

**Mohenis Services, Inc., Virginia Linen Service, Inc., and Virginia Textile Service, Inc. and Laundry Workers and Dry Cleaners International Union, Local No. 212, AFL-CIO.** Case 11-CA-14198 (formerly 5-CA-21668)

August 21, 1992

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND  
RAUDABAUGH

On September 12, 1991, Administrative Law Judge J. Pargen Robertson issued the attached decision. The General Counsel and the Respondent filed exceptions and supporting briefs, and the Respondent filed a brief in opposition to the General Counsel's exceptions.

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,<sup>1</sup> and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Mohenis Services, Inc., Virginia Linen Service, Inc., and Virginia Textile Service, Inc., Petersburg, Virginia, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

<sup>1</sup>In adopting the judge, Member Devaney agrees that Mohenis Services, Inc., Virginia Linen Service, Inc., and Virginia Textile Service, Inc. are not a single integrated employer and that the Virginia Textile Service, Inc. employees do not constitute an accretion to, or spinoff of, the Virginia Linen Service, Inc. bargaining unit. He does not find it necessary to reach the waiver issue. Members Oviatt and Raudabaugh agree with the judge's determination that the Union waived any claim that the Virginia Textile Service, Inc. employees were part of the Virginia Linen Service, Inc. bargaining unit and thus they find it unnecessary to pass on the single employer, accretion, and spinoff issues.

We disagree with our dissenting colleague with respect to the refusal to provide information concerning the employees of Virginia Textile. In our view, the Union had a reasonable basis for believing that Virginia Textile and Virginia Linen were a single employer and that the two groups of employees constituted a single appropriate unit. The requested information was relevant to that claim. Contrary to his colleagues, Member Oviatt would not find a violation of Sec. 8(a)(5) in the Respondent's alleged failure to supply information to the Union regarding the Virginia Textile Service, Inc. employees. He finds that the Union failed to make even the minimally required showing as to why such information on nonbargaining unit employees was relevant.

*Jane P. North, Esq.*, for the General Counsel.  
*Allen G. Siegel, Esq.* and *Henry Morris, Jr., Esq.*, of Washington, D.C., for the Respondent.

308 NLRB No. 57

DECISION

J. PARGEN ROBERTSON, Administrative Law Judge. This matter was heard in Petersburg, Virginia, on July 9 and 10, 1991. An amended complaint issued on June 24, 1991. The charge was filed on December 19, 1990, and amended on February 13, 1991.

The complaint, as amended at the hearing, alleges that Respondent violated Section 8(a)(1) and (5) of the National Labor Relations Act (Act).

Respondent admitted that each of the three named Respondents are, and have been at material times, employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

Additionally, Respondent admitted that the Charging Party (Union) is a labor organization within the meaning of Section 2(5) of the Act.

Counsel for General Counsel moved to correct the transcript. That motion is granted. General Counsel also moved to delete paragraph 16(a) of the complaint. That motion is granted.

During the hearing Respondent filed a motion to dismiss on the grounds that the Union acted improperly in writing to Respondent on June 18, 1991. That motion is denied. The evidence does not establish a basis for dismissal.

The complaint alleges that Respondent violated Section 8(a)(5) and (1) of the Act. The 8(a)(1) allegations involve comments allegedly made to employees at the Respondent Virginia Textile Service, Inc. (Textile) facility in December 1990.

The 8(a)(5) allegations are more complex. Those allegations involve General Counsel's contentions that the three named Respondents constitute a single integrated business enterprise; that Textile employees constitute an accretion to the recognized bargaining unit at Virginia Linen Service, Inc. (Linen); that Respondent refused to recognize that the Textile employees are within the scope of the collective-bargaining contract between Linen and the Union; and that Respondent made unilateral changes at its Textile location. Finally, there is an allegation that Respondent refused to provide information at the Union's request.

Mohenis Services, Inc. (Mohenis) is the parent corporation and sole owner of both Linen and Textile, as well as being the parent of several other "profit centers." Mohenis is owned by the Struminger family.

Linen has had a longstanding collective-bargaining relationship with the Charging Party (Union). They have been parties to several collective-bargaining contracts with the most recent having an effective term from September 30, 1989, to September 30, 1993. That agreement contains the following recognition clause:

*Bargaining Unit:* The Company recognizes the Union as the exclusive collective bargaining agent for all production employees at the Company's plant at 875 East Bank Street, Petersburg, Virginia, excluding all other employees, watchmen, guards and supervisors as defined in the Act. Part-time and summer replacement employees shall not be covered by any of the terms and conditions of this Agreement.

Textile's facility was constructed and opened in 1990 at its location at 516 Brown Street in Petersburg.

The operations of both Linen and Textile include laundries. Textile, since its 1990 opening, has catered to large customers. Its operations are automated and were described during the hearing as state of the art operations.

Textile employs 14 production employees. All 14 were former employees of Linen and were hired while they were employed by Linen. Those 14 employees moved from Linen to Textile during November 1990 without a break in their work. Since Textile's original staffing of employees, there has been no interchange of employees between Textile and Linen.

Respondent contends there is no single integrated enterprise relationship among the Respondent companies despite the common ownership; that in any event, Textile does not constitute an accretion to Linen; and that the Union waived any claim to include the Textile employees within the terms of its collective-bargaining agreement with Linen.

#### The 8(a)(1) Allegations

The complaint includes allegations that Respondent threatened its Textile employees with loss of benefits and that Respondent promised the employees increased benefits.

Louise Evans testified that Textile General Manager Sheridan Randolph called a meeting of Textile employees at the Textile facility during the first or second week in December 1990:

(Randolph) called a meeting to tell us that the flooring had been—something was wrong with the flooring and they had to redo it. He said that we would have to have a week off from work. The first week in January. He told us that we will be paid for it and he said he also wanted to tell us that there was not a Union at Virginia Textiles.

I told him that I did not understand because I belonged to the Union at Virginia Linen for 22 years and I did not understand why there could not be a Union at Virginia Textiles. I told him I felt like that they was sort of taking my rights from me. He, then, said Louise, you never needed a Union anyhow, so whenever you had a complaint you always came to me and we talked it over. I said yes. I said but I may not have needed one. I said but I feel that there is a Union that it may help somebody else, they might need one. He said now you're getting into feelings and I don't want to talk about feelings.

Then, he went onto talk about the time we had off and he was telling us about our pay. That we would get paid for the whole week and he said, something like with a smile, he said see if you was going through the Union you wouldn't get paid anything at all. So, I told him, I said I thought that if you—not unless it was an act of God that you had to get paid on the contract. That you had to get paid at least for half a day. He said only if you reported to work.

Then, I asked him could he give me a reason why he did not want a Union in the new plant. He said he always like dealing with people one on one and he said

he also didn't like paying the lawyer's fees. That if he did not pay lawyer's fees. He was able to pay us more money.

Sheridan Randolph admitted that he did meet with the Textile employees at its plant in mid-December and that he told employees they would be paid for a week they would not work in January due to the need to redo the floors. Randolph testified that he told the employees that they probably would not have been paid if they had been under the union contract.

Randolph denied that he threatened employees with loss of benefits or that he promised employees improved benefits, depending on their supporting or opposing the Union.

Louise Evans testified that Donald Struminger called a meeting at Textile among the employees in February 1990. Struminger told the employees that Union Business Agent Howard was saying he needed the Union at Textile. Struminger said that he did not need the Union at Textile. Struminger told the employees that he had already spent \$10,000 in lawyer fees and he would not have this. Evans told Struminger that she was not happy because she could not belong to the Union. Struminger replied that if she was not happy he would see if he could make arrangements for her to be transferred back to the old laundry.

Donald Struminger's testimony appeared to support Louise Evans. I was impressed with Evans' demeanor and I credit her testimony as to the conversations involving Randolph and Struminger.

#### Findings

The credited evidence proved that the Textile general manager told the employees they would not receive pay for the week Textile was closed if they had been represented by the Union and that it would pay employees more if it did not have to pay attorney fees because of the Union. Subsequently Donald Struminger supported that position by telling the employees that he had already paid \$10,000 in attorney fees because of the Union.

Through Respondent's advice the employees were led to believe that they would suffer pay loss and possible loss of opportunity for pay increases, if they insisted on being represented by the Union at Textile.

Respondent argued that it merely advised its employees as to what was provided in the collective-bargaining agreement. The credited evidence shows that was not the case. Sheridan Randolph initially engaged in an argument as to whether the employees needed the Union at Textile. Subsequently he told the employees that they would not receive any pay for their week off if they went through the Union and that he would pay the Textile employees more money if he did not have to pay attorney fees.

I find that Respondent thereby coerced its employees in regard to their protected rights under Section 7 of the Act in violation of Section 8(a)(1) of the Act. *Storall Mfg. Co.*, 275 NLRB 220 (1985); *Precision Founders*, 278 NLRB 544 (1986); *Evans St. Clair, Inc.*, 278 NLRB 459 (1986); *Standard Products Co.*, 281 NLRB 141 (1986).

### The 8(a)(5) Allegations

#### The Alleged Refusal to Provide Requested Information

The Union made several requests for information from Respondent. By letter dated November 19, 1990, addressed to Mike Fox, Manager Laundry Division, Virginia Linen Service, Inc., the Union requested employee names, addresses, wage scales, and seniority lists.

On December 6 Respondent's attorney wrote the Union pointing out that the Union's November 19 letter failed to identify the group of employees involved in its request for information.

On December 10 the Union wrote Donald Struminger, president, Virginia Textile Service and requested employee names, addresses, wage scales for each employee, and seniority lists.

On December 14 Respondent's attorney wrote the Union regarding the Union's December 10 letter and pointed out that the Union had again failed to identify the group of employees involved in that request for information.

Ezekiel Howard, who became the Union's business agent when the former business agent died in October 1990, testified that he phoned Respondent's attorney between December 19 and 22, 1990. After Howard inquired about his requests for information, he was told that a packet was being prepared for mailing to Howard.

When the packet did not arrive Howard again phoned the attorneys for Respondent, after Christmas. Again Howard was told that the packet was being prepared and would be mailed to him.

On January 4, 1991, Respondent's attorney wrote the Union and indicated that on representation that the Union would drop its unfair labor practice charge, the names and wage rates of Linen unit employees were included. That letter also indicated that Textile had no obligation to extend dues deductions to the employees of Textile.

Howard phoned Respondent's attorneys and informed them that the packet they had sent did not contain the employees' addresses.

On January 14 Respondent's attorney wrote the Union advising that it would supply the addresses of unit employees of Linen only if the Union agreed to pay Respondent the reasonable costs of supplying that information.

As to the above evidence, there was no substantial dispute. I was impressed with Ezekiel Howard's demeanor and I credit his testimony.

#### Findings

It is settled that an employer is obligated to furnish information requested by its employees' collective-bargaining agent which is relevant and necessary to the Union's bargaining responsibilities under the terms of a collective-bargaining agreement. *Kendall College of Art*, 292 NLRB 1065 (1989); *George Koch & Sons, Inc.*, 295 NLRB 695 (1989).

As to information regarding unit employees there is a presumption that the information is relevant to the Union's bargaining obligation. When the information requested of an employer is about employees or operations other than those represented by the Union it is necessary for the General Counsel to prove relevancy. However, the standard for relevancy is the same whether relevancy is presumed or proved

by specific evidence. That standard is a liberal discovery-type standard. *George Koch & Sons*, supra at 696.

In another decision the Board found that a Union was entitled to information where it was pursuing an investigation into whether a single-integrated employer situation existed.

As the judge found, there is "an objective factual basis for the Union to believe that bargaining unit work was being performed by employees of E & M and H & K, that H & K and E & M together with Respondent might constitute a single employer, and that the assignment of subcontracting of loads to their drivers violated both the recognition clause of the agreement and the subcontracting clause." . . . That objective factual basis makes the Union's request here a legitimate one and clearly not, as urged by our dissenting colleague, a fishing expedition.

. . . .  
Thus, the Union's request for information is merely part of an investigatory process through which it determines whether or not there exists a basis for a grievance against the Respondent. [*Blue Diamond Co.*, 295 NLRB 1007 (1989).]

Here the Union and Respondent engaged in a dispute regarding the Textile employees which ultimately became an issue in these proceedings.

At the time of the Union's request for the Textile employees' names, etc., that information was relevant to an ongoing dispute between Respondent and the Union. Under the rationale of *Blue Diamond*, the Union was entitled to that requested information as well as to the information it requested regarding Linen unit employees.

As to the Union's request to Linen for information regarding unit employees, I find, in light of the above-mentioned jurisprudence, that those records are presumptively relevant to the Union's bargaining responsibilities. As shown above the record illustrated that the request regarding Textile employees was relevant to the Union's dispute with Respondent as to whether those employees were in the bargaining unit.

In view of the fact that the requests were addressed first to Linen where the Union was party to a collective-bargaining agreement, and secondly to Textile where the Union disputed Respondent's contention that the Textile employees were not part of the Linen bargaining unit, I am not impressed with Respondent's contention that the Union failed to specify which employees were involved in the Union's requests. It is obvious from the address on each respective letter, that the Union was seeking information regarding the employees of each respective addressee.

The Union was entitled to a timely response to its request. However, Respondent did not furnish any part of the requested records for over 6 weeks. *International Credit Service*, 240 NLRB 715, 719 (1979)

Finally, Respondent furnished the Union with some of the requested information regarding Linen employees but, even then, Respondent failed to supply the Union with addresses of the employees. Subsequently, Respondent told the Union the addresses would be furnished only if the Union agreed to pay costs. The Union was not supplied with any of the information on the Textile employees.

I find that Respondent engaged in action which is violative of Section 8(a)(5) and (1) of the Act.

#### The Alleged Refusal to Recognize and Unilateral Changes

The record evidence revealed that Mohenis is the parent corporation of some 16 profit centers. Before 1990, one of those profit centers which included a laundry, was located in Petersburg, Virginia. That laundry, Linen, was a modern, automated laundry that employed 85 employees in a bargaining unit represented by the Union.

In 1990 Mohenis built another laundry in Petersburg. That laundry, Textile, was designed by Donald Struminger to handle large volume customers. Before that time other laundries owned by Mohenis, including Linen, performed the large volume work as well as other work.

The Textile facility was designed as a state of the art facility, in such a manner as to avoid the necessity of a large work force and to provide a pleasing environment for its small work force. It is clear from the record that Textile was conceived and built in part because of Mohenis' continuing relationship with large volume customers in the hotel business in the Virginia-Maryland area.

Petersburg was selected as the site for the Textile facility even though Mohenis considered other locations which would have been as conveniently located to its large volume customers as was Petersburg. Textile draws from a customer radius of 150 miles enabling it to consider location in any number of cities in the Virginia-Maryland area.

The Linen general manager asked that he be awarded the general manager job at Textile. He was given the job.

The general manager then brought over all Textile's original work force of 14 employees from Linen. Linen is approximately 3 miles from Textile. Textile also installed a 60-pound washer extractor and a flat work ironer which it obtained from Linen. The evidence indicated that Linen had fully depreciated the flat work ironer and would have faced some tax disadvantages if it had charged Textile for the ironer. Textile also subleased some trucks that had been originally leased to Linen. The record showed that Textile pays all lease fees for trucks used by it.

In other respects there has been no interchange of operations between Linen and Textile with one exception. In January it was necessary to close Textile to redo its floors. On that occasion others, including Linen, performed the work which Textile would have performed during that week.

Textile is more automated than Linen. Its production capacity is half that of Linen but it uses 14 employees, as opposed to 85 used by Linen, in its production.

While Textile performs large volume work for large volume customers, other Mohenis laundry facilities including Linen, perform some of the work for those same large volume customers. For example robes and tablecloths may be processed in locations other than Textile, for the Hyatt hotels that are Textile customers.

The record evidence including a January 4, 1991 letter to the Union from Respondent's attorney, shows that the Union has requested but Respondent has refused, to recognize that the Linen employees' bargaining unit extends to the Textile employees. The Union had written Textile on December 10, 1990, complaining about Textile's contention that its employees were no longer a union.

General Counsel cited *South Prairie Construction Co. v. Operating Engineers Local 627 (Peter Kiewit Sons' Co.)*, 425 U.S. 800 (1976), in arguing that Textile constitutes a single integrated enterprise with Linen; that the Textile production employees constitute an accretion to the bargaining unit at Linen; and that Respondent violated Section 8(a)(5) by refusing the Union's request that it recognize the Textile employees as falling within the coverage of the collective-bargaining agreement between Linen and the Union.

Respondent argued that Textile does not constitute a single integrated enterprise; that the Textile employees are not an accretion to the Linen unit; that the Union bargained and waived any rights to contend that Textile constitutes an accretion and that it did not refuse to recognize nor did it make unilateral changes in violation of Section 8(a)(5).

#### Findings

##### The Single-Integrated Employer Question

The first question in regard to whether the Textile employees are part of the bargaining unit at Linen must involve a query into whether Textile and Linen constitute a single integrated employer.

Four factors must be evaluated to determine whether two companies constitute a single employer: (1) interrelation of the operations; (2) common management; (3) centralized control of labor relations; and (4) common ownership. See *Radio Union v. Broadcast Service*, 380 U.S. 255, 256 (1965). Here, the judge acknowledged the absence of two factors, common management and centralized control of labor relations. The latter factor is considered critical to a single employer finding. [*Alabama Metal Products*, 280 NLRB 1090 fn. 1 (1986).]

##### Common Ownership

As to the four critical elements there is no question as to the proper answer to item 4. The two entities have common ownership. Mohenis is the parent corporation of both Linen and Textile and Mohenis is owned by the Struminger family.

However, Linen and Textile are not the only "profit centers," owned by Mohenis. They are only 2 of 16 and of the 16, only Linen has employees that are represented by a Union.

##### Interrelationship of Operations

The record shows there is no current interchange of employees between Textile and Linen.

All the original Textile employees were hired while they worked for Linen. Textile's supervisory employees also worked for Linen before they started working for Textile. The record shows that Linen's former general manager, Sheridan Randolph, asked for the general manager position at Textile several months before Textile started operations. After Randolph was given the job of Textile general manager, he selected the Textile work force from among the employees he was then supervising at Linen. Since that time none of the Textile employees have returned to work for Linen.

Shortly after Textile commenced operations, it was necessary for Textile to close for 1 week during January due to the necessity to re-floor its facility. At that time all the Tex-

tile employees received the week off work with pay and Textile's work was handled by Linen and by other laundry facilities.

Textile originally received a flat work ironer and a washer extractor from Linen which were included in its equipment and Textile is subleasing some trucks that were originally leased to Linen. The equipment received from Linen was estimated to constitute 2 percent of Textile's equipment.

There was no showing that any of the material or employees which were originally at Linen but were moved to Textile, have been returned to Linen. None of the employees that left Linen and started work for Textile, have returned to work at Linen. The ironer which was moved from Linen to Textile, was never returned to Linen and washer extractor and the trucks which were originally leased to Linen and were subleased to Textile, were not shown to have ever returned to Linen.

All the Mohenis companies file a consolidated Federal income tax return and they are all covered by a blanket liability insurance policy.

Textile and Linen have their own, separate, payroll accounts and their own deposit accounts. Currently, while Textile is awaiting installation of a computer, their payroll checks are prepared at Mohenis.

All the various Mohenis corporations have a common accounts payable account from which all accounts payable checks are drawn. Money is swept into that account on a regular basis from the various corporate accounts.

Textile has nine customers, Hyatt Regency, Washington, D.C.; Hyatt Hotel, Richmond, Virginia; Governor's Inn, Williamsburg, Virginia; Sanitary Linen Service, Norfolk, Virginia; Tarheel Linen Service, Durham, North Carolina; Virginia Linen Service, Charlottesville, Virginia; Virginia Linen Service, Petersburg, Virginia; Virginia Linen Service, Franconia, Virginia; and Virginia Linen Service, Landover, Maryland. The record is confused as to the number of Linen customers. There was testimony they have 80, 1500, or 5000 customers. Despite that confusion the record does show that Linen handles much smaller average laundry loads than does Textile.

Textile's customers provide it with large volume laundry which may involve as much as \$15,000 per week. Linen, on the other hand, handles small volumes with its customers' bills frequently running some \$40 to \$50 per week.

Linen's Petersburg facility caters to customers in the vicinity of the facility. Textile, on the other hand, draws customers from a 150-mile radius.

