

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Triple C Maintenance, Inc. and International Association of Heat and Frost Insulators and Asbestos Workers, Local 64. Case 17-CA-19243

May 2, 2002

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN
AND COWEN

On October 30, 1998, the National Labor Relations Board issued a Decision and Order,¹ *inter alia*, directing the Respondent, Triple C Maintenance, Inc., to make whole certain of its unit employees for loss of earnings and other benefits resulting from its failure to abide by the terms and conditions of the collective-bargaining agreement, to reimburse its unit employees for any expenses ensuing from the Respondent's failure to make the required benefit payments, and to remit all fringe benefit amounts that have become due. On July 10, 2000, the United States Court of Appeals for the Tenth Circuit issued its opinion and judgment enforcing the Board's Order.²

A controversy having arisen over the amount of backpay due the discriminatees and amounts due to various fringe benefit funds, on March 6, 2001, the Regional Director for Region 17 issued a compliance specification and notice of hearing alleging the amount due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. On March 28, 2001, the Respondent filed an answer to the compliance specification.

On August 10, 2001, the Regional Director for Region 17 issued an amended compliance specification. By letter dated October 19, 2001, the Respondent notified counsel for the General Counsel that the amended compliance specification was accurate and correct, that the Respondent did not intend to file an answer to the amended compliance specification, and that the Respondent was withdrawing its March 28, 2001 answer to the original compliance specification.

On October 26, 2001, the General Counsel filed with the Board a Motion for Summary Judgment, with exhibits attached. On October 30, 2001, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion and in the amended compliance specification are therefore undisputed.

Ruling on the Motion for Summary Judgment

As noted above, the Respondent has withdrawn its answer to the original compliance specification and has advised that it does not intend to file an answer to the amended compliance specification. We therefore conclude that the amounts due to the unit employees and funds are as stated in the amended compliance specification, and we will order payment by the Respondent of those amounts to the discriminatees and funds, plus interest accrued on these amounts to the date of payment. Accordingly, we grant the General Counsel's Motion for Summary Judgment.

ORDER

The National Labor Relations Board orders that the Respondent, Triple C Maintenance, Inc., Sapulpa, Oklahoma, its officers, agents, successors, and assigns, shall make whole the individuals named below, by paying them the amounts following their names, plus interest,³ and minus tax withholdings required by Federal and state laws,⁴ and shall make whole the funds named below, by paying them the amount following their names and any additional amounts due, plus interest.⁵

Name	Amount
Houston Tiger	\$ 0.00
Gilbert Ulibarri	\$ 83.92
Nicolas Perez	\$ 53.55
Carlos Villa	\$ 0.00
Arturo Fernandez	\$ 0.00
Alberto Gonzalez	\$ 0.00
William Spencer	\$ 0.00
Brad Evans	\$ 0.00
Jeremy Welsh	\$ 0.00
Oscar Garcia	\$ <u>134.22</u>

Total Backpay Due Employees \$ 271.69

Pension Fund	\$ 3,575.22
Health & Welfare Fund	\$ 5,948.65
National Apprenticeship Fund	\$ <u>321.15</u>

Total Due the Funds \$ 9,845.02

GRAND TOTAL \$10,116.71

³ See *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

⁴ The General Counsel's amended compliance specification requests that the Board order the Respondent to reimburse these individuals for any extra Federal and/or state income taxes that would or may result from the lump sum payment of the backpay award. This aspect of the General Counsel's proposed Order would involve a change in Board law. See, e.g., *Hendrickson Bros.*, 272 NLRB 438, 440 (1985) *enfd.* 762 F.2d 990 (2d Cir. 1985). In light of this, we believe that the appropriateness of this proposed remedy should be resolved after a full briefing by affected parties. See *Kloepfers Floor Covering, Inc.*, 330 NLRB 811 fn. 1 (2000). Because there has been no such briefing in this case, we decline to include this additional relief in the Order here.

⁵ See *Merryweather Optical Co.*, 240 NLRB 1213, 1216, fn. 7 (1979).

¹ 327 NLRB 42.

² 219 F.3d 1147.

Dated, Washington, D.C. May 2, 2002

Peter J. Hurtgen, Chairman

Wilma B. Liebman, Member

William B. Cowen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD