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Proper Steel Erectors, Inc. and its alter ego B & M Steel Erectors, Inc. and Iron Workers Upstate Locals of New York and Vicinity, Consisting of International Association of Bridge, Structural, Ornamental, and Reinforcing Iron Workers, Local Union Nos. 60, 33, 9, 440, 6 and 12. Case 3–CA–24700

July 25, 2008

ORDER GRANTING MOTION FOR
RECONSIDERATION

BY CHAIRMAN SCHAMBER AND MEMBER LIEBMAN

On February 8, 2008, the National Labor Relations Board¹ issued a Supplemental Decision and Order² granting in part and denying in part the General Counsel's motion seeking default judgment on allegations regarding the Respondent's backpay obligations and contributions owed to union benefit funds set forth in the March 26, 2007 amended compliance specification. The Board granted default judgment with regard to the backpay allegations and certain of the benefit funds allegations. However, it remanded to Region 3 for a hearing the remaining benefit funds allegations, which the Respondent had denied in its answer to the original specification,

On March 7, 2008, the General Counsel filed a Motion for Reconsideration requesting that the Board reconsider its refusal to grant default judgment on all of the benefit funds allegations. The General Counsel contends that (1) the Respondent does not deny the allegations that were remanded for a hearing; (2) "upon information and belief" the Respondent is not a solvent entity, and did not file an answer to the amended compliance specification because it is without financial resources to participate in a hearing; and (3) a hearing would be a waste of the Board's resources, as it is unlikely that the Respondent will appear.

In support of the motion, the General Counsel submitted a letter from the Respondent's counsel dated March 21, 2007, stating that the Respondent did not contest the

¹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice cases and representation cases. See Sec. 3(b) of the Act.

² 352 NLRB No. 11.

backpay figures or unpaid benefit funds as alleged in the March 2, 2007 amendment to the compliance specification. The General Counsel also submitted an e-mail from the Respondent's counsel, dated the same day as the letter, stating that the Respondent would file an answer admitting the allegations when it was served with the amended compliance specification. However, when the amended specification issued on March 26, 2007, the Respondent filed no answer.

The Respondent did not oppose the General Counsel's motion.

Section 102.48(d)(1) of the Board's Rules and Regulations permits a party in "extraordinary circumstances" to move for reconsideration of a Board decision. Having duly considered the Motion for Reconsideration, the Board, on May 20, 2008, issued a Notice to Show Cause why the motion should not be granted. The Respondent failed to file a timely response to the Notice to Show Cause. Accordingly, the allegations in the motion are uncontested.³

Based on the evidence presented by the General Counsel, we find that the Respondent does not contest any of the allegations set forth in the March 26 amended compliance specification. We therefore deem those allegations to be admitted, and we grant the General Counsel's motion for default judgment in its entirety.

ORDER

The General Counsel's Motion for Reconsideration is granted. Accordingly, the Board's Supplemental Decision and Order is modified, and default judgment is granted with respect to all allegations in the March 26, 2007 amended compliance specification.

It is ordered that the Respondent, Proper Steel Erectors, Inc., and its alter ego B & M Steel Erectors, Inc., Pompey and Central Square, New York, its officers,

³ The General Counsel has not explained why the March 21, 2007 letter and e-mail from the Respondent's counsel were not submitted in support of the motion for default judgment. Typically, the Board refuses to find extraordinary circumstances where a party submits evidence that is not newly discovered or previously unavailable in support of a motion for reconsideration. See, e.g., *Superior Protections Inc.*, 341 NLRB 614 (2004), *enfd.* 401 F.3d 282 (5th Cir. 2005). Here, however, a refusal to consider that evidence could result in unnecessary expenditures of the Board's resources. Given these unusual circumstances, and the Respondent's failure to respond to the Notice to Show Cause, we have decided to reopen the record and accept the March 21 letter and e-mail in support of the General Counsel's motion. In doing so, we find that the General Counsel has established that the proffered evidence requires a different result from that reached in the Supplemental Decision and Order. See Sec. 102.48(d)(1) of the Board's Rules and Regulations.

DECISIONS OF THE NATIONAL LABOR RELATIONS BOARD

agents, successors, and assigns, shall make whole the individuals listed in attachment 1, by paying them a total amount of \$16,505.15, as set forth in attachment 1, plus interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and State laws. The Respondent shall also make whole the benefit funds by paying them a total

amount of \$24,317.65, as set forth in attachment 2, in the manner specified in the Board's underlying Decision and Order.

Dated, Washington, D.C. July 25, 2008

Peter C. Schaumber, Chairman

Wilma B. Liebman, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

ATTACHMENT 1

Proper Steel Erectors, Inc.
and B & M Steel Erectors, Inc.
Case 3-CA-24700

Backpay

| | Local 12 | Local 33 | Local 60 | Local 440 | Backpay Total |
|------------------------|--------------------|-----------------|-------------------|-------------------|--------------------------|
| 1. Beckman, Duane | \$ 1,064.50 | \$0.00 | \$ 302.50 | | \$ 1,367.00 |
| 2. Beyea, Ray | | | 0.00 | | - |
| 3. Commer, Jacques | 579.50 | | 819.88 | | 1,399.38 |
| 4. Dieffenbach, Trevor | 2,136.50 | | 677.00 | | 2,813.50 |
| 5. Drury, Bruce | | 0.00 | | | - |
| 6. Dupree, Christopher | 328.00 | | | | 328.00 |
| 7. Gabriel, Raun | 919.13 | | 0.00 | | 919.13 |
| 8. Jaconski, Vincent | 891.50 | | 691.88 | | 1,583.38 |
| 9. Lazore, John | 0.00 | | 0.00 | | - |
| 10. Lazore, Shawn | 1,087.50 | 0.00 | 60.00 | | 1,147.50 |
| 11. Lorete, Kevin | | 0.00 | | | - |
| 12. Lute, Russell | 66.00 | | 143.00 | | 209.00 |
| 13. Moon, Ricky | 58.00 | | 44.00 | | 102.00 |
| 14. O'Connor, John | 801.00 | | 28.00 | | 829.00 |
| 15. Papineau, Kent | | | 0.00 | | - |
| 16. Scudo, Sean | 598.75 | 0.00 | | | 598.75 |
| 17. Sendel, Frederick | 508.00 | | 751.63 | | 1,259.63 |
| 18. Spencer, Ray | | | | \$1,068.00 | 1,068.00 |
| 19. Spencer, Roger | 84.00 | | 52.00 | | 136.00 |
| 20. Stone, Guy | | | 0.00 | | - |
| 21. Urbaniak, Shawn | 836.63 | | 0.00 | | 836.63 |
| 22. Williams, Jason | 148.00 | | | | 148.00 |
| 23. Woodworth, Colin | <u>1,110.25</u> | <u>0.00</u> | <u>650.00</u> | <u> </u> | <u>1,750.25</u> |
| TOTALS | \$11,217.26 | \$0.00 | \$4,219.89 | \$1,068.00 | \$16,505.15 |

Proper Steel Erectors, Inc.
and B & M Steel Erectors, Inc.
Case 3–CA–24700

ATTACHMENT 2

| Local 12 | Welfare | WNY Pension | Supp Pension | Annuity | Train/Ed | Total | | |
|--------------------|-------------------|--------------------|---------------------|-------------------|--------------------|---------------------------|-------------------|-----------|
| Quarter 05-1 | \$85.05 | \$69.30 | \$480.69 | \$213.30 | \$ - | \$848.34 | Windham | |
| Quarter 05-2 | 218.40 | 194.40 | 1,134.72 | 469.50 | | 2,017.02 | Windham | |
| | 209.30 | 105.30 | 614.64 | 208.50 | | 1,137.74 | Jiminy | |
| | 832.65 | 247.05 | 1,442.04 | 443.25 | | 2,964.99 | 22 Century | |
| Quarter 05-3 | 86.45 | 74.25 | 433.40 | 124.50 | | 718.60 | Windham | |
| | 591.50 | 271.35 | 1,583.88 | 528.00 | | 2,974.73 | Jiminy | |
| | 671.13 | 199.13 | 1,162.30 | 261.00 | | 2,293.55 | 22 Century | |
| Quarter 06-1 | 254.80 | 75.60 | 441.28 | 169.50 | | 941.18 | 20 Century | |
| Quarter 06-2 | 546.00 | 162.00 | 945.60 | 358.50 | | 2,012.10 | 20 Century | |
| Totals | \$3,495.28 | \$1,398.38 | \$8,238.55 | \$2,776.05 | \$ - | \$15,908.25 | | |
| Local 33 | Welfare | Pension | Annuity | Training | Total | Offset | Net Total | |
| Quarter 05-3 | \$220.00 | \$262.50 | \$1,700.50 | \$ - | \$2,183.00 | \$898.70 | \$1,284.30 | Riverside |
| Quarter 05-4 | | | 334.40 | | 334.40 | benefits paid in check | | Riverside |
| Totals | \$220.00 | \$262.50 | \$2,034.90 | \$ - | \$2,517.40 | \$898.70 | \$1,284.30 | |
| Local 60 | Welfare | Pension | Annuity | Education | Total | Offset | Net Total | |
| Quarter 05-3 | \$105.60 | \$3,682.80 | \$6,690.00 | \$148.00 | \$10,626.40 | benefits paid in check | | Seneca |
| Quarter 05-4 | 369.60 | 3,205.40 | 7,187.50 | 16.00 | 10,778.50 | benefits paid in check | | Seneca |
| | 46.20 | 279.00 | 505.00 | - | 830.20 | \$ - | \$830.20 | Cayuga |
| Quarter 06-1 | 363.00 | 1,664.70 | 1,342.50 | 59.25 | 3,429.45 | benefits paid in check | | Seneca |
| | 518.10 | 1,562.40 | 2,772.50 | 53.50 | 4,906.50 | | 4,906.50 | Cayuga |
| Totals | \$1,402.50 | \$10,394.30 | \$18,497.50 | \$276.75 | \$30,571.05 | \$ - | \$5,736.70 | |
| Local 440 | Welfare | Pension | Medical | Annuity | App/Train | Total | | |
| Quarter 04-1 | \$444.00 | \$565.20 | \$61.20 | \$318.00 | \$ - | \$1,388.40 | | |
| Totals | \$444.00 | \$565.20 | \$61.20 | \$318.00 | \$ - | \$1,388.40 | | |
| Local 12 | | \$15,908.25 | | | | | | |
| Local 33 | | 1,284.30 | | | | | | |
| Local 60 | | 5,736.70 | | | | | | |
| Local 440 | | 1,388.40 | | | | | | |
| Grand Total | | \$24,317.65 | | | | | | |

