

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION

BRISTOL INDUSTRIAL CORPORATION	:	
and C.O. SABINO CORPORATION	:	
(Single and Joint Employers)	:	
	:	
and	:	Case No. 04-CA-148573 and
	:	04-CA-153165
METROPOLITAN REGIONAL COUNCIL	:	
OF CARPENTERS, UNITED BROTHERHOOD	:	
OF CARPENTERS AND JOINERS OF AMERICA:	:	
OF AMERICA, SOUTHEASTERN	:	
PENNSYLVANIA, STATE OF DELAWARE	:	
AND EASTERN SHORE OF MARYLAND	:	

RESPONDENTS' EXCEPTIONS TO THE DECISION OF THE
ADMINISTRATIVE LAW JUDGE

THE HONORABLE SUSAN A. FLYNN
Administrative Law Judge
National Labor Relations Board
Division of Judges
1015 Half Street, SE
Washington, DC20570-0001

NATIONAL LABOR RELATIONS BOARD
Office of the Executive Secretary
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EXCEPTIONS

Respondents Bristol Industrial Corporation (“Bristol”) and C.O. Sabino Corporation (“Sabino”), by and through their counsel, Edward H. Wiley, Esquire, file the following Exceptions to the December 2, 2016 Decision of the Administrative Law Judge, The Honorable Susan A. Flynn.

The Respondents’ Exceptions extend to the Statement of the Case; the Findings of Fact; the Analysis; the Conclusions of Law; and, by extension, the Remedy, with particular emphasis as to the irrelevance of NLRB v. Gissel Packing Company, 395 U.S. 575 (1969).

Exceptions - Statement of the Case

There was no allegation that Respondents had the police eject the complainants “due to their concerted activity”.

On March 20th, the complainants had already been “discharged”; and were being disruptive and refused to vacate the employer’s premises. When Verissimo questioned Dougherty as to why he did not have his tools, Dougherty started using the “F” word; saying he knew Verissimo was not going to give them work; and cussing out Ralph Shelby who called the owner who, in turn, told Shelby to call the police. (N.T., pp. 285-287). The police were called for the same reason on March 30th. (N.T., pp. 289-290).

The calling and presence of the police had nothing to do with the complainants “protected concerted activity”. It was entirely related to their insubordinate and disruptive behavior after they had been “discharged”.

The uttering or availing themselves of the words “union”, “concerted activity” and “Section 7 rights” does not imbue the person or persons uttering them with the right

and/or privilege to trespass, to be insubordinate, insulting or disruptive of the employer's workplace, or to "ransack the unit. (N.T., p 388)..

Exceptions – Background

It is not even remotely accurate that "Sabino did not perform certain of the duties specified in the subcontracts". Sabino did the cabinetry, the flooring, the finishing, the insulation, the window installation, the doors, the carpets, the bathrooms and the demolition. (N.T., p. 36).

That deliberate misstatement of the facts was an attempt to support the complainants' "single employer" position.

Exceptions – Analysis – Are the Respondents a Single Employer?

The four (4) criteria for identifying two nominally separate entities set out in HydroLines, Inc., 305 NLRB 416 (1991) do not apply in this case.

The operations of Bristol and Sabino were not interrelated. For example, it is not true that the complainants were hired for the WHA site without having been interviewed or selected by Verissimo". Verissimo interviewed both complainants for Handyman positions at the WHA job site. (N.T., pp. 280-281). Even if the record showed that Verissimo did little other than deliver materials, that does not reflect any shortcoming on his part as to the single employer theory. He was the owner. He did not have to work as an employee would work.

Enuha did not substantially manage Sabino, as well as Bristol. That flat assertion is not supported by the record.

Enuha did not substantially control labor relations at both companies. The record is clear, as indicated by the ALJ, that Verissimo told Dougherty that although he had

been fired by Bristol, he was still employed by Sabino. It is also clear that Verissimo subsequently laid off Dougherty and Burroughs, and fired Dougherty for insubordination; and laid off Burroughs a second time.

Not only was there no common ownership of Bristol and Sabino, but also there was no lack of “arm’s length” dealings between the companies. In addition to determining whether the two companies have substantially identical ownership, management and supervision, business purpose, operation, customers and equipment (which they did not), the Board also looks as to whether the purpose behind the creation of the alleged alter ego was legitimate or whether, instead, its purpose was to evade responsibilities under the Act. US Reinforcing, Inc., 350 NLRB 404 (2007).

Clearly, Sabino and Bristol existed separately long before the “union came acalling”.

Exceptions – Respondents did not violate the Act by Terminating and Laying Off Dougherty, and Laid Laying Off Burroughs on March 20th and 30th.

Simply stated, Dougherty was terminated by Bristol and Sabino for insubordination; and both he and Burroughs were laid off for lack of work. It is clear that no anti-union animus was indicated because Sabino called both back to work; and they refused to come in because they had planned a fishing trip. Rather than terminating them he gave them until the following Monday to return. Appearing without tools was simply another attempt to get Sabino to act in a manner they could characterize as violative of Section 7. He did not.

As for Gissel Packing Company, as indicated above, it is irrelevant because that type of remedy would be inappropriate here even if there had been a minor violation of the Act, which there was not. The three (3) consolidated cases, Gissel, Heck’s Inc. and

General Steel Products, Inc. involved the egregious conduct of employers' engaged in during the course of union organizing campaigns.

There was no organizing campaign in this case. There were simply two employees who were attempting to take undue advantage of their recent association with a union by focusing on one owner's voicing of her opinion about unions; and who were given more of an opportunity to retain their employment than was warranted.

Respectfully submitted,


EDWARD H. WILEY, ESQUIRE

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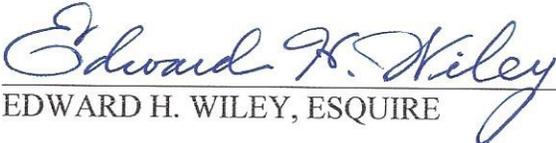
CERTIFICATION OF SERVICE

The undersigned counsel for Respondents Bristol Industrial Corporation and C.O. Sabino Corporation hereby certifies that on December 30, 2016 a true and correct copy of Respondents' Exceptions to the December 2, 2016 Decision of the Administrative Law Judge was served by E-Filing on the National Labor Relations Board's Office of the Executive Secretary; and served on January 3, 2017 by E-Mail on the National Labor Relation Board's Office of the Regional Director (Region 4).

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