



Employment Law Note

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“(Wo)Man Bites Dog” in Alter Ego Case



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In responding to an unfair labor practice charge alleging an “alter ego” relationship between a Union entity and a non-Union employer, an Administrative Law Judge recently ruled that a marital relationship between the owners of two businesses did not necessarily create an “alter ego” relationship. In his decision in *Glass Fabricators, Inc. (IUPAT District Council 6)*, the Judge and the General Counsel revealed how far women have come in the construction industry over the last few years. First, let’s review the legal background of alter ego claims.

Unions and Union Trust Funds are on the lookout for signatory companies who create, and then siphon Union work to, non-Union entities in order to escape the confines of a Union agreement. Unions often make alter ego claims to expand the reach of their Union contract from the signatory employer to an alleged non-signatory “alter ego.” In responding to alter ego claims, the Board and the Courts examine a variety of factors demonstrating the existence or absence of control by the Union entity over the non-Union one. Among the factors reviewed are the day-to-day control exercised by one entity over the other, the siphoning of work from the Union employer to the non-union one, the exchange of employees, supervisors, or equipment between the two entities, and common ownership. If proven, alter ego cases can result in huge liability for Union employers based on years of unpaid trust fund contributions, wages, and violations of hiring hall requirements. In addition, in one fell swoop, the Union gets another signatory company.

In *Glass Fabricators*, Administrative Law Judge Thomas Randazzo was faced with a claim that a failing Ohio glass installer had launched a new non-union business in order to get around a Union contract which saddled the business with uncompetitive terms. The General Counsel who prosecuted the case noted that the owners of both businesses were married and that the Judge should therefore rely on the inference that “people in a close familial relationship” are co-managing each other’s business. As one can guess, in the construction industry, the typical “familial relationship/alter ego” cases involve a husband or father setting up his wife or son to “manage” a non-union entity which is, in reality, run by the husband. The irony in this case was that the Union entity was owned and managed by a woman, and that General Counsel was therefore alleging she had set up her husband as a “beard” to front a non-signatory alter ego while she was actually managing both entities. While women in construction have a long way to go to obtain equal work opportunities, equal pay, and a workplace free from harassment or worse, General Counsel’s analysis that a woman can be just as controlling and manipulative as a man is somewhat refreshing.

The Judge had little trouble brushing aside the inference based on the absence of the wife’s financial control over the operations of the non-union entity, the husband’s credible claim that he was running the non-union business without interference or control by his wife, the fact that both entities operated in different spaces, and the fact that the businesses did not perform the exact same Glaziers work. This helped undercut not only the inference of co-

management, but also the damning fact that the Union company went out of business as the non-Union entity came into existence.

Key Takeaways

Aside from the refreshing absence of the “little lady” analysis which often permeates alter ego cases, employers need to be aware that entities owned by family members will draw the attention of Unions and Union Trust Funds if one of the entities is signatory to a Union agreement. In the event the husband, wife, son or daughter of an individual who runs a Union signatory company goes into business for him or herself, the new entity must make doubly sure that it has an arm’s length relationship with the signatory entity and that a Union or Trust Fund will not be able to establish an “alter ego” case. Be aware that Unions and Trust Funds view “close familial relationships” as low hanging fruit in the alter ego tree.

For more information about this month’s Employment Law Note
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