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SRC Painting, LLC, PBN, LLC, and Liquid Systems, and James Wierzbicki, Karen Wierzbicki, Edmund Wierzbicki, Eric Wierzbicki, Constance Wierzbicki, and Erin Wierzbicki, individually¹ and International Union of Painters and Allied Trades, District Council No. 7, AFL-CIO. Cases 30-CA-16577 and 30-CA-16813

January 5, 2011

SUPPLEMENTAL DECISION AND ORDER
REMANDING

BY CHAIRMAN LIEBMAN AND MEMBERS PEARCE
AND HAYES

On March 31, 2006, the National Labor Relations Board issued a Decision and Order in this proceeding.² On June 14, 2007, the United States Court of Appeals for the Seventh Circuit entered its consent judgment enforcing in full the Board's Order. A controversy having arisen over the amounts due under the Board's Order, the Regional Director for Region 30 issued a compliance specification and notice of hearing on June 30, 2010,³ alleging the amounts due under that Order, and notifying the Respondents that they should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondents failed to file an answer. By letter dated July 23, the Deputy Regional Director advised the Respondents that no answer to the compliance specification had been received and that unless an answer was filed by August 2, a motion for default judgment would be filed. The Deputy Regional Director also enclosed a copy of Section 102.56 of the Board's Rules and Regulations. To date, Respondents SRC, LLC (SRC), PBN, LLC (PBN), James Wierzbicki, and Erin Wierzbicki have failed to file an answer.

On August 2, Respondents Liquid Systems, Eric Wierzbicki, and Edmund Wierzbicki filed an answer. By letter dated August 4, the Region informed Respondents Liquid Systems, Eric Wierzbicki, and Edmund Wierzbicki that the answer to the compliance specification was deficient under applicable sections of the Board's Rules

and Regulations. Another copy of Section 102.56 was included. The letter further noted that if a proper answer was not received by August 10 the Regional Office would file a Motion for Summary Judgment. On August 10, Respondents Liquid Systems, Eric Wierzbicki, and Edmund Wierzbicki filed an amended answer to the compliance specification.

On August 27, the Acting General Counsel filed with the Board a Motion to Transfer Proceedings to the Board, Motion for Partial Summary Judgment, Motion for Default Judgment, and Motion to Strike, with argument in support and exhibits attached. None of the Respondents filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel. On the entire record, the Board makes the following

Ruling for Motion to Transfer Proceeding to the Board,
Partial Summary Judgment and Motion to Strike

Section 102.56(b) and (c) of the Board's Rules and Regulations states:

(b) *Contents of answer to specification.*—The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(c) *Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification.*—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. If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by

¹ The caption appears as noted in the Board's Decision and Order reported at 346 NLRB 707 (2006). In that decision, the Board found that Constance Wierzbicki and Karen Wierzbicki were not personally liable for the corporate respondents' unfair labor practices, and the Acting General Counsel makes no claims against these individuals.

² 346 NLRB 707.

³ Dates are 2010 unless otherwise noted.

paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

The Acting General Counsel submits that he is entitled to partial summary judgment against Respondents Liquid Systems, Eric Wierzbicki, and Edmund Wierzbicki, because they failed to file an answer that conforms to the requirements of Section 102.56 of the Board's Rules and Regulations. Specifically, he asks that all allegations, with the exception of those relating to mitigation and interim earnings, in the compliance specification be deemed true.

We agree with the Acting General Counsel's contentions. Respondents Liquid Systems, Eric Wierzbicki, and Edmund Wierzbicki's amended answer is substantially deficient insofar as it contains general denials concerning matters within the Respondents' knowledge. It is insufficient because it does not fairly meet the substance of the allegations of the compliance specification, nor does it reveal any basis cognizable under Section 102.56(b) for disagreement with the compliance specification's allegations. The Respondents also failed to set forth any figures or alternative premises in support of its denials. Notably, these deficiencies occurred despite numerous notifications advising the Respondents of the Section 102.56 requirements.

The Acting General Counsel also moves to strike evidence contained in portions of these Respondents' amended answer, pursuant to Federal Rules of Evidence 403 and 404. Specifically, he requests that we strike the parts of Respondents' answer to paragraphs 19, 20, 22, and 23 of the compliance specification that contain personal information concerning a discriminatee. We find that the information contained in those sections of the answer may be relevant to the issues concerning mitigation and interim earnings, but nevertheless find that those responses are insufficient and lack specificity as answers to allegations for which the Acting General Counsel seeks summary judgment.

Accordingly, we shall grant the Acting General Counsel's Motion to Transfer Proceedings to the Board and Motion for Partial Summary Judgment, but shall deny its Motion to Strike, and shall direct a hearing limited to issues concerning mitigation and interim earnings. Because we have found that Respondents Liquid Systems, Eric Wierzbicki, and Edmund Wierzbicki's general denials as to the allegations in the compliance specification are insufficient under Section 102.56(b) and (c) of the

Board's Rules and Regulations, we deem these Respondents to have admitted those allegations, as well as the allegations they have specifically admitted to be true.

Ruling on the Motion to Default

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.

The Acting General Counsel claims that he is entitled to default judgment against Respondents SRC, PBN, James Wierzbicki, and Erin Wierzbicki for failing to file any answer to the compliance specification.

As stated above, despite having been advised of the filing requirements, Respondents SRC, PBN, James Wierzbicki, and Erin Wierzbicki have failed to file an answer to the compliance specification. Nonetheless, we deny the Acting General Counsel's Motion for Default Judgment. The answer timely filed by Respondents Liquid Systems, Eric Wierzbicki, and Edmund Wierzbicki serves to preclude the entry of a default judgment against Respondents SRC, PBN, James Wierzbicki, and Erin Wierzbicki, since the corporate respondents have been found to be alter egos of one another.⁴

ORDER

IT IS ORDERED that the Acting General Counsel's Motion to Transfer Proceedings to the Board is granted.

IT IS FURTHER ORDERED that the Acting General Counsel's Motion for Partial Summary Judgment, concerning all allegations in the compliance specification except as to amounts of mitigation and interim earnings, is granted.

IT IS FURTHER ORDERED that the Acting General Counsel's Motion to Strike is denied.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 30 for the purpose of issuing a notice of hearing and scheduling a hearing before an administrative law judge for the purpose of taking evidence concerning mitigation and interim earnings. The judge shall prepare and serve on the parties a decision containing findings of fact, conclusions of law, and recommendations based on all the record evidence. Following service of the judge's decision on

⁴ 346 NLRB 707. See *Metro Demolition Co.*, 348 NLRB 272 (2006), and cases cited therein.

the parties, the provisions of Section 102.46 of the Board's Rules and Regulations shall be applicable.

Dated, Washington, D.C. January 5, 2011

Wilma B. Liebman, Chairman

Mark Gaston Pearce, Member

Brian E. Hayes, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD