G.E. Maier Company *and* Ohio and Vicinity Regional Council of Carpenters, United Brotherhood of Carpenters and Joiners of America. Case 9–CA–42602

May 9, 2007

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND WALSH

On August 28, 2006, Administrative Law Judge Arthur J. Amchan issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel and Charging Party filed answering briefs.

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[1] and briefs and has decided to adopt the judge's rulings, findings,[2] and conclusions and to adopt the recommended Order.[3]

The judge found that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to provide the Union the information requested in its January 5, 2006 letter, regarding the Respondent's relationship with two other companies. The Respondent argues that it never had a duty to bargain with the Union, and therefore had no duty to provide the requested information, because James Fangmeyer acted without authority when, at a jobsite in Wellston, Ohio, in May 2002, he signed the Union's "Acceptance of Agreements." That document provided that the Respondent agreed to recognize the Union and to abide by the Union's collective-bargaining agreements with area contractor associations. The judge rejected this argument, finding, among other things, that Fangmeyer had apparent authority to bind the Respondent. We agree.

As the judge explained, the Board will find apparent authority where there is a "manifestation by the principal to a third party that creates a reasonable belief that the principal has authorized the alleged agent to perform the acts in question." *Pan-Oston Co.*, 336 NLRB 305–306 (2001). Here, the Respondent had provided Fangmeyer with business cards identifying him as its "Vice-President Installations," and Fangmeyer had given one of those cards to union organizer Mark Johnson at the Wellston jobsite. Moreover, the Respondent had authorized Fangmeyer to hire workers and to take any other necessary steps to complete the work at a jobsite, and Fangmeyer had exercised that authority in hiring an apprentice through the Union at the Wellston jobsite. In these circumstances, we find that it was reasonable for the Union to believe that Fangmeyer was authorized to sign the Acceptance of Agreements on the Respondent's behalf. See *Horizon Group of New England*, 347 NLRB No. 74, slip op. at 12 (2006).[4]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, G.E. Maier Company, Cincinnati, Ohio, its officers, agents, successors, and assigns shall take the action set forth in the Order, except that the attached notice is substituted for that of the administrative law judge.

Dated, Washington, D.C. May 9, 2007

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[1] No exceptions were filed to the judge's findings: (1) that the Respondent did not timely terminate its obligations to the Union under the June 1, 2005 collective-bargaining agreement; and (2) that the Union established the relevance of the information requested in its January 5, 2006 letter to the Respondent.

[2] The 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), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] We shall attach a new notice to conform to the judge's recommended Order.

[4] While the Respondent's sole owner, Thomas G. Maier Sr., insisted that Fangmeyer was not authorized to sign the Acceptance of Agreements, Maier conceded at the hearing that he would not have expected a third party to understand the purported limits of Fangmeyer's authority.

As the judge correctly recognized, Maier's December 28, 2005 letter to the Union, in which he untimely sought to terminate the parties' bargaining relationship, contains another important concession. In this letter, Maier acknowledged that the Respondent had "signed an agreement" with the Union, without any suggestion that Fangmeyer had exceeded his authority. This concession amounts to an admission on Maier's part that Fangmeyer signed the Acceptance of Agreements on behalf of the Respondent.

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 Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain in good faith with the Ohio and Vicinity Regional Council of Carpenters, United Brotherhood of Carpenters and Joiners of America (the Union) as the exclusive bargaining agent of our employees in the appropriate bargaining unit by failing and refusing to furnish the Union with certain requested information, which was and is necessary and relevant to the Union's performance of its function as the exclusive bargaining agent of our unit 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 to the Union all the information requested in the Union's letter dated January 5, 2006.

G.E. MAIER COMPANY

Patricia Rossner Fry, Esq., for the General Counsel.
Douglas C. Anspach Jr., Esq. (Taft, Stettinius & Hollister, LLP), of Dayton, Ohio, for the Respondent.
Fred Seleman, Esq. (Ulmer & Berne LLP), of Cleveland, Ohio, for the Charging Party.

DECISION

STATEMENT OF THE CASE

ARTHUR J. AMCHAN, Administrative Law Judge. This case was tried in Cincinnati, Ohio, on June 20, 2006. The Union, the Ohio and Vicinity Regional Council of Carpenters, filed the charge in this matter on January 26, 2006, and the General Counsel issued a complaint on April 12, 2006.

The General Counsel alleges that Respondent, G.E. Maier Company, violated Section 8(a)(5) and (1) by failing and refusing to provide the Union with information it requested regarding the relationship between Respondent and another employer, GEMCO. Respondent contends that it had no obligation to bargain with the Union, including any obligation to provide the information requested.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, the Respondent, and the Charging Party, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a corporation, distributed and installed playground and gymnasium equipment from its facility in Cincinnati, Ohio, at least through mid-2005. It contends that it is no longer in business and is no longer subject to the Act. While it is not clear whether this is true, the record establishes within the calendar year prior to the filing of the charge and complaint, Respondent installed gymnasium and playground equipment valued in excess of $50,000 which was shipped from sources outside the State of Ohio. Therefore, I find that Respondent is subject to the Board's jurisdiction and is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, *American Gypsum Co.,* 231 NLRB 1291, 1298 (1977); *Benchmark Industries,* 269 NLRB 1096, 1097–1098 (1984); *Kranz Heating & Cooling,* 328 NLRB 401, 402 (1999).

II. ALLEGED UNFAIR LABOR PRACTICES

Respondent, G.E. Maier, was founded in 1949. Its sole owner in recent years has been Thomas G. Maier Sr., a son of the founder. As late as 2005, Respondent distributed playground and gymnasium equipment and such items as bleachers and scoreboards and has regularly installed this equipment at jobsites, many of which were schools.

In about 1999 or 2000, Maier established two other companies, GEMCO (or GEMCO Products) and GEMCO Installations. These companies are in the same business as Respondent. GEMCO Installations employs four individuals who install playground and gymnasium equipment. Maier is sole owner of all three companies. He determines the employment policies for all three companies. His son, Thomas Maier Jr., is an officer of Respondent. His son, Christopher Maier, is an officer of GEMCO.[1] The three companies are in the same building, appear to have the same telephone number, e-mail address and be otherwise completely intertwined with one another. For example, they have one employee telephone list and Nancy Absher, assistant treasurer of GEMCO, handles the payroll for all three companies. All three companies use the same accountant who determines how the GEMCO companies charge Respondent, and vice versa—assuming there are arms-length transactions between these companies. Respondent has apparently done most of its recent work as a subcontractor to one of the GEMCO companies.

For the last several years, Respondent's only permanent employee has been James Fangmeyer, who worked for it for 37 years and has been a member of the Charging Party Union for many years.[2] In 2002, Fangmeyer carried a business card

[1] It is unclear in this record how GEMCO Products and GEMCO Installations are differentiated, if in fact, there is any distinction.

[2] The General Counsel alleged in its complaint that Fangmeyer was a supervisor within the meaning of Sec. 2(11) of the Act and an agent within the meaning of Sec. 2(13). Respondent denied that Fangmeyer was a supervisor or an agent. The General Counsel has not established

which identified him as a vice president for installations of both Respondent and GEMCO. He presented this card to Union Organizer Mark Johnson on a jobsite in Wellston, Ohio, in May 2002.

Over the past several years, through 2005, Fangmeyer has been in charge of installing equipment for Respondent at various sites. On some of these sites, the general contractor has been J & H Erectors, a company which is party to a collective-bargaining agreement between the Union and the Tri-State Contractors Association. This agreement covers a number of counties in southern Ohio, as well as several in Kentucky and West Virginia. While at various jobsites, including those on which J & H Erectors has been the general contractor, Fangmeyer has been authorized to take whatever steps need to be taken to complete the work, including obtaining equipment at Respondent's expense and obtaining additional labor when he needed it.

On several occasions, when he has been on jobsites at which J & H Erectors has been the general contractor, during the past 5 years and prior to that, Fangmeyer has called the Charging Party Union to obtain additional labor.[3] Thomas Maier Sr., was aware that Fangmeyer and other officials of Respondent had done so, at least on some occasions, such as on a jobsite at Youngstown State University in 1997. On several occasions Fangmeyer has signed documents recognizing the Union as the exclusive bargaining representative of Respondent's employees and promising to abide by the terms of various collective-bargaining agreements.

One of these is the "acceptance of agreements," General Counsel Exhibit 12, which Fangmeyer signed on behalf of Respondent on May 8, 2002, on a J & H Erectors jobsite in Wellston, Ohio, south/southeast of Columbus. Respondent was installing basketball equipment in the Wellston school gymnasium. Pursuant to this document, Respondent recognized the Union as the exclusive bargaining representative for its employees performing work on all present and future jobs within the jurisdiction of the Union, promised to abide by the collective-bargaining agreement between the Union and the Tri-State Contractors Association and authorized the Tri-State Contractors Association to be its collective-bargaining representative with the Union.

This collective-bargaining agreement between the Tri-State Contractors Association and the Union was effective between June 1, 2001 and May 31, 2005 (GC Exh. 18). It provided that, "it is understood that all signatory employers are bound to future agreements unless a 90 day cancellation notice is submitted to the Union." The agreement was renewed with minor changes and is effective from June 1, 2005, through May 31, 2010 (GC Exh. 17).

On the Wellston site, Fangmeyer and Union Organizer Mark Johnson agreed that Respondent could hire a union apprentice, Bill Crabtree. Fangmeyer called Respondent's office and obtained workmen's compensation and unemployment insurance numbers to fill out other documents for the Union. Fangmeyer discussed with Nancy Absher, at one time the assistant treasurer of Respondent and currently assistant treasurer of GEMCO, how to fill out the Union's fringe benefit forms for Crabtree. Respondent has paid into the Unions' fringe benefits funds for a number of employees, who generally worked for it for several weeks, up through 2005.

Sometime after the Wellston job, in 2002 or 2003, Union Organizer Mark Johnson encountered a crew installing basketball backboards on a unionized project at the Jackson, Ohio High School. The foreman identified the crew as working for GEMCO. Johnson called Chris Maier, Thomas Maier's son. Chris Maier expressed dissatisfaction over an experience with the Union in the Cleveland area. However, he told Johnson that if the Union would let GEMCO finish the work they were doing, he would send Fangmeyer to the site for a later phase and that Fangmeyer would contact the Union for help. Pursuant to this agreement, the Union furnished Respondent with the services of one of its apprentices.

Later in this time period, the same thing occurred on a multi-gymnasium project for the Waverly, Ohio schools. After a telephone conversation between Chris Maier and Johnson, non-union employees were allowed to complete work on one gym and the Union supplied apprentices for the rest of the project.

Two union apprentices also worked for Respondent on jobs in Portsmouth, Ohio in 2005.[4] Respondent paid into the Union's fringe benefit funds on behalf of these employees. At some point Chris Maier told Johnson that while Respondent would operate as an "open shop" in other areas, it would work with union labor in South Central Ohio.

On December 28, 2005, Thomas Maier sent a letter to the Union notifying it of Respondent's intent to terminate its relationship with the Union (GC Exh. 10). The Union responded by sending Maier a letter on January 5, 2006, requesting detailed information about Respondent's relationship with GEMCO. Respondent has refused to provide such information which led the Union to file the charge which gave rise to the General Counsel's complaint in this matter.

Analysis

Respondent did not timely terminate its relationship with the Union in December 2005.

Respondent, by signing the "acceptance of agreements" on May 8, 2002, and similar documents, did not indicate an unequivocal intent to be bound by multiemployer bargaining. Therefore, it could have terminated its relationship with the Union had it done so within the timeframe provided in the parties' collective-bargaining agreement, *Schaetzel Trucking, Inc.,* 250 NLRB 321, 323 (1980); *Gordon Electric Co.,* 123 NLRB 862, 863 (1959).

However, the collective-bargaining agreement that expired on May 31, 2005, provided that all signatory employers would be bound to future agreements unless a 90-day written cancella-

that Fangmeyer was a supervisor, but if it had been successful it would also have established that Respondent had no permanent employees.

[3] Two union apprentices worked for Respondent in Portsmouth, Ohio, sometime after March 22, 2005.

[4] These jobs, on which J & H Erectors was the general contractor, were worth over a million dollars.

tion notice was submitted to the Union.[5] It is undisputed that Respondent did not submit a written cancellation notice to the Union 90 days prior to the expiration of the agreement.[6] The Board's holding in *Phoenix Air Conditioning,* 231 NLRB 341 (1977), mandates the conclusion that unless Respondent gave such notice within 120 (or 90) days prior to the expiration of the Union's agreement with the Tri-State Contractors, it could not terminate its obligations under the collective-bargaining agreement that became effective on June 1, 2005.[7]

Respondent is not excused from an obligation to provide the requested information by the fact that on paper James Fangmeyer was its only permanent employee.

Respondent's principal defense to complaint is that the Act precludes the Board from directing it to bargain collectively with the Union since it only employed one permanent employee, James Fangmeyer, since about 1999. If Respondent is correct, it cannot be required to provide the Union the information requested about its relationship with GEMCO in its January 5, 2006 letter.[8]

Black letter law clearly prevents the Board from ordering an employer who employs one permanent employee to bargain collectively, *D & B Masonry,* 275 NLRB 1403, 1408 (1985), and *Stack Electric,* 290 NLRB 575 (1988). However, the fact that James Fangmeyer was the only employee of G.E. Maier Company is the not the end of the inquiry in this matter. It is apparent that one or more of the GEMCO companies may be an alter ego or successor employer to Respondent. An employer is generally obligated to provide information, such as that requested by the Union, so that the Board can determine whether it is subject to the Board's jurisdictional standards by virtue of its relationship to the other companies, whether it employs unit employees, and whether or not it has an obligation to bargain with the Union, *Jervis B. Webb Co.,* 302 NLRB 316, 317 (1991); *CEC, Inc.,* 337 NLRB 516, 519 (2002).

James Fangmeyer had both actual and apparent authority to bind Respondent when he signed documents committing G.E. Maier to be bound by the collective-bargaining agreement between the Tri-State Contractors Association and the Union.

An individual is an agent of his employer if he is acting with apparent authority on behalf of the employer when he makes a particular statement or takes a particular action. Apparent authority results from a manifestation by the principal to a third party that creates a reasonable belief that the principal has authorized the alleged agent to perform the acts in question. Either the principal must intend to cause the third person to believe the agent is authorized to act for him, or the principal should realize that its conduct is likely to create such a belief, *Pan-Oston Co.,* 336 NLRB 305 (2001).

I conclude from Union Organizer Mark Johnson's uncontradicted testimony regarding his conversations with Chris Maier in late 2002 or 2003, that James Fangmeyer had apparent authority to bind Respondent to the collective-bargaining agreement between the Tri-State Contractors Association and the Union. On the Jackson, Ohio jobsite, a GEMCO foreman advised Johnson to call Chris Maier. Chris Maier, who his father contends is an officer of GEMCO, but apparently not of Respondent, "acknowledged that they . . . signed . . . an agreement for my area."

Chris Maier also acknowledged and ratified Fangmeyer's agreements with the Union by promising to send Fangmeyer to work on additional phases on the project and to hire union apprentices to work with him. The same thing occurred on the Waverly project. At no time did Chris Maier contend that he had no authority to speak for Respondent or that Fangmeyer did not have authority to sign an agreement with the Union.[9] Thus, assuming that Fangmeyer did not have apparent authority to bind Respondent prior to the Union's conversations with Chris Maier, he did so afterwards. Moreover, Respondent, by Chris Maier, ratified Fangmeyer's conduct, *Williams Services,* 302 NLRB 492, 504 (1991).

Additionally, Respondent's December 28, 2005 letter to the Union, seeking to terminate its relationship, concedes that G.E. Maier had signed an agreement with the Union. In that letter, there is no contention that James Fangmeyer signed such agreements without authority to do so. Indeed, I infer from the December 28, 2005 letter and Thomas Maier, Senior's awareness that Respondent had on a number of occasions employed apprentices from the union hall, that Fangmeyer had actual authority to sign the acceptance of agreements with the Union.

The Union has established the relevance of the requested information to its duties as collective-bargaining representative; Respondent violated Section 8(a)(5) in failing and refusing to provide the information requested.

Since this record demonstrates that the Union has a reasonable objective basis for believing that an alter ego, single employer or successorship relationship exists between Respondent and the GEMCO companies, it is entitled to the information it requested regarding the relationships between Thomas Maier's companies on January 5, 2006, *Cannelton Industries,* 339 NLRB 996 (2003);[10] *Contract Flooring Systems, Inc.,* 344

[5] The "acceptance of agreements" signed by Fangmeyer appears to be inconsistent with the collective-bargaining agreement. It requires 120-days notice.

[6] Sometime in the summer of 2005, Chris Maier informed the Union verbally that Respondent no longer wanted any relationship with it.

[7] Also see *Cowboy Scaffolding,* 326 NLRB 1050 (1998); *Gary's Electrical Service Co.,* 326 NLRB 1136, 1140 (1998); *City Electric,* 288 NLRB 443 (1988).

[8] If Respondent is required to provide this information, it should be ordered to answer the questions insofar as they applied to GEMCO, GEMCO Products, and GEMCO Installations. There is no indication that the Union knew of the existence of the latter two entities and any fair reading of the inquiry would put Respondent on notice that the Union was asking about any company related to GEMCO that is controlled by Thomas Maier.

[9] Indeed, Chris Maier held several meetings between 2003 and 2005 with Union Business Representative Mark Galea in which he led the Union to reasonably conclude that he spoke for Respondent. Respondent's Br. at page 2 concedes that Christopher Maier was at one time an officer and manager of Respondent.

[10] Current Board law does not require the Union to disclose, at the time of its information request, the facts which cause it to suspect an alter-ego or single employer relationship exists. The United States Court of Appeals for the Third Circuit, however, generally does require the Union to disclose sufficient facts to the employer at the time of any information request to demonstrate its claim of relevance, *Hertz Corp.*

NLRB No. 117 (2005); *Z-Bro, Inc.*, 300 NLRB 87, 90 (1990). By failing and refusing to provide this information, Respondent violated Section 8(a)(5) and (1) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[11]

ORDER

Respondent, G. E. Maier Company, Cincinnati, Ohio, its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with the Ohio and Vicinity Regional Council of Carpenters, United Brotherhood of Carpenters and Joiners of America as the exclusive bargaining agent of its employees in the appropriate bargaining unit by failing and refusing to furnish the Union with certain requested information which was and is necessary and relevant to the Union's performance of its function as the exclusive bargaining agent of the unit employees.

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

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

(a) Furnish the Union all the information requested in the Union's letter dated January 5, 2006.

(b) Within 14 days after service by the Region, post at its Cincinnati, Ohio facility, copies of the attached notice marked "Appendix."[12] Copies of the notice, on forms provided by the Regional Director for Region 9, 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 employees and former employees employed by the Respondent at any time since January 5, 2006.

(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.

Dated, Washington, D.C. August 28, 2006

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 Federal labor law and has ordered us to post and obey this notice.

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Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain in good faith with the Ohio and Vicinity Regional Council of Carpenters, United Brotherhood of Carpenters and Joiners of America (Union) as the exclusive bargaining agent of our employees in the appropriate bargaining unit by failing and refusing to furnish the Union with certain requested information, which was and is necessary and relevant to the Union's performance of its function as the exclusive bargaining agent of our unit 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 to the Union all the information requested in the Union's letter, dated January 5, 2006, regarding our relationship to GEMCO and related companies.

G.E. MAIER COMPANY

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v. NLRB, 105 F. 3d 868 (3d Cir. 1997). However, the Court made clear that a union does not have to communicate the facts justifying its request in situations where the employer already is aware of such facts:

> In some situations, a union's reasons for suspecting that discrimination is occurring will be readily apparent. When it is clear that the employer should have known the reason for the union's request for information, a specific communication of the facts underlying the request may not be necessary. As the ALJ noted in this case, two of Hertz's managers testified that credibly that they had no idea why the Union believed that Hertz's hiring practices might be discriminatory until they arrived at the administrative hearing. . . .

105 F.3d at 874.

By contrast, Respondent was well aware that GEMCO or GEMCO Installation employees were performing work claimed by the Union within the Union's jurisdiction.

[11] 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.

[12] 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."