

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.

Bebley Enterprises, Inc. and International Union of Painters and Allied Trades, AFL-CIO, Local Union No. 7 a/w International Union of Painters and Allied Trades. Case 08-CA-038181

October 31, 2012

SUPPLEMENTAL 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 the Respondent, Bebley Enterprises, Inc., has failed to file an answer to the amended compliance specification.

On December 29, 2010, the National Labor Relations Board issued a Decision and Order,¹ that, among other things, ordered the Respondent to make whole discriminatee Bobby Hill for any loss of earnings and other benefits suffered as a result of the Respondent's unfair labor practices in violation of Section 8(a)(3) and (1) of the Act. It further ordered the Respondent to make contractually-required contributions to fringe benefit funds, and to deduct and remit dues pursuant to valid checkoff authorizations in order to remedy the Respondent's violation of Section 8(a)(5) and (1) of the Act. On July 12, 2011, the United States Court of Appeals for the Sixth Circuit entered its judgment enforcing, in full, the Board's Order.²

A controversy having arisen over the amount of backpay due the discriminatee and other amounts due under the terms of the Board's Order, on November 30, 2011, the Regional Director issued a compliance specification and notice of hearing alleging the amounts due under the Board's Order and notifying the Respondent that it must file a timely answer complying with the Board's Rules and Regulations. The Respondent filed an answer on December 23, 2011. On January 26, 2012, the Regional Director issued an amended compliance specification and notice of hearing. By letter dated January 31, 2012, the Respondent waived its right to legal representation, waived its right to file an answer, accepted the allegations in the amended compliance specification as true, and withdrew the Respondent's answer filed in response to the original compliance specification.

On October 1, 2012, the Acting General Counsel filed with the Board a Motion for Default Judgment, with ex-

hibits attached.³ On October 2, 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 and in the amended 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 compliance 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 Respondent initially filed an answer to the original compliance specification, which it subsequently withdrew. In addition, the Respondent informed counsel for the Acting General Counsel that the Respondent did not intend to file an answer to the amended compliance specification. The withdrawal of an answer has the same effect as a failure to file an answer, i.e., the allegations in the compliance specification must be considered to be true.⁴

Therefore, based on the withdrawal of Respondent's answer to the original compliance specification, and in the absence of good cause for the Respondent's failure to file an answer to the amended compliance specification, we deem the allegations in the amended compliance specification to be admitted as true, and we grant the Acting General Counsel's Motion for Default Judgment. Accordingly, we conclude that the net backpay due Bobby Hill, and the amounts owed to the health fund and for union dues, are as stated in the amended compliance specification, and we will order the Respondent to pay those amounts due, plus interest accrued to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondent, Bebley Enterprises, Inc., Toledo, Ohio, its officers, agents, successors, and assigns, shall make whole Bobby Hill and the Union's health fund, and de-

¹ 356 NLRB No. 64.

² No. 11-1616.

³ The Motion was mistakenly filed with the Division of Judges on February 21, 2012. Subsequently, the Motion was properly re-filed with the Board.

⁴ *Maislin Transport*, 274 NLRB 529 (1985).

DECISIONS OF THE NATIONAL LABOR RELATIONS BOARD

duct and remit union dues, as set forth below, with interest accrued to the date of payment, as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987),

		Interest ⁵	Liquidated Damages	Total
Backpay Owed Bobby Hill	\$ 8,461.00	\$801.00	-----	\$ 9,262.00
Union Health Fund	21,000.43	-----	\$4,200.10	25,200.53
Union Dues	831.70	83.03	-----	914.73
TOTAL AMOUNT DUE				\$35,377.26

compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), minus tax withholdings required by Federal and State laws:

Dated, Washington, D.C. October 31, 2012

Mark Gaston Pearce, Chairman

Brian E. Hayes, Member

Richard F. Griffin, Jr., Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

⁵ Interest has been estimated through November 30, 2011.