

Denart Coal Co., Inc. and its alter ego, V Coal Co., Inc., Laing Enterprises; Vance Trucking; Delores Vance d/b/a D & J Trucking, a sole proprietorship; Don Vance; Don E. Vance; and Michael Vance and United Mine Workers of America, District 17. Case 9-CA-25650

December 16, 1994

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND
BROWNING

On October 14, 1992, Administrative Law Judge Hubert E. Lott issued the attached supplemental decision. The General Counsel filed exceptions and a supporting brief. On March 26, 1993, the Board issued an Order remanding the proceeding to the judge.¹ On March 25, 1994, the judge issued the attached second supplemental decision. The General Counsel filed exceptions and a supporting brief and the Respondents filed an answering brief, which was styled as a reply memorandum.²

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

The Board has considered the supplemental decision and second supplemental decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Supplemental Decision and Order.

In his supplemental and second supplemental decisions, Judge Lott found that none of the Respondents involved in the proceeding before him were liable for the backpay remedy the Board ordered in the unfair labor practice proceeding, and he recommended that the compliance specification be dismissed in its entirety. For the reasons set forth below, we find, contrary to the judge, that certain of the Respondents are liable for the backpay amounts due under the Board's Order in the unfair labor practice case.

I. PROCEDURAL HISTORY

On August 14, 1989, the Board issued an Order in this proceeding, adopting, in the absence of exceptions, the findings, conclusions, and recommendations of Administrative Law Judge Wallace Nations.³ Judge Nations found that Respondents Denart Coal Co., Inc. (Denart) and V Coal Co., Inc. (V Coal) violated Section 8(a)(5) and (1) of the Act by refusing to comply with the terms of their applicable collective-bargaining

agreement with the Union and failing to supply information to the Union. The judge further found that Denart, majority-owned and controlled by Don Vance, and V Coal, owned by Don Vance's sons and operated by Don Vance, are alter ego coal mining corporations commonly owned and managed by Vance family members. The Board adopted the judge's recommended Order that Denart/V Coal, inter alia, make employees whole for losses resulting from the unfair labor practices. On March 1, 1990, the United States Court of Appeals for the Fourth Circuit enforced the Board's Order in full.⁴

On June 4, 1990, the Regional Director issued a compliance specification, alleging, inter alia, that in addition to Denart/V Coal, the following entities (collectively the additional Respondents) are responsible for the backpay due under the terms of the Board's Order: Laing Enterprises (Laing); Vance Trucking; Delores Vance d/b/a D & J Trucking, a sole proprietorship (D & J); Don Vance, an individual; Don E. Vance, an individual; and Michael Vance, an individual.

On January 28, 1991, the Board granted the General Counsel's Motion for Partial Summary Judgment against Denart/V Coal for failure to file an answer to the compliance specification, and found that all allegations in the compliance specification were admitted as true against them. The Board, however, remanded for a hearing as to the liability of the additional Respondents. 301 NLRB 391.

In his supplemental decision, Judge Lott found that there was insufficient evidence to establish a single-employer relationship between Denart/V Coal and any of the additional Respondents, and dismissed the compliance specification allegations against all the Respondents. In its remand, the Board directed the judge to explain his finding that Delores Vance's testimony regarding the ownership and operations of D & J was uncontradicted by the documentary evidence.

In the second supplemental decision, Judge Lott reaffirmed his finding that none of the additional Respondents are a single employer with Denart/V Coal.

For the reasons below, we reverse the judge and find that D & J is a single employer with Denart/V Coal.⁵ As such, D & J is liable with Denart/V Coal for remedying the unfair labor practices as set forth in the compliance specification. Finally, because D & J is a proprietorship, not a corporation, its principals (Don

⁴No. 90-1004 (unpublished).

⁵Contrary to the General Counsel's exceptions, there is insufficient record evidence to establish that Laing or Vance Trucking, which have been dissolved, are single employers with Denart/V Coal or that Michael Vance or Don E. Vance are individually liable for remedying the unfair labor practices. Accordingly, we dismiss the allegations in the compliance specification as to those Respondents.

¹Not reported in Board volumes.

²The brief was submitted on behalf of Respondents Laing Enterprises, Vance Trucking, Delores Vance d/b/a D & J Trucking, Don Vance, Don E. Vance, and Michael Vance.

³Not reported in Board volumes.

and Delores Vance) are personally liable for the obligations incurred by D & J.

II. ANALYSIS

It is well settled that the Board examines the following factors in determining whether two or more employing entities constitute a single employer: (1) common ownership; (2) interrelation of operations; (3) common management; and (4) centralized control of labor relations. *Radio Technicians Local 1264 v. Broadcast Service of Mobile*, 380 U.S. 255 (1965).⁶ Not all of these criteria need be present to establish single-employer status and a significant factor is the absence of an “arm’s length relationship found among unintegrated companies.” *Operating Engineers Local 627 v. NLRB*, 518 F.2d 1040, 1046 (D.C. Cir. 1975), *affd.* in pertinent part sub nom. *South Prairie Construction Co. v. Operating Engineers Local 627*, 425 U.S. 800 (1976). We shall examine each of these factors in turn.

A. Common Ownership

The judge in his first decision found Delores Vance’s testimony that she was D & J’s sole owner to be “uncontradicted.” In his exceptions, the General Counsel referred to a number of documents that on their face contradicted Delores Vance’s testimony that she is the sole owner of D & J and that Don Vance is uninvolved with its operations. In our Order remanding the case to the judge, we stated in pertinent part as follows:

We cannot reconcile the judge’s apparent crediting of Delores Vance with the documentary evidence. We shall therefore remand this proceeding for the judge to explain or reconsider his credibility findings in light of the documentary evidence, which he did not discuss in his supplemental decision.

In his second decision, the judge stated that because the compliance specification did not allege Don Vance to be an owner of D & J, “whether or not Delores Vance is the sole proprietor as she testified, is not relevant to this proceeding.” At the same time, the judge observed that the documentary evidence concerning ownership to which we referred in our remand was inconclusive. He offered little explanation for this assertion.

The judge’s second decision is seriously flawed. First, the judge did not perform the task we specifically assigned him and instead termed “irrelevant” the issue that was the focus of our Order remanding. This was plain error on his part because “it is not for [an

⁶Therefore, the judge erred in stating that the test includes the factors of “employee interchange, business purpose, plant and equipment and anti-union motive.”

administrative law judge] to speculate as to what course the Board should follow On the contrary, it remains the [judge’s] duty to apply established Board precedent.” *Insurance Agents*, 119 NLRB 768, 773 (1957), *revd.* on other grounds 361 U.S. 477 (1960). We would not have remanded the case to the judge if we shared his view that the ownership issue was “irrelevant.” The judge should have recognized the legal authority of the Board’s Order and complied with its instructions.

Second, the fact that the compliance specification did not contain a specific allegation that Don Vance owned D & J is immaterial. The specification did allege, *inter alia*, that there was “common ownership” of D & J Trucking and Denart/V Coal, that D & J is a single employer with Denart/V Coal, that Don and Delores Vance “have held common stock in, have commingled assets with . . . and have operated” the single employer, and that Don and Delores Vance are “personally, jointly and severally, liable” with Denart/V Coal for the amounts due under the Board’s Order. Further, the issue of whether Don Vance was a principal of D & J Trucking was fully litigated at the hearing. Finally, the very fact that Denart/V Coal and D & J are alleged as single employers places the question of “common ownership” in issue, because that is one of the criteria for determining single-employer status, a fact that the judge could not have taken into account because of his mischaracterization of those criteria (see fn. 6 above). Under these circumstances, we find, contrary to the judge, that there is no due-process barrier to deciding the ownership question that was the subject of our remand. *Cf. Jerry’s United Super*, 289 NLRB 125 fn. 2 (1988).

Because the judge failed to fulfill his role as fact finder on two occasions, we shall proceed to examine the documentary evidence in the record *de novo*. See, e.g., *Williamson Memorial Hospital*, 284 NLRB 37 (1987). We recognize that in our Order remanding we stated that the judge “apparent[ly] credit[ed]” Delores Vance’s testimony on the ownership issue, but after carefully reexamining the record and the judge’s first decision in light of his second decision, we now realize that the judge did not, in fact, make a credibility resolution respecting Delores Vance’s testimony. We rest this conclusion on several considerations.

In neither of his decisions did the judge refer even generally to the testimonial demeanor of the witnesses who testified. Nor did the judge make an explicit credibility finding regarding Delores Vance’s testimony. Rather, in his first decision, he stated that her testimony was “uncontradicted,” an error that we brought to the judge’s attention in our Order remanding and that he failed to correct in his second decision. Furthermore, in his second decision, the judge stated that the issue on which Delores Vance testified was

“not relevant to this proceeding.” Therefore, instead of crediting and relying on Delores Vance’s testimony, it appears that the judge viewed the testimony as having no bearing on the outcome of this case. Accordingly, in the absence of a credibility finding by the judge concerning Delores Vance’s testimony, we shall “exercis[e] [our] responsibility to assess the testimony in the light of the record as a whole.” *Royal Type-writer Co. v. NLRB*, 533 F.2d 1030, 1042–1043 fn. 12 (8th Cir. 1976).⁷

We find that the preponderance of the evidence establishes D & J is commonly owned by Don Vance, majority owner of Denart, and his wife Delores Vance, an admitted owner of D & J.⁸ Thus, on a credit application with a bank for a personal \$10,000 loan, Don Vance identified himself as “owner” of D & J and listed D & J’s bank account as his own. On several checks made payable to D & J, Don Vance endorsed them by signing, “D & J Trucking/Don Vance/-Owner.” These checks were for no small amount, totaling approximately \$135,000. Contrary to the judge, we find that there is no “multitude of other documents . . . listing Delores Vance as sole owner of D & J Trucking” and that the documents in the record do not “cancel each other out.”⁹

D & J was started with money from the joint account of Don and Delores Vance,¹⁰ their joint money was used to fund D & J thereafter, and Don Vance personally guaranteed loans to D & J without any evidence of consideration.¹¹

B. Interrelation of Operations

Denart and V Coal were engaged in the business of mining coal. D & J hauled coal for Denart and V Coal

⁷We have been administratively advised that Judge Lott has retired from the NLRB. Therefore, a second remand is not, in any event, a viable alternative.

⁸Indeed, counsel for the additional Respondents concedes in his brief to the Board that common ownership exists among all the Respondents.

⁹We also reject the judge’s finding that documentary evidence dated after Denart and V Coal ceased doing business is irrelevant. Denart/V Coal continued to exist after their operations ended, and D & J settled V Coal’s accounts with various suppliers after V Coal ceased operations. Thus, events after Denart/V Coal ceased operations have a direct bearing on the single-employer issue. See *Emsing’s Supermarket*, 284 NLRB 302, 303 (1987), enfd. 872 F.2d 1279 (7th Cir. 1989).

¹⁰Indeed, the initial funding from a joint husband-wife account and the continuing involvement of one spouse in both enterprises would be a sufficient basis for finding common ownership. See *H. A. Green Decorating Co.*, 299 NLRB 157, 163 (1990).

¹¹The judge suggests that Don Vance’s cosigning of loans to D & J is without significance because marital property was used as collateral. We find this suggestion to be factually erroneous as to the collateral used in most of the loans in question and also find that Don Vance’s guarantee of loans to D & J without compensation is relevant to the issue of whether he had a financial interest in D & J.

as well as other coal mines. D & J also leased equipment to Denart and V Coal.

In addition, the record is replete with evidence establishing a substantial operational and financial interrelationship between D & J and Denart/V Coal and a lack of arm’s-length dealings between the entities. For example, D & J paid V Coal’s payroll of \$20,000, with money Don and Delores Vance borrowed (with interest) from a bank. See *Emsing’s Supermarket*, supra, 303–304. There was no provision for interest repayments by V Coal to D & J or to Don or Delores Vance. Further, Delores Vance made a no-interest loan of \$40,000 to Denart, a loan for which there is no written note or agreement. D & J/Delores Vance made other loans to V Coal for which there is no documentary evidence that interest payments were required or evidence that D & J has demanded full repayment of the loans from V Coal. See *Il Progresso Italo Americano Publishing Co.*, 299 NLRB 270, 288 (1990); *MIS, Inc.*, 289 NLRB 491, 492 (1988). Additionally, when D & J leased equipment to V Coal, it did not require any insurance or security deposit from V Coal. Finally, D & J paid V Coal’s creditors with money transferred from V Coal to D & J after V Coal ceased operations, to enable V Coal to avoid attachment of its assets by various creditors.¹² In the words of the Board in *Emsing’s Supermarket*, supra at 304:

These facts, taken as a whole, clearly reveal not only a financial interdependency between [Denart/V Coal] and [D & J], but also a propensity on the part of [Don and Delores Vance] to operate [the companies] in such a manner that the exigencies of one would be met by the other.

This method of operating shows less than an “arm’s length relationship” between [Denart/V Coal] and [D & J].

C. Common Management

It is undisputed that Don Vance managed Denart. There is substantial documentary evidence in the record controverting Delores Vance’s testimony that Don Vance was not involved in the management of D & J. The record shows that Don Vance filed a financial statement with a bank in which he stated that D & J is his “business or occupation.” Also in the record is a credit application in which the Vances held themselves out as jointly doing business as D & J. In another application, Don Vance applied for credit on behalf of D & J. Even the judge found that Don Vance

¹²Denart’s interrelation of operations with D & J is further evidenced by the following: Don Vance agreed with the Union that Denart would pay union dues on behalf of D & J employees (see below); all the Respondents share the same accountant (Don Vance’s cousin); D & J’s facility is located on property leased by Denart; and D & J’s office is located at the home of Don and Delores Vance.

contracted for goods on behalf of D & J by purchasing a truck, an act hardly in keeping with one who is not involved in the Company's operations.

Don Vance, Delores Vance, and their son, Don E. Vance discussed the businesses of all the entities at weekly informal meetings. Denart/V Coal had no formal board of directors meetings and corporate minutes are not in evidence. The family meetings, the absence of any formal meetings by each entity, and the disregard of the separation between the various entities attest to their common management.

D. Centralized Control of Labor Relations

Evidence of Don Vance's involvement in D & J's labor relations is limited but significant. Delores Vance denied that Don Vance was involved in certain aspects of labor relations for D & J—hiring and dealing with employees regarding their wages and terms and conditions of employment. The record shows, however, that Don Vance met with union representatives of United Mine Workers District 17 regarding D & J employees and agreed that Denart would pay the dues of D & J employees. The record also shows that Don Vance represented D & J in a proceeding before the State of West Virginia Department of Energy regarding an employee of D & J who was injured at work. Although not overwhelming, this evidence of Don Vance's involvement in D & J's labor relations, in combination with the ample evidence relating to the other factors discussed above, provides additional support for a finding that D & J and Denart/V Coal are a single employer.¹³

E. Conclusion

Under all the circumstances—including common ownership of Denart/V Coal and D & J, the marital relationship between Don and Delores Vance, the financial and operational interrelationship between Denart/V Coal and D & J, Don Vance's involvement in the labor relations of D & J, and common management—we find that the record establishes an absence of an arm's-length relationship between Denart/V Coal and D & J and that they therefore constitute a single employer.

III. REMEDY

The Respondents' brief concedes, as it must, that Delores Vance is personally liable if D & J is a single employer with Denart/V Coal, because D & J is a proprietorship, not a corporation. There is no contention

¹³ We do not require extensive evidence that all four criteria have been satisfied before making a finding of single-employer status. See *Imco/International Measurement Co.*, 304 NLRB 738, 740 (1991) (single-employer finding warranted where three of four criteria met and no arm's-length relationship existed among the entities), *enfd.* 978 F.2d 334 (7th Cir. 1992).

that D & J as an entity has limited liability. Given our findings that Denart/V Coal and D & J are a single employer and that Don Vance and Delores Vance jointly own D & J, we conclude that they are both personally liable with Denart/V Coal/D & J for remedying the unfair labor practices.

No issue is presented with respect to the amount of backpay that is due. In its 1991 Decision and Order in this case, the Board granted the General Counsel's Motion for Summary Judgment against Denart/V Coal for failure to file an answer to the compliance specification. The Board stated that it "deem[ed] all the allegations in the compliance specification to be admitted as true against the Respondents, Denart Coal Co., Inc. and its alter ego V. Coal Co., Inc." 301 NLRB at 392. In addition, the Board stated:

If all the Respondents are a single employer, then they are all responsible for, and bound by, the actions of the single employer in this proceeding. That includes the failure of the original, named Respondents to provide an adequate answer here. [*Id.*]

Accordingly, additional Respondents D & J, Don Vance, and Delores Vance, bound as they are by the actions of the original Respondents, are also liable for payment of the amounts set forth in the compliance specification.

ORDER

The National Labor Relations Board orders that the Respondents, Denart Coal Co., Inc. and its alter ego, V Coal Co., Inc.; D & J Trucking; and Don Vance and Delores Vance, as individuals, Chapmanville, West Virginia, their officers, agents, successors, and assigns, jointly and severally, shall make whole each of the employees named below by paying each of them the amount specified as net backpay, as well as payment to each of them for losses suffered by virtue of the Respondents' failure to provide medical insurance as required by the collective-bargaining agreement, with interest computed in accordance with *New Horizons for the Retarded*, 283 NLRB 1173 (1987), until payment of all amounts due is made, less tax withholdings required by Federal and state laws:

<i>Discriminatees</i>	<i>Backpay</i>	<i>Medical Expense</i>
Adams, Arthur		\$383
Bailey, Chester	\$17,000	92
Brown, Harold	17,575	411
Brumfield, Robert		1,787
Bryant, James		1,664
Buzzard, Bruce	16,350	0
Carter, Troy		129
Dickerson, L.	9,825	0
Ellis, Buell Jr.		6,421
Farley, H.	16,225	379

<i>Discriminatees</i>	<i>Backpay</i>	<i>Medical Expense</i>
Harless, Aley	15,725	1,563
Harris, John	1,250	519
Lambert, G.	15,575	703
Lance, Larry	10,800	0
Martin, Thomas	18,825	302
Russell, R.	350	0
Vance, Sherman		803

IT IS FURTHER ORDERED that the above-named parties jointly and severally shall pay the 1950 Pension Trust, 1950 Benefit Trust, and 1974 Pension Trust, the amounts specified below pursuant to the terms and conditions of the 1984–1988 Bituminous Coal Wage Agreement, with any additional amounts due the funds computed according to *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979), until payment is made of all such amounts due:

1950 Pension Trust	\$78,864
1950 Benefit Trust	45,471
1974 Pension Trust	15,071

Gary E. Lindsay, Esq., for the General Counsel.

Daniel McCarthy, Esq., for the Respondent.

Charles Donnelly, Esq., for the Charging Party.

SUPPLEMENTAL DECISION

STATEMENT OF THE CASE

HUBERT E. LOTT, Administrative Law Judge. This case was tried in Charleston, West Virginia, on December 16 and 17, 1991.

FINDINGS OF FACT

A. Background

On July 5, 1989, Judge Wallace Nations found that V Coal Co., Inc. was the alter ego of Denart Coal Co., Inc., and that they were in violation of Section 8(a)(5) and (1) of the Act for refusing to comply with the Bituminous Coal Wage Agreement (JD-147-89). Exceptions were not filed by the Respondent and the Board adopted Judge Nations' decision on August 14, 1989. On March 1, 1990, the United States Court of Appeals for the Fourth Circuit enforced the Board's Order in full.

On June 4, 1990, the Regional Director for Region 9 issued a compliance specification alleging that Laing Enterprises, Vance Trucking, and D & J Trucking, a sole proprietorship, constitute a single employer with Respondent's Denart Coal Co., Inc. and V Coal Co., Inc. The specification further alleges that Delores Vance, Don Vance, Don E. Vance, and Michael Vance are individually liable with Denart Coal and V Coal for any payments owned under the BCWA because they "held common stock in, have commingled assets with and have been agents of" the single employer alleged above.

On October 9, 1990, counsel for the General Counsel filed with the Board a Motion for Partial Summary Judgment and Motion to preclude Respondents from controverting certain allegations of the compliance specification, because Respond-

ent Denart Coal and its alter ego did not file an answer. On January 28, 1991, the Board, in its decision at 301 NLRB 391, granted the Motion for Partial Summary Judgment against Respondent's Denart Coal and its alter ego V Coal and denied the motion with respect to issues raised by the other Respondents and individuals. However, the Board made the following statement in its decision:

If all the Respondents are a single employer, then they are all responsible for and bound by the actions of the single employer in this proceeding. That includes the failure of the original named Respondents to provide an adequate answer here and against whom we have granted partial summary judgment. If they are not a single employer, then there is no basis on this motion for imposing liability on the additional Respondents. In that circumstance, their access to any records necessary to answer the backpay specification is irrelevant; it does not run against them.

B. Status of Denart Coal Co, Inc. and V Coal Co., Inc.

It was found in a previous case that V Coal Co., Inc. is the alter ego of Denart. Don Vance (father) owns 75 percent of Denart and was a consultant to V Coal, Inc., whose stock holders are Don E. and Michael Vance (sons). Both companies were engaged in the business of mining coal. However, Denart ceased operations in November 1987 and V Coal ceased operating in September 1988.

In December 1988, Don Vance borrowed \$30,000 from the bank to buy Denart stock. The money was deposited into Denart's account and was carried on Denart's books as a liability. Payments were made on the loan. On January 6, 1988, Delores Vance (wife of Don) paid \$40,000 to Denart which was repayment for a no-interest loan.

On March 31, 1988, Denart paid \$138,500 to D & J Trucking (owned by Delores Vance) which were the proceeds from and insurance claim on a miner leased from D & J and buried in a mine fire. Lease agreements required the lessee to carry insurance.

There were in evidence canceled checks to Vance Coal for hauling coal from the mine. Also in evidence was a receipt for tools purchased by Denart for \$445 on the D & J account. When this occurred, Denart reimbursed D & J, who had an account with Tools Unlimited. There is also a check for \$1320 paid by Denart to Shamblin Stone for invoices made out to Vance. These invoices were for crushed stone placed on Denart's road. The invoices were incorrectly addressed to Vance Trucking because Vance hauled the stone.

V Coal Co., Inc. was formed on January 2, 1988, by Don E. and Michael Vance with their own money and later money borrowed from Delores (D & J). These loans were covered by loan agreements and carried on the financial statement of both companies. D & J had lease agreements with V Coal covering the mine equipment. Regular payments were made to D & J for this equipment which was also listed on the financial statements. V Coal had a coal haulage agreement with Vance Trucking and payments were made to Vance for hauling coal from the mine. V Coal ceased operations in September 1988. Thereafter, on June 2, 1989, it made payments of \$51,000 to Delores Vance in repayment of loans, \$1000 to Baron & Curtis, and \$12,000 to M.R. Ellis for services rendered. V Coal also paid Don E.

Vance \$24,000 on June 2, 1989, in repayment of a loan. He in turn paid the money to Delores Vance in repayment for a loan. The repayments to Delores Vance are reflected in her draw account. All the money received by D & J and Delores Vance from V Coal was used to pay V Coal creditors.

On June 9, 1989, M.R. Ellis, the accountant for all the companies and a CPA, negotiated settlement agreements between V Coal and its creditors because V Coal was insolvent. According to M.R. Ellis, after the agreements were reached, V Coal, in August 1989, received \$11,000 from Appalachian Power Co. as a return of deposit which was in turn paid to Delores Vance who paid the money to V Coal's creditors. V Coal also had an account receivable in excess of \$150,000 from Paulownia Coal, which has been in litigation for years with very little prospect of collecting. There was a \$27,000 transfer from V Coal to D & J account on June 2, 1989. This money was paid to D & J for the purpose of paying V Coal's creditors and the canceled checks so indicate.

C. Laing Enterprises

The shareholder's were Don Vance and Don Toppings. This company was dissolved in 1990 and its equipment (road grader and two end loaders) were sold to D & J Co.

D. Vance Trucking

Vance was in the business of hauling coal and it was dissolved in September 1991. Don Vance was the president and only shareholder. The articles of incorporation, dated July 1, 1984, list Don and Delores Vance as incorporators. Delores was secretary of the corporation at that time; however, she was removed from that office on July 1, 1987, because she was too busy with her own company. The bank deposit agreement gives both Don and Delores Vance power to sign checks, notes, and borrow money on behalf of the corporation. All the trucks leased from D & J are listed as assets on Vance's financial statements.

E. D & J Trucking

D & J is a sole proprietorship owned by Delores Vance. She had a draw account which is listed on D & J's financial statements as her equity interest. She used this account for personal as well as business transactions. Her office is in a portion of her home which is owned jointly by her and her husband Don Vance.

D & J hauled coal for Denart and V Coal as well as other coal mines. All coal hauling was billed and paid for. D & J leased equipment to Denart and V Coal which are covered by lease agreements. Rental payments were made and credited to D & J's account. After Denart and V Coal cease doing business, D & J leased equipment to other mine operators such as Rose Eagle Mine and B & F Enterprise.

Delores Vance testified that Don Vance was not involved in the operations of D & J. He was not the owner, had nothing to do with her drivers or their wages. However, he did buy a truck for D & J in 1987 when she was on vacation. Delores Vance paid the D & J bills. One \$50,000 loan to V Coal was listed as uncollectible and carried as a debit on D & J's financial statements.

When V Coal ceased operations, Don E. and Michael Vance returned to D & J. Don E. worked as a contract hauler and Michael worked as an employee for a while.

The bank made two loans of \$150,000 and \$50,000 to D & J trucking. Both Don and Delores Vance signed a loan agreement because they put up their home and other property which they jointly owned as collateral. Regular payments were made to the bank by D & J on these loans.

D & J loaned money to V Coal to cover startup costs and payroll. These loans were covered by promissory notes from Don E. and Michael Vance and carried on D & J's financial statements as loans.

Richard Glover, United Mine Workers International representative, testified that he dealt with Don Vance concerning D & J employees because the D & J Garage was on Denart property.¹ Although Don Vance signed a contract with the Union covering Denart employees, he would not sign a contract covering D & J employees. According to Glover, Don Vance didn't want to be responsible for D & J employees but he would see that owner-operators paid their dues. On December 18, 1985, Clifford Crum, a United Mine Workers executive board member, agreed in writing that the owner-operators hauling coal for Denart were not Denart employees. The Union's dues-checkoff list, dated November 20, 1987, has D & J drivers separately designated from those of Denart Coal Co.

Analysis and Conclusions

Single-Employer, Alter Ego Status of Other Respondents

In determining whether or not entities constitute a single employer, the Board generally considers common ownership, common management and control, employee interchange, business purpose, plant and equipment, and antiunion motive.

The compliance specification alleges that Laing Enterprises, Vance Trucking, and D & J Trucking constitute a single employer with Respondents Denart Coal Co., Inc. and its alter ego V Coal Co., Inc. having common ownership, management, supervision, facilities, and centralized control of labor relations. After reviewing the evidence, it seems evident that counsel for the General Counsel did not prove, by a preponderance of the evidence, that single-employer status exists. I cannot find common ownership between Denart/V Coal and the other Respondents based on the evidence presented. Moreover, there is virtually nothing in the record to support a finding of common management and control, employee interchange, business purpose, plant and equipment interchange, or antiunion motivation.

There was evidence of one no-interest loan made to D & J by Denart which was repaid but it is unclear whether other no-interest loans were made. In any event, the loans themselves were bona fide.

There also was testimony that Don Vance would see that D & J contract drivers would pay union dues but this was offset by him also saying that he didn't want to be responsible for those drivers. It is further offset by Delores Vance's uncontradicted testimony that she was the sole owner of D & J and that she hired the drivers and determined and

¹ The evidence does not support a finding that either Denart or V Coal owned the property on which they were mining coal.

paid their wages, and that Don Vance had nothing to do with D & J operators. There is virtually no evidence with respect to the other Respondents.

The business purpose of Denart Coal and V Coal was coal mining. The other Respondents were engaged in trucking and equipment rental. Other than that, the record is devoid of employee interchange, plant and equipment interchange, other than lease arrangements and antiunion motivation.

Accordingly, I find that Laing Enterprises, Vance Trucking, and D & J Trucking are not a single employer with Denart Coal Co., Inc. and its alter ego V Coal Co., Inc.

Individual Liability of Delores Vance, Don Vance, Don E. Vance, and Michael Vance

In the compliance specification, counsel for the General Counsel alleges that the Vances are individually liable because they held common stock in, commingled assets with, have been agents of, and have operated the single-integrated enterprise.

The evidence does not support a finding of a single-integrated enterprise composed of all Respondents. It should be further stated that stock ownership in a corporation does not create individual liability. Moreover, the evidence does not support a finding that assets of any of the entities were commingled. To the contrary, the evidence supports a finding that Millard Ellis, the certified public accountant who kept the records and accounts of all the entities, gave uncontradicted testimony on the hundreds of transactions offered into evidence, explaining each transaction. He kept separate financial statements and records for each entity. Loan payments, rental payments, and other financial transactions were kept separately, which was not disputed. Although loans and payments were made between various Respondents, the evidence does not support a finding of commingling.

Although it was not alleged and therefore not an issue before me, I cannot find evidence of fraud, concealment, or any attempt to defeat a backpay obligation. *Riley Aeronautics Corp.*, 178 NLRB 495 (1969).

Accordingly, the evidence does not support a finding of individual liability.

CONCLUSIONS OF LAW

1. The Respondents, Laing Enterprises, Vance Trucking, and D & J Trucking are not a single employer with Denart Coal Co., Inc. and its alter ego V Coal Co., Inc.

2. There is no individual liability.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²

ORDER

The compliance specification allegations are dismissed.

²If 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.

Gary E. Lindsay, Esq., for the General Counsel.

Daniel McCarthy, Esq., for the Respondent.
Charles Donnelly, Esq., for the Charging Party.

SECOND SUPPLEMENTAL DECISION

My supplemental decision issued October 14, 1992, in which it was found that Laing Enterprises, Vance Trucking, and D & J Trucking are not a single employer with Denart Coal Co., Inc. and its alter ego V Coal Co., Inc. It was further found that there was insufficient evidence to find individual liability.

On March 26, 1993, the Board remanded the case questioning whether or not Delores Vance was the sole owner of D & J Trucking. The Board further questioned the liability of corporate shareowners stating that should I find a single-employer relationship between D & J and Denart/V Coal, then the D & J owner is individually liable for the obligations incurred by D & J.

In the compliance specification, the General Counsel alleges that D & J Trucking is a sole proprietorship. Later in the specification, the General Counsel alleges that Delores Vance is the sole proprietor of D & J Trucking.

Nowhere in the specification is Don Vance alleged as the sole proprietor of D & J Trucking or that it is actually a partnership. Therefore, whether Delores Vance is the sole proprietor, as she testified, is not relevant to this proceeding. The allegation is that Delores Vance d/b/a a sole proprietorship is a single employer with Denart Coal Co., Inc. and V Coal Co., Inc.

An examination of the documents indicates that there is no evidence of common ownership between D & J Trucking and Denart/V Coal. The few documents listing Don Vance as owner of D & J cannot be used to find that he was. Nevertheless, these documents are rebutted by a multitude of other documents dated from 1987 to 1991 listing Delores Vance as sole owner of D & J Trucking and Don Vance as guarantor, as an individual. Had he been anything else, the documents required him to so state. It is therefore my finding that these documents do not prove a single-employer relationship between D & J Trucking and Denart/V Coal. If anything, they cancel each other out.

It is alleged among other things that common ownership exists between D & J Trucking and Denart/V Coal. Denart ceased doing business in November 1987 and V Coal closed down in September 1988. Therefore, there can be no nexus between these companies and D & J after these dates. Before these dates Don Vance listed himself as owner of D & J. While this cannot be used to prove ownership, it may show that he had some relationship as an individual, or husband to Delores, with D & J in order to obtain loans. What transpires between husband and wife financially is hardly the stuff that would implicate their respective businesses. In most cases, the other spouse must cosign loans when personal joint property is used as collateral. These factors alone do not support a finding that Denart Coal/V Coal and D & J Trucking were a single employer as alleged in the specification. Finally, these documents shed no light on the allegations of common management, supervision, facilities, and centralized control of labor relations; moreover, the record is devoid of other evidence of single-employer status.

Accordingly, I find that Laing Enterprises, Vance Trucking, and D & J Trucking are not a single employer with Denart Coal Co., Inc. and its alter ego V Coal Co., Inc.

Addressing individual liability, one of the allegations in the specification is that the Vances are individually liable be-

cause they held common stock in Denart Coal Co., Inc. and V Coal Co., Inc. The reply in my decision stands and my findings and decision on individual liability remain the same.