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**AMJ Sheet Metal & HVAC, LLC and Sheet Metal Workers International Association, Local 19.**  
Case 04-CA-083412

September 18, 2012

**DECISION AND ORDER**

BY CHAIRMAN PEARCE AND MEMBERS GRIFFIN  
BLOCK

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 complaint. Upon a charge filed by the Union on June 19, 2012, the Acting General Counsel issued the complaint on August 3, 2012, against AMJ Sheet Metal & HVAC, LLC, the Respondent, alleging that it has violated Section 8(a)(3) and (1) of the Act. The Respondent failed to file an answer.

On August 29, 2012, the Acting General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on August 29, 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. 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 the 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 complaint affirmatively states that the answer must be received by August 17, 2012. Further, the undisputed allegations in the Acting General Counsel's motion disclose that the Region, by letter dated August 21, 2012, notified the Respondent that unless an answer were received by August 28, 2012, a motion for default judgment would be filed.

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 New Jersey corporation with an office and shop at 6 Paragon Way, Freehold, New Jersey, has been engaged in performing sheet metal fabrication and installation services in the

construction industry. During the year preceding the issuance of the complaint, the Respondent, in conducting its business operations described above, performed services valued in excess of \$50,000 outside the State of New Jersey. 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 Sheet Metal Workers International Association, Local 19, 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 with Respondent set forth opposite their 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:

Alix Jerome	Owner and President
Michael Ertok	Dispatcher

About June 8, 2012, the Respondent discharged its employee William C. Dorward.

The Respondent engaged in the conduct described above because William C. Dorward engaged in union activities and to discourage other employees from engaging in union activities.

**CONCLUSION OF LAW**

By the conduct described above, 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 and 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)(3) and (1) of the Act by discharging William C. Dorward, we shall order the Respondent to offer Dorward full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed and to make Dorward whole for any loss of earnings and other benefits suffered as a result of the Respondent's discrimination against him. Backpay shall

be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as 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).<sup>1</sup> The Respondent shall also be required to remove from its files any reference to the unlawful discharge of William C. Dorward and to notify him in writing that this has been done and that the unlawful discharge will not be used against him in any way.

#### ORDER

The National Labor Relations Board orders that the Respondent, AMJ Sheet Metal & HVAC, LLC, Freehold, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against employees because they engage in union activities, and/or to discourage other employees from engaging in union activities.

(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) Within 14 days from the date of this Order, offer William C. Dorward full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make William C. Dorward whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of this decision.

<sup>1</sup> In the complaint and motion for default judgment, 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.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge of William C. Dorward, and within 3 days thereafter, notify him in writing that this has been done and that the unlawful discharge will not be used against him in any way.

(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 Freehold, New Jersey facility copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 4, 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. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If 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 June 8, 2012.

(f) Within 21 days after service by the Region, file with the Regional Director for Region 4, a sworn certification of a responsible official on a form provided by the

<sup>2</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."

Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. September 18, 2012

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Mark Gaston Pearce, Chairman

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Richard F. Griffin, Jr., Member

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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

Choose not to engage in any of these protected activities.

WE WILL NOT discharge or otherwise discriminate against you because you engage in union activities, and/or to discourage other employees from engaging in union activities.

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, within 14 days from the date of the Board's Order, offer William C. Dorward full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make William C. Dorward whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharge of William C. Dorward, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the unlawful discharge will not be used against him in any way.

AMJ SHEET METAL & HVAC, LLC