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Four Winds Services, Inc. and General Truck Drivers, Warehousemen Helpers, Sales and Service and Casino Employees, Teamsters Local Union No. 957. Case 9–CA–62287

February 14, 2012

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HAYES
AND GRIFFIN

The Acting General Counsel seeks a default judgment in this case on the ground that Four Winds Services, Inc., the Respondent, has failed to file an answer to the consolidated complaint and compliance specification. Upon a charge filed on August 8, 2011, by General Truck Drivers, Warehousemen Helpers, Sales and Service and Casino Employees, Teamsters Local Union No. 957, the Union, the Acting General Counsel issued the consolidated complaint and compliance specification on October 21, 2011, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act. The Respondent failed to file an answer.

On November 22, 2011, the Acting General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on November 25, 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 filed no response. The allegations in the motion are therefore undisputed.

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

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 consolidated complaint and compliance specification affirmatively stated that unless an answer was received by November 11, 2011, the Board may find, pursuant to a motion for default judgment, that the allegations in the consolidated complaint and compliance specification are true. Further, the undisputed allegations in the Acting General Counsel's memorandum in support of his motion disclose that the

Respondent, by letter dated November 14, 2011, notified the Respondent that unless an answer was received by November 21, 2011, a motion for default judgment would be filed.

In the absence of good cause being shown for the failure to file an answer, we deem the allegations in the consolidated complaint and compliance specification to be admitted as true, and 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 Fairborn, Ohio, has been engaged as a contractor providing fuel distribution and aircraft maintenance services at the Wright Patterson Air Force Base under contract with the Federal government. During the 12-month period preceding the issuance of the consolidated complaint and compliance specification, the Respondent, in conducting its operations described above, purchased and received at its Fairborn, Ohio facility goods valued in excess of \$50,000 directly from points outside the State of Ohio.

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 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, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Dennis Carson	- Vice President
Roberta Carver-Carson	- President
John Liegl	- Human Resource Manager

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 Fuels Specialist personnel employed by the Respondent at Wright Patterson Air Force Base, Fairborn, Ohio excluding all office clerical employees, all professional employees, guards, lab technicians and supervisors as defined in the Act.

Since about January 2006, and at all material times, the Union has been the designated exclusive collective-

bargaining representative of the unit, and since then, the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from October 1, 2009 to September 30, 2012, (the 2009–2012 agreement).

At all times since at least January 2006, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

On about the dates set forth below, the Respondent failed to continue in effect all the terms and conditions of employment of the unit as set forth in the 2009–2012 agreement, by the following conduct:

1) Since about May 1, 2011, failing to remit to the Union the union dues deducted from employees' paychecks as provided in article VI, subsection 6.2 of the 2009–2012 agreement.

2) Since about May 1, 2011, failing to make the weekly contributions to the Union's Ohio Conference of Teamsters & Industry Health and Welfare Fund as provided in article XX of the 2009–2012 agreement.

3) About July 15, 2011, failing to pay employee their accrued vacation pay as provided in article XIV, subsection 14.1 of the 2009–2012 agreement.

The Respondent engaged in the conduct described above without the Union's consent.

The terms and conditions of employment described above are mandatory subjects for the purpose of collective bargaining.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(5) and (1) of the Act, and has thereby engaged in unfair labor practices affecting 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 has violated Section 8(a)(5) and (1) by failing to continue in effect all the terms and conditions of employment of the unit as set forth in the 2009–2012 agreement by, inter alia, since May 1, 2011, failing to remit to the Union the union dues deducted from employees' paychecks as provided in the 2009–2012 agreement, we shall order the Respondent to remit to the Union the amount set forth in appendix A of 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 1171 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), enf. denied on other grounds sub nom. *Jackson Hospital Corp. v. NLRB*, 647 F.3d 1137 (D.C. Cir. 2011).¹

Additionally, having found that the Respondent has violated Section 8(a)(5) and (1) by, inter alia, failing to continue in effect all the terms and conditions of employment of the unit as set forth in the 2009–2012 agreement, by failing since May 1, 2011, to make the weekly contributions to the Union's Ohio Conference of Teamsters & Industry Health and Welfare Fund as provided in the 2009–2012 agreement, we shall order the Respondent to make the fund contributions on behalf of the unit employees in the amounts set forth in appendix B of 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.

