

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE

BOBBITT ELECTRICAL SERVICE, INC.

and

Case 25-CA-31185

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL UNION NO. 481,
a/w INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS

ACTING GENERAL COUNSEL'S MOTION
FOR DEFAULT JUDGMENT

Comes now Counsel for the Acting General Counsel and, pursuant to Section 102.56 of the Rules and Regulations of the National Labor Relations Board, moves that default judgment be granted in the above-captioned case. As grounds therefore, the Acting General Counsel states that:

1. On May 28, 2010, the Board issued its Decision and Order (355 NLRB No. 37) directing Bobbitt Electrical Services, Inc. (hereinafter "Respondent") to, *inter alia*, (a) offer Robert Scott (hereinafter "Scott") reinstatement to his former job or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed; (b) make Scott whole, with interest, for any loss of earnings and other benefits suffered as a result of the discrimination against him, less any net interim earnings; (c) remove from its files any reference to Scott's unlawful discharge, and notify him that this has been done and that the discharge will not be used against him in any way; and (d) mail the notice to the International Brotherhood of Electrical Workers, Local Union No. 481, a/w

International Brotherhood of Electrical Workers (hereinafter “Union”) and to the last known address of its unit employees employed by the Respondent on or after October 16, 2009, at its VA Hospital jobsite in Indianapolis, Indiana.

2. A controversy having arisen over the amount of the backpay due under the terms of the Board's Order, the Acting Regional Director of the National Labor Relations Board for the Twenty-fifth Region, on November 12, 2010, issued and caused to be served on the parties a Compliance Specification and Notice of Hearing (hereafter referred to as “Specification”) alleging the amount of backpay due under the Board's Order and notifying Respondent that it must file a timely answer complying with the Board's Rules and Regulations.¹

3. Section 102.56 (a) of the Rules and Regulations provides in relevant part that “Each respondent alleged in the specification to have compliance obligations shall, within 21 days from the service of the specification, file . . . an answer thereto” Section 102.56 (c) provides in relevant part that “If the respondent fails to file any answer to the specification within the time proscribed by this section, the Board may . . . find the specification to be true and enter such order as may be appropriate.”

4. On February 17, 2011, the undersigned sent a letter to Respondent, at 6259 Coffman Road, Indianapolis, IN 46268, advising Respondent of the necessity of filing an answer and the consequences of failing to do so.² That letter gave Respondent until March 3, 2011, to file an answer to the Specification in this matter.

5. To date the Respondent has not filed an Answer to the aforementioned Specification

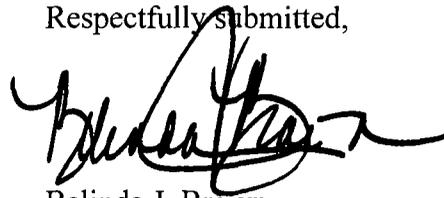
¹ A copy of this Compliance Specification and Notice of Hearing is attached hereto as Exhibit A. A copy of the Affidavit of Service is attached hereto as Exhibit B

² A copy of the letter is attached as Exhibit C. A copy of the Affidavit of Service is attached as Exhibit D.

WHEREFORE, Counsel for the Acting General Counsel prays that all allegations in the Compliance Specification issued in the above-captioned case be found to be true; that default judgment be granted in the above-captioned case; that an Order with an appropriate remedy be issued based upon the pleadings in the above-captioned case.

SIGNED at Indianapolis, Indiana, this 11th day of April, 2011.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Belinda J. Brown', written over a horizontal line.

Belinda J. Brown
Counsel for the General Counsel
National Labor Relations Board
Region Twenty-Five
Minton-Capehart Federal Building, Room 238
575 North Pennsylvania Street
Indianapolis, Indiana 46204
Phone: (317) 226-5856
Fax: (317) 226-5103
E-mail: belinda.brown@nlrb.gov

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing General Counsel's Motion for Default Judgment has been filed electronically through the Office of the Executive Secretary E-Filing Program and copies of General Counsel's Motion for Default Judgment have been served upon the following persons by electronic transmission this 11th day of April, 2011:

:

Lester A. Heltzer
Executive Secretary
1099 14th Street NW
Washington, D.C. 20570-0001

