

Association of D.C. Liquor Wholesalers and its members Forman Bros., Inc., and/or Leon's Leasing Co., Inc., Washington Wholesale Liquor Co., Inc., and Beitzell & Co. and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 639, AFL-CIO

Association of D.C. Liquor Wholesalers and its members Forman Bros., Inc. and/or Leon's Leasing Co., Inc., Washington Wholesale Liquor Co., Inc. and/or Newco Washington Wholesale Liquor Company, Inc., and Beitzell & Co. and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 639, AFL-CIO.
Cases 5-CA-20103 and 5-CA-20321

September 28, 1990

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT AND DEVANEY

On March 22, 1990, Administrative Law Judge Frank H. Itkin issued the attached decision. The Respondents filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,¹ and conclusions and to adopt the recommended Order as modified.²

¹In adopting the judge's finding that, in violation of Sec. 8(a)(5) and (1) of the Act, the Respondents supplied false and misleading answers to the Union's information requests, we rely on facts establishing that the Respondents supplied contradictory responses to the Union. Thus, the answers provided by Respondent Forman/Leon's Leasing in its letters of April 19 and May 16, 1989, indicated that there were no common directors or officers as between these two entities, while on November 22, 1989, this Respondent represented that "Harold Munter . . . is an Officer and Director of both companies throughout the entire period." Similarly, Respondent Washington/Newco indicated in its April 19 and May 16, 1989 responses to the Union's question whether there were any directors and officers common to Newco and Charmer (another entity possibly owned and controlled by members of the Merinoff family, as to which the Union sought information), that only Charles Merinoff fit such a description. Yet in documents that the Union's attorney obtained later from the District of Columbia government, it appears that Newco's directors are Charles Merinoff, Herman Merinoff, and Steven Drucker, all three of whom are also directors and officers of Charmer.

We also agree with the judge that, in violation of Sec. 8(a)(5) and (1), the Respondents engaged in unwarranted delays in supplying the Union with the requested information. Both Respondents Forman/Leon's Leasing and Washington/Newco refused and failed to furnish any information during the period beginning June 7, 1988, when the Union made its initial request, to February 15, 1989, a period of approximately 8 months. Washington/Newco ceased providing information altogether on June 28, 1989, and Forman/Leon's ceased providing information on May 16, 1989, except for a last-minute submission on November 22, 1989, only 6 days before trial.

²We shall modify the recommended Order and notice to require the Respondents to furnish the information as set forth in the complaints.

We grant the Respondents' exception regarding the inclusion of Respondent Beitzell & Co. in the findings of violations and the remedial Order. There is no evidence that Beitzell was ever requested to supply information.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondents, Association of D.C. Liquor Wholesalers and its members Forman Bros., Inc. and/or Leon's Leasing Co., Inc., Washington Wholesale Liquor Co., Inc. and/or Newco Washington Wholesale Liquor Company, Inc., Washington, D.C., their officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for the judge's paragraph 1(a).

"(a) Failing and refusing to bargain in good faith with the Union, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 639, AFL-CIO as the exclusive bargaining agent of their employees in the following appropriate unit by failing and refusing to furnish the Union with certain requested information, including requested supporting documentation, as described in Appendix A, which is necessary and relevant to the Union's performance of its function as the exclusive bargaining agent of the unit employees. The appropriate bargaining unit is:

All truck drivers, tow motor operators, checkers, helpers and warehousemen employed by Respondent Employers, excluding all other employees, guards and supervisors as defined in the Act."

2. Substitute the following for the judge's paragraph 2(a).

"(a) Furnish the Union with the requested information as described in Appendix A."

3. Substitute the attached Appendix B for that of the administrative law judge.

APPENDIX A

Case No. 5-CA-20103

Provide the following information requested by the Union in its letters dated June 7, June 17, June 27, and October 14, 1988.

1. The contract of sale between Respondent Washington and an entity named Charmer, plus all documents which shall identify Charmer.

2. Information as to all of the corporate and financial arrangements involving Respondent Washington and Charmer.

3. All documents showing the identity and relationship between Forman Bros., Inc. and Leon's Leasing Co., Inc.

4. Information as to all of the corporate and financial arrangements involving Forman Bros., Inc. and Leon's Leasing Co., Inc.

Case No. 5-CA-20321

In the case of Washington Wholesale Liquor Co., Inc., provide the following information supported by documents.

1. The schedules and lists attached to the agreement between Washington and Newco (e.g., Sched. C, p. 12 of agreement);

2. Identify and explain paragraph 6(g) of the agreement (p. 12) that “no governmental agency or department investigation is pending or threatened against Sellor or any of its property or assets”;

3. Identify and explain the statements that there are no governmental suits or proceedings and no litigation pending against Washington (pp. 30-31 of the agreement);

Provide the following information for Newco and Charmer for the time period January 1, 1987, through the present, unless otherwise indicated.

1. The office address and employment history (including job titles and responsibilities), for the period indicated above to date, of a) each present company officer and/or director and b) each former company officer and/or director who was employed at any time during that period.

2. The name and employment history (including job titles and responsibilities) of each current or former director, officer, supervisor, and/or employee of any of the companies who at any time since January 1, 1987, has been or was employed by any of the other companies in any capacity.

3. The state or states in which each company has been and/or is qualified or registered to do business, and the dates the company so qualified or registered.

4. The names and addresses of all persons, corporations, or other entities owning stock (and the percentage of their ownership) in each company as of January 1 of each year from 1987 to date.

5. The nature of the business of each company, including products, services, customers and locations of distribution warehousing, and/or sales facilities.

6. The date, terms and parties to each contract, commitment or understanding, whether oral or written, under which the companies have been and/or are jointly obligated to engage in business activity.

7. The date, terms and parties to each contract, commitment or understanding, whether oral or written, between the companies under which one of the companies has been and/or is required or authorized to use the services, facilities, personnel, or equipment of any of the other companies.

8. The date, terms, parties to and persons entering into each contract, commitment, or understanding, whether oral or written, between the companies.

9. The date, terms, and parties to and persons entering into each contract, commitment, or understanding, whether oral or written, under which one of the companies agreed to loan, sell and/or contribute equipment, services, money and/or any other things of value to any of their other companies.

10. The date and substance of each bid submitted by one company for work to be performed in whole or in part by other company.

11. The date and substance of each contract entered into by one company for work which was, or is, being performed in whole or in part by any of the other companies, including, but not limited to, work performed in Washington, D.C.

12. The identity of each person or entity that guaranteed the performance of each contract entered into by either company, and the parties to the contract.

13. The name, effective dates, terms and class of eligible employees, supervisors, officers and/or directors of each health, life insurance, pension, incentive, stock option, retirement and/or similar benefit plan offered by each company.

14. The nature and terms of any lines of credit, revolving credit, or other credit arrangements offered by one company to any of the other companies, the dates on which such credit was extended, the amount of credit extended, and the parties to each extension of credit.

15. The nature and amount of indebtedness owed by each company to the other company on June 1 of each year from 1987 to date.

16. Identify the banking institution, branch location, and account number of each company's bank account and payroll accounts.

17. Identify the law firm or firms and the accounting firm or business representing each company.

Provide the following information for Forman and Leon's for the time period January 1, 1987, through the present, unless otherwise indicated:

1. The name and employment history (including job titles and responsibilities) of each current or former director, officer, supervisor, and/or employee of any of the companies who at any time since January 1, 1987, has been or was employed by any of the other companies in any capacity.

2. The names and addresses of all persons, corporations, or other entities owning stock (and the percentages of their ownership) in each company as of January 1 of each year from 1987 to date.

3. The nature of the business of each company, including products, services, customers and locations of distribution warehousing, and/or sales facilities.

4. The name, title, employer, and job duties of any persons who are, or who have been, responsible in any way for labor relations and/or personnel relations for each company, the period of time during which each of these persons was assigned these responsibilities, and each person's employer during each such period of time.

5. The name, title, and employer of each person who had, or has, responsibility for hiring, firing, and supervising employees in each company, the period of time during which each of these persons was assigned these responsibilities, and each person's employer during each such period of time.

6. The name, title, and employer of each person responsible for new businesses for each company, and the period or periods of time during which each of these persons was assigned these responsibilities.

7. The name, effective dates, terms and class of eligible employees, supervisors, officers and/or directors of each health, life insurance, pension, incentive, stock option, retirement, and/or similar benefit plan offered by each company.

8. The dates, participants and substance of each meeting, conference and/or discussion attended by one or more shareholders, directors, officers, supervisors, and/or employees of any of the companies at which the formation and/or function of any of the other company was discussed.

9. Copies of those portions of all documents, including but not limited to correspondence, memoranda, notes, and minutes, which refer directly or indirectly to the formation, dissolution, and/or function of any of the other companies.

10. The date, substance, and participants in each meeting attended by supervisory employees from both companies.

11. Provide each company's contractor license number for each state where it does business.

APPENDIX B

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 have violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain in good faith with the Union, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of

Amercia, Local Union No. 639, AFL-CIO as the exclusive bargaining agent of our employees in the following appropriate bargaining unit by failing and refusing to furnish the Union with certain requested information, as described in the Board's Decision, including requested supporting documentation, which is necessary and relevant to the Union's performance of its function as the exclusive bargaining agent of the unit employees. The appropriate bargaining unit is:

All truck drivers, tow motor operators, checkers, helpers and warehousemen employed by Respondent Employers, excluding all other employees, guards and supervisors as defined in the Act.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed to them in Section 7 of the National Labor Relations Act.

WE WILL furnish the Union with the requested information, including the requested supporting documentation, as described in the Board's decision.

ASSOCIATION OF D.C. LIQUOR, WHOLESALE
SALERS AND ITS MEMBERS FORMAN
BROS., INC. AND/OR LEON'S LEASING
CO., INC., WASHINGTON WHOLESALE
LIQUOR CO., INC. AND/OR NEWCO
WASHINGTON WHOLESALE LIQUOR
COMPANY, INC.

Marc A. Stefan and Bruce E. Goodman, Esq., for the General Counsel.

Ronald E. Tisch and Linda H. Thatcher, Esq., for the Employers.

Hugh J. Beins and Elizabeth J. Head, Esq., for the Union.

DECISION

FRANK H. ITKIN, Administrative Law Judge. Unfair labor practice charges and amended charges were filed in the above cases on November 9, 1988, January 30, March 20, and July 24, 1989. Complaints issued on February 27 and August 11, 1989, and were amended at the hearing. The cases were consolidated on August 14, 1989. General Counsel alleges that Respondent Employers violated Section 8(a)(5) and (1) of the National Labor Relations Act by their failure and refusal to bargain in good faith with the Union as the exclusive bargaining agent of an appropriate unit of their employees by refusing to supply to the Union certain requested information that was both necessary for and relevant to the Union's performance of its function as bargaining agent for the unit employees; by responding to the Union's requests for information with false and misleading information; and by the unwarranted delay in supplying certain requested information. Respondents deny violating the Act as alleged. A hearing was held on the issues raised in Washington, D.C., on November 28, 1989. On the entire record, including my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

The jurisdictional allegations of the amended consolidated complaints are not disputed. Rather, counsel for Respondents principally argues that the Union's information requests, discussed below, are not presumptively relevant and the Union has failed to sufficiently demonstrate relevancy; Respondents Forman and/or Leon's responded to every information request; Respondent Newco has sufficiently responded to the information requests; Respondents Association, Beitzell, Forman, and Washington are not proper parties to this proceeding; and General Counsel was improperly permitted to amend his consolidated complaints at the hearing.

However, before turning to the Union's information requests and the related contentions of the parties, it is important to note the following background information. On May 17, 1988, Administrative Law Judge Thomas R. Wilks issued his decision in Case 5-CA-18743 reported at 292 NLRB 1234 (1989), finding, *inter alia*, that Respondents Association, Forman, Leon's, Washington, and Beitzell violated Section 8(a)(5) and (1) of the Act on and after February 27, 1987, by failing to bargain in good faith with the Union; by unilaterally implementing changes in terms and conditions of employment; and by locking out and replacing unit employees. The administrative law judge further found that Respondents' lockout and replacement of the unit employees also violated Section 8(a)(3) and (1) of the Act and recommended, *inter alia*, reinstatement, a make-whole remedy, and broad order. The Board, on February 21, 1989, issued its Decision and Order affirming, insofar as pertinent here, the findings and conclusions of the administrative law judge. The Board agreed that "Respondents' conduct on February 27, 1987, and thereafter, in failing to bargain in good faith and in unilaterally implementing changes in terms and conditions of employment, violated Section 8(a)(5) and (1) of the Act"; "that the lockout and replacement of employees, having been motivated by the same bad faith declaration of impasse, were similarly unlawful"; and that "these actions also constitute discrimination against employees in violation of Section 8(a)(3) and (1) of the Act." The Board essentially adopted the recommended reinstatement, make-whole, and broad remedial order of the administrative law judge. 292 NLRB 1234 (1989). The Board's Order is now pending review in the United States Court of Appeals for the District of Columbia Circuit.

Ronald Ross, the Union's business representative, testified in the instant information request proceeding. Ross recalled that on March 2, 1987, "the entire Liquor Association, the bargaining unit employees, were locked out"; a picket line was established; it later "was rumored that [Respondent] Washington Wholesale was either being sold or put up for sale and I got that rumor from the guys [locked-out Washington Wholesale employees] who were actually walking the picket lines"; "we noticed that there were different trucks along with the trucks that they [Washington] previously had"; "there were other trucks that were added . . . with New York tags"; there were "placards painted on the side of the [new] truck[s] which said Washington Wholesale but under that you could see that there was some type of writing but you couldn't see it clearly enough to distinguish what it was"; Washington's trucks previously had "D.C. tags," however, as noted, the new trucks had "N. Y. tags"; and the new trucks had a "cardboard taped over" the permanent in-

scription stating "Washington Wholesale." In addition, Ross recalled that one of the locked-out unit employees provided him with a letter pertaining to "the sale of the Company." (See G.C. Exh. 19.) This document, dated November 19, 1987, is a notice to the creditors of Respondent Washington reciting, *inter alia*, a bulk sale is about to be made by Respondent Washington to Respondent Newco; the address of Newco is "c/o Dow, Lohnes & Albertson" in New York City; and it is signed by Charles Merinoff on behalf of Newco. Ross previously had been notified that Respondent Leon's had become "the successor employer to" Respondent Forman. (See R. Exh. 1.) Ross therefore caused the above information to be relayed to Union's counsel for appropriate action. Ross noted that no locked-out unit employees had been reinstated and he approximated the potential backpay liability to the unit employees in the pending Board proceeding at over \$10 million.

Elizabeth Head, counsel for the Union, testified about her efforts on behalf of the Union to obtain information from Respondents. Head went to the Alcoholic Beverage Control Board of the District of Columbia and obtained the following information pertaining to Charles Merinoff (who had signed the above bulk sale notice on behalf of Respondent Newco); other members of the Merinoff family; Charmer Industries, Inc.; Efficiency Enterprises, Inc.; and the Merinoff Family Partnership. These documents, as counsel for General Counsel notes in his posthearing brief (p. 3), "raised and continue to raise substantial questions concerning the ownership and control of Respondent Washington and/or Newco and the roles of the Merinoffs and their corporate and related entities in that ownership and control." (See G.C. Exhs. 18, 20-22.)

Thus, General Counsel's Exhibit 18, Respondent Newco's Alcoholic Beverage Control license application, shows, *inter alia*, that Merinoff family members are listed as officers, directors and stockholders of Respondent Newco and also officers, directors and stockholders of Charmer Industries, Inc.; Charmer is a "wholesale distributor of alcoholic beverages" in New York; and, specifically,

Messrs. Herman Merinoff, Charles Merinoff and Steven Drucker are stockholders of applicant [Newco] and also have interests in Charmer All of the remaining stockholders of applicant are also stockholders of Charmer Some of the funds invested in applicant by the stockholders were accumulated as a result of compensation and/or dividends paid to them by Charmer Charmer has loaned the Corporation [Newco] \$1 million Of the \$2 million being contributed to the Corporation, \$1 million will represent capital paid in by the stockholders and the other \$1 million will consist of a loan from Charmer The funds being invested in the Corporation come from the individual bank accounts of the stockholders which accounts are maintained at Manufacturers Trust Company The funds being loaned by Charmer will come from operating capital.

General Counsel's Exhibit 20, an affidavit by Charles Merinoff in support of the above license application, shows, *inter alia*, the sources of the funds to be invested by the named stockholders of Newco, noting:

The remaining stockholders are each stockholders of Efficiency Enterprises, Inc. . . . Each has owed to

him/her by Efficiency undistributed profits To the extent Efficiency does not have sufficient funds in its bank account to pay each of the stockholders . . . their respective investment [in Newco], Efficiency will draw on its line of credit at Manufacturers Each of the remaining stockholders will finance his/her purchase of Newco's stock with the funds received from Efficiency. . . . In addition to the \$1 million capital investment being made by the [listed] stockholders, there will [be] \$1 million loaned to Newco by . . . Herman I. Merinoff, . . . Ruth Drucker . . . [and the] Merinoff Family Partnership [as described therein.]¹

In addition, General Counsel's Exhibit 21 shows, inter alia, that Efficiency is engaged in the truck rental business and General Counsel's Exhibit 22 shows the relationship between Efficiency and the Merinoff Family Partnership.

Accordingly, Hugh Beins, counsel for the Union, wrote Ronald Tisch, counsel for Respondents, on June 7, 1988 (G.C. Exh. 2), a request for the following information:

1. The contract of sale between Respondent Washington and Chalmer (mistakenly called "Charmers") together with all documents which identify Chalmer.
2. The number of hours worked by the replacements since March 2, 1987, the date of the unlawful lockout.

Beins explained:

Our major concern at the moment is to obtain the reinstatement of the employees. That should be in your interest also because it will serve to cut off the [backpay] liability which is running with interest. We must pursue any relief from the Board to obtain reinstatement.

Beins received no response to his letter and again wrote Tisch on June 17 (G.C. Exh. 3) requesting the contract of sale between Respondent Washington and Chalmer with all documents which identify Chalmer as well as "all documents showing the identity and relationship between [Respondents] Forman and Leon's" Beins noted:

Finally, we insist upon the financial statements for all three Companies in the year 1987. There is a rumor that Beitzell is in imminent danger of bankruptcy or sale. If the assets of these Companies are in jeopardy, it is obviously highly relevant to the rights of the Union and the employees.

Beins requested an "immediate reply."

Tisch responded to Beins on June 22 (G.C. Exh. 7) stating, inter alia, that the "relevance" of the "contract of sale" between "Chalmers" and "Washington Wholesale Liquor escapes us"; the "request for all documents which shall identify Chalmers" "appears to be irrelevant as well as overly broad, burdensome and vague"; "we would appreciate your insight as to the relevance of the hours worked by the replacement employees"; as to Forman and Leon's "you had the opportunity to litigate any issue arising therefrom . . . at the unfair labor practice hearing" and the "Company notified the Union that Leon's . . . would be the new Employer"; and "you are not entitled to financial statements

¹ See also the letter dated August 18, 1987, part of the above application, which shows that the seven listed shareholders of Efficiency are among the listed shareholders of Respondent Newco.

. . . since you stated the need arose out of a rumor pertaining to Beitzell's bankruptcy or sale."

Beins wrote Tisch again on June 27 (G.C. Exh. 4) explaining the "relevance" of his requests pertaining to Charmer, as follows:

Around March 1987 Charmers [sic] bought Washington At that time I wrote the Company advising them of the obligation pursuant to the *Golden State* doctrine. I never received a reply. Since then Charmers' people and Charmers' trucks from New York have been in Washington's location in D.C. The licenses of the trucks were only recently changed from New York to D.C. licenses.

We are very much concerned that a "dummy" corporation may have been set up to purchase Washington even though in fact Charmers D.C. is the same Chalmers as in New York City. Since you are representing the Company, you certainly have the evidence and we are entitled to it because of its relevance.

Again Beins asked for a prompt response; however, no information was provided.

Beins again wrote Tisch on October 14 (G.C. Exh. 5) restating that the requested information was both necessary and relevant. Beins explained:

Specifically, I want to know all of the corporate and financial arrangements involving Forman . . . and Leon's . . . or any other entity involved with the group we represent. . . . I want the same information for Washington and the New York corporation [mistakenly described as Charmer] which bought them. Frankly, I am curious and suspicious that some devious mind may be plotting how to avoid the financial exposure of the NLRB decision.

Beins requested this information within the next 2 weeks and threatened to file charges with the Board. He also enclosed a copy of his earlier letter to Charmer. (See G.C. Exh. 4.)

Tisch replied to Beins on November 1 (G.C. Exh. 8) repeating that "the relevance of your requests escaped us" and "still does." No information was provided.

The Union, as noted above, filed initial unfair labor practice charges on November 9, 1988, and a complaint issued on February 27, 1989. On February 15 or 16, 1989, Respondent Employers first provided the Union with some requested information. (See G.C. Exhs. 13, 14, 15, and 16.)² General Counsel's Exhibit 13 is the agreement between Respondent Forman and Respondent Leon's, dated October 1, 1985. General Counsel's Exhibit 14 is the consent of the board of directors of Respondent Newco, dated May 21, 1987, pertaining to its incorporation. This document refers to an "Exhibit A" which was omitted. General Counsel's Exhibit 15 is a certificate of Respondent Leon's, dated February 13, 1989, showing its stockholders, directors, and officers. General Counsel's Exhibit 16 is the sales agreement between Respondent Washington and Respondent Newco, dated May 31, 1987. A number of documents are incorporated by reference into the sales agreement; however, as counsel for General Counsel notes in his posthearing brief (p. 6), Re-

² See also G.C. Exh. 17, Respondent Newco's certificate of incorporation.

spondents have refused to supply them. (See G.C. Exh. 11, p. 1 with respect to Newco.)

Beins wrote Tisch on February 21 (G.C. Exh. 6) acknowledging the receipt of information "for the first time" on February 16. Beins complained that the information supplied was "totally inadequate." Beins generally spelled out some 15 information requests pertaining to, inter alia, the relationships between Respondent Washington, Respondent Newco, Chalmer, and the Merinoffs and the previous information requests. Beins also enclosed 38 specific questions pertaining to Newco and Chalmer. Beins further spelled out some nine information requests pertaining to Respondents Forman and Leon's and their relationship. Beins also enclosed the same 38 specific questions pertaining to Forman and Leon's.

A further unfair labor practice charge was filed on March 20. Tisch then supplied the Union with additional information on April 19 (G.C. Exh. 9). Tisch later supplied "additional information" to Board agents on May 16 (G.C. Exh. 11), June 28 (G.C. Exh. 10), and November 22 (G.C. Exh. 12).³ Tisch did not supply requested supporting documentation. He refused to supply requested information pertaining to Charmer or entities other than Washington or Newco. Requested information pertaining to, for example, ownership percentages was called "confidential"; later, however, it was supplied. Cf. General Counsel's Exhibits 11 and 12. At one point, the Union was informed that there were no common directors between Respondents Forman and Leon's. Later, some 6 days before this hearing, the Board agent was informed that one Harold Munter is an officer and director of both corporate entities. Cf. General Counsel's Exhibits 6, 9, 11, and 12. At one point, the Union was also informed that Charles Merinoff was the common officer and director of Respondent Newco and Charmer. However, elsewhere, it appeared that Newco directors Charles Merinoff, Herman Merinoff, and Steven Drucker are also directors, officers, and shareholders of Charmer. Cf. General Counsel's Exhibits 6, 9, 17, and 18. In addition, although Respondent Newco's ABC license application makes it clear that Charmer loaned \$1 million to Newco, Charles Merinoff, in a later submission to a Board agent (G.C. Exh. 10), claimed that this was an error. Significantly, no attempt was apparently made to correct the ABC license application.⁴

Discussion

We are principally concerned here with the delays and refusals of Respondents to supply requested information to the Union. Respondents Association, Forman, Leon's, Washington, and Beitzell had been found by the Board to have violated their bargaining obligation to the Union and to have unlawfully locked out the unit employees represented by the Union. The Board had ordered Respondents to reinstate and make whole the unit employees. The Union, as discussed below, concerned that Respondents might be attempting to evade their reinstatement and backpay obligation approximated at over \$10 million, made information requests commencing on and after June 7, 1988. (See G.C. Exhs. 2 through 6.) The credited and undisputed evidence of record

makes it plain that Respondents delayed and refused to provide requested information and, in addition, provided false and misleading information. The question here is whether this conduct of Respondents further violated their bargaining obligation under Section 8(a)(5) and (1) of the Act.

The controlling legal principles have been restated many times. Thus, as summarized in *Maben Energy Corp.*, 295 NLRB 149 (1989), "an employer is obligated to provide a union with requested information if there is a probability that such data is relevant and will be of use to the union in fulfilling its statutory duties and responsibilities as the employees' exclusive bargaining representative"; the issue in such a case is "whether the requested information had probable and potential relevance to the union's statutory obligation to represent employees within the contractual units"; "the fact the requested information may relate to employers and employees outside the represented bargaining unit does not by itself negate its relevance"; "for, whatever the eventual merits of the union's claim that their contracts are being violated and their bargaining units unlawfully diminished, they are entitled to the requested information under the discovery type standard announced in *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 437 (1967), to judge for themselves whether to press their claims in the contractual grievance procedure or before the Board or Courts" *Associated General Contractors of California*, 242 NLRB 891 (1979), enfd. as modified 633 F.2d 766 (9th Cir. 1980). See also *Electrical Energy Services*, 288 NLRB 925 (1988). And, where a union seeks information to establish an alter ego or single employer relationship, it is not required to prove the existence of such a relationship, rather, it is sufficient "that General Counsel has established that the union had an objective factual basis for believing" that one entity is an "alter ego or single employer" of the other. *M. Scher & Sons, Inc.*, 286 NLRB 688 (1987). Clearly, these same principles are equally applicable to union efforts to determine successorship relationships. Cf. *Westwood Import Co.*, 251 NLRB 1213, 1226 (1980).

Moreover, the delayed and untimely submission of such requested information does not fulfill this bargaining obligation or obviate the need for a remedy. Cf. *Alle Arcibo Corp.*, 264 NLRB 1267, 1274 (1982), and *First Big Mountain Mining Co.*, JD-246-89 (cited by counsel for the Union and Respondents in their posthearing briefs). Likewise, an employer does not fulfill this obligation when it submits information to a Board representative rather than directly to the requesting union with whom it must bargain in good faith. See *CRST, Inc.*, 269 NLRB 400 (1984). In short, "a union's right to information is not defeated merely because the union may acquire the needed information through an independent course of investigation . . . the union is entitled to an accurate and authoritative statement . . . the employer either must supply such information or adequately set forth the reasons why it is unable to comply" Finally, general, belated, and eschewed assertions of confidentiality will not justify a refusal by an employer to supply requested information where it fails to come forward with some offer "to accommodate its concerns with its bargaining obligations." See *Maben Energy*, supra.

In the instant case, the Union, in an attempt to bring Respondents into compliance with the Board's outstanding Order and thus get its locked-out unit members back to work and made whole, initiated the above information requests.

³ As noted, the instant hearing commenced on November 28, some six days after this last submission.

⁴ I credit the testimony of Ronald Ross and Elizabeth Head as summarized above. Their testimony is uncontroverted and substantiated by undisputed documentary evidence.

Respondents Forman and/or Leon's and Respondents Washington and/or Newco had undergone ownership changes both before and after the unlawful March 2, 1987 lockout. The existing information concerning the Forman-Leon's transaction (see R. Exh. 1) was certainly not clear. Under the circumstances, the Union was not obligated to accept without more the general and vague assertion that Leon's was a "successor" to Forman. Accordingly, the Union's request for detailed information pertaining to the relationship between Forman and Leon's is clearly relevant to the Union's obligation to represent its locked-out unit members. Respondents, however, by their counsel, as demonstrated above, attempted initially to ignore the Union's request for this information. Later, Respondents periodically released portions of this requested information, submitted false and misleading information, and, in addition, submitted requested information to Board representatives instead of directly to the Union.

The Union fared no better with respect to its requested information pertaining to the relationship between Respondent Washington, Respondent Newco, Charmer, and other related entities. Again, as demonstrated above, Respondents, by their counsel, engaged in unwarranted and unjustified delays, submitted false and misleading information, submitted information to Board representatives rather than directly to the Union, and refused to submit requested information pertaining to Charmer and related entities. Thus, for example, counsel for Respondents generally asserted that the "relevance" of information pertaining to the relationship between Respondent Newco and Chalmer "escapes us." Counsel for the Union adequately and sufficiently demonstrated to counsel for Respondents his concerns over a suspected attempt by Respondents through the use of a "dummy corporation" to evade their obligation under the outstanding Board Order. Respondents nevertheless persisted in their refusal to supply requested information.

The evidence of record amply demonstrates an objective factual basis for believing that Respondents were engaging in an attempt to evade or avoid their outstanding reinstatement and backpay obligation by use of related and connected entities. Thus, shortly after the unlawful lockout, the Union observed different trucks at Respondents' facility with New York license tags and their permanent identifications concealed. The Union also obtained a notice, dated November 19, 1987, and signed by Charles Merinoff, indicating that "a bulk sale is about to be made" from Respondent Washington to Respondent Newco. Newco was listed as having a New York address. In addition, the Union obtained documents showing connections between Respondent Newco, Charmer, Efficiency, and the Merinoff Family Partnership. Members of the Merinoff family, as demonstrated above, are listed as directors, officers, and stockholders of Newco and Charmer. Charmer is a corporation with a New York address engaged in the wholesale distribution of alcoholic beverages. Charmer loaned \$1 million to Newco. These funds came from operating capital. There is reference in the documents to another \$1 million loan to Newco from the listed shareholders to be paid out of an account maintained with Hanover Trust. Elsewhere, it is recited:

The remaining stockholders are each stockholders of Efficiency Enterprises, Inc. . . . Each has owed to him/her by Efficiency undistributed profits To the extent Efficiency does not have sufficient funds in

its bank account to pay each of the stockholders . . . their respective investment [in Newco], Efficiency will draw on its line of credit at Manufacturers Each of the remaining stockholders will finance his/her purchase of Newco's stock with the funds received from Efficiency. . . . In addition to the \$1 million capital investment being made by the [listed] stockholders, there will [be] \$1 million loaned to Newco by . . . Herman I. Merinoff, . . . Ruth Drucker . . . [and the] Merinoff Family Partnership [as described therein.]

The contract of sale between Washington and Newco provides that notices to Newco shall be sent to Charmer at its New York address. In addition, Efficiency is engaged in the truck rental business and there is obviously a relationship between Efficiency and the Merinoff Family Partnership.

On this record, I find and conclude that the information requested by the Union, as recited above, was clearly relevant to and necessary for the Union to fulfill its statutory representational duties on behalf of the unlawfully locked-out unit employees. I also find and conclude that General Counsel and the Union have amply established probable and potential relevance. Finally, I find and conclude that Respondents, by their delays in supplying such information, by their refusals to supply such information, and by their supplying of false and misleading information, have further violated their bargaining obligation, in violation of Section 8(a)(5) and (1) of the Act. See 292 NLRB 1234.⁵

CONCLUSIONS OF LAW

1. Respondents are employers engaged in commerce as alleged.
2. The Union is a labor organization as alleged.
3. The Union is the exclusive bargaining agent of the following appropriate unit of Respondents' employees:

All truck drivers, tow motor operators, checkers, helpers and warehousemen employed by Respondent Employers, excluding all other employees, guards and supervisors as defined in the Act.

⁵Counsel for General Counsel also argues that the requested information was "presumptively relevant"; however, as he elsewhere acknowledges, "a finding of presumptive relevance is not essential" here because the parties have "amply demonstrated the relevance of the requested information." Counsel for Respondents argues that the information sought here is "confidential." I reject this assertion. As noted above, such general, belated, and eschewed assertions of confidentiality will not justify a refusal by an employer to supply requested information where it fails to come forward with some offer "to accommodate its concerns with its bargaining obligations." See *Maben Energy*, supra. Likewise, on this record, I find no reasonable basis for contending that the requests were burdensome or oppressive. Counsel for Respondents also renews his objections to the complaint amendments allowed at the hearing. Upon reconsideration, I adhere to those rulings and further note that the allowed amendments were closely related to the filed charges and issued complaints. Finally, counsel for Respondents argues that Respondents Association, Washington, Forman, and Beitzell are not proper parties here. As explained supra, these parties were respondents in the initial proceeding and found by the Board to have bargained in bad faith, locked out, and discriminated against the unit employees. The requests for information involved in this proceeding were served on counsel who apparently represents these respondents. Counsel for General Counsel and the Union are now seeking, in effect, to bring these respondents into compliance with the Board's outstanding Order and fulfill their bargaining obligation. Under the circumstances, I find them to be proper parties to this proceeding.

4. Respondents violated Section 8(a)(5) and (1) of the Act by their failure and refusal to bargain in good faith with the Union as the exclusive bargaining agent of their employees in the above appropriate unit by refusing to supply to the Union certain requested information that was both necessary for and relevant to the Union's performance of its function as bargaining agent for the unit employees; by responding to the Union's requests for information with false and misleading information; and by the unwarranted delay in supplying certain requested information.

5. The unfair labor practices found above affect commerce as alleged.

REMEDY

To remedy the unfair labor practices found above, Respondents will be directed to cease and desist from engaging in such conduct or in any other manner impinging upon employee Section 7 rights. I note that the Board approved in the earlier unfair labor practice case such a broad order. Since Respondents are persisting in their refusal to bargain in good faith, such a broad order would similarly be appropriate here. Respondents will also be directed to turn over to the Union, insofar as they have not already done so, the requested information together with requested supporting documentation and post the attached notices.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁶

ORDER

Respondents Association of D.C. Liquor Wholesalers and its Members Forman Bros., Inc. and/or Leon's Leasing Co., Inc.; Washington Wholesale Liquor Co., Inc. and/or Newco Washington Wholesale Liquor Company, Inc.; and Beitzell & Co.; their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with the Union, International Brotherhood of Teamsters, Chauffeurs,

Warehousemen and Helpers of America, Local Union No. 639, AFL-CIO as the exclusive bargaining agent of their employees in the following appropriate bargaining unit by failing and refusing to furnish the Union with certain requested information, including requested supporting documentation, as described in the above decision, which is necessary and relevant to the Union's performance of its function as the exclusive bargaining agent of the unit employees. The appropriate bargaining unit is:

All truck drivers, tow motor operators, checkers, helpers and warehousemen employed by Respondent Employers, excluding all other employees, guards and supervisors as defined in the Act.

(b) In any other manner interfering with, restraining, or coercing their employees in the exercise of the rights guaranteed to them in Section 7 of the National Labor Relations Act.

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

(a) Furnish the Union, insofar as they have not already done so, with the requested information as described in the above decision.

(b) Post at their facilities copies of the attached notice marked "Appendix."⁷ Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent has taken to comply.

⁶If 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.

⁷If 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."