JD(ATL)-36-08
Saline, MI

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
ATLANTA BRANCH OFFICE
DIVISION OF JUDGES

PAINT AMERICA SERVICES, INC.,
SRS GROUP, INC.,
PAINT AMERICA,
PAINT AMERICA, INC., and
PAINT AMERICA OF MICHIGAN, INC.

and Case 7-CA-47564

DISTRICT COUNCIL 22,
INTERNATIONAL UNION OF PAINTERS
AND ALLIED TRADES, AFL-CIO-CLC

Eric S. Cockrell, Esq. for the General Counsel.
Mr. Salvatore Randazzo for SRS Group, Inc.
Mr. Tommy Thomas for the Charging Party.

SUPPLEMENTAL DECISION

JOHN H. WEST, Administrative Law Judge: On September 30, 2004, the National Labor Relations Board (Board) issued a Decision and Order[1] which ordered, as here pertinent, Respondent Paint America Services, Inc. (PASI) to make whole discriminatee George Lancaster for any loss of earnings and other benefits that he may have suffered as a result of his discharge by the Respondent in violation of Section 8(a)(3) and (1) of the National Labor Relations Act, as amended (Act). On April 28, 2005, the United States Court of Appeals for the Sixth Circuit entered its judgment enforcing the Board's Order.[2]

Since a controversy arose regarding the amount of backpay and benefits due under the Order, the Regional Director for Region 7 issued a compliance specification and notice of hearing on December 20, 2006 (1) naming as Respondents not only PASI, but also SRS Group, Inc. (SRS), Paint America (PA), and Dutchman Waterproofing & Restoration, Inc. (Dutchman), (2) alleging (a) that all four entities constitute a single employer, and (b) the amounts due under the Board's Order, and (3) notifying Respondents that they should file a timely answer complying with the Board's Rules and Regulations. The Respondents described above in this paragraph filed an answer (1) denying (a) that they constitute a single employer, (b) that they had any obligation to contribute to the educational fund of District Council 22, International Union of Painters and Allied trades, AFL-CIO, CLC (Union), and (c) the compliance specification's allegations regarding the amounts due, and (2) claiming that Lancaster had not been the victim of unlawful discrimination and asserted that it had not received any proof that Lancaster had suffered any loss.

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[1] *Paint America Services*, 343 NLRB No. 41 (2004). The Board granted General Counsel's Motion for Default Judgment. While it is listed at the beginning of the volume, it is not reported in the volume since it is a summary judgment decision.

[2] No. 05-1241.

On May 14, 2007 the Regional Director for Region 7 issued an amended compliance specification (1) naming as Respondents PASI, SRS, PA, Paint America, Inc. (PAI) and Paint America of Michigan, Inc. (PAMI), and (2) alleging (a) that all five Respondents constitute a single employer, (b) Lancaster's interim earnings, and (c) the backpay due to Lancaster and to the vacation fund through December 31, 2006.

SRS and PA filed an answer to the amended compliance specification denying (a) that PASI, SRS, PA, PAI, and PAMI constituted a single employer, (b) that the Union had a collective-bargaining agreement with any Respondent during Lancaster's employment, and (c) that the remedy should include contributions to a union vacation fund. By subsequent letters General Counsel informed (a) SRS and PA that their answer and amended answer were deficient, and (b) PAMI, PAI and PASI that no answer had been received from them. PAMI, PAI and PASI never filed an answer to the amended compliance specification.

On July 24, 2007, the General Counsel filed with the Board a Motion for Partial Summary Judgment against Respondents SRS and PA and a Motion for Partial Default Judgment and/or Partial Summary Judgment against Respondents PASI, PAI, and PAMI.

On August 6, 2007 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's motions should not be granted. On August 17, 2007, SRS filed an answer to Notice to show Cause, and subsequently General Counsel filed an opposition to SRS's answer. PA, PAMI, PAI and PASI did not respond to the Notice to Show Cause.

On February 29, 2008 the Board issued a Supplemental Decision and Order.[3] In it the Board pointed out, as here pertinent, that the General Counsel, in both of his motions, seeks summary and/or default judgment on only those allegations in the amended compliance specification to be admitted as true against them, except for the single-employer allegation - as to which General Counsel does not seek judgment. The Board concluded that it would grant General Counsel's alternative Motion for Partial Summary Judgment against PASI because PASI's answer to the original compliance specification fails to satisfy the requirements of Section 102.56(b) and otherwise fails to raise an issue warranting a hearing; that General Counsel's amended compliance specification sets forth a formula for calculating gross backpay; that PASI's responses to the corresponding allegations in the original compliance specification fail to deny those allegations with the specificity required by Section 102.56(b); that PASI's answer fails to set forth an alternative backpay formula, an alternative backpay period, an alternative applicable wage rate, or an alternative number of hours that Lancaster would have worked but for the unlawful discrimination; that these are matters within the Respondent's knowledge, and PASI's failure to furnish such alternative supporting figures and premises renders summary judgment appropriate; that PASI may not relitigate the Board's prior finding that Lancaster was terminated during the term of a collective bargaining agreement; that General Counsel's Motion for Partial Summary Judgment against PASI is granted, except to the extent that the issue of interim earnings is remanded, which issue was adequately raised by Respondents SRS and PA; that resolution of the derivative liability on remand will necessarily resolve the question of the adequacy of the answer and amended answer of SRS and PA to the gross backpay allegations of the amended compliance specification; that if SRS and PA are not found to constitute a single employer together with PASI, then SRS and PA will not be liable for backpay; that if, on the other hand, the General Counsel proves that such a relationship exists,

[3] *Paint America Services*, 352 NLRB No. 31 (2008).

then SRS and PA will be bound by the failure of PASI to file an adequate answer here; that the answer of SRS and PA, which generally denies the interim earnings allegations, timely placed into issue Lancaster's interim earnings because interim earnings are generally not matters within the knowledge of a respondent and, therefore, a general denial is sufficient to defeat a motion for summary judgment; that General Counsel's Motion for partial Default Judgment against Respondents PAI and PAMI and his Motion for Partial Summary Judgment against Respondent PASI is granted, except to the extent that issues raised by SRS and PA have been remanded for a hearing; and that PASI, PAI and PAMI are not permitted to participate in that hearing. The Board ordered that General Counsel's Motion for (1) Partial Default Judgment against Respondents Paint America, Inc. and Paint America of Michigan, Inc., and (2) Partial Summary Judgment against Respondent Paint America Services, Inc. is granted, except to the extent that the issue of interim earnings is remanded to be decided at a hearing; and that a hearing be held before an Administrative Law Judge, which shall be limited to the determination of derivative liability and interim earnings.

The remanded hearing was held in Detroit, Michigan on May 14, 15, and 16, 2008 and on July 8, 2008. On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by Counsel for General Counsel and Salvatore Randazzo[4], I make the following

Findings of Fact

When called as a 611(c) witness by Counsel for General Counsel, Salvatore Randazzo testified that he is President of SRS; that he does not hold a position with any of the other companies named at the top of the amended compliance specification; that General Counsel's Exhibit 5 is an October 7, 1999 Michigan Certificate of Assumed Name which (a) indicates that the true name of the corporation is SRS Group, Inc., (b) assigns the identification number of 142-92A, (c) indicates that the assumed name under which the business is to be transacted is Paint America, and (d) indicates that Sal Randazzo is the President; that General Counsel's Exhibit 6 is a Michigan Department of Labor & Economic Profit Corporation Information Update form which indicates that the resident agent name and mailing address of the registered office for SRS Group, Inc., identification number 14292A, is Sal Randazzo, 107 E. Bennett, Saline MI 48176, and which shows that he signed the form as President, dated it "4/24/06," and gave the telephone number of 734-429-2366; that General Counsel's Exhibit 8 is his business card[5]; that General Counsel's Exhibit 9 is a check signed by his wife, Jamile Randazzo, made payable to SRS Group but he could not recall receiving it[6]; that General Counsel's Exhibits 10 - 15 are

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[4] Salvatore Randazzo requests a number of things in this pleading. No need or justification has been shown for the granting of any of the requests. Accordingly, all requests made by Salvatore Randazzo are hereby denied.

[5] The card reads as follows:

Paint America
EXCELLENCE APPLIED
Since 1989

Sal Randazzo
President
sal@paint-america

107 E. Bennett
Saline, Michigan 48176
Phone: 734-429-2366
Fax: 734-429-8184
Web: www.paint-america.com

An SRS Group Co.
COMMERCIAL/INDUSTRIAL COATING AND WALLCOVERING

[6] The check for $5,000.00 is drawn on the account of "Paint America, A PAINT AMERICA

Continued

invoices from "Paint America (a SRS Company), P.O. Box 456, Saline, MI 48176, Telephone 734-429-2366" to Dearborn Campus Support Serv.[7]; that General Counsel's Exhibit 16 is a five-page request for quotation sent to "Paint America of Michigan, Inc, Sal Randazzo, FAX # 734-429-8184"; that the request is "misnamed and misaddressed on its face, but it's been corrected in the final page" (transcript page 78); and that the last page of General Counsel's Exhibit 16 has handwriting which indicates a date of "6-24-05," the supplier's legal name is "Paint America," the name of the person signing is Sal Randazzo, his title is President, the specified address for "Paint America" is 107 E. Bennett, Saline, MI 48176, the email address is Salrandazzo@comcast.net, the phone number is 734-429-2366, the toll free fax number is 734-429-8184, and the taxpayer identification number is 38-3484068.

General Counsel's Exhibit 104 is a notarized Discharge of Lien which Salvatore Randazzo signed as President of Paint America on January 3, 2002.

Robert Kennedy, who is Business Manager/Secretary -Treasurer of Painter's District Council 22, testified that he has responsibility for the records of the Charging Party, he is the keeper of the records that are kept in the normal course of business; that General Counsel's Exhibit 54 is the front and back pages of a collective bargaining agreement that was in effect from June 1, 1992 through May 31, 1995; that, as indicated on the second page, the employer involved is Paint America, Inc., its shop address is P.O. Box 456, Salina, Michigan 48176, its business phone is 429-5190, its President is Jamile Randazzo, her telephone number is 429-5190, and her address is 640 Hickory Lane, Saline, Michigan 48176; that Jamile Randazzo signed the agreement for the employer in two places and "Sal Randazzo J.R." appears on a signature line[8]; that General Counsel's Exhibit 55 is the front and back page of a collective bargaining agreement between Paint America of Michigan, Inc. and Painter's District Council 22 which was in effect from June 1, 1998 through May 31, 2003; that as indicated on the back page of General Counsel's Exhibit 55, the employer involved is Paint America of Michigan, Inc., its shop address is 640 Hickory Lane, Saline, Michigan 48176, P.O. Box 456, Saline, Michigan 48176, its business phone is (734) 429-5190, its President is Jamile Randazzo, her telephone number is (734) 429-5190, her address is 640 Hickory Lane, Saline, Michigan 48176, and Jamile Randazzo signed the agreement for the employer indicating that her title was President; that he originally met Sal and Jamile Randazzo between 1985 and 1990 and his understanding at the time from the conversation that they had was that Sal Randazzo was in charge of Paint America, he was the owner of Paint America, and Jamile Randazzo was his wife; and that he received the following letter, General Counsel's Exhibit 56, on the letterhead of "Paint America, EXCELLENCE APPLIED, SINCE 1989:"

SERVICES, INC. COMPANY, P.O. BOX 456, SALINE, MI 48176" and it is dated "11-22-04".

[7] They are dated "02/28/07," "02/28/07," 2/28/07," "03/13/07," 03/13/07," and "02/28/07," respectively. Each one has an entry and a charge for work performed by "Foreman Painter" Sal Randazzo or "Foreman" Sal Randazzo.

[8] While "Sal Randazzo J.R." appears on a signature line, it is not indicated on that page of the agreement what his position was with Paint America, Inc. Counsel for General Counsel pointed out that the issue of whether there was a contract in effect between Paint America Services, Inc. and the Charging Party has already been litigated, and the purpose of this exhibit goes to the single employer issue. Sal Randazzo requested that a comparison be made of this signature and his admitted signature on General Counsel's Exhibit 5. The Union representative who signed the agreement, Gene Leach, is no longer alive. The signature of Jamile Randazzo and Sal Randazzo on General Counsel's Exhibit 54 appear to be written by the same person, and the signature of Sal Randazzo on that document does not appear to be the same as on General Counsel's Exhibit 5.

March 27, 2003 VIA Certified Mail

Robert Kennedy
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Re: Termination of Collective Bargaining Agreement

Dear Mr. Kennedy ,

Please be advised that the current collective bargaining agreement between Paint America of Michigan, Inc. and the Painters and Allied Trades District Council No. 22 will expire on May 31, 2003.

In accordance with that agreement we are hereby notifying you that Paint America of Michigan, Inc. will withdraw from that agreement at its date of termination. Paint America of Michigan, Inc. will not be represented by any 3rd party employer association in collective bargaining, with regards to any new agreement or extension of the present agreement.

To reiterate, the present agreement between paint America of Michigan, Inc. and the International Union of Painters and Allied Trades, AFL-CIO, District Council No. 22 will cease on its expiration of May 31, 2003 and will not be renewed.

Sincerely,
Jamile Randazzo
President

cc: Michigan Alliance of Union Painting Contractors, Inc.
National Labor Relations Board, Michigan Office
Steven Hilger, Atty.

Kennedy further testified that General Counsel's Exhibit 57 is a letter he received by fax ("Jun 06 03 12:23p SRS GROUP INC 734 429 8184" appears at the top of the letter.) on the letterhead of "Paint America, EXCELLENCE APPLIED, SINCE 1989"[9]; and that the body of General Counsel's Exhibit 57 reads as follows:

NOTICE

June 6, 2003 VIA FAX: 586-552-4477

Robert Kennedy
….

Re: Painters Union Failure to Bargain

Dear Mr. Kennedy,

[9] The following appears in the lower left hand corner of the letter "P.O. Box 456, Saline, Michigan 48176, Phone: 734-429-5190, Fax: 734-429-8184, Web: www.paint-america.com." This also appeared on General Counsel's Exhibit 56.

Please be advised of the following.

1. The current collective bargaining agreement between Paint America of Michigan, Inc. (Paint America) and the International Union of Painters and Allied Trades, District Council No. 22 (Painters Union) has expired as of May 31, 2003.

2. The Painters Union has made no attempt to bargain with Paint America for a new contract.

3. The Painters Union has failed to enter into a new collective bargaining agreement with any other employer bargaining group representing the painting trade.

4. Paint America of Michigan, Inc. has agreed to extend the expired collective bargaining agreement until June 30, 2003. (See attached letter)

5. Paint America is willing and ready to enter into negotiations with the Painters Union for a new agreement.

Due to the above facts Paint America of Michigan Inc. is notifying you that we will hold the International Union of Painters and Allied Trades, AFL-CIO District Council 22 (Painters Union), its employees, members and associates responsible for any and all damages as a result of any type of disruption to or at projects where we are directly or indirectly involved.

Paint America will hold the Painters Union financially responsible for any and all damages suffered by us, or our customers. Damages include all costs, attorney fees and any other expenses or losses incurred as a result of unfair or illegal practices by the Painters Union.

Paint America of Michigan, Inc. will consider additional extensions to the expired agreement provided that the Painters Union will bargain with Paint America of Michigan, Inc. in good faith.

Sincerely,

Jamile Randazzo
President

cc: National Labor Relations Board, Michigan Office
Congressman Nick Smith, 7th Congressional District
Steven Hilger, Atty.

The attached letter, page two of General Counsel's Exhibit 57, has the same letterhead, the same address, the same date, the same fax number at the top, is signed by the same person, and has the same "cc" as page one of General Counsel's Exhibit 57. As here pertinent, the body of the second page of General Counsel's Exhibit 57 reads as follows:

In order to show good faith Paint America of Michigan, Inc. will extend the existing expired contract with the Painters Union through June 30, 2003. This extension will cover those projects that were not completed prior to the expiration of the agreement that ended on May 31, 2003.

This extension does not bind Paint America of Michigan Inc. or the Painters Union to any past, present, or future agreements beyond the date of this extension.

Paint America of Michigan, Inc. will consider additional extensions to the expired agreement provided that the Painters Union will bargain with Paint America of Michigan, Inc. in good faith.

Further, Kennedy testified that General Counsel's Exhibit 58 is a letter he received by fax ("Jul 01 03 06:37p SRS GROUP INC 734 429 8184" appears at the top of the fax.). It is on the same letterhead, with the same address as General Counsel's Exhibit 57. The body of the letter, which is handwritten, reads as follows:

07-01-03

Dear Bob [Kennedy],

Thank you for extending our contract for thirty days. (From May 31st to June 30, 2003)

Please Bob, send me the new contract to sign as soon as you can. Meanwhile I am requesting from you to please give me a second extension from July 1st, 2003 to July 31, 2003 so that we can keep working. Thank you for your attention in this matter.

Sincerely,
Jamile Randazzo

General Counsel's Exhibit 59 is, according to the testimony of Kennedy, a card that the Charging Party keeps in a file, a record maintained in the normal course of the Charging Party's business operations, when a collective bargaining is signed with an employer, which card gives the date of the agreement, the name, address, and phone number of the company. Kennedy testified that the company on General Counsel's Exhibit 59 is Paint America, 640 Hickory Lane, P.O. Box 456, Saline, Michigan 48176, telephone 734-429-5190, and the "Owner, President, Partner" is Jamile Randazzo with a phone number of 734-429-5190 and a fax number of 734-429-8184. The card has a date at the top, namely "JULY 2, 2003." Kennedy testified that General Counsel's Exhibit 60 consists of three pages, the first of which is a November 19, 2004 letter from him to Paint America at 640 Hickory Lane, Saline, Michigan 48176 enclosing three contracts of the Painting Articles of Agreement for signing, and requesting a $300 check for the arbitration fund; that the second page is a certificate of liability insurance, dated "12/07/04" which indicates that the insured is Paint America Services, Inc., P.O. Box 456, Saline, Michigan 48176; and that the third page is a copy of a check of "PAINT AMERICA, A PAINT AMERICA SERVICES INC. COMPANY, P.O. BOX 456, SALINE, MI 48176," dated "12-06-04," made payable to the Painters Arbitration Fund for $300 and signed by Jamile Randazzo. With respect to General Counsel's Exhibit 61, Kennedy testified that it is the front and back page of a collective bargaining agreement between the Charging Party and Paint America Services, Inc. effective June 1, 2004 through May 31, 2007; and that the business phone number of Paint America Services, Inc. is 734-429-5190, the office address is 640 Hickory … [Lane], Saline, Michigan 48176, Jamile Randazzo is designated as the "President, Partner", her telephone is 734-429-2193, and Jamile Randazzo signed the agreement giving the title "President." Kennedy testified that General Counsel's Exhibit 62 is a fringe benefit report that all employers turn in monthly; that this one, which is dated January 30, 2004, is from a firm named Paint America of Michigan, P.O. Box 456, Saline, Michigan 48176; that Jamile Randazzo signed the report on the line designated "OWNER'S SIGNATURE"; that General Counsel's Exhibits 63, 64, and 65 are

other fringe benefit reports, dated "02/27/04," "03-26-04," and "April 30, 04," respectively, from Paint America of Michigan, P.O. Box 456, Saline, Michigan 48176 all of which are signed by Jamile Randazzo on the line designated "OWNER'S SIGNATURE"; that General Counsel's Exhibits 66 and 67 are print-out fringe reports for May and June 2004, respectively, and the June 2004 report has a fax number at the top, namely, "Jul 16 04 09:13a SRS GROUP INC 734 429 8184"[10]; that General Counsel's Exhibit 68 is a fringe report for the period October 2004 through July 31, 2005 from Paint America Services, P.O. Box 456, Salina, Michigan 48176 which is signed by Jamile Randazzo on the line designated "OWNER'S SIGNATURE"; and that General Counsel's Exhibits 69 - 72 are print-out fringe reports collectively for July, August, and September 2004, for Paint America Services, Inc., all of which are signed by Jamile Randazzo; and that Sal Randazzo used to be in charge of the Washtenaw County Painting and Decorating Contractors of America and he used to work on collective-bargaining agreements with the District Council.

On cross-examination Kennedy testified that Jamile Randazzo's name appears in the "EMPLOYEES NAME IN FULL" column of the fringe benefit report for "1-30-04," "02-27-04" and "03-26-04," General Counsel's Exhibits 62, 63 and 64, respectively, because she was paying for health insurance for her and her family; and that the Painters Union insurance fund also provides insurance for the signatory contractor and their family if they pay the premium

Thomas Truman, who was a Business Agent/Organizer for the Charging Party, testified that General Counsel's Exhibit 74 is the front and back pages of a contract between the Charging Party and Paint America which (a) he signed, (b) Jamile Randazzo signed on "07-02-03" as President of Paint America (It is noted that the box for "Corporation" is checked on the signature page.), (c) was an extension of the contract from June 1, 1998 through May 31, 2004, (d) has his July 2. 2003 handwritten notations of "extend" and "2004" after "May 31" on the back page, and (e) has the company shop address as 640 Hickory Lane, Saline, Michigan, P.O. Box 456, 48176, a business phone of 734-429-5190, and a fax number of 734-429-8184; that the 1-year extension of the collective-bargaining agreement came about because on July 1, 2003 he received notification from a union member that Paint America got the painting contract on the Law Quad for the University of Michigan; that he went to this jobsite and found painters working there for Paint America; that since Sal Randazzo did not have a contract with the Charging Party at the time and one was required to work that job, he telephoned Sal Randazzo; that Sal Randazzo told him to bring the contract out to the job and he, Sal Randazzo, would sign the contract; that he met Sal Randazzo's wife, Jamile, at the jobsite and she signed the contract in his presence; that he was not sure if he asked Jamile Randazzo why she was signing the contract instead of Sal Randazzo but he recalled that she told him the day she signed this contract that she was Sal Randazzo's wife; that General Counsel's Exhibit 75 is a May 7, 2004 letter his secretary drafted and he sent to Mrs. Randazzo of Paint America of Michigan advising her "that George E. Lancaster … has been appointed Shop Steward for Paint America of Michigan effective May 7, 2004."; that on May 10, 2004 he received a telephone call from Lancaster who told him that he was let go from Paint America; that he telephoned Sal Randazzo that day or the next day and asked him why Lancaster was let go; that Sal Randazzo told him that Lancaster had to be employed with him for at least 15 days before he could be made steward; that he told Sal Randazzo that Lancaster was not a new employee, he had been a past employee, so he did not need to be employed for 15 days to be made steward; that during this

[10] The first one has what appear to be Jamile Randazzo's initials written on it. With respect to the second one, General Counsel's Exhibit 67, if the employees listed thereon were not paid by SRS Group, Inc., Sal Randazzo could have introduced payroll records to show that this was not the case. He did not.

conversation Sal Randazzo said that he did not need a union steward, and he could do anything he pleased; that during this conversation Sal Randazzo did not say that he was not responsible for managing or supervising Lancaster and he did not say that he was not affiliated with Paint America of Michigan; that he knows the Paint America that Sal Randazzo owns; that Paint America has been around for a while and when he became Business Agent for the Charging Party Sal Randazzo was the person that owned it and operated it; and that he is not familiar with a company called SRS Group.

On cross-examination Truman testified that General Counsel's Exhibit 55 is a contract between the Charging Party and Paint America of Michigan, Inc. effective from June 1, 1998 through May 31, 2003; that on the front page of General Counsel's Exhibit 74 "Paint America" is typed on the line naming the contracting party and on the back page "Paint America" is handwritten on the line for the name of the Employer; that his secretary typed the former and he wrote the latter; that he put Paint America on General Counsel's Exhibit 74 because as far as he knew Sal Randazzo was Paint America; that he may have told the secretary what to type on the contract; that he wrote Paint America on the back sheet on the "Name of Employer" and that is what his secretary used to typed up the remainder of General Counsel's Exhibit 74; that after Lancaster was terminated he, Truman, telephoned Sal Randazzo because he, Truman, viewed Sal Randazzo as the owner and operator of Paint America; and that at the seminar for the Saline schools Sal Randazzo introduced himself to him as the owner of Paint America.