Bernard Bobbitt
Bobbitt Electrical Services, Inc.
6259 Coffman Road
Indianapolis, IN 46268
Email: Bernard@bobbittelectrical.com

Steven L. Montgomery, Business Agent
IBEW Local 481
Suite 205
1828 North Meridian Street
Indianapolis, IN 46202
Email: smontgomery@ibew481.org



Brenda J. Brown

10/10/10

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE

BOBBITT ELECTRICAL SERVICE, INC.

and

Case 25-CA-31185

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL UNION
No. 481, a/w INTERNATIONAL
BROTHERHOOD OF ELECTRICAL
WORKERS

COMPLIANCE SPECIFICATION AND
NOTICE OF HEARING

The National Labor Relations Board, herein called the Board, issued its Decision and Order (355 NLRB No. 37) on May 28, 2010, finding that Bobbitt Electrical Service, Inc., its officers, agents, successors, and assigns, herein called Respondent, had engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.

The Board ordered Respondent to, *inter alia*:

- A. Offer Robert Scott reinstatement to his former job or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.
- B. Make whole, with interest, Robert Scott for any loss of earnings and other benefits suffered as a result of the discrimination against him, less any net interim earnings. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *Jackson Hospital Corporation d/b/a Kentucky River Medical Center*, 356 NLRB No. 8 (2010).
- C. Remove from its files any reference to Robert Scott's unlawful discharge, and notify Scott that this has been done and that the discharge will not be used against him in any way.
- D. Mail the Notice to the Union and to the last known address of its unit employees employed by the Respondent on or after October 16, 2009, at its VA Hospital jobsite in Indianapolis, Indiana.

Exhibit A

Controversy having arisen over the amount of backpay due under the terms of the Board's Order, the undersigned Regional Director of the National Labor Relations Board for the Twenty-fifth Region, pursuant to the authority duly conferred upon him by the Board, hereby issues this Compliance Specification and alleges the following:

Definitions

1. The backpay period for the discriminatee, Robert Scott, begins on October 16, 2009, and continues through November 15, 2009, when Respondent left the job site and the general contractor, WTI, engaged another electrical contractor to complete the remaining work. The backpay period is comprised of four weeks and one day all contained within one calendar quarter, specifically, Quarter 4 of 2009.

2. An appropriate measure of gross backpay for Scott is the amount he would have earned if continually employed by Respondent during the backpay period.

3. The calendar quarter gross backpay Scott would have earned is based on Scott's average weekly earnings while he was employed by the Respondent¹. This average was applied to the four weeks and one day which constitute the backpay period.

4. Calendar quarter interim earnings are the wages Scott received from interim employers during the backpay period, computed on a quarterly basis.

5. Calendar quarter net interim earnings are the difference between calendar quarter interim earnings and calendar quarter expenses.

6. The calendar quarter net backpay is the difference between the calendar quarter gross backpay and calendar quarter net interim earnings.

Robert Scott

7. a. At the time of his unlawful discharge, Scott was earning \$37.50 per hour.

b. For the purposes of computation, an average of Scott's actual weekly earnings for the period he was employed at the Respondent's VA Hospital jobsite was used to project his continued earnings absent his unlawful discharge. Scott's average weekly earnings of \$1,649.79 were multiplied by the four full weeks of the backpay period. To that figure was added \$329.96² for the one remaining day in the pay period in which Scott was discharged. The sum of the two figures equals the total gross backpay.

¹ Scott was hired by the Respondent on July 21, 2009, and employed through October 15, 2009 at the Respondent's VA Hospital jobsite.

² Scott's average weekly earnings divided by five work days equals his average daily earnings.

- c. The gross backpay computation for Scott is set forth in Appendix A.
- d. It is admitted that Scott's interim employment and earnings are set forth in Appendix B.
- e. It is admitted that Scott's interim expenses are as set forth in Appendix C and summarized in Appendix A.
- f. Scott's gross backpay, interim earnings, interim expenses, net interim earnings and net backpay are summarized in Appendix A.

SUMMARY

8. Summarizing the facts and calculations specified above and in Appendices A through B inclusive, Respondent is liable for the backpay due Robert Scott as described above. The obligation of the Respondent to make whole Robert Scott under the Board's Order will be discharged by the payment of the amount set opposite his name below, plus interest accrued, minus the tax and withholding required by Federal and State law³:

Robert Scott

\$ 3,302.88

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Section 102.56 of the Board's Rules and Regulations, it must file an answer to the compliance specification. The answer must be received by this office on or before December 3, 2010, or postmarked on or before December 2, 2010. Unless filed electronically in a pdf format, Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at <http://www.nlr.gov>, click on E-Gov, and then click on the E-Filing link on the pull-down menu. Click on the "File Documents" button under "Regional, Subregional and Resident Offices" and then follow the directions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that such answer be signed and sworn to by the respondent or by a duly authorized agent with appropriate power of attorney affixed. See Section 102.56(a). If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a compliance specification is not a pdf file containing the

³ Applies to the wage portion only.

required signature, then the E-filing rules require that such answer containing the required signature be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the answer on each of the other parties must be accomplished in conformance with the requirements of Section 102.114 of the Board's Rules and Regulations. The answer may not be filed by facsimile transmission.

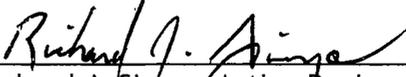
As to all matters set forth in the compliance specification that are within the knowledge of Respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial is not sufficient. See Section 102.56(b) of the Board's Rules and Regulations, a copy of which is attached. Rather, the answer must state the basis for any disagreement with any allegations that are within the Respondent's knowledge, and set forth in detail Respondent's position as to the applicable premises and furnish the appropriate supporting figures.

If no answer is filed or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the compliance specification are true. If the answer fails to deny allegations of the compliance specification in the manner required under Section 102.56(b) of the Board's Rules and Regulations, and the failure to do so is not adequately explained, the Board may find those allegations in the compliance specification are true and preclude Respondent from introducing any evidence controverting those allegations.

NOTICE OF HEARING

PLEASE TAKE NOTICE that on January 24, 2011 at 1:00 p.m. (EST) and on consecutive days thereafter until concluded, a hearing will be conducted at the Region Twenty-five Hearing Room, 575 North Pennsylvania Street, Room 238, Indianapolis, Indiana before a duly designated Administrative Law Judge of the National Labor Relations Board on the allegations set forth in the above compliance specification, at which time and place you will have the right to appear in person, or otherwise, and give testimony regarding the allegations in this compliance specification. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

SIGNED at Indianapolis, Indiana this 12th day of November, 2010.


Richard J. Simon, Acting Regional Director
National Labor Relations Board - Region 25
Room 238, Minton-Capehart Federal Building
Indianapolis, Indiana 46204-1577

Attachments

Qtr./Year	Gross Backpay	Interim Earnings	Interim Expenses	Net Interim Earnings	Net Backpay	Date of Termination through End of Backpay Period
Q4/2009	\$ 6,929.12	\$ 3,695.39	\$ 69.15	\$ 3,626.24	\$ 3,302.88	10/16/2009 - 11/15/2009

Qtr./Year	Interim Employer	Interim Earnings	Date of Hire through End of Backpay Period
Q4/2009	Industrial Electric, Inc.	\$ 3,695.39	10/28/09 - 11/15/09

Quarter	Home Address	Destination Address	Mileage One Way	Mileage Expense*	Notes
Q4-2009	Scott Residence 1478 Muessing Road Indianapolis, IN 46239	IBEW, Local 369 4315 Preston Hwy. Louisville, KY 40213	125.73	\$ 69.15	

The expense was incurred on or about 10/23/09 when Scott and a fellow union member drove to the Union Hall to sign the "Out of Work" book. Because the two drove together, Scott is claiming only mileage one way.

*Mileage expense is computed by multiplying the total quarterly mileage by the IRS Standard Mileage Rate for use of a car, van, pickup or panel truck in effect for each particular quarter. The effective rate for the fourth quarter of 2009 was 55 cents per mile. The IRS standard rates are available at www.IRS.gov.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

Case:

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end. An agreement between the parties, approved by the General Counsel, would serve to cancel the hearing.

However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements **will not be granted** unless good and sufficient grounds are shown **and** the following requirements are met:

(1) The request must be in writing. An original and two copies must be filed with the General Counsel and with the Chief Administrative Law Judge in Washington, D.C.

(2) Grounds must be set forth in **detail**;

(3) Alternative dates for any rescheduled hearing must be given;

(4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; **and**

(5) Copies must be simultaneously served on all other parties (*listed below*), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

Sec. 102.56 Answer to compliance specification.

(a) Filing and service of answer; form.—Each respondent alleged in the specification to have compliance obligations shall, within 21 days from the service of the specification, file an original and four copies of an answer thereto with the Regional Director issuing the specification, and shall immediately serve a copy thereof on the other parties. The answer to the specification shall be in writing, the original being signed and sworn to by the respondent or by a duly authorized agent with appropriate power of attorney affixed, and shall contain the mailing address of the respondent.

(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 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.

(d) Extension of time for filing answer to specification.—Upon the Regional Director's own motion or upon proper cause shown by any respondent, the Regional Director issuing the compliance specification and notice of hearing may by written order extend the time within which the answer to the specification shall be filed.

(e) Amendment to answer.—Following the amendment of the specification by the Regional Director, any respondent affected by the amendment may amend its answer thereto.

NATIONAL LABOR RELATIONS BOARD
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE

BOBBITT ELECTRIC
Charged Party

and

**INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS LOCAL 481**
Charging Party

Case: 25-CA-31185 AMD

DATE OF MAILING: December 23, 2010

AFFIDAVIT OF SERVICE OF: COMPLIANCE SPECIFICATION AND NOTICE OF HEARING

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by personal service upon the following person(s), addressed to them at the following addresses:

Mr. Bernard Bobbitt
Bobbitt Electric
6259 Coffman Rd.
Indianapolis, IN 46268



Subscribed and sworn before me

DESIGNATED AGENT

this 23rd day of DECEMBER, 2010


NATIONAL LABOR RELATIONS BOARD

Exhibit B



United States Government

NATIONAL LABOR RELATIONS BOARD

Region 25

575 North Pennsylvania Street - Room 238

Indianapolis, IN 46204-1577

February 17, 2011

Mr. Bernard Bobbitt
Bobbitt Electric
6259 Coffman Road
Indianapolis, IN 46268

RE: Bobbitt Electric
Case: 25-CA-31185

Dear Mr. Bobbitt:

On November 12, 2010, the Regional Director issued a Compliance Specification and Notice of Hearing in the above-captioned case. Pursuant to Section 102.56(a) of the National Labor Relations Board's Rules and Regulations, an Answer to the Specification must be filed within 21 days. Section 102.56(c) provides that if a respondent fails to file any answer within this timeframe, the Board may find the Specification to be true and enter such order as may be appropriate. As of this date, you have not submitted an Answer in this matter. I have included a copy of Section 102.56 for your convenience, please also note that Section 102.56(b) describes the content required in an Answer to the Specification.

Please be advised that if your Answer in this case is not received by March 3, 2011, the Regional Office will file a Motion for Default Judgment with the Board, requesting that the allegations in the Specification be found true and an appropriate order issue. If you have any questions or concerns, please do not hesitate to contact me at (317) 226-5856.

Very truly yours,

Belinda J. Brown
Field Attorney

Enclosure: Section 102.56 of the Rules and Regulations
H:\R25Com\25Cases\25-CA-31185\Compliance\CLTR.25-CA-31185.default.doc

Exhibit C

NATIONAL LABOR RELATIONS BOARD
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE

BOBBITT ELECTRIC
Charged Party

Case: 25-CA-31185 AMD

and

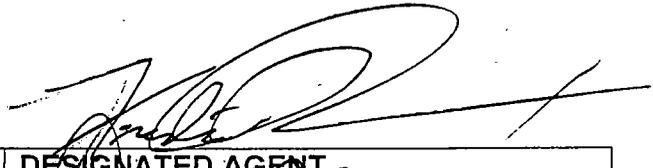
INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS LOCAL 481
Charging Party

DATE OF SERVICE: February 17, 2011

AFFIDAVIT OF SERVICE OF: LETTER REQUESTING COMPLIANCE SPEC ANSWER

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by personal service upon the following person(s), addressed to them at the following addresses:

Mr. Bernard Bobbitt
Bobbitt Electric
6259 Coffman Rd.
Indianapolis, IN 46268



DESIGNATED AGENT

NATIONAL LABOR RELATIONS BOARD

Subscribed and sworn before me	DESIGNATED AGENT
this 18th day of February, 2011	 NATIONAL LABOR RELATIONS BOARD

Exhibit D