Further, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to continue in effect all the terms and conditions of employment of the unit as set forth in the 2009–2012 agreement, by failing as of July 15, 2011, to pay the employees their accrued vacation pay as provided in the 2009–2012 agreement, we shall order the Respondent to make the unit employees whole by paying them the amounts set forth in appendix C of 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, and minus tax withholding required by Federal and State laws.

Finally, although there is no assertion in the motion for default judgment that the Respondent has closed its Fairborn Ohio operation, the motion states that the Respondent terminated all of its employees on July 15, 2011. Accordingly, in addition to the customary notice-posting provisions, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of all unit employees employed by the Respondent at any time since May 1, 2011, in order to inform them of the outcome of this proceeding.

¹ The compliance specification states that the time period for which the Respondent failed to remit dues to the Union and failed to contribute to the Union's benefit fund is from May 1, 2011 through July 15, 2011, the date on which the Respondent discharged all of its employees.

ORDER

The National Labor Relations Board orders that the Respondent, Four Winds Services, Inc., Fairborn, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with General Truck Drivers, Warehousemen Helpers, Sales and Service and Casino Employees, Teamsters Local Union No. 957 as the exclusive collective-bargaining representative of the employees in the following unit by failing to continue in effect all the terms and conditions of employment of the unit as set forth in the October 1, 2009 to September 30, 2012 collective-bargaining agreement, by failing to remit to the Union the union dues deducted from employees' paychecks as provided in article VI, subsection 6.2 of the parties' agreement; failing to make the weekly contributions on behalf of unit employees to the Union's Ohio Conference of Teamsters & Industry Health and Welfare Fund as provided in article XX of the parties' agreement; and failing to pay employees their accrued vacation pay as provided in article XIV, subsection 14.1 of the parties' agreement. The unit is:

All Fuels Specialist personnel employed by the Respondent at Wright Patterson Air Force Base, Fairborn, Ohio excluding all office clerical employees, all professional employees, guards, lab technicians and supervisors as defined in the Act.

(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) Remit to the Union the union dues deducted from employees' paychecks, as provided in the parties 2009–2012 agreement, in the amount of \$3277.50, as set forth in appendix A of the consolidated complaint and compliance specification, with interest in the manner set forth in the remedy section of this decision.

(b) Make all weekly contributions that the Respondent has failed to make to the Union's Ohio Conference of Teamsters & Industry Health and Welfare Fund on behalf of unit employees as provided in the parties' 2009–2012 agreement, in the amount of \$61,600, as set forth in appendix B of the consolidated complaint and compliance specification, with interest in the manner set forth in the remedy section of this decision.

(c) Make the unit employees whole for its failure to pay them their accrued vacation pay as provided in the parties' 2009–2012 agreement, by paying them the amounts following their names, the total of which is \$53,221.18, as set forth in appendix C of the consolidated complaint and compliance specification, with interest in the manner set forth in the remedy section of this decision.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Fairborn, Ohio, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 9, 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.³ 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 the facility 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 May 1, 2011. Further, in view of the fact that the Respondent has terminated the unit employees, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of all unit employees employed at the Fairborn, Ohio facility at any time since May 1, 2011.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted and Mailed by Order of the National Labor Relations Board" shall read "Posted and Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

³ 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.

(f) 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. February 14, 2012

Mark Gaston Pearce, Chairman

Brian E. Hayes, Member

Richard F. Griffin, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED AND MAILED 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, mail, 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 General Truck Drivers, Warehousemen Helpers, Sales and Service and Casino Employees, Teamsters Local Union No. 957 as the exclusive

collective-bargaining representative of the employees in the following unit by failing to continue in effect all the terms and conditions of employment of the unit as set forth in our October 1, 2009 to September 30, 2012 collective-bargaining agreement, by failing to remit to the Union the union dues deducted from employees' paychecks as provided in article VI, subsection 6.2 of the agreement; failing to make the weekly contributions on behalf of unit employees to the Union's Ohio Conference of Teamsters & Industry Health and Welfare Fund as provided in article XX of the agreement; and failing to pay our employees their accrued vacation pay as provided in article XIV, subsection 14.1 of the agreement. The unit is:

All Fuels Specialist personnel employed by us at Wright Patterson Air Force Base, Fairborn, Ohio excluding all office clerical employees, all professional employees, guards, lab technicians and supervisors as defined in the Act.

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

WE WILL remit to the Union the dues deducted from employees' paychecks pursuant to our 2009–2012 agreement, in the amount totaling \$3277.50, plus interest.

WE WILL make all weekly contributions that we have failed to make to the Union's Ohio Conference of Teamsters & Industry Health and Welfare Fund on behalf of unit employees pursuant to our 2009–2012 agreement, in the amount of \$61,600, plus interest.

WE WILL make the unit employees whole for our failure pay them their accrued vacation pay pursuant to our 2009–2012 agreement, by paying them the amounts set forth in the Board's Order, the total of which is \$53,221.18, plus interest.

FOUR WINDS SERVICES, INC.

Appendix A

Appendix A		Union Dues				
Last Name	First Name and Middle Initial	Union Dues Per Month	Quarter 2-2011 (2 Months)	Quarter 3-2011 (1/2 Month)	Total	
Allen	Drew T	\$ 69.00	\$ 138.00	\$ 34.50	\$ 172.50	
Belem	Ronald E	\$ 69.00	\$ 138.00	\$ 34.50	\$ 172.50	
Bates	Jason A	\$ 69.00	\$ 138.00	\$ 34.50	\$ 172.50	
Farra	David L	\$ 69.00	\$ 138.00	\$ 34.50	\$ 172.50	
Fetty	Terry L	\$ 69.00	\$ 138.00	\$ 34.50	\$ 172.50	
Fothergill	Thomas E	\$ 69.00	\$ 138.00	\$ 34.50	\$ 172.50	
Gilbert	Steven	\$ 69.00	\$ 138.00	\$ 34.50	\$ 172.50	
Gulasa, Jr.	Frank J	\$ 69.00	\$ 138.00	\$ 34.50	\$ 172.50	
Hayes	Dennis A	\$ 69.00	\$ 138.00	\$ 34.50	\$ 172.50	
Huffard	Keith D	\$ 69.00	\$ 138.00	\$ 34.50	\$ 172.50	
Hutchinson	Danny R	\$ 69.00	\$ 138.00	\$ 34.50	\$ 172.50	
Langdon	Alfred	\$ 69.00	\$ 138.00	\$ 34.50	\$ 172.50	
Malloy	Timothy	\$ 69.00	\$ 138.00	\$ 34.50	\$ 172.50	
Maxwell	Jonathan W	\$ 69.00	\$ 138.00	\$ 34.50	\$ 172.50	
Merculo, Jr.	Phillips V	\$ 69.00	\$ 138.00	\$ 34.50	\$ 172.50	
Pierce	Michael L	\$ 69.00	\$ 138.00	\$ 34.50	\$ 172.50	
Whitesell	Glenn A	\$ 69.00	\$ 138.00	\$ 34.50	\$ 172.50	
Walton	Gilbert J	\$ 69.00	\$ 138.00	\$ 34.50	\$ 172.50	
Yeary	Jonathan L	\$ 69.00	\$ 138.00	\$ 34.50	\$ 172.50	
Total:			\$ 2,622.00	\$ 655.50	\$ 3,277.50	

Appendix B

Appendix B		H&W				
Last Name	First Name and Middle Initial	Health & Welfare Contributions Per Week	Quarter 2-2011 (9 weeks)	Quarter 3-2011 (2 weeks)	Total	
Allen	Drew T	\$ 280.00	\$ 2,520.00	\$ 560.00	\$ 3,080.00	
Belem	Ronald E	\$ 280.00	\$ 2,520.00	\$ 560.00	\$ 3,080.00	
Bates	Jason A	\$ 280.00	\$ 2,520.00	\$ 560.00	\$ 3,080.00	
Farra	David L	\$ 280.00	\$ 2,520.00	\$ 560.00	\$ 3,080.00	
Fetty	Terry L	\$ 280.00	\$ 2,520.00	\$ 560.00	\$ 3,080.00	
Fothergill	Thomas E	\$ 280.00	\$ 2,520.00	\$ 560.00	\$ 3,080.00	
Gilbert	Steven	\$ 280.00	\$ 2,520.00	\$ 560.00	\$ 3,080.00	
Gulasa, Jr.	Frank J	\$ 280.00	\$ 2,520.00	\$ 560.00	\$ 3,080.00	
Hayes	Dennis A	\$ 280.00	\$ 2,520.00	\$ 560.00	\$ 3,080.00	
Huffard	Keith D	\$ 280.00	\$ 2,520.00	\$ 560.00	\$ 3,080.00	
Hutchinson	Danny R	\$ 280.00	\$ 2,520.00	\$ 560.00	\$ 3,080.00	
Langdon	Alfred	\$ 280.00	\$ 2,520.00	\$ 560.00	\$ 3,080.00	
Lieuranc	Douglas C	\$ 280.00	\$ 2,520.00	\$ 560.00	\$ 3,080.00	
Malloy	Timothy	\$ 280.00	\$ 2,520.00	\$ 560.00	\$ 3,080.00	
Maxwell	Jonathan W	\$ 280.00	\$ 2,520.00	\$ 560.00	\$ 3,080.00	
Merculo, Jr.	Phillips V	\$ 280.00	\$ 2,520.00	\$ 560.00	\$ 3,080.00	
Pierce	Michael L	\$ 280.00	\$ 2,520.00	\$ 560.00	\$ 3,080.00	
Whitesell	Glenn A	\$ 280.00	\$ 2,520.00	\$ 560.00	\$ 3,080.00	
Walton	Gilbert J	\$ 280.00	\$ 2,520.00	\$ 560.00	\$ 3,080.00	
Yeary	Jonathan L	\$ 280.00	\$ 2,520.00	\$ 560.00	\$ 3,080.00	
Total:			\$ 50,400.00	\$ 11,200.00	\$ 61,600.00	

DECISIONS OF THE NATIONAL LABOR RELATIONS BOARD

Appendix C

Appendix C		Vacation		
Last Name	First Name and Middle Initial	Vacation Hours Accrued as of July 15, 2011	Vacation Hourly Rate	Total Vacation Pay
Allen	Drew T	\$ 78.30	\$ 27.79	\$ 2,175.96
Bates	Jason A	\$ 4.81	\$ 27.79	\$ 133.67
Belem	Ronald E	\$ -	\$ 27.79	\$ -
Farra	David L	\$ 2.32	\$ 27.79	\$ 64.47
Fetty	Terry L	\$ 187.20	\$ 27.79	\$ 5,202.29
Fothergill	Thomas E	\$ 122.35	\$ 27.79	\$ 3,400.11
Gilbert	Steven	\$ 176.43	\$ 27.79	\$ 4,902.99
Guilasa, Jr.	Frank J	\$ 115.16	\$ 27.79	\$ 3,200.30
Hayes	Dennis A	\$ 70.30	\$ 27.79	\$ 1,953.64
Huffard	Keith D	\$ 95.18	\$ 27.79	\$ 2,645.05
Hutchinson	Danny R	\$ 115.65	\$ 27.79	\$ 3,213.91
Langdon	Alfred	\$ 48.35	\$ 27.79	\$ 1,343.65
Lieuranc	Douglas C	\$ 122.35	\$ 27.79	\$ 3,400.11
Malloy	Timothy	\$ 87.94	\$ 27.79	\$ 2,443.85
Maxwell	Jonathan W	\$ -	\$ 27.79	\$ -
Merculo, Jr.	Phillips V	\$ 201.15	\$ 27.79	\$ 5,589.96
Pierce	Michael L	\$ 123.06	\$ 27.79	\$ 3,419.84
Whitesell	Glenn A	\$ 197.35	\$ 27.79	\$ 5,484.36
Walton	Gilbert J	\$ 78.27	\$ 27.79	\$ 2,175.12
Yeary	Jonathan L	\$ 88.95	\$ 27.79	\$ 2,471.92
Total:		1,915.12		\$ 53,221.18