

E. J. Alrich Electrical Contractors, Inc. and Local 269, International Brotherhood of Electrical Workers. Case 22–CA–20796

June 30, 1998

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS LIEBMAN
AND BRAME

On November 14, 1997, Administrative Law Judge Joel P. Biblowitz issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

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

The Board has considered the decision and the record in light of the exceptions and briefs¹ and has decided to adopt the judge's rulings, findings,² and conclusions and to adopt the recommended Order as modified.³

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below, and orders that the Respondent, E.J. Alrich Electrical Contractors, Inc., Ringwood, New

¹The Respondent's request for oral argument is denied as the record, exceptions, and briefs adequately present the issues and positions of the parties.

²The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings. In doing so, however, we do not rely on the judge's observation that the threats attributed to the Union would not be "unusual statements from a union attempting to organize a company's employees."

In adopting the finding of a violation, we note, as did the judge in his findings of fact, that the Union made its request for information after hearing William Tortoriello's statements that the Respondent and Germinsky Electric were the same company; that they shared the same administration and ownership; and that they shared tools, equipment, material, and administrative staff, and had the same phone system. We also note, inter alia, that Union representative Battoni discovered contractor remittance reports showing the two companies had an identical Federal I.D. number. We find that, based on this evidence, the Union had a reasonable belief that the two companies might be alter egos. Thus, as the judge found, the Union, as the collective-bargaining representative of the Respondent's employees, was entitled to the requested information to verify whether its belief was accurate. The Respondent does not challenge the scope or content of the information request.

³We shall modify the judge's recommended Order to require Respondent to furnish the requested information to the Unions without any further request on their part. See *I & F Corp.*, 322 NLRB 1037 fn. 1 (1997). We also shall modify the judge's recommended Order in accordance with our decisions in *Indian Hills Care Center*, 321 NLRB 144 (1996), and *Excel Container, Inc.*, 325 NLRB 17 (1997).

325 NLRB No. 193

Jersey, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified below.

1. Substitute the following for paragraph 2(a).

"(a) Furnish to all the Unions named above in a timely manner the information that they requested in May and June 1995."

2. Substitute the following for paragraph 2(b).

"(b) Within 14 days after service by the Region, post at its facility in Ringwood, New Jersey, copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current and former employees employed by the Respondent at any time since May 19, 1995."

3. Substitute the attached notice for that of the administrative law judge.

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 had found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively with Locals 269, 52, 351, 358, 400, 456, 675, and 743 of the International Brotherhood of Electrical Workers (the Unions) by refusing to furnish the Unions with information necessary for, and relevant to, the Unions' function as the exclusive bargaining representative of certain of our employees.

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

WE WILL furnish the Unions in a timely manner the information that they requested in May and June 1995.

E.J. ALRICH ELECTRICAL CONTRACTORS, INC.

Julie Kaufman, Esq., for the General Counsel.

Ronald Tobia, Esq. and Jill Tobia, Esq. (*Schwartz, Tobia, Stanziale, Becker, Rosensweig & Sedita*), for the Respondent.

Gary Carlson, Esq., for the Charging Party.

DECISION

STATEMENT OF THE CASE

JOEL P. BIBLOWITZ, Administrative Law. This case was heard by me on February 10 and September 29, 1997, in Newark, New Jersey. The complaint herein, which was based upon an unfair labor practice charge that was filed on July 12, 1995,¹ by Local 269, International Brotherhood of Electrical Workers (Local 269) alleges that E.J. Alrich Electrical Contractors, Inc. (Respondent) violated Section 8(a)(1) and (5) of the Act by failing and refusing to provide to Local 269, as well as Locals 52, 351, 358, 400, 456, 675, and Local 743, International Brotherhood of Electrical Workers (at times, collectively, the Unions) certain information requested by these Unions in May and June, despite the fact that this information is relevant to the Unions as the collective-bargaining representative of certain of Respondent's employees.

FINDINGS OF FACT

I. JURISDICTION

Respondent admits, and I find, that it has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION STATUS

Respondent admits, and I find, that Local 269 has been a labor organization within the meaning of Section 2(5) of the Act.

III. THE FACTS

There are two principal employers involved herein, the Respondent and Germinsky Electrical Company, Inc. (Germinsky Electric) and two individuals, Manny Germinsky and Bruce Germinsky, father and son. Since April 1, Germinsky Electric has been one of three company's which make up the Germinsky Group. Bruce Germinsky has been the president of the Respondent since its formation in about 1975 and, up until April 1, he owned 90 percent of Respondent's outstanding shares with Manny Germinsky owning the balance. From April 1 to date, Bruce Germinsky has owned 100 percent of Respondent's stock. Up until April 1, Bruce and Manny Germinsky were each shareholders of Germinsky Electric; commencing on about April 1, with the formation of the Germinsky Group, Bruce and Manny Germinsky each owned 50 percent of this Company. Since about January 1, 1996, Bruce Germinsky has owned 100 percent of the shares of the Germinsky Group. More importantly, Germinsky Electric has operated as a nonunion electrical contractor since 1922, first under the ownership of Bruce Germinsky's grandfather, Manny Germinsky, and then himself. At the present time, Germinsky Electric is still a nonunion electrical con-

tractor performing, basically, commercial service, installation, and renovation work, and presently employing between 40 and 45 electricians. Respondent was created in 1975 to service customers of Germinsky Electric who had projects requiring that the work be performed by union electricians, and Bruce Germinsky "basically" ran this Company. Sometime after April 1, Respondent ceased operations, according to Respondent, because of market forces, economic circumstances, and personal reasons, the retirement of Manny Germinsky, and Bruce Germinsky's assumption of the operation of Germinsky Electric.

Most of the facts herein are uncontroverted. Between November 1976 and June 1993 Respondent entered into letters of assent with the Unions involved herein² without regard to whether majority status of these unions had ever been established under the provisions of Section 9(a) of the Act. In other words, these were 8(f) agreements. The most recent collective-bargaining agreements that Respondent is bound by pursuant to these letters of assent, expire between August 31, 1996, and May 31, 1999. In nearly identical letters to the Respondent dated between May 19 and June 12, the Unions notified Respondent that it has come to their attention that the Respondent is, or may be, in violation of its contract with the Union because of Respondent's operation of Germinsky Electric. These letters then ask 44 questions about the operations and connections of the two companies. Respondent has never responded to these letters.

The principal witnesses for the General Counsel were Clement Battoni, business agent and organizer for Local 675, and William Tortoriello, who had been employed by Germinsky Electric. Battoni testified that he knew of Germinsky Electric as a nonunion contractor because he was born and raised in the area where it is located and at the time that he became an organizer for Local 675 in 1988, he knew that Manny Germinsky owned Germinsky Electric. When asked by counsel for the Respondent if it was common knowledge in the trade that one of these companies was union and the other was nonunion, he answered yes. In addition, he is the referral agent for Local 675 and, from the time that he became employed by Local 675 in about 1988, until the early 1990s, he received telephone calls from Bruce Germinsky and Tortoriello, requesting referrals of employees to Respondent, and he complied with these requests. The procedure was that Tortoriello or Germinsky called him, said how many employees they needed, and he sent the employees to Respondent. When Tortoriello called, he identified himself as Bill or Billy T from Respondent. In about February, a Local 675 member told him that Germinsky Electric had terminated Tortoriello; Battoni said that he meant Respondent, and the member replied no, Germinsky Electric fired him. Battoni testified: "A red flag went up because Tortoriello was the guy that used to call me for manpower for Alrich Electric." Battoni called Tortoriello and said that he understood that he had been fired. Tortoriello responded that he had worked for Germinsky for 30, and Battoni said, "You mean Alrich Electric." Tortoriello said, "No, Germinsky Electric." Battoni asked: "Didn't you work for Alrich?" and he responded, "They are the same company." Battoni then told him that he knew some contractors and, al-

¹Unless indicated otherwise, all dates referred to herein relate to the year 1995.

²Some time after the executions of these letters of assent, one of these Unions, Local 439, merged into Local 351.

though he could not promise him anything, he would attempt to get him a job interview, and Tortoriello did obtain employment with the Company that Battoni referred him to.

About a week after this initial phone call, Battoni and Tortoriello met at the Local 675 office. Battoni asked him if Respondent and Germinsky were related, and he said: "They're the same company. They share the same administration, the same ownership. They're in the same . . . building.³ They share tools, equipment, material, administrative staff. They even have the same receptionist." He also said that the same truck delivers to Respondent and Germinsky Electric, and that they have the same phone system. Battoni testified that New Jersey locals of the IBEW generally hold monthly meetings to discuss recent developments. In about the May meeting, presided over by Gene Adams, the IBEW International Representative Battoni told those present the information he had learned regarding the relationship of Respondent and Germinsky Electric and "the possibility of alter ego, double breasting." One of the other union representatives at the meeting said that Germinsky Electric was operating in his jurisdiction as well, which, Battoni testified: "[S]howed that he was kind of branching out." Battoni also showed those present at the meeting a letter dated May 5 from the Germinsky Group to its employees informing them that Local 675 was attempting to organize them. Battoni stressed to those present the significance of the fact that the letter was signed by Bruce Germinsky, as president and CEO, while he was also signatory to their letters of assent for the Respondent. Additionally, after receiving this letter from a member, Battoni checked his contractor's remittance records and found two remittance reports, one from Respondent and the other from Germinsky Electric, both with an identical Federal I.D. number, although John Cortese, who is the vice president of finance and administration for the Germinsky Group, testified that the Respondent and Germinsky Electric each has its own Federal I.D. number. As a result of all this information, at Adams' request, each of the Unions named in the complaint sent identical 44 question information demands to the Respondent. As to why he made this information request to the Respondent, Battoni testified: "My reason is that we believe that there might be a violation of the Collective Bargaining Agreement with [Respondent]."

Bruce Germinsky testified that in about 1988 he had a meeting with Battoni, who asked him why Respondent did not perform more work in the area. Battoni also asked, "[Q]uestions about the Alrich and Germinsky operation and why the work was divided the way it was." He told Battoni that Germinsky Electric was his father's business and Respondent was his; 99 percent of the work that Respondent gets is work that Germinsky Electric's customers decide has to be union. He further testified that over the years that he has operated the Respondent, he has discussed the Respondent and Germinsky Electric with all of the union representatives, answering their questions such as why Respondent was not performing certain work. He told these representatives what he told Battoni, *supra*. In addition, he also told them that if they had any questions about work being performed by Germinsky Electric, to call his father.

³Battoni testified that he was previously aware of the fact that they were located in the same building.

By Order dated March 21, 1997, the Board granted the Respondent's request for special permission to appeal, and directed me to reopen the record herein for the purpose of permitting the parties to present evidence regarding the Respondent's defense herein that the Unions' information requests were made in bad faith, and therefore the Respondent can lawfully refuse to respond to the requests. At the reopening, on September 29, 1997, the Respondent called nine union representatives, as well as Bruce and Manny Germinsky. There is agreement on some of this testimony and credibility issues on others. Admittedly, a member of the Local 262 executive board was hired by, and became a supervisor for, the Respondent. Additionally, another Local 262 member, started out as a journeyman and then became a foreman and a supervisor for the Respondent. There is also agreement that at meetings between union representatives and Bruce and Manny Germinsky, the union representatives asked them to sign a statewide agreement for Germinsky Electric, which they refused to do. However, in an issue that may be more semantics than substantive, Bruce and Manny Germinsky testified that at some of these meetings, the union representatives told them that Germinsky was a "targeted" employer by the Union. The parties agree that there was animosity between Neal Boyle, of Local 675 (since retired), and Bruce and Manny Germinsky. They disagree on whether there were threats about what he, and the Unions, would do to Germinsky Electric if it refused to sign a contract with the Union. Bruce and Manny Germinsky testified that at meetings union representatives said that Boyle would bring them to their knees, try to destroy them, bankrupt them and put them out of business unless they signed with the Union. Union representatives Elias Baram, Pat Dellecava, Raymond Greeley, and Martin Schwartz each denied that these statements were made at meetings they attended with Bruce and Manny Germinsky. I found Baram to be an extremely credible and believable witness and found Greeley to be credible and believable, as well. Although Manny and Bruce Germinsky appeared to be credible as well, and although the statements attributed to the union representatives (by way of Boyle) are not unusual statements from a union attempting to organize a company's employees, I found Baram and, to a lesser degree, Greeley, so credible that I credit their testimony that these threatening statements were not made.

IV. ANALYSIS

Admittedly, the Unions made the requests for information upon the Respondent and Respondent refused to answer these requests. However, Respondent has a number of defenses to this allegation. The Respondent defends that these Unions are not entitled to this information because they knew, and acquiesced in, the Germinsky family's two operations for more than 20 years: Manny nonunion with Germinsky Electric and Bruce, union, with Alrich. They cannot claim to have a reasonable suspicion of a double breasted operation since they long have had actual knowledge of it. Further, even if they otherwise had the right to this information, since the Unions' real interest is organizing the employees of Germinsky Electric, these requests were made in bad faith and the Unions are not entitled to the information. The remaining defense is that because these Unions are 8(f) representatives they have no statutory right to information that they might otherwise have.

The Board, in *Sheraton Hartford Hotel*, 289 NLRB 463–464 (1988), set forth the law to be applied in situations like the instant matter:

Section 8(a)(5) obligates an employer to provide a union requested information if there is a probability that the information would be relevant to the union in fulfilling its statutory duties as bargaining representative. Where the requested information concerns wage rates, job descriptions, and other information pertaining to employees within the bargaining unit, the information is presumptively relevant. Where the information does not concern matters pertaining to the bargaining unit, the union must show that the information is relevant. When the requested information does not pertain to matters related to the bargaining unit, to satisfy the burden of showing relevance, the union must offer more than mere suspicion for it to be entitled to the information. [Citations omitted.]

A union satisfies this burden by demonstrating a reasonable belief supported by objective evidence for requesting the information. *Shoppers Food Warehouse*, 315 NLRB 258, 259 (1994). Additionally, potential or probable relevance is sufficient to give rise to the employer's obligation to furnish the information; a prima facie case need not be established. *Brisco Sheet Metal*, 307 NLRB 361 (1992); *Reiss Viking*, 312 NLRB 622 (1993).

The Unions herein have clearly satisfied the burden of establishing the relevance of the information that they requested in May and June. They have represented certain of Respondent's employees for from 4 to 20 years. Recently, the number of employees whom they referred to Respondent steadily decreased until it stopped completely when the Respondent ceased operating. The unions are entitled to know whether this was a "natural death" as alleged by Respondent, or whether Bruce and Manny Germinsky were purposely transferring Respondent's work to Germinsky Electric employees in order to pay lower nonunion wages and be more profitable and/or to get rid of the Unions. The fact that the Unions, or at least some of them, have known of the existence of the two companies for many years is no defense herein. The Unions, apparently, had little cause to complain in the past because they were referring members to Respondent. However, when that market tightened up, and then disappeared, they had the right to see where that work went, and why. *Brisco Sheet Metal, Inc.*, supra. Additionally, there is a difference between knowing that a father owns a nonunion company while his son owns a unionized company and knowing, or wanting to know, if these companies really operate as one.

Respondent also defends that since the Unions herein are 8(f) representatives, they are not entitled to information that they might otherwise be entitled to. Counsel for the Respondent cites no case to support this proposition, nor could I locate any. Finally, counsel for the Respondent argues that the Unions herein have known of the connection between the Respondent and Germinsky for many years, and that the requests herein therefore are not good-faith requests for information. Rather, argues the Respondent, these requests were made in bad faith and were actually part of an overall attempt by these Unions to further their organization of the

Germinsky Electric employees. In support of this argument Respondent cites *NLRB v. Wachter Construction*, 23 F.3d 1378 (8th Cir. 1994), which I find is clearly distinguishable. In that case the contracts provided that the employers could subcontract their work to nonunion employers as long as they adhered to contract terms and paid wages and fringe benefits equivalent to union scale. At about this time, the number of nonunion employers in the field increased and the Unions made information requests regarding the subcontractors that the employers were using. The administrative law judge found that the union's real purpose in making these information requests was to force these employers to use only union contractors. The court stated that the real reason for the unions' information request was to force the employers to subcontract only to union firms—not a legitimate purpose under its contract—and found that in "the instant case . . . the union representative sought to overburden the employer with information requests so as to prevent the employer from subcontracting any work to nonunion workers, even though concededly the collective bargaining agreement provided such subcontracting was permissible." The court concluded: "The respondent did not commit an unfair labor practice in failing to provide the bulk of the information requested, because the union made its request in bad faith. The union's bad faith motive in requesting the information alleviated the employer's duty to respond." In the instant matter the Respondent alleges that the bad faith on the part of the unions is that what they really want to do is to organize Germinsky's employees. I'm sure that they do; what union would not want to organize a large number of nonunion employees? What I fail to see is: where is the bad faith? Respondent's brief states: "The fact that these unions now suddenly want to question this relationship which the unions themselves were in agreement with for twenty years, suggests ulterior, bad faith motives." I do not agree. Rather, I find it more likely that the Unions did not earlier question this relationship because the Respondent was using their members and paying money into the Unions' funds. When the Respondent ceased its operation, and the Germinsky operation went all nonunion, the Unions decided to question the connection between the two.

In *Island Creek Coal Co.*, 292 NLRB 480, 489 (1989), the Board stated that if the *only* reason for the information request is harassment, an employer is not required to comply with the request [emphasis supplied]. Not only is there a lack of evidence that harassment of Germinsky Electric was the sole motive for these requests, there is no evidence, only an inference, that it is a reason. *Hawkins Construction Co.*, 285 NLRB 1313 (1987). The Respondent's bad-faith defense is therefore rejected, and I find that its refusal to provide the requested information violates Section 8(a)(1)(5) of the Act.

CONCLUSIONS OF LAW

1. The Respondent has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. Local 269 has been a labor organization within the meaning of Section 2(5) of the Act.
3. By failing and refusing to respond to the Unions information requests made in May and June, the Respondent violated Section 8(a)(1) and (5) of the Act.

THE REMEDY

Having found that the Respondent violated the Act as alleged in the Complaint, I shall recommend that it cease and desist therefrom and take certain affirmative action necessary to effectuate the policies of the Act. In that regard, I shall recommend that Respondent be ordered to, upon request, promptly provide the Unions with the information that they requested in May and June 1995.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁴

ORDER

The Respondent, E.J. Alrich Electrical Contractors, Inc., Ringwood, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain in good faith with Locals 269, 52, 351, 358, 400, 456, 675, and 743 of the International Brotherhood of Electrical Workers, by failing and refusing to furnish these Unions with information that they requested in May and June 1995, which information is relevant and nec-

⁴If 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.

essary to these Unions to administer the collective-bargaining agreements that they have with the Respondent.

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

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

(a) Furnish to all the unions named above, on request, the information that they requested in May and June 1995.

(b) Post at its facility in Ringwood, New Jersey, copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region, attesting to the steps that the Respondent has taken to comply.

⁵If 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."