. For the period at issue, Respondent Bailey

served about 60 customers and Respondent CB had approximately 53 customers. Respondents had about 11 customers in common. Even assuming, as the General Counsel argues, that Respondent Bailey was instrumental in Respondent CB acquiring two of their former customers (D.A. Bentley—Buffalo Wild Wings project; Belsaas & Smith—Cle Elum Railroad Street), I find that the numbers are insignificant considering the totality of the evidence. The Board has normally not found alter ego status when less than half of the alleged alter egos customers were also customers of the former company. *Polis Wallcovering, Inc.*, 323 NLRB 873, 876 (1997). Accordingly, I find that there is insufficient evidence to establish Respondents had substantially identical customers.

5. Lack of Substantially Identical Management/Supervision

While Robert was actively involved in the day-to-day management of Respondent Bailey, there is no evidence that Sally (co-owner and shareholder) had an active role in the company operations. Robert managed the financial affairs of the company, retained final hiring authority for personnel, negotiated with the Union to terminate the CBA, and oversaw work on the awarded contracts. He also interacted with the Union when there were conflicts involving bargaining unit employees. The General Counsel failed to submit any evidence or make a persuasive argument that Respondents had substantially identical management and/or supervisors. The General Counsel's primary argument seems to be that this factor is met because "CB Electric cannot function as an electrical contracting company without Bob Bailey's administrator's license." (GC Br. 10). Christopher admitted that Respondent CB needed a journeyman with an administrator's license for the entity to conduct business as an electrical contractor. Nonetheless, there is no evidence that Robert had management or supervisory duties as a result of his administrator's license or status as a master electrician. There was simply no testimony detailing Robert's duties as an employee of Respondent CB. The record is devoid of evidence that as a Respondent CB employee Robert hired or fired people, set wages, managed the financial books, or filed the company's taxes. Hastings was the only former Respondent Bailey employee (other than Christopher, Amelia, and Robert) that was hired to work for Respondent CB. The record establishes that she is a trainee who has or had no supervisory or management duties for either Respondent. Based on the totality of evidence, I find that there is insufficient evidence to conclude that the management and supervision of Respondents are substantially identical.

6. Lack of Evidence of a Purpose to Evade Responsibilities Under the Act

The General Counsel argues that Respondent Bailey's attempts to "terminate its bargaining relationship with the Union warrants a finding that Bailey Electric's closure and CB Electric's creation occurred in order to sever ties with the Union." (GC Exh. 11). According to the General Counsel, the familial relationship combined with Christopher's knowledge of Robert's desire to operate as an "open shop" is sufficient to establish that Respondent CB was created so that Respondent Bailey could avoid its responsibilities under the Act. I disagree.

The General Counsel asserts that it is beneficial to "the Bailey family in having CB Electric operate as a nonunion firm; it allows Bob and Chris Bailey to continue to earn their livelihoods as electrical contractors without the high cost of a union contract or union representation." (GC Br. 11). Although Respondent CB's creation as a non-union company

might have relieved some of Robert and Christopher's financial pressures, it does not, given all the evidence, establish unlawful motivation. It is undisputed that Respondent Bailey began experiencing financial difficulties in about 2012, ultimately resulting in a Chapter 7 bankruptcy filing; and that Christopher's attempts to find other employment, outside of the electrical contracting field, was unsuccessful. Although Robert was unhappy with the quality of some employees sent by the Union, resulting in the loss of at least one longtime customer, the record shows that economic factors (and possibly a missed filing deadline by his bankruptcy attorney) forced Respondent Bailey to close. Consequently, I do not find anything nefarious about Christopher opening up his own electrical contracting firm after being unable to find employment; and hiring his unemployed father to serve as the master electrician/administrator that was a necessity for the company to operate. I find there is no evidence of a purpose to evade responsibilities under the Act.

Accordingly, I find that the evidence fails to establish that an alter ego relationship existed between Respondent Bailey and Respondent CB. As discussed above, there is no substantially identical ownership, equipment, customers, management and supervision or unlawful motivation.

B. RESPONDENTS BAILEY AND CB REPUDIATION AND FAILURE TO CONTINUE THE TERMS OF THE CBA

Since I have previously found no alter ego relationship exists between Respondents Bailey and CB, Respondent CB is not obligated to continue to: make payments to the Union's Inland Empire Electrical Trust, the Retirement Trust NECA/IBEW, the IBEW 9th District Pension Plan, and the National Electrical Benefit Plan; deduct and forward working dues to the Union's Financial Secretary; and comply with the Union's Inside Referral Procedure.

Respondent Bailey, a signatory to the CBA, however, is bound by it until May 31, 2016. Consequently, Respondent Bailey's admitted decision to stop making payments to the above listed union funds, and failure to deduct and forward union dues to the Union and comply with the Union's Inside Referral Procedure violate §§ 8(a)(5) and (1) of the Act. Simply because Respondent Bailey had not engaged in business since about September 15, 2014, is not a valid reason for failing to continue the terms and conditions of an effective CBA. *John Deklewa & Sons, Inc.*, 282 NLRB 1375, 1389 (1987) *enforced sub nom. Int'l Ass'n. of Bridge Workers, Local 3 v. NLRB*, 843 F.2d 770 (3rd Cir.), *cert denied* 109 S. Ct. 222 (1988); *McKenzie Eng'g Co. v. NLRB*, 303 F.3d 902, 908 (8th Cir. 2002).

C. FEBRUARY 2, 2015 REQUESTS FOR INFORMATION FROM RESPONDENTS BAILEY AND CB

A union bears the burden of establishing relevance when it requests information to determine whether an alter ego relationship exists between entities. *Reiss Viking*, 312 NLRB 622, 625 (1993); *Bentley-Jost Electric Corp.*, 283 NLRB 564, 568 (1987), citing *Walter N. Yoder & Sons*, 754 F.2d 531, 536 (4th Cir. 1985). Mere suspicion is not sufficient for a union to meet its burden that an alter ego or single employer relationship exists. Rather, it must have an objective, factual basis for believing that the relationship exists. See *M. Scher & Son, Inc.*, 286 NLRB 688, 691 (1987). However, Board law does not require the union to disclose those facts to the employer at the time of the information request. *Baldwin Shop 'N Save*, 314 NLRB 114, 121 (1994); *Corson & Gruman*, 278 NLRB 329, 333-334 fn. 3 (1986). Rather, it is sufficient that the

General Counsel demonstrates at the hearing that the union had, at the relevant time, a reasonable belief.

5 If the Union had a reasonable objective basis for believing that an alter-ego relationship exists between Respondents Bailey and CB, it is entitled to the information it requested from Respondent Bailey. *Cannelton Industries*, 339 NLRB 996 (2003); *Contract Flooring Systems, Inc.*, 344 NLRB 925 (2005); *Z-Bro, Inc.*, 300 NLRB 87, 90 (1990). Since, however, I found that Respondent CB is not an alter ego of Respondent Bailey and did not have a CBA with the Union, the Union is not entitled to the information it requested from Respondent CB. However, 10 Respondent Bailey and the Union do have a contractual agreement that, despite Respondent Bailey's dissolution, is effective until May 31, 2016. Therefore, I must determine whether Respondent Bailey unlawfully failed and refused to provide the Union with the requested information.

15 The Union sent Robert a letter requesting that he respond to a series of questions to assist the Union in determining if an alter ego relationship existed between Respondents Bailey and CB. By letter dated February 4, 2015, Robert responded on behalf of the corporation denying the factors existed for an alter ego relationship between the two entities and refusing to address the attached list of questions. (GC Exh. 9) . Marsh acknowledged that he has no basis to dispute 20 that Robert is a non-supervisory employee of Respondent CB; is unaware of who manages or makes labor decisions for Respondent CB; does not know if Respondent CB is owned by anyone other than Christopher and Amelia; and has never reviewed the contracts or bids awarded to Respondent CB. Despite these unknowns, Marsh sent the requests for information to the Respondent because he learned from some union members that Respondent Bailey had ceased 25 doing business; and subsequently learned that Respondent CB was established as a non-union electrical contractor. The General Counsel argues that the Union had a reasonable objective basis for its belief that an alter ego relationship existed between the Respondents because of the closing of Respondent Bailey and "notice from Bailey Electric's employees informing the Union that [they] were being laid off . . . the Union had reasonable ground to believe that Bailey 30 Electric was diverting bargaining unit work [to] a nonunion Enterprise." (GC Br. 13) .

35 Considering the low standard ("reasonable objective basis") that has been established for determining if a union should be given information involving an alleged alter ego relationship, I find that Respondent Bailey must provide the requested information. The objective facts are: Robert made several attempts to terminate the CBA and made known his desire to operate as an "open shop" if he was to continue operating Respondent Bailey; Robert ultimately dissolved Respondent Bailey and subsequently his son and former employee, Christopher, established Respondent CB; a few of Respondent Bailey's former employees went to work for Respondent CB; and Respondent CB was awarded contracts by at least two of Respondent Bailey's former 40 customers. Based on these facts, I find that the Union has a reasonable objective basis for believing that an alter-ego relationship exists between Respondents Bailey and CB, and it is entitled to the information it requested from Respondent Bailey.

45 Accordingly, I find that Respondent Bailey has violated Sections 8(a)(5) and (1) of the Act as set forth above. However, I recommend dismissal of all charges against Respondent CB since I have found that no alter ego relationship existed between the two entities.

CONCLUSIONS OF LAW

5 1. The Respondent, Bailey Electric, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Respondent, CB Electric, LLC is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

10 3. The International Brotherhood of Electrical Workers (IBEW) Local 112 is a labor organization within the meaning of Section 2(5) of the Act.

15 3. By failing and refusing to fully provide relevant information requested by the Union in writing on or about February 2, 2015, the Respondent has engaged in an unfair labor practice affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

20 4. By failing to and refusing to make payments to the Union's Inland Empire Electrical Trust, the Retirement Trust NECA/IBEW, the IBEW 9th District Pension Plan, and the National Electrical Benefit Plan; deduct and forward working dues to the Union's Financial Secretary; and comply with the Union's Inside Referral Procedure, Respondent Bailey has unlawfully repudiated and failed to continue the terms of the effective CBA in violation of Sections 8(a)(5) and (1) of the Act.

25 4. The above violations are unfair labor practices that affect commerce within the meaning of Section 2(6) and (7) of the Act.

5. The Respondent has not violated the Act except as set forth above.

30 REMEDY

35 Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent will be ordered to produce the requested and relevant information, and communicate to employees by electronic post and U.S. mail the attached Appendix and notice.

40 The Respondent will be ordered to make whole its unit employees by making all delinquent contributions, having accrued since September 15, 2014, to the Union's Inland Empire Electrical Trust, the Retirement Trust NECA/IBEW, the IBEW 9th District Pension Plan, and the National Electrical Benefit Plan; deduct and forward working dues it failed to pay to the Union's Financial Secretary; and reimburse the unit employees for any loss of income they experienced from Respondent Bailey's failure to comply with the Union's Inside Referral Procedure. Respondent Bailey shall make all such delinquent contributions since September 15, 45 2014, including any additional amounts due the funds, unit employees, and/or to the Union's Financial Secretary in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7

(1979). Respondent Bailey will be ordered to reimburse unit employees for any expenses ensuing from its failure to make the required fund contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891, 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981, computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010), enf. denied on other grounds sub. nom. *Jackson Hospital Corp. v. NLRB*, 647 F.3d 1137 (D.C. Cir. 2011).

The Respondent shall file a report with the Social Security Administration allocating any applicable backpay to the appropriate calendar quarters. The Respondent shall also compensate the discriminatees for the adverse tax consequences, if any, of receiving one or more lump-sum backpay awards covering periods longer than 1 year, *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB No. 10 (2014).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹¹

ORDER

The Respondent, Bailey Electric, Inc., in Yakima, Washington, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to provide the Union, the International Brotherhood of Electrical Workers Local 112, information requested that is necessary and relevant to its role as the exclusive representative of the employees in following unit:

All employees performing inside electrical work within the Union's jurisdiction.

(b) Failing and refusing to make payments to the Union's Inland Empire Electrical Trust, the Retirement Trust NECA/IBEW, the IBEW 9th District Pension Plan, and the National Electrical Benefit Plan; deduct and forward working dues to the Union's Financial Secretary; and comply with the Union's Inside Referral Procedure.

(c) In any like or related manner, interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the purposes and policies of the Act.

¹¹ 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.

(a) Within 14 days from the date of the Board's Order, furnish the Union with all information it requested in writing on February 2, 2015.

5 (b) Within 21 days from the date of the Board's Order, make whole its unit employees by making all delinquent contributions, having accrued since September 15, 2014, to the Union's Inland Empire Electrical Trust, the Retirement Trust NECA/IBEW, the IBEW 9th District Pension Plan, and the National Electrical Benefit Plan; deduct and forward working dues it failed to pay to the Union's Financial Secretary; and reimburse the unit employees for any loss of income they experienced from Respondent Bailey's failure to comply with the Union's Inside Referral Procedure. Respondent Bailey shall make all such delinquent contributions since 10 September 15, 2014, including any additional amounts due the funds, unit employees, and/or to the Union's Financial Secretary.

15 (c) Within 14 days after service by the Region, post at its facility in Yakima, WA copies of the attached notice marked "Appendix."¹² Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. In addition to physical posting of paper notices, the notices shall be 20 distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these 25 proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 15, 2014.

30 (d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

35 Dated, Washington, D.C. April 22, 2016



Christine E. Dibble (CED)
Administrative Law Judge

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¹² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT repudiate the terms of an effective collective-bargaining agreement or fail to continue in effect the terms and conditions of employment of the Unit contained in said collective-bargaining agreement; or fail and refuse to furnish the Union with requested information that is relevant and necessary to the Unions' performance of its function as the collective bargaining representatives of the employees in the following unit:

All employees performing inside electrical work within the Union's jurisdiction.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed to you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, furnish the Union with the information it requested on February 2, 2015.

WE WILL within 21 days from the date of the Board's Order make the Union whole for the payments the Respondent Bailey failed to make to the Union's Inland Empire Electrical Trust, the Retirement Trust NECA/IBEW, the IBEW 9th District Pension Plan, and the National Electrical Benefit Plan; make the Union whole for missed deductions and forward working dues Respondent Bailey failed to make to the Union's Financial Secretary; and reimburse for any loss of income the Union may have experienced for Respondent Bailey's failure to comply with the Union's Inside Referral Procedure. The above reimbursements must include applicable interest.

WE WILL continue in effect the terms and conditions of employment of the Unit contained in the effective collective-bargaining agreement.

BAILEY ELECTRIC, INC.
(Employer)

DATED: _____ **BY** _____
(Representative) **(Title)**

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

915 2nd Avenue, Room 2948, Seattle, WA 98174-1078
(206) 220-6300, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at www.nlr.gov/case/19-CA-146474 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, SE., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (206) 220-6284.