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ITAL General Construction, Inc., and its alter ego LATI Development, Inc. and Bricklayers & Allied Craftsmen, Local 11, AFL-CIO. Case 3-CA-20225

June 22, 2000

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS LIEBMAN, HURTGEN, AND BRAME

On March 25, 1998, the National Labor Relations Board issued a Decision and Order,¹ inter alia, ordering the Respondents, ITAL General Construction, Inc., and its alter ego LATI Development, Inc., to apply the terms of the Non-Association Employer Agreement to the unit employees of LATI Development, Inc., and to make whole those employees for loss of earnings and other benefits resulting from the Respondents' failure to honor the Agreement, including contributions and payments the Union and the contractual trust funds would have received. On August 26, 1998, the United States Court of Appeals for the Second Circuit entered its judgment enforcing in full the provisions of the Board's Order.²

A controversy having arisen over the amount of backpay due employees and contributions and payments owed the funds, on March 22, 2000, the Regional Director for Region 3 issued a compliance specification and notice of hearing alleging the amounts due under the Board's Order, and notifying the Respondents that they should file a timely answer complying with the Board's Rules and Regulations. Although properly served with copies of the compliance specification,³ the Respondents failed to file an answer.

By letter dated April 3, 2000, the General Counsel advised the Respondents that no answer to the compliance specification had been received and that unless an appropriate answer was filed by April 21, 2000, summary judgment would be sought. The Respondents filed no answer.

On May 8, 2000, the General Counsel filed with the Board a Motion for Summary Judgment, with exhibits attached. On May 11, 2000, 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 Respondents again 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.

Ruling on the Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondents 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.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondents, despite having been advised of the filing requirements, have failed to file an answer to the compliance specification. In the absence of good cause for the Respondents' 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 amounts due the employees and the funds are as stated in the compliance specification and we will order payment by the Respondents of those amounts, plus interest accrued on the amounts to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondents, ITAL General Construction, Inc., and its alter ego LATI Development, Inc., East Rochester, New York, their officers, agents, successors, and assigns, shall make whole the individuals and funds named below, by paying them the amounts set forth below, plus interest on the backpay owed as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and any additional amounts accruing on the fund contributions as prescribed in *Merryweather Optical Co.*, 240 NLRB 1213 (1979), minus tax withholdings required by Federal and state laws:

Shaun Alianell	\$1,666.00
James Barberio	2,244.00
John Calderon Jr.,	978.00
David Cummings	781.00
Leland Davis	1,372.00
Johnathan Esparza	967.00
Luis Fernandez	4,176.00
Tim Freeman	3,316.00
Luis Gonzalez	3,574.00
Patrick Goode	63.00

¹ 325 NLRB 503.

² Case No. 98-4284.

³ Copies of the compliance specification served on the Respondents by certified and regular mail were returned to the Regional Office by the Post Office marked "refused" and "Return to sender; moved, left no address; unable to forward." The Respondents' failure or refusal to accept certified mail cannot defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986).

Carmelo Gulino	31.00	Bricklayers and Allied Craftsmen Annuity	
Giuseppe Gulino	803.00	Fund:	20,138.40
Leonardo Gulino	2,647.00	Bricklayers and Allied Craftsmen Training	
Darren Lay	6,563.00	Fund:	5,370.24
Robert Mateer	1,364.00	TOTAL BACKPAY AND CONTRIBUTIONS:	\$104,607.79
Samuel Morales	652.00	Dated, Washington, D.C. June 22, 2000	
Douglas Morey	218.00		
Francis Trippi	210.00		
Bienvenido Valdez	852.00		
Mohammed Yasin	63.00		
Richard Zimmer	1,429.00		
Bricklayers and Allied Craftsmen Health-Welfare			
Fund:	\$26,179.92		
Bricklayers and Allied Craftsmen Local Pension			
Fund:	15,439.44		
Bricklayers and Allied Craftsmen International Pen-			
sion Fund:	1,678.20		
Bricklayers and Allied Craftsmen Administration &			
Safety Fund:	1,832.59	(SEAL)	NATIONAL LABOR RELATIONS BOARD

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J. Robert Brame III, Member