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**J.E.W. Design & Construction, Inc. and Laborers International Union North America, Construction & General Laborers Local #1177.** Case 15–CA–19675

September 9, 2011

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS BECKER  
AND HAYES

The Acting General Counsel seeks a default judgment in this case on the ground that J.E.W. Design & Construction, Inc., the Respondent, has failed to file an answer to the complaint and compliance specification and order consolidating complaint and compliance specification. Upon a charge and first, second, and third amended charges filed by the Union on July 14 and 23, November 16, and December 15, 2010, respectively, the Acting General Counsel issued a complaint and notice of hearing on January 28, 2011. Thereafter, on April 29, 2011, the Acting General Counsel issued a compliance specification and order consolidating complaint and compliance specification and notice of hearing.<sup>1</sup> The Respondent failed to file an answer to either the complaint or the compliance specification and order consolidating complaint and compliance specification and notice of hearing (together, the consolidated complaint and compliance specification).

On June 13, 2011, the Acting General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on June 14, 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. On July 13, 2011, a revised Notice to Show Cause was served on

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<sup>1</sup> A copy of the complaint was served by certified mail on the Respondent at its corporate address located at 1718 North Broad Street, New Orleans, Louisiana 70119, and the United States Postal Service track and confirm service indicates that this document was delivered on February 1, 2011. A copy of the complaint was also served by certified mail on an officer of the Respondent, Joseph Armant, at his home address of 5121 Quarter Lane, Baton Rouge, Louisiana 70809, and the return receipt indicates that this document was delivered on February 1, 2011. A copy of the compliance specification and order consolidating complaint was served by certified mail on the Respondent at its corporate address and on Joseph Armant at his home address. These documents were returned to sender as “refused” from Armant’s home address and “unclaimed” from the Respondent’s corporate address. It is well settled that a respondent’s failure or refusal to accept certified mail or to provide for receiving appropriate service cannot serve to defeat the purposes of the Act. See, e.g., *I.C.E. Electric, Inc.*, 339 NLRB 247 fn. 2 (2003), and cases cited therein.

the Respondent by certified mail. The Respondent filed no response to either notice. The allegations in the motion are therefore undisputed.

Ruling on Motion for Default Judgment

Section 102.20 of the Board’s Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. Similarly, Section 102.56 of the Board’s Rules and Regulations provides that the allegations in a compliance specification will be taken as true if an answer is not filed within 21 days from service of the compliance specification. In addition, the compliance specification and order consolidating complaint and compliance specification affirmatively stated that the Board may find, pursuant to a motion for default judgment, that the allegations in the consolidated complaint and compliance specification are true unless an answer was received by on or before May 20, 2011. Further, the undisputed allegations in the Acting General Counsel’s motion disclose that the Region, by letter dated May 24, 2011, notified the Respondent that unless an answer was received by May 31, 2011, a motion for default judgment would be filed. Nevertheless, the Respondent failed to file an answer.

In the absence of good cause being shown for the failure to file a timely answer, we grant the Acting General Counsel’s Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with an office and place of business in New Orleans, Louisiana, and with jobsites at various Louisiana locations including one located at 1938 General Taylor Avenue, Baton Rouge, Louisiana, has been engaged as a contractor in the construction industry performing residential, commercial, and industrial construction.

Annually, the Respondent, in conducting its business operations described above, purchases and receives at its New Orleans, Louisiana facility and Louisiana jobsites, goods valued in excess of \$50,000 directly from points outside the State of Louisiana.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Laborers International Union North America, Construction & General Laborers Local #1177, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

## II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Joseph Armant<sup>2</sup> held the position of President/Owner of the Respondent and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and agent of the Respondent within the meaning of Section 2(13) of the Act.

The following employees of the Respondent (the unit), constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees performing environmental, construction, demolition, and other related industrial, commercial, and residential service work coming within the trade jurisdiction of Laborers International Union North America, Construction & General Laborers Local #1177.

On about May 21, 2010, the Respondent, an employer engaged in the building and construction industry, entered into a collective-bargaining agreement effective for the period of May 21, 2010, to May 21, 2011 (the agreement), whereby it recognized the Union as the exclusive collective-bargaining representative of the unit and agreed to continue the agreement in effect from year to year thereafter unless timely notice was given in accordance with the terms of article 16 of the agreement.

Since about May 21, 2010, pursuant to the agreement, the Union has been recognized as the limited exclusive collective-bargaining representative of the unit by the Respondent without regard to whether the majority status of the Union had ever been established under the provisions of Section 9(a) of the Act.<sup>3</sup> Such recognition has been embodied in the collective-bargaining agreement described above.

Since about June 25, 2010, the Respondent failed and refused to pay unit employees for the total number of hours they actually worked; make fringe benefit payments on behalf of unit employees; and pay the unit employee foreman at the rate of \$16 per hour.

On about June 25, 2010, the Respondent deducted \$240 from the pay of unit employees for alleged property damage.

The subjects set forth above relate to wages, hours, and other terms and conditions of employment of the unit and

are mandatory subjects for the purposes of collective bargaining.

The Respondent engaged in the conduct described above without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct and/or the effects of this conduct.

## CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to recognize and bargain collectively and in good faith with the limited exclusive collective-bargaining representative of its employees in violation of Section 8(a)(5) and (1). The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to pay unit employees for the total number of hours they actually worked, to make fringe benefit payments on behalf of unit employees, to pay the unit employee foreman at the rate of \$16 per hour, and by deducting \$240 from the pay of unit employees for alleged property damage, we shall order the Respondent to make the employees whole by paying them the amounts of backpay set forth in the consolidated complaint and compliance specification, plus interest accrued to the date of payment at the rate prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), and minus tax withholdings required by Federal and State laws. We shall also order the Respondent to make fringe benefit fund payments on behalf of the unit employees in the amounts set forth in the consolidated complaint and compliance specification, plus interest accrued to the date of payment at the rate prescribed in *New Horizons for the Retarded*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.<sup>4</sup>

## ORDER

The National Labor Relations Board orders that the Respondent, J.E.W. Design & Construction, Inc., New

<sup>2</sup> The spelling of this name as "Arment" in the complaint appears to be a typographical error.

<sup>3</sup> Accordingly, we find that this relationship was entered into pursuant to Sec. 8(f) of the Act and that the Union is therefore the limited 9(a) representative of the unit employees for the period covered by the agreement. See, e.g., *A.S.B. Cloture, Ltd.*, 313 NLRB 1012 fn. 2 (1994), citing *Electri-Tech, Inc.*, 306 NLRB 707 fn. 2 (1992), and *John Deklewa & Sons*, 282 NLRB 1375 (1987), enf. sub nom. *Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988).

<sup>4</sup> The compliance specification explicitly alleged that a make whole remedy for the benefit funds should include the payments due plus interest computed at the rate prescribed by *New Horizons for the Retarded*, supra and *Kentucky River Medical Center*, supra.

Orleans and Baton Rouge, Louisiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Laborers International Union North America, Construction & General Laborers Local #1177, as the limited exclusive collective-bargaining representative of the employees in the following unit by failing and refusing to pay unit employees for the total number of hours they actually worked; failing and refusing to make fringe benefit payments on behalf of unit employees; failing and refusing to pay the unit employee foreman at the rate of \$16 per hour; and deducting money from the pay of unit employees for alleged property damage. The appropriate unit is:

All employees performing environmental, construction, demolition, and other related industrial, commercial, and residential service work coming within the trade jurisdiction of Laborers International Union North America, Construction & General Laborers Local #1177.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole the following unit employees for losses suffered as a result of the Respondent's failure to pay them for the total number of hours they actually worked, failure to pay the unit employee foreman at the rate of \$16 per hour, and deduction of \$240 from their pay for alleged property damage, by paying them the total amounts opposite their names, in the manner set forth in the remedy section of this decision.

<b>Discriminatee</b>	<b>Total Backpay</b>
Ernest Dominique	\$ 285.00
Willie Dorsey, Jr.	285.00
Joseph W. Fort	277.50
Willie Thomas	307.50
Robert Miller	317.00
<b>TOTAL</b>	<b>\$1472.00</b>

(b) Make all omitted fringe benefit fund payments on behalf of the unit employees named below in the amounts opposite their names, in the manner set forth in the remedy section of this decision.

<b>Discriminatee</b>	<b>Louisiana Laborers' Health And Welfare Plan</b>	<b>Laborers' National Pension Fund</b>	<b>South Central Laborers' Training Fund</b>	<b>Laborers-Employers Cooperation And Education Trust</b>	<b>Total Benefit Fund Contributions</b>
Ernest Dominique, Jr.	\$ 43.20	\$19.20	\$ 9.60	\$1.60	\$ 73.60
Willie Dorsey, Jr.	43.20	19.20	9.60	1.60	73.60
Joseph W. Fort	42.53	18.90	9.45	1.58	72.46
Willie Thomas	31.73	14.10	7.05	1.18	54.06
Robert Miller	43.20	19.20	9.60	1.60	73.60
<b>TOTALS</b>	<b>\$203.86</b>	<b>\$90.60</b>	<b>\$45.30</b>	<b>\$7.56</b>	<b>\$347.32</b>

(c) Within 14 days after service by the Region, post at its facilities in New Orleans and Baton Rouge, Louisiana, copies of the attached notice marked "Appendix."<sup>5</sup> Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means.<sup>6</sup> Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed its facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 25, 2010.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. September 9, 2011

_____ Mark Gaston Pearce,	Chairman
_____ Craig Becker,	Member
_____ Brian E. Hayes,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

<sup>5</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

<sup>6</sup> For the reasons stated in his dissenting opinion in *J. Picini Flooring*, 356 NLRB No.9 (2010), Member Hayes would not require electronic distribution of the notice.

## APPENDIX

### NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with Laborers International Union North America, Construction & General Laborers Local #1177, as the limited exclusive collective-bargaining representative of our employees by failing and refusing to pay unit employees for the total number of hours they actually worked; failing and refusing to make fringe benefit payments on behalf of unit employees; failing and refusing to pay the unit employee foreman at the rate of \$16.00 per hour; and deducting money from the pay of unit employees for alleged property damage. The appropriate unit is:

All employees performing environmental, construction, demolition, and other related industrial, commercial, and residential service work coming within the trade jurisdiction of Laborers International Union North America, Construction & General Laborers Local #1177.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights listed above.

WE WILL make whole employees Ernest Dominique, Jr., Willie Dorsey, Jr., Joseph W. Fort, Willie Thomas, and Robert Miller for any loss of earnings and fringe

benefit payments suffered as a result of our unlawful actions, by paying them the amounts set forth in the Board's Order, plus interest accrued to the date of payment, and minus tax withholdings required by Federal and State laws, and by making all fringe benefit

contributions that have not been made on their behalf, plus interest accrued to the date of payment, as set forth in the Board's Order.

J.E.W. DESIGN & CONSTRUCTION, INC.