

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2**

EAST MARKET RESTAURANT, INC.

And
318 RESTAURANT WORKERS UNION

**Case Nos. 02-CA-120982
02-CA-133656
02-CA-144988**

**MEMORANDUM IN SUPPORT OF PETITION
FOR DEFAULT JUDGMENT
AND ISSUANCE OF DECISION AND ORDER**

Pursuant to Section 102.24(b) of the Rules and Regulations of the National Labor Relations Board, herein Rules and Regulations, Counsel for the General Counsel, hereafter General Counsel, submits this memorandum in support of the Petition for Default Judgment and Issuance of Decision and Order, herein the Petition. As set forth below, General Counsel respectfully submits that the pleadings contained in and exhibits attached to the Petition establish that there exist no genuine issues of fact as to any allegation set forth in the Order Consolidating Cases, Consolidated Complaint, and Notice of Hearing, Exhibit K¹, hereafter the Consolidated Complaint, or in the Order Amending the Consolidated Complaint, Exhibit M, hereafter the Order Amending, and that therefore, as a matter of law, an Order granting Default Judgment and remedying the violations alleged in the Consolidated Complaint as amended should issue.

I. STATEMENT OF THE CASE

¹ References to Exhibits are to the exhibits attached to the Petition.

On January 17, 2014² and May 27, respectively, 318 Restaurant Workers Union, herein the Union, filed a charge and amended charge against East Market Restaurant, Inc., herein Respondent. Exhibits A and C. The charge and amended charge were served on Respondent on January 22 and May 28, respectively. Exhibits B and D. The charge alleged, in pertinent part, that on or about November 26, 2013, Respondent threatened employee Sky Wong, herein Wong, with criminal prosecution if he continued to engage in Union and concerted protected activity, in violation of Section 8(a)(1) of the National Labor Relations Act, herein the Act, and terminated Wong for engaging in such activity, in violation of Section 8(a)(1) and (3) of the Act. The charge further alleged that Respondent terminated Wong for his participation in the investigation of a charge against Respondent before the National Labor Relations Board, herein the Board, in violation of Section 8(a)(1) and (4) of the Act. Finally, the charge, as amended, alleged that Respondent failed to notify and bargain with the Union regarding the termination of Wong in violation of Section 8(a)(1) and (5) of the Act.

On July 29, the Union filed another charge against Respondent, Exhibit E, which was served on Respondent on July 30, Exhibit F, alleging that Respondent, in or about February, threatened its employees with discharge, closure of its facility located at 75 East Broadway, New York, New York, hereafter the Respondent's facility, and unspecified reprisals because they engaged in Union and concerted protected activity, in violation of Section 8(a)(1) of the Act. The charge further alleged that, beginning in or about March or April, Respondent organized regular pickets in front of Jing Fong Restaurant and Grand Harmony Restaurant, collectively "the Restaurants," in retaliation for the participation of the Restaurants' employees in Union and concerted protected activity in front of the facility, in violation of Section 8(a)(1) of the Act. Moreover, the charge alleged that Respondent, on May 7, terminated employee Sai Qin Chen,

² All dates hereafter are in 2014, unless otherwise indicated.

hereafter Chen, because she engaged in Union and concerted protected activities, in violation of Section 8(a)(1) and (3) of the Act, and failed to notify or bargain with the Union in regard to Chen's termination, in violation of Section 8(a)(1) and (5) of the Act.

On January 23, 2015, the Union again filed a charge against Respondent which was served on Respondent on January 28, 2015, Exhibits G and H. This charge alleged, in pertinent part, that Respondent, on or about December 28, closed the restaurant without notice to or bargaining with the Union regarding the effects of the closure, in violation of Section 8(a)(1) and (5) of the Act.

Based on the initial charge, as amended, a Complaint and Notice of Hearing in Case No. 02-CA-120982, hereafter the Complaint, was issued on August 29. Exhibit I. The Complaint was served on Respondent by regular and certified mail. Exhibit J.³ On March 20, 2015, the Consolidated Complaint was issued encompassing all of the allegations described above. Exhibit K. The Consolidated Complaint was served on Respondent by regular and certified mail. Exhibit L. On April 8, 2015, the Order Amending issued and was served on Respondent by regular and certified mail. Exhibit M and N.

Respondent filed a timely Answer to the Complaint, Exhibit O, but withdrew the Answer by letter dated March 19, 2015. Exhibit P. The March 19, 2015 letter further indicated Respondent's intention not to file an answer to the Consolidated Complaint, issuance of which was then pending. Respondent sent another letter to General Counsel on April 9, 2015, indicating its further intention not to file an Answer to the Order Amending. Exhibit Q.

³ It should be noted that the Complaint was initially served on Respondent counsel at an incorrect address and was subsequently re-served when the mistake was discovered. In the meanwhile, the Region issued a 7-day letter requiring Respondent to file its Answer by no later than September 25, 2014. Respondent counsel, on receiving the letter, notified the Region that it had not received the Complaint and, after service was completed, submitted its Answer by the specified date. Thus, Respondent's Answer to the Complaint was deemed timely.

Consistent with its representations, Respondent did not file an answer to the Consolidated Complaint within fourteen days of service as the Rules and Regulations require, nor has Respondent filed any answer to the Consolidated Complaint, as amended, to date.

II. ARGUMENT

Point 1: There Are No Genuine Issues of Fact Which Warrant a Hearing.

Respondent has withdrawn its Answer to the Complaint and failed to file an answer to the Consolidated Complaint and Order Amending in this matter. The Board has consistently held, and its Rules and Regulations require, that if a party charged with an unfair labor practice, upon receipt of the Complaint and Notice of Hearing, fails to file an Answer within the time and in the manner prescribed by Section 102.20 et. seq. of the Rules and Regulations, all allegations in the Complaint shall be deemed admitted to be true, and may be so found by the Board, and judgment may be rendered on the basis of the Complaint alone. Board's Rules and Regulations, Section 102.20; *Electra-Cal Contractors*, 339 NLRB 370 (2003); *Contractors Excavating, Inc.*, 270 NLRB 1189 (1984); *Clean and Shine*, 255 NLRB 1144 (1981); *Galesburg Construction Co., Inc.*, 259 NLRB 722 (1981). In light of Respondent's withdrawal of its previously-filed Answer and failure to file any answer to the Consolidated Complaint and Order Amending, as required by the Board's Rules and Regulations, all of the allegations of the Consolidated Complaint as amended are deemed to be admitted as true and there are no factual disputes which warrant a hearing.

Point 2: Respondent's Alleged Conduct Violates Section 8(a)(1), (3), (4) and (5) of the Act.

The Consolidated Complaint, as amended, alleges all of the elements necessary to establish that Respondent violated Section 8(a)(1), (3), (4) and (5) of the Act.⁴

A. The Alleged Violation of Section 8(a)(1) of the Act

Under Section 8(a)(1) of the Act, it is “an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7” of the Act. Section 7 provides that “employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. ” The Board has held that employee discussions in regard to working conditions and employees’ concerted legal action against their employer regarding their terms and conditions of employment are protected under Section 8(a)(1). *See e.g. Bryant Health Center, Inc.*, 353 NLRB 739 (2009) (Section 7 protects employees’ discussion about salaries, wage increases, performance evaluations, and discipline); *Santa’s Bakery*, 249 NLRB 1058 (1980) (adopting administrative law judge’s finding, based on *B & M Excavating, Inc.* 155 NLRB 1152 (1965), that employer who discharged employees for filing a wage and hour lawsuit violated Section 8(a)(1)).

Moreover, the Board has found that an employer who threatens employees with reprisals, such as discharge, plant closure, or criminal prosecution, for engaging in concerted protected or union activities violates of Section 8(a)(1) of the Act. *See, e.g. Action Auto Stores, Inc.*, 298 NLRB 875 (1990)(citing cases for the proposition that threats of discharge and plant closure in response to union activity are “among the most flagrant’ of unfair labor practices.”); *White Oak*

⁴ The Consolidated Complaint, as amended, also contains the necessary allegations concerning filing and service of the charges, the supervisory and/or agency status of Respondent representatives and the Union’s labor organization status, and establishing the Board’s jurisdiction in this matter. (Exhibit K, ¶¶ 1-5; Exhibit M).

Manor, 353 NLRB 795 (2009)(employer's threats of discharge to employees who engaged in protected concerted activity, specifically protesting the employer's unfair enforcement of its dress code, and discharge of employee who spearheaded the protest violated Section 8(a)(1)), *adopted in rel. part*, 355 NLRB 1280 (2010); *Moffitt Building Materials Company and Lumbermans Wholesale Company*, 214 NLRB 655 (1974)(employer who threatened criminal prosecution of employees who encouraged coworkers to engage in union and protected concerted activity violated 8(a)(1)). Even an employer's threats of unspecified reprisals in retaliation for employees' union and protected concerted activities violate Section 8(a)(1) under Board law. *See, e.g., Station Casinos, LLC*, 358 NLRB No. 153 (September 28, 2012) (adopting administrative law judge's finding that employer made threats of unspecified reprisal in violation of Section 8(a)(1) of the Act, citing *Metro One Loss Prevention Services Group (Guard Division NY), Inc.*, 356 NLRB No. 20, slip op. at 14, (November 8, 2010)).

The Consolidated Complaint, as amended, alleges multiple violations of 8(a)(1), including that Respondent, by Alex Cheng, threatened employees with criminal prosecution if they engaged in protected concerted and Union activities, and that Respondent, by Zheng Xiang Zheng, threatened employees with discharge, closure of Respondent's facility and unspecified reprisals if they engaged in protected concerted and Union activities. Exhibit K, Paras. 7 & 8. Thus, the Board should find that Respondent violated Section 8(a)(1) of the Act as alleged in this regard, and should order appropriate remedial action.

The Consolidated Complaint, as amended, further alleges that Respondent violated Section 8(a)(1) of the Act by organizing regular pickets in front of the Restaurants in retaliation for the participation of the Restaurants' employees in Union and concerted protected activities in front of Respondent's facility. Exhibit K, Para. 9. The Board has previously held that an

employer violates 8(a)(1) vis-à-vis the employees of a second employer if the conduct of the first employer reasonably tends to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights. *New York New York Hotel & Casino*, 356 NLRB No. 119, slip op. at 5 (March 25, 2011), *enfd.*, 676 F.3d 193 (D.C. Cir. 2012). Moreover, the Board has made clear that an employer cannot accomplish indirectly an object which would be unlawful if attempted directly. *See Wild Oats Community Markets*, 336 NLRB 179, 181-182 (2001). It is beyond doubt that Respondent would have acted unlawfully had it attempted to interfere directly in Union protests and protected concerted activity of the Restaurants' employees on the public sidewalk outside the facility. *Id.* (citing cases). Thus, the Board should find that Respondent's attempt to accomplish the same object indirectly, through conduct reasonably calculated to exert economic pressure on the Restaurants and their employees, was also in violation of Section 8(a)(1) of the Act. *Id.*

Finally, the Consolidated Complaint alleges that Respondent discharged Wong because he engaged in concerted protected activities, specifically filing a wage and hour lawsuit with his coworkers against Respondent, and discharged Chen for engaging in protected concerted activity, specifically speaking with coworkers engaged in the wage and hour law suit and declining to participate in Respondent's retaliatory pickets in front of the Restaurants. Exhibit K, Paras. 10 (a)-(c) & 11. The Board should therefore also find that Respondent violated Section 8(a)(1) of the Act in discharging these employees based on their protected concerted activities and to discourage employees from engaging in such activities. *White Oak Manor*. 353 NLRB at fn. 2 & 801, *Santa's Bakery*, 249 NLRB at 1058, 1062-1063.

In light of the above violations of Section 8(a)(1), the Board should order appropriate remedial relief as well as additional remedies discussed below in Section IV.

B. The Alleged Violations of Section 8(a)(3) and (4) of the Act

Section 8(a)(3) of the Act makes it an unfair labor practice for an employer to discriminate “in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization. ” In addition, Section 8(a)(4) of the Act prohibits discrimination against employees for filing charges or “giving testimony” under the Act. Discharge, it is often remarked, is the workplace “equivalent of capital punishment.” *Griffin v. Auto Workers*, 469 F.2d 181, 183 (4th Cir. 1972); *see also Carolina Steel Corp.*, 296 NLRB 1279, 1284 (1989); *Sears, Roebuck and Co.*, 337 NLRB 443, 452 (2002). Thus, firing an employee in retaliation for her participation in union activity or for providing witness testimony in a Board investigation is clearly unlawful. *Dewey Bros., Inc.*, 187 NLRB 137 (1970) (discharge of an employee because he openly supported a union organizing campaign by signing an authorization card, speaking with coworkers about the union and attending union meetings violates 8(a)(3)); *NLRB v. Scrivener*, 405 U.S. 117, 122-124 (1972)(discharge of employee for providing an affidavit during a Board investigation violates 8(a)(4)).

The Consolidated Complaint, as amended, alleges that Respondent violated Section 8(a)(3) by discharging employees Wong and Chen because they assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities. Exhibit K, Paras. 10 (a)-(c) & 11 (c)-(d). The Consolidated Complaint as amended therefore contains the allegations necessary for finding that Respondent violated Section 8(a)(3) of the Act by discharging Wong and Chen, and ordering appropriate remedial action as well as additional remedies discussed below in the Section IV.

The Consolidated Complaint further alleges that Respondent terminated Wong, in violation of Section 8(a)(4), because he cooperated in a Board investigation in Case No. 02-CA-105999. Exhibit K, Para. 10 (b), (d). That allegation is sufficient to warrant a finding that Wong's termination also violated Section 8(a)(4) of the Act and issuance of an order for appropriate remedial relief.

C. *The Alleged Violation of Section 8(a)(5) of the Act*

Section 8(d) of the Act defines the duty to bargain collectively as “the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment. ” Under Section 8(a)(5) of the Act, it is an unfair labor practice for an employer to refuse to bargain collectively with the representative of its employees, subject to the provisions of Section 9(a) of the Act. The Board recognizes disciplinary action as a term and condition of employment and requires that an employer bargain with the 9(a) representative of its employees in regard to such actions, in so far as they are discretionary, even in the absence of an agreed-upon grievance process. *See Alan Ritchey, Inc.*, 359 NLRB No. 40 (2012)(employer must bargain with a union over discretionary discipline once the union has been certified as the employees' 9(a) representative even if no contract containing a grievance and arbitration provision has been reached). Although *Alan Ritchey* is non-precedential in that it was issued by an improperly constituted panel, as determined by *NLRB v. Noel Canning*, 134 S. Ct. 2550 (2014), nevertheless, the rationale is persuasive and should be applied here. It is clear that while an employer is engaged in first contract negotiations with the employees' exclusive collective bargaining representative it is prohibited from unilaterally changing terms and conditions of employment until it has bargained with the union and reached an overall impasse in bargaining

for the agreement as a whole. *See, e.g., Lawrence Livermore Security, LLC*, 357 NLRB No. 23 (July 28, 2011)(layoffs implemented while employer was engaged in first contract bargaining with union violated Sec. 8(a)(5) in that they were made without notice to or bargaining with the union and at a time when the parties had not reached an overall impasse in contract negotiations). The terminations of Wong and Chen clearly constituted a unilateral change in their terms and conditions of employment as to which bargaining was required.

The Consolidated Complaint, as amended, alleges that, since July 25, 2011, Respondent recognized the Union as the exclusive collective-bargaining representative of all full-time and regular part-time dining room employees, including bus persons, waiters, captain, hosts and dim sum sellers, employed at the Respondent's facility, hereafter the Unit, and that the Unit is appropriate for purposes of collective bargaining, as required by Section 9(b) of the Act. Exhibit K, Para. 6. Accordingly, the Union is the representative of the Unit within the meaning of Section 8(a)(5) of the Act. The Consolidated Complaint, as amended, further alleges that Respondent exercised discretion in terminating Wong and Chen and made those decisions without prior notice to the Union and without affording the Union an opportunity to bargain regarding the terminations and the effects of the terminations. Exhibit K, Para. 12. Thus, Respondent did not meet its obligation to bargain collectively with the Union in violation of Section 8(a)(5) of the Act. *See id*; *see also Alan Ritchey*, 359 NLRB No. 40.

The Board has also held that even in circumstances where an employer has no obligation to bargain over a decision, for example the decision to close its business, the employer cannot escape the obligation to bargain over the effects of the decision on its employees' terms and conditions of employment absent a clear and unequivocal waiver by the union. *See First National Maintenance Corp. v. NLRB*, 452 U.S. 666, 681-682 (1981); *Clarkwood Corp.*, 233

NLRB 1172 (1977), enfd. 586 F.2d 835 (3d Cir. 1978)). Here, the Consolidated Complaint as amended alleges that, on December 29, Respondent closed the Respondent's facility without prior notice to the Union and without affording the Union an opportunity to bargain over the effects of this conduct. Exhibit K, Para. 13. It is clear that Respondent thus also failed to meet its effects bargaining obligation in this regard in violation of Section 8(a)(5) of the Act. *First National Maintenance Corp. v. NLRB*, 452 U.S. at 681-682.

Based on the allegations described above, the Board should find that Respondent violated Section 8(a)(5) of the Act and order appropriate remedial action.

III. CONCLUSION

As all Consolidated Complaint and Order Amending allegations are deemed admitted due to the Respondent's withdrawal of its Answer and failure to file an answer to the Consolidated Complaint as amended, there exist no factual issues to be litigated before the Board, and no hearing is warranted. Further, as the Consolidated Complaint as amended states legally cognizable violations of Section 8(a)(1), (3), (4) and (5) of the Act, General Counsel respectfully asserts that granting this Motion for Default Judgment is appropriate.

IV. REMEDY

Should the Board grant this Motion for Default Judgment and find that Respondent engaged in unfair labor practices in violation of Section 8(a)(1), (3), (4) and (5) of the Act, it is respectfully requested that the Board issue a Decision and Order against Respondent, containing findings of fact and conclusions of law in accordance with the allegations of the Consolidated Complaint, as amended, and remedying the unfair labor practices.

General Counsel requests that, in light of the closure of Respondent's facility, Respondent be ordered to mail the Notice to all of its employees in Mandarin, Cantonese, Foo

Zhu and any other dialects spoken by the employees. *See, e.g., Dean Transportation Inc.*, 350 NLRB 48, 62 (2007), *enfd. by* 551 F.3d 1055 (D.C. Cir 2009). In addition, General Counsel seeks certain nonstandard remedies, specifically in regard to Respondent's alleged picketing in front of the Restaurants in retaliation for the participation of the Restaurants' employees in concerted protected and Union activities in front on Respondent's facility, in violation of 8(a)(1). In order to provide an effective remedy for this violation, General Counsel requests that Respondent be ordered to deliver to the Regional Director, within 14 days after service by the Region, signed copies of the notices in sufficient number for posting by the Restaurants, if they wish, in all places where notices to employees are habitually posted. *Cf. International Union of Operating Engineers, Local 14-14B (Skanska USA)*, 358 NLRB No. 115 (2012)(finding that union violated Section 8(b)(1)(A) and 8(b)(2) and ordering that union provide signed copies of Notice remedying those violations to employer, who was not a charged party, in order that the employer could post the notice if it wished to do so).

In regard to the alleged violations of 8(a)(3), General Counsel also seeks additional remedies. Specifically, General Counsel contends that the discriminatees are entitled to reimbursement of expenses incurred while seeking interim employment, where such expenses would not have been necessary had the employee been able to continue working for respondent. *Deena Artware, Inc.*, 112 NLRB 371, 374 (1955); *Crossett Lumber Co.*, 8 NLRB 440, 498 (1938). These expenses might include: increased transportation costs in seeking or commuting to interim employment⁵; the cost of tools or uniforms required by an interim employer⁶; room and board when seeking employment and/or working away from

⁵ *D.L. Baker, Inc.* 351 NLRB 515, 537 (2007).

⁶ *Cibao Meat Products & Local 169, Union of Needle Trades, Indus. & Textile Employees*, 348 NLRB 47, 50 (2006); *Rice Lake Creamery Co.* 151 NLRB 1113, 1114 (1965).

home⁷; contractually required union dues and/or initiation fees, if not previously required while working for respondent⁸; and/or the cost of moving if required to assume interim employment.⁹

Until now the Board has considered these expenses as an offset to a discriminatee's interim earnings rather than calculating them separately. This has had the effect of limiting reimbursement for search-for-work and work-related expenses to an amount that cannot exceed the discriminatees' gross interim earnings. *See W Texas Utilities Co.*, 109 NLRB 936, 939 n.3 (1954) ("We find it unnecessary to consider the deductibility of [the discriminatee's] expenses over and above the amount of his gross interim earnings in any quarter, as such expenses are in no event charged to the Respondent."); *see also N. Slope Mech.*, 286 NLRB 633,641 fn. 19 (1987). Thus, under current Board law, a discriminatee, who incurs expenses while searching for interim employment, but is ultimately unsuccessful in securing such employment, is not entitled to any reimbursement for expenses. Similarly, under current law, an employee who expends funds searching for work and ultimately obtains a job, but at a wage rate or for a period of time such that his/her interim earnings fail to exceed search-for-work or work-related expenses for that quarter, is left uncompensated for his/her full expenses. The practical effect of this rule is to punish discriminatees, who meet their statutory obligations to seek interim work¹⁰, but who, through no fault of their own, are unable to secure employment, or who secure employment at a lower rate than interim

⁷ *Aircraft & Helicopter Leasing*, 227 NLRB 644, 650 (1976).

⁸ *Rainbow Coaches*, 280 NLRB 166, 190 (1986).

⁹ *Coronet Foods, Inc.* 322 NLRB 837 (1997).

¹⁰ *In Re Midwestern Pers. Servs., Inc.*, 346 NLRB 624, 625 (2006) ("To be entitled to backpay, a discriminatee must make reasonable efforts to secure interim employment.").

expenses.

Aside from being inequitable, this current rule is contrary to general Board remedial principles. Under well-established Board law, when evaluating a backpay award the "primary focus clearly must be on making employees whole." *Jackson Hasp. Corp.*, 356 NLRB No. 8 at *3 (Oct. 22, 2010). This means the remedy should be calculated to restore "the situation, as nearly as possible, to that which would have [occurred] but for the illegal discrimination." *Phelps Dodge Corp. v. NLRB*, 313 U.S. 177, 194 (1941); *see also Pressroom Cleaners & Serv. Employees Int'l Union, Local 32BJ*, 361 NLRB No. 57 at *2 (Sept. 30, 2014) (quoting *Phelps Dodge*). The current Board law dealing with search-for-work and work-related expenses fails to make discriminatees whole, inasmuch as it excludes from the backpay monies spent by the discriminatee that would not have been expended but for the employer's unlawful conduct. Worse still, the rule applies this truncated remedial structure only to those discriminatees who are affected most by an employer's unlawful actions-i.e., those employees who, despite searching for employment following the employer's violations, are unable to secure work.

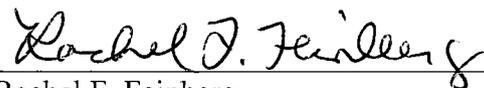
It also runs counter to the approach taken by the Equal Employment Opportunity Commission and the United States Department of Labor. *See Enforcement Guidance: Compensatory and Punitive Damages Available under § 102 of the Civil Rights Act of 1991*, Decision No. 915.002, at *5, *available at* 1992 WL 189089 (July 14, 1992); *Hobby v. Georgia Power Co.*, 2001 WL 168898 at *29 (Feb. 2001), *aff'd Georgia Power Co. v. U.S. Dep 't of Labor*, No. 01-10916, 52 Fed.Appx. 490 (Table) (11th Cir. 2002).

In these circumstances, a change to the existing rule regarding search-for-work and work-related expenses is clearly warranted. In the past, where a remedial structure fails to

achieve its objective, "the Board has revised and updated its remedial policies from time to time to ensure that victims of unlawful conduct are actually made whole " *Don Chavas, LLC*, 361 NLRB No. 10 at *3 (Aug. 8, 2014). In order for employees truly to be made whole for their losses, the Board should hold that search-for-work and work-related expenses will be charged to a respondent regardless of whether the discriminatee received interim earnings during the period.¹¹ These expenses should be calculated separately from taxable net backpay and should be paid separately, in the payroll period when incurred, with daily compounded interest charged on these amounts. *See Jackson Hosp. Corp.*, 356 NLRB No. 8 at* 1 (Oct. 22, 2010) (interest is to be compounded daily in backpay cases).

Dated: April 15, 2015
New York, New York

Respectfully submitted,



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¹¹ Award of expenses regardless of interim earnings is already how the Board treats other non-employment related expenses incurred by discriminatees, such as medical expenses and fund contributions. *Knickerbocker Plastic Co., Inc.* 104 NLRB 514, 516 at *2 (1953).