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Exhibitus, LLC and New Jersey Regional Council of Carpenters, United Brotherhood of Carpenters and Joiners of America. Case 4-CA-37328

July 6, 2011

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. On October 18, 2010, the Board issued an Order¹ that found that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to bargain with the Union about the effects of its decision to close its Moorestown, New Jersey facility. The Board required the Respondent, among other things, to pay all bargaining unit employees no less than 2-weeks' wages, less any interim earnings, for the period commencing 5 days after the date of the Board's Order.²

A controversy having arisen regarding the amount of backpay due under the terms of the Board's Order, the Regional Director issued a compliance specification and notice of hearing on April 6, 2011, alleging the amounts due under the Board's Order 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.

By letter dated April 28, 2011, the Region advised the Respondent that no answer to the compliance specification had been received and that unless an answer was filed by May 5, 2011, a motion for default judgment

¹ Unpublished Order adopting, in the absence of exceptions, the decision of Administrative Law Judge Robert A. Giannasi issued on September 3, 2010 (JD-49-10).

² The Board required the Respondent to pay backpay to employees in the bargaining unit in a manner similar to that required in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968), as clarified by *Melody Toyota*, 325 NLRB 846 (1998), for any loss of pay resulting from the Respondent's unfair labor practices.

Consistent with his dissenting view in *Kadouri International Foods, Inc.*, 356 NLRB No. 148, slip op. at 1, fn. 1 (2011), Member Hayes disagrees with the portion of the *Transmarine* remedy that imposes a 2 weeks' minimum back pay remedy on the Respondent, without regard to actual losses incurred. Nonetheless, in the context of this default judgment proceeding, and in light of the fact that the remedy is applied only to three employees who were permanently laid off due to the Respondent's decision to close, Member Hayes agrees to apply extant remedial precedent.

would be filed with the Board. To date, the Respondent has failed to file an answer.

On May 9, 2011, the Acting General Counsel filed with the Board a Motion for Default Judgment, with exhibits attached. On May 10, 2011, 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.

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 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 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 those amounts to the discriminatees, plus interest accrued to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondent, Exhibitus, LLC, Moorestown, New Jersey, its officers, agents, successors, and assigns, shall make whole the individuals named below by paying them the amounts following their names, 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:³

³ The Board has declined to apply its new policy, announced in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), of daily compounding of interest on backpay awards, in cases such as this, that were already in the compliance stage on the date that decision issued. *Rome Electrical Systems, Inc.*, 356 NLRB No. 38, slip op. at 1 fn. 2 (2010).

DECISIONS OF THE NATIONAL LABOR RELATIONS BOARD

Terry Coyle	\$2,131.20
Joe Senatore, Jr.	2,131.20
William Senatore	2,131.20
TOTAL BACKPAY DUE	\$6,393.60

Dated, Washington, D.C. July, 6, 2011

Craig Becker, Member

Mark Gaston Pearce, Member

Brian E. Hayes, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD