Cannelton Industries, Inc. and Princess Beverly Coal Company and Kanawha Corporation and Dunn Coal and Dock Company *and* International Union, United Mine Workers of America. Cases 9–CA–37785–1, 9–CA–37785–2, 9–CA–38277–1, and 9–CA–38277–2

August 14, 2003

DECISION AND ORDER

BY MEMBERS LIEBMAN, SCHAUMBER, AND ACOSTA

On March 14, 2002, Administrative Law Judge Benjamin Schlesinger issued the attached decision. The Respondents filed exceptions and supporting briefs. The General Counsel and Charging Party filed reply 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 and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified and set forth in full below.

The complaint alleged, and the judge found, that the Respondents violated Section 8(a)(5) and (1) of the Act by refusing to furnish the Union with information relevant to its collective-bargaining responsibilities.

Background

This case concerns the Respondents' refusal to comply with several information requests made by the Union. The Union and the Respondents were signatories to a memorandum of understanding (MOU), effective through December 31, 2002. The MOU incorporated by reference article II of the National Bituminous Coal Wage Agreement (NBCWA) entitled "Job Opportunity and Benefit Security."[1] That provision states in relevant part:

> [T]he first three out of every five new job openings covered by this Agreement at any existing, new, or newly acquired non-signatory bituminous coal operation of the Employer shall be filled by classified laid-off Employees of the Employer's operations.

In December 1999, one of the Respondents, Dunn Coal, laid off several employees. The Union subsequently learned that a new company, CC Coal, was beginning to hire in the area. Union Attorney Douglas Parker investigated the relationship between the Respondents and CC Coal. During his investigation, Parker discovered information that suggested an interrelationship between CC Coal and the Respondents. As a result, on June 2, 2000,[2] Parker submitted an information request to Cannelton Industries, Inc. and Princess Beverly Coal Company.[3] In that request, he stated that there appeared to be a significant degree of interrelation between CC Coal and other of the Respondents.

After the Respondents failed to supply the requested information and questioned the relevance of the request, the Union, on July 26, and again on August 23, wrote to the Respondents setting out in more detail the reasons for its request. The August 23 request was the most specific. That letter stated that the Union had reason to suspect that there was a single, joint-employer, and/or alter-ego relationship between CC Coal and one of the Union's signatory companies. The letter included nine separate bullet points delineating specific evidence possessed by the Union that suggested such a relationship.[4] Finally, on November 30, 2001, 4 days before the hearing, the Union sent another letter to the Respondents to clarify further the relevance of the information request. The Respondents nonetheless refused to provide the requested information, claiming primarily that the relevance of the Union's request was unclear.

The Judge's Decision

The judge found that the Respondents violated Section 8(a)(5) and (1) by failing to provide the Union with the requested information. According to the judge, the Union's information requests were clearly directed at showing the sharing of functions necessary to prove a single-employer or alter-ego relationship, the result of which would be that CC Coal was bound under the Respondents' MOU with the Union. The judge further found that the Union had a reasonable objective basis to inquire whether CC Coal was a single employer with, or alter ego of, the Respondents. Finally, according to the judge, a union is not required, at the time of an information request, to share with the employer the factual basis of its claim that requested information is relevant and necessary. It is sufficient, the judge stated, that the factual basis be shown at the unfair labor practice hearing.

[1] Respondent Princess Beverly is signatory to an even broader provision, which covers new coal mining operations of nonsignatory companies.

[2] All dates hereafter are 2000 unless otherwise indicated.

[3] Subsequently the Union requested the same information from the other two Respondents, Kanawha Corporation, and Dunn Coal and Dock Company.

[4] These bullet points are reproduced in the judge's decision. Included among them is evidence that Respondents shared a common address with CC Coal; that Respondents and CC Coal shared some of the same officers; that Respondents and CC Coal shared personnel and equipment; and that radio communications indicated the coal mined at CC Coal's Skitter Creek operation was being shipped to Cannelton's prep plant, where it was blended and processed with coal from the other Respondents.

The Respondents' Exceptions

The Respondents except to the judge's findings. The Respondents primarily argue they need not have complied with the request because the Union, at the time that it made its information request, failed to provide the Respondents with specific facts giving rise to its belief that a single-employer/alter-ego relationship existed. Citing, inter alia, *NLRB v. Postal Service*, 18 F.3d 1089 (3d Cir. 1994), and *Hertz Corp. v. NLRB*, 105 F.3d 868 (3d Cir. 1997), the Respondents argue that the obligation to turn over the information was never triggered. Alternatively, the Respondents argue that the Union did not satisfy its obligation to present the requisite evidence until 4 days before the hearing, in the Union's November 30, 2001 letter, or at the hearing itself. Thus, the Respondents contend, they should have been given sufficient time to respond after the hearing.[5] We find no merit in the Respondents' exceptions.

Analysis

When a union requests information relating to an alleged single-employer or alter-ego relationship, the union bears the burden of establishing the relevance of the requested information. *Reiss Viking*, 312 NLRB 622, 625 (1993); *Bentley-Jost Electric Corp.*, 283 NLRB 564, 568 (1987), citing *Walter N. Yoder & Sons*, 754 F.2d 531, 536 (4th Cir. 1985). A union cannot meet its burden based on a mere suspicion that an alter-ego or single-employer relationship exists; it must have an objective, factual basis for believing that the relationship exists. See *M. Scher & Son, Inc.*, 286 NLRB 688, 691 (1987). Under current Board law, however, the union is not obligated to disclose those facts to the employer at the time of the information request. *Baldwin Shop 'N Save*, 314 NLRB 114, 121 (1994); *Corson & Gruman*, 278 NLRB 329, 333–334 fn. 3 (1986). Rather, it is sufficient that the General Counsel demonstrate at the hearing that the union had, at the relevant time, a reasonable belief. *Knappton Maritime Corp.*, 292 NLRB 236, 238–239 (1988). Ultimately, it is the Board's role, not the employer's, to act as the arbiter of whether the union's evidence supports a reasonable belief. *Bentley-Jost*, 283 NLRB at 568.

As the Respondents point out, the Third Circuit has taken a different approach. The Third Circuit has held that for there to be an obligation to furnish information, the union, at the time of the request, must disclose to the employer sufficient facts to demonstrate its claim of relevance. *Hertz Corp.*, supra, citing *NLRB v. Postal Service*, supra.[6] On the facts before us, however, we find a violation of the Act under either standard.

We find that, by the time of its August 23 letter, the Union had demonstrated to the Respondents both the relevance of the previously requested information and the existence of evidence that gave rise to a reasonable belief in the relevance of that information.[7] As shown, by the time of the August 23 letter, the Union had provided the Respondents with specific evidence of their suspected alter-ego or single-employer relationship with CC Coal. This included, but was not limited to, evidence that: the Respondents shared a common address with CC Coal; the Respondents and CC Coal shared some of the same officers; the Respondents and CC Coal shared personnel and equipment; and radio communications indicated that coal mined at CC Coal's Skitter Creek operation was being shipped to Cannelton's prep plant and blended with the Respondents' coal.

The Respondents' refusal to supply the information at that point had no lawful justification.[8] Accordingly, we agree with the judge that the Respondents violated Section 8(a)(5) and (1) of the Act by failing to furnish the Union with the requested information.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below.

A. Respondent Cannelton Industries, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with the United Mine Workers of America (Union) 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

[5] Although it is not entirely clear, the Respondents also appear to argue that, even if the Union presented the Respondents with evidence of its reasonable objective basis for believing the requested information was relevant at the time it made the requests, the Respondents were not legally obligated to provide the information until the judge made a finding at the hearing that the Union's evidence did, indeed, present a reasonable objective basis for the Union's request. The Respondents have not cited any support for such a proposition, and we are aware of none. To the extent that Respondents have presented such an argument, we find no merit in it.

[6] Neither *Hertz Corp.* nor *Postal Service* was an alter-ego case.

[7] We shall modify the conditional notice-posting requirement in our Order to refer to this August 23 date for all Respondents.

[8] We observe that the Respondents raised no objection to the scope of the information requests.

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 to the Union all the information requested in the Union's letter, dated June 2, 2000.

(b) Within 14 days after service by the Region, post at its facility copies of the attached notice marked "Appendix B."[9] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by Respondent's authorized representative, shall be posted by 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 Respondent to ensure that the notices are not altered, defaced, or covered by any material. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at any time since August 23, 2000.

(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 Respondent has taken to comply.

B. Respondent Princess Beverly Coal Company, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with the United Mine Workers of America (Union) 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 to the Union all the information requested in the Union's letter, dated June 2, 2000.

(b) Within 14 days after service by the Region, post at its facility copies of the attached notice marked "Appendix C."[10] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by Respondent's authorized representative, shall be posted by 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 Respondent to ensure that the notices are not altered, defaced, or covered by any material. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at any time since August 23, 2000.

(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 Respondent has taken to comply.

C. Respondent Kanawha Corporation, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with the United Mine Workers of America (Union) 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 to the Union all the information requested in the Union's letter, dated August 23, 2000.

(b) Within 14 days after service by the Region, post at its facility copies of the attached notice marked "Appendix D."[11] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by Respondent's authorized representative, shall be posted by 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 Respondent

[9] 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."

[10] See fn. 9, supra.

[11] See fn. 9, supra.

to ensure that the notices are not altered, defaced, or covered by any material. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at any time since August 23, 2000.

(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 Respondent has taken to comply.

D. Respondent Dunn Coal and Dock Company, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with the United Mine Workers of America (Union) 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 to the Union all the information requested in the Union's letter, dated July 28, 2000.

(b) Within 14 days after service by the Region, post at its facility copies of the attached notice marked "Appendix E."[12] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by Respondent's authorized representative, shall be posted by 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 Respondent to ensure that the notices are not altered, defaced, or covered by any material. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at any time since August 23, 2000.

(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 Respondent has taken to comply.

[12] See fn. 9, supra.

Engrid Emerson Vaughan, Esq., for the General Counsel.
Merritt J. Green, Esq., of McLean, Virginia, for the Respondent.[1]
Mark March, of Charleston, West Virginia, and *Phillip Camden*, of Trusberry, West Virginia, for the Charging Party.

DECISION

FINDINGS OF FACT AND CONCLUSIONS OF LAW

BENJAMIN SCHLESINGER, Administrative Law Judge. This is an information case. The Charging Party, International Union, United Mine Workers of America (Union), requested from the four Respondents, Cannelton Industries, Inc. (Cannelton), Princess Beverly Coal Company (Princess Beverly), Kanawha Corporation (Kanawha), and Dunn Coal and Dock Company (Dunn), replies to extensive questions and demands for production of documents. Each refused. The complaint alleges a violation of Section 8(a)(5) and (1) of the Act. Respondents deny that they violated the Act in any manner.[2]

Each Respondent is a corporation and has been engaged in operating a surface coal mine in Fayette County (except Princess Beverly, which operates in Kanawha County), West Virginia. During the 12 months ending May 17, 2001, each Respondent purchased and received at its Fayette (for Princess Beverly, Kanawha) County facility goods valued in excess of $50,000 directly from points outside West Virginia. I conclude that each has been an employer within the meaning of Section (2), (6), and (7) of the Act.

Respondents are signatory to and bound by collective-bargaining agreements, or memoranda of understanding, with the International, which I conclude is a labor organization within the meaning of Section 2(5) of the Act. Each of the memoranda incorporates by reference the National Bituminous Coal Wage Agreement (NBCWA), which includes the following provision:

> the first three out of every five new job openings covered by this Agreement at any existing, new, or newly acquired nonsignatory bituminous coal operation of the Employer shall be filled by classified laid-off Employees of the Employer's operations.

In addition, Princess Beverly is also a signatory to the memorandurn of understanding regarding job opportunities, which expands job opportunities for classified employees of Princess Beverly at "existing, new, or newly acquired nonsignatory bituminous coal mining operations of the nonsignatory Companies."

[1] William B. Cowen, Esq., having been appointed a member of the Board, withdrew from representing Respondent on January 23, 2002.

[2] This case was tried in Charleston, West Virginia, on December 4, 2001. The charges in Cases 9–CA–37785–1 and 9–CA–37785–2 were filed against Cannelton and Princess Beverly on July 3, 2000; and the charges in Cases 9–CA–38277–1 and 9–CA–38277–2 were filed on February 21, 2001. A third amended consolidated complaint was issued on May 17, 2001.

This case has its genesis with the layoffs of the employees of Dunn in December 1999, as well as layoffs of some employees from some of the other Respondents. The Union learned that a new company, CC Coal, was beginning to hire employees and union attorney Douglas Parker began to investigate whether CC Coal was simply a continuation of Dunn, but operating outside the parameters of the Union's collective-bargaining agreement. He thought that he had enough hints of an interrelationship, so he wrote to Cannelton and Princess Beverly on June 2, 2000,[3] requesting information (Appendix A attached to this decision), and explaining his reasons:

> It has come to the attention of the Union that CC Coal Company (CC Coal) recently initiated mining operations in Kanawha and Boone County, West Virginia. It has also come to the Union's attention that there appears to be a significant degree of interrelation between the CC Coal operation and the UMWA signatory operations of Cannelton Industries, Inc. and Princess Beverly Coal Company.
>
> In order to effectively administer and enforce the current collective bargaining agreement, further prepare for negotiation of a successor agreement, intelligently represent UMWA bargaining unit employees employed at AEI subsidiaries, and determine which entity or entities constitute "employers" with whom the Union has a contractual and/or bargaining relationship, we ask that you respond to the following information request by close of business, June 30, 2000.

On June 20, Respondents' then counsel, William B. Cowen, wrote to Parker, confirming receipt of the demand and questioning the relevance of many of the requests, noting that many of them sought information about companies, actually only CC Coal, with whom the Union had no collective-bargaining relationship. To that extent, Cowen wrote that he was unclear how the information would be relevant to the legitimate interests of the Union in representing the employees of Cannelton and Princess Beverly. The essence of Cowen's position was not with the specific items sought, but with the principle that the Union was entitled to anything related to a company not under agreement with it. Parker answered Cowen on June 26, referring to the relationship of Cannelton and Princess Beverly with CC Coal "and possibly other AEI-related companies," as follows:

> The purpose of the information request is to ascertain the nature of the relationship between the UMWA signatory companies and other AEI affiliated companies, in particular CC Coal. The Union wishes to evaluate whether CC Coal has a single employer, joint employer and/or alter ego relationship with a UMWA signatory company.

In his reply of June 30, Cowen recognized that Parker was investigating "the alleged relationship between various companies" and wrote that he would address that matter in his response to the specific questions contained in Parker's June 2 demand. In the meantime, however, regarding "AEI," which he correctly identified as "AEI Resources, Inc." (AEI), he explained that Cannelton was a corporation engaged in the mining and preparation of bituminous coal at its Stockton Mine and Lady Dunn Preparation Plant in Kanawha County, that Cannelton had been in existence as a coal mining company for well over 30 years, and that Cannelton was a wholly owned subsidiary of Cannelton Inc., which also had other subsidiaries. He also explained that in the summer of 1998, the stock of Cannelton Inc. was purchased by West Virginia Indiana Coal Holding Company, Inc. (West Virginia Indiana), a holding company that also owned other companies and was owned by AEI, also acquired the stock of Princess Beverly in the first quarter of 1999.

Parker wrote to Cowen on July 18 that he used AEI

> as a generic term referring to companies known commonly as "AEI" or "Addington," much as "AEI" or "Addington" are used in industry publications, because the Union does not want to wager a guess as to the corporate structure, and every company therein, that links CC Coal and any UMWA signatory. In essence, the term could include any company that is requested to provide information or is named in response to any of the Union's information requests.
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> It is not at all clear why this distinction makes a difference or why the identity of "AEI" is relevant to the Employer's obligation to respond to the Union's request for information. If the Union had perfect information about the relationship between UMWA signatories and other related companies, it could be more specific.

Despite the fact that Parker had advised Cowen that he was seeking to prove that CC Coal was an alter ego of, and thus the same entity as, both Cannelton and Princess Beverly, Cowen repeatedly insisted that the Union was asking for items not related to his clients. In his letter of July 21, Cowen wrote that Parker's requests sought information from or about other companies, some of which had agreements with the Union, and others did not, which were unrelated "to the wages, hours or other employment conditions of Cannelton's classified employees, and therefore it is not clear how this information is relevant to the UMWA's role as the representative of those employees." Finally, although Parker's letters were perfectly clear in asserting his alter ego theory, Cowen repeated that he was unaware of any interrelationship between the operations of CC Coal and Cannelton and Princess Beverly. Furthermore, Cowen charged that Parker's letters did "not actually state that the UMWA claims or believes that such a relationship may exist, nor [did it] identify any objective factual basis substantiating any such claim or belief." Cowen objected to Parker's "mere conclusory statements regarding alleged relationships [which] do not assist [him] in identifying relevant information." He asked Parker for "the factual basis supporting [his] belief that the requested information is relevant to the UMWA's representative role."

On August 23, Parker wrote to Cowen, enclosing attachments to support his allegations:

[3] All dates are in 2000, unless otherwise indicated. On July 28 and August 23, the Union demanded the same information from Dunn and Kanawha, respectively. In the interest of brevity, the recitation of facts in this Decision relates specifically to Cannelton; but Parker's demand for information from Kanawha and Dunn and Cowen's letters on behalf of the other parties have substantially the same content, and the issues raised are identical.

I write in response to your request for information regarding the Union's good faith, objective basis for requesting information regarding the relationship between CC Coal Company and the UMWA signatory companies from whom the Union has made information requests. As explained in previous correspondence, the Union believes that a single, joint employer, and/or alter ego relationship may exist between CC Coal Company and one or more UMWA signatory companies affiliated, owned or controlled by AEI Resources, Inc., Addington Enterprises, Inc., or a related company.

The Union's requests for information have been based in part on the following information:

According to the most recent filing, dated April 29, 1999, made by "AEI Resources, Inc. and AEI Holding Company, Inc." with the Securities and Exchange Commission (a single company based upon the filing) the principle [sic] executive offices of all AEI-related companies, including (among others) CC Coal, Coal Ventures Holding Co., Inc., Cannelton, Inc., Cannelton Industries, Inc., Dunn Coal and Dock Company, Kanawha Corporation, Inc., West VirginiaIndiana Coal Holding Company, Princess Beverly Coal Company, and Princess Beverly Coal Holding Company, is 1500 North Big Run Rd, Ashland, KY 41102.

- CC Coal Company is a wholly-owned subsidiary of Coal Ventures Holding Co., which is in turn a wholly-owned subsidiary of AEI Resources, Inc. AEI Resources, Inc. also owns Princess Beverly Coal Company, a signatory company, as well as West Virginia-Indiana Coal Holding Company. West Virginia-Indiana Holding Company owns Cannelton, Inc. as well as Kanwaha Corporation, a signatory company. Cannelton, Inc. in turn owns Cannelton Industries, Inc. and Dunn Coal and Dock, both of which are signatory companies.

- Resource Data International, in a document entitled "Mine Controlling Company Profile: 1-Addington Enterprises, Inc.-Operations Page," lists together all the operations of AEI-affiliated signatory operations, as well as CC Coal Company's Skitter Creek operation. The listing, from 1999, indicates that Skitter Creek was owned at that time by Battle Ridge Co., and that Battle Ridge was a company controlled by Addington Enterprises (Addington Enterprises owns AEI Resources, either as a wholly-owned subsidiary, or through another wholly-owned subsidiary, AEI Resources Holding Inc.). Operations controlled by Addington Enterprises that are also listed include Cannelton Industries Inc.'s Lady Dunn Prep Plant and Stockton Mine, Cyprus Kanawha Corp.'s (currently Kanawha Corp.) Armstrong Creek mine, Dunn Coal and Dock's mines 150 and 155, and the Princess Beverly mine (listed as an operation of "Orion Resources"). Some time in November of 1999, Battle Ridge Companies apparently transferred the permits of the Skitter Creek mine to another AEI-controlled company, CC Coal Company.

- CC Coal Company has the following officers: Director, Stephen Addington; CFO, John E. Baum; CEO, Donald Paul Brown; President, Kevin Crutchfield; Treasurer, Vic Grub; Vice President, Coy K. Lane, Jr.; Secretary, Albert Eugene Lynch. These individuals all hold the identical posts for CC Coal Company's parent, Coal Ventures Holding Co.. They also hold these identical posts for AEI Resources, Inc., the common parent of Coal Ventures Holding Co. and West Virginia-Indiana Holding Co. These individuals are also all officers and/or directors of AEI Holdings, Inc., the company which originally purchased Kanawha Corp., Cannelton Industries, and Dunn Coal and Dock Co. from Cyprus Amax Corporation in a stock sale before these entities were transferred to AEI Resources subsidiary West Virginia-Indiana Holding Co.
- In addition to sharing principal offices in Ashland, Kentucky, CC Coal Company, Cannelton Industries, Inc[.], Kanawha Corp., and Dunn Coal and Dock Co. all operate out of the offices of West Virginia Indiana Holding Co.'s Chelyan, WV offices. All of these companies are listed on an internal telephone directory of West Virginia-Indiana Holding Co.

- AEI Resources, Inc., which filed a consolidated filing with the Securities and Exchange Commission for all its affiliated companies in 1999, indicated that the intention of the company was to integrate its various operations in order to provide coal from multiple sources to satisfy its long-term sales contracts and to save expenses by closing unneeded offices, reducing personnel, and taking advantage of "mining and material sourcing synergies." The SEC report discusses all the AEI-affiliated operations and their impact on that goal.

- UMWA members have heard CB radio communications indicating that coal mined at CC Coal Company's Skitter Creek operation is being shipped to Cannelton Industries Inc.'s Lady Dunn Prep Plant by trucks contracted to 4Way Trucking Company. The coal is then being blended with coal from other AEI-affiliated companies, including Cannelton Industries, Dunn Coal and Dock, and Kanawha Corp., and possibly Princess Beverly Coal Company.

- Mr. James Wills, Local Union President for the classified employees of Cannelton Industries, Inc., has received correspondence addressed to him on letterhead from Princess Beverly Coal Company in an envelope with the logo of AEI Holdings Co., Inc. as the return address. The let-

ter indicates payment of contributions to the 401K Plan under the UMWA collective bargaining agreement. It is not clear whether the payments reflect payments on behalf of employees at Cannelton Industries or Princess Beverly Coal Company, but it does reflect that for purposes of benefits and payroll that the AEI-affiliated companies appear to have some form of integrated, centralized accounting and payments source at AEI Holdings, Inc.

- During previous settlement discussions between you and myself regarding Cannelton Industries Inc. v. Dist. 17, UMWA and Local Union 8843, UMWA, 2:98-0894 (S.D.W.Va.), Cannelton Industries offered a written settlement agreement in which it sought the UMWA to forego enforcement of any rights it may have against "any and all affliated corporations and/or entities" regarding the mining of coal in an area described by property description "North of Jennie Creek in Mingo County, West Virginia." That settlement agreement was offered to the Union in March of 1999. Attached please find information taken from the Website of the West Virginia Division of Environmental Protection which provides the permit details from CC Coal's "Jennie Creek Haulroad." This permit appears to be on or in close proximity to the property described in Cannelton Industries, Inc.'s settlement offer. Marrowbone Development Co., another AEI-owned signatory company, has permits and operations on and/or around this property as well. Cannelton Industries never had any proprietary interest in that property. At the same time that this settlement offer was provided to the Union, your firm also presented the Union with a draft copy of a civil RICO lawsuit to be filed against present and former officers and representatives of District 17 and Local Union 8843 by West Virginia-Indiana Coal Holding Company, Inc[.], Cannelton, Inc., Cannelton Industries, Inc., and Dunn Coal and Dock Company if the Union did not accept the terms of the settlement offer. This settlement offer, made by Cannelton Industries, Inc., regarding property owned and/or controlled by Marrowbone Development and/or CC Coal Company, indicates an integration of the businesses of all of these companies as well as an apparent desire to avoid any Union claims to the work at issue.

The Union has served information requests on Cannelton Industries, Dunn Coal and Dock Co., Princess Beverly Coal Company, and Kanawha Corp. These information requests were served because the above information gives it a good faith, objective basis for believing that CC Coal may constitute a single, joint, employer, and/or alter ego company with one or more UMWA signatory operations of AEI Resources, Inc. and/or its affiliated companies. [Reference to attachments omitted.]

Parker's reply was not enough to convince Cowen, who again denied that Parker was seeking relevant information because Respondents were unaware of any interrelation whatsoever between their operations and that of CC Coal. Parker's August 23 letter "did not clarify Respondents' confusion" nor have "relevance to the[ir] alleged operational integration." Cowen disputed the legal sufficiency of Parker's allegations. For example, Cowen wrote on September 29:

> [Y]our August 23, 2000 letter contains nine (9) unnumbered items. Items 1, 2, 3 and 5 merely suggest that Cannelton and CC Coal Company have the same ultimate parent company - AEI Resources, Inc. As you know, the mere fact that two companies may be part of the same corporate structure, alone, never constitutes single employer status and is not sufficient to establish an "objective factual basis" for believing that Cannelton and CC Coal Company are a single employer, joint employer and/or alter egos.
>
> Items 4, 6, 7 and 8 appear to be irrelevant to whether there is operational integration sufficient to support a single employer, joint employer and/or alter ego relationship between the operations of CC Coal Company and Cannelton. For example, item 4 discusses corporate officers, but notably absent is any suggestion that Cannelton and CC Coal Company share any corporate officers or directors. Therefore, the relevance of this item is confusing. Only item 7 appears to have any possible relevance to the operations of Cannelton, but, even if the events you describe are accurate, as you know, the processing of coal is not evidence of a single employer relationship. See *Boich Mining Co. v. NLRB*, 955 F.2d 431 (6th Cir. 1992).
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> Finally, with regard to item 9, notwithstanding Cannelton's surprise that the UMWA would ignore the confidentiality of settlement discussions and violate the parties' understanding that these settlement discussions were "off the record," Cannelton fails to comprehend how the UMWA's pattern of illegal activity and conjecture regarding settlement negotiations is evidence of operational integration between Cannelton and CC Coal sufficient to support a single employer, joint employer and/or alter ego relationship.

Cowen ended by renewing his request that the Union

> provide a "factual basis" to support its claim that there existed sufficient operational integration between Cannelton and CC Coal Company to support an "objective factual basis" for believing that a single employer, joint employer and/or alter ego relationship existed. Absent an "objective factual basis" for such claims, it does not appear that the requested information is relevant to the UMWA's role in representing Cannelton's classified employees.

Finally, 4 days before the hearing in this proceeding, on November 30, 2001, Deborah Feliks, staff attorney of the Union, wrote to Cowen to clarify the relevance of the information requests the Union served on Respondents:

If alter ego status is imposed upon two business entities, the labor obligations of the original employer will be carried over to the subsequent entity. Therefore, if the Union establishes such a relationship between CC Coal and any signatory Cannelton company, then the collective bargaining agreement would also apply to CC Coal. Similarly, if a single employer relationship exists, then the contract would apply if the Union can establish that CC Coal employees share enough of a community of interest with the signatory employees to constitute an appropriate bargaining unit.

If the UMWA can establish such an alter ego or single employer relationship, then any number of important contract provisions could apply to CC Coal's presently nonsignatory employees. For instance, the employees of Armstrong Creek were covered by the National Bituminous Coal Wage Agreement ("NBCWA"). Section A of Article II of the NBCWA covers Job opportunities "at any existing, now or newly acquired non-signatory bituminous coal operation of [the Company]." Therefore, if a. single employer relationship exists, laid off signatory Cannelton employees could have job rights at CC Coal and any other Cannelton operations functioning as an alter ego or sharing a single employer relationship. Similarly, the Union needs the requested information to determine whether there exists potential for the negotiation of a jobs provision similar or identical to the NBCWA's Memorandum of Understanding Regarding Job Opportunities.

Article XVII of the NBCWA, entitled "Recall of Persons on Layoff Status," sets out a definition of seniority, and describes layoff procedures, recall rights, the procedure for recall of employees on layoff, and the rights of employees to transfer to an employer's other mines. Section (h) specifies that "[s]ignatory companies and coal producing divisions thereof, and wholly owned and controlled coal producing subsidiaries and wholly owned arid controlled coal producing affiliates, shall be treated as one and the same Employer for panel rights purposes." Since a wholly owned subsidiary is a company to which the Union has panel rights, then the Union has the right to determine whether CC Coal or any other Cannelton companies are wholly owned coal-producing affiliates of a signatory company. If the information requested bears this out, former Armstrong Creek employees could be in a position to take advantage of some of the provisions of Article XVII. For example, if Cannelton is found to be a single employer or to have an alter ego relationship with a parent company, and CC Coal is a wholly owned and controlled subsidiary or affiliate of that company, then the contract could allow former Armstrong Creek employees to obtain immediate reemployment at the Company's operations, or at least to be on the panel for CC Coal.

Because every scenario presented in this letter directly impacts the UMWA's ability to negotiate, administer, and enforce the collective bargaining agreement, there can be no doubt that the information the UMWA has requested satisfies the applicable legal definition of "relevance." Therefore, the UMWA once again implores Cannelton Industries, Princess Beverly, Dunn Coal & Dock, and the Kanawha Corporation to respond to the above-referenced information requests.

Cowen did not respond to this letter.

The Board wrote in *Shoppers Food Warehouse*, 315 NLRB 258, 259 (1994):

> [I]t is well settled that an employer, on request, must provide a union with information that is relevant to its carrying out its statutory duties and responsibilities in representing employees. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967). This duty to provide information includes information relevant to contract administration and negotiations. *Barnard Engineering Co.*, 282 NLRB 617, 619 (1987); and *Leland Stanford Junior University*, 262 NLRB 136, 139 (1982), enfd. 715 F.2d 473 (9th Cir. 1983). . . . [W]here, as here, the information sought concerns matters outside the bargaining unit, such as those related to single employer or alter ego status, a union bears the burden of establishing the relevance of the requested information. *Reiss Viking*, 312 NLRB 622, 625 (1993); and *Duquesne Light Co.*, 306 NLRB 1042 (1992). A union has satisfied its burden when it demonstrates a reasonable belief supported by objective evidence for requesting the information. *Knappton Maritime Corp.*, 292 NLRB 236, 238-239 (1988). See also *Postal Service*, 310 NLRB 391 (1993). The Board uses a broad, discovery-type standard in determining relevance in information requests, including those for which a special demonstration of relevance is needed, and potential or probable relevance is sufficient to give rise to an employer's obligation to provide information. *Reiss Viking*, supra; *Children's Hospital of San Francisco*, 312 NLRB 920, 930 (1993); and *Pfizer, Inc.*, 268 NLRB 916, 918 (1984), enfd. 763 F.2d 887 (7th Cir. 1985). In this regard, the Board does not pass on the merits of a union's claim of breach of a collectivebargaining agreement in determining whether information relating to the processing of a grievance is relevant. *Reiss Viking*, supra; and *Island Creek Coal* Co., 292 NLRB 480, 487 (1989), enfd. mem. 899 F.2d 1222 (6th Cir. 1990).

See also *Allison Corp.*, 330 NLRB 1363, 1367 (2000).

The Union represented the employees of each of Respondents. If it could prove that CC Coal were merely a single employer with or an alter ego of Respondents, then it would represent the employees of CC Coal, too. Separate firms may be regarded as a single employer under the Act where there is interrelation of operations, together with centralized control of labor relations, common management, and common ownership or financial control. *Radio Technicians Local 1264 v. Broadcast Service of Mobile*, 380 U.S. 255 (1965); *NLRB v. M. P. Building Corp.*, 411 F.2d 567 (5th Cir. 1969). An alter ego relationship is much the same. The line seems to be drawn between the two concepts when it is found that one entity is the "disguised continuance" of the other. Then, one is the alter ego of the other. *Radio Technicians Local 1264 v. Broadcast Service of Mobile*, 380 U.S. at 256; *Southport Petroleum Co. v. NLRB*, 315 U.S. 100, 106 (1942). To determine the existence of an alter ego relationship, the Board focuses on whether the entities share "substantially identical management, business purpose, operation, equipment, customers, and supervision, as well as ownership." *Crawford Door Sales Co.*, 226 NLRB 1144 (1976).

The Board does not require the presence of each factor to conclude that alter ego status is warranted. *Dow Chemical Co.*, 326 NLRB 288 (1998); *Fugazy Continental Corp.*, 265 NLRB 1301 (1982), enfd. 725 F.2d 1416 (D.C. Cir. 1984). For example, actual common ownership is not an essential element of an alter ego relationship. *All Kind Quilting*, 266 NLRB 1186 fn. 4 (1983). Nor is nominal, as distinguished from real common management and supervision. *American Pacific Concrete Pipe Co.*, 262 NLRB 1223, 1226 (1982), enfd. mem. 709 F.2d 1514 (9th Cir. 1983). Rather, single employer status depends on all the circumstances[4] and is characterized by the absence of the arms'-length relationship found between unintegrated entities. *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). *Dow Chemical Co.*, 326 NLRB 288 (1998); *Denart Coal Co.*, 315 NLRB 850, 851 (1994), enfd. sub nom. *Vance v. NLRB*, 71 F.3d 486 (4th Cir. 1995); *Hydrolines, Inc.*, 305 NLRB 416, 417 (1991). Each case must turn on its own facts. *Advance Electric*, 268 NLRB 1001, 1002 (1984).

All the Union's demands were aimed at showing the interrelationship of Respondents with the operation of CC Coal. As such, they were directed to show the very sharing of functions necessary to prove a single employer or alter ego relationship, the result of which would be that CC Coal would be bound under the Union's subsisting collective-bargaining agreements. The relevance was patent, especially to an experienced counsel such as Cowen. *Leonard B. Herbert, Jr., &* Co., 259 NLRB 881 (1981), enfd. 696 F.2d 1120 (5th Cir. 1983), cert. denied 464 U.S. 817 (1983).[5] Parker clearly stated the relevance of the requests; and, even if he had not, a reading of his letters, together with the material that he sought, had to make the relevance clear to Cowen, no matter what he might have written. *Ohio Power Co.*, 216 NLRB 987, 995 (1975), enfd. 531 F.2d 1381 (6th Cir. 1976); *Beth Abraham Health Services*, 332 NLRB 1234 (2000). Feliks' letter, quoted at length above, only made clearer what should have been obvious.

The Union also established that the requested information was relevant to the Union's grievance processing. There had been a grievance filed on January 17, 2000, claiming that the employees who had been laid off by Dunn should be placed on the panel of persons to be hired at "all of the Co. operations," referring to all of the AEI or West Virginia Indiana interests. That claim was made under the provision in the NBCWA that, at the very least, the first three out of every five new job openings, which included CC Coal, if the Union proved it to be an alter ego, should be filled by classified laid-off employees of Dunn. The fact that Parker made no reference to the specific provisions of the collective-bargaining agreements does not diminish the strength of the General Counsel's case. Feliks' letter made clear exactly what should have been well understood by Respondents.

In addition, assuming arguendo that Feliks' letter was untimely, as Respondents contend, Cowen was certainly aware of the Union's contentions in early 2001, because the counsel for the General Counsel asked in March for his position regarding the specific provisions that Feliks and the General Counsel relied on in prosecuting the complaint in this proceeding. Cowen argued that the provisions were "not applicable in the circumstances of this case." I do not hold that he was incorrect. He may succeed before an arbitrator or another body, if the Union seeks to pursue its claim that the laid-off employees of Dunn, as well as the other Respondents, are entitled to jobs from CC Coal. But the General Counsel need not establish an actual violation to show relevance.[6] This is not a proceeding to determine that issue. *Southeastern Brush Co.*, 306 NLRB 884 fn. 1 (1992). It is a proceeding to determine the Union's right to information to aid it in determining whether it has enough facts to support its claim. *Oklahoma Fixture Co.*, 333 NLRB 804, 807 (2001); *Associated General Contractors of California*, 242 NLRB 891, 893–894 (1979), enfd. 633 NLRB 766, 771 fn. 6. (9th Cir. 1980), cert. denied 452 U.S. 915 (1981). In that instance, the information sought is clearly relevant.

In any event, I find that Feliks' letter was not untimely. The facts show that the Union repeatedly demanded the same information for essentially the same reason, to prove, inter alia, that CC Coal was an alter ego and to support the claims of Respondents' laid-off employees to other jobs. *General Electric Co. v. NLRB*, 916 F.2d 1163 (7th Cir. 1990), relied on by Respondents, is distinguishable. There, the union asked for cost information on certain maintenance subcontracts 16 months prior to the expiration of its collective-bargaining agreement and 13 months before it could serve notice that it wished to terminate or modify the agreement. The Union never explained the reason that it wanted the information, and the court held that its first-time explanation at the hearing before the administrative law judge 9 months after its demand was too late. *Bamard Engineering Co.*, 282 NLRB 617 (1987), distinguished by the court in *General Electric*, 916 F.2d at 1169, held that there was a continuing request, as the facts demonstrate here, is still good Board law.

Accordingly, I find that the Union's demands are relevant to its collective-bargaining functions, and I turn to the second issue concerning whether the Union had "a reasonable belief supported by objective evidence for requesting the information." The Union must offer more than mere suspicion, *Sheraton Hartford Hotel*, 289 NLRB 463, 464 (1988); and the sufficiency of "a slight suspicion" is subject to question. *Corson &*

[4] Because a consideration of all the circumstances is critical, *Boich Mining Co. v. NLRB*, *955* F.2d 431 (6th Cir. 1992), which found that there were no other indications that two companies were interrelated, declined to find that their blending of a relatively small amount of coal could transform them into a single employer. Although the Union's questions seek information about blending, that refers to only one possible indicia of their relationship.

[5] Respondents' reliance on *Island Creek Coal Co.*, 292 NLRB 480 (1989), enfd. mem. 899 F.2d 1222 (6th Cir. 1990), is misplaced. There, the union never made it clear, other than by an empty generalization, the reason that it was seeking information.

[6] I find that Parker's testimony, relied on by Respondents, does not support a finding that, under no circumstances, an arbitrator could not grant rights to Respondents' laid-off employees to jobs at CC Coal, especially if CC Coal were found to be an alter ego of Respondents. Rather, Parker's testimony seems to indicate that the Union has not been successful in sustaining its claims under art. II of the NBCWA. He did not concede that the grievance had no merit.

Gruman Co., 278 NLRB 329 (1986), enfd. mem. 811 F.2d 1504 (4th Cir. 1987). On the other hand, the Union is not required to show that the information which triggered its request was accurate or ultimately reliable, and its information request may be based on hearsay. *Magnet Coal*, 307 NLRB 444 fn. 3 (1992), enfd. mem 8 F.3d 71 (D.C. Cir. 1993). Even rumors may be pursued, providing that there is at least some demonstration that the request for information is more than pure fantasy. *Sheraton Hartford Hotel*, supra.

CC Coal Company is wholly owned by Coal Ventures Holding Company, Inc., which was wholly owned by AEI Resources Holding, Inc., which was wholly owned by AEI, which, in turn, was the owner of West Virginia Indiana Coal, which, by itself or other holding companies, is the owner of Respondents. The SEC filings stated that all of these companies had the same address in Ashland, Kentucky. The officers of CC Coal occupy identical offices in its immediate parent and in AEI. The only common officer in CC Coal and Respondents is William H. Haselhoff, who was a director of Cannelton and Dunn beginning March 28, 2000, and secretary-treasurer of each from October 5, 1998. He was also a vice president of CC Goal from June 29, 1998, to October 23, 1998. The offices of CC Coal and Respondents are presently located in the same building in Cheylan, West Virginia. At least one person affiliated with Respondents knows what is happening at CC Coal. Terry Whitt, vice president of labor and employee relations with West Virginia Indiana, knew enough to deny that he was the same person who works for CC Coal, but knew that there was a "Whitt" or "Witt" employed there. Mike Fugate was in charge of running the mine at Dunn, yet he too knew enough about CC Coal to tell the Dunn employees that CC Coal was about to open.

Wayne Bennett was employed by Dunn but was issued paychecks by Coal Ventures, Inc., not otherwise identified, but whose name is strikingly similar to the name of the holding company that owns CC Coal. Bennett was hired to work at CC Coal; but when he was sent to take his physical examination, he was identified as a prospective employee of West Virginia Indiana, the owner of Respondents, and was issued a health benefit plan card by West Virginia Indiana. At CC Coal, he was issued clothing with the name "Addington" on it. Dunn employee Philip Camden was also issued paychecks from West Virginia Indiana and Coal Ventures, Inc., and he was listed as an employee of West Virginia Indiana on a bill for an X-ray he took. He complained that he had lost money from one of his paychecks that was supposed to be deducted for the purchase of savings bonds and was referred by Dunn to the office of AEI in Ashland, Kentucky, where the telephone was once answered "Addington." On another occasion, he had a problem with a wage payment and tried to telephone Dunn, but was told that there was no working number. He knew that the office had moved to Cheylan and asked the information operator whether there was a number there for a coal company. He was told that there was, CC Coal, and called there and asked to speak to the payroll person from Dunn. The employee, presumably from CC Coal, transferred him to the Dunn employee. There were reports of employee interchange, shared equipment, and sharing of common contractors by Respondents to CC Coal. CC Coal's coal was being blended with coal mined by others of Respondents.

I find that these facts present a reasonable objective basis to believe that CC Coal may be a single employer with or alter ego of Respondents. The fact that the Union may not have sufficient proof at this time to sustain its belief and support such a finding is unimportant. If it had absolute proof, there would have been little reason for it to have made its request for information in the first place.[7] Furthermore, the General Counsel was entitled to prove at the hearing the Union's objective basis for making its information request. Contrary to Respondents' contention, Board law requires only that the Union give them a showing of relevance when making its demand. There is no Board authority—and I am bound by Board decisions, until the United States Supreme Court rules to the contrary—which holds that a union is required to show its objective basis, as opposed to relevance, at the time that it makes its demand. As Respondents' brief concedes, Administrative Law Judge Marvin Roth has twice held that objective facts not be stated that early. *Baldwin Shop `N Save*, 314 NLRB 114 (1994), and *Corson & Gruman Co.*, 278 NLRB 329, 333–334 fn. 3 (1986). Beside his cogent discussion of the law, with which I agree,[8] his conclusion makes eminent good sense in an alter ego case. If anyone should know the facts that underlie the Union's request, Respondents presumably know. After all, an alter ego case is based on there being a disguised continuance. An employer does not want the existence of an alter ego known, because frequently the purpose of its establishment is to divert work and undercut the terms of a collective-bargaining agreement. To force a union to reveal its objective facts at the outset merely permits an employer to change and correct its unsuccessful methods of disguise. On the other hand, by requiring that a union support its request with objective facts at the hearing, the Board ensures that a union is not engaged in a mere fishing expedition.

Here, the Union provided Cowen with many objective facts long before the hearing. The factual bits and pieces that I have found it now possesses, combined with the material that it has asked for, may as a whole constitute sufficient proof of an alter ego relationship. The Union is entitled to obtain that information. Respondents' objection to the Union's demand for information rests solely on its claim that the Union proved neither the relevance of an alter ego relationship nor an objective basis for making its demands. I reject their defense. But even had they objected to the relevance of individual demands for information, I credit Parker's testimony and note that the Board has required employers to produce information similar and even identical to the information that the Union requested, in the specific context of the NBCWA. *Magnet Coal*, supra; *Consolidation Coal Co.*, 307 NLRB 69 (1992), enfd. mem. 979 F.2d 847 (4th Cir. 1992); *Arch of West Virginia*, 304 NLRB 1089 (1991); *Westmoreland Coal Co.*, 304 NLRB 528 (1991); *Maben Energy Corp.*, 295 NLRB 149 (1989).

[7] For this reason, Respondents' motion to dismiss the complaint on this basis, denied at the hearing, is denied once again.

[8] For this reason, Respondents' motion to limit the proof at the hearing is denied.

Accordingly, I conclude that Respondents violated Section 8(a)(5) and (1) of the Act by failing to produce the requested information.

REMEDY

Having found that Respondents have engaged in certain unfair labor practices, I find that they must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, I will order Respondents to answer fully the Union's requests for information. To the extent that they answered some requests based on their understanding that the relationship between CC Coal and them was irrelevant, or directing the Union to another company to provide the information, or denying the relevance of the Union's request, Respondents shall answer those requests again, based on the findings in this decision that the relationships are relevant, as are the questions.

[Recommended Order omitted from publication.]

APPENDIX A

Definitions and Instructions

1. This request is being simultaneously directed to Cannelton Industries, Inc. (Cannelton) and Princess Beverly, Inc. (Princess Beverly). The named companies may respond collectively or separately, but should so indicate in their response(s).

2. "You" refers to Cannelton, Princess Beverly and all agents or representatives responding on behalf of either company to this information request.

3. Please provide all requested information. If you do not have knowledge sufficient to answer a question, you are requested to take diligent measures to obtain knowledge sufficient to answer that question from your representatives, attorneys, accountants, or other agents. You are also requested to take diligent measures to obtain knowledge sufficient to answer any such question from any company which has a proprietary interest in you, either directly (your immediate parent company) or indirectly (your ultimate parent company as well as any intermediate companies, for example). You are also requested to obtain such information necessary to provide full and complete answers to these requests from any company in which you or any parent company has a direct or indirect proprietary interest (for example a "sister" company with a common parent at some point in your shared corporate tree). By "indirect" the Union means any corporate or proprietary relationship regardless of the number of intermediary entities or the particulars of the whole or partial propriety interest. The purpose of these instructions and definitions is to prevent you from claiming a lack of knowledge in response to a request for information when the requested information can be obtained from a related company.

4. Please provide all requested documents. If you do not have documents responsive to a request, you are requested to take diligent measures to obtain and provide responsive documents from your representatives, attorneys, accountants, or other agents. You are also requested to take diligent measures to obtain responsive documents from any company which has a proprietary interest in you, either directly (your immediate parent company) or indirectly (your ultimate parent company as well as any intermediate companies, for example). You are also requested to obtain such documents from any company in which you or any parent company has a direct or indirect proprietary interest (for example a "sister" company with a common parent at some point in your shared corporate tree). By "indirect" the Union means any proprietary relationship regardless of the number of intermediary entities or the particulars of the whole proprietary interest. The purpose of these instructions and definitions is to prevent you from claiming a [sic] that you do not have documents responsive to a request when you can obtain those documents from a related company.

5. "Concerning" or "concerns" means reflecting, related to, involving, describing, evidencing, or constituting.

6. "Document" means the original and copies of any written, printed, typewritten, or otherwise recorded material known to the person or company served with this request, or his attorney, including but not limited to letters, memoranda, bulletins, telegrams, notes, notebooks, transcripts, diaries, charts, diagrams, graphs, photographs, minutes and other records of meetings, tapes, maintenance of data in electronic data processing systems, and any other recordings or other data compilations containing the requested information; briefs, affidavits, position statements, and other legal documents; correspondence and other written communication; books, pamphlets, manuals, brochures and guides; contracts, reports, invoices and receipts; and all other documentary material, including any nonidentical copy (whether different from the original because of alternations, [sic] notes, comments, or other material contained thereon or attached thereto, or otherwise) and drafts as well as final versions.

7. "Identify" or "identification" means
(a) with respect to a document, to specify the author and recipient of the document, the date of the original document, the nature of the document by title (or, if no name or title applies, by other description), and the location and custodian of the document (if the document sought has been destroyed or no longer exists, state all facts known about the document, specify the date it was destroyed or ceased to exist, and describe all the circumstances relating to its destruction or ceasing to exist);
(b) with respect to an individual, to state the person's name, home and business addresses and telephone numbers, name of employer, and relationship to any UMWA signatory or related company.
(c) with respect to an entity, to state its name, business address and telephone number, and relationship to any UMWA signatory or related company.

8. "Person" means any natural individual, governmental entity or agency, business entity (including but not limited to a corporation, firm, partnership, joint venture, association or sole proprietorship), organization, association, federation, trust; estate, group or other entity of any type.

9. "UMWA signatory" refers to Cannelton and Princess Beverly, as well as any subsidiary, division, or operation controlled by either company.

10. Whenever used herein, the singular shall be deemed to include the plural and vice versa; the present tense shall be deemed to include the past tense and vice versa; the masculine shall be deemed to include the feminine and vice versa; the disjunctive "or" shall be deemed to include the conjunctive "and" and vice versa; and each of the words "each," "every," "any," and "all" shall be deemed to include each of the other words.

11. As to any document withheld from production on any ground, including privilege, or any document which has been destroyed, please: (a) identify the document; and (b) state with particularity the facts and grounds on which you base your refusal to produce a and (c) if the document sought has been destroyed or no longer exists, state all facts known about the document, specify the date it was destroyed or ceased to exist, and describe all the circumstances relating to its destruction or ceasing to exist.

12. To the extent that any document request requires you to duplicate the production required by a previous request, you may so state and reference the previously provided documents without providing duplicate copies of the same documents.

13. Any requested document or information should be produced at the UMWA Headquarters, 8315 Lee Highway, Fairfax, VA 22031.

14. Unless otherwise stated, the relevant time period for this request is from June 1, 1999 to the present.

REQUEST FOR WRITTEN RESPONSES

1. With respect to CC Coal, state
   a. Full name of company;
   b. Date of incorporation or formation;
   c. Address of principal office;
   d. Reason for formation;
   e. Source of initial capitalization;
   f. Business activity performed;
   g. Each geographical area where business is performed or transacted;
   h. Officers and directors at time of formation and at present;
   i. Any other names by which the company is known.

2. Please provide all documents which contain any organizational charts, bulletins, or explanations of "corporate trees" which concern the corporate relationship between CC Coal, the UMWA signatory companies, and any and all commonly related companies. This request includes but not limited to articles of corporation with all amendments and attachments, mine permits, and legal identity reports filed with any federal or state agency. If a organization chart, bulletin, or other document does not exist that clearly outlines the "corporate tree," in the alternative please draft such an organizational outline.

3. Please provide all deeds, leases, licenses, contracts, permits, reports, bonds, or other similar instruments which identify lands or coal reserves in West Virginia in which CC Coal has a proprietary interest.

4. Please provide all deeds, leases, licenses, contracts, permits, reports, bonds, or other similar instruments which identify or relate to land or coal reserves in West Virginia on which CC Coal operates or intends to operate.

5. Produce all contracts, agreements, memoranda of understanding, or similar instruments which concern

a. The development of coal resources by, for, or on behalf of CC Coal;
b. The marketing of coal by, for, or on behalf of CC Coal;
c. The acquisition or use of coal lands, coal mining, processing or transportation facilities, or equipment for, by, or on behalf of CC Coal.

6. Produce all documents which describe or dictate the terms and conditions of employment for employees of CC Coal, including but not limited to personnel manuals, policy memoranda, benefit and pension plans and their plan descriptions, and copies of forms such as job applications, employee evaluations, incident or discipline report forms, grievance forms, etc.

7. Provide all documents concerning the discipline of employees of CC Coal.

8. Provide all documents concerning the hiring procedures of employees at CC Coal.

9. For CC Coal, identify (or in the alternative provide documents which reflect) the person or persons responsible for performing duties and making management decisions in connection with
a. Coal sales;
b. Accounting and payroll;
c. Hourly and/or salaried employee benefit plans, including, but not limited to, pension plans, health plans, disability plans, sickness and accident plans, insurance plans, and profit sharing or financial bonus plans in which officers, managers, supervisors, or employees may or do participate.
d. Grievance handling;
e. Collective bargaining;
f. Labor relations;
g. Human resources or personnel;
h. Preparation of federal and state income tax returns;
i. Engineering;
j. Coal production;
k. Purchasing, leasing, contracting or any other manner of conveying or transferring mining supplies and equipment;
I. Liability insurance;
m. Laboratory services;
n. Legal representation or legal counsel;
o. Auditing;
p. Credit;
q. Purchasing of equipment;
r. Estimating;
s. Land or mineral right acquisition, sale, transfer or other conveyance;
t. Transportation services;
u. Obtaining bonds, permits, and other licenses;
v. Contracting for services and administration of commercial contracts;
w. Maintenance;
x. Secretarial duties.

10. For Cannelton, identify (or in the alternative provide documents which reflect) the person or persons responsible for performing duties and making management decisions in connection with
a. Coal sales;
b. Accounting and payroll;
c. Hourly and/or salaried employee benefit plans, plans, health plans, disability plans, sickness and profit sharing or financial bonus
employees may or do participate.
d. Grievance handling;
e. Collective bargaining;
f. Labor relations;
g. Human resources or personnel;
h. Preparation of federal and state
i. Engineering;
j. Coal production;
k. Purchasing, leasing, contracting mining supplies and equipment;
l. Liability insurance;
m. Laboratory services;
n. Legal representation or legal counsel;
o. Auditing
p. Credit;
q. Purchasing of equipment;
r. Estimating;
s. Land or mineral right acquisition, sale, transfer or other conveyance;
t. Transportation services;
u. Obtaining bonds, permits, and other licenses;
v. Contracting for services and administration of commercial contracts;
w. Maintenance;
x. Secretarial duties.

11. For Princess Beverly, identify (or in the alternative provide documents which reflect) the person or persons responsible for performing duties and making management decisions in connection with
a. Coal sales;
b. Accounting and payroll;
c. Hourly and/or salaried employee benefit plans, including, but not limited to, pension plans, health plans, disability plans, sickness and accident plans, insurance plans, and profit sharing or financial bonus plans in which officers, managers, supervisors, or employees may or do participate.
d. Grievance handling;
e. Collective bargaining;
f. Labor relations;
g. Human resources or personnel;
h. Preparation of federal and state income tax returns;
i. Engineering;
j. Coal production;
k. Purchasing, leasing, contracting or any other manner of conveying or transferring mining supplies and equipment;
l. Liability insurance;
m. Laboratory services;
n. Legal representation or legal counsel;
o. Auditing;
p. Credit;
q. Purchasing of equipment;
r. Estimating;
s. Land or mineral right acquisition, sale, transfer or other conveyance;
t. Transportation services;
u. Obtaining bonds, permits, and other licenses;
v. Contracting for services and administration of commercial contracts;
w. Maintenance;
x. Secretarial duties.

12. Please provide a copy of a W-2 form, a paycheck, and a pay stub for each individual identified in response to 9, 10, and 11, above, issued during the relevant time period. If the issuer of the W-2 form, paycheck, or pay stub has changed in the relevant time period, please provide a set of documents issued by each of those entities. You may redact social security numbers and entries on the forms related to wages and benefits.

13. Identify the officers and/or directors of CC Coal, Cannelton, and Princess Beverly. Identify any positions each individual holds with any related companies.

14. Please provide a list of all equipment used by CC Coal in its mining operation, including the serial number, name of manufacturer, model description, class description, model year, and AEI equipment number.

15. Describe and identify the assets, if any, of CC Coal and/or any other AEI subsidiary or affiliate acquired from Cannelton Industries and/or Princess Beverly.

16. Produce all documents reflecting the transfer of any proprietary interest in real property, between CC Coal, Cannelton, and/or Princess Beverly.
17. Produce all documents reflecting the transfer of any proprietary interest in real property between CC Coal and any parent or related company.

18. Produce all documents concerning the sale, transfer, leasing, lending, or transport of personal property, including but not limited to equipment, supplies, and spare parts, between UMWA signatories [and] CC Coal. This request encompasses both direct transactions and transactions by, with, or through intermediary entities or persons which resulted in the transfer of possession, interest in, or control of personal property between any UMWA signatory and CC Coal.

19. Regarding all contractual relationships for the sale, production, delivery, or brokerage of coal which have been entered into by, for or on behalf of CC Coal, Cannelton, and Princess Beverly, provide a copy of each contract. Supplement that production with any other documents necessary to reflect the full and complete terms of each contractual relationship. You may redact pricing data and data which reflect the chemical composition of coal, unless the contract is with a related company, in which case the Union requests that you do not redact pricing data.

a. For each document provided pursuant to this request, please identify the source of all coal (by mine, owner and operating entity) sold or transported pursuant to that agreement.

b. If coal from either CC Coal or a UMWA signatory is sold or transferred to a related corporate entity or person prior to being sold or transferred to an unrelated company or person, provide all contracts, sales or brokerage agreements, or similar instruments which reflect the terms and conditions for the sale, production, delivery, or brokerage of coal by and between all related companies. The Union requests that pricing data be included (not redacted) on any documents requested herein that concern transactions between related companies, though data related to the chemical composition of coal may be redacted.

20. Regarding docks, coal load out or transport facilities, coal testing laboratories, or coal prepping or blending plants (collectively "facilities") used by either CC Coal, Cannelton and Princess Beverly

a. State the legal relationship between each facility mid each of the following companies: CC Coal, Cannelton and Princess Beverly.

b. Identify tire individuals responsible for engaging in business transactions or managing matters on behalf of each facility. For each such individual, describe his or her particular function, and identify the entity who makes social security, federal and slate tax payments on his or her behalf.

21. Provide all documents concerning the transport, delivery, or sale of coal which has been mined by CC Coal. You may redact pricing data and data reflecting the coal's chemical composition, unless the documents concern a transaction with a related company, in which case the Union requests that you do not redact pricing data.

22. Regarding the impact that the formation of CC Coal has on Cannelton or Princess Beverly

a. Describe how the formation of CC Coal has affected, if at all, the corporate structure of Cannelton and Princess Beverly.

b. Do Cannelton and Princess Beverly maintain the same officers, directors, and management personnel as they did prior to the formation of CC Coal? If not, specify the changes which have occurred with respect to these personnel and/or their positions.

23. What is the relationship between CC Coal and the UMWA signatory companies? Do the companies share office equipment, operations equipment, or other assets?

a. If equipment and supplies are shared, please identify it/them.

b. If equipment or supplies not identified in a previous request have been transferred from one company to another, please identify the date of transfer and terms of any transfer of equipment.

c. Provide all documents which reflect the transfers described in "b," above.

d. Identify all persons employed by CC Coal, Cannelton and Princess Beverly, that perform work or provide services for another related company. For each, state the companies worked for, the functions and services performed for each company, and the company who pays each person, pays social security, handles taxes and benefits.

e. 1f the terms and conditions for the provision of any services identified in "d," above, are memorialized or described in any documents, please provide all such documents, including but not limited to contracts, agreements, leases, memoranda, or directives from parent companies,

f. Please identify and produce all contracts, agreements, or similar instruments under which at least two of the following receive services or equipment: CC Coal, Cannelton, Princes Beverly.

24. For Cannelton describe how the formation of CC Coal affects or may affect its operations, including coal production, day-to-day management of its operations, and marketing and blending of its coal.

25. For Princess Beverly describe how the formation of CC Coal affects or may affect their operations, including coal production, day-to-day management of its operations, and marketing and blending of its coal.

26. Provide all documents which concern the blending of coal mined by CC Coal with coal mined by a UMWA signatory. You may redact data related to chemical composition of coal.

27. Identify and briefly describe any lease, license, contract service agreement, or subcontract arrangements which exist or are contemplated between

a. CC Coal and any UMWA signatory company,

b. CC Coal and any other AEI subsidiary;

c. Any UMWA signatory and any other AEI subsidiary;

d. CC Coal and any third party, including but not limited to security, engineering, office support, sanitation (both office and mining), medical clinics, drug testing laboratories, equipment maintenance, food and beverage services, supplies (both office and mining), cleaning services, travel services, computer services and communication services. Where no agreement exists for one of these services, identify the person(s) or entity that provides the service.

e. Any UMWA signatory comany [sic] and any third party, including but not limited to security, engineering, office support, sanitation (both office and mining), medical clinics, drug testing laboratories, equipment maintenance, food and beverage services, supplies (both office and mining), cleaning services, travel services, computer services and communication services. Where no agreement exists for one of these services, identify the person(s) or entity that provides the service.

f. Identify the entity that issues the checks which regularly pay for the services described in "d" and "e" above, if it is not CC Coal. Provide a copy of one such check written to each person or entity. You may redact the amount of payment.

g. Provide all documents which reflect the agreements and contractual arrangements described in "a-e," above. Financial terms may he redacted unless the document reflects dealings with a related entity.

28. Identify the bank account(s) by bank account number, holder, and name of account in which the revenues or proceeds of CC Coal and each UMWA signatory company is presently deposited, the person(s) who opened the account(s), and the person(s) authorized to make deposits or withdraw funds from each such account.

29. Identify the bank account(s) by bank account number, holder, and name of account from which CC Coal and each signatory company presently pay their expenses of operation, including, but not limited to the payments of employees' wages and benefits. Identify the person(s) who opened the account(s) and the persons authorized to make deposits and/or withdrawal funds from each account.

30. Produce all documents which concern the relationship or potential relationship between CC Coal and the UMWA, including but not limited to documents concerning the potential application of a UMWA collective-bargaining agreement or part thereof at CC Coal operations, potential bargaining rights of the UMWA at CC Coal operations, or the potential employment of UMWA members at CC Coal operations.

31. Produce all documents which concern the management of CC Coal and that also concern employees or agents of a UMWA signatory.

32. Produce all documents concerning the terms and conditions of employment at CC Coal which also concern employees or agents of a UMWA signatory.

33. State the reasons for all layoffs at operations of Cannelton and/or Princess Beverly within the last year. Provide all documents which support the veracity of the provided reasons.

34. Please identify the person or persons who are responding to this information request.

35. Identify by name, title, and employer(s) the persons consulted in the course of responding to this informatitn request.

36. Produce all documents not otherwise requested which have been referenced or used by any person to provide answers to these requests.

APPENDIX B

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 any 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 United Mine Workers 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 our employees in the exercise of the rights guaranteed to them in Section 7 of the Act.

WE WILL furnish to the Union all the information requested in the Union's letter, dated June 2, 2000.

CANNELTON INDUSTRIES, INC.

APPENDIX C

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 any 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 United Mine Workers 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 bargainin agent of our unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed to them in Section 7 of the Act.

WE WILL furnish to the Union all the information requested in the Union's letter, dated June 2, 2000.

PRINCESS BEVERLY COAL COMPANY

APPENDIX D

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 any 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 United Mine Workers 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 our employees in the exercise of the rights guaranteed to them in Section 7 of the Act.

WE WILL furnish to the Union all the information requested in the Union's letter, dated August 23, 2000.

KANAWHA CORPORATION

APPENDIX E

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 any 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 United Mine Workers 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 our employees in the exercise of the rights guaranteed to them in Section 7 of the Act.

WE WILL furnish to the Union all the information requested in the Union's letter, dated July 28, 2000.

DUNN COAL AND DOCK COMPANY