

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.

**Cadence Innovation, LLC Debtor-in-Possession and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO-CLC.** Cases 9-CA-43672 (formerly 7-CA-50215), 9-CA-43673 (formerly 7-CA-50320), and 9-CA-43674 (formerly 7-CA-50338)

May 29, 2009

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBER SCHAUMBER

The General Counsel seeks default judgment in this case on the ground that the Respondent has failed to file an answer to the compliance specification.

On January 16, 2009, the Board issued a Decision and Order<sup>1</sup> that, among other things, ordered the Respondent to make whole employee Tawana Merriewether for any loss of earnings and other benefits suffered as a result of the Respondent's unfair labor practices in violation of Section 8(a)(3) and (1) of the Act.

A controversy having arisen over the amount of backpay due Merriewether, on March 25, 2009, the Regional Director issued a compliance specification and notice of hearing alleging the amount due under the Board's Order. The compliance specification notified the Respondent that it should file an answer by April 15, 2009, complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent failed to file an answer.

By letter dated April 17, 2009, the Region advised the Respondent that no answer to the compliance specification had been received and that unless an answer was filed by April 24, 2009, a motion for default judgment would be filed. To date, the Respondent has not filed an answer.

On May 4, 2009, the General Counsel filed with the Board a Motion for Default Judgment, with exhibits attached. On May 8, 2009, 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 again filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

<sup>1</sup> 353 NLRB No. 77.

Ruling on the Motion for Default Judgment<sup>2</sup>

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.

According to the uncontroverted allegations of the motion for default judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, 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 the discriminatee is as stated in the compliance specification as modified below,<sup>3</sup> and we will order the Respondent to pay that amount to Tawana Merriewether, plus interest accrued on the amount to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondent, Cadence Innovation, LLC, Debtor-in-Possession, Troy, Michigan, its officers, agents, successors, and assigns, shall make Tawana Merriewether whole by paying her the amount following her name, plus interest accrued to the date of payment, as prescribed in *New Horizons for the Retarded*, 283 NLRB

<sup>2</sup> Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act. See *New Process Steel v. NLRB*, \_\_\_ F.3d \_\_\_, 2009 WL 1162556 (7th Cir. May 1, 2009), petition for cert. filed \_\_\_ U.S.L.W. \_\_\_ (U.S. May 27, 2009) (No. 08-1457); *Northeastern Land Services v. NLRB*, 560 F.3d 36 (1st Cir. 2009), rehearing denied No. 08-1878 (May 20, 2009). But see *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, \_\_\_ F.3d \_\_\_, 2009 WL 1162574 (D.C. Cir. May 1, 2009), petition for rehearing filed Nos. 08-1162, 08-1214 (May 27, 2009).

<sup>3</sup> We note and correct three mathematical errors in the General Counsel's Appendix A, which is attached to the compliance specification. First, the correct amount of total gross backpay owed to the discriminatee is \$17,097, not \$17,098. Second, the correct amount of net backpay owed to the discriminatee for the third quarter of 2007 is \$3519, not \$3520. Third, the correct amount of total net backpay owed to the discriminatee is \$7533, not \$7534.

1173 (1987), minus tax withholdings required by Federal  
and State laws:

Tawana Merriewether                 \$7,533

Dated, Washington, D.C. May 29, 2009

\_\_\_\_\_  
Wilma B. Liebman,                     Chairman

\_\_\_\_\_  
Peter C. Schaumber,                 Member

(SEAL)         NATIONAL LABOR RELATIONS BOARD