

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

GIBBS CONTRACTING, INC.

and

**Cases 05-CA-107444
05-CA-112497**

**INTERNATIONAL UNION OF
OPERATING ENGINEERS,
LOCAL 99**

SUPPLEMENTAL ORDER

On October 20, 2014, the National Labor Relations Board issued its Decision and Order¹ in the above cases, directing Gibbs Contracting, Inc. (the Respondent), to, inter alia, make whole the bargaining unit employees, with interest, for any losses sustained due to the unlawfully imposed changes to their health, welfare, and pension contributions, benefits, and other terms and conditions of employment made by the Respondent in violation of Section 8(a)(5) and (1) of the National Labor Relations Act (the Act). The Order also requires the Respondent to compensate the unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and to file a report with the Social Security Administration allocating the awards to the appropriate calendar quarters for each employee.

On September 10, 2015, the United States Court of Appeals for the District of Columbia Circuit entered its judgment in Case No. 15-1060, enforcing in full the Board's Order.

On July 18, 2017, the Respondent; the International Union of Operating Engineers, Local 99 (the Union); and the General Counsel of the National Labor Relations Board entered into a Formal Settlement Stipulation Consenting to Amount of Backpay, Schedule for Payment, and the Entry of a Supplemental Board Order and Consent Judgment (Stipulation), subject to the Board's approval, providing for the entry of a supplemental order by the Board and a consent judgment by any appropriate United States Court of Appeals. The parties waived all further and other proceedings before the Board to which they may be entitled under the Act or the Board's Rules and Regulations, and the Respondent waived all defenses to the entry of the judgment, including compliance with the Order of the Board.

¹ 361 NLRB 704.

The Stipulation provides that the entire record in this matter consists of the Stipulation; the underlying Board Order (361 NLRB 704); and the judgment of the United States Court of Appeals for the District of Columbia Circuit Case No. 15-1060.

The Stipulation also fully resolves the United States District Court for the District of Columbia Case No. 16-mc-01297 (ABJ).²

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Stipulation is approved and made a part of the record, and the proceeding is transferred to and continued before the Board in Washington, D.C., for the entry of a Supplemental Order pursuant to the provisions of the Stipulation.

Based on the Formal Settlement Stipulation and the entire record, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board makes the following:

SUPPLEMENTAL ORDER

The Respondent, Gibbs Contracting, Inc., Washington, D.C., its officers, agents, successors, and assigns, shall take the following affirmative action necessary to effectuate the policies of the Act:

1. The parties have reached agreement concerning the amount of backpay due under the terms of the Decision and Order of the Board. The full sum due is \$390,887.54, broken down as follows³:

- (a) \$247,313.19 in backpay due to individual employees;
- (b) \$46,924.39 in pension contributions due to the Central Pension Fund;
- (c) \$9,885.50 in dues remittances due to the International Union of Operating Engineers, Local 99 (Union);
- (d) \$45,843.00 in interest on all sums described above in paragraphs 3(a) through 3(c) due to the individual employees, the Central Pension Fund, and the Union;
- (e) \$22,002.00 in excess tax compensation due to the individual employees; and

² The parties filed a joint motion with the district court to dismiss Case No. 16-mc-01297 (ABJ) on July 26, 2017, pursuant to the instant settlement stipulation. The court granted the motion on August 1, 2017.

³ The Stipulation inadvertently lists the total amount in backpay due to individual employees as \$247,313.18 (Stipulation at par. 3(a)), rather than the correct amount of \$247,313.19. Accordingly, the Stipulation also inadvertently lists the full sum due as \$390,887.53 (Stipulation at par. 3), rather than the correct amount of \$390,887.54.

(f) \$18,919.46 as the Respondent's share of FICA on the backpay amount identified above in paragraph 3(a), which will be forwarded to the appropriate taxing authorities.

2. Payments due to the individual employees are as follows:

Employee	Backpay	Interest	Excess Tax
Regimar Durr	\$42,229.91	\$6,205.00	\$5,124.00
Melvin Hansberry	\$12,240.32	\$1,798.00	\$749.00
John Jenifer	\$22,980.08	\$3,377.00	\$1,673.00
Robert Lathern	\$21,481.73	\$3,156.00	\$1,526.00
Bryan Marshall	\$22,171.62	\$3,259.00	\$1,594.00
Isaac Moore	\$22,249.84	\$3,269.00	\$1,601.00
Danielle Twisdale	\$26,523.33	\$3,898.00	\$2,052.00
Kevin Watts	\$17,727.76	\$2,605.00	\$1,158.00
Dwonn Williams	\$15,117.74	\$2,222.00	\$903.00
Shawn Wimbush	\$44,590.86	\$6,553.00	\$5,622.00

3. All parties waive the right to contest the amounts set forth above in paragraphs 1 and 2, and waive their right to any hearing before an Administrative Law Judge, the filing of exceptions and briefs before the Board, and all further and other proceedings to which the parties may be entitled under the Act or the Board's Rules and Regulations to contest the amount of backpay, pension and dues remittances, interest, and excess tax liability due. However, the Respondent does not waive the right to prepay the amounts due without penalty. In the event of prepayment before the expiration of the 18-month period, interest amounts will be re-calculated based on the time of final payment and the Respondent does not waive the right to review and, if necessary, contest the amount of final interest calculation in the event that prepayments are made.

4. The obligation of the Respondent to make whole employees as described above will be discharged by 18 consecutive monthly installment payments each in the amount of \$21,715.97. Payments are due and payable at the close of business on the first day of each month beginning on July 1, 2017; if the first day of the month falls on a weekend or holiday, the monthly payment is due on the next business day.

All payments will be made payable to the National Labor Relations Board, and should be sent to the Board's offices at NLRB Region 5, Bank of America Center, Tower II, 100 S. Charles St., Ste. 600, Baltimore, MD 21201. At appropriate times, the Region will request disbursements from the United States Treasury for payment to the individual employees and/or Union funds. Appropriate withholdings will be made from the backpay amounts and appropriate tax documents (such as a W-2 and Form 1099) will be sent to the individuals by the Agency at the appropriate times.

5. In consideration of the installment plan described above in paragraph 4, the Respondent agrees that upon approval of this Stipulation, the Board may immediately enter this supplemental order providing for the payment to the individuals, Central Pension Fund, and the Union listed above in paragraphs 1 and 2, in the amounts opposite their names. Thereafter, the United States Court of Appeals for any appropriate circuit may enter its judgment enforcing the supplemental order of the Board. The Respondent waives all defenses to the entry of the judgment, including compliance with the Order of the Board.

6. If any installment is not paid on or before the date due without proof of mailing by certified, registered or other traceable/tracking mail, the full unpaid amount shall become immediately due and payable and the Board may, without further notice, institute proceedings against the Respondent for the collection of the full indebtedness remaining due, with additional interest due on the entire unpaid balance from the date of default until full payment is received. Proof of mailing by certified, registered, or any other traceable/tracking method before the first of the month shall constitute compliance with the due date of the first of the month, provided the amounts due and transmitted are ultimately received by the Board.

Dated, Washington D.C., March 25, 2019.

John F. Ring, Chairman

Lauren McFerran, Member

Marvin E. Kaplan, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD