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Osborn Electric, Inc. and Local Union #131, International Brotherhood of Electrical Workers, AFL-CIO and Roger Clark, Party of Interest.
Case 7-CA-37273

June 30, 1998

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS LIEBMAN, HURTGEN, AND BRAME

On October 15, 1996, the National Labor Relations Board issued a Decision and Order,¹ inter alia, ordering Osborn Electric, Inc., to make whole certain of its employees for loss of earnings and other benefits resulting from the Respondent's unfair labor practices in violation of the National Labor Relations Act.

A controversy having arisen over the amount of backpay due, on April 14, 1998, the Regional Director for Region 7 issued a compliance specification and notice of hearing alleging the amount due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent failed to file an answer.

On May 18, 1998, the Regional Office received a letter from the Respondent asserting that it would not file an answer to the compliance specification inasmuch as the Respondent is currently in bankruptcy proceedings.

On June 1, 1998, the Acting General Counsel filed with the Board a Motion to Transfer Case to the Board and for Summary Judgment, with exhibits attached. On June 2, 1998, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent 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.

¹ On December 17, 1997, the United States Court of Appeals for the Sixth Circuit issued its Decision and Order in Case 97-6341 enforcing the Board's Order.

Ruling on the Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any 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.

Although the Respondent is in bankruptcy, it is well established that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. *Phoenix Co.*, 274 NLRB 995 (1985). Board proceedings fall within the exception to the automatic stay provisions for proceedings by a governmental unit to enforce its police or regulatory powers. See *id.*, and cases cited therein.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the net amounts due the employees and the Charging Party Union's fringe benefit funds is as stated in the compliance specification, and we will order payment by the Respondent of those amounts, plus interest accrued on those amounts to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondent, Osborn Electric, Inc., Portage, Michigan, its officers, agents, successors, and assigns, shall make whole the individuals and entities named below, by paying them the amounts following their names, plus interest on the backpay due the employees² and any additional amounts due the funds,³ and minus tax with-

² See *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

³ See *Merryweather Optical Co.*, 240 NLRB 1213 (1979).

holdings on the backpay due the employees required
by Federal and state laws:

Baker, Pat	\$71.76
Campbell, Andy	1,331.80
Casanto, Todd	127.29
Clark, Roger	1,942.66
Koutny, Ken	3,361.42
Oberthaler, Kevin	3,087.82
Spreitzer, Joe	129.68
Timmerman, Steve	2,339.01

Total Backpay Due Employees \$12,391.44

Health Plan ⁴	\$67,530.54
Local Pension ⁵	30,071.63
NEBF ⁶	12,245.36
LMCF ⁷	691.21
JATC ⁸	215.52
Total Due the Funds:	\$110,754.26⁹
Grand Total Due:	\$123,145.70

Dated, Washington, D.C. June 30, 1998

⁴Local Union No. 131, International Brotherhood of Electrical Workers, AFL-CIO Health Plan fund.

⁵Local Union No. 131, International Brotherhood of Electrical Workers, AFL-CIO Pension Plan.

⁶Local Union No. 131, International Brotherhood of Electrical Workers, AFL-CIO National Electrical Benefit Fund.

⁷Local Union No. 131, International Brotherhood of Electrical Workers, AFL-CIO Kalamazoo Labor-Management Cooperative Fund.

⁸Local Union No. 131, International Brotherhood of Electrical Workers, AFL-CIO Joint Apprenticeship and Training Trust Fund.

⁹The compliance specification erroneously stated that the sum owed the fringe benefit funds is \$110,765.26 rather than \$110,754.26.

Wilma B. Liebman, Member

Peter J. Hurtgen, Member

J. Robert Brame III, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD