Classic Fire Protection, LLC and its alter ego, Swift Fire Protection, LLC *and* United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 669, AFL–CIO. Cases 09–CA–044812, 09–CA–044814, and 09–CA–044926

November 20, 2012

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS GRIFFIN AND BLOCK

The Acting General Counsel seeks default judgment in this case on the ground that the Respondents, Classic Fire Protection, LLC (Respondent Classic) and Swift Fire Protection, LLC (Respondent Swift), have withdrawn their answer and amended answer to the compliance specification. On April 16, 2010, the Board issued an unpublished Order[1] that, among other things, required Respondent Classic to make whole seven discharged employees and three applicants for any loss of earnings that they may have suffered as a result of its unfair labor practices in violation of Section 8(a)(3) and (1) of the Act.

A controversy having arisen over the amounts of backpay due the discharged employees and applicants under the Board's Order, on November 30, 2011, the Regional Director issued a compliance specification alleging the amounts due under the Board's Order. Although not a party to the original unfair labor practice litigation, Respondent Swift was added to the compliance specification and was alleged to be an alter ego of Respondent Classic, and therefore alleged to be liable for remedying Respondent Classic's unfair labor practices.

The compliance specification alleged that the alter ego relationship between Respondent Classic and Respondent Swift is based on the common familial ownership between Respondent Classic and Respondent Swift; an insignificant hiatus between the cessation of Respondent Classic's operations and the commencement of Respondent Swift's operations; substantially identical management, supervision, similar business purpose, customers, operations, equipment and substantial familial support; and an intent to avoid Respondent Classic's liability under the Act.

On December 13, 2011 and January 11, 2012, respectively, the Respondents filed an answer and amended answer to the compliance specification. However, on August 17, 2012, the Respondents entered into a compliance stipulation with the Union, where they agreed to withdraw their answers upon approval of the stipulation. The Respondents also agreed that the Regional Director could file an unopposed motion for default judgment and further, that the Board could, without necessity of trial or any other proceeding, find all allegations of the compliance specification to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Respondents on all issues raised by the pleadings. The Respondents expressly consented to the entry of a Board Order providing a remedy in accordance with the allegations of the compliance specification and to the enforcement of such Order in the appropriate United States court of appeals. The parties agreed that the stipulation, the Board's Decision and Order, and the compliance specification constitute the entire record.

The stipulation also included the following provisions: (1) Respondents will, upon notice that the compliance stipulation has been approved by the Regional Director for Region 9, immediately convey to Region 9 payment of $1300; based on Respondents' representations that both Classic and Swift have been dissolved, are totally out of business, and without additional assets with which to satisfy the full backpay obligation, the Regional Director and the Union agree that payment of this amount shall constitute compliance with the backpay provisions of the Board Order;[2] (2) the parties agree that Mark Meyer and Mathew Meyer are not, as individuals, personally liable for remedying the unfair labor practices of Respondents as set forth in the compliance specification and the Board's Order; and (3) in the event that Respondents, individually or collectively, resume operations or acquire additional assets, the Regional Director shall have the right to institute further proceedings to collect the full amounts alleged in the compliance specification, determine any additional amounts owed, and to obtain reinstatement and instatement for the 10 discriminatees, if appropriate.

On August 30, 2012, the Regional Director approved the stipulation, and on September 21, 2012, the Respondents withdrew their answers.

On October 1, 2012, the Acting General Counsel filed with the Board a Motion for Default Judgment, with exhibits attached. On October 3, 2012, the Board issued an

[1] Unpublished Order adopting, in the absence of exceptions, the decision of Administrative Law Judge Eric M. Fine issued on February 26, 2010 (JD–13–10).

[2] There is no indication whether Respondents have paid this amount to the Region, but there is also no allegation that the Respondents have breached this provision of the stipulation.

order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents filed no response. The allegations in the motion and in 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, although initially filing an answer and amended answer to the compliance specification, subsequently withdrew the answers pursuant to the compliance stipulation. Such a withdrawal has the same effect as failure to file an answer, i.e., the allegations in the compliance specification must be considered to be true.[3]

Based on the withdrawal of the Respondents' answer and amended answer to the compliance specification and in accord with the parties' stipulation, 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 Respondent Swift is an alter ego of Respondent Classic, and is therefore liable for remedying the unfair labor practices of Respondent Classic. We further conclude that the net backpay due the discriminatees is as stated in the compliance specification and we will order the Respondents to pay those amounts, plus interest accrued to the date of payment.

[3] See *Maislin Transport*, 274 NLRB 529 (1985).

ORDER

The National Labor Relations Board orders that the Respondents, Classic Fire Protection, LLC and its alter ego, Swift Fire Protection, LLC, Westerville, Ohio, their officers, agents, successors, and assigns, shall make whole employees set forth below, by paying them the amounts following their names, plus interest accrued to the date of payment in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and State laws:[4]

Robert Ford	$ 4960
Rich Forsha	0
Robert Huff	1504
James Patrick King	4960
Josh McKim	4650
Larry Meuse	5270
Benjamin Waldo	1504
Travis Anders	12,541
Daniel Cervi	0
Michael Stetham, Jr.	1168
Total amount due:	$ 36,557

Dated, Washington, D.C. November 20, 2012

Mark Gaston Pearce, Chairman

Richard F. Griffin, Jr., Member

Sharon Block, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[4] The Board has declined to apply its new policy, announced in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), of daily compounding of interest on backpay awards, in cases such as this, that were already in the compliance stage on the date that decision issued. *Rome Electrical Systems, Inc.*, 356 NLRB No. 38, slip op. at 1 fn. 2 (2010).