Stagetech Productions, LLC *and* Jeffery Skinner.
Cases 11–CA–022813 11–CA–023147

August 31, 2012

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HAYES AND BLOCK

The Acting General Counsel seeks default judgment in Case 11–CA–022813 pursuant to the terms of an informal settlement agreement, and in Case 11–CA–023147 on the ground that the Respondent withdrew its answers to the consolidated complaint and amendment to the consolidated complaint. The Respondent filed no response to the Acting General Counsel's Motion for Default Judgment. The allegations in the motion are therefore undisputed. The procedural aspects and substantive allegations in each case are discussed below.

Case 11–CA–022813: Upon a September 15, 2010 charge, a November 10, 2010 first amended charge, a December 20, 2010 second amended charge, and a January 26, 2011 third amended charge filed by Jeffery Skinner, the Charging Party, against StageTech Productions, LLC, the Respondent, alleging that it violated Section 8(a)(3) and (1) of the Act, the Acting General Counsel, the Charging Party, and the Respondent entered into an informal settlement agreement. The parties' agreement was approved by the Regional Director for Region 11 on April 12, 2011. Among other things, the settlement agreement required the Respondent to post a Board notice to employees; make backpay payments with interest to each of the seven named discriminatees; call employees for work even if they support a union; remove from the Respondent's files all references to the failure of the Respondent to call for work each of the seven named discriminatees; and remove from its files all references to the discipline issued to Gareth Owings between March and April 2010.

The settlement agreement also contained the following provision:

> The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will issue the complaint on the allegations spelled out above in the Scope of Agreement section. Thereafter, the General Counsel may file a motion for summary judgment with the Board on the allegations of the complaint. The Charged Party understands and agrees that all of the allegations of the aforementioned complaint will be deemed admitted and it will have waived its right to file an Answer to such complaint. The only issue that may be raised before the Board is whether the Charged Party defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board order ex parte.

As set forth in the Acting General Counsel's motion, the Respondent made backpay payments with interest to all seven named discriminatees, fully complied with the expungement notification provisions with respect to Gareth Owings, and posted the agreed-upon Notice to Employees for the requisite period of time. In addition, the uncontroverted allegations in the Motion state that the Respondent has failed to comply with the terms of the informal settlement agreement by: since about May 2011, establishing and maintaining a discriminatory hiring list/system; and about April 12, 2011, failing and refusing to call or return employees Jeffery Skinner, Gareth Owings, Wesley Dickson, Matt LeRoux, Chris Wilkerson, and Justin Gasper to their normal work frequency.

Case 11–CA–023147: Upon a June 17, 2011 charge, an August 26, 2011 first amended charge, an October 28, 2011 second amended charge, and a November 30, 2011 third amended charge filed by Jeffery Skinner, the Acting General Counsel issued an order consolidating Cases 11–CA–022813 and 11–CA–023147, order revoking settlement, and a consolidated complaint on December 30, 2011. The Respondent filed an answer to the consolidated complaint. On February 14, 2012, the Acting Regional Director issued an amendment to the above-described order and consolidated complaint.[1] The Respondent filed an answer to the

[1] The amendment to the order and the consolidated complaint replaced the introductory paragraphs in the consolidated complaint and

amendment to the consolidated complaint. On May 10, 2012, the Respondent withdrew its answers to the consolidated complaint and the amendment to the consolidated complaint. The consolidated complaint and amendment to the consolidated complaint (collectively, the amended consolidated complaint) allege, inter alia, that the Respondent violated the Act and breached the terms of the informal settlement agreement by: since on about May 2011, establishing and maintaining a discriminatory hiring list/system; and about April 12, 2011, failing and refusing to call or return employees Jeffery Skinner, Gareth Owings, Wesley Dickson, Matt LeRoux, Chris Wilkerson, and Justin Gasper to their normal work frequency.

On July 6, 2012, the Acting General Counsel filed the Motion for Default Judgment in Cases 11–CA–022813 and 11–CA–023147. Thereafter, on July 10, 2012, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. As noted above, the Respondent filed no response, and 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

With respect to Case 11–CA–022813, the uncontroverted allegations in the Motion for Default Judgment reassert the allegations in the amended consolidated complaint, that the Respondent has failed to comply with the terms of the settlement agreement by: since about May 2011, establishing and maintaining a discriminatory hiring list/system; and, since about April 12, 2011, failing and refusing to call or return employees Jeffery Skinner, Gareth Owings, Wesley Dickson, Matt LeRoux, Chris Wilkerson, and Justin Gasper to their normal work frequency. Consequently, pursuant to the "Compliance with Notice" provision in the settlement agreement set forth above, the Board may find the allegations in the amended consolidated complaint are true.[2]

With respect to Case 11–CA–023147, 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. In addition, the consolidated complaint affirmatively stated that unless an answer was received by January 13, 2012, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Although the Respondent filed answers to the consolidated complaint and amendment to consolidated complaint on January 12 and February 28, 2012, respectively, it subsequently withdrew its answers. The withdrawal of an answer has the same effect as a failure to file an answer, i.e., the allegations in the amended consolidated complaint must be considered to be admitted as true.[3]

Accordingly, we deem the allegations in the amended consolidated complaint 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 a place of business in Greenville, South Carolina, has been engaged in providing stagehand labor to entertainment venues in Greenville, South Carolina.

During the 12-month period preceding issuance of the consolidated complaint, the Respondent, in con-

recast the title of the pleading to Order Consolidating Cases and Consolidated Complaint.

[2] See *U-Bee, Ltd*., 315 NLRB 667, 668 (1994).

[3] The Respondent stated in its May 10, 2012 submission to the Region that its decision to withdraw its answers was not to be construed as an admission of any wrongdoing; that the Respondent expressly denied any wrongdoing; and that the Respondent's withdrawal, and all communications leading up to it, shall not constitute, be construed as, or be deemed evidence of, a concession, admission or statement against interest regarding any liability, improper conduct or wrongdoing by the Respondent. The submission further stated that the Respondent wished to "proceed to a backpay specification where StageTech will be permitted to challenge fully the NLRB's grounds for provision of backpay to the alleged discriminates. . . ." Motion, Exh. 26, Respondent's May 10, 2012 Withdrawal of Answer, pp. 1–2.

We find that the Respondent's assertions regarding the import of its withdrawals do not change the legal significance of its actions and do not prevent the Board from deeming the allegations in the consolidated complaint to be true and from finding that the Respondent has violated the Act. See *Biomedical Services,* 338 NLRB 742, 742 (2002); *Maislin Transport,* 274 NLRB 529, 529 (1985). Further, issues decided in an unfair labor practice proceeding may not be relitigated in the compliance phase. See *Willis Roof Consulting, Inc*., 355 NLRB 280, 280 fn. 1 (2010), *Arctic Framing,* 313 NLRB 798, 799 (1994), *Gold State Acoustics,* 310 NLRB 557, 558 (1993), *Brown & Root, Inc.*, 132 NLRB 486, 492 (1961), enfd. 311 F.2d 447, 451 (8th Cir. 1963). Nor do the Respondent's general denials asserted in its May 10 submission compel a different result. See *Ace Green, LLC*, 356 NLRB No. 97 (2011). Therefore, in the compliance proceeding, the Respondent will be permitted to challenge only the amount due to the discriminatees under this Order, the accuracy of the figures set forth in the backpay specification, and/or the premises on which they are based. See generally NLRB Rules and Regulations, Sec. 102.52 and following.

ducting its business operations described above, derived gross revenues in excess of $50,000, and provided services valued in excess of $50,000 directly to entertainment venues Bi-Lo Center and The Peace Center, each of which is directly engaged in interstate commerce.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times Phyllis Garrett has been the owner of the Respondent, has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act, and an agent of the Respondent within the meaning of Section 2(13) of the Act.

Since about April 2010, and continuing to date, the Respondent, through the actions of its supervisor and agent, Phyllis Garrett, at the Respondent's Greenville, South Carolina facility, has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act by the following acts and conduct:

1. Around March 2010, threatened employees that it would be futile for them to form/join a union;
2. Around March 2010, gave the employees the impression that it was monitoring their union activities;
3. Around March 2010, promised increased wages to employees if they withdrew their support for the union;
4. Around March 2010, made threats of a loss of work to employees because they engaged in union activities;
5. Around March 2010, stated that its customers would not allow unionized employees to work their events;
6. Around March 2010, asked employees about their union activities;
7. Since about May 2011, and continuing to date, the Respondent established and maintained a discriminatory hiring list/system;
8. Since about April 2010 through April 11, 2011, the Respondent refused to hire Jeffery Skinner, Gareth Owings, Wesley Dickson, Matt LeRoux, Chris Wilkerson, Earl McElrath, and Justin Gasper;
9. On April 11, 2010, the Respondent issued written discipline to Gareth Owings.
10. Since about April 12, 2011, the Respondent has failed and refused to call or return employees Jeffery Skinner, Gareth Owings, Wesley Dickson, Matt LeRoux, Chris Wilkerson and Justin Gasper to their normal work frequency.

The Respondent engaged in the conduct described in paragraphs 7–10, above, because the employees named therein engaged in, joined, supported, or assisted the Union and engaged in concerted activities for the purpose of collective-bargaining or other mutual aid and protection, and in order to discourage employees from engaging in such concerted activities for the purpose of collective-bargaining or other mutual aid or protection. In addition, the Respondent engaged in the conduct described in paragraph 10, above, because of the filing and settlement of Case 11–CA–022813.

CONCLUSIONS OF LAW

1. By the conduct described above in paragraphs 7 and 10, the Respondent violated the terms of the settlement agreement entered into in disposition of Case 11–CA–022813 and, accordingly, pursuant to Section 101.9(e)(2) of the Board's Rules and Regulations and Statements of Procedure, the settlement agreement is vacated and set aside.
2. By the conduct described above in paragraphs 1–6, the Respondent has been interfering with, restraining and coercing employees in the exercise of rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.
3. By the conduct described above in paragraphs 7–10, the Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(3) and (1) of the Act.
4. By the conduct described above in paragraph 10, the Respondent has been discriminating against employees for filing charges or giving testimony under the Act in violation of Section 8(a)(4) and (1) of the Act.
5. The unfair labor practices of the Respondent 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 Sec-

tion 8(a)(3) and (1) of the Act by refusing to hire employees Jeffery Skinner, Gareth Owings, Wesley Dickson, Matt LeRoux, Chris Wilkerson, Justin Gasper, and Earl McElrath from April 2010 through April 11, 2011, we shall order the Respondent to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest 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).

Further, having found that, since April 12, 2011, the Respondent violated Section 8(a)(4), (3), and (1) by failing and refusing to call or return employees Jeffery Skinner, Gareth Owings, Wesley Dickson, Matt LeRoux, Chris Wilkerson, and Justin Gasper to their normal work frequency, we shall order the Respondent to immediately return to calling to work those employees at the frequency they enjoyed prior to the Respondent's discrimination against them since April 2010, and to make them whole for any loss of earnings and other benefits they may have suffered as a result of these unlawful changes, in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest 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).[4]

Finally, having found that the Respondent violated the Act by establishing and maintaining a discriminatory hiring list/system, and refusing to hire Jeffery Skinner, Gareth Owings, Wesley Dickson, Matt LeRoux, Chris Wilkerson, Earl McElrath and Justin Gasper since about April 2010 through April 11, 2011, and by failing and refusing to call or return employees Jeffery Skinner, Gareth Owings, Wesley Dickson, Matt LeRoux, Chris Wilkerson, and Justin Gasper to their normal work frequency, we shall order the Respondent to rescind the discriminatory hiring list/system and to call employees to work regardless of their support for the Union.

ORDER

The National Labor Relations Board orders that the Respondent, StageTech Productions, LLC, Greenville, South Carolina, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees that it would be futile for them to form or join a union.

(b) Giving employees the impression that it was monitoring their union activities.

(c) Promising increased wages to employees if they withdrew their support for the Union.

(d) Making threats of a loss of work to employees because they engaged in union activities.

(e) Telling employees that its customers would not allow unionized employees to work their events.

(f) Asking employees about their union activities.

(g) Establishing and maintaining a discriminatory hiring list/system.

(h) Failing and refusing to hire employees because they engaged in, joined, or assisted the Union, and engaged in concerted activities for the purpose of collective bargaining or other mutual aid and protection, and in order to discourage other employees from engaging in such concerted activities for the purpose of collective bargaining or other mutual aid and protection.

(i) Issuing discipline to employees because they engaged in, joined, or assisted the Union, and engaged in concerted activities for the purpose of collective bargaining or other mutual aid and protection, and to discourage other employees from engaging in such concerted activities for the purpose of collective bargaining or other mutual aid and protection.

(j) Failing or refusing to call or return employees for work because they engaged in, joined, or assisted the Union, and engaged in concerted activities for the purpose of collective bargaining or other mutual aid and protection, and in order to discourage other employees from engaging in such concerted activities for the purpose of collective bargaining or other mutual aid and protection.

(k) Failing or refusing to call or return employees for work because they filed charges or gave testimony under the Act, or because of the filing and settlement of Case 11–CA–022813; and

(l) 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.

[4] In the consolidated complaint, the Acting General Counsel seeks an order requiring reimbursement of amounts equal to the difference in taxes owed upon receipt of a lump-sum payment and taxes that would have been owed had there been no discrimination. Further, the Acting General Counsel requests that the Respondent be required to submit the appropriate documentation to the Social Security Administration so that when backpay is paid, it will be allocated to the appropriate periods. Because the relief sought would involve a change in Board law, we believe that the appropriateness of this proposed remedy should be resolved after a full briefing by the affected parties, and there has been no such briefing in this case. Accordingly, we decline to order this relief at this time. See, e.g., *Ishikawa Gasket America, Inc.*, 337 NLRB 175, 176 (2001), enfd. 354 F.3d 534 (6th Cir. 2004), and cases cited therein.

2. Take the following affirmative action necessary to effectuate the policies of the Act.[5]

(a) Call employees for work regardless of their support for the Union.

(b) Immediately return Jeffery Skinner, Gareth Owings, Matt LeRoux, Wesley Dickson, Chris Wilkerson, and Justin Gasper to their prior levels of work calls or employment that they enjoyed prior to the discrimination against them since April 2010.

(c) Make Jeffery Skinner, Gareth Owings, Matt LeRoux, Wesley Dickson, Chris Wilkerson, Earl McElrath, and Justin Gasper whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, with interest, in the manner set forth in the remedy section of this decision.

(d) Within 14 days from the date of this Order, remove from its files all references to its failure to hire or call for work Jeffery Skinner, Gareth Owings, Wesley Dickson, Matt LeRoux, Chris Wilkerson, Earl McElrath, and Justin Gasper, to the extent that such documents exist, and within 3 days thereafter, notify them in writing that this has been done and that it will not be used against them in any way.

(e) 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.

(f) Within 14 days after service by the Region, post at its facilities in Greenville, South Carolina, copies of the attached notice marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director for Region 11, 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.[7] 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 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 March 2010.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 11 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. August 31, 2012

Mark Gaston Pearce, Chairman

Brian E. Hayes, Member

Sharon Block, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

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

[5] The Respondent shall be required to comply with the affirmative provisions of the Board's Order to the extent that it has not already done so.

[6] 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."

[7] 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.

Choose not to engage in any of these protected activities.

WE WILL NOT threaten you that it would be futile for you to join or form a union.

WE WILL NOT give the impression that we are monitoring your union activities.

WE WILL NOT promise increased wages if you withdraw your support for the Union.

WE WILL NOT make threats of a loss of work to you because you engaged in union activities.

WE WILL NOT tell you that our customers will not allow you to work events if you support the Union.

WE WILL NOT ask you about your union activities.

WE WILL NOT refuse to hire you because you support or assist the Union.

WE WILL NOT issue discipline to you because you suport or assist the Union.

WE WILL NOT refuse to call or return you to your normal work frequency because you support or assist the Union or because of the filing and/or settlement of unfair labor practice charges.

WE WILL NOT establish or maintain a hiring or referral list or system that discriminates against employees who support a union.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce you in the exercise of the rights guaranteed by Section 7 of the Act.

WE WILL call employees for work regardless of their support for the Union.

WE WILL immediately return Jeffery Skinner, Gareth Owings, Matt LeRoux, Wesley Dickson, Chris Wilkerson and Justin Gasper to their prior levels of work calls or employment that they enjoyed prior to our discrimination against them since April 2010.

WE WILL pay backpay, plus interest, to Jeffery Skinner, Gareth Owings, Matt LeRoux, Wesley Dickson, Chris Wilkerson, Earl McElrath, and Justin Gasper for refusing to hire them or for the financial losses they suffered as a result of our refusal to call them to work at the frequency they enjoyed prior to our discrimination against them since April 2010.

WE WILL, within 14 days from the date of the Board's Order, remove from our files all references to our failure to hire or to call for work Jeffery Skinner, Gareth Owings, Wesley Dickson, Matt LeRoux, Chris Wilkerson, Earl McElrath, and Justin Gasper, to the extent that such documents exist, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that they will not be used against them in any way.

WE HAVE removed from our files all references to the discipline issued to Gareth Owings in April 2010, and notified him in writing that this has been done, and that the discipline issued will not be used against him in any way.

STAGETECH PRODUCTIONS, LLC