

**Somerville Construction Co., a sole proprietorship, and its alter ego HI-TK, LLC; and Somerville Construction Co., a sole proprietorship and HI-TK, LLC, single employers and International Union of Bricklayers & Allied Craftsmen Local 4 of Indiana and Kentucky, Merrillville Chapter, a/w International Union of Bricklayers and Allied Craftsmen, AFL-CIO.** Case 25-CA-25276

May 9, 2003

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS SCHAUMBER, WALSH, AND ACOSTA

On January 15, 2003, Administrative Law Judge Robert A. Pulcini issued the attached supplemental decision.<sup>1</sup> The General Counsel filed limited exceptions.<sup>2</sup>

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 affirms the judge's rulings, findings, and conclusions as modified, and adopts the recommended Order, as modified and set forth in full below.

<sup>1</sup> On January 29, 1999, the Board, at 327 NLRB 514, issued its decision in the underlying unfair labor practice case, finding that Respondent *Somerville Construction Co.* violated Sect. 8(a)(5) by engaging in certain unfair labor practices. (The Board incorrectly spelled the Respondent's name in that case.) The United States Court of Appeals for the Third Circuit, at 206 F.3d 752, subsequently enforced the Board's Order on May 8, 2000.

<sup>2</sup> Respondent HI-TK, LLC (HI-TK) filed a statement in response (Response) to the General Counsel's limited exceptions. The Response was untimely under Sec. 102.46(d)(1) of the Board's Rules and, on that ground, the General Counsel filed a motion to strike the Response.

HI-TK argues that its late filing is excusable because the Board failed to serve it with a copy of the judge's decision. Respondent Somerville, however, which HI-TK has conceded is its alter ego, was served with a copy of that decision. It is well established that, where two companies are alter egos, service on one company is sufficient to constitute service on the other. See, e.g., *Sturdevant Roofing Co.*, 238 NLRB 186, 187 (1978), *enfd.* 636 F.2d 271 (10th Cir. 1980). Further, assuming HI-TK had not already received a copy of the decision, HI-TK's receipt of the General Counsel's limited exceptions put HI-TK on notice that the judge's decision had issued. HI-TK never notified the Board that it had not received the judge's decision, requested a copy of the same, or inquired as to the deadline for filing a response to the limited exceptions. Thus, it appears any uncertainty on HI-TK's part as to the time period for filing a response to the limited exceptions was due to HI-TK's own lack of diligence. We, therefore, grant the General Counsel's motion to strike the Respondent's response on timeliness grounds. Even if we were to accept HI-TK's untimely response, we find the arguments raised in it are lacking in merit.

In light of the above, it is unnecessary to pass on the General Counsel's motion to strike HI-TK's supplemental response to the General Counsel's initial motion. We point out also that HI-TK's supplemental response constitutes a reply brief not permitted under Section 102.46(h) of the Board's Rules. For the same reason, the Board will not accept any further submissions by HI-TK.

At the outset of the backpay hearing, the parties, including Respondent Somerville Construction Co. (Somerville) and Respondent HI-TK, LLC (HI-TK) entered into a joint stipulation to resolve all issues relating to the compliance specification the General Counsel had issued. The judge, in his supplemental decision, set forth findings of fact and a recommended Order which he believed were consistent with the parties' joint stipulation and addressed all of the relevant issues set forth therein.

The General Counsel contends in limited exceptions that the judge omitted the following findings that were a relevant part of the joint stipulation: (1) that Respondents Somerville and HI-TK are, and have been at all material times, alter egos and a single employer within the meaning of the Act; (2) that HI-TK is jointly and severally liable with Somerville to remedy Somerville's unfair labor practices; and (3) that, in the event any of the individual discriminatees cannot be located within 1 year from the date of this decision, the money due such individuals will be distributed to the other discriminatees. We find merit in the General Counsel's contentions.

Regarding (1) and (2) above, the compliance specification specifically alleges that Respondents Somerville and HI-TK are alter egos and a single employer within the meaning of the Act. Since the joint stipulation provides that Somerville and HI-TK agree to withdraw their respective answers to the compliance specification and states that they do not contest the allegations set forth therein, we modify the judge's findings of fact to provide that Somerville and HI-TK are alter egos and a single employer within the meaning of the Act and that, as a single integrated business enterprise, they are jointly and severally liable for Somerville's unfair labor practices. We also modify the judge's recommended Order accordingly.

Regarding (3) above, the joint stipulation that Somerville and HI-TK executed also provides that, in the event any of the individual discriminatees cannot be located within 1 year from the date of the judge's decision, the money due such individuals will be distributed to the other discriminatees. Therefore, we modify the judge's recommended Order to reflect the parties' agreement on this issue.

ORDER

IT IS ORDERED that Respondent Somerville Construction Co., a sole proprietorship, and Respondent HI-TK, LLC are alter egos and a single employer within the meaning of the Act and that they constitute a single integrated business enterprise that is jointly and severally liable to remedy the unfair labor practices that Respondent Somerville has committed.

IT IS FURTHER ORDERED that Respondents Somerville and HI-TK, LLC, Indianapolis, Indiana, their officers, agents, successors, and assigns, shall pay to the individuals set forth in Appendix A of the judge's decision the total of \$2,852,389 representing backpay in the amount of \$1,499,941 and fringe benefits in the amount of \$1,352,448, minus the appropriate deductions for any tax withholding required by State and Federal laws.

IT IS FURTHER ORDERED that, in the event that any of the individual discriminatees cannot be located within 1 year from the date of the judge's decision, the money due such individuals will be distributed to the other discriminatees named in Appendix A of the judge's decision consistent with the Board's standard practice and procedure.

*Joanne C. Mages, Esq. and Rebekah Ramirez, Esq.*, for the General Counsel.

*James D. Masur II, Esq. (Locke Reynolds LLP)*, of Indianapolis, Indiana, for the Respondent.

*Paul T. Berkowitz Esq. (Paul T. Berkowitz & Associates, Ltd.)*, of Chicago, Illinois, for the Charging Party.

#### SUPPLEMENTAL DECISION

##### STATEMENT OF THE CASE

ROBERT A. PULCINI, Administrative Law Judge. This case was tried in Indianapolis, Indiana, on November 12, 2002. A Decision and Order of the National Labor Relations Board issued on January 29, 2000, affirming the findings of Administrative Law Judge James L. Rose in his recommended decision of November 20, 1998, that certain unfair labor practices occurred in the above-captioned case. An order from the Seventh Circuit United States Court of Appeal issued on January 19, 2000, affirming the Boards' findings. A compliance specification and notice of hearing then issued on February 20, 2002, to resolve, inter alia, issues of backpay.<sup>1</sup>

At hearing, the parties resolved all outstanding issues related to the compliance specification by entering into a joint stipulation and Motion for Judgment on the pleadings.<sup>2</sup>

<sup>1</sup> The compliance specification also alleged that the original Respondent Somerville Construction now does business as an entity called HI-TK, LLC, either as an alter ego or as a single employer, or both. (Collectively referred to as the Respondent.)

<sup>2</sup> Respondent withdrew its answer to the compliance specification as part of the stipulation.

This stipulation and the Board and Court of Appeals findings constitute the entire record in this matter including the compliance specification as amended by agreement.

On the entire record, I make the following

#### FINDINGS OF FACT

##### I. JURISDICTION

The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

Pursuant to the stipulation, as described, the backpay period ended on May 31, 1998.

The now uncontested specification computes the backpay in the amount of \$1,499,941. Similarly, the fringe benefits are computed as \$1,352,448. The total exposure of the Respondent is \$2,852,389.<sup>3</sup>

The individuals identified by the parties as eligible for distribution of the above amounts are set forth in Appendix A of this Supplemental Decision. The manner of distribution will be made according to the usual practices of the Board.

On these findings of fact, I grant the Motion for Summary Judgment on the pleadings and on the entire record issue the following recommended<sup>4</sup>

#### ORDER

The Respondent, Somerville Construction Co., and HI-TK, LLC, Indianapolis, Indiana, their officers, agents, successors, and assigns, shall pay to the individuals set out in Appendix A, the total of \$2,852,389 representing backpay in the amount of \$1,499,941 and fringe benefits in the amount of \$1,352,448, making the appropriate deductions for any tax withholding required by State and Federal laws.

<sup>3</sup> The amounts of moneys reflect the application of a formula agreed to by the parties as mirroring industry practice. It is a lump sum that does not rely on the actual hours worked.

<sup>4</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.

#### APPENDIX A

- |                        |                          |                       |
|------------------------|--------------------------|-----------------------|
| 1. Aguilar, Jesse      | 11. Anguilar, Jessie     | 21. Azapata, Veronica |
| 2. Allen, Derrick      | 12. Aquilar, Jose Israel | 22. Babcock, Dave     |
| 3. Almanzon, Bernardo  | 13. Arbogast, Nelson     | 23. Banda, Javir      |
| 4. Alv, G. R.          | 14. Arcos, Horacio       | 24. Banegas, Jorg R.  |
| 5. Alv, L.             | 15. Arcos, Ricardo       | 25. Bankhead, Robert  |
| 6. Alvarado, Juventino | 16. Armenta, Guadalupe   | 26. Bantes, Michael   |
| 7. Alvarado, Leobardo  | 17. Armento, Mauro       | 27. Baugh, Michael    |
| 8. Alvarez, Leobardo   | 18. Arredondo, David     | 28. Bautista, Jose    |
| 9. Anderson, Ronnie    | 19. Arriga, Jose         | 29. Bell, Clemon      |
| 10. Andrade, Enrique   | 20. Averitte, Andrew     | 30. Bell, Harold      |

31. Ben, J.C.
32. Benamon, Sam
33. Ber, E.
34. Berry, Larry
35. Blas, Domingo
36. Bocanegra, Carlos
37. Bolanos, Angel
38. Boyd, Kelly
39. Boyd, Wavy
40. Bradley, Fred C.
41. Brewer, Carlos
42. Brewer, Dorothy
43. Brooks, Anthony
44. Brooks, James
45. Brown, Joe
46. Brown, Joe L., Jr.
47. Brown, Jonn
48. Brown, Nathaniel F.
49. Brown, Nathaniel L
50. Bruner, Floyd T.
51. Bryant, Antonio Lee
52. Butcher, John
53. Butto, Corey
54. Butts, Helen
55. Calderon, Dimas
56. Caldwell, Robert
57. Calvin, George
58. Campbell, Derrick
59. Cardenas, Ramon
60. Cardona, Jose
61. Carnell, Chris
62. Carnell, Kurt
63. Carnell, Ricky
64. Castaneda, Salomon Uribe
65. Castillo, Antonio
66. Cathey, Willie B.
67. Chambers, Beverly
68. Chavez, Fernando
69. Chavez, Fernando Sr.
70. Chavez, Jr., Fernando
71. Chavez, Raul Martinez
72. Churchman, M. S.
73. Clark, James
74. Clay, Robert
75. Cole, J. C.
76. Coles, Charles
77. Collier, James M.
78. Conley, T.C.
79. Covington, James
80. Cox, Eddie
81. Cruz, Antonio
82. Cruz, Tony
83. Cunningham, Mack
84. Cunningham, V.W
85. Daniel, Edward
86. Daniel, Edward Jr.
87. Daniels, Edward
88. Daulton, Carl
89. Davis, John
90. Davis, Sammy
91. Davis, Shawn
92. Day, Dora
93. Dees, Detra
94. Diaz, Marco
95. Dillon, Anthony
96. Dodd, Allen
97. Doughthit, Doren
98. Dumes, Sam
99. Dyson, Keith
100. Easterling, Curtis
101. Edmonds, Bryant Keith
102. Edwards, Michael
103. Ellis, Thomas
104. Estrada, Luciano Olivera
105. Ferell, James
106. Fincher, Nikkia
107. Flores, Abel
108. Flores, Miguel
109. Flores, Noe
110. Foster, John
111. Frazier, Bobby
112. Frazier, Charmel M.
113. Freeman, Keith
114. Fryson, John
115. Fuentes, Juan
116. Fuentes, Salvador
117. Gaither, Ronnie
118. Gamez, Jose A.
119. Gamez, Juan F.
120. Garcia, Adolfo
121. Garcia, Felipe
122. Garcia, Fernando
123. Garcia, Jose Luis
124. Garcia, Ricardo
125. Garrett, Daryl
126. Gibson, Raymond
127. Gil, George
128. Godinez, Martin
129. Godinez, Tammy
130. Gomez, Jolio A. Montoya
131. Gomez, Jose
132. Gonzales, Hugo
133. Gonzales, Rocendo
134. Gonzales, Rosendo
135. Gonzalez, Fernando Chavez
136. Gooch, William
137. Graham, Fred
138. Graves, Leonard
139. Gray, Jr., H.E.
140. Griffin, Cortese
141. Griffin, Percy R.
142. Guarniola, Jose
143. Guy, Dirk D.
144. Hall, Brian
145. Hampton, Larry
146. Harlin, Quiana
147. Harrell, Edward J.
148. Harville, Leroy
149. Hernandez, Cesar
150. Hernandez, Ygnacio
151. Herrera, Jesus R.
152. Hicks, James
153. Hicks, Sylvester
154. Holmes, Leon
155. Homes, Leon
156. Houston, Nicholas
157. Howard, Jackie K., Jr.
158. Howson, Fred
159. Hoyle, James
160. Hoyle, Nina
161. Hughes, Don
162. Ibarra, Julian
163. Ipina, Valentino
164. Jackson, J.C.
165. Jackson, James
166. Jackson, Prentiss
167. Jackson, Robert
168. Jams, Ronald
169. Jefferson, Allan
170. Jeffries, Rosie
171. Jennings, Willie
172. Johnson, Derrick
173. Johnson, Euranus J.
174. Johnson, III, Johnny
175. Johnson, Michael
176. Johnson, Tony
177. Johnson, Warter
178. Jones, Clint
179. Jones, Dan
180. Jones, Frank D.
181. Jones, George
182. Jones, Kenneth
183. Jones, Willie
184. Kyles, Howard
185. LaJaye, Stewart
186. Lewis, Barbara
187. Lewis, Darrell
188. Lewis, Milton
189. Lewis, Ryan
190. Lopez, Abel
191. Lopez, Guillermo
192. Lopez, Manuel
193. Lopez, Omar
194. Lopez, Salvador
195. Lopez, Uriel
196. Lordeo, Fidel
197. Luna, J, Delores
198. Maguegal, Carlos
199. Magueyal, J. Ernesto
200. Mann, Robert
201. Manning, Derek
202. Manuel, Antonio
203. Martin, Guadalupe
204. Martinez, Edgardo S.

205. Martinez, Enrique Olvera  
206. Martinez, Juan  
207. Matinez, Juan  
208. McGlan, Willie  
209. McKinney, Roosevelt  
210. McNeal, Charlie J.  
211. McNeal, William  
212. Medina, Jose  
213. Mejia, Noe  
214. Mendes, Tomas  
215. Mendez, Jose Luis  
216. Mendoza, Benjamin  
217. Mendoza, Eluterio  
218. Mendoza, Javier  
219. Mendoza, Raul  
220. Mendoza, Raul B.  
221. Mendoza, Salome  
222. Minter, John  
223. Miranda, Israel  
224. Montoya, Enrique  
225. Moore, Edward  
226. Morales, Enrique  
227. Morales, Gerardo  
228. Morales, Leobardo  
229. Morales, Miguel  
230. Mosley, David  
231. Munday, Curtis  
232. Murillo, Ernesto  
233. Musick, Penny  
234. Nichols, Michael W.  
235. Nunes, Martin  
236. O., Margarito Gomez  
237. Oaks, Glen  
238. Orr, Dennis, R.  
239. Orr, Ulice O.  
240. Paniagua, Baltazar F  
241. Parada, David  
242. Pennington, Robert  
243. Perez, Bartolo Aguilar  
244. Perez, Ramon  
245. Perine, Edward  
246. PeNine, Terry  
247. Phillips, Jim  
248. Plummer, Mark A.  
249. Ponce, Juan  
250. Ponce, Mario  
251. Poole Gregory K.  
252. Powell, Hallie  
253. Pratt, Michael  
254. Price, Sammy  
255. Puente, Guillermo  
256. Pullins, Kevin  
257. Purnell, Carolyn  
258. Rainey, Charmel M.  
259. Rainey, Randolph  
260. Ramirez, Dimas V.  
261. Randolph, Vernell  
262. Reed, Paul R.  
263. Reynosa, Aureliano  
264. Richardson, Reggie  
265. Richardson, Roger  
266. Rivera, Ernesto  
267. Rivera, Jose L.  
268. Rivera, Mateo  
269. Rivera, Oscar  
270. Riveria, Juan  
271. Roberts, Kenny  
272. Robledo, Andres  
273. Robledo, Juan Manuel  
274. Robledo, Pedro  
275. Rodriguez, Augustine  
276. Rodriguez, Roberto  
277. Rodriquez, Miguel  
278. Rodriquez, Roberto S.  
279. Rojas, Abel  
280. Rollins, Elzea  
281. Rosas, Ivan  
282. Ross, Todd  
283. Rubio, Jose L. Martinez  
284. Salazar, Candelario  
285. Sanchez, Francisco F.  
286. Sanchez, Salvador  
287. Sanders, Elbert  
288. Serrato, Eleazar  
289. Shelby, Joe  
290. Shinkle, David  
291. SiFuentes, Sergio  
292. Sil, I.  
293. Slayden, Sollie  
294. Smiley, Michael G.  
295. Somerville, Brandon  
296. Somerville, Dana  
297. Somerville, Denise  
298. Somerville, Diane  
299. Somerville, Frank  
300. Somerville, Frank Cordell  
301. Somerville, Homer L. Jr.  
302. Sosa, Miguel  
303. Spier, H. J.  
304. Spight, Derrick L.  
305. Stringer, Emmanuel  
306. Taylor, John Ed  
307. Taylor, Phillip  
308. Tena, Victor  
309. Torrence, Delisa  
310. Tovar, Wilmer  
311. Troutman, Antonio  
312. Tucker, Vincent  
313. Tyler, Dondray  
314. Vazquez, Jose Alverto  
315. Vega, Fermin  
316. Vicario, Gregorio  
317. Victoria, Erick  
318. Volladares, Luis Alfredo  
319. Walker, Charlie  
320. Wallace, Zula  
321. War, C.  
322. Watkins, Horace  
323. Whitley, Willie  
324. Watts, Elmer  
325. Williams, Eugene  
326. Williams, James  
327. Williams, Leon  
328. Williams, Mary  
329. Wilson, Billy  
330. Winn, Richard  
331. Woods, Shelby  
332. Wright, Rafael  
333. Young, James  
334. Zamora, David Romero  
335. Zamora, Enrique  
336. Zamora, Javier  
337. Zapata, Frutoso