On redirect Truman testified that he did not have any involvement in the preparation of the contract received as General Counsel's 55 and he did not sign that document; and that with respect to the contract received as General Counsel's Exhibit 74, Jamile Randazzo did not voice any objection to him before she signed the contract.

On recross Truman testified that General Counsel's Exhibit 75 contains a copy of Lancaster's Steward's card, the Employer named thereon is Paint America of MI, and he, Truman, signed the card.

Tommy Thomas testified that when he became business agent for District Council 22 in 2003 he met Sal Randazzo in July 2003 at a job at the University of Michigan law quad in Ann Arbor, Michigan and Sal Randazzo handed him a business card, General Counsel's Exhibit 8, which reads as follows:

Paint America
Excellence Applied
Since 1989

Sal Randazzo
President
sal@paint-america.com

107 E. Bennett
Saline, Michigan 48176
Phone: 734-429-2366
Fax: 734-429-8184
Web: www.paint-america.com

An SRS Group Co.
COMMERCIAL/INDUSTRIAL COATING AND WALLCOVERING

Thomas further testified that General Counsel's Exhibit 59 is a copy of a card which is maintained in a card file on the business representative's desk at the District Council and it is used for correspondence with each individual signatory contractor. The card is dated July 2, 2003, the name of the Employer is Paint America, the business phone listed is 734-429-5190, the address is 640 Hickory Lane, P.O. Box 456, Saline, Michigan 48176, the Owner, President, Partner listed is Jamile Randazzo, her phone number is 734-429-5190, and her fax is 734-429-8184.

Lancaster testified that he worked for Paint America from June 1999 through May 10, 2004; that he was a painter foreman and a member of Local 514 since 1999 and he became a member of Local 675 in August or September 2004; that he was hired by Sal Randazzo after he was interviewed, at the behest of Sal Randazzo, by Maurice, who was Sal Randazzo's head foreman; that he was laid off by Sal Randazzo during the winter months, November through March, and then Sal Randazzo would telephone him and tell him to report back to work; that he understood Sal Randazzo to be the owner of Paint America because he always took directions from Sal Randazzo; that at a point in time Sal Randazzo handed him a Nextel telephone so that Sal Randazzo could communicate with him, and he, Lancaster, started running jobs; that when he received the Nextel phone head foreman Maurice told him he was a foreman, "you got the phone, that means that you're a foreman" (transcript page 159); that from then on mainly he was the head on the jobs that he ran and he only reported to Sal Randazzo; that the equipment he used included paint brushes and rollers, poles for the rollers, airless spray equipment, ladders, scaffolding (including bakers and perrys which are on wheels and are smaller than scaffolding), and sandblasters; that this equipment was delivered by Sal Randazzo whenever the equipment was needed; that every Friday Sal Randazzo would bring the paychecks to the job site; that Sal Randazzo would bring time and material slips to the jobsite when they were needed; that any time he did extra work he would fill out the time and material slips, have the contractor on the site sign it, and he would return it to Sal Randazzo[11]; that the painters wore white painters pants and Sal Randazzo delivered white Paint America shirts, which had the red, white and blue Paint America logo (See General Counsel's Exhibit 40.) on them, to the painters and Sal Randazzo liked to see the painters wearing the shirts; that at one time Sal Randazzo may have had some hats with the Paint America logo on them that he handed out; that he never took any direction in his daily work activities from Jamile Randazzo, who is Sal Randazzo's wife; that once in a while when he telephoned the office to turn in time or see where he was going to go Jamile Randazzo would answer the telephone; that maybe a total of five or six times throughout his employment with Paint America, Jamile Randazzo delivered the paychecks to the jobsite; that once a week he called in his hours to the office of Paint America and most of the time Sal Randazzo answered the telephone; that there was another gentlemen in the office who would answer the telephone and take the painters time but he did not remember the person's name; that Paint America had a 14- or 16-foot white GMC box van which had the Paint America logo on it with the words "wall-to-wall, coast-to-coast"; that Sal Randazzo used the box van to haul equipment, materials, and tools; that he went to Paint America's office which is located on Bennett Street in Saline, Michigan, and which consisted of a house, a mobile home trailer which was used as an office, and three tool trailers; that he received Sal Randazzo's business card which indicates that Sal Randazzo was President of Paint America which, according to the card, was "[a]n SRS Group Co."; that with respect to "[a]n SRS Group Co." on the card, Sal Randazzo told him that "sometimes the SRS Group would win a contract, and if it was a union job, … the SRS Group would subcontract the work to Paint America, which was a union contractor" (transcript page 188); that General Counsel's Exhibit 43 is his W-2 Statement from "Paint America of Michigan Inc., 640 Hickory Lane, Saline, MI 48176" for 2003; that during 2003 there was never a change with respect to who he reported to on job sites, his uniform did not change, the paperwork he normally filled out in his daily work activities did not change, he did not call any different phone numbers to reach the Bennett Street office, he did not report to any different office, no one other than Sal or Jamile Randazzo delivered his paycheck to the jobsite during 2003, he did not report his time to anyone else other than Sal Randazzo during 2003, and he did not use any different equipment; that 640 Hickory Lane Saline, Michigan,

[11] While he did not fill out the "Time & Material Ticket" received as General Counsel's Exhibit 40, Lancaster testified that this is the form he used.

48176 is Sal Randazzo's home address, and he, Lancaster, picked up a number of things there such as blueprints or paperwork or attended a meeting there; and that he saw Jamile Randazzo at that location.

On cross-examination Lancaster testified that to the extent that he recalled, Paint America of Michigan, Inc. was on his paychecks; that Paint America changed banks several times during his employment with the company; that a few times Sal Randazzo had handwritten different checks, indicating that there was something wrong with the bank account; that General Counsel's Exhibit 43, a W-2 showing wages of $9,490.16, represents about 10 weeks of work in 2003; that 90 percent of the time he worked 8 hour days in 2003; that he did work for the SRS Group and he has received a paychecks from the SRS Group, Inc; that when he received a paycheck from SRS Group he was under the impression that he was still working for Paint America; and that Paint America of Michigan, Incorporated was a union contractor when he worked for Paint America.

On redirect Lancaster testified that he never took any direction from Jamile Randazzo; and that in 2003 he did not report to anyone different than he reported to before 2003.

On recross Lancaster testified that from 1999 to 2003 he did not take any direction to do anything from Jamile Randazzo.

With respect to his termination, Lancaster testified that the last job he worked on for Paint America was at the dorm rooms of the University of Michigan in Ann Arbor, Michigan; that he started this job on May 5 or 6, 2004 at the direction of Sal Randazzo; that Sal Randazzo took the painters to the jobsite when the job started and Sal Randazzo introduced them to the University of Michigan in-house painter who showed them the rooms which needed to be painted with paint supplied by the University; that he worked the job for 4 or 5 days; that the week he went back to work for Paint America Local 514 Business Agent Tommy Truman asked him to be a union shop steward because the Union had trouble with Paint America keeping up in all their benefits and keeping track of their hours; that he received his union shop steward card; that two days later, a Monday night, Sal Randazzo telephoned him, saying that he, Sal Randazzo, received paperwork from the Union indicating that they had made Lancaster a shop steward for Paint America; and that

> … right away he told me that he didn't need it, he didn't want it, there was nobody else that he knew of that had a shop steward. He was too small of a business, and he just wouldn't have it.
>
> ….
>
> Well, I explained to Sal that I thought it was a good thing that , you know, I knew in the past that there was some friction between Paint America, Sal Randazzo, and the union hall and District Council 22 and that I could be the mediator and maybe, … it would help things out. And he all - - he just disagreed with me and - - right away and said no, he said maybe you should have called me before I received this paperwork and no, and by the way I don't need you to go to work tomorrow. So then I proceeded to ask him, well, there's work there. You don't need me, you don't want me, am I laid off? And he says I don't know. And I - - and the conversation just went back and forth from there …. Sal are you laying me [off]? I don't know.
>
> ….

> …. And I kept asking him, well, do I call you tomorrow morning? I don't know. Do I need to call you tomorrow; am I laid off, Sal? I don't know. And that went on for a good while, maybe four, five minutes. And then the conversation ended that I wasn't to work the next day. He would call me when he needed me. And that's how the conversation ended. [Transcript pages 196 and 197]

Lancaster further testified that he was never recalled by Paint America; that General Counsel's Exhibit 44 is a payroll check from "PAINT AMERICA, A PAINT AMERICA SERVICES INC. COMPANY, PO BOX 456, SALINE, MI 48176," dated June 11, 2004 made payable to him and signed by Jamile Randazzo; that General Counsel's Exhibit 45 is the paycheck stub for General Counsel's Exhibit 44, for pay period "06/06/04," both of which were mailed to him in June 2004; that he did not know that he was working for a company called Paint America Services Inc. Company; that before he received the June 11, 2004 paycheck nothing had changed with respect to who he reported to on a daily basis, his uniform, the paperwork he filled out in carrying out his daily activities, the telephone number of the Bennett Street shop did not change, the office location did not change, he did not use any different type of equipment, and no one other than Sal or Jamile Randazzo delivered his paycheck to the jobsite; that General Counsel's Exhibit 46 is a payroll check made payable to him, signed by Jamile Randazzo, dated "5/14/04," with the name of the company handwritten in the upper left corner of the check, namely "Paint America, P.O. Box 456, Saline, Mi. 48176, Ph. 734-429-5190"; and that General Counsel's Exhibit 47 is a paycheck stub (described on the document as a Payroll Summary Report) for pay period "05/09/04."[12]

General Counsel's Exhibit 76 is a letter dated May 20, 2004, from Union Business Representative Tommy Thomas to "PAINT AMERICA and SRS GROUP, a Single Employer" requesting specified information regarding employees and job sites within the Union's jurisdiction because the Union was concerned that the two corporations were alter egos or a single employer and engaged in double breasting. Thomas testified that as indicated by page two of General Counsel's Exhibit 76, he sent this letter to Paint America, 640 Hickory Lane, P.O. Box 456, Saline, Michigan 48176; that Jamile Randazzo, who is the wife of Sal Randazzo, signed the receipt for the letter; that he forwarded this correspondence because he had been approached by some of the Union's members, George Lancaster, Joezef Klimek, and Jac Kubicz, who told him that during the week they would be painting for Paint America and receive a Paint America check, and they would do weekend work for SRS Group and they would either receive cash or a check without a check stub; that the work was performed at the Henry Ford apartments; that he went to that location on May 20, 2004; that he was concerned that there was an attempt being made by using two different companies to circumvent the Union and the collective bargaining contract; that he went to the Henry Ford apartments on May 23 and 24, 2004, he saw Klimek and another union member, Fred Petracaj, working there on the weekend, and they told him that they have to work weekends for either cash or straight time or they would be removed from Paint America's employ; that on Monday May 25, 2004 he telephoned the number on the card file at the Union for Paint America, namely 734-429-5190; that he requested to speak with Sal Randazzo; that Sal Randazzo told him that Klimek and Petracaj were working for SRS Group and not Paint America[13], SRS Group was not a signatory contractor and was not

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[12] Counsel for General Counsel pointed out that the only purpose of Lancaster's testimony on this point "was to show the fact that Mr. Sal Randazzo in fact discharged him." (transcript page 338)

[13] General Counsel's Exhibit 66 indicates that Jamile Randazzo initialed a report showing that payments were made to the Painters Union Insurance Fund for, among others, Klimek and Petracaj.

subject to the collective bargaining agreement, and his wife owned Paint America; that later that same day he dialed the same telephone number (734-429-5190) and asked to speak to Jamile Randazzo; that Jamile Randazzo told him that Klimek and Petracaj were working for her husband's company and not hers, they were working for her husband's company on the weekends and for her during the week, and she had no control over how her husband did business; that this is the first time he realized of this attempt to not pay fringe benefits for the Union's members; and that General Counsel's Exhibit 77 is a handwritten letter which reads as follows:

June 22, 2004

Dear Mr. Thomas,

In response to your letters dated May 20th, or & June 16th, 2004 and having limited English proficiency; it took me days to translate your words and terms written in your letters. I still don't understand clearly what are you accusing me of wrong doing!.

Mr. Thomas, for your information: I am the solely [sic] owner of Paint America. I am the President of Paint America. Paint America is a Union Company. Paint America is a minority owned Company. Paint America employs only union painters. Today, Paint America pays it dues to the Union. The Union's auditor checks & audits Paint America's payroll books every year. You are welcome to [sic] any other information you need from me related to my Company Paint America. Nevertheless, I can not offer you any information about any other Company that is not mine anyway.

Mr. Thomas, from your accusations and persecuting attitude I might conclude that you have issues against hard working minorities [sic] individuals like me. You must have a lot of time in [sic] your hands to play detective!!. Please do not waste any time in senseless accusations. Next time you address a correspondence to me please do it in Spanish. Espanol is my first language and the National Labor Relations Board Agency informed me that I am intitle [sic] to request a translator from your office that I can understand clearly what you are accusing me of wrong doing. Viva America! & Viva la Constitution!

gracias,
Jamile Randazzo

As indicated by the printing at the top of both pages of the letter it was faxed to Thomas. The printing at the top of the pages reads "Jun 25 04 02:12a SRS GROUP INC 734 429 8184 …." Thomas testified that he received this letter by fax on June 25, 2004; that the fax number at the top both pages of the letter is for SRS Group and it happens to be the exact same fax number for the signatory company Paint America, as indicated on the card kept on file by the Union, General Counsel's Exhibit 59; and that he sent a letter to Paint America and SRS Group on June 16, 2004 but he did not have a copy of the letter since it has been misplaced or lost.

Jacek Kubicz testified that he worked for Paint America for 2 or 3 years, ending his employment with that company in 2004; that at the time he was a member of Local 42 of the Painters' Union; that he got Paint America's telephone from a union sheet of contractors and he telephoned Paint America looking for job; that the man he spoke to on the telephone, Sal Randazzo, asked him some questions about his work experience and then told him to report to the Henry Ford Hospital job site the next day and speak to Maurice, who was the supervisor; that the next day he told Maurice that he was the new person, and he had spoken with the owner of the company who sent him to report to the job; that Maurice was expecting him; that

he wore white pants and a T-shirt and there was no lettering or insignia on the pants or shirt; that he worked with Lancaster; that he had some of his own tools and there were other tools on the job site; that a couple of times he saw a truck with a Paint America logo or insignia on it, reading in part "Coast to Coast"; that the truck was used to carry equipment; that he never saw Sal Randazzo drive that truck; that he went to Sal Randazzo's house on Bennett Street once for dinner; that Maurice, Jamile or Sal brought his paycheck to the jobsite; that sometimes Lancaster, who was a foreman, delivered his paycheck at the jobsite; that for about 1 year he painted on a job in the West Hall at the University of Michigan; that General Counsel's Exhibit 73 looks like the paycheck he received every week[14]; that he left Paint America in August 2004 when the painting that he was doing since May 2004 on the dorm rooms at the University of was completed; that a couple of times Jamile Randazzo telephoned him when he was on lay off and she asked him if he wanted to work because they had some work to be done; that he has heard of a company called SRS Group, Inc., and he received a few paychecks from them while he was employed by Paint America; and that during the time that he received paychecks from SRS Group, Inc. and the time when he received General Counsel's Exhibit 73 nothing had changed regarding (a) who he reported to, (b) who gave him his paycheck, (c) the equipment that he used, or (d) the clothing that he wore. On cross-examination Kubicz testified that he did not know who the owner of Paint America was.

Regarding his employment after he was terminated on May 10, 2004 by Sal Randazzo, Lancaster testified that he was unemployed from May 10 - 28, 2004; that with respect to attempts to secure alternative employment he contacted District Council 22 and had his name put on the out-of-work list; that he sent out four or five resumes each week, General Counsel's Exhibit 48, starting at the top of the contractor's list, which is handed out by the District Council and has the names of every union contractor in the District Council area, and working his way down; that when he signed up for unemployment between May 10 - 28, 2004 he put his resume on the web site of the Michigan Works; that between May 10 - 28, 2004 he telephoned several business agents, namely Tommy Truman, Tommy Thomas, and Frank Neeb, and let them know that he was on the out-of-work list; that he collected unemployment benefits between May 10 - 28, 2004; that he was hired by Interior Exterior Specialists at the end of May 2004; that General Counsel's Exhibit 49 is his paycheck stubs from Interior Exterior Specialists[15]; that his starting wage rate at Interior Exterior Specialists was $23.66, he received an additional $2 an hour when he became a foreman for Interior Exterior Specialists, he received $2.32 for every hour worked which went into a vacation fund, and his benefits included retirement and health insurance; that Interior Exterior Specialists was supposed to pay a prevailing wage on the painting work done on schools but in August 2004 Interior Exterior Specialists stopped paying all of his benefits; that Interior Exterior Specialists advised him that it would not pay his benefits but would pay him the prevailing wage rate; that when Interior Exterior Specialists ceased paying him the prevailing wage rate he filed a claim for it and when Interior Exterior Specialists received the paperwork regarding the prevailing wage rate claim he was advised on or about February 9, 2005 by the owner of Interior Exterior Specialists that it did not have any work for him; that he then collected unemployment; and that he was unemployed from February 9, 2005 until the first part of March 2005 and during this period he put his name on the out-of-work list, sent out a few resumes, talked to his business agent, and updated his resume on the Michigan Works website.

[14] The check is payable to Jacek Kubicz, 526 Meadow Cir., Wixom, MI 48393 (all typed). It is dated "05/29/04" and the following appears in the upper left hand corner of the check: "PAINT AMERICA, A PAINT AMERICA SERVICES INC. COMPANY, SALINE, MI 48176." Jamile Randazzo signed the check.

[15] Lancaster testified that he lost the first few stubs.

Thomas testified that when a member becomes unemployed for whatever reason there were two things the member could do, namely have their name placed on the Union's out-of-work list and get a list of the signatory contractors from the Union.

On March 16, 2005 Lancaster was hired by Boice Bird & Sons, Inc. (Boice) out of Saginaw, Michigan. Lancaster testified that the union telephoned him and asked him if he wanted to go into industrial painting; that he accepted the job with Boice; that General Counsel's Exhibit 50 is the payroll check stubs from Boice[16]; and that Boice is out of Saginaw, which is about 3 hours driving time from his home, and when it completed the job in his area in the end of May 2005 or the beginning of June 2005, Boice had no more work for him in his area but Boice told him that if it ever had more work in his area, it would call him.

On cross-examination, Lancaster testified that during the approximately 2 weeks between leaving Interior Exterior Specialists and being hired by Boice he collected unemployment.

Lancaster testified that the day after being laid off by Boice he was hired by Tye Painting, Inc. (Tye); that General Counsel's Exhibit 51 is the payroll pay stubs from Tye; that Tye is located in Chelsea, Michigan which is about a 1.5 hour drive from his home; that his wage rate, $26.66, did not change while he worked for Tye; and that when the job he was hired for was completed in late July 2005 he was let go with the owner of Tye, Danny Tye, telling him that he did not have any more work for him.

According to his testimony, within a few days after leaving Tye, the beginning of August 2005, he was hired by Woods Construction, Inc. (Woods) in Sterling Heights, Michigan, which is about a 1.25 hour drive from his home. Lancaster testified that his wage rate, $23.66, did not change when he started at Woods; that in addition he received vacation pay, retirement and insurance; that he was made painter foreman which pays $.50 above scale; that General Counsel's Exhibit 52 is his check stubs from Woods; that he was still working at Woods at the time of the trial herein; that he did have some periods of unemployment - no more than 2 weeks at a stretch - because of a lack of work, mainly between the months of November and February, while he worked for Woods; that he did not try to find alternative employment during those periods when he was unemployed while working for Woods because his superintendent at Woods, Kevin Boden, told him that he would be the first one called back to work when Woods had work; that this happened every time; that he has not been offered reinstatement by SRS Group, Inc., Paint America, Paint America, Inc., or Paint America of Michigan, Inc.; that General Counsel's Exhibit 53 is a history of his payroll at Woods, which was prepared by Woods' payroll accountant; and that he gave this Woods payroll history to the Regional Office of the Board just a couple of days before he testified at the trial herein.

William Erwin, who is a senior procurement agent for the University of Michigan in Ann Arbor, Michigan, testified that General Counsel's Exhibit 17 is a February 6, 2004, $25,000.00 for painting services purchase order (described as an award document to the vendor for an article or product) of the University of Michigan which indicates that the vendor is Paint America of Michigan Incorporated, P.O. Box 456, Saline, MI 48176[17]; that General Counsel's Exhibit 19 is a March 23, 2004, $5,848.40 purchase order of the University of Michigan which indicates

[16] As pointed out by Lancaster, for a period he received Saginaw scale, which was $26.01.

[17] General Counsel's Exhibit 18 is a record kept in the normal course of business by the University of Michigan. It is a memorandum indicating that Paint America is one of two paint contractors the University wanted to bid on a job.

that the vendor is Paint America of Michigan Incorporated, P.O. Box 456, Saline, MI 48176 and that the job is to paint closets and remove closet doors; that General Counsel's Exhibit 20 is a March 24, 2004, $7,270.00 purchase order receipt of the University of Michigan which indicates that the vendor is Paint America of Michigan Incorporated, P.O. Box 456, Saline, MI 48176; that General Counsel's Exhibit 21 is a Checklist, Processing Guideline, Purchase Order/Requisition, dated "3/24" of the University of Michigan[18]; that General Counsel's Exhibit 22 is a University of Michigan transaction report dated March 25, 2004 of a faxed request for a quote which was sent to "Paint America, ATTN: Sal Randazzo, FAX # 734-429-8184"; that General Counsel's Exhibit 23 is a University of Michigan March 24, 2004, five-page request for quotation which was sent to "Paint America, ATTN: Sal Randazzo, FAX # 734-429-8184" and the last page of which was filled out in handwriting specifying a date of "4/5/04," a supplier's legal name of "Paint America," a purported signature of Sal Randazzo who also printed his name, a title was "GM," next to the printed name Sal Randazzo, an address of 107 E. Bennett, Saline, MI 48176, an email address of Salrandazzo@comcast.net, a phone number of 734-429-2366, a fax number of 734-429-8184, and a taxpayer identification number of 38-3484068; that General Counsel's Exhibit 24 is a March 26, 2004 email which is kept in the normal course of business by the University of Michigan[19]; that General Counsel's Exhibit 26 is an eight page March 31, 2004 University of Michigan request for quotation faxed to "Paint America, Sal, Fax# 734-429-8184"[20] with the last page filled out in handwriting to show (1) a date of "4/12/04," (2) "Paint America" as the supplier's legal name, (3) an authorized signature of Jamile Randazzo, who according to the form has the title of President, (4) an address of "640 Hickory/P.O. Box 456, Saline, MI 48176," (5) an email address of "Salrandazzo@comcast.net," and (6) a telephone number of 734-429-5190; that General Counsel's Exhibit 27, which is a Sign Up Sheet for those attending a walk through on April 12, 2004, is signed by "Jamile R." for "Paint America" and a fax number of 1-734-429-8184 appears on the form next to "Jamile R."; that General Counsel's Exhibit 28 is a March 31, 2004 request for quotation from the University of Michigan to Paint America, Sal, FAX # 734-429-8184 which was sent back to the University with a cover sheet from Paint America and with page 8 of the exhibit filled out in handwriting to show (1) a date of "4/12/04," (2) "Paint America" as the supplier's legal name, (3) an authorized signature of Jamile Randazzo who according to the form has the title of President, (4) an address of "640 Hickory/P.O. Box 456, Saline, MI 48176," (5) an email address of "Salrandazzo@comcast.net," and (6) a telephone number of 734-429-5190[21]; that General Counsel's Exhibit 29 is a University of Michigan internal email dated April 28, 2004, referring to Paint America being the lowest bidder on a $175,000.00 job; that General Counsel's Exhibit 30 is a University of Michigan, April 29, 2004, purchase order to vendor "Paint America of Michigan Incorporated, P.O. Box 456, Saline, MI 48176" for a job costing $8,400.00; that General Counsel's Exhibit 31 is a May 4, 2004 University of Michigan internal email indicating that a $7,270.00 job was being awarded to Paint America; that General Counsel's Exhibit 32 is a University of Michigan May 10, 2004 purchase order award for vendor "Paint America of Michigan Incorporated, PO Box 456, Saline MI 48176" for a $175,000.00 job; that General Counsel's Exhibit 33 is a May 26, 2004 purchase order of

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[18] The document has the following handwritten notations: "Paint America, Sal (will be on vacation that week - will send someone else)" and "429-5190 Paint America, 734-429-8184."

[19] The one page document is an internal email which indicates, as here pertinent, that "Sal from Paint America will be on vacation that week however, he will have someone attend in his absence.

[20] It appears that the bid was faxed back to the University in that the fax number of "SRS GROUP INC." namely 734 429 8184, appears at the top of each page. It is noted that the line for "TOLL FREE FAX NUMBER:_____" on the last page of the form is left blank.

[21] The FAX number at the top of the pages reads "Apr 12 04 03:53p [and later times that day on 14 of the subsequent pages] SRS GROUP INC. 734 429 8184 …."

the University of Michigan for vendor "Paint America of Michigan, Incorporated, PO Box 456, Saline MI 48176" for painting the Martha Cook building not to exceed $13,500.00[22]; that General Counsel's Exhibit 34 is a University of Michigan internal email dated June 15, 2004 which indicates "[p]lease extend our Paint America P.O. (3-412726) and add $25,000.00[23]; that General Counsel's Exhibit 35 is a University of Michigan purchase order dated July 27, 2004 for vendor "Paint America of Michigan Incorporated, PO Box 456, Saline MI 48176" for a paint job for $2,950.00; that General Counsel's Exhibit 36 is a University of Michigan July 27, 2004 purchase order for vendor Paint America of Michigan Incorporated, PO Box 456, Saline, MI 48176" for a paint job for $3,500.00; that General Counsel's Exhibit 37 is a University of Michigan July 27, 2004 purchase order for vendor "Paint America of Michigan Incorporated, PO Box 456, Saline, MI 48176" for a paint job for $250.00; that General Counsel's Exhibit 38 is a University of Michigan July 28, 2004 purchase order for vendor Paint America of Michigan Incorporated, PO Box 456, Saline, MI 48176" for a paint job for $9,000.00[24]; and that General Counsel's Exhibit 39 is a University of Michigan April 25, 2004 purchase order for vendor Paint America of Michigan Incorporated, PO Box 456, Saline, MI 48176" for a paint job for $3,318.20

Thomas testified that he went to the Michigan Department of Labor & Economic Growth website and searched for Paint America Services, Inc. on May 12, 2008. The results of his search, General Counsel's Exhibit 78, read as follows:

> Searched for: PAINT AMERICA SERVICES, INC.
> ID NUM: 16200D
> Entity Name: PAINT AMERICA SERVICES, INC.
> Type of Entity: Domestic Profit Corporation
> Resident Agent: JAMILE RANDAZZO
> Registered Office Address: 640 HICKORY LN SALINE MI 48176
> Mailing Address: MI
> Formed Under Act Number(s):284-1972
> Incorporation/Qualification Date: 12-16-2003
> Jurisdiction of Origin: MICHIGAN
> Number of Shares: 1,500
> Year of the most Recent Annual Report:
> Year of the Most Recent Report With Officers & Directors:
> Status: AUTOMATIC DISSOLUTION Date: 7-15-2006

Further, Thomas testified that General Counsel's Exhibit 79 is a Filing Endorsement for the articles of incorporation for Paint America Services, Inc. which is dated December 16, 2003, and which includes the Articles of Incorporation which indicate that the address of the registered office of this corporation is 640 Hickory Lane, Saline, Michigan 48176[25]; that he went to the Michigan Department of Labor & Economic Growth website and searched for SRS Group, Inc. on May 12, 2008. The results of his search, General Counsel's Exhibit 7, read as follows:

> Searched for: SRS GROUP, INC.
> ID NUM: 14292D

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[22] The word "CANCEL" appears on the right side of the order and the "Extended Amt" and "Total PO Amount" is 0.00.

[23] See General Counsel's Exhibit 17 described above.

[24] This purchase order also contains the following in the body of the order: "PAINT AMERICA, PHONE 734-429-5190, 107 EAST BENNETT STREET, SALINE, MI 48176"

[25] The resident agent named is Jamile Randazzo.

Entity Name: SRS GROUP, INC.
Type of Entity: Domestic Profit Corporation
Resident Agent: SAL RANDAZZO
Registered Office Address: 107 E. BENNETT, SALINE MI 48176
Mailing Address: MI
Formed Under Act Number(s):284-1972
Incorporation/Qualification Date: 8-12-1999
Jurisdiction of Origin: MICHIGAN
Number of Shares: 60,000
Year of the most Recent Annual Report: 06
Year of the Most Recent Report With Officers & Directors: 01
Status: ACTIVE Date: Present

Assumed Names	Id NUM	Creation Date	Renew Date	Expiration Date
SRS AMERICA	14292A	10-13-1999		12-31-2004
PAINT AMERICA	14292A	10-13-1999		12-31-2004
DUTCHMAN CAULKING & WATERPROOFING	14292A	10-13-1999		12-31-2004
DECK RX	14292A	10-13-1999		12-31-2004

Further, Thomas testified that General Counsel's Exhibit 80, which is dated 2004, is a document he printed off the Michigan Department of Labor's website; that the focus of his inquiry was SRS GROUP, INC.[26], the resident agent listed on the document is Sal Randazzo of 107 E. Bennett, Saline, Michigan 48176, the address of the registered office is the same, Sal Randazzo's title is President, the document was signed on "4/24/06," and the phone number is 734-429-2366. Additionally, Thomas testified that he went to the Michigan Department of Labor & Economic Growth website and searched for Paint America on May 12, 2008. The results of his search, General Counsel's Exhibit 80, read as follows:

Searched for: PAINT AMERICA
ID NUM: 281683
Entity Name: PAINT AMERICA INC.
Type of Entity: Domestic Profit Corporation
Resident Agent: JAMILE RANDAZZO
Registered Office Address: 640 HICKORY LN SALINE MI 48176
Mailing Address:
Formed Under Act Number(s):284-1972
Incorporation/Qualification Date: 3-29-1990
Jurisdiction of Origin: MICHIGAN
Number of Shares: 100,000
Year of the most Recent Annual Report: 92
Year of the Most Recent Report With Officers & Directors:
Status: AUTOMATIC DISSOLUTIOIN Date: 7-15-1995

Assumed Names	Id NUM	Creation Date	Renew Date	Expiration Date
PAINT AMERICA	281683	8-2-1990		7-15-1995

Further, Thomas testified that he went to the Michigan Department of Labor & Economic Growth website and searched for Paint America on May 12, 2008. The results of his search, General Counsel's Exhibit 82, read as follows:

[26] The identification number listed is 14292A.

Searched for: PAINT AMERICA
ID NUM: 14292D
Entity Name: SRS GROUP, INC.
Type of Entity: Domestic Profit Corporation
Resident Agent: SAL RANDAZZO
Registered Office Address: 107 E. BENNETT, SALINE MI 48176
Mailing Address: MI
Formed Under Act Number(s):284-1972
Incorporation/Qualification Date: 8-12-1999
Jurisdiction of Origin: MICHIGAN
Number of Shares: 60,000
Year of the most Recent Annual Report: 06
Year of the Most Recent Report With Officers & Directors: 01
Status: ACTIVE Date: Present

Assumed Names	Id NUM	Creation Date	Renew Date	Expiration Date
SRS AMERICA	14292A	10-13-1999		12-31-2004
PAINT AMERICA	14292A	10-13-1999		12-31-2004
DUTCHMAN CAULKING & WATERPROOFING	14292A	10-13-1999		12-31-2004
DECK RX	14292A	10-13-1999		12-31-2004

Thomas testified he went to the Michigan Department of Labor & Economic Growth website and searched for Paint America, Inc. on May 12, 2008. The results of his search, General Counsel's Exhibit 83, read as follows:

Searched for: PAINT AMERICA, INC.
ID NUM: 281683
Entity Name: PAINT AMERICA, INC.
Type of Entity: Domestic Profit Corporation
Resident Agent: JAMILE RANDAZZO
Registered Office Address: 640 HICKORY LN, SALINE MI 48176
Mailing Address:
Formed Under Act Number(s):284-1972
Incorporation/Qualification Date: 3-29-1990
Jurisdiction of Origin: MICHIGAN
Number of Shares: 100,000
Year of the most Recent Annual Report: 92
Year of the Most Recent Report With Officers & Directors: 01
Status: AUTOMATIC DISSOLUTION Date: 7-15-1995

Assumed Names	Id NUM	Creation Date	Renew Date	Expiration Date
PAINT AMERICA	281683	8-2-1990		7-15-1995

Thomas testified that General Counsel's Exhibit 84 is a Certificate of Assumed Name that he printed off the Michigan Department of Commerce website; that Paint America, Inc. was the subject of his search; that the true name given on the certificate is Paint America, Inc. that the location of the corporate registered office is 640 Hickory Lane, Saline, Michigan 48176; that the assumed name under which the business is to be transacted is Paint America; that Jamile Randazzo signed the Certificate, which is dated July 5, 1990, as President; that General Counsel's Exhibit 85 is the Articles of Incorporation for Paint America, Inc. which were filed

March 29, 1990 with the Michigan Department of Commerce, which document indicates that (a) the address of the registered office is 640 Hickory Lane, Saline, Michigan 48176, (b) the name of the resident at the registered office is Jamile Randazzo, (c) the incorporators were Jamile and Salvatore James Randazzo of the same address, and (d) the document was signed by Jamile and Salvatore Randazzo as incorporators; and that he went to the Michigan Department of Labor & Economic Growth website and searched for Paint America of Michigan, Inc. on May 12, 2008. The results of his search, General Counsel's Exhibit 86, read as follows:

> Searched for: PAINT AMERICA OF MICHIGAN, INC.
> ID NUM: 14291D
> Entity Name: PAINT AMERICA OF MICHIGAN, INC.
> Type of Entity: Domestic Profit Corporation
> Resident Agent: JAMILE RANDAZZO
> Registered Office Address: 640 HICKORY LN SALINE MI 48176
> Mailing Address: MI
> Formed Under Act Number(s):284-1972
> Incorporation/Qualification Date: 8-12-1999
> Jurisdiction of Origin: MICHIGAN
> Number of Shares: 60,000
> Year of the most Recent Annual Report: 03
> Year of the Most Recent Report With Officers & Directors: 01
> Status: DISSOLVED Date: 4-12-2005

Thomas testified that General Counsel's Exhibit 87 is the Articles of Incorporation for Paint America of Michigan, Inc. that he printed off the Michigan Department of Commerce website; that the specified registered office address is 640 Hickory Lane, Saline, Michigan 48176; that the name of the registered agent is Jamile Randazzo of the same address; and that Jamile Randazzo signed the document.

Jay Greenhill, who is a Board Field Examiner who works on compliance issues, testified that he drafted the involved amended compliance specification, General Counsel's Exhibit 1(j); that General Counsel's Exhibit 49 is the pay stubs for Lancaster when he worked for Interior/Exterior Specialists (Interior); that General Counsel's Exhibit 50 is the pay stubs for Lancaster when he worked for Boice Bird & Sons, Inc. (Boice); that General Counsel's Exhibit 51 is the pay stubs for Lancaster when he worked for Tye Painting, Inc. (Tye); that General Counsel's Exhibit 52 is the pay stubs for Lancaster when he worked for Woods Construction, Inc. (Woods); that General Counsel's Exhibit 53 is a print out of Lancaster's hours at Woods; that General Counsel's Exhibit 88 is a fax he received from union representative Thomas pursuant to his request for a copy of the Union wage scale; that General Counsel's Exhibit 89 is an amendment to the amended compliance specification[27]; that Lancaster asserted that he worked for Paint America 40 hours per week pretty regularly so without documentation from Paint America he used the 40 hour per week calculation; that General Counsel's Exhibit 47 is the documents that Lancaster provided from the time he worked for Paint America; that the pay stubs from Interior, Boice, Tye and Woods were used to determine interim earnings for the involved backpay quarters; that the amendments to Schedules A and B, General Counsel's Exhibits 90 and 91, respectively, of the amended compliance specification are based on the

[27] This amendment alleges that Lancaster worked an irregular number of hours each week for Boice, Tye, and Woods during specified periods at rate of $26.01, $26.66, and $24.16 per hour, respectively; and that Lancaster also worked some hours for Boice at a rate higher than $26.66.

new records, General Counsel's Exhibits 51 and 52, he received from Lancaster; that he determined the revised interim earnings on Schedule A by using Lancaster's pay stubs, and by taking the amount of hours that Lancaster worked, and multiplying that figure by Lancaster's hourly wage rate; that Schedule B is Lancaster's union vacation fund earnings and he determined the Interim Union Vacation Funds Earned by multiplying 40 hours a week by $2.32 per hour for the backpay period up to August 1, 2004; that beginning August 1, 2004 he began using the pay stubs Lancaster provided from Interior and he multiplied the hours worked by $2.32 an hour; that starting about the pay period of November 21 - 27, 2004 Lancaster stopped earning union vacation fund wages from Interior; that the amount for Interim Union Vacation Funds Earned for the 1st quarter of 2005 is $0 because Lancaster stopped earning union vacation fund wages from Interior and Boise (General Counsel's Exhibit 50) also did not pay the union vacation fund; that the Interim Union Vacation Funds Earned is $320 for the 2nd quarter of 2005 because Lancaster started working for Tye; that for the 3rd quarter of 2005 he used the Tye and Woods pay stubs; and that for the 4th quarter of 2005, all of 2006, and the first quarter of 2007 he used the Woods pay stubs.[28]

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[28] Greenhill sponsored a number of Exhibits, General Counsel's Exhibits 92 - 103, which are unclaimed or refused certified, return receipt requested mailings of the Notice of Hearing for the May 14, 2008 hearing to the following two addresses in Saline, Michigan 48176:

92 Paint America Services, Inc.
640 Hickory Lane
attn: Mrs. Jamile Randazzo, Pres.

93 Paint America of Michigan
640 Hickory Lane
attn: Mrs. Jamile Randazzo

94 Paint America, Inc.
640 Hickory Lane
attn: Mrs. Jamile Randazzo

95 Paint America, Inc.
107 E. Bennett
attn: Mrs. Jamile Randazzo

96 SRS Group, Inc.
640 Hickory Lane
attn: Salvatore Randazzo, Pres.

97 Paint America
640 Hickory Lane
attn: Salvatore Randazzo, Pres.

98 Paint America Services, Inc.
640 Hickory Lane
attn: Mrs. Jamile Randazzo

99 Paint America of Michigan
640 Hickory Lane
attn: Mrs. Jamile Randazzo

100 Paint America, Inc.
640 Hickory Lane
attn: Mrs. Jamile Randazzo [not the same article as 94 above]

101 Paint America, Inc.
107 E. Bennett
attn: Mrs. Jamile Randazzo

102 SRS Group, Inc.
640 Hickory Lane

Continued

On cross-examination Greenhill testified that, other than what Lancaster gave him (General Counsel's Exhibit 47), he did not receive any documentation from Paint America[29]; and that Lancaster told him that he worked an average of 40 hours a week at Paint America.

Salvatore Randazzo testified that he resides at 640 Hickory Lane, Saline, Michigan 48176 and his wife, Jamile Randazzo, also resides at that address; and that Jamile Randazzo has been his spouse since at least January 1, 2004.

At one point Salvatore Randazzo made the following statement:

> JUDGE WEST: Is it your position that the Respondents are not privy or were not privy to Mr. Lancaster's earnings with the Respondent's before he was terminated? Is that your position?
>
> MR. RANDAZZO: That's my position, your Honor. [Transcript page 685]

Analysis

As noted above, this proceeding was limited to a determination of derivative liability and interim earnings. Counsel for General Counsel on brief contends that he has met his burden of proving by a preponderance of the evidence that Respondents constitute a single employer; that the Board uses a four-factor test to determine whether two or more businesses constitute a

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attn: Salvatore Randazzo, Pres. [not the same article as 96 above]
103 Paint America
640 Hickory Lane
attn: Salvatore Randazzo, Pres. [not the same article as 97 above]

The mailings collectively occurred between March 8, and May 1, 2008. Greenhill testified that the regular mail for General Counsel's Exhibits 92 - 103 was not returned, except 98 - 101.

[29] As here pertinent, Counsel for General Counsel's subpoena duces tecum B-571896, General Counsel's Exhibit 4, sought from the custodian of records of Paint America:

> 28) Copies of documents that reflect the following information for … George Lancaster … from January 1, 2004 to the present:
> (a) the … hire date and classification …;
> (b) the hours worked …; and
> (c) wages and fringe benefits paid to … [Lancaster].

When called as a 611(c) witness by Counsel for General Counsel, Sal Randazzo testified as follows regarding this paragraph of this subpoena:

> Q. Number 28?
> A. I can't answer. I can't answer a second set of questions that are addressed to a separate entity other than to the SRS Group Incorporated and its d/b/as; they're one and the same. [Transcript page 60]

Earlier when testifying as a 611(c) witness regarding subpoena duces tecum B-571894, General Counsel's Exhibit 3, which was issued to the custodian of records, SRS Group, Inc., Sal Randazzo testified as follows about the exact same language in item 28 of that subpoena:

> Q. Number 28?
> A. I don't have the A, B, and C, it's not - - there are no documents like that I know of, that I'm aware of
> Q. Are you saying they don't exist?
> A. I'm saying I'm not aware of any. [Transcript page 42]

single employer, namely (1) common management, (2) interrelation of operation, (3) centralized control of labor relations, and (4) common ownership or financial control; that no single factor is dispositive, nor must all factors be satisfied to prove single-employer status, *Bolivar-Tees, Inc.*, 349 NLRB 720 (2007); that the totality of the evidence in a particular case is controlling, *Dow Chemical Co.*, 326 NLRB 288 (1988); that the Board does not vest all four factors with equal importance and has placed emphasis on the third factor, namely centralized control of labor relations, *Mercy Hospital of Buffalo*, 336 NLRB 1282 (2001); that the Board uses a single-factor test to determine single-employer status, namely the presence or absence of an arm's-length relationship amongst unrelated companies, *Lanier Corp.,* 346 NLRB 748 fn. 5 (2006); that the Board will find a single-employer relationship where one spouse exercises control over key business decisions of the other spouse's company, such as finances, *Silver Court Nursing Center,* 313 NLRB 1141, 1142 (1994); that the common management and centralized control of labor relations factors in the single employer analysis are satisfied here because Salvatore Randazzo exercised dominant control over Respondents' managerial duties and supervised Respondents' employees on a daily basis; that Respondents business operations were so interrelated as to constitute a single integrated enterprise because PA, SRS, PAMI, and PASI held themselves out to the public as a single enterprise; that the Board treats ownership of separate companies owned by close family members as common ownership where there is evidence that the companies have less than an arms-length relationship and where there is evidence of common management, centralized control of labor relations, and an interrelationship of operations, *Truck & Dock Services, Inc.,* 272 NLRB 592 fn.2 (1984); that here Salvatore and Jamile Randazzo have been married since at least the mid to late 1980s, they share a residence at 640 Hickory Lane, Saline, and in 2004 the Board determined in the underlying unfair labor practice decision that Jamile was 'President' and Salvatore was 'Manager' of PASI; that Salvatore and Jamile shared 'overall control of critical matters at the policy level' on one another's companies to the extent that the common ownership is equivalent to actual or common control, *Emsing's Supermarket*, 284 NLRB 302, 303 (1987); that Salvatore managed Respondents' day-to-day operations, and he was the primary authority for the conduct of their labor operations (Counsel for General Counsel provides 22 record citations.); that in the mid to late 1980s Salvatore co-signed a collective-bargaining agreement, along with his wife; that about the summer of 2001 Salvatore introduced himself to the Union as the owner of PA; that in July 2003 Salvatore negotiated the signing of a collective bargaining agreement telling the Union that his wife would sign the agreement, which she did the following day; that the Union considered PA and PAMI one in the same company, and Respondents presented no evidence that they attempted to correct the Union's belief; that the Board will find single-employer status among companies owned by family members where they hold themselves out to the public and there is evidence of common management, centralized control of labor relations, common ownership and financial control, and there is the sharing of business facilities and public signage, *Silver Court Nursing Center,* supra; that Jamile signed checks to employees and SRS blurring the lines between SRS, PA and PASI because they share the same post office box, namely P.O. Box 456, Saline; that since the creation of SRS and PA in 1999, Salvatore has distributed a business card to not only the Union and employees, but to the public stating he is the president for both PA and SRS companies; that Salvatore's business card, General Counsel Exhibit 8, lists the same fax number found on PA letterhead, and lists the phone number and post office belonging to PAMI, PASI and PAI; that a single-employer relationship will be found among companies where one spouse is a 'dominant force' in managing the business, respondents share the same customers and business purpose, and there is 'some' intermingling of respondents' employees, *Carthage Sheet Metal Company*, 286 NLRB 1249, 1283 (1987); that Salvatore was the primary supervisor of Respondent's employees because he was solely responsible for managing and directing their daily activities; that employees' contacts with Jamile were minimal and infrequent; that employees saw Salvatore as the owner of PA and manager of PASI; that Salvatore hired Lancaster and Kubicz,

Salvatore instructed them at the job site either directly or indirectly by Lancaster-who he appointed job site foreman, Salvatore assigned Lancaster a tool box containing small hand tools and issued him a uniform with the PA logo, Salvatore laid off Lancaster when work was slow (after Lancaster laid off Kubicz per Salvatore's instructions), Salvatore recalled Lancaster, Salvatore fired Lancaster on May 20, 2004,[30] and Salvatore alone explained to the Union why he discharged Lancaster; that here there was extensive intermingling of employees among PA, SRS, PAMI, and PASI; that Lancaster received paychecks from PA, SRS, PAMI, and PASI, and Kubicz received paychecks from PA, PASI, and SRS; that when employees received different paychecks from Respondents, nothing changed about their management or supervision, work clothing, equipment, or the persons handling payroll matters; that Respondent's management and supervision was so seamless that the various Respondents were indistinguishable from one another; that Respondents made no effort to distinguish themselves as separate employers in that in 2001 Salvatore Randazzo told Lancaster that when SRS won a contract involving union work, it would subcontract the work to PA; that SRS and PA are not separate entities as demonstrated by what Salvatore told the Union when it inquired as to whether the collective-bargaining agreement was circumvented by having Union members Joezef Klimek and Frederik Petracaj work for cash on weekends, namely that SRS was not bound by the PA collective-bargaining contract on the grounds that the employees were working for SRS; that the intermingling of employees among Respondents was further demonstrated by the fringe benefit reports they submitted to the Union's fringe benefit funds on employees' behalf in that (a) for January - May, 2004 Jamile submitted fringe benefit reports on behalf of PAMI naming Union members Klimek, Lancaster, and Kubiez, (b) for June 2004 SRS faxed a fringe benefit report naming Lancaster, Kubiez, Klimek, and Petracaj, (c) that for July - September, 2004 Jamile submitted fringe benefit reports on behalf of PASI naming Kubiez, Klimek, and Petracaj; that PA was scheduled to begin work at the University of Michigan on May 4, 2004, and PAMI was already scheduled to be performing work there when Lancaster was discharged on May 20, 2004; that Lancaster's final two checks show that he was employed by PA and PASI; that in February 2007 Salvatore generated invoices on behalf of SRS and PA to University of Michigan for the payment for painting services performed by Salvatore and Union member Petracaj; that the interrelationship of operations, centralized control of labor relations, and common ownership and financial control factors in the single-employer analysis is satisfied here because Salvatore and Jamile Randazzo exercised control over Respondents' finances through the bidding process and labor relations; that Salvatore exercised primary control over the finances of not only SRS and PA, but PAMI, his wife's company; that Salvatore used fax machines belonging to SRS, PA, and PAMI to fax bid quotations addressed to PAMI from University of Michigan, exercised judgment in deciding the wage rates he believed the proposed work would involve, and returned the documents to University of Michigan, listing the supplier's name as PA; that PAMI shares the same post office box with PA, SRS, PASI, and PAI; that PAMI shares the same phone number with PA, SRS, PAI, and PASI; that Respondents did not present any evidence that they attempted to counter the hand-in-glove relationship among PA, SRS, and PAMI from the perspective of University of Michigan; that Jamile indirectly exercised limited management and control over Respondents' finances in that in April 2004, on behalf of Salvatore, she returned job bid quotations and paint specifications to University of Michigan using the fax machine belonging to SRS, she identified herself as PA's President and

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[30] It is noted that the Board, in its above-described Supplemental Decision and Order herein, 352 NLRB No. 31 (2008) at page 3 of the slip opinion, indicates that Lancaster was discharged on May 20, 2004. But both Lancaster and Truman indicate that Lancaster was terminated on May 10, 2004. And the Board, in the decision in the underlying unfair labor practice proceeding at 343 NLRB No. 41 (2004) on page 1 of the slip opinion indicates that "[a]bout May 10, 2004 the Respondent discharged … Lancaster." General Counsel's Exhibit 1(c).

referenced the residential address she shares with Salvatore on the documents, along with the post office box publicly listed as also belonging to PAMI, PAI, and PASI; that Jamile participated in a walk-through, which is a necessary part of the job bid process, to review contractor specifications; that while the Board gives less weight to the centralized control of labor relations factor when one of a number of entities have no employees, here there was intermingling of employees among PA, SRS, PAMI, and PASI, and Salvatore supervised their daily activities; that Jamile exercised control over critical labor relations matters in that in 1993, 1999, 2003 and 2004 she signed collective-bargaining agreements with the Union as President of PAI (also signed by Salvatore), PAMI, PA, and PASI, respectively; that Jamile forwarded correspondence to the Union concerning the PAMI and PA collective-bargaining agreements in March, June and July 2003 and the last two were sent from SRS's fax machine; that Jamile prepared and submitted fringe benefit reports to the Union as part of Respondent's payment of employees' fringe benefits; that in May 2004 when the Union questioned her about whether union members employed by PA were also working weekends without benefit of the Union contract, Jamile told the Union that the union members worked for her husband's company during the weekend and for her during the week; that the absence of PAI employees does not mitigate against a finding that PAI is a single employer together with PA, SRS, PASI, and PAMI because the common management, interrelation of operations, and common ownership and financial control factors are satisfied; that there is interrelationship of operations because (a) PAI shares the same post office box with PA, SRS, PAMI, and PASI, (b) PAI shares the Hickory Lane address with Salvatore, Jamile, PA, SRS, PAMI, and PASI, (c)PAI shares the same phone number with PA, PAMI, and PASI, and (d) despite the apparent dissolution of PAI in 1995, PAI and SRS use PA as an assumed name and as recently as May 2008 SRS was an active corporation that continues to use PA as an assumed name; that Counsel for General Counsel has met his burden of proving that Lancaster did not willfully fail to find interim employment; that even though Lancaster did not secure employment with Boice until six weeks after his layoff from Interior/Exterior, November to March has been traditionally a period of slow work; that subsequently Lancaster worked for Woods on an ongoing basis except for periods of unemployment from about November through February because of a lack of work; that he did not seek interim employment during his layoffs at Woods because he was promised and he was recalled when work became available at Woods; that Respondents did not present any evidence that there were substantially equivalent jobs in Lancaster's relevant geographic area during his periods of unemployment since Respondents discharged him; that Respondents did not present any evidence that Lancaster failed to exercise reasonable diligence in searching for interim employment, and they have not recalled him to work; that SRS and PA (a) presented only Salvatore as part of their case-in-chief, and (b) did not present any evidence to contradict the evidence presented by Counsel for General Counsel; that Salvatore Randazzo was not credible in his testimony about his failure to produce subpoenaed documents; that Salvatore refused to provide any of the subpoenaed documents concerning SRS and PA; that an adverse inference against SRS and PA is warranted, namely that the subpoenaed documents concerning the single-employer issue, if produced, would be unfavorable to PA and SRS; and that Counsel for General Counsel's renewed motion to strike the purported physician's letter attached to the Petition to Revoke filed by SRS should be granted since it is unauthenticated, hearsay, and Counsel for General Counsel was not given the opportunity to cross-examine the purported physician.

As noted above, Salvatore Randazzo filed a brief, which he titled "THE Alleged RESPONDENT'S FINAL SUMMATION AND CLOSING ARGUMENTS." One of Salvatore Randazzo's arguments reads as follows:

ARGUMENT No. 6
USA IS A BANKRUPT CORPORATION AND THE IMPOSSIBILITY TO PROSECUTE

> THIS CASE IN ANY CAPACITY OR WHY THE UNITED STATES OF AMERICA IS A BANKRUPT CORPORATION AND IN FACT AND LAW IS TECHNICALLY A CIVILLY DEAD ENTITY WITHOUT STANDING IN LAW TO SUE OR MAKE COMPLAINT AGAINST ANYONE! [Unnumbered page 25 in the body of the brief; emphasis in original]

The third page from the end of the Salvatore Randazzo' pleading, contains the following:

> CONSTRUCTIVE NOTICE OF LIS PENDENS IS HEREIN GIVEN TO ALL PARTIES, WHO HAVE DELIBERATELY WITH MALICE AND FORTHOUGHT SOUGHT TO INJURE ME, OR MY BUSINESS, OR MY FAMILY! TAKE HEADE [sic] !! YOU ARE ABOUT TO BE SUED!!! [Emphasis in original]

And the following appears on the tenth unnumbered page of the brief:

> VERY IMPORTANT NOTE HERE:
> LOSS OF JUDICIAL IMMUNITY
> It has also been well established that: When a judge knows that he/she lacks jurisdiction, or acts in face of clearly valid statutes expressly depriving him/her of jurisdiction, jurisdictional immunity is lost. [Citation omitted] …. A judge must be acting within his jurisdiction as to subject matter and person, to be entitled to immunity from civil action for his acts. [Citation omitted] Generally, judges are immune from suit for judicial acts within or in excess of their jurisdiction even if those acts have been done maliciously or corruptly; the only exception being for acts done in the clear absence of all jurisdiction. [Emphasis in original.]

No worthwhile purpose would be served here by summarizing any other portion of this brief. Notwithstanding the fact that Salvatore Randazzo was repeatedly told that the proceeding was limited to derivative liability and interim earnings, he still, on brief, attempts to address matters (a) he tried to relitigate, and (b) which are beyond the scope of this proceeding.

In my opinion, Salvatore Randazzo is not credible. His answers under oath to many of Counsel for General Counsel questions regarding subpoenaed documents were obviously outright lies. His conduct throughout the trial demonstrated that has a difficult time being truthful, even while under oath. Salvatore Randazzo has been gaming the system. For the most part, he has refused to comply unless and until he had no choice.

Counsel for General Counsel's renewed Motion to Strike the purported doctor's note attached to SRS's Petition to Revoke (See General Counsel's Exhibit 2.) is hereby granted. No attempt was made to even properly authenticate this hearsay letter.

Counsel for General Counsel's request for an adverse inference is granted to the extent specified below. Salvatore Randazzo did not turn over any documents pursuant to Counsel for General Counsel's subpoena requests. As noted above, the involved employees received payment from SRS Group, Inc. and Paint America, inter alia. Salvatore Randazzo entered an appearance at the trial herein for "SRS Group, Inc. that has a d/b/a of Paint America." (transcript page 20) When called as a 611(c) witness by Counsel for General Counsel regarding the subpoenas duces tecum served on the custodian of records of SRS Group, Inc. and the custodian of records of Paint America, General Counsel's Exhibits 3 and 4, respectively, Salvatore Randazzo did not deny the existence of many of the documents sought. Rather, among other things he testified collectively that (1) he did not know the whereabouts of the

documents, (2) he did not have the documents in his possession, (3) he did not have the documents with him when he testified at the trial herein, (4) he did not deny the existence of specified documents but he did not have the documents in his possession because that would require somebody going and locating those documents, and putting them together and making them available, and he did not have anybody to do that, (5) he could not recall the existence of specified documents, (6) he did not believe that specified documents exist, (7) if the documents exist, he did not recall seeing them and he did not know their whereabouts, (8) he refused to answer questions about the documents sought, and (9) he refused to answer on the basis that he did not have any knowledge or assertedly it was directed to an entity that was not SRS Group, Inc. and its d/b/as. To the extent that Salvatore Randazzo did not specifically deny the existence of the documents sought in the above-described subpoenas, the adverse inference sought by Counsel for General Counsel is granted, namely that the subpoenaed documents which Salvatore Randazzo did not specifically deny the existence of and which concern the single-employer issue, if produced, would be unfavorable to SRS and PA. Compare *RCC Fabricators, Inc.*, 352 NLRB No. 88 slip op. at n. 5 and at 26 (2008). See also *McAllister Towing & Transportation Co., 341 NLRB 394, 396 (2004).*

As noted above, the scope of this proceeding is limited to determining derivative liability and interim earnings. With respect to the former, the Board indicated as follows in *Bolivar-Tees, Inc.*, 349 NLRB 720, 720 (2007):

> The hallmark of a single employer is the absence of an arm's-length relationship among seemingly independent companies. *RBE Electronics of S.D.*, 320 NLRB 80 (1995); *Hydrolines, Inc.*, 305 NLRB 416, 417 (1991). The Board looks at four factors in making a finding on this issue: (1) interrelation of operations; (2) common management; (3) centralized control of labor relations; and (4) common ownership or financial control. *Central Mack Sales*, 273 NLRB 1268, 1271-1272 (1984). While the Board considers common control of labor relations a significant indication of single-employer status, *Beverly Enterprises*, 341 NLRB 296, 306 (2004), no single aspect is controlling, and all four factors need not be present to find single-employer status. Instead, the ultimate determination turns on the totality of the evidence in a given case. *Dow Chemical Co.*, 326 NLRB 288, 288 (1998).

All of the four relevant criteria are met here: interrelation of operations, common management, centralized control of labor relations, and common ownership or financial control. In view of the substantial interrelationship and the repeated lack of arm's-length dealings among the companies, single-employer status exists between PASI, SRS, PA, PAI, and PAMI.

Interrelation of Operations

Respondents share the same customers, the same business purpose, and there is intermingling of Respondents' employees among PA, SRS, PAMI and PASI. Lancaster received paychecks from PA, SRS, PAMI and PASI. His last two paychecks were from "Paint America, P.O. Box 456 …" dated "5/14/04" and from "PAINT AMERICA, A PAINT AMERICA SERVICES, INC. COMPANY, P.O. BOX 456 …" dated "06/11/04." As noted above, Paint America is an assumed name of SRS Group, Inc. whose President and sole owner (transcript page 56) is Salvatore Randazzo. I do not believe that it was made clear on this record on what basis Jamile Randazzo would be signing a check for Paint America, which is an assumed name of SRS Group, Inc. in that according to some of the documentation introduced herein Paint America, meaning Paint America, Inc., was automatically dissolved in 1995. Paint America, as an assumed name of SRS Group, Inc. still exists. Lancaster testified that he did not even know that he was working for a company named Paint America Services, Inc. Company. And Kubicz

received paychecks from SRS and from "PAINT AMERICA, A PAINT AMERICA SERVICES, INC. COMPANY." While Lancaster and Kubicz received paychecks from the various entities, nothing changed with respect to who the employees reported to on a daily basis, what they wore, the equipment they used, the location or telephone number of the business office, or persons handling the involved payroll. Salvatore Randazzo was the dominant force in managing Respondents. Employees viewed Salvatore Randazzo as the owner of PA. A business card received in evidence, General Counsel's Exhibit 8, indicates that Sal Randazzo is President of Paint America, of 107 E. Bennett, Saline, Michigan, "An SRS Group Co." In a written quotation dated "6-24-05" received as General Counsel's Exhibit 16, Sal Randazzo signed as President of Paint America of 107 E. Bennett, Saline, Michigan 48176. On January 3, 2002 Sal Randazzo signed a notarized Discharge of Lien as President of Paint America, General Counsel's Exhibit 104. When Kennedy, who is the Business Manager/Secretary-Treasurer of Painter's District Council 22, met Salvatore and Jamile Randazzo between 1985 and 1990, his understanding from the conversation was that Salvatore Randazzo was the owner in charge of Paint America and Jamile was his wife. Truman, who was a Business Agent/Organizer for the Charging Party, viewed Salvatore Randazzo as the owner operator of Paint America, and he heard Salvatore Randazzo introduce himself as the owner of Paint America at a seminar they both attended. The collective- bargaining agreements which cover the involved union members have been between the Union and Paint America, Inc., P.O. Box 456, with Jamile Randazzo signing as President (1992-1995); between the Union and Paint America of Michigan, Inc., 640 Hickory Lane, with Jamile Randazzo signing as President (1998-2003), and between the Union and Paint America with Jamile Randazzo signing as President (2003-May 31, 2004). With respect to the 2003-2004 contract, Salvatore Randazzo, when he was caught working a union job without a union contract, told the union representative that he would sign the collective-bargaining agreement. When the collective-bargaining agreement was presented for his signature at the job site, Jamile Randazzo showed up and signed it. The collective-bargaining agreement Jamile Randazzo signed on July 2, 2003 was between the Union and Paint America. It is noted, however, that while the employer is described as "Paint America," the box in the collective-bargaining agreement describing the Employer as a "Corporation" is checked. Consequently, although the employer is not specifically named as "Paint America, Inc.," the fact that the box is checked, in effect, amounts to the same thing. In any event, (a) the Board has already found in the underlying proceeding that Lancaster was discharged during the term of a collective-bargaining agreement between the parties that was effective from June 1, 1998 (As noted above, the 1998-2003 agreement was with Paint America of Michigan, Inc. and it is noted that the Board found that PASI discharged Lancaster during the term of a collective-bargaining agreement between the parties that was effective from June 1, 1998 to May 31, 2004.) to May 31, 2004, and (b) this proceeding is limited to the determination of derivative liability and interim earnings. Consequently, that matter cannot be relitigated. Additionally, in view of the fact that there was a collective-bargaining agreement between the Union and a corporation named Paint America covering the involved employees, it could be argued that Paint America Corporation or Incorporated (Inc.) did have employees up until May 31, 2004 even though PAI may have been dissolved on paper sometime prior to this. (See General Counsel's Exhibits 80 and 83 which indicate, for Paint America, Inc., "AUTOMATIC DISSOLUTION Date: 7-15-1995") Respondent's letter indicating that it was terminating the second above-described collective-bargaining agreement was written on "Paint America, EXCELLENCE APPLIED, SINCE 1989" letterhead. The subsequent letter of Paint America of Michigan, Inc. accusing the Union of failure to bargain is also written on "Paint America, EXCELLENCE APPLIED, SINCE 1989," P.O. Box 456 letterhead and it was faxed by the Respondents on an "SRS GROUP, INC." fax machine. As noted above, the same approach was taken with other correspondence from Respondents to the Union, namely the body of the correspondence deals with Paint America of Michigan, Inc., the letterhead refers to "Paint America, EXCELLENCE APPLIED, SINCE 1989," P.O. Box 456, and the correspondence was transmitted on a "SRS GROUP INC" fax machine. The 2004-2007

collective-bargaining agreement covering the involved employees is between the Union and Paint America Services, Inc., 640 Hickory Lane, with Jamile Randazzo signing as President. The subsequent December 2004 required $300 check to the Union for the arbitration fund is drawn on the account of "PAINT AMERICA, A PAINT AMERICA SERVICES, INC. COMPANY, P.O. BOX 456" and it is signed by Jamile Randazzo. With respect to the fringe benefit reports covering the involved union members which are submitted by Respondents, the ones for January, February, March, and April 2004 were sent in by Paint America of Michigan, Inc. The one for May and June 2004 has the fax number of "SRS GROUP, INC." The one for September 2004 is from Paint America Services, Inc. And the one for July 2005 is from Paint America Services, P.O. Box 456. The senior procurement agent for the University of Michigan who testified at the trial herein sponsored a number of 2004 business records, some of which referred to Paint America of Michigan Incorporated, P.O. Box 456, others of which refer to Paint America, and at least one of which was signed by Salvatore Randazzo as "GM" of Paint America. The SRS Group, Inc. fax machine was used to fax at least two of the Paint America quotes back to the University of Michigan. In the underlying unfair labor practice proceeding the Board found that Salvatore Randazzo was the manager of PA and Jamile Randazzo was the President of PA. As noted above, Salvatore Randazzo is the President of SRS which has a Certificate of Assumed name from Michigan under which business is to be transacted as Paint America. Salvatore Randazzo told Lancaster that when SRS won a contract involving union work, the work would be subcontracted to PA. Salvatore Randazzo told the Union that SRS was not bound by PA's collective-bargaining agreement when the involved employees worked for SRS. Union employees of Respondents were required to work on weekends for SRS as nonunion employees for cash or checks without pay stubs (no contributions to the Union fund) in order to keep their Union jobs with PA during the week. Notwithstanding that Lancaster worked for Paint America under the involved collective-bargaining agreement, and notwithstanding that Salvatore Randazzo testified that he did not hold any position with Respondents other than President of SRS Group, Inc., Salvatore Randazzo discharged Lancaster on May 20, 2004. Then there is the matter of the November 22, 2004 $5,000.00 check signed by Jamile Randazzo, drawn on the account of "Paint America, A PAINT AMERICA SERVICES, INC. COMPANY, P.O. BOX 456, SALINE, MI 48176" made payable to SRS Group. Salvatore Randazzo claimed under oath that he did not recall receiving it. As correctly pointed out by Counsel for General Counsel on brief, at various times the Respondents used the same street address, the same P.O. Box, the same phone number, and the same fax machine. PASI, SRS, PA, PAI, and PAMI hold themselves out to the public as a single enterprise.

Common Management

As demonstrated by record evidence, Salvatore Randazzo is the dominant force in managing Respondents. He is the one who directs Respondents' day-to-day business. He is the one who directs employees. He is the one that the Union, the employees, and the University of Michigan view as the true operator of Respondents. In other words, those who deal with Respondents look to Salvatore Randazzo as the operator of Respondents. Jamile Randazzo clearly plays a role in the operations of Respondents. She has signed documentation as President of some of Respondents. She has signed correspondence. She has submitted fringe benefit reports, and she has returned bid quotations. (It has not been shown that anyone other than Salvatore Randazzo was responsible for working up the bid quotations.) Jamile Randazzo exercised limited management over certain of Respondents. It is clear that Salvatore Randazzo is the driving force behind Respondents. He hired the involved employees, he told them what to do, he laid them off, he recalled them, he discharged Lancaster, and he alone explained the position of Respondents regarding Lancaster's discharge. In my opinion, as here pertinent, there is common management of PASI, SRS, PA, PAI, and PAMI.

Centralized Control of Labor Relations

Salvatore Randazzo exercises dominant control over the labor relations of the Respondents. As noted above, Salvatore Randazzo was the one who discharged Lancaster and it was he alone who spoke to the Union giving Respondents' position with respect to the discharge and what Salvatore Randazzo believed that he could notwithstanding the presence of the Union. It was also Salvatore Randazzo who, when caught doing union work in 2003 without a union collective-bargaining agreement in place, agreed to sign a collective-bargaining contract. As noted above, he sent his wife to the job site to sign the contract. In a way, Salvatore Randazzo has been hoisted on his own petard in that he created a situation with the numerous entities with similar names so that even one of Respondents' principals, Jamile Randazzo, apparently could not keep them straight. While Jamile Randazzo has signed the collective-bargaining agreements, Salvatore Randazzo has signed at least one of the agreements.[31] And while Jamile Randazzo has corresponded with the Union regarding the collective bargaining agreements, and has submitted to the Union fringe benefit reports for various of the Respondents, she has used an SRS Group, Inc. fax machine, which is her husband's company, in doing so. This raises additional questions in that on one of the fringe benefit reports, General Counsel's Exhibit 67, the only company name on the document is SRS Group, Inc. So while that company may not have had a collective-bargaining agreement with the Union at the time, the approach taken by Respondents makes it appear that the fringe benefit payments for June 2004 are being made on behalf of SRS Group, Inc. In my opinion, Counsel for General Counsel has shown by a preponderance of evidence that in terms of this factor all of the Respondents constitute a single employer.

Common Ownership or Financial Control

As pointed out by Counsel for General Counsel on brief, the Board has used a single-factor test to determine single-employer status, namely the presence or absence of an arm's-length relationship amongst unrelated companies, *Lanier Corp.,* 346 NLRB 748 fn. 5 (2006), and the Board will find a single-employer relationship where one spouse exercises control over key business decisions of the other spouse's company, such as finances, *Silver Court Nursing Center,* 313 NLRB 1141, 1142 (1994). Also as pointed out by Counsel for General Counsel on brief, the Board treats ownership of separate companies owned by close family members as common ownership where there is evidence that the companies have less than an arms-length relationship and where there is evidence of common management, centralized control of labor relations, and an interrelationship of operations, *Truck & Dock Services, Inc.,* 272 NLRB 592 fn.2 (1984). All of these have been found above. Additionally there is the matter of the November 22, 2004 $5,000.00 check signed by Jamile Randazzo, drawn on the account of "Paint America, A PAINT AMERICA SERVICES, INC. COMPANY, P.O. BOX 456, SALINE, MI 48176" made payable to SRS Group. As noted above, Salvatore Randazzo claimed under oath that he did not recall receiving it. Jamile Randazzo was not called as a witness by the Respondents to explain this check that she signed and made out to her husband's company.[32] Additionally, Salvatore Randazzo was the only one who entered an appearance at the trial and testified for one of the Respondents (As noted above, Salvatore Randazzo limited his appearance.) in the matter I have before me. Consequently, it was not shown that anyone other than Salvatore Randazzo made the decision on who would testify about this financial matter.

[31] Whether he signed for himself or he had his wife sign for him is of little consequence.

[32] I do not believe that the prohibition in note 6 of the Board's decision in 352 NLRB No. 31 (2008) would have precluded this.

This is a direct transfer of funds from one of the Respondents to another Respondent. If Respondents are unwilling to explain this transfer of funds, it cannot be found that the transfer was an arms-length transaction. In view of the above and in view of the financial control that Salvatore Randazzo has over the Respondents, I believe that Counsel for General Counsel has shown by a preponderance of evidence that in terms of this factor, in addition to the other factors described above, all of the Respondents constitute a single employer.

With respect to interim employment, while it took Lancaster from May 10 to May 18, 2004 to find employment with Interior/Exterior Specialists after he was discharged by Salvatore Randazzo, Lancaster exercised diligence in looking for employment in that during this period he contacted District Council 22 and had his name put on the out-of-work list, he sent out four or five resumes each week, General Counsel's Exhibit 48, starting at the top of the contractor's list, which is handed out by the District Council (It has the names of every union contractor in the District Council area.) and working his way down, he signed up for unemployment between May 10 - 28, 2004, he put his resume on the web site of the Michigan Works, he telephoned several business agents, namely Tommy Truman, Tommy Thomas, and Frank Neeb, and let them know that he was on the out-of-work list, and he collected unemployment benefits between May 10 - 28, 2004. When he was without work between February 9, 2005 and March 16, 2005, Lancaster collected unemployment, put his name on the out-of-work list, sent out a few resumes, talked to his business agent, and updated his resume on the Michigan Works website. As pointed out by Counsel for General Counsel on brief, November to March is traditionally a slow period for the involved work. Again Lancaster was diligent in looking for employment and when the Union telephoned him with a job with Boice he took it on March 16, 2004. Going from Boice to Tye, Lancaster was only out of work for one day. Going from Tye to Woods Lancaster was only out of work for about 7 days. And although he had short periods of unemployment while he worked for Woods, they occurred during traditionally slow periods and Wood's superintendent kept his word and recalled Lancaster first when work started coming in again. Lancaster did not willfully fail to find interim employment.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[33]

[33] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The Respondents PASI, SRS, PA, PAI, and PAMI, all of which constitute a single employer, are jointly and severally liable for all backpay owed to George Lancaster and the Union's vacation fund on his behalf, and their officers, agents, successors and assigns shall make whole George Lancaster and the Union's vacation fund in the amounts of $26,029.20 and $4,117.68, respectively, plus interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987); that the backpay owed to George Lancaster and the Union vacation fund continues to accrue because none of Respondents have offered George Lancaster reinstatement; and that Respondents SRS and PA are bound by the failure of PASI to file an appropriate answer to the original compliance specification.

Dated, Washington, DC, September 29, 2008.

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John H. West
Administrative Law Judge