

International Union, United Mine Workers of America and Boich Mining Company

District 6, United Mine Workers of America and Boich Mining Company

Local Union No. 7449, United Mine Workers of America and Boich Mining Company. Cases 8-CC-1420-1, 8-CC-1420-2, and 8-CC-1420-3

February 27, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT AND RAUDABAUGH

On March 22, 1990, Administrative Law Judge Thomas A. Ricci issued the attached decision. The General Counsel and the Charging Party filed exceptions and supporting briefs, and the Respondents filed an answering brief.¹ The General Counsel filed a motion to strike the Respondents' brief, and the Respondents filed a response to the General Counsel's motion.

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 briefs and has decided to affirm the judge's rulings, findings,² and conclusions as modified and to adopt the recommended Order.

The judge found that Boich Mining Company (Boich) and Aloe Coal Company (Aloe Coal) are a single employer and therefore that the Respondents' strike against Boich in support of their strike against Aloe Coal was lawful primary activity. We agree with the judge's conclusion, although we find the evidence presents a closer question than he adjudged. For the reasons stated below, we find that evidence of common ownership and the interrelation of operations, on balance, indicates that Boich and Aloe Coal are a single employer, especially in light of the fact that the coal of both companies is blended to create a new product that both companies sell to their customers.³

¹The General Counsel contends that the Respondents' answering brief does not conform to Sec. 102.46(d)(2) of the Board's Rules and Regulations. Specifically, the General Counsel argues that, although the Respondents did not file exceptions or cross-exceptions to the judge's decision, their brief improperly contains numerous proposed findings of fact not raised by way of the exceptions filed by the General Counsel and the Charging Party. We deny the General Counsel's motion. In so doing, we emphasize that our decision is based entirely on testimony credited by the judge and on un rebutted record evidence; thus the General Counsel and the Charging Party are not prejudiced by our refusal to strike the Respondents' brief.

²The General Counsel and the Charging Party have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

³Although we have used the term "single employer" herein, we wish to emphasize that we use the term for the limited purpose of connoting that

Boich and Aloe Coal are wholly-owned subsidiaries of Aloe Holding Company (Aloe Holding), which is owned by a family of six Aloe siblings.⁴ One of those siblings, David Aloe, is responsible for the Aloe family's mining properties, which also include Robinson Coal Co., North Fayette Coal Co., and Boich Lime and Coal Company.⁵ Aloe Coal is the sole owner of Coal Equipment Company (Coal Equipment), which does maintenance work for mining companies, and Imperial Farms, Inc., which does reclamation work on strip-mined properties.⁶

Boich's mine is located in eastern Ohio, some 31 miles from Aloe Coal's operations in western Pennsylvania. Employees at each facility are represented by the Respondent United Mine Workers International and its local unions.

During the summer of 1989,⁷ there was a labor dispute between the Union and Aloe Coal. On August 3, the International Union called the employees of Boich out on strike in support of its strike against Aloe Coal. From August 4 through September 4, the Boich employees, represented by Respondent Local 7449, struck and picketed Boich's facility.⁸

The complaint alleges that the Respondents' action against Boich was "secondary" activity against a neutral employer, and therefore violated Section 8(b)(4)(B) of the Act. For the reasons set forth below, we agree with the judge's dismissal of the complaint.⁹

Section 8(b)(4)(B) makes it unlawful for a union or its agents to strike or picket one person, with whom the union does not have a labor dispute, in order to force that person to cease doing business with another person (usually an employer with whom the union

Boich is sufficiently related to Aloe Coal as to render Boich nonneutral with respect to the labor dispute with Aloe Coal. See *Teamsters Local 560 (Curtin Matheson)*, 248 NLRB 1212, 1213-1214 (1980). This does not necessarily mean that Boich and Aloe Coal would constitute a single employer for all purposes or in other contexts.

⁴The judge erroneously stated that Boich is owned by Aloe Coal. We correct the error.

⁵Robinson Coal, North Fayette Coal, and Boich Lime and Coal are owned directly by the Aloe family, not by Aloe Holding.

⁶We base our finding that Coal Equipment Co. and Imperial Farms, Inc. are owned by Aloe Coal on C.P. Exh. 9, which was sponsored by James Birsic, the director of legal affairs for Aloe Holding. Birsic testified that he prepared that exhibit on the basis of his actual knowledge of the ownership relationships among the entities in question, and that it was an accurate representation of those relationships.

Abe Bryan, president of Boich, testified generally (without stating the basis of his claim to knowledge) that Coal Equipment and Imperial Farms were subsidiaries of Aloe Holding. That characterization is not completely inconsistent with Birsic's, because Aloe Coal, which Birsic depicted as owning both Coal Equipment and Imperial Farms, is itself a subsidiary of Aloe Holding. To the extent the two witnesses' testimony is inconsistent, however, we find Birsic's to be more accurate because Birsic was in a better position to know the companies' relationship in detail, and because his testimony was more precise than Bryan's, which was technically without foundation.

⁷Unless otherwise noted, all dates are in 1989.

⁸The judge inadvertently stated that the strike at Aloe Coal ended on September 4. The strike that ended that day was the strike at Boich.

⁹We do not rely on *Royal Typewriter Co. v. NLRB*, 533 F.2d 1030 (8th Cir. 1976); *Emsing's Supermarket*, 284 NLRB 302 (1987), *enfd.* 872 F.2d 1279 (7th Cir. 1989); or *United Contractors*, 220 NLRB 463 (1975), cited by the judge, because we find them inapposite to this case.

does have a labor dispute). Section 8(b)(4)(B) does not, however, prohibit otherwise lawful *primary* strikes or picketing (that is, actions taken against one with whom the union has a labor dispute). Section 8(b)(4)(B) was designed, in other words, “to preserve the traditional right of striking employees to bring pressure against employers who are substantially involved in their dispute, while protecting neutral employers from being enmeshed in it.” *Curtin Matheson*, supra, 248 NLRB at 1212–1213.

In assessing whether an employer is neutral or not, the Board and the courts have developed the “ally doctrine,” which has two branches. One involves the employer whose neutrality is alleged to be compromised by the performance of “struck work”;¹⁰ the other, the employer who is claimed to be so closely related to the primary employer that the two constitute a single employer or single enterprise. *Id.* at 1213. In either case, it is the union’s burden to demonstrate the existence of an ally relationship. *Gannett Co.*, supra, 271 NLRB at 67. As there is no evidence that Boich performs struck work for Aloe Coal, our analysis must focus on whether Boich and Aloe Coal constitute a “single employer.”

In determining whether two entities constitute a single employer, the Board considers four factors: (1) common ownership, (2) common management, (3) interrelation of operations, and (4) common or centralized control of labor relations. *Teamsters Local 50 (E. J. Dougherty Oil)*, 269 NLRB 170, 174 (1984). These factors are to be considered together, not in isolation; however, the nature of the day-to-day operations and of the labor policies of the two entities are of paramount consideration. *Ibid.*¹¹ Common ownership, with its attendant potential for control, alone is insufficient to support a finding of single-employer status; it is active, not potential, control that is significant. *Ibid.*; *Food & Commercial Workers Local 1439 (Price Enterprises)*, 271 NLRB 754, 756 (1984).

In this case, it is uncontroverted that Boich and Aloe Coal are commonly owned by Aloe Holding. Thus, the factor of common ownership points toward single-employer status.

Concerning the second and fourth factors—common management and common or centralized control of labor relations—the evidence is somewhat more ambiguous. As the General Counsel and the Charging

¹⁰Struck work is work done by the secondary employer which that employer would not have performed but for the strike against the primary employer. *Newspaper & Mail Deliverers (Gannett Co.)*, 271 NLRB 60, 67 (1984).

¹¹In fact, the Board has indicated that, although no single factor is controlling, the most important factor may be centralized control of labor relations. See, e.g., *Geo. V. Hamilton, Inc.*, 289 NLRB 1335, 1336 (1988). We therefore disavow the judge’s statement that interrelationship of operations is the most significant of these factors, at least insofar as that statement suggests that that factor is *always* the most significant. As we discuss below, however, that factor is the one that influences our decision most heavily in this case.

Party urge, there is considerable un rebutted evidence in the record indicating that Boich and Aloe Coal are managed, at least on a day-to-day basis, substantially independently of each other. Thus, Boich’s president, Abe Bryan, testified that he has the responsibility for hiring, firing, and day-to-day labor relations at Boich, and that he handles all personnel and grievances, as well as safety, permitting, and reclamation matters. Bryan is responsible for planning Boich’s operations. It was Bryan who negotiated the 1988 local collective-bargaining agreement on behalf of Boich. Boich’s treasurer, Raymond Skundrich, negotiated the rates paid by Boich for employee health benefits.

Similarly, Grant MacSwain, vice president of Aloe Coal, testified that he oversees the entire operation of the Aloe mine, including labor, maintenance, and cost control. According to MacSwain, he is in charge of day-to-day labor relations for Aloe Coal: he is responsible for hiring and firing, handles grievances, and negotiates the collective-bargaining agreement with the Union.

Unlike the judge, we think the evidence recounted above is substantial and that it points toward a finding that Boich is a neutral employer. However, certain other evidence, concerning David Aloe’s relationship with Boich, casts a measure of doubt on Boich’s neutrality. Thus, the judge found that David Aloe visits the Boich mine several times a week.¹² As the judge suggestively inquired, what would Aloe, as the family’s representative for mining activities, be doing at the Boich mine so regularly and frequently other than to make sure the mine was being operated properly?¹³ Two Boich employees testified that Aloe had, in fact, given them instructions on the preferred method of operating certain equipment, and that they had obeyed those instructions.¹⁴ Bryan testified that David Aloe had given him a suggestion concerning a different way of “shooting” (i.e., blasting) coal which proved to be

¹²Employees Larry Trushel and Gibson Holland both testified that David Aloe is on the Boich property at least twice a week. (Trushel, however, admitted on cross-examination that, because he rotates shifts, he does not personally see Aloe on the Boich property that often.) Bryan testified that Aloe visits the Boich facility less than once a month. The judge observed that, although David Aloe was present for the entire hearing, he did not testify to contradict the Respondents’ witnesses. Contrary to the General Counsel and the Charging Party, the judge was clearly justified, under the circumstances, in drawing an adverse inference from Aloe’s failure to testify. *International Automated Machines*, 285 NLRB 1122 (1987). Although the judge may have overstated the credited testimony when he found that Aloe visits Boich “several” times a week, that testimony fairly supports a finding that he is there an average of twice a week.

¹³The observation is, as the General Counsel points out, somewhat speculative, because the record does not establish what David Aloe normally does when he visits Boich’s facility. Nevertheless, we do not think the judge was required to blind his eyes to the obvious import of Aloe’s regular, frequent visits to the Boich mine: namely, that he plays an active role in at least some aspects of the mine’s management. In any event, as we find below, the record as a whole indicates that Boich and Aloe Coal are separately managed.

¹⁴One of those employees is named Kenneth Allen, not (as the judge stated) Don Allen.

a major improvement when it was implemented.¹⁵ On one occasion, employees at Boich approached Bryan during a period of wildcat strike activity in the district and asked him if, instead of taking staggered vacations, they could shut the mine down for a week and all take their vacations at the same time, in the hope that the wildcat activity would have blown over by then and the miners could go back to work. Although Bryan thought the idea was a good one, it was vetoed by David Aloe.¹⁶

The foregoing evidence, as we have said, indicates that Boich actually may not be as independently managed as it appears to be on paper. However, that evidence raises only the possibility that Boich may not be managed independently of Aloe *Holding Company*. It does not establish that Boich is controlled in any meaningful way by Aloe *Coal*, the entity with which the Union had the labor dispute.¹⁷ Nor is there any specific evidence that David Aloe controls the operations of Aloe *Coal*, even to the extent he influences the affairs of Boich.¹⁸ We therefore find that, although there is some evidence of common management and control, on balance the record indicates that, on a day-to-day basis, Boich and Aloe *Coal* have separate management and control of labor relations, and that those

¹⁵ However, Bryan denied ever having been given an order by David Aloe. He also testified that Aloe had made suggestions that he (Bryan) disagreed with and did not implement.

¹⁶ The judge also alluded to an episode in which a Boich employee, in the presence of David Aloe, was threatened with discharge. However, there is no evidence that Aloe himself said or did anything other than audit the event, and the employee was not discharged. Unlike the judge, we find no reason to attribute to David Aloe any authority over the affairs of Boich on the basis of this episode. Nor do we rely on any of the testimony concerning David Aloe's role in Boich's operations that was not based on the witnesses' personal knowledge.

¹⁷ There is also evidence that much of Boich's production goes to fulfill contract obligations of Boich Lime and Coal Co., and that the mix of coal mined by Boich has changed since Boich was acquired by Aloe Holding. This evidence, too, indicates that Boich may have a close relationship with Aloe *Holding*, but establishes little concerning Boich's relationship with Aloe *Coal*.

¹⁸ James Birsic, the director of legal affairs for Aloe Holding, testified as follows:

Q. So right now David [Aloe] is the man in charge of the mining operations?

A. Basically he controls the mining investments we have, yes.

Q. And David, I presume, goes to the mining operations and oversees them and does what he feels necessary as the owner of those operations, correct?

A. Well, correct. I mean, we have sizable investments in these companies, and he's responsible to make sure that we're maximizing the returns from those investments.

Q. And as an owner, though, it's not unusual for David to get right out there and make direct operations from day to day the goings on with regard to each of these operations, isn't that true?

. . . .

A. I don't know that.

Thus, although Birsic testified in general terms that David Aloe has the responsibility to make certain the Aloe family's mining operations are being run well, he did not testify specifically concerning David Aloe's relationship with Aloe *Coal* (or, for that matter, with Boich). Moreover, Birsic admitted that he had no personal knowledge of whether David Aloe made day-to-day operational decisions for any of the mining properties.

factors tend to support a finding that Boich is a neutral party.

We turn now to the final factor, interrelatedness of operations. There is un rebutted testimony that, in many significant respects, the operations of Boich and Aloe *Coal* are separate. Thus, each company maintains separate offices, payrolls, bank accounts, and financial and accounting operations.¹⁹ There is no interchange of either employees or supervisors between the two operations, which are located some 31 miles apart in different States, and the two companies do not sell coal to each other's principal customers. Contrary to the judge, Boich coal normally is hauled by trucking companies that are entirely independent of the Aloe family.²⁰

Other evidence, however, indicates a greater degree of interrelatedness between Boich and Aloe *Coal*. Thus, Boich leases its computer system from Aloe *Coal*.²¹ Boich has acquired several pieces of equipment from Aloe *Coal*, either by way of exchange or outright purchase.²² An employee of Coal Equipment Company, a subsidiary of Aloe *Coal*, works with Boich's mechanics doing maintenance work on Boich equipment at the Boich mine under the supervision of Boich's maintenance foreman.²³ Boich also purchases some parts and equipment from Coal Equipment Company. Imperial Farms, another subsidiary of Aloe *Coal*, does the bulk of the reclamation work at the Boich facility. There is no evidence that any of these transactions are made on other than an arm's-length basis. We note, however, that Boich entered into the computer lease with Aloe *Coal*, as well as its relationships

¹⁹ Bryan also testified that Boich's health care benefits are provided by Blue Cross/Blue Shield of West Virginia, whereas Blue Cross/Blue Shield of Pennsylvania provides health care benefits for the "Aloe Holding Company operations." We do not rely on this testimony, because Bryan did not specify whether Aloe *Coal's* health insurance provider was separate from Boich's.

²⁰ On occasion, Boich coal has been hauled by Fairfield-Hawthorne Trucking Company, a subsidiary of Imperial Land Corporation, which is owned 50 percent by the six Aloe siblings and 50 percent by two of their cousins, and which is also used by Aloe *Coal*. That arrangement was temporary, however, and was occasioned by the fact that high water and a lack of barges at the Weirton, West Virginia dock (which Boich usually uses) prevented Boich from loading coal at that dock. It elected to load instead at a dock in Pennsylvania. Because the coal in question was to be picked up and loaded in Pennsylvania, it was necessary for Boich to engage a trucking company with a Pennsylvania intrastate license, which the companies usually used by Boich did not have. Boich therefore engaged Fairfield-Hawthorne, which did have such a license. Because this was a temporary departure from its normal method of operation and was necessitated by natural causes, we find little significance in Boich's limited use of Fairfield-Hawthorne (which, in any event, is not owned or controlled by Aloe *Coal*).

²¹ Bryan testified that he believed the computer was leased from Aloe Holding. However, invoices introduced by the General Counsel indicate that Aloe *Coal*, not Aloe Holding, leases the computer system to Boich.

²² Boich has acquired equipment from non-Aloe coal companies as well.

²³ That employee apparently is named Bob Struith, not Bob Stoop, as in the judge's opinion. He works at Boich pursuant to a maintenance contract between Boich and Coal Equipment Co. He also is sometimes supervised by Jesse McCullough from Coal Equipment Co. (not, as the judge stated, from "Aloe").

Some maintenance work at the Boich mine is performed by entities unrelated to the Aloe family's holdings.

with Coal Equipment Company and Imperial Farms, only after it was acquired by the Aloe interests.²⁴

Even more important, a significant amount of Boich's coal is sent on a regular basis to Aloe Coal's facility to be washed and blended with coal from the Aloe Coal mine before it is shipped to customers. Some of Boich's coal must be washed to remove dirt, debris, and rocks.²⁵ It is then blended with Aloe coal to produce a mixture that is lower in sulfur content than Boich's coal, and lower in ash content than Aloe's.²⁶ At the end of the process, each company takes a share of the mixed coal that corresponds to the fraction of the mixture that it contributed.²⁷ According to Bryan and MacSwain, approximately 8 percent of Boich's coal and 5 to 6 percent of Aloe Coal's output are blended in this manner.²⁸

We view the evidence as a whole as establishing that the operations of Boich and Aloe Coal are interrelated to a significant degree. In particular, we agree with the judge that Aloe Coal's blending of Boich's coal with its own to create, in effect, a new product that then is sold to the customers of both producers constitutes an integration of both processes and products the importance of which cannot be gainsaid. Even though only a comparatively small fraction of the output of each company is blended with that of the other, the amounts blended cannot be said to be de minimis. Moreover, the blending takes place on a regular basis, not sporadically.²⁹ We find that this blending of products to make a new product that both companies sell, combined with the other forms of interrelationship discussed above, outweighs in importance the independent aspects of the operations of the two companies. We therefore find that the factor of interrelationship of operations favors a finding that Boich and Aloe Coal are a single employer.

²⁴The judge also remarked on the large number of telephone calls that are regularly made between Boich and other Aloe interests. We agree that those calls constitute some evidence of interrelated operations. However, in the absence of any testimony indicating the subject matter of the calls or the identities of the persons who made them, we do not assign them the degree of significance the judge did.

²⁵Boich pays Aloe Coal for the washing service, apparently on an arm's-length basis. Bryan testified that other coal-washing plants in the area either do not have the capacity to take Boich's coal or have been shut down. Boich acquired a portable washing plant from Thistle Coal Co., another Aloe Coal subsidiary (now inactive, according to Birsic), but found that it would be economically impossible to operate it under EPA regulations. Thus, according to Bryan, if Boich could not have its coal washed by Aloe Coal, the coal could not be washed at all.

²⁶Aloe Coal also blends its coal with that of other companies, including some that apparently are not owned or controlled by the Aloe family. It also washes coal for non-Aloe entities.

²⁷It appears that the mixture typically is approximately two parts Boich coal to one part Aloe. Thus, Boich would take two-thirds of the mixture and Aloe, one-third.

²⁸The estimate for Boich refers to 1988; that for Aloe Coal is for 1989. MacSwain testified that only a negligible percentage of Aloe Coal's output was blended with Boich coal in 1988.

²⁹Charles Abbott, who operates Aloe Coal's washing and mixing plant, testified that he processes Boich coal 15 to 20 percent of the time.

To sum up, then, common ownership and interrelationship of operations are factors indicating that Boich and Aloe Coal constitute a single employer, while separate day-to-day management and control over labor relations suggest that Boich is neutral with respect to the Union's labor dispute with Aloe Coal. Clearly, this is a close case. We find, however, that the factor of interrelated operations, and especially the blending of Boich and Aloe coal to create a new product that both producers sell to their customers, tips the balance in favor of single-employer status. We think that when two commonly owned entities combine their products in this way, they may be said to have "such identity and community of interests as [to negate] the claim that [one] is a neutral employer." *Curtin Matheson*, supra, 248 NLRB at 1213-1214, quoting *Teamsters Local 282 (Acme Concrete & Supply Corp.)*, 137 NLRB 1321, 1324 (1962). We find, therefore, that the Union has carried its burden of demonstrating that an ally or single-employer relationship exists between Boich and Aloe Coal, and thus that it did not violate Section 8(b)(4)(B) by striking and picketing Boich. Accordingly, we shall dismiss the complaint.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

Susan Fernandez, Esq. and *Mark Neubecker, Esq.*, for the General Counsel.

William Manion, Esq., of Washington, Pennsylvania, for the International Mine Workers of America.

Thomas M. Myers, Esq., of Shadyside, Ohio, for District 6 and Local 7449 of the United Mine Workers of America.

David J. Laurent, Esq. (Polito & Smock), of Pittsburgh, Pennsylvania, for the Charging Party.

DECISION

STATEMENT OF THE CASE

THOMAS A. RICCI, Administrative Law Judge. A hearing in this proceeding was held at St. Clairsville, Ohio, on September 21 and 22, 1989, on complaint of the General Counsel against the International Union, United Mine Workers of America, District 6, United Mine Workers of America, and Local Union No. 7449, United Mine Workers of America (the Respondents). The complaint issued on August 25, 1989, on three separate charges filed on August 4, 1989, by Boich Mining Company (the Charging Party). The sole issue to be decided is whether the various groups of the three Unions here named as Respondents violated Section 8(b)(4) of the statute by calling a strike against the Charging Party. Briefs were filed by the General Counsel, the Charging Party, and the Respondents.

On the entire record and from my observation of the witnesses, I make the following

FINDINGS OF FACT

I. THE LABOR ORGANIZATIONS INVOLVED

I find that International Union, United Mine Workers of America, District 6, United Mine Workers of America, and Local Union No. 7449, United Mine Workers of America, are labor organizations within the meaning of Section 2(5) of the Act.

II. THE BUSINESS OF THE CHARGING PARTY

Boich Mining Company, an Ohio corporation, is engaged in the mining, processing, and nonretail sale of coal at its Bloomingdale, Ohio place of business. Annually it sells and ships from its mining location products, goods, and materials valued in excess of \$50,000 directly to points located outside the State of Ohio. I find that Boich Mining Company is an employer within the meaning of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICE

Boich Mining Company does a mining operation in Bloomingdale, Ohio. Its employees are represented by the Mine Workers Union with a collective-bargaining contract in effect until 1993. Aloe Coal Company is engaged in the mining of coal in a Pennsylvania location. Its employees are also represented by the Mine Workers Union. At the time of the events here considered, the Union and the Aloe Coal Company were engaged in a labor dispute, and its employees were on strike. On August 3, 1989, the Union called the employees of Boich Mining out on strike in support of its then-current strike against Aloe Coal Company. That strike activity against Aloe Coal Company was discontinued on September 4, 1989, and those employees returned to work.

The complaint alleges that the Boich Mining Company has nothing to do with Aloe Coal, that the two companies are entirely separate and unrelated operations, and that since Boich was a neutral, or secondary employer as far as Aloe is concerned, such strike action by the Union was in violation of Section 8(b)(4) of the Act. The Mine Workers defends on the ground that Aloe and Boich are in reality a single employer, completely integrated, and that therefore there was nothing secondary about its strike against Boich at that time.

There was a dispute at the hearing about the responsibility of the various organizations within the Mine Workers Union for that strike action. The complaint names three separate Respondents—the International Union, its District 6, and its Local Union No. 7449. Did all three of these organizations participate in the decision to strike Boich, and did all three actually take part in the strike action? Were it necessary on this record I would find that all three of the named Respondents did join to bring about that strike. But I do not reach that question in this decision because the evidence clearly supports the basic defense assertion that Boich Mining and Aloe Coal Company are in fact to be deemed a single employer within Board law and that therefore the complaint must be dismissed.

No two cases involving questions of this kind are alike, and therefore no precise precedent can serve to decide the next case. As the Mine Workers correctly argue here, there are several factors that relate intimately to the basic issue. One is common ownership, or financial control. Another is

common management at the top. Centralized control of labor relations is a pertinent factor. And finally, most significant, is interrelationship of operations.

Boich Mining is owned by Aloe Coal Company, which purchased it from a previous owner in 1986. Aloe Coal owns and operates another mine about 30 miles distant from the operation of Boich Mining. Aloe Coal is only one of a number of other mining companies also owned and operated by that company. All these companies are owned by a number of brothers and sisters in a family called Aloe. Within that family there is one brother (David Aloe) who alone actually runs the entire operations, including about all the various mining operations, each under a different corporate name. The focus of the defense asserted here is that that man is frequently at the Boich Mine, that he decides much of what is done there, and how it is performed, and that there is constant communication between the Aloe Company and Boich Mining. A number of witnesses for the defense testified clearly that David Aloe is present at the Boich Mine several times each week. Boich Mine records received in evidences show constant telephoning back and forth between the two companies. They reveal that about 35 percent of the telephone calls between the two locations, 30 miles apart, are between one company and the other. Several managerial officers of Boich Mining, who run that mine for the Aloe Company, gave contrary testimony, some of them saying that David Aloe only visits the Boich Mine about once a month. David Aloe was present in the hearing room throughout the 2-day hearing, but chose not to testify at all!¹ With him choosing not to contradict a word of the defense witnesses, there is no question but that they must be believed.

I find that David Aloe is present at the Boich Mine several times each week. As the sole representative of the owners of the mine, what would he be doing there so often except to see that it operated as he thinks proper?² Bryan said clearly that there is an employee of Coal Equipment Company, one Bob Stoop, who regularly works at the Boich Mine. Stoop works on Boich's equipment as a repairman "on a day-to-day basis"; together with Boich's mechanics. Bryan also admitted there is an employee named Jesse McCullough, who comes from Aloe to work at Boich Mining. This is from the direct testimony of the Boich Mining manager.

There is also direct testimony that David Aloe participates on questions of vacation time, about the discharge of a man from Boich Mine, about his instructions to Boich Mining employees as how to operate some of the machines. Again, the fact the owner of the mine sitting there did not contradict a word of these witnesses makes their testimony completely acceptable. If this record showed no more than the foregoing, I would find that Boich Mining and Aloe Coal are an inte-

¹ From the testimony of James Birsic, Aloe Holding Company's director of legal affairs:

Q. And David, I presume, goes to the mining operations and oversees them and does what he feels necessary as the owner of those operations, correct?

A. Well, correct.

From the testimony of the manager of the Boich Mine, Mr. Bryan:

Q. So, he [David Aloe] decides whether the Boich Mining Company will purchase new equipment or buy a piece of equipment from one of the other Aloe Holding Company subsidiaries?

A. I will make the request and he hasn't said no, yes, but I think he can.

² Another coal mining company owned by the Aloe family is called Coal Equipment Company.

grated and single employer for purposes of passing on the merits of this complaint.

Larry Trushel, an employee of Boich Mine, testified, without contradiction, that when Aloe Holding took over the Boich Mine, Abe Bryan, the newly hired local manager appointed by David Aloe, introduced David Aloe “as our new employer,” and that David Aloe then welcomed the employees “into the Aloe family.” Bryan’s testimony is even more revealing:

Q. Do you recall when the purchase first took place you, at a safety meeting, introducing Mr. Aloe as the new owner and the new boss of the Boich Mining Company?

A. Yes, sir.

Trushel testified that David Aloe started coming to Boich Mine “at least a couple of times a week,” that he told Trushel “to run the dragline in a different manner.” Trushel also testified, again without contradiction, that about the same time John Booth, a superintendent of Boich Mining, told him “that David Aloe tells them what to do.”

The story of David Aloe’s direct participation in the management of Boich Mine goes on and on. There came a time when wildcat strikes by the Mine Workers Union were occurring throughout the area. A number of employees asked Bryan, the manager, could they take a week’s vacation in order to avoid the strike problem within the larger union. Bryan said it was a good idea, but that he would have to clear with David Aloe. Bryan then talked to Mark Aloe, a brother of David, who also said he liked the idea but that he would have to first check with David. An hour later Bryan told the employees they would not be permitted to take the time off because David Aloe had so decided. This testimony is fully supported by that of another employee, Gisson Holland. Holland also said that when a medical bill of his had not been paid, he asked the office girl in charge of insurance why and also why the employees’ insurance coverage had been changed, the girl told him “it was Dave Aloe’s idea.” Don Allen, a longtime employee of Boich, gave the following testimony:

Q. And, what conversation took place between you and Mr. Aloe on that occasion?

A. He didn’t feel that I was doing the proper job—in the proper manner, cleaning the coal, so he directed me—to—when I finished cleaning the mines up, to walk the back hoe down out of the pit bottom instead of getting mud back on coal.

He told me to take it down off the coal and then clean the coal, and then walk it back up around—the mud still stays on the cats. It don’t come off that quick.

Allen obeyed David Aloe. Again, all the foregoing stands uncontradicted.

A no less significant and determinative fact here is that the two companies are substantially integrated in their mining and selling coal operation. “Thousands of tons” of coal, to quote one of the witnesses, are trucked to the Aloe Company location 30 miles away where it is “washed” by Aloe in their plant and “blended” with coal mined at the Aloe plant. Part of that final product is then trucked by Aloe to its direct customers and part is trucked, again in Aloe vehicles, to Boich’s customers. If ever there was a picture of “integrated” operations, to quote Board precedent, this is it. No need to belabor the details repeated again and again by the witnesses. Aloe mixes its product with that of Boich and then sells it to the customers of both companies. Enough.

I see no reason to belabor this decision with the many details of Boich’s use of Aloe’s equipment, of its purchase of many pieces of necessary equipment from the various Aloe corporations, of its use of visiting employees of different companies in its daily operations. The company agents kept listing the many things they are personally responsible for in the day-to-day work they do. They hire and fire people, they handle grievances, they keep the daily records, they make out the paychecks and pay all bills, etc. Much emphasis was also placed on the fact that the Boich Corporation pays Aloe Company for the washing of its coal, and for the deliveries made by Aloe, in its own trucks of coal to Boich’s customers. But in the light of the total record, all this means is that to keep its business records straight the two companies must record everything they do, with particular care to record all expenses and costs against receipts of money. It amounts to no more than correct bookkeeping. What matters here is the actual control of operations by the Aloe Company over the doings of both companies. See *Royal Typewriter Co. v. NLRB*, 513 F.2d 1030 (8th Cir. 1976); *Emsings Supermarket*, 284 NLRB 302 (1987); *United Contractors*, 220 NLRB 463 (1975).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended³

ORDER

I recommend that the complaint be dismissed.

³If 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.