

St. Joseph Equipment Corporation and Local Union No. 321, International Brotherhood of Painters and Allied Trades, AFL-CIO. Case 7-CA-29666

March 14, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT AND OVIATT

On May 21, 1990, Administrative Law Judge Claude R. Wolfe issued the attached decision. The Respondent 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, and conclusions only to the extent consistent with this Decision and Order. Holland Construction Company was the general contractor on the Fairfield project in Kalamazoo, Michigan. Wil-Par Construction Company (Wil-Par) was a subcontractor of Holland Construction on that project. Wil-Par was signatory to a collective-bargaining agreement with the Union, and employed members of the Union on the Fairfield project.

In June 1988, Wil-Par advised the Union that it had insufficient funds to make required union fringe benefit fund contributions. The Union's business agent, Ricky Root, unsuccessfully sought from the president of Holland Construction, Jerry Levi, a written guarantee that it would withhold from payments to Wil-Par amounts owed the Union by Wil-Par for fringe benefit fund contributions. Root advised Levi that there were Wil-Par employees who would refuse to work if the required payments were not made. Thereafter, counsel for the Union advised Holland Construction that construction liens would be placed on the Fairfield project if the required fringe benefit fund contributions owed by Wil-Par were not made. Holland Construction was subject to substantial financial penalty if the project was not timely completed.

Levi thereafter contacted Root in an effort to resolve the matter. Levi suggested the execution of a collective-bargaining agreement, and promised to issue a check for the amount owed the fringe benefit funds by Wil-Par. Levi told Root that St. Joseph Equipment Corporation (St. Joseph), the Respondent, was the appropriate party with whom to enter into the contract.¹ Levi persuaded Marie Holland, the president of St. Joseph, to sign a contract with the Union. On June 21, 1988, Marie Holland, on behalf of St. Joseph Equipment Corporation, and Root signed a proposed ten-

tative collective-bargaining agreement effective June 1, 1988, through May 31, 1990.

In October 1988, Holland Construction issued a joint check to Wil-Par and the Union's attorneys covering the amounts owed by Wil-Par to the Union's fringe benefit funds. The Fairfield job was completed in late 1988. On May 17, 1989, Marie Holland signed the printed version of the tentative collective-bargaining agreement she had earlier signed.

In June 1989, Root visited a Holland Construction project in Battle Creek, Michigan, and learned that there was a nonunion painting subcontractor on the job. Root also observed that a St. Joseph employee was supervising the project for Holland Construction. Root thereafter telephoned Levi and indicated that nonunion subcontracting violated their agreement. Levi responded that Holland Construction did not have a contract with the Union and St. Joseph, which did, was not party to the subcontracting. Root stated that he felt that St. Joseph and Holland were interrelated, and indicated that he would send Levi a questionnaire to determine if the two were separate entities. Thereafter, Root sent to Holland Construction and the Respondent a list of 77 questions, with an accompanying letter indicating his belief that Holland Construction may be "governed by the recognition and work preservation provisions of the collective bargaining agreement." The Respondent and Holland Construction declined to furnish the requested information.

The judge found that the Union had a reasonable basis for believing that St. Joseph and Holland Construction were related businesses² and that the Union's contract with St. Joseph might, therefore, be applicable to Holland Construction. The judge found further that the requested information was relevant to the Union's determination whether Holland Construction was violating article XI, section 9 of the collective-bargaining agreement, which the Union contends prohibits nonunion subcontracting.³ The judge additionally construed article XI, section 9, as a lawful limitation on subcontracting under the construction industry proviso of Section 8(e) of the Act. Accordingly, the judge found that the Respondent violated Section 8(a)(5) of

²The judge noted, *inter alia*, that St. Joseph signed the contract with the Union at the behest of and for the benefit of Holland Construction; that Root was twice confronted with Holland Construction projects supervised by a St. Joseph employee; and that the two companies have their principal offices in the same building and share the same telephone.

³Art. XI, sec. 9, provides:

The employers, party hereto, shall not attempt to engage in any work covered by the Agreement in any area in or outside of the geographic jurisdiction of the Union party thereto through the use or device of another business or corporation which such employer controls, or thru [sic] the use or device of the joint venture with another employer or contractor without first consulting with the Brotherhood for the purpose of establishing to the Brotherhood's satisfaction that the use of such device is not for the purpose of taking advantage of lower wages or conditions than are in effect, and if the Brotherhood is not so satisfied, the Union party has the option of cancelling the Agreement.

¹Root was aware that an employee of St. Joseph was in charge of overall jobsite coordination of the Fairfield project for Holland Construction.

the Act by refusing to furnish the Union with the requested information. We disagree.

The Union contends that the requested alter ego information is relevant to its determination whether Holland Construction has violated article XI, section 9 of the collective-bargaining agreement.⁴ Assuming that section 9 can be read as a limitation on subcontracting, we find, as set forth below, that contractual provision to be unenforceable under Section 8(e) of the Act. As the Board would not enforce that provision of the contract and hence would not find any violation of the agreement based on that provision, the relevance of the requested information cannot be established based on an alleged violation of section 9.

Section 8(e) of the Act makes it an unfair labor practice for an employer and a labor organization to enter into a contract whereby the employer agrees to cease doing business with any other person. However, the construction industry proviso to Section 8(e) exempts any agreement between a labor organization and an employer in the construction industry relating to the contracting of work to be done at the construction site.⁵

In *Connell Construction Co. v. Plumbers Local 100*, 421 U.S. 616 (1975), the Supreme Court held that the construction industry proviso to Section 8(e) only privileges subcontracting restrictions sought or negotiated in the context of a collective-bargaining relationship. The Court found the subcontracting provision in *Connell* to run afoul of that rule as the union sought an agreement from the employer dealing solely with subcontracting, and specifically disavowed any intent to seek recognition by the employer. In addition, the union had no past relationship with the employer and did not seek to establish one.

⁴The Board deems information requested by a union concerning terms and conditions of employment of employees actually represented by the union to be presumptively relevant. *Masonic Hall*, 261 NLRB 436, 437 (1982), enf. 699 F.2d 626 (2d Cir. 1983). However, information requested by a union of an employer concerning the existence of a double-breasted or alter ego operation, as in this case, is not presumptively relevant. *Pence Construction Corp.*, 281 NLRB 322, 324 (1986). The union requesting such information bears the burden of demonstrating a reasonable belief that the two companies are a single employer or alter ego, and that the information is relevant to the union's administration or enforcement of its collective-bargaining agreement or would be of use to the union in carrying out its statutory duties and responsibilities. *Electrical Energy Services*, 288 NLRB 925, 931-932 (1988); *Barnard Engineering Co.*, 282 NLRB 617, 619 (1987).

⁵Sec. 8(e) provides in pertinent part:

It shall be an unfair labor practice for any labor organization and any employer to enter into a contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person, and any contract entered into heretofore or hereafter containing such an agreement shall be to such extent unenforceable and void: *Provided*, That nothing in this subsection (e) shall apply to an agreement between a labor organization and an employer in the construction industry relating to the contracting or subcontracting of work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work

Accordingly, section 9 is only valid in this case if it can be shown that it was arrived at within a collective-bargaining framework. A collective-bargaining relationship sufficient to satisfy the rule set forth in *Connell* may be established by a prehire agreement executed in accordance with Section 8(f) of the Act. *Los Angeles Building Trades Council (Schriver, Inc.)*, 239 NLRB 264, 269-270 (1978), enf. 635 F.2d 859 (D.C. Cir. 1980), cert. denied 451 U.S. 976 (1981). Although the Respondent and the Union here signed an 8(f) collective-bargaining agreement, we cannot conclude based on the particular facts of this case that the agreement was reached in the context of a collective-bargaining relationship.

It is undisputed that the Union did not have a collective-bargaining relationship with the Respondent or Holland Construction prior to the Fairfield project. It is also clear that the Union approached Holland Construction solely in an effort to guarantee fringe benefit fund payments owing by Wil-Par on the Fairfield project. Indeed, according to the testimony credited by the judge, Levi suggested the execution of the agreement "to get the matter resolved," i.e., to guarantee the fringe benefit payments to avoid disruption of the project and possible exposure of Holland Construction to substantial penalties. There is insufficient evidence in the record to indicate that Root sought in addition to such a guarantee a complete bargaining relationship on behalf of Respondent's employees because, as Root testified, he was aware at that time that neither the Respondent nor Holland Construction had ever employed employees represented by the Union or engaged in work within the jurisdiction of the Union. Root further testified that he did not receive a commitment from Jerry Levi or Marie Holland that either the Respondent or Holland Construction would employ employees represented by the Union or engage in painting in the future, and that in fact neither had done so subsequent to the Fairfield project. Additionally, on June 14, 1989, the Respondent declined to pay the Union an annual apprenticeship fund fee on the ground that it did not at that time employ painters and did not intend to hire any in the future.

In view of the clearly limited purpose that gave rise to the agreement, as well as the fact that the Respondent or Holland Construction did not employ employees represented by the Union either before or after the Fairfield project, and the Respondent made clear to the Union on at least one occasion its intent not to do so, we cannot conclude that the subcontracting restriction in this case was reached in the context of a collective-bargaining relationship. Compare *Iron Workers Pacific Northwest Council (Hoffman Construction)*, 292 NLRB 562, 578 (1989) (no collective-bargaining relationship for 8(e) purposes where prior agreement had expired and where the employer no longer employed unit employees and disavowed any intent to hire unit employees in the future); *Sheet Metal Workers Local 17*

(*Planair Sheet*), 241 NLRB 880 (1979) (collective-bargaining relationship found under Sec. 8(e) where collective-bargaining agreement in effect between employer and union and parties stipulated that employer at all material times employed members of the union signatory to the contract and intended to do so in the foreseeable future). We therefore find that article XI, section 9, is not privileged under the construction industry proviso of Section 8(e) of the Act.

The Union has not set forth any alternative basis for establishing the relevance of the requested information other than an alleged violation of article XI, section 9, which provision we have found to be unenforceable. Thus, we cannot conclude that the Union has “established a reasonable and probable relevance of the requested information by showing that the information could make tenable its contentions as to violations of the contract by [r]espondent.” *Doubarn Sheet Metal*, 243 NLRB 821, 823–824 (1979). Compare *National Cleaning Co.*, 265 NLRB 1352, 1354 (1982), enf. 723 F.2d 746 (9th Cir. 1984) (information sought by union regarding single employer status found to be relevant because it would “lend some credence” to union contention that respondent had violated the subcontracting provision of the contract). Accordingly, we find that the Union has not met its burden of demonstrating the relevance of the requested information to its administration or enforcement of the collective-bargaining agreement. “[W]here the information is plainly irrelevant to any dispute there is no duty to provide it.” *Ohio Power Co.*, 216 NLRB 987, 991 (1975), enf. 531 F.2d 1381 (6th Cir. 1976). We therefore find that the Respondent did not violate Section 8(a)(5) and (1) of the Act by refusing to furnish the Union with the requested information.

ORDER

The complaint is dismissed.

CHAIRMAN STEPHENS, concurring in the result.

Although I agree with the result my colleagues reach in this case, I do not agree with their rationale, specifically their implicit premise that a general statutory bargaining obligation existed between the parties in the circumstances of this case.

The significant facts are straightforward. The Respondent is a general contractor in the construction industry. It signed a “collective bargaining agreement” for purposes totally unrelated to a collective-bargaining relationship with the Union. The Respondent did not at the time employ employees representable by the Union, did not subsequently, and has never intended to do so at any relevant time. In these circumstances, the Respondent, even accounting for its status as an employer under Section 8(f), did not have a statutory duty to bargain. See, e.g., *Searls Refrigeration Co.*, 297 NLRB 133, 135 (1989); *Stack Electric*, 290 NLRB

575, 576 (1988); *Garman Construction Co.*, 287 NLRB 88, 89 (1987). Accordingly, I would dismiss the complaint because the Union—at no relevant time representing or seeking to represent any employees of the Respondent—had no statutory right to request *any* information, because the Respondent had no statutory obligation under Section 8(a)(5) and Section 8(d).

Dwight R. Kirksey, Esq., for the General Counsel.

Robert J. Chovanec, Esq., for the Respondent.

Ricky L. Root, for the Charging Party.

DECISION

STATEMENT OF THE CASE

CLAUDE R. WOLFE, Administrative Law Judge. This proceeding was litigated before me at Grand Rapids, Michigan, on January 25, 1990, pursuant to charges filed and served on September 11, 1989, and complaint issued on October 31, 1989, alleging St. Joseph Equipment Corporation (Respondent or St. Joseph) violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish Local Union No. 312, International Brotherhood of Painters and Allied Trades (the Union) with requested information.

On the entire record, and after considering the comparative testimonial demeanor of the witnesses as well as the able posttrial briefs of the parties, I make the following

FINDINGS AND CONCLUSIONS

I. JURISDICTION

Holland Construction Company (Holland), with main offices in St. Joseph, Michigan, is engaged in the business of general contracting of commercial building construction. During the calendar year 1989, Holland purchased and received goods valued at more than \$50,000 from firms located outside the State of Michigan which were delivered to Holland projects in Michigan. Holland is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

St. Joseph has its principal office in St. Joseph, Michigan, and is engaged in the business of general contracting of commercial building construction. During the fiscal year ending December 31, 1988, a representative period, St. Joseph had gross revenues from its business operations in excess of \$500,000. During the same period, St. Joseph performed services valued in excess of \$50,000 for Holland. St. Joseph is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

The Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICE

Wil-Par Construction, a drywall finisher, had a collective-bargaining agreement with the Union and employed union members to perform work on a construction project in Kalamazoo, Michigan, in 1988. Wil-Par was performing that work as a subcontractor for Holland who was the general contractor on the job but subcontracted all the work out to

other employers and acted as the construction manager on the site. John Hongers, an employee of St. Joseph, was in charge of overall jobsite coordination for Holland.

Wil-Par failed to comply with the Union's contract requirements respecting timing of paydays, payment of wages, and fringe benefit payments. Unable to resolve these problems with Wil-Par, Ricky Root, the Union's business representative, went to the Holland jobsite trailer with the owner of Wil-Par and advised Bongers, who said he was representing Holland on the site, of the Union's problems, with Wil-Par's failure to pay its employees' wages on schedule, and further advised Wil-Par employees were refusing to work unless they had a payday. Bongers immediately called the Holland offices and thereafter advised a check was being delivered from that office to Wil-Par who would then pay its workers. The employees were paid and thus the issue resolved. The problem of the failure to pay fringe benefits was brought to the attention of Wil-Par's owner on or about June 14, 1988. The Wil-Par owner responded he had no money. Root then called Jerry Levi, the president of Holland, advised him of the fringe benefit problem, and the further fact there were employees of Wil-Par who would refuse to work if these benefit fund payments were not forthcoming. Root requested Levi to give a written guarantee Levi would withhold the benefit funds from payments to Wil-Par. Levi refused. Root then referred the matter to the Union's benefit fund attorney who directed a June 14, 1988 letter to Holland, Wil-Par, and the customer for whom the construction was being performed. The letter advised, in substance, that unless the fringe benefit contributions were paid construction liens would be placed on the project. I do not credit Levi's testimony that Root asked Maria Holland to sign a union contract when he called Levi on or about June 14, or that during that conversation Levi told Root he would go ask Holland to secure a signature to such a contract on behalf of St. Joseph. Root was a more believable witness than Levi in terms of comparative demeanor and certainty and gave more consistent and probable testimony. Moreover, Levi stressed that he went promptly to Maria Holland to secure her consent to a contract after his discussion with Root, yet she signed no contract until June 21. I believe it's more likely that Levi has combined two conversations with Root into one. He does not deny talking to Root on June 20, and I credit Root's account of that call. Thus, I find Levi called Root on June 20, after receiving the June 14 letter from the fund attorney, asked what it would take to get the matter resolved, suggested the execution of a collective-bargaining agreement, and promised to issue a check for the amounts due the fringe benefit fund. Root called him back the same day, agreed to contract with him, and agreed to meet with Levi and Maria Holland the following day after Levi explained that Holland signs contracts on behalf of St. Joseph, and had signed the contracts with other labor organizations. Levi's claims that Holland would not sign a contract because it had no employees on the site but he thought St. Joseph might because it had employees ignores the fact that St. Joseph, like Holland, employed no one in the trades represented by the Union, and had no plan to. Why it would be more appropriate for one employer with no union employees or intention of ever having any to sign rather than another in the same situation is not satisfactorily explained and impresses me as an excuse rather than "a" or "the" reason. In any event, Levi per-

sued Holland to sign the Union's contract. According to Levi, he told Holland he needed someone to sign the Union's agreement in order to get the Union to continue to supply employees to the jobsite. He further stated that when he said this, she asked why should she sign if it was not going to be used for anything, and she added she did not want to employ painters. Levi continues that he told her Root wanted a body he recognizes to sign the agreement even if it was just a signature on a piece of paper. Holland merely testified regarding these matters that Levi's testimony regarding what he told her is correct. What he told her is not dispositive of what Root wanted; however, Levi may have chosen to describe Root's wants. It seems clear that the immediate purpose of Root's request was a contract with the general contractor in order to secure compliance with its agreement with Wil-Par. Root was looking for a guarantor, not just a name on a piece of paper. Levi well knew that, and Root accepted Levi's representation that St. Joseph was the appropriate party with whom to contract.

Holland's question to Levi regarding the purpose of signing something that would not be used for anything suggests that she was not convinced signing the agreement meant nothing to Holland in terms of liability, and Root said nothing to her on June 21 when they met to in any way imply she was not bound by what she signed. Holland's testimony that she signed because Levi told her "he had this job that was going in Kalamazoo. It had to be done on time and there was a big penalty clause and he had to have a union contractor" indicates an unusual amount of concern for one independent contractor to have for another, suggests the relationship between the two companies is not as remote and businesslike as Respondent would have it, and indicates they were far more closely intertwined. According to Holland, a rather vague witness who gave little testimony, she told Root she was signing only for the "Fairfield job." This is where Wil-Par was working. According to Root, he told her Levi and he had gone through the entire agreement immediately prior to his meeting with her and were in agreement the contract would be signed. Holland does not deny Root so said. Levi denies going through the agreement before Holland signed it. I credit Root, noting he was the more believable witness and that it is very unlikely Levi did not examine the contract before it was signed. Accordingly, I find Levi and Root examined the agreement together on June 21, 1988, before Holland signed it. What she signed was a proposed, tentative agreement covering the period June 1, 1988, through May 31, 1990.

The Fairfield job at Kalamazoo was completed in 1988. Prior to that time, Holland, on October 28, 1988, issued a joint check to Wil-Par and the Union's fund attorneys covering the amounts owed by Wil-Par to the Union's fringe benefit fund. Notwithstanding Respondent's claim that its agreement was limited to the Fairfield job, Holland again signed the contract after it was printed in its entirety and forwarded to Levi for signature on May 17, 1989, long after the Fairfield job was done. I must conclude the agreement, even if limited when originally signed, no longer was so limited after Holland signed it after May 17, 1989. This agreement covers journeymen painters and indentured apprentices, among others.

Root's request that Respondent pay \$150 yearly fee to the painter's apprenticeship fund was rejected by a letter from

Holland on June 14, 1989, on the ground St. Joseph had no painters and did not intend to hire any.

In June 1989, Root visited a construction site in Battle Creek, Michigan, and found Dave Hogan, a St. Joseph employee, supervising the job for Holland. St. Joseph had employees on the site, but had no separate work trailer. Hogan was in the Holland trailer. Root found from the subcontractor's list furnished by Hogan that there was a nonunion painting contractor on the job. Thereafter, on or about June 21, 1989, Root called Levi and said he thought the subcontracting to a nonunion contractor violated their agreement. Levi protested that Holland had no agreement with the Union, and St. Joseph, which did, did not subcontract the work in question. Root advised he believed there was a close interrelationship between St. Joseph and Holland, and asked Levi if he would mind Root sending a questionnaire to help determine if the two were separate entities. Levi told him to send it.¹ Root sent the following letter to St. Joseph and Holland on June 21, 1989, with an attached list of 77 questions:²

ATTENTION: JERRY LEVI
MARIE HOLLAND

Based upon a review by Local #312, it appears that there may be a close inte-relationship [sic] between St. Joseph Equipment Corp. and Holland Construction. St. Joseph Equipment Corp. is a party to a collective bargaining agreement with Local 312. Depending upon the relationship between St. Joseph Equipment and Holland Construction, Holland Construction may in fact be governed by the recognition and work preservation provisions of the collective bargaining agreement. In many instances, commonly controlled or alter-ego corporation may have fringe fund liabilities pursuant to the provisions of ERISA.

Enclosed please find a Questionnaire seeking information respective operations of St. Joseph Equipment and Holland Construction and the relationship between those two entities. This information is essential for Local 312 to administer its collective bargaining agreement.

Please respond to the enclosed Questionnaire by June 7, 1989. Your prompt attention to this matter will be appreciated.

Holland did not reply. St. Joseph replied by letter of June 25, 1989, as follows:

Dear Rick:

Enclosed is the information you just sent to St. Joseph Equipment Corporation. You sent it ATTN: Jerry Levi; he does not work for me. I am President and own St. Joseph Equipment Corporation. You must be under the impression that we deliver mail.

I am not now employing any of your employees nor do I ever intend to in the future so I am returning this information you requested.

Yours very truly,

¹ I credit Root's version of the call and specifically do not credit Levi that he did not complete the questionnaire because Root represented it was only a few questions rather than the many it actually contained.

² Appendix A is omitted from publication.

ST. JOSEPH EQUIPMENT CORP.

/s/ Marie Holland

Marie Holland, President

Root then sent the following letter to Marie Holland on July 11, 1989:

Enclosed is the same Questionnaire which you returned without regard to its content. The letter was sent to Jerry Levi and Marie Holland. Why did I do this? Any business that I've had with St. Joseph Equipment Corp. or Holland Construction I've had to deal with Jerry Levi, in fact the only time I've spoke to you Marie Holland was the event that Jerry had agreed to enter the collective-bargaining agreement with Local No. 312 and Jerry lead you into the office for the signing of the agreement.

And as I discussed with Jerry and would also be glad to discuss with you if when I call to discuss matters concerning St. Joseph Equipment you would take my call instead of Jerry. I believe there is a contract violation of sub-contracting and I must investigate as such.

Again, based upon a review by Local No. 312, it appears that there may be a close relationship between St. Joseph Equipment Corp. and Holland Construction. St. Joseph Equipment Corp. is a party to a collective bargaining agreement with Local No. 312. Depending upon the relationship between St. Joseph Equipment and Holland Construction, Holland may in fact be governed by the recognition and work preservation provisions of the collective bargaining agreement. In many instances, commonly controlled or alter ego corporation may have fringe fund liabilities pursuant to the provisions of ERISA.

Please complete the enclosed Questionnaire as this information is essential for Local No. 312 to administer its collective bargaining agreement with St. Joseph Equipment.

There was no response.

Discussion

The collective-bargaining agreement between St. Joseph and the Union is in full force and effect, was re-executed after the Fairfield job ended, and therefore is not limited to that job. Respondent's suggestion that the 1989 execution was in some way a limitation of the agreement to a nonexistent worksite is imaginative but untenable. More serious is the argument that article XI, section 9 of the agreement violates Section 8(e) of the Act. Section 8(e) provides in relevant part:

It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement . . . whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such an agreement shall be to such extent unenforceable and void: *Provided*, that nothing in this subsection (e) shall apply to any agreement between a

labor organization and an employer in the construction industry relating to the contracting or subcontracting of work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work.

Article XI, section 9 of the agreement provides:

The employers, party hereto, shall not attempt to engage in any work covered by the Agreement in any area in or outside of the geographic jurisdiction of the Union party thereto through the use or device of another business or corporation which such employer controls, or thru the use of device of the joint venture with another employer or contractor without first consulting with the Brotherhood for the purpose of establishing to the Brotherhood's satisfaction that the use of such device is not for the purpose of taking advantage of lower wages or conditions than are in effect, and if the Brotherhood is not so satisfied, the Union party has the option of cancelling the Agreement.

The General Counsel's observation that the object of this provision should properly be construed as the prevention of evasion of contracted provisions concerning benefits conferred on employees by the questionable use of a joint venture or other employer controlled by the contracting employer is well taken, as is the observation that the questioned article XI, section 9, if it be construed as a limitation of subcontracting bargaining unit jobsite work, falls within the construction industry proviso of Section 8(e) of the Act. *Woelke & Romero Framing, Inc.*, 456 U.S. 645 (1982), is indeed dispositive of this latter issue, and I conclude article XI, section 9 of the contract does not run afoul of Section 8(e) of the Act.

It is well settled that an employer must furnish a union, at its request, necessary and relevant information to enable a union to fulfill its obligation as a bargaining representative, and the information requested need only be shown to be probably or potentially relevant. *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435, 437 (1967). Here, the information sought by the Union is not presumptively relevant as is information regarding wages, hours, and working conditions of employees in the bargaining unit. St. Joseph's employees were covered by the contract of which there was none.³ If, however, the Union can show that it had a reasonable belief based on objective facts that St. Joseph and Holland are a single employer or alter egos and the information it requests is relevant, it must be furnished on request so that the Union may be able to more clearly determine if that belief be true and whether it is reasonable to conclude its collective-bargaining agreement, notably article XI, section 9, and the fringe fund liabilities Root refers to in his letters, may not have been complied with.⁴

This case boils down to two questions: Is the Union entitled to any information from the Respondent? If so, what in-

³ *George Koch & Sons, Inc.*, 295 NLRB 695 (1989). See, e.g., *Stephen Oderwald, Inc.*, 284 NLRB 277 (1987); *St. Marys Foundry Co.*, 284 NLRB 221 (1987), and cases cited in those decisions.

⁴ *Walter N. Yoder & Sons*, 270 NLRB 652 fn. 5 (1984), and cases cited there.

formation sought, if any, must be produced? The answer to the first question depends on whether the Union has a reasonable basis for believing St. Joseph and Holland are inter-related businesses.⁵ I conclude it has. St. Joseph maintains no separate work trailer on Holland job. Root was confronted at two jobsites by St. Joseph employees officed in a Holland trailer and directing projects for Holland. The two firms have their principal offices in the same building and share the same telephone. Root sought an agreement from Holland, not St. Joseph, and entered into the agreement with St. Joseph because Levi told Root that, although Holland never executed labor agreements, St. Joseph did. Levi, the president of Holland, persuaded Holland, the owner of St. Joseph, to execute the contract with the Union in June 1988 in order to assure that union workers would continue to work for a Holland subcontractor. In short, St. Joseph acted at Holland's behest and for Holland's benefit when Holland signed the contract in June 1988. Root had no reason to believe the relationship between the two companies was any different when Holland again signed an agreement in 1989. The presence of Hogan, a St. Joseph employee, in the Holland trailer on the Battle Creek job as the job overseer for Holland was sufficient reason to believe the relationship had not changed. With the foregoing evidence in hand, Root had an objective factual basis for his belief there was a special business relationship between St. Joseph and Holland which might well require Root to consider whether the contract with St. Joseph was applicable to and being violated by Holland. It was therefore appropriate for Root to request information from St. Joseph in order to resolve exactly what this relationship is and thus enable the Union to properly administer its responsibilities as a collective-bargaining agent. In determining what information must be supplied, a broad discovery type standard is appropriate.⁶ The request tendered by Root to St. Joseph has 77 separate divisions, each with two or more requested items therein. The requested information is relevant to the Union's performance of its role as collective-bargaining representative of employees covered by the collective-bargaining agreement with St. Joseph. Respondent's failure to provide any of the information requested violated Section 8(a)(5) and (1) of the Act. *George Koch*, supra. It may be that some of the information requested is not within the possession and control of St. Joseph. The Board, cognizant of this possibility, held in *George Koch* that "any disputes regarding the Respondent's obligations under the decision can be addressed in the compliance stage of this proceeding," and I conclude that observation in a proceeding where 89 items were requested is also applicable to the instant case.

CONCLUSIONS OF LAW

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

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

⁵ *Barnard Engineering Co.*, 282 NLRB 617, 619 (1987).

⁶ *NLRB v. Acme Industrial Co.*, supra.

3. By refusing to furnish the Union with the requested information relevant to administration of the collective-bargaining agreement, the Respondent failed to bargain collectively and in good faith with the Union and has thereby engaged

in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

[Recommended Order omitted from publication.]