

**Ybarra Construction Company and D & P Drywall, Inc., Single Employer and District Council 22, International Union of Painters and Allied Trades, AFL-CIO. Case 7-CA-44842**

October 31, 2006

**SECOND SUPPLEMENTAL DECISION AND ORDER**

BY CHAIRMAN BATTISTA AND MEMBERS KIRSANOW  
AND WALSH

The General Counsel seeks a default judgment in this case on the ground that the Respondent has withdrawn its answer and amended answer to the compliance specification.

On September 29, 2004, the Board issued a Decision and Order<sup>1</sup> that, among other things, ordered the Respondent to make employee Alan Kirk whole for lost earnings and benefits resulting from the Respondent's unfair labor practices in violation of Section 8(a)(1) and (3) of the Act.

A controversy having arisen regarding the backpay due to Kirk, the Regional Director for Region 7, on December 9, 2005, issued a compliance specification and notice of hearing specifying the amount of backpay due to Kirk under the Board's Order. On December 30, 2005, the Respondent filed an answer to the specification. In a letter dated January 3, 2006, the General Counsel advised the Respondent that its answer was insufficient and that failure to file a proper answer by January 10 would result in the filing of a Motion for Summary Judgment.

On January 12, 2006, the General Counsel filed a Motion for Partial Summary Judgment with the Board. On January 23, 2006, the Respondent filed an amended answer to the compliance specification. On July 31, 2006, the Board issued a Supplemental Decision and Order<sup>2</sup> granting in part the General Counsel's motion with respect to all aspects of the compliance specification except for the method of calculating base period hours and interim earnings.

On September 18, 2006, the Respondent withdrew its answer and amended answer to the compliance specification.<sup>3</sup>

On September 25, 2006, the General Counsel filed with the Board a Motion for Default Judgment, with exhibits attached. On September 27, 2006, 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 did not file a response. The allegations in the motion and in the compliance specification are therefore undisputed.

**Ruling on the Motion for Default Judgment**

Section 102.56(a) of the Board's Rules and Regulations provides that a respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) provides that if the respondent fails to file an answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

Here, according to the uncontroverted allegations of the Motion for Default Judgment, although the Respondent initially filed an answer and an amended answer to the compliance specification, the Respondent, by counsel, subsequently withdrew its answers on September 18, 2006. The withdrawal of an answer has the same effect as a failure to file an answer, i.e., the allegations in the compliance specification must be considered to be true.<sup>4</sup>

Accordingly, based on the withdrawal of the Respondent's answers to the compliance specification, and in the absence of good cause being shown otherwise, we deem the allegations in the compliance specification to be admitted as true, and we grant the General Counsel's Motion for Default Judgment. Accordingly, we conclude that the net backpay due Kirk is as stated in the compliance specification and we will order the Respondent to pay that amount to Kirk, plus interest accrued to the date of payment.

**ORDER**

The National Labor Relations Board orders that the Respondents, Ybarra Construction Company, Detroit, Michigan, and D & P Drywall, Inc., Dearborn, Michigan, a single employer, their officers, agents, successors, and assigns, shall make whole Alan Kirk by paying him \$31,425.65, plus interest accrued to the date of payment, as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and State laws.

TOTAL BACKPAY: \$31,425.65

<sup>4</sup> See *Maislin Transport*, 274 NLRB 529 (1985).

<sup>1</sup> 343 NLRB No. 5 (2004).

<sup>2</sup> 347 NLRB No. 79 (2006).

<sup>3</sup> The Respondent's letter withdrawing its answers stated that the "Respondent wishes to concede judgment in [this] matter."