

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRD REGION**

**ACE MASONRY, d/b/a ACE UNLIMITED and
BELLA MASONRY, LLC, alter egos and
BELLA FURNITURE SOLUTIONS, INC., and
HENRY BELLA VIGNA, LISA BELLA VIGNA,
ROBERT P. BELLA VIGNA AND
DOMENICK BELLA VIGNA, Individuals**

and

**CASES 03-CA-073540
03-CA-074523**

**INTERNATIONAL UNION OF BRICKLAYERS
AND ALLIED CRAFTWORKERS, LOCAL NO. 3**

and

**03-CA-073549
03-CA-074531**

LABORERS INTERNATIONAL UNION, LOCAL NO. 785

and

03-CA-079606

NORTHEAST REGIONAL COUNCIL OF CARPENTERS

**MEMORANDUM IN SUPPORT OF
THE ACTING GENERAL COUNSEL'S MOTION
FOR PARTIAL SUMMARY JUDGMENT**

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September 19, 2013

I

STATEMENT OF THE CASE

The proceedings to date are summarized in paragraphs 1 through 9 of the Motion, and need not be repeated here. The Compliance Specification, as amended, (“Specification”) alleges that the Respondents’ obligation to make employees whole under the terms of the enforced Board Order will be discharged by the payment of \$11,309.11, plus interest, and that the Respondents’ obligation to the Bricklayers’ (\$71,976.05), Laborers’ (\$8,243.84) and Carpenters’ (\$48,576.42) Funds will be discharged by a total payment of \$128,796.31, plus interest and liquidated damages.

II

RELEVANT AUTHORITIES

Section 102.56(b) of the Board’s Rules and Regulations governs the form and content of an answer to a compliance specification:

The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent’s position as to the applicable premises and furnishing the appropriate supporting figures.

Section 102.56(c) provides in part that, where a respondent files an answer, but:

...fails to deny any allegation of the specification in the manner required by [Section 102.56(b)], and the failure so to deny is not adequately explained, such allegation shall be deemed to be

admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

As argued in more detail below, summary judgment should be granted as to paragraphs I, II(a), II(b), II(c), first paragraph II(d), second paragraph II(d)¹ in part, II(e) in part, II(f) in part, III(a) in part, III(b), and III(c) of the Specification because Respondents make general denials that are insufficient under the Rules and the Answers, fail to state the basis on which Respondents disagree with the backpay calculations in the Specification and do not provide an alternate method of calculation with supporting figures.²

The Board has granted motions for summary judgment where a respondent's answer does not comport with the specificity required by Section 102.56(b). In Baker Electric, 330 NLRB 521 (2000), the Board granted summary judgment as to the gross backpay formula for all claimants (employees who worked for respondent and referrals who would have worked for respondent) and as to the interim earnings and net backpay formula for the employees who worked for respondent because the data used to calculate the gross backpay set forth in the specification (hours worked and increases provided in the collective-bargaining agreement), as well as interim earnings (amount paid by respondent) were all within respondent's knowledge and control, yet respondent failed to set forth its position as to the applicable premises or to furnish appropriate supporting figures or alternative calculations.

¹ Two paragraphs in the Specification were inadvertently numbered as II(d). Both paragraphs are relevant to the backpay calculation.

² The second paragraph II(d) and paragraphs II(e), II(f), III(a) and III(d) contain gross and net backpay calculations for referral Charles Morrow. Counsel for the Acting General Counsel is seeking summary judgment on Charles Morrow's gross backpay only.

The Board has granted summary judgment in cases where respondents took no position on the gross backpay calculation in the compliance specification or the premises on which they were based, and failed to provide alternate figures or premises regarding the amount of gross backpay owed to the discriminatees. In circumstances where the Board has concluded that respondent's answer is insufficient under Section 102.56(b) and (c) of the Rules due to general denials of the allegations in the specification, the Board deems allegations set forth in the specification to be admitted as true and precludes respondent from introducing any evidence controverting them. See Random Acquisitions, LLC, 359 NLRB No. 59 (2013); SRC Painting, LLC, 356 NLRB No. 74 (2011); and Baker Electric, supra.

III

ARGUMENT

Paragraph 1 of the Specification alleges the backpay period. Respondents' Answers do not specifically admit or deny the allegation, but generally deny all paragraphs not specifically denied, admitted or addressed in its Answers.

Respondents' generally deny the allegations pled in paragraphs II(a), II(b), II(c), the first paragraph II(d), the second paragraph II(d), II(e), II(f), III(a), III(b), III(c) and III(d) which address the method in which backpay was calculated, the amount of backpay owed, the method in which the amount owing to the various funds was calculated and the amount owing to the Bricklayers', Laborers' and Carpenters' Funds. Specifically, the referenced paragraphs plead the following:

- Paragraph II(a) (the appropriate measure of gross backpay)
- Paragraph II(b) (the appropriate measure of net backpay)
- Paragraph II(c) (the gross backpay, interim earnings and net backpay calculation for employees who worked for

respondents performing work under the Bricklayers' collective-bargaining agreement)

- First Paragraph II(d) (the gross backpay, interim earnings and net backpay calculation for employees who worked for respondents performing work under the Laborers' collective-bargaining agreement)
- Second Paragraph II(d) (the gross and net backpay calculation for a referral who would have performed work under the Carpenters' collective-bargaining agreement)³
- Paragraph II(e) (summary of backpay due per individual)
- Paragraph II(f) (summary of total amount of backpay owing)
- Paragraph III(a) (the appropriate measure of the amount owing to the Bricklayers', Laborers' and Carpenters' Funds)
- Paragraph III(b) (the calculation for the amount owing to the Bricklayers' Funds)
- Paragraph III(c) (the calculation for the amount owing to the Laborers' Funds)
- Paragraph III(d) (the calculation for the amount owing to the Carpenters' Funds)

Respondents' Answers do not address the appropriate measures by which backpay or fund contributions were calculated in the specification nor the amount due in this regard but generally deny these paragraphs. Respondents do not set forth any basis for a disagreement with the calculation of gross backpay or fund contribution amounts owing or provide an alternative measure for calculating gross backpay with supporting figures.

The remaining paragraphs of the Specification are adequately answered. Respondents have not pled any affirmative defenses.

³ There are no interim earnings offsetting gross backpay in the calculation for the referral referenced in the second paragraph II(d).

Respondent admits the allegations contained in paragraphs V(d), VI(b), VI(c), VI(d), and VI(g) of the Specification.

IV

CONCLUSION

Respondents' Answers to the Specification are insufficient under the Board's Rules and Regulations. The Acting General Counsel asks that the relief sought in the Motion be granted, and that compliance proceedings be limited to the issues that remain.

Albany, New York
September 19, 2013

Respectfully submitted,

/s/Gregory Lehmann
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