The Textile employees work in a separate facility from Linen. That facility, unlike the Linen facility, is air conditioned and has a recreation room.

#### Common Management

The day-to-day management is not common between Linen and Textile. Both Linen and Textile are separately managed from first-line supervision up through general managers.

The supervisors at Textile were formerly employed at Linen. After their move from Linen to Textile, none moved back to Linen. Other than the original opening at Textile, there was no showing that supervisors are routinely transferred, promoted or otherwise, from Linen to Textile or from Textile to Linen.

The directors and officers are the same for all three companies, Mohenis, Textile, and Linen. As shown above Linen and Textile are owned by Mohenis which, in turn, is owned by the Struminger family.

Mohenis performs several services for its companies including Textile and Linen. Those services include purchasing of supplies, engineering, and computer software.

As to purchasing, each company must operate within their individual budgets. Purchases are made after requisitions are submitted by the particular company to the purchasing office at Mohenis.

#### Centralized Control of Labor Relations

Ultimately all labor relations matters which are within the scope of management authority, for Textile and Linen, may be handled by Donald Struminger. He exercises similar authority for all 16 of Mohenis' profit centers. However, routinely all matters are handled within each individual profit center. On those routine occasions, the individual profit centers, including Linen and Textile, handle their own labor relations matters.

Labor relations matters are handled differently in profit centers in which the employees are represented. As to all the centers where there is no union representation, there is a fairness review committee available for employee grievances. That committee includes three production employees and two management employees.

Day-to-day labor relations as well as the setting of wages are handled separately within each profit center. As to the setting of wages and benefits, each profit center has a narrow window of discretion. Mohenis sets limits for wages and each profit center must operate within those limits. At the time of the opening of Textile's laundry, the wages and benefits were the same between Linen and Textile. Two of the fourteen employees employed by Textile received \$.50-per-hour pay increases over what they had been paid at Linen, because of increased responsibilities. The other 12 employees received the same pay at Textile they had received at Linen.

Day-to-day labor relations matters on the profit center level are handled differently at Linen and Textile. Absent appeal under the grievance procedure whether through the Union or through Textile's fairness review procedure, labor relations matters do not routinely involve anyone above the profit center level.

Each profit center is responsible for its own hiring and firing of employees.

A number of cases cited by the parties are helpful in determining the issues present here. In *Rice Food Markets*, 255 NLRB 884 (1981), *Hahn Motors*, 283 NLRB 901 (1987), and *Coca-Cola Bottling Co. of Buffalo*, 299 NLRB 989 (1990), the National Labor Relations Board extended the unit scope to employees in dispute. In those cases there were findings that single-integrated business enterprises existed. The Board found in those cases that the questioned action by the single employer involved "new" facilities which were found to be not totally new. Employees continued to perform previously perform job functions even though the employer had created separate companies. For example in *Rice Food Markets*, the disputed employees formerly worked within the grocery stores which included areas where alcohol beverages were marketed. After enactment of a state law requiring separate retail marketing of alcohol beverages, alcohol beverage

stores were partitioned off from the existing grocery stores. The dispute involved the employees in those partitioned off alcohol beverage stores which were found to constitute single-integrated enterprises with the grocery stores.

The instant matter is different. Textile is a totally new operation. Even though its employees came from Linen, they perform discrete jobs at Textile. Textile is a large volume operation as opposed to Linen. Textile is more automated than Linen. Although the product is similar at Textile and Linen, the job classifications are different. At Textile the jobs before the finish stage of the operations, are more like monitoring automated washing and drying operations than at Linen, where the employees are more directly involved in the production processes. The employees at Textile perform under a general job classification that enables each of them to perform all the necessary tasks in the production process. Because of that, employees may more easily fill in for other employees if necessary. On the other hand, the Linen employees perform more specialized tasks.

Linen and Textile are not dependent on one another in regard to employees or business. Textile caters to large volume business whereas Linen does not. Each hires and fires its own employees without input from the other. The Textile facility is in its own building which is approximately 3 miles from the Linen facility. The Textile employees wear separate uniforms in different colors than do the Linen employees. The employees do not come in contact with each other during work. Although the overall work is similar the various jobs up to the finish jobs, are different.

In view of the above, I find that of the four criteria involved in determining the single integrated employer issue, only one, common ownership, is clearly present in this situation. As to the others, the facts establish something less than a clear yes or no as to each of those questions.

As to interrelationship of operations, the evidence shows there is no continuing interrelationship of operations. Initially Textile drew its employees from Linen and Textile obtained a small portion of equipment, a flat work ironer and a washer extractor, from Linen. Since that time there has been no interchange of employees or equipment. Other than one occasion in early January, when Textile closed temporarily, there has been no occasion where one performed work for the other. On that occasion, Linen performed some of the Textile work.

As to common management, the evidence shows that the day-to-day managements of Linen and Textile, are separate. However, Mohenis wide policy decisions are made by Mohenis management.

As to centralized control of labor relations, again, the day-to-day control is held individually by Textile as to their employees and individually by Linen as to their employees. Again, as to Mohenis wide policy, those decisions are made by Mohenis. Moreover, as to the final step in grievance proceedings, the final management decision rests with Donald Struminger on those instances when the matter is processed to the final stages.

