

*NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.*

**Douglas R. Wilbur, Inc. d/b/a DRW Electric and its alter egos Brookside Electric, Inc. and Dynamax Electric Corp. and Local 252, International Brotherhood of Electrical Workers, AFL-CIO.** Cases 07-CA-052789 and 07-CA-053196

March 2, 2012

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HAYES  
AND GRIFFIN

The Acting General Counsel seeks default judgment in this case on the ground that the Respondents have failed to file an answer to the compliance specification.

On March 31, 2011, the Board issued a Decision and Order,<sup>1</sup> finding that the Respondents violated Section 8(a)(5) and (1) of the Act. The Board ordered the Respondents, among other things, to make whole bargaining unit employees for loss of earnings and benefits resulting from the Respondents' unfair labor practices. On July 7, 2011, the United States Court of Appeals for the Sixth Circuit entered its judgment enforcing the Board's Order.<sup>2</sup>

A controversy having arisen over the amount of backpay due the discriminatees and contributions due the funds, on November 8, 2011, the Regional Director issued a compliance specification and notice of hearing alleging the amount due under the Board's 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 November 30, 2011, the Regional Director for Region 7 advised the Respondents that no answer to the compliance specification had been received and that unless an appropriate answer was filed by December 9, 2011, default judgment would be sought. To date, the Respondents have failed to file an answer.

On December 15, 2011, the Acting General Counsel filed with the Board a Motion for Default Judgment, with exhibits attached. On December 16, 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 Respondents again filed no response.

<sup>1</sup> 356 NLRB No. 121.

<sup>2</sup> Case No. 11-1632.

On December 21, 2011, the Acting General Counsel filed a motion to supplement the motion for default judgment. On January 19, 2012, the Board issued a revised Notice to Show Cause, noting that the original Notice was not served on the following parties: (1) Douglas R. Wilbur, Inc. d/b/a DRW Electric and its alter ego Brookside Electric, Inc. at its address at 11553 N. Shore Drive, Whitmore Lake, Michigan 48189; (2) Brookside Electric, Inc.; and (3) Dynamax Electric Corp. at their known addresses. Again, the Respondents did not respond. The allegations in the motion for default judgment, the motion to supplement, and 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 Respondents, despite having been advised of the filing requirements, have failed to file an answer to the compliance specification. In the absence of good cause for the Respondents' failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the Acting General Counsel's Motion for Default Judgment. Accordingly, we conclude that the amounts of gross backpay due the unit employees are as stated in the compliance specification, plus interest accrued to the date of payment.

The Acting General Counsel's supplemental motion states that the Regional Director has been unable to identify the discriminatees affected by the Respondents' unfair labor practices and to whom the remedy in the underlying case was directed. To afford the Acting General Counsel an opportunity to identify the discriminatees and ascertain their interim earnings, we shall order the Respondent to pay the discriminatees' specified gross backpay to the Regional Director for Region 7 to be held in escrow for a period not to exceed 1 year. That 1-year period shall begin when the Respondent deposits the backpay into escrow or on the date this Supplemental Decision and Order becomes final, including enforcement thereof, whichever is later. Should the Regional

Director determine that deductions are warranted, the amount so deducted shall be returned to the Respondent and the remainder paid to the discriminatees. In the event that the Acting General Counsel, at the end of the 1-year escrow period, has failed to identify the discriminatees, the awards shall lapse and the full backpay amount shall be returned to the Respondents. See *G & T Terminal Packaging Co.*, 356 NLRB No. 41 (2010); *Starlite Cutting*, 280 NLRB 1071 (1986), order amended by 284 NLRB 620 (1987).

Finally, we conclude that the contractual fringe benefit fund payments owed by the Respondent are as stated in the compliance specification, and we will order the Respondent to pay those amounts to the funds on behalf of the unit employees.<sup>3</sup>

#### ORDER

The National Labor Relations Board orders that the Respondents, Douglas R. Wilbur, Inc. d/b/a DRW Electric and its alter egos Brookeside Electric, Inc. and Dynamax Electric Corp., Whitmore Lake and Ann Arbor, Michigan, their officers, agents, successors, and assigns, shall jointly and severally make whole the unit employees by paying the amounts listed, 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 set forth 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), minus all tax withholdings required by Federal and State laws and by making the payments due the benefit funds in the amounts set forth, plus interest accrued to the date of payment as prescribed in *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). The amount of backpay due the employees shall be paid to the Regional Director for Region 7 to be held in escrow for a period not to exceed 1 year. The 1-year escrow period shall begin upon the Respondent's compliance by payment of the backpay for deposit into escrow or that date that the Board's Supplemental Decision and Order becomes final, including enforcement thereof, whichever is later.

<sup>3</sup> We note that while the Acting General Counsel has determined fringe benefit amounts, which he states are "owed to the discriminatees," those amounts are due the Union's respective fringe benefit funds unless a discriminatee has made personal contributions to a benefit or other fund that has been accepted in lieu of the Respondents' contributions. In those circumstances, the employee is to be reimbursed, and such reimbursement would be a setoff to the amount due the funds. See 356 NLRB No. 121, slip op. at 4 fn. 4. Accordingly, we have set forth the amounts owed to the funds without reference to any named employee.

In summary, the amounts owed by the Respondents are as follows:

Backpay	
Brookeside Employee One	\$28,998
Brookeside Employee Two	20,757
Dynamax Employee One	17,048
Dynamax Employee Two	<u>8,928</u>
TOTAL BACKPAY	\$75,731
Benefit Fund Payments	
Brookeside Employee One	\$18,943
Brookeside Employer Two	13,319
Dynamax Employee One	11,649
Dynamax Employee Two	<u>6,048</u>
TOTAL FRINGE BENEFIT PAYMENTS	\$49,959
COMBINED TOTAL DUE:	\$125,690

Dated, Washington, D.C. March 2, 2012

\_\_\_\_\_  
Mark Gaston Pearce, Chairman

\_\_\_\_\_  
Brian E. Hayes, Member

\_\_\_\_\_  
Richard F. Griffin, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD