

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

MICROPOWER USA CORP.

and

Case Nos. 02-CA-130858  
02-CA-132236

PROFESSIONALS AT MICROPOWER  
NEW YORK STATE UNITED TEACHERS

and

Case No. 02-CA-132592

GREG SANDLER, an Individual

and

Case No. 02-CA-132830

AMINA CHOWDHURY, an Individual

**MEMORANDUM IN SUPPORT OF MOTION TO TRANSFER PROCEEDINGS  
TO THE BOARD AND FOR DEFAULT JUDGMENT AND ISSUANCE OF  
A SUPPLEMENTAL BOARD DECISION AND ORDER**

Pursuant to Section 102.24 and 102.56 of the Rules and Regulations of the National Labor Relations Board (Rules and Regulations), Counsel for the General Counsel (General Counsel) submits this memorandum in support of the Motion to Transfer Proceedings to the Board and for Default Judgment and Issuance of a Supplemental Board Decision and Order (the Motion). As set forth below, General Counsel respectfully submits that the pleadings herein and exhibits attached to the Petition establish that there exist no genuine issues of fact as to any allegation set forth in the Amended Compliance Specification, and that therefore, as a matter of law, a

Supplemental Decision and Order should issue granting the relief set forth in the Amended Compliance Specification.

## I. STATEMENT OF THE CASE

On March 31, 2015, the National Labor Relations Board issued its Decision and Order reported at 362 NLRB No. 63, directing Respondent to, among other things, make employees Alex Albaret, Valmike Apuzen, Florentino Capili, Amina Chowdhury, Imelda Lapid, Ntumba Mukendi, Felicity Nduku, Gwendolyn Nisbett, Greg Sandler, and Nevdoyle Santana whole for any loss of earnings and other benefits suffered since June 2014, as a result of the discrimination against them in violation of Section 8(a)(1) and (3) of the National Labor Relations Act.

To date, Respondent has paid no backpay to its employees and the backpay owed currently is \$68,797.00, plus interest.

On August 31, 2015, the Regional Director for Region 2 issued a Compliance Specification and Notice of Hearing to Respondent (Compliance Specification). The Compliance Specification informed Respondent that if it did not file an answer within 21 days of service of the Compliance Specification, as required by Section 102.56(a) of the Board's Rules and Regulations, pursuant to a Motion for Default Judgment, the Board may find all of the allegations in the Compliance Specification are true.

The answer to the Compliance Specification was due on September 21, 2015. Respondent failed to file an answer'

On September 15, 2015, the Acting Regional Director for Region 2 issued an Amended Compliance Specification and Notice of Hearing to Respondent (Amended

Compliance Specification). The Amended Compliance Specification informed Respondent that if it did not file an Answer within 21 days of service of the Amended Compliance Specification, as required by Section 102.56(b) of the Board's Rules and Regulations, pursuant to a Motion for Default Judgment, the Board may find all of the allegations in the Amended Compliance Specification are true.

The answer to the Amended Compliance Specification was due on October 6, 2015. Respondent failed to file an answer.

On October 15, 2015, Region 2 sent a letter by U.S. mail to the Respondent. The letter stated that the time limits for filing an answer to the Amended Compliance Specification had expired and requested an answer.

To date, no answer to the Amended Compliance Specification and Notice of Hearing has been filed.

Respondent, having been duly served, failed to file an answer to the Compliance Specification and the Amended Compliance Specification in accordance with Section 102.56 of the Board's Rules and Regulations. The required time for such adequate filing has now expired. Therefore, all allegations in the Amended Compliance Specification and Notice of Hearing must be deemed admitted as true and no issue of fact exists warranting or requiring a hearing.

## **II. ARGUMENT**

### **There Are No Genuine Issues of Fact Which Warrant a Hearing.**

Respondent has failed to file an Answer to the Amended Compliance Specification and Notice of Hearing. The Board has consistently held, and its Rules and

Regulations require, that if Respondent, upon receipt of the Amended Compliance Specification and Notice of Hearing, fails to file an Answer within the time prescribed by Section 102.56(a) of the Rules and Regulations, all allegations in the Amended Compliance Specification 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 Amended Compliance Specification alone. Board's Rules and Regulations, Section 102.56(c). *Bryan Adair Construction*, 347 NLRB 247 (2004); *Koehn Painting*, 333 NLRB No. 22 (2001); *Environmental Construction*, 333 NLRB No. 10 (2001).

Thus, by the failure of Respondent to file an Answer as required by the Board's Rules and Regulations, all of the allegations of the Amended Compliance Specification are deemed to be admitted as true and there are no factual disputes which warrant a hearing.

### **III. CONCLUSION**

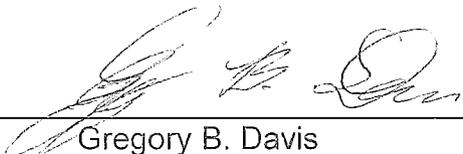
As all Amended Compliance Specification allegations are deemed admitted due to the failure of Respondent to file an Answer, there exist no factual issues to be litigated before the Board, and no hearing is warranted. Further, as the Amended Compliance Specification states legally allegations of the net backpay owed to the discriminates herein, Counsel for the General Counsel respectfully asserts that granting this Motion for Default Judgment and Issuance of a Supplemental Board Decision and Order is appropriate.

#### IV. REMEDY

Should the Board grant this motion for Default Judgment, it is respectfully requested that the Board issue a Supplemental Decision and Order ordering Respondent to make payments to the discriminatees in the amounts set forth in Amended Compliance Specification, plus interest and tax on interest accrued to the date of payment and excess tax liability, minus tax withholding by Federal and State laws.

Dated: October 19, 2015  
New York, New York

Respectfully submitted,



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