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Mays Printing Company, Inc. and Local 2/289-M, Graphic Communications Conference, District Council 3, International Brotherhood of Teamsters. Cases 7–CA–51544 and 7–CA–52247

September 15, 2010

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS BECKER, PEARCE, AND HAYES

The Acting General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the compliance specification.¹

On May 29, 2009, the Board issued a Decision and Order² that, among other things, ordered the Respondent to make its employees whole for any loss of earnings and other benefits, with interest, resulting from the Respondent's unfair labor practices in violation of Section 8(a)(5) and (1) of the Act. On November 2, 2009, the United States Court of Appeals for the Sixth Circuit entered its judgment enforcing in full the Board's Order.³

On July 1, 2010, the Board issued an Order⁴ that, among other things, ordered the Respondent to make whole Jeffery A. Krejci for any loss of earnings and other benefits, with interest, resulting from the Respondent's unfair labor practices in violation of Section 8(a)(3) of the Act.

A controversy having arisen over the amount of backpay due under the terms of the Board's Orders, the Regional Director issued a compliance specification and notice of hearing on June 11, 2010, alleging the amounts due under the Board's Orders, and notifying the Respondent that it should file a timely answer 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.

¹ Although Case 7–CA–51544 was decided by only two Board Members, the court's order and mandate upholding that decision became final prior to the Supreme Court's decision in *New Process Steel, L.P. v. NLRB*, 130 S.Ct. 2635 (2010), holding that a two-member group may not exercise delegated authority when the membership of the group falls below three. In these circumstances, we regard the matters finally resolved by the court of appeals as res judicata in this proceeding. See *Chicot County Drainage District v. Baxter State Bank*, 308 U.S. 371, 374–378 (1940); *Nemaizer v. Baker*, 793 F.2d 58, 65 (2d Cir. 1986) (cited with approval in *United Student Aid Funds, Inc. v. Spinosa*, 130 S.Ct. 1367, 1377 (2010)).

² 354 NLRB No. 23.

³ No. 09–2036.

⁴ Unpublished Order adopting, in the absence of exceptions, the decision of Administrative Law Judge Arthur J. Amchan issued on May 11, 2010 (JD–03–10).

By letter dated July 7, 2010, the Region advised the Respondent that no answer to the compliance specification had been received and that unless an answer was filed by July 16, 2010, a motion for default judgment would be filed. To date, the Respondent has failed to file an answer.

On July 26, 2010, the Acting General Counsel filed with the Board a Motion for Default Judgment, with exhibits attached. On July 27, 2010, the Board issued an order transferring the proceeding to the Board and Notice to Show Cause why the motion should not be granted. On August 5, 2010, the Board issued a Revised 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.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

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 any 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 grant the Acting General Counsel's Motion for Default Judgment. Accordingly, we conclude that the net backpay due the discriminatees is as stated in the compliance specification, and we will order the Respondent to pay the amounts to the discriminatees, plus interest accrued to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondent, Mays Printing Company, Inc., Detroit, Michigan, its officers, agents, successors, and assigns, shall, in Case 7–CA–51544, make whole Michael J. Camilleri, Paul N. Altese, Kenan F. Cross, Martin J. Griffin, Randolph S. Waller, and Jeffery A. Krejci by paying each of them the amount of backpay listed below, plus interest accrued to the date of payment, as pre-

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scribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and minus tax withholdings required by Federal and State laws:

Michael J. Camilleri	\$ 8,719.81
Paul N. Altese	4,019.06
Kenan F. Cross	4,117.51
Martin J. Griffin	4,140.70
Randolph S. Waller	3,835.57
Jeffery A. Krejci	<u>4,912.90</u>
Backpay due in Case 7-CA-51544:	\$29,745.55

The National Labor Relations Board orders that the Respondent, Mays Printing Company, Inc., Detroit, Michigan, its officers, agents, successors, and assigns, shall, in Case 7-CA-52247, make whole discriminatee Jeffery A. Krejci by paying him the following amount, plus interest accrued to the date of payment, as prescribed in *New Horizons for the Retarded*, supra, minus tax withholdings required by Federal and State law: \$35,816.00.⁵

⁵ As set forth in the compliance specification, discriminatee Krejci's backpay period is ongoing until he receives a valid offer of reinstatement;

Backpay due in Case 7-CA-51544:	\$29,745.55
Backpay due in Case 7-CA-52247:	<u>35,816.00</u>
TOTAL BACKPAY DUE:	\$65,561.55

Dated, Washington, D.C. September 15, 2010

Craig Becker, Member

Mark Gaston Pearce, Member

Brian E. Hayes, Member

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ment; the backpay amount listed above has been calculated through June 11, 2010, in order to ascertain a definitive backpay period for purposes of this proceeding.