

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8

GLASS FABRICATORS, INC. AND) CASE 08-CA-174567
GLASS AND METAL SOLUTIONS, INC.,)
NOT ALTER EGOS)
AND)
INTERNATIONAL UNION OF PAINTERS) CLOSING BRIEF AND PROPOSED
& ALLIED TRADES DISTRICT COUNCIL 6) FINDINGS AND CONCLUSIONS BY
) GLASS AND METAL SOLUTIONS, INC.

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I. BRIEF.

A. INTRODUCTION.

The parties do not dispute that **Glass Fabricators, Inc.** is a party to a collective bargaining agreement (the “Contract”) with Local 181 of District Council 6, Painters and Allied Trades (the “Union”). The parties also do not dispute that, absent an alter ego determination, **Glass and Metal Solutions, Inc.** is not a party to the Contract. It is undisputed that Glass and Metal Solutions, Inc. has never been a part of the Construction Employers Association (CEA) and has never signed a contract with any Union (including Local 181 of District Council 6, Painters and Allied Trades). [GC Exhibit 1(i), Affidavit of Dale Dotson, attached to Respondent’s Motion for Summary Judgment, (hereinafter “Aff. Dale Dotson”), at ¶ 24].

Therefore, the Complaint, insofar as it pertains to Glass and Metal Solutions, Inc., is wholly dependent upon a finding that Glass and Metal Solutions, Inc. is not truly a separate corporation but is, instead, merely the alter ego of Glass Fabricators, Inc. On the other hand, if Glass and Metal Solutions, Inc. is not merely the alter ego of Glass Fabricators, Inc., then Glass and Metal Solutions, Inc. would not have any obligations to the Union related to the Contract.

If the companies are not alter egos, Digital is correct and we do not have jurisdiction, as the case no longer involves the interpretation of a CBA... If, on the other hand, they are alter egos, we have jurisdiction and, based on that finding, Digital is subject to the provisions of the CBA...

In re Staying the Arbitration & Vacating a Notice of Intention to Arbitrate Between Armen Digital Graphics, Ltd. & Amalgamated Lithographers of Am., Local One, S.D.N.Y. 96 Civ. 5844 (LBS), 1997 U.S. Dist. LEXIS 11938, at * 6 (Aug. 8, 1997), and at * 22 (“Since Local One has failed to prove that Digital is the alter ego of Graphics, Digital cannot be viewed as a party to the CBA between Local One and Graphics”).

B. COMPLAINANT HAS THE BURDEN OF PROVING SUBSTANTIALLY IDENTICAL MANAGEMENT, BUSINESS PURPOSE, OPERATION, EQUIPMENT, CUSTOMERS, SUPERVISION AND OWNERSHIP.

The corporate identities of the companies cannot be set aside on the basis of an alter-ego determination unless it is first proved that the two companies have “‘*substantially identical*’ management, business purpose, operation, equipment, customers, supervision and ownership.” ADF, Inc., & Its Alter Ego Adla, LLC & Int’l Bhd. of Teamsters, Local Union No. 251, 355 NLRB 81, 83 (2010)(emphasis added); *see also* Bd. of Trustees of Plumbers v. R. & T. Schneider Plumbing Co., S.D.Ohio No. 1:13-CV-858, 2015 WL 4191297, *16 (July 10, 2015), *citing* Rd. Sprinkler Fitters Local Union No. 669, U.A., AFL–CIO v. Dorn Sprinkler Co., 669 F.3d 790, 794 (6th Cir. 2012).

... "the hallmarks of the alter ego doctrine include 'whether the two enterprises have substantially identical management, business purpose, operation, equipment, customers, supervision, and ownership.'" Truck Drivers Local 807, 944 F.2d at 1046.

In re Staying the Arbitration & Vacating a Notice of Intention to Arbitrate Between Armen Digital Graphics, Ltd. & Amalgamated Lithographers of Am., Local One, S.D.N.Y. 96 Civ. 5844 (LBS), 1997 U.S. Dist. LEXIS 11938, at * 23 (Aug. 8, 1997). Among the many factors, an “intent to evade” the obligations of a collective bargaining agreement can be considered. Gen. Longshore Workers, Local 1988 v. Pate Stevedore Co., N.D.Fla. CASE NO. 91-30292-RV, 1993 U.S. Dist. LEXIS 18638, at *14-15 (Dec. 30, 1993).

C. EVEN PROOF OF “MANY SIMILARITIES” BETWEEN TWO COMPANIES IS NOT SUFFICIENT TO SUPPORT AN ALTER-EGO DETERMINATION.

Even when it is proven that there are many similarities between two companies, that partial showing would not be enough to prove that they are alter egos of each other under the

standard. Instead, the standard places a high bar for ignoring the separate corporate identities, requiring proof that the two companies are “*substantially identical*.”

The NLRB utilizes a seven-prong test to determine whether a new business is a disguised continuance of the old business in Crawford Door Sales Co., 226 NLRB Dec. 144 (1976). Two entities will not be held to be alter egos unless they have "substantially identical" ownership, business purpose, management, supervision, customers, operation, and equipment. Id.; T. E. Elevator Corp. of Connecticut, 268 NLRB Dec. 227 (1984). "**Many similarities" is insufficient; the Crawford Door factors must be "substantially identical" between the two entities.** T. E. Elevator Corp. of Connecticut, 268 NLRB Dec. 1461 (1984). While the Eleventh Circuit has not specifically adopted it, eight other Circuits have cited the Crawford Door criteria with approval. Crest Tankers, Inc. v. National Maritime Union, 796 F.2d 234, 237 (8th Cir. 1986); NLRB v Dane County Dairy, 795 F.2d 1313, 1321 (7th Cir. 1986); NLRB v. Allcoast Transfer, Inc., 780 F.2d 576, 579 (6th Cir. 1986); Goodman Piping Products, Inc. v NLRB, 741 F.2d 10, 11 (2d Cir. 1984); Fugazy Continental Corp. v. NLRB, 233 U.S. App. D.C. 310, 725 F.2d 1416, 1419 (D.C. Cir. 1984); Alkire v. NLRB, 716 F.2d 1014, 1018 n.4 (4th Cir. 1983); NLRB v. Al Bryant, Inc., 711 F.2d 543, 553-54 (3rd Cir. 1983); cert. denied, 464 U.S. 1039, 104 S. Ct. 699, 79 L. Ed. 2d 165 (1984); Carpenters Local No. 1846 v. Pratt-Farnsworth, Inc., 690 F.2d 489, 507-98 (5th Cir. 1982), cert. denied, 464 U.S. 932, 104 S. Ct. 335, 78 L. Ed. 2d 305 (1983).

Gen. Longshore Workers, Local 1988 v. Pate Stevedore Co., N.D.Fla. CASE NO. 91-30292-RV, 1993 U.S. Dist. LEXIS 18638, at *14-15 (Dec. 30, 1993)(emphasis added).

Therefore, in ignoring the separate corporate identities under an alter-ego determination, it would be necessary to prove that both companies have substantially identical management, business purpose, operation, equipment, customers, supervision, and ownership.

We hold that Graphics and Digital are **not alter egos**. We find that the companies are owned by members of the same immediate family, that the parents contributed generously to the capitalization of Digital, and that the administrative functions of the two companies are highly integrated. However, the evidence leads us to conclude that the prepress operations of Graphics and Digital are completely differentiated, as are the products of the companies. As **the core functions of the two businesses are distinct** and the companies duly incorporated as separate corporations, Test. of S. Ajamian, Tr. at 37; Pl.'s Exs. D & E, we cannot find that they are alter egos. Consequently, we hold also that Digital is not bound by the collective bargaining agreement between Graphics and Local One.

In re Staying the Arbitration & Vacating a Notice of Intention to Arbitrate Between Armen Digital Graphics, Ltd. & Amalgamated Lithographers of Am., Local One, S.D.N.Y. 96 Civ. 5844 (LBS), 1997 U.S. Dist. LEXIS 11938, at * 30 (Aug. 8, 1997)(emphasis added).

Our factual findings lead us to conclude that, **although Graphics and Digital share administrative expenses and staff**, and their principals are engaged in some transactions that cannot be fairly described as "arms-length", **they are not alter egos**.

In re Staying the Arbitration & Vacating a Notice of Intention to Arbitrate Between Armen Digital Graphics, Ltd. & Amalgamated Lithographers of Am., Local One, S.D.N.Y. 96 Civ. 5844 (LBS), 1997 U.S. Dist. LEXIS 11938, at * 23 (Aug. 8, 1997)(emphasis added).

D. GLASS AND METAL SOLUTIONS, INC. DOES NOT HAVE A SUBSTANTIALLY IDENTICAL OWNERSHIP WHEN COMPARED TO GLASS FABRICATORS, INC.

1. The use of familial relationship between owners of different corporations is not a substitute to proving the necessary elements otherwise required for an alter-ego determination.

The use of familial relationship between owners is not a substitute to proving the necessary elements otherwise required for an alter-ego determination. To the contrary, familial relationship has been useful only in situations where all evidence points to an alter ego finding except for actual common ownership. Where the other elements are not already present, pointing to familial relationship is insufficient.

Local One relies heavily on the familial (and financially interdependent) relationship between Frances and her parents to create a presumption of alter ego status. We decline to raise that presumption in this case. The decisions Local One cites are inapposite. Each involved a situation in which all evidence pointed toward an alter ego finding except the fact that the companies were not owned by the same people. In the absence of identical ownership, the NLRB used the fact that the owners were members of the same immediate family and the companies closely held as a proxy for identical ownership. See Kenmore Contracting Co.,

289 N.L.R.B. No. 56, 1988 WL 213821, at *2 (1988); Crawford Door, 226 N.L.R.B. 1144, 1976 WL 7566, at *2. By contrast, the operations, business purposes, management, supervision, equipment, and customer bases of Graphics and Digital are too distinct to suggest alter ego status and therefore inadequate to justify imputing common ownership to close family members.

In re Staying the Arbitration & Vacating a Notice of Intention to Arbitrate Between Armen

Digital Graphics, Ltd. & Amalgamated Lithographers of Am., Local One, S.D.N.Y. 96 Civ. 5844 (LBS), 1997 U.S. Dist. LEXIS 11938, at * 24-25 (Aug. 8, 1997).

In Rd. Sprinkler Fitters Local Union No. 669, U.A., AFL–CIO v. Dorn Sprinkler Co., 669 F.3d 790, 794 (6th Cir. 2012), the “district court granted summary judgment to Defendants, holding that Dorn Sprinkler was not the alter ego of Dorn Fire Protection, and thus, that Dorn Fire Protection did not have an obligation to arbitrate with the Union.” Id., at p. 792. In that case, as here, the “Union relies heavily on the familial relationship between the leadership of the two companies. But even though the characters are the same and are related to one another, this does not necessarily mean the overall nature of management is the same in both companies.” Id., at p. 795, *citing* Kenmore Contracting Co. v. Int’l Assoc. of Bridge, Structural, & Orn. Iron Workers, 289 NLRB No. 56 (June 24, 1988). “None of these situations make the management of these two companies substantially identical.” Rd. Sprinkler Fitters Local Union No. 669, U.A., AFL–CIO v. Dorn Sprinkler Co., 669 F.3d 790, 795 (6th Cir. 2012).

First, **the nature of the management structure in the two companies is not substantially identical.** Although the Union suggests that ‘the same family members who had managed Dorn Sprinkler also managed Dorn Fire Protection,’ the record does not support this contention. The evidence suggests that (1) **Christopher Dorn, who was lead salesman at Dorn Sprinkler is now the owner and President of Dorn Fire Protection...**

Id., at 794 (emphasis added).

Even in cases where there is a direct investment of money from a parent (who owned one company) to their child for purposes of starting the other company, the leap cannot be made to overcome actual separate ownership unless all of the other elements of establishing a substantially identical entity are present.

That Frances depended heavily on financing from her parents does not render the ownership of the two companies "substantially identical." Local One argues that the presumption of common ownership it would apply in cases involving closely held family businesses should be even stronger where financially dependent children run one company and the parents, the other. Again, Kenmore Contracting fails to persuade us. There, the children invested nominal sums in their purportedly independent business. What money they did invest was available for investment only because of their parents' financial support. 289 N.L.R.B. No. 56, 1988 WL 213821, at *2-*3. Here, Frances Ajamian invested forty thousand dollars of her own money alongside the one hundred thousand to two hundred thousand dollars loaned or given to her by her parents. These loans were not made at arms length. However, we cannot, without more, infer alter ego status from a parent's generosity.

In re Staying the Arbitration & Vacating a Notice of Intention to Arbitrate Between Armen Digital Graphics, Ltd. & Amalgamated Lithographers of Am., Local One, S.D.N.Y. 96 Civ. 5844 (LBS), 1997 U.S. Dist. LEXIS 11938, at * 25 (Aug. 8, 1997)(emphasis added).

However, the NLRB has occasionally applied alter ego doctrine if the two entities were owned by members of the same family, and the owners of the unionized entity received financial benefit from the non unionized entity **and exercised integral control**. Kenmore Contracting Co., 289 NLRB 336 (1988); Watt Electric Co., 273 NLRB Dec. 665 (1984). Nonetheless, **a close family relationship between the ownership of two companies, without more, does not show common ownership**. Victor Valley Heating & Air Conditioning, 267 NLRB Dec. 1292, 1296-97 (1983); Shellmaker, 265 NLRB 749, 754-55 (1982); Freiderich Truck Service, 259 NLRB Dec. 1294, 1300 (1982).

Gen. Longshore Workers, Local 1988 v. Pate Stevedore Co., N.D.Fla. Case No. 91-30292-RV, 1993 U.S. Dist. LEXIS 18638, at *18-19 (Dec. 30, 1993).

2. Glass Fabricators, Inc. is owned entirely Patricia Dotson.

Patricia Dotson is the President and sole shareholder of Glass Fabricators, Inc. whereas Dale Dotson, an employee, never owned any shares in Glass Fabricators, Inc. [GC Exhibit 1(i), Aff. Dale Dotson, at ¶ 8; Dale Dotson Hearing Trans. 10.16 - Vol. 2, (Page 309:15 to 309:18), (Page 309:21 to 309:25), 10.17 - Vol. 3, (Page 537:13 to 537:19); Patricia Dotson Hearing Trans. 10.16 - Vol. 2, (Page 208:19 to 208:22), (Page 221:11 to 221:15)].

3. Glass and Metal Solutions, Inc. is separately owned by Dale Dotson, incorporated, insured, licensed and taxed.

Dale Dotson is the sole owner of Glass and Metal Solutions, Inc. [GC Exhibit 1(i), Aff. Dale Dotson, at ¶¶ 2 and 9; Dale Dotson Hearing Trans. 10.17 - Vol. 3, (Page 521:16 to 521:23)]. Patricia Dotson has never owned any shares of Glass and Metal Solutions, Inc. [GC Exhibit 1(i), Aff. Dale Dotson, at ¶ 9; Dale Dotson Hearing Trans. 10.17 - Vol. 3, (Pages 537:20 to 538:19)].

Glass and Metal Solutions, Inc. is a separate Ohio Corporation incorporated and in good standing. [GC Exhibit 12; Dale Dotson Hearing Trans. 10.17 - Vol. 3, (Page 521:16 to 521:23)]. Glass and Metal Solutions, Inc. maintains separate Worker's Compensation Coverage. [RGMS Exhibit 2; Dale Dotson Hearing Trans. 10.17 - Vol. 3, (Pages 521:24 to 522:17)]. Glass and Metal Solutions, Inc. maintains separate licensing. [RGMS Exhibit 8; Dale Dotson Hearing Trans. 10.17 - Vol. 3, (Page 525:12 to 525:22)]. Glass and Metal Solutions, Inc. maintains separate insurance. [GC Exhibits 18 and 65; Dale Dotson Hearing Trans. 10.17 - Vol. 3, (Pages 527:24 to 528:10)].

Glass and Metal Solutions, Inc. has a separate Employer Tax ID with the Internal Revenue Service and files its separate income tax returns for the years in which it has income.

[GC Exhibits 15 (2015) and 63 (2016); Dale Dotson Hearing Trans. 10.16 - Vol. 2, (Pages 368:18 to 369:5), (Page 370:3 to 370:17), 10.17 - Vol. 3, (Pages 526:19 to 527:22).

E. GLASS AND METAL SOLUTIONS, INC. DOES NOT HAVE SUBSTANTIALLY IDENTICAL MANAGEMENT OR SUPERVISION WHEN COMPARED TO GLASS FABRICATORS, INC.

1. Some similarity in management or supervision is not sufficient to establish substantially identical management and supervision.

The alter-ego determination sets aside the corporate identity and, therefore, cannot depend upon similarity or the presence of some overlap in management and supervision between two companies. Instead, the test requires proof that both companies have *substantially identical* management and supervision. The fact that family members help out when their spouse or child needs it in a closely held company is not the same as demonstrating that the companies are substantially identical.

...This evidence--that Frances signed a letter to Local One as "President, Armen Graphics, Ltd."; that for as long as two years, Frances had check-signing authority for Graphics while Sam had the same power for Digital for a month; and that when Local One representatives visited the shared offices Frances told them that she was "in charge here," Test. of A. Caifano, Tr. at 24--fails to establish that the management and supervision of the two companies is substantially identical. The admittedly central role Violet Ajamian plays in her administrative capacity with Graphics and Digital similarly fails to prove that the management and supervision of the two companies is sufficiently identical to make the alter ego case.

We do not doubt that the family relationships of the principals has at times led to a shared responsibility for the family businesses. However, we cannot reasonably construe these isolated facts as proof of alter ego status.

In re Staying the Arbitration & Vacating a Notice of Intention to Arbitrate Between Armen Digital Graphics, Ltd. & Amalgamated Lithographers of Am., Local One, S.D.N.Y. 96 Civ. 5844 (LBS), 1997 U.S. Dist. LEXIS 11938, at * 28-29 (Aug. 8, 1997)(emphasis added).

Buck Pate was the chief executive officer and made the majority of the management decisions at Pate of Pensacola. However, Michael Pate managed labor relations and dealt with the Union, and had significant management responsibilities during the final period of his employment at Pate of Pensacola. Michael Pate is the sole manager at Pensacola Stevedore. He has, or had, a management role in both businesses. But Michael Pate left Pate of Pensacola, and there is no evidence of any continuance of management by him or a management relationship there after he formed Pensacola Stevedore. There is no commonality of management in the same time frame. See Amalgamated Meat Cutters, *supra*, 663 F.2d 223 (D.C. Cir. 1980).

Gen. Longshore Workers, Local 1988 v. Pate Stevedore Co., N.D.Fla. Case No. 91-30292-RV, 1993 U.S. Dist. LEXIS 18638, at *23-24 (Dec. 30, 1993).

2. Patricia Dotson managed her company Glass Fabricators, Inc. in her positions as its President, Controller and Office Manager.

At Glass Fabricators, Inc., Patricia Dotson was not only the sole shareholder, she also held office as President of the company as well as being the company's Controller and the company's Office Manager. [Patricia Dotson Hearing Trans. 10.16 - Vol. 2, (Page 221:11 to 221:15); Dale Dotson Hearing Trans. 10.16 - Vol. 2, (Page 309:15 to 309:18); Michael Turkal Hearing Trans. 10.17 - Vol. 3, (Page 455:4 to 455:15)].

Patricia Dotson was also, along with Glass Fabricator, Inc.'s Project Manager and Estimator Tony Augustine, responsible for ordering materials, supplies and products at Glass Fabricators, Inc. [Patricia Dotson Hearing Trans. 10.16 - Vol. 2, (Page 185:17 to 185:25); Michael Turkal Hearing Trans. 10.17 - Vol. 3, (Page 455:4 to 455:15)].

At Glass Fabricators, Inc., consistent with her positions as President, Controller and Office Manager, Patricia Dotson managed the billing, payroll and banking. [Dale Dotson Hearing Trans. 10.17 - Vol. 3, (Pages 535:18 to 536:10)].

3. Dale Dotson was a foreman at Glass Fabricators, Inc., responsible for supervising a crew, as one of multiple lead foremen.

At Glass Fabricators, Inc., Dale Dotson was an employee, employed as one of multiple lead foremen. [Dale Dotson Hearing Trans. 10.16 - Vol. 2, (Page 309:15 to 309:18); Patricia Dotson Hearing Trans. 10.16 - Vol. 2, (Pages 198:17 to 199:3); Michael Turkal Hearing Trans. 10.17 - Vol. 3, (Page 448:3 to 448:10)].

Other crews at Glass Fabricators were supervised by Lead Foremen Kyle Conway, Eric Butler, Project Manager Anthony Augustine, and sometimes even Patricia Dotson. [Patricia Dotson Hearing Trans. 10.16 - Vol. 2, (Pages 198:17 to 199:3), (Pages 234:10 to 235:25); Anthony Augustine Hearing Trans. 8.14 – Vol. 1, (Pages 67:1 to 68:17), (Pages 69:12 to 69:25)].

4. In Contrast, at Glass and Metal Solutions, Inc., Dale Dotson manages billing, payroll, ordering, banking and estimating.

At Glass and Metal Solutions, Inc., Dale Dotson along with his son and a helper constitute a single, and solitary, crew. [Dale Dotson Hearing Trans. 10.17 - Vol. 3, (Page 534:3 to 534:19)].

In addition to working on the solitary three-man crew at Glass and Metal Solutions, Inc., Dale Dotson also manages the billing, payroll, ordering, banking and estimating:

20 Q. All right. So, Dale, what if any
21 are the differences in what you actually did as
22 an employee of Glass Fabricators, Inc., an Ohio
23 corporation, when compared with what you do now
24 as an employee of your company, Glass and Metal
25 Solutions, Inc.?

1 A. There's a lot.

2 Q. Take your time because it's
3 important and that's what we're here for.

4 A. I do bookkeeping. I do bidding. I
5 do payroll. I pay the bills. I make sure my
6 taxes are paid. Plus I, you know, go out to

7 jobs and look at them, do field measuring. You
8 know, I book the hotels for everybody, for us
9 when we're traveling. I write the per diem
10 checks. I pay all the credit card bills. I
11 mean, I have a lot on my plate. I do every
12 day.

13 Q. So there's all the organizational
14 operations and the management things that
15 you've described?

16 A. Yes.

17 Q. And you never did any of those at
18 Glass Fabricators as part of your core job
19 responsibilities?

20 A. Never, no.

21 Q. Instead, those were performed by
22 Patricia Dotson?

23 A. Yes.

[Dale Dotson Hearing Trans. 10.17 - Vol. 3, (Pages 538:20 to 539:23)].

At Glass and Metal Solutions, Inc., Patricia Dotson has never held any position,
responsibilities, performed work or helped out in any manner whatsoever:

20 Q. Now, does Patricia Dotson have a
21 membership interest in Glass and Metal
22 Solutions, Inc.?

23 A. No, she doesn't.

24 Q. Has she ever loaned money to Glass
25 and Metal Solutions, Inc.?

1 A. No, she hasn't.

2 Q. Does she have any shares in it?

3 A. No, she doesn't.

4 Q. Is she a partner with it in any
5 capacity?

6 A. No.

7 Q. Has she ever been employed by it?

8 A. No.

9 Q. Has she ever done bookkeeping for
10 it?

11 A. No.

12 Q. Has she ever called for workers for
13 it?

14 A. Never.

- 15 Q. Has she ever done hiring or firing?
16 A. Never.
17 Q. Has she ever stuffed an envelope
18 for it?
19 A. Never.

[Dale Dotson Hearing Trans. 10.17 - Vol. 3, (Pages 537:20 to 538:19)].

F. GLASS AND METAL SOLUTIONS, INC. DOES NOT HAVE A
SUBSTANTIALLY IDENTICAL OPERATION WITH REGARD TO
EMPLOYEES WHEN COMPARED TO GLASS FABRICATORS, INC.

1. Employment of some of the former employees of another company is not sufficient to establish substantially identical operations.

When considering the operational factor, employment of some former employees of another company is not sufficient support for a finding of *substantially identical* operations, which would be necessary to set aside the corporate identities. Rd. Sprinkler Fitters Local Union No. 669, U.A., AFL-CIO v. Dorn Sprinkler Co., 669 F.3d 790, 795 (6th Cir. 2012).

This factor tends to cut against alter-ego status because... Although the Union states that Dorn Fire Protection employed ‘a number of former employees of Dorn Sprinkler,’ **only two of the fourteen Dorn Fire Protection employees worked for Dorn Sprinkler** at or around the time of its closing, showing no real continuity of work force. Accordingly, the two companies' operations are not strongly related.”

Id., at 795 (emphasis added).

2. Glass and Metal Solutions, Inc. has a significantly smaller workforce than Glass Fabricators, Inc.

Glass Fabricators, Inc. had multiple Lead Foremen and a Project Manager, in addition to a Controller, all of who were capable of and did run crews simultaneously as business demanded it. [Patricia Dotson Hearing Trans. 10.16 - Vol. 2, (Pages 198:17 to 199:3), (Pages 234:10 to 235:25); Anthony Augustine Hearing Trans. 8.14 – Vol. 1, (Pages 66:12 to 68:17), (Pages 69:12

to 69:25)]. Each crew would have four (4) to eight (8) employees working within it, depending upon the size of the project that particular crew was assigned to work. [Patricia Dotson Hearing Trans. 10.16 - Vol. 2, (Pages 234:10 to 235:25); Anthony Augustine Hearing Trans. 8.14 – Vol. 1, (Pages 66:12 to 68:17), (Pages 69:12 to 69:25)].

If a Glass Fabricators, Inc. job entailed “really big glass,” one crew might even be as large as eight (8) to twelve (12) workers. Anthony Augustine Hearing Trans. 8.14 – Vol. 1, (Pages 69:7 to 70:10)

In contrast, at Glass and Metal Solutions, Inc., Dale Dotson along with his son and a helper constitute a single, and solitary, crew. [Dale Dotson Hearing Trans. 10.17 - Vol. 3, (Page 534:3 to 534:19)]. Glass and Metal Solutions, Inc. has consisted of only three (3) employees on a single crew, and at one time had as many as four (4) total employees, including Dale Dotson, when Dale Dotson’s daughter helped out in the office for a period of time:

- 3 Q. All right. At any given time, how
4 many employees does Glass and Metal Solutions
5 have, including yourself?
6 A. Including myself, probably the
7 maximum at one time was four, when my daughter
8 was working in the office.
9 Q. Okay. And when your daughter is
10 not working in the office, how many?
11 A. Two to three.
12 Q. Okay. And who are the two to
13 three?
14 A. Myself, my son, Dale, Junior, and
15 then a variety of different guys that we've
16 used as helpers.
17 Q. But at any given time there would
18 usually be just one helper?
19 A. Yes.

[Dale Dotson Hearing Trans. 10.17 - Vol. 3, (Page 534:3 to 534:19)].

3. The employees at Glass and Metal Solutions, Inc. have different duties than Glass Fabricators, Inc.

- a) Dale Dotson has different duties at Glass and Metal Solutions, Inc. than he did at Glass Fabricators, Inc.

As discussed above, when Dale Dotson was employed at Glass Fabricators, Inc. he was one of multiple Lead Foreman running crews of four (4) to (12) employees. The supervision of other crews, as well as the management of payroll, banking, etc. was all handled by other employees, a Lead Foreman, a Project Manager or the President/Controller/Office Manager and sometimes crew supervisor Patricia Dotson. [Patricia Dotson Hearing Trans. 10.16 - Vol. 2, (Page 185:17 to 185:25), (Pages 198:17 to 199:3), (Page 221:11 to 221:15), (Pages 234:10 to 235:25); Dale Dotson Hearing Trans. 10.16 - Vol. 2, (Page 309:15 to 309:18); 10.17 - Vol. 3, (Pages 535:18 to 536:10); Michael Turkal Hearing Trans. 10.17 - Vol. 3, (Page 448:3 to 448:10), (Page 455:4 to 455:15); Anthony Augustine Hearing Trans. 8.14 – Vol. 1, (Pages 67:1 to 68:17), (Pages 69:12 to 69:25)].

In contrast, at Glass and Metal Solutions, Inc., Dale Dotson along with his son and a helper constitute a single, and solitary, crew. [Dale Dotson Hearing Trans. 10.17 - Vol. 3, (Page 534:3 to 534:19)]. In addition to working on the solitary three-man crew at Glass and Metal Solutions, Inc., Dale Dotson also manages the billing, payroll, ordering, banking and estimating. [Dale Dotson Hearing Trans. 10.17 - Vol. 3, (Pages 538:20 to 539:23)].

- b) Dale Dotson Jr. has different duties.

Dale Dotson, Jr. was an employee at his mother's company, Glass Fabricators, Inc. When that company failed, he became an employee of his father's company Glass Fabricators,

Inc. The nature of his job is quite different. At Glass Fabricators, Inc. Dale Dotson Jr. was working on high rises, repelling off of buildings and doing skylight repairs under the supervision of Lead Foreman Kyle Conway. At Glass Fabricators, Dale Dotson Jr. is performing hand work on ground level interior storefronts, and also has the responsibilities of running a project from the job meeting, to layout to installation:

23 A. Yes, there's a big difference.

24 Q. I'd like you to tell me the
25 difference between what he did between Glass
1 and Metal Solutions, Inc., an Ohio corporation,
2 and what he did for Glass Fabricators, Inc., an
3 Ohio corporation?

4 A. Mostly when he worked for Glass
5 Fabricators, he worked with -- Kyle Conway was
6 his boss. Kyle was teaching him repelling off
7 buildings. He was working on high rises. He
8 worked -- they were doing skylight repairs. He
9 did probably -- most of the work Kyle and Dale
10 did together was service work, fix revolving
11 doors, do the repelling, all stuff, you know,
12 up in the air, high stuff.

13 Q. How about when your son later is
14 employed by Glass and Metal Solutions, Inc., an
15 Ohio corporation, what does he do there?

16 A. He's actually laying out like
17 the -- going to job meetings, doing mall front
18 layout, field measuring and verifying some of
19 the same stuff I do. Like I've been out a
20 month and a half now, so the last couple jobs
21 we've had, Dale has actually done everything
22 involved in it, from the job meeting to the
23 layout to installation.

[Dale Dotson Hearing Trans. 17 - Vol. 3, (Pages 531:23 to 532:23)].

c) Dale Dotson's daughter has never worked for Glass Fabricators, Inc.

At Glass Fabricators, Inc., the billing payroll and banking were all managed by Patricia Dotson, who has never worked at Glass and Metal Solutions, Inc., as discussed earlier. At Glass

and Metal Solutions, Inc., those management duties are handled by Dale Dotson, discussed above, and for a time with the assistance of his daughter, who has never worked for Glass Fabricators, Inc. [Dale Dotson Hearing Trans. 17 - Vol. 3, (Pages 535:18 to 536:10), (Pages 538:20 to 539:23)].

d) Glass Fabricators, Inc. did not have the position of a Helper.

At Glass and Metal Solutions, Inc., Dale Dotson along with his son and a Helper constitute a single, and solitary, crew. [Dale Dotson Hearing Trans. 10.17 - Vol. 3, (Page 534:3 to 534:19)]. Unlike Glass Fabricators, Inc., the business model of Glass and Metal Solutions, Inc. has a crew comprised of two people who are equally capable of handling the job, from job meeting, to layout, to installation, along with a third person sometimes employed in the position of a Helper. [Dale Dotson Hearing Trans. 17 - Vol. 3, (Pages 531:23 to 532:23), (Page 535:4 to 535:17)]. The Helper has the responsibility for unloading the truck, and for running for supplies at Lowes or Home Depot, errands and occasional assistance with lifting. [Dale Dotson Hearing Trans. 17 - Vol. 3, (Page 535:4 to 535:17)].

In contrast, the operations of Glass Fabricators, Inc. were structured differently, as discussed above, and it did not have a Helper position. [Dale Dotson Hearing Trans. 17 - Vol. 3, (Page 535:4 to 535:17)].

**G. GLASS AND METAL SOLUTIONS, INC. DOES NOT HAVE A
SUBSTANTIALLY IDENTICAL BUSINESS PURPOSE OR OPERATION**

REGARDING THE CORE BUSINESS WHEN COMPARED TO GLASS
FABRICATORS, INC.

1. Being in the same general industry is not sufficient to establish substantially identical operations or substantially identical business purposes.

As an effort to set aside the corporate existence in an alter-ego determination requires that the two companies are not only similar, but actually *substantially identical*, the element of operational identity cannot be satisfied by a superficial look at the industry they are engaged in.

Being in the same part of the same industry is not sufficient to establish *substantially identical* operations or *substantially identical* business purposes. Each case depends upon a closer look at the actual operations and purposes of the two companies. In performing the analysis, a factual study of the core functions and operations of the two companies is necessary.

While the companies share office space and administrative costs and functions (including the services of a bookkeeper), the core functions of each business are operationally distinct. Graphics uses traditional prepress methods to produce lithographic plates. It does not produce color separations; it is undisputed that it never has. On the other hand, Digital uses computers to produce color separations. It does not produce plates.

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Instead, the operational element of the analysis would require a finding that the two companies were “engaged in businesses in fact *identical* to those of their unionized, defunct, or dormant alter egos. See Kenmore Contracting, 289 N.L.R.B. No. 56, 1988 WL 213821, at *1; Advance Electric, 268 N.L.R.B. No. 151, 1984 WL 36068, at *3; All Kind Quilting, Inc., 266 N.L.R.B. No. 202, 1983 WL 25107, at *8-*12 (1983); Crawford Door, 226 N.L.R.B. No. 174, 1976 WL 7566, at *12.” Id., at 26 (emphasis added).

- a) Glass Fabricators, Inc.'s core business was fabricating exterior glass and incidental to that fabrication was installation of its fabricated products high in the air to the exterior of multi-story buildings.

The "main profit center" of Glass Fabricators, Inc. was in the fabrication of the products it sold. [Patricia Dotson Hearing Trans. 10.16 - Vol. 2, (Pages 225:3 to 226:5), (Pages 233:23 to 234:1)]. Glass Fabricators would take huge, raw sheets of glass and cut them down to size, beveling them, polishing them and otherwise fabricating them into a final product, with machine driven processes. [Patricia Dotson Hearing Trans. 10.16 - Vol. 2, (Pages 225:3 to 226:5)]. Glass Fabricators, Inc. would also fabricate, in its facility, the aluminum framing and components that went into the exterior glass systems it sold. [Patricia Dotson Hearing Trans. 10.16 - Vol. 2, (Pages 232:20 to 234:9)].

The installation of its fabricated products was "incidental to the fabrication." [Patricia Dotson Hearing Trans. 10.16 - Vol. 2, (Pages 225:3 to 226:5), (Pages 233:23 to 234:1)]. "Very little" of the business of Glass Fabricators, Inc. would consist of jobs to install glass. [Patricia Dotson Hearing Trans. (Page 223:1 to 223:15)]. The main customers of Glass Fabricators, Inc., would, as its name implies, come to it for large quantities of fabricated glass, involving cutting, drilling, shaping and beveling of glass. [Patricia Dotson Hearing Trans. 10.16 - Vol. 2, (Page 192:1 to 192:15)]

When installation was being performed by Glass Fabricators, Inc., the primary form of installation was putting its fabricated products on the outside of buildings high in the air, many stories up from the ground. [Patricia Dotson Hearing Trans. 10.16 - Vol. 2, (Pages 225:3 to 226:5)]. Although Glass Fabricators, Inc. had, at one time, a relationship with a contractor that had hired it to install prefabricated ground-level storefronts on Circle K stores, that work had not been done by Glass Fabricators, Inc. for a half-decade. Nonetheless, back when the work had

been done, it was exterior glass systems. [Anthony Augustine Hearing Trans. Vol. I, (Pages 106:10 to 107:7)].

The mainstay of Glass Fabricators, Inc.'s business was exterior glass. [Anthony Augustine Hearing Trans. Vol. I, (Page 85:18 to 85:22)]. The systems fabricated and installed by Glass Fabricators, Inc. were exterior systems, built with methods designed to be weather barriers as well. [Dale Dotson Hearing Trans. 10.17 - Vol. 3, (Pages 544:23 to 545:15)].

On one occasion, in 2013, Glass Fabricators, Inc. contracted with Olivieri Construction to perform glazing work at a Victoria's Secret located at Great Northern Mall. [Michael Turkal Hearing Trans. 10.17 - Vol. 3, (Pages 490:17 to 491:2) (Pages 492:21 to 493:14); Patricia Dotson Hearing Trans. 10.17 - Vol. 3, (Pages 514:11 to 515:2)]. The one other Glass Fabricators, Inc. project visited by Union Business Agent Michael Turkal was a job being performed by Glass Fabricators for the Justice Center in Downtown Cleveland in 2014 - that involved use of a crane to install glass up in the air on the outside of the building, and which was the "very last project Glass Fabricators, Inc. did" because Michael Turkal pulled all Union workers from Glass Fabricators, Inc. [Michael Turkal Hearing Trans. 10.17 - Vol. 3, (Page 470:10 to 470:21) (Page 471:4 to 471:9) (Pages 490:17 to 491:2); Patricia Dotson Hearing Trans. 10.17 - Vol. 3, (Page 515:3 to 515:23)].

Before it went out of business in 2014, the "mainstay" of Glass Fabricators, Inc.'s business was reflected in the Galleria Skylight repair, involving repairs on the 12th and 16th floors, high-level work using special equipment on a six-figure job. [Patricia Dotson Hearing Trans. 10.16 - Vol. 2, (Page 228:8 to 228:20)]. Another example of a "typical" project for Glass Fabricator's, Inc. was the high-level installation of glass fabricated by the company for Nine

Construction in Lakewood, Ohio. Patricia Dotson Hearing Trans. 10.16 - Vol. 2, (Pages 229:8 to 231:7). Another “typical” example was the installation of glass it fabricated for LTV Steel, which took months, some number of stories in the air, using cranes. [Patricia Dotson Hearing Trans. 10.16 - Vol. 2, (Pages 229:8 to 231:7)]. Another example involved Lead Foreman Kyle Conway “repelling down” the side of the Rock & Roll Hall of Fame. [Patricia Dotson Hearing Trans. 10.16 - Vol. 2, (Pages 229:8 to 231:7)].

Consistent with its regular installation of exterior glass systems many stories in the air, Glass Fabricator’s, Inc. was hired to train the Independence Excavation Company on how to remove glass safely on the very tall many-story Federal Building in downtown Cleveland where the NLRB is located. [Patricia Dotson Hearing Trans. 10.16 - Vol. 2, (Pages 231:21 to 232:19)].

The “principal purpose” of Glass Fabricators, Inc. was the high-level job involving the fabrication of the glass that would be used. [Patricia Dotson Hearing Trans. 10.16 - Vol. 2, (Pages 231:21 to 232:19)]. The systems involved special “insulated glass” and related framing materials to make “a real curtain wall, and it was a high rise on a high-rise building.” [Dale Dotson Hearing Trans. 10.17 - Vol. 3, (Pages 540:17 to 542:22), (Pages 543:10 to 544:22)].

- b) Glass and Metal Solution, Inc.’s core business is the low-level installation of interior store front glass using materials fabricated by other sources, usually owner supplied.

In contrast, Glass and Metal Solution, Inc.’s core business is the low-level installation of interior store front glass using materials fabricated by other sources, usually owner supplied. [Dale Dotson Hearing Trans. 10.17 - Vol. 3, (Pages 565:9 to 566:3)]. Specifically, more than ninety percent (>90%) of the business of Glass and Metal Solutions, Inc. is installing owner

supplied material in single-story, interior-type work for Cahil, a general contractor. [Dale Dotson Hearing Trans. 10.17 - Vol. 3, (Pages 565:9 to 566:3)].

Unlike the fabrication core business of Glass Fabricators, Inc., the core business of Glass and Metal Solutions, Inc. has the three-man crew installing pre-fabricated, owner supplied materials on the ground level inside a shopping mall [Dale Dotson Hearing Trans. 10.17 - Vol. 3, (Page 533:8 to 533:24), (Pages 533:25 to 534:2) (Pages 540:17 to 542:22) (Pages 543:10 to 544:22)]:

8 What's different about the
9 installation, if anything?

10 A. Most of the stuff we do is
11 owner-supplied materials. They come out
12 prefabricated. And it's their own design of
13 their own system. And we're supplying labor.

14 Q. Okay.

15 A. They have drawings and everything
16 is done according to what their company's --
17 we're not doing any fabrication. Everything is
18 prefabricated. We're just installing whatever
19 they ship us from wood trim, carpentry, break
20 metal, polycarbonate panels. A lot of the
21 stores, they don't have glass in them, they're
22 called ACM panels, aluminum composite metal
23 panels, and they have designs printed on them,
24 and we install those.

[Dale Dotson Hearing Trans. 10.17 - Vol. 3, (Page 533:8 to 533:24)].

These are not weather resistant systems at all, as they are simply at walking level inside a shopping mall. [Dale Dotson Hearing Trans. 10.17 - Vol. 3, (Pages 544:23 to 545:15)]

H. GLASS AND METAL SOLUTIONS, INC. DOES NOT HAVE SUBSTANTIALLY IDENTICAL CUSTOMERS WHEN COMPARED TO GLASS FABRICATORS, INC.

1. Some overlap in customers is not sufficient to support finding of substantially identical customers.

In attempting to set aside the corporate existence of separate companies, it is not enough to show that there is some overlap in the customer base of two companies. Instead, it must be proven that the customers of both companies are *substantially identical*.

Graphics and Digital **share some customers**. Other customers have shifted their business from Graphics to Digital. We have found that **the two companies provide their customers with products at different, albeit successive, stages of the prepress process**. We do not know whether the products of one company are sold as a package with those of the other. Nor do we know the extent to which the customer bases of the two companies overlap. All Local One has offered as proof is the fact that Graphics and Digital **share five customers**. D.'s Post-Hearing Mem. at 38-39. We are not told what proportion of each company's business is derived from these "common" customers. **Compare Advance Electric, 268 N.L.R.B. No. 151, 1984 WL 36068, at *3 (75% of new company's customers, representing 93% of its dollar volume, had been customers of alter ego)**. On this sparse evidence, we must conclude that the customer bases of the two companies are not substantially identical and therefore do not constitute grounds for an alter ego finding.

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(LBS), 1997 U.S. Dist. LEXIS 11938, at * 27-28 (Aug. 8, 1997)(emphasis added).

Next, we consider the customer base of the two companies. **Despite the Union's claim that Dorn Fire Protection's customers " included a number of former Dorn Sprinkler customers," proportionally speaking, this argument is simply not persuasive**. Only nine out of Dorn Fire Protection's more than 250 customers were formerly Dorn Sprinkler customers. Moreover, when Dorn Sprinkler went out of business, Dorn Fire Protection completed only two of the projects that were pending for Dorn Sprinkler and, when asked, declined to complete another.

Id., at 796.

It is undisputed in the record that stevedores competitively bid for jobs in the Port of Pensacola. It is also undisputed that prior to the demise of Pate of Pensacola, it and Pensacola Stevedore **submitted competing bids for the same job**. The defendant concedes that Pensacola Stevedore has unloaded three ships which had formerly been customers of Pate of Pensacola. The plaintiff alleges that there are **six common customers**. Using either number, **the customer base of the two companies is nothing remotely approaching substantially identical**.

Gen. Longshore Workers, Local 1988 v. Pate Stevedore Co., N.D.Fla. Case No. 91-30292-RV, 1993 U.S. Dist. LEXIS 18638, at *24-25 (Dec. 30, 1993).

2. The customer base is different between Glass Fabricators, Inc. and Glass and Metal Solutions, Inc.

- a) Glass and Metal Solutions, Inc. did not pick up any of the contracts that had been with Glass Fabricators, Inc.

At the outset of the discussion of customers, Glass and Metal Solutions, Inc. never picked up any of the contracts that had been with Glass Fabricators, Inc., as confirmed by the Glass Fabricators, Inc. Estimator and Project Manager called by Claimant:

- 12 Q. And then, Dale started a company
13 called Glass and Metal Solutions, right?
14 A. Right.
15 Q. Okay. Now -- but Glass and Metal
16 Solutions didn't pick up the business that had
17 been performed by Glass Fabricators?
18 A. Are you saying, like, finish jobs?
19 Q. Correct.
20 A. Yeah. No.
21 Q. That never happened, did it?
22 A. No.

[Anthony Augustine Hearing Trans. Vol. I, (Page 89:12 to 89:22)].

In fact, although Mr. Augustine thought he might have been asked to prepare bids on one to three potential jobs for Glass and Metal Solutions, Inc. in 2014, none of the bids were successful:

- 22 Q. Let me ask you this; any of the one
23 to three jobs that you may have bid for Glass
24 and Metal Solutions, Inc., as far as you know
25 sitting here today, Glass and Metal Solutions
1 never even got those jobs, did they?
2 A. Not that I know of, no.

[Anthony Augustine Hearing Trans. Vol. I, (Pages 91:22 to 92:2)].

Also, with regard to the project known as the “25th Street Lofts”, although it looked at first as though Glass and Metal Solutions, Inc. would get the job, and contract documents were prepared by the general contractor, Glass and Metal Solutions, Inc. never did sign the contract, the contract offer was withdrawn by the general contractor, and the work was fulfilled by some other company altogether. [GC Exhibit 55; GC Exhibit 53; Dale Dotson Hearing Trans. 10.16 - Vol. 2, (Pages 317:11 to 318:2), (Page 325:8 to 325:21); Michael Turkal Hearing Trans. 10.17 - Vol. 3, (Page 481:19 to 481:23)].

- b) A small fraction of Glass and Metal Solutions, Inc.’s work involved services for companies that had also used Glass Fabricator’s, Inc.

Despite the fact that ninety percent of Glass and Metal Solutions, Inc.’s work is for Cahill Construction, Claimant points to the overlap of approximately ten (10) names appearing on the customer list of the two companies. *See* Patricia Dotson Hearing Trans. 10.16 - Vol. 2, (Pages 188:17 to 191:25). Dale Dotson explained that the companies had his personal cell phone number and called him for some odd jobs and requests. The core business of Glass and Metal Solutions, however, was in serving Cahill Construction:

4 Q. All right. And we've seen what's
5 been marked as General Counsel Exhibits 48 and
6 16. And these happen to be invoice registers
7 that have lists of customers. And they include
8 things like Cahill Construction, Difold
9 Builders, Omni Lakewood, all these different
10 ones.

11 But on here you're saying Cahill
12 Construction is the main customer?

13 A. That's my main. Without them, I'd
14 be out of business.

15 Q. Using your own words, how would you
16 describe the proportion of your business that
17 is devoted by Glass and Metal Solutions to
18 serving just Cahill Construction?

19 A. 90-some percent of it.

20 Q. Okay. Now, has Glass Fabricators
21 done work for Cahill Construction?

22 A. No.

[Dale Dotson Hearing Trans. 10.17 - Vol. 3, (Page 566:4 to 566:22)].

Even with regard to the small fraction of the business represented by the overlap of approximately ten customer names, the witnesses were clear in explaining the differences in both size, scope, value and nature of the work performed by the two companies. Consistent with the core business purpose of Glass Fabricators, Inc. the work by that company usually involved fabrication of quantities of glass and/or high-level work, whereas the work performed by Glass and Metal Solutions, Inc. was more along the lines of odd-job repairs or ordering of a part from some other supplier as a favor. None of the examples cited by Claimant would support a finding of continuity between the businesses, even as to the small fraction of work represented by those customers. [Patricia Dotson Hearing Trans. 10.16 - Vol. 2, (Pages 188:17 to 191:25); Dale Dotson Hearing Trans. 10.17 - Vol. 3, (Pages 551:10 to 554:4), (Pages 554:8 to 556:10), (Pages 556:11 to 558:1), (Page 558:9 to 558:13), (Page 560:4 to 560:18), (Pages 560:19 to 561:8), (Pages 561:9 to 562:1), (Page 562:2 to 562:22), (Pages 562:23 to 563:12)]

3. The location of the work is different between the companies.

The work performed by Glass Fabricators was in Northern Ohio, and mostly in the downtown of the City of Cleveland, which is consistent with its core business purpose of fabricating exterior glass systems for tall high-rise buildings. [Patricia Dotson Hearing Trans. 10.16 - Vol. 2, (Page 184:14 to 184:22)]. Glass Fabricators, Inc. has never performed work in the many states across the country that have formed the mainstay of Glass and Metal Solutions, Inc. incessant travel, namely New Hampshire, Montana, New Orleans, Texas, Utah, West Virginia, Indiana or Colorado. [Patricia Dotson Hearing Trans. 10.17 - Vol. 3, (Pages 587:11 to 588:2); Dale Dotson Hearing Trans. 10.17 - Vol. 3, (Pages 567:16 to 568:8)].

In contrast, more than ninety percent (>90%) of the work performed by Glass and Metal Solutions has been outside the State of Ohio, requiring travel all across the country to New Hampshire, Montana, New Orleans, Texas, Utah, West Virginia, Indiana and Colorado.. [Dale Dotson Hearing Trans. 10.16 - Vol. 2, (Pages 367:25 to 368:7), 10.17 - Vol. 3, (Pages 566:25 to 567:15)]. The regular travel as part of Glass and Metal Solutions, Inc.'s core business has required Dale Dotson to incur regular expenses for hotels throughout the country, whereas he did not have to travel like that as a Foreman for Glass Fabricators, Inc. [GC Exhibit 21; GC Exhibit 47; Dale Dotson Hearing Trans. 10.16 - Vol. 2, (Pages 365:21 to 367:14), 10.17 - Vol. 3, (Pages 570:17 to 571:15)].

Very unlike Glass Fabricators, Inc., almost all of the income generated by Glass and Metal Solutions, Inc. is generated from work outside of the State of Ohio. [Dale Dotson Hearing Trans. 10.16 - Vol. 2, (Pages 372:8 to 374:3)].

4. The supplies ordered from Vendors for their customers is different between the companies.

Claimant found interest in the fact that some things had been ordered by Glass and Metal Solutions, Inc. from suppliers that had been vendors to Glass Fabricators, Inc. Nonetheless, the things ordered were vastly different in not only cost, but nature as well. [Dale Dotson Hearing Trans. 10.17 - Vol. 3, (Page 572:10 to 572:21) Dale Dotson Hearing Trans. 10.17 - Vol. 3, (Page 573:2 to 573:19)].

In the instances where a customer wanted Glass and Metal Solutions, Inc. to supply something, it would buy something that was already made:

- 17 Q. Glass and Metal Solutions, when it
18 buys something from Trulite, it's buying
19 something that Trulite has already fabricated,
20 and sends it as a finished product to you?
21 A. Yes.

[Dale Dotson Hearing Trans. 10.17 - Vol. 3, (Page 572:10 to 572:21)].

On the other hand, when Glass Fabricators, Inc. would buy something from places like Trulite, it was buying the raw materials needed to fabricate products:

- 2 Q. What kinds of things does Glass
3 Fabricators buy from places like Trulite?
4 A. They would buy like case goods.
5 Q. What is that?
6 A. Like a whole case of mirror in a
7 stock sheet size, cut it down, polish the
8 edges, bevel the edges, you know, for like
9 hotels and stuff like that. They fabricated
10 all their own goods. They'd order tempered
11 glass and make them into insulated units for
12 exteriors of the building. They'd cut and
13 polish their own glass and send it out to
14 Trulite and have them temper it for them.
15 Q. Okay.
16 A. That way they had the control of
17 quality --

- 18 Q. All right.
19 A. -- on their fabricated goods.

[Dale Dotson Hearing Trans. 10.17 - Vol. 3, (Page 573:2 to 573:19)].

I. GLASS AND METAL SOLUTIONS, INC. DOES NOT HAVE A
SUBSTANTIALLY IDENTICAL OPERATIONS WITH REGARD TO THE
EQUIPMENT USED FOR ITS CORE BUSINESS WHEN COMPARED TO
GLASS FABRICATORS, INC.

1. The shared use of ancillary office supplies or a computer is not sufficient to a requisite finding of substantially identical operations.

Even in cases where there is evidence of some operational similarity, in shared address, office equipment, or even bookkeeping computers, the inquiry must look to whether or not that is the equipment used in the core industry work performed by the two companies, as opposed to ancillary functions.

The two companies **share office equipment, including two fax machines, a copier, and three Dell computers used for bookkeeping and wordprocessing. However, there is no evidence that any of this equipment is used in the prepress work of either company.** Rather, each company uses its own, and very different, lithographic equipment. Compare Kenmore Contracting, 289 N.L.R.B. No. 56, 1988 WL 213821, at *3 (construction company used construction equipment of its alter ego); Advance Electric, 268 N.L.R.B. No. 151, 1984 WL 36068, at *4 (all trucks and electrical supplies used by electrical contracting company had belonged to its alter ego); All Kind Quilting, 266 N.L.R.B. No. 202, 1983 WL 25107, at *12-*13 (quilting company bought at auction and used, but never paid for, quilting equipment of alter ego); Crawford Door, 226 N.L.R.B. No. 174, 1976 WL 7566, at *8 (garage door installation company used alter ego's trucks).

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“We also consider the equipment used by each company... Dorn Fire Protection began operations with all of its own tools.” Rd. Sprinkler Fitters Local Union No. 669, U.A., AFL–CIO v. Dorn Sprinkler Co., 669 F.3d 790, 795 (6th Cir. 2012).

2. The equipment used by the companies for their core operations is vastly different.

Claimant focused on whether Estimator Anthony Augustine used office supplies from Glass Fabricators, Inc., like pens and paper pads, when he may, or may not have, wrote a handful of unsuccessful bids for Glass and Metal Solutions and he ultimately did not know where the office supplies were purchased after all. [Anthony Augustine Hearing Trans. Vol. I, (Page 64:5 to 64:13)].

Claimant found interest in a “really old” Ford van with many “hundreds of thousands of miles on it” and full of trash that may have been either given to Dale Dotson or purchased from Glass Fabricators, Inc. for a few hundred dollars but, in the end, it ended up having little value and ended up with their mutual friend Mark. Patricia Dotson Hearing Trans. 10.16 - Vol. 2, (Page 206:12 to 206:19) (Pages 236:1 to 237:9)

Claimant found interest in the fact that Glass Fabricators, Inc. was one of multiple tenants in a multi-tenant building owned by Ohio Corporation Realty Acquisitions, Inc., which was owned by Dale Dotson. In the end, it turned out that Glass Fabricators, Inc. stopped paying its rent, was deeply in debt, and the building was underwater in liens. The equipment abandoned by Glass Fabricators, Inc. was auctioned off by a third-party auction company. None of the equipment was purchased by Glass and Metal Solutions, Inc. and the auction resulted in a net check to Dale Dotson in the amount of only \$5,000.00. The real property was sold to pay off the loans, liens and debts. [Patricia Dotson Hearing Trans. 10.16 - Vol. 2, (Page 207:3 to

207:18); Dale Dotson Hearing Trans. 10.16 - Vol. 2, (Page 309:19 to 309:20), (Page 311:2 to 311:6), (Page 312:2 to 312:7); Dale Dotson Hearing Trans. 10.16 - Vol. 2, (Pages 312:23 to 313:7), (Page 355:16 to 355:21), (Pages 355:22 to 356:19), (Page 357:7 to 357:12), (Pages 358:17 to 359:5), (Page 359:6 to 359:22), (Page 360:17 to 360:22), (Pages 361:21 to 362:6), (Page 363:7 to 363:17), (Page 364:2 to 364:10); 10.17 - Vol. 3, (Pages 519:7 to 521:4), (Page 521:5 to 521:15)].

3. GMS did not operate out of Halstead

When Dale Dotson incorporated Glass and Metal Solutions, Inc., his company Realty Acquisitions, Inc. was the landlord of the multi-unit building on Halstead Avenue, so he used that address for the filing. Not having landed any work, however, he did not actually begin operations of Glass and Metal Solutions, Inc. at that location. Instead, he eventually operated it out of his garage (as he was not fabricating products anyway) and ultimately found another location that he first rented from a friend and then purchased. [Dale Dotson Hearing Trans. 10.16 - Vol. 2, (Page 313:11 to 313:15); Dale Dotson Hearing Trans. 10.16 - Vol. 2, (Page 315:4 to 315:8); Dale Dotson Hearing Trans. 10.16 - Vol. 2, (Page 316:11 to 316:14)].

Claimant found interest in the testimony of Mr. Turkal who stated he was driving by the Halsted location on a monthly basis to see what was going on. On all of his visits, he claims to have seen any activity on on occasion. From sitting in his car across the parking lot of the next building down, he claims to have seen Dale and his son loading glass onto a dark colored van. No other information was provided, he had “limited vision,” we are left to speculate what the glass was for, who ordered it, where it came from, or whether it was scrap. Mr. Turkal admitted that has never actually seen Glass and Metal Solutions, Inc. performing work on any job at all.

[Michael Turkal Hearing Trans. 10.17 - Vol. 3, (Pages 483:15 to 485:21) (Page 490:4 to 490:16) (Page 487:22 to 487:24)].

Claimant found interest in Mr. Dotson's sloppy clerical work in re-using boilerplate fax cover sheets from a Microsoft Word document form that he copied from Glass Fabricators, Inc. [Dale Dotson Hearing Trans. 10.16 - Vol. 2, (Pages 319:18 to 321:13), 10.17 - Vol. 3, (Pages 510:17 to 511:7)]

But not of that interest addresses the equipment used in the core business of the companies, which is vastly different.

4. Glass Fabricators, Inc. used specialized equipment to fabricate the glass it sold as its core business purpose.

Glass Fabricators, Inc. used specialized equipment to fabricate the glass it sold as its core business purpose, like power cups, CNC beveling machines, glass cutting tables for fabricating large sheets of glass, polishing machines, metal punch machines for curtain wall metal, and metal turning lathes. [Patricia Dotson Hearing Trans. 10.16 - Vol. 2, (Pages 232:20 to 234:9); Anthony Augustine Hearing Trans. Vol. I, (Pages 78:3 to 80:23), (Page 82:7 to 82:24)].

In contrast, Glass and Metal Solutions, Inc. does not fabricate, and does not use any equipment related to fabrication, and uses simple hand tools for installing interior floor level glass. [Dale Dotson Hearing Trans. 10.17 - Vol. 3, (Page 546:3 to 546:12); Dale Dotson Hearing Trans. 10.17 - Vol. 3, (Pages 548:11 to 550:4)].

5. Glass Fabricators, Inc. used special equipment for the high-level installation of the glass it fabricated as its core business purpose.

Glass Fabricators, Inc. used special equipment for the high-level installation of the glass it fabricated as its core business purpose, like cranes, lifts, scaffolding, swing stage equipment, huge platforms suspended from cables from the tops of skyscrapers, and rappelling equipment for mountain climbing to repel down the sides of buildings. [Patricia Dotson Hearing Trans. 10.16 - Vol. 2, (Page 226:6 to 226:19), (Page 227:13 to 227:22), (Page 228:4 to 228:7); Anthony Augustine Hearing Trans. Vol. I, (Pages 75:18 to 76:9); Dale Dotson Hearing Trans. 10.17 - Vol. 3, (Pages 546:22 to 548:2)].

In contrast, Glass and Metal Solutions, Inc. does not fabricate, and does not use any equipment related to fabrication, and uses simple hand tools for installing interior floor level glass, not using any equipment for high-level installations as it is not required. [Dale Dotson Hearing Trans. 10.17 - Vol. 3, (Page 546:19 to 546:21), (Page 550:5 to 550:11), (Page 546:13 to 546:18), (Page 548:3 to 548:10)].

J. GLASS AND METAL SOLUTIONS, INC. WAS NOT FORMED FOR THE PURPOSE OF EVADING A COLLECTIVE BARGAINING AGREEMENT, BUT WAS FORMED BECAUSE GLASS FABRICATORS, INC. WENT OUT OF BUSINESS AND ITS FORMER EMPLOYEE NEEDED TO WORK.

Among the many factors, an “intent to evade” the obligations of a collective bargaining agreement can be considered. Gen. Longshore Workers, Local 1988 v. Pate Stevedore Co., N.D.Fla. CASE NO. 91-30292-RV, 1993 U.S. Dist. LEXIS 18638, at *14-15 (Dec. 30, 1993).

However, here, Glass Fabricators, Inc. had already failed as a company and Dale Dotson, who was not an owner in Glass Fabricators, Inc., needed to eat, or, as Michael Turek

puts it “to keep financially alive.” Michael Turkal Hearing Trans. 10.17 - Vol. 3, (Pages 473:17 to 474:4).

II. FINDINGS OF FACT

- Glass and Metal Solutions, Inc. does not have substantially identical management when compared to Glass Fabricators, Inc.
- Glass and Metal Solutions, Inc. does not have a substantially identical business purpose when compared to Glass Fabricators, Inc.
- Glass and Metal Solutions, Inc. does not have a substantially identical operation when compared to Glass Fabricators, Inc.
- Glass and Metal Solutions, Inc. does not have substantially identical customers when compared to Glass Fabricators, Inc.
- Glass and Metal Solutions, Inc. does not have a substantially identical supervision when compared to Glass Fabricators, Inc.
- Glass and Metal Solutions, Inc. does not have a substantially identical ownership when compared to Glass Fabricators, Inc.
- Glass and Metal Solutions, Inc. was not formed with and intent to evade the obligations of a collective bargaining agreement.

III. CONCLUSIONS OF LAW

- Glass and Metal Solutions, Inc. is not the alter ego of Glass Fabricators, Inc.
- The Complaint is dismissed as to Glass and Metal Solutions, Inc.

Respectfully submitted,

/S/ STEPHEN B. DOUCETTE

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CERTIFICATE OF SERVICE

The undersigned certifies that on November 22, 2017 a copy of the foregoing was filed electronically through the National Labor Relations Board's e-filing system. Additionally, copies were served upon each of the following by e-mail and regular U.S. Mail:

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Additionally, a copy of the foregoing was served upon each of the following by regular U.S. Mail:

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