In *Alabama Metal Products*, 280 NLRB 1090 (1986), which is cited above, there was common ownership and interrelation of the operations. Although there was no interchange of employees the record in *Alabama Metal* illustrated that the "new" employer sold 98 percent of its product to the "old" employer. Primarily on the basis of that informa-

tion the administrative law judge found there was interrelation of operations.

However, the Board in *Alabama Metal* determined there was no single integrated enterprise on its determination that two elements, common management and centralized control of labor relations, were absent.

*Alabama Metal* presented a stronger case for single integrated employer, than the instant matter. There the employer at issue, did 98 percent of its work from its alleged integrated employer. Here, while one of Textile's customers is Virginia Linen, Petersburg, that involves a different division of Linen than its laundry and Linen does not constitute the bulk of Textile's work. The record failed to show that Textile, as was the case in *Alabama Metal*, would cease to exist without Linen's business.

#### The Accretion Question

General Counsel argued that Textile constitutes a spin off or accretion to the Linen bargaining unit. However,

the Board has found a valid accretion only when the additional employees have little or no separate group identity and thus cannot be considered to be a separate appropriate unit and when the additional employees share an overwhelming community of interest with the preexisting unit to which they are accreted. *Safeway Stores*, 256 NLRB 918 (1981)

Here the Textile employees work in a totally separate building, 3 miles away from Linen. Even though Textile hired its original work force from Linen, there is no continuing interchange of employees. The only employee contact was shown to be Christmas parties and summer picnics. Textile employees wear uniforms which look different than those worn by Linen employees. Textile employees perform different jobs. Textile employees service different jobs than those performed by Linen. Even though Linen also does some work for some of the customers serviced by Textile, Textile consistently performs such high volume work as the sheets and pillow cases for its hotel customers. Textile employees work under separate supervision from Linen.

Even General Counsel agrees that the Textile facility was the culmination of lengthy planning, negotiation, and design work by Donald Struminger. That plant incorporated the most recent technology for a large volume laundry facility with a high volume-to-employee ratio.

Before 1990 Respondent had several laundry facilities but nothing like Textile.

Linen, unlike Textile, was designed to handle a wide variety of customers including both large and small volume customers. However, Linen was unable to handle large volume customers with a high volume-to-employee ratio as was Textile. Textile handles up to 3000 pounds of laundry per hour with 14 employees while Linen handles up to 6000 pounds of laundry per hour with 85 employees.

General Counsel in its argument cited, among other cases, *Central Soya Co.*, 288 NLRB 1402 (1988), *enfd.* 867 F.2d 1245 (1988). Apparently General Counsel intended to cite *Central Soya Co.*, 281 NLRB 1308 (1986), *affd.* 867 F.2d 1245 (10th Cir. 1989).

In *Central Soya* the employer purchased a competitor's facility. Shortly after the purchase the employer closed its old

unionized facility and merged its former unionized work force into the new facility. The Union's request for recognition was denied. There the Board found an accretion existed and found that the employer had violated Section 8(a)(1) and (5) of the Act.

Here the situation is more difficult. There was no abolition of the previous plant as in *Central Soya* and there was not a replacement of the same functions by the new plant. Here the new plant involved different objectives and functions. Moreover, if an accretion is found here, the employees at Textile will, in effect, be determined to be part of a much larger unit without ever having had an opportunity to express their wishes in that regard.

A finding of accretion would deprive the Textile employees of the opportunity to make their own determination as to bargaining representative. Those employees would not have the opportunity to express their own preference as to bargaining representative before the initial determination that they are represented by the Union as part of the Linen unit. Moreover, the Textile employees will be deprived of the opportunity to express whether they desire to be a small part of a large overall bargaining unit.

On the other hand if there is a determination that the Textile employees are not a part of the Linen bargaining unit, such a finding would not prevent the Textile employees from making their own determination as to whether they wanted to be represented by the Union, by another union, or not be represented by any union.

In a case involving the accretion question, Administrative Law Judge Schwarzbart stated:

Administrative Law Judge Shapiro in his Board-approved decision in *Westwood Import Company, Inc.* [251 NLRB 1213, 1220 (1980)], discussed certain principles applicable to accretion:

"An accretion is, by definition, merely the addition of new employees to an already existing group." *N.L.R.B. v. Food Employers Council, Inc., and Retail Clerks Union, Local 770*, 399 F.2d 501, 502 (9th Cir. 1968). Employees so added to an existing bargaining unit are regarded as a part of that unit. See *Westinghouse Electric Corp. v. N.L.R.B.*, 440 F.2d 7 (2d Cir. 1971). In deciding whether a new group of employees is an accretion to an existing bargaining unit, the Board not only considers such factors as functional integration, level of management control, similarity of working conditions, bargaining history, employee interchange, job skills, and physical separateness but also gives special weight to the interests of the unrepresented employees in exercising their own right to self-organization. See *Food Employers Council, Inc.*, supra at 501, 504. Hence, even though an overall bargaining unit may be appropriate if the issue is raised in the context of a petition for a representation election, the Board will not, "under guise of accretion, compel a group of employees, who may constitute a separate appropriate unit, to be included in an overall unit without allowing those employees the opportunity of expressing their preference in a secret-ballot election or by some other evidence that they wish to authorize the union to represent them." *Melbet Jewelry Co., Inc., and I.D.S.-Orchard Park Inc.*, 180 NLRB 107, 110 (1969). And,

"when the relevant considerations are not free from doubt," the Board and courts are in agreement that "it would seem more satisfactory to resolve such close questions through the election process rather than seeking an addition of the new employees by a finding of accretion" because "as a general rule, the accretion doctrine should be applied restrictively since it deprives the new employees of the opportunity to express their desires regarding membership in the existing unit." *Westinghouse Electric Corp. v. N.L.R.B.*, 440 F.2d 7, 11, and cases cited therein. *Sav-It Discount Foods, Inc.*, 263 NLRB 689, 693 (1982).

I find in disagreement with General Counsel, Textile does not involve a spinoff from Linen. Textile was shown to constitute a totally separate facility. In view of the jurisprudence, I also find the evidence failed to support my findings of accretion.

I find that the record demonstrated that the Textile employees have separate group identity from unit employees at Linen and the record showed there is little or no community of interest between the Textile employees and unit employees at Linen. *Hotel & Restaurant Employees Local 274 (Warwick Caterers)*, 282 NLRB 939 (1987).

#### The Waiver Question

Respondent also argues that the Union waived any claim that the Textile employees are part of the Linen bargaining unit.

It is important to keep in mind that we are litigating the question of whether Respondent illegally refused to recognize the Union as bargaining agent of the Textile employees as part of the Linen bargaining unit. There is no question before me, of whether the Union represents the Textile employees as a separate bargaining unit or on the basis of an expression from the Textile employees of their desire for a combined unit with Linen.

That distinction is an important one when dealing with the waiver question. The credited evidence shows that the parties included in their negotiations, discussions regarding whether the new collective-bargaining agreement would be limited to the Linen facility. As shown below, I credit the testimony of Donald Struminger. That testimony shows that the parties agreed that the contract would be limited to the Linen facility.

There was no showing and, indeed it is not alleged, that Respondent and the Union engaged in any discussions designed to waive the Textile employees' right to be represented by a union. I do not reach that question here.

This particular question deals with whether the parties, Respondent and the Union, agreed to limit the collective-bargaining agreement to the Linen employees.

Donald Struminger testified that during the two negotiating sessions before Linen and the Local agreed to the current collective-bargaining agreement, he told the Union that Mohenis planned a new facility and that facility would not be included in the current collective-bargaining agreement. Due to that discussion the parties agreed to change the language in the collective-bargaining agreement.

The record shows that the contract language was changed in both the introductory and the recognition clauses limiting the contract to Linen's laundry division at 875 East Bank

Street in Petersburg. Before negotiations for the current collective-bargaining agreement between the Union and Linen, prior collective-bargaining agreements referred to the employer at its Petersburg, Virginia plant. Those earlier contract provisions did not limit the agreement to 875 East Bank Street.

General Counsel offered evidence including the testimony of Barbara Tucker and Beatrice Dabney, that the matter of a new plant was not discussed during contract negotiations.

However, according to the Union's notes for the October 23, 1990 bargaining session, Donald Struminger said that the contract would apply only to the Linen facility.

Finally, both record and affidavit testimony of Local President Deborah Hinton shows that she recalled Donald Struminger saying something about opening a new plant and also some apartments. That testimony conflicts with a document signed by Hinton and others, which states that the new plant was not mentioned during negotiations.

In view of Hinton's testimony and the conflicts between that testimony and a statement which was signed by Hinton and by Beatrice Dabny and Barbara Tucker, as well as by Maretha Mosby, I am unable to credit the testimony that the new plant was not discussed during contract negotiations.

As to discussions during negotiations regarding the new plant, I credit the testimony of Donald Struminger. That evidence shows that Struminger told the Union of Mohenis' plans to build a new facility and that the Union agreed to specifically limit the collective-bargaining agreement to the Linen facility in Petersburg. In that regard I credit the following testimony of Donald Struminger:

(Former Business Agent) Mason and I specifically talked about the fact that the present agreement that was a series of agreements that had gone over a period of about 20 years, was not specific enough in relating to 875 E. Bank Street, and that we felt that because of the pending construction of the new plant and because of the new agreement would not apply to the new plant, because we had no idea of what the new plant would look like and how it would work out and so on and so forth, that it should be specific language changed that would very specifically tie the agreement to 875 E. Bank Street (the Linen facility at Petersburg).

General Counsel cited *Reece Corp.*, 294 NLRB 448 (1989), and *National Linen Service*, 293 NLRB 992 (1989), in support of its contention that the Union had not entered into a knowledgeable waiver of any rights. General Counsel argued, among other points, that "Respondent cannot rely on its own obfuscation to establish waiver."

The record does not support General Counsel. There is no showing of "obfuscation." Respondent offered the testimony of Donald Struminger which illustrated the parties discussed limiting the contract to the Linen facility along with the fact that Mohenis was planning a new facility. There was no evidence that Respondent failed to respond to any inquiries about the new plant. Even if I should credit General Counsel's witness, there was no showing there that Respondent was not cooperative or responsive to the Union regarding the new facility question.

General Counsel argues that the Union did not engage in a knowledgeable waiver.

The record shows that the issue was presented and discussed. There was no showing that Respondent told the Union anything that was untrue or that Respondent knew more about the planned Textile facility than it told the Union. The record does show that the Union agreed to Respondent's request that the collective-bargaining agreement be amended to specify that it was limited to the Linen facility on East Bank Street in Petersburg.

The credited evidence which includes language in the contract, shows that the Union waived any claim that the collective-bargaining agreement would include the Textile employees. The wording of the contract proves that the contract was limited to the Linen employees and the testimony of Donald Struminger proved that the Union was aware of Respondent's plans to build a new facility at the time it agreed to limit the contract to the Linen employees. There was no showing that Respondent withheld information regarding that question and there was no showing that the Union acted on the basis of false information or on the basis of requests for information which were not fulfilled. I am unable to determine that the parties agreed to anything other than what is stated in the contract language especially in view of the failure of the record to show that Respondent took any action to mislead the Union or to keep the Union uninformed. See *Oddie v. Ross Gear & Tool Co.*, 305 F.2d 143 (6th Cir. 1962), cert. denied 371 U.S. 941 (1962); *Auto Workers Local 1251 v. Robertshaw Controls Co.*, 405 F.2d 29 (2d Cir. 1968).

In view of the above I find that the record does not support a finding that the unit at Textile constitutes an accretion to the Linen bargaining unit and, for that reason, the record does not support a finding that Respondent violated Section 8(a)(1) and (5). Moreover, the record shows that the Union during collective bargaining, agreed to limit the scope of the collective-bargaining contract to the Linen employees.

I find that Textile did not engage in violative conduct by unilaterally changing the terms and conditions of employment at a time when its employees were represented by the Union. The facts do not show that those employees were represented by the Union.

#### CONCLUSIONS OF LAW

1. Mohenis Services, Inc., Virginia Linen Service, Inc., and Virginia Textile Service, Inc. are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Laundry Workers and Dry Cleaners International Union, Local No. 212, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent by threatening its employees with loss of pay increases and by promising its employees increased benefits if its employees selected Laundry Workers and Dry Cleaners International Union, Local 212, AFL-CIO, as their collective-bargaining representative engaged in conduct violative of Section 8(a)(1) of the Act.

4. Respondent, by failing to provide bargaining representative of its employees at Linen, Laundry Workers and Dry Cleaners International Union, Local 212, AFL-CIO, requested information including names, addresses, wage scales and seniority lists for its employees at Linen and Textile, has violated Section 8(a)(1) and (5) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

#### THE REMEDY

Having found that Respondent has engaged in unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>1</sup>

#### ORDER

The Respondent, Mohenis Services, Inc., Virginia Linen Service, Inc., and Virginia Textile Service, Inc., Petersburg, Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Engaging in conduct in violation of Section 8(a)(1) of the Act by threatening its employees with loss of pay increases and by promising its employees increased benefits if its employees selected Laundry Workers and Dry Cleaners International Union, Local 212, AFL-CIO, as their collective-bargaining representative.

(b) Failing to provide bargaining representative of its employees at Linen, Laundry Workers and Dry Cleaners International Union, Local 212, AFL-CIO, requested information including names, addresses, wage scales, and seniority lists for its employees at Linen and Textile.

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed them by Section 7 of the Act.

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

(a) On request, provide Laundry Workers and Dry Cleaners International Union, Local No. 212, AFL-CIO, as exclusive collective-bargaining representative of the following described bargaining unit, with names, addresses, wage scales, and seniority lists of our employees at Virginia Linen Service, Inc., and Virginia Textile Service, Inc.

All production employees at the Virginia Linen Service, Inc. plant at 875 East Bank Street, Petersburg, Virginia, excluding all other employees, watchmen, guards and supervisors as defined in the Act. Part-time and summer replacement employees shall not be covered by any of the terms and conditions of this Agreement.

(b) Post at its facility in Petersburg, Virginia, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 11, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon re-

<sup>1</sup> If 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.

<sup>2</sup> If 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."

ceipt 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.

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

#### APPENDIX

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

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten our employees with loss of pay increases and WE WILL NOT promise our employees increased benefits if its employees selected Laundry Workers and Dry Cleaners International Union, Local 212, AFL-CIO, as their collective-bargaining representative.

WE WILL NOT fail to provide Laundry Workers and Dry Cleaners International Union, Local 212, AFL-CIO, the bargaining representative of our employees in the following described collective-bargaining unit, requested information including names, addresses, wage scales, and seniority lists for our employees at Virginia Linen Service, Inc., and Virginia Textile Service, Inc.

All production employees at the Virginia Linen Service, Inc. plant at 875 East Bank Street, Petersburg, Virginia, excluding all other employees, watchmen, guards and supervisors as defined in the Act. Part-time and summer replacement employees shall not be covered by any of the terms and conditions of this Agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, on request, provide the Union, as exclusive collective-bargaining representative of the above-described bargaining unit, with names, addresses, wage scales, and seniority lists of our employees at Virginia Linen Service, Inc., and Virginia Textile Service, Inc.

MOHENIS SERVICES, INC., VIRGINIA LINEN SERVICE, INC., AND VIRGINIA TEXTILE SERVICE, INC.