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Gloria J. Verno d/b/a Joe's Painting and its alter ego Joe's Painting, Inc.; T&M Painting, Inc., a corporation charged with derivative liability; Joseph P. Verno, an individual charged with personal liability and International Union of Painters and Allied Trades, District Council 57 of Western Pennsylvania, AFL-CIO, CLC. Case 06-CA-036647

June 26, 2012

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS HAYES, GRIFFIN, AND BLOCK

On September 30, 2010, the National Labor Relations Board issued a Decision and Order¹ in this proceeding that, among other things, ordered Respondent Gloria J. Verno d/b/a Joe's Painting and its alter ego Joe's Painting, Inc. to make whole bargaining unit employees for any loss of earnings or other benefits caused by the unlawful failure to adhere to the terms of a collective-bargaining agreement between the parties. On December 13, 2010, the United States Court of Appeals for the Third Circuit entered its judgment enforcing the Board's Order.²

Based on noncompliance with the Board's Order as enforced, on February 15, 2012, the Regional Director for Region 6 issued a compliance specification and notice of hearing, alleging the amounts due and notifying the Respondents³ that they should file an answer complying with the Board's Rules and Regulations. On March 5, 2012, the Respondents filed an answer to the specification.⁴

By letter dated April 6, 2012, counsel for the Acting General Counsel notified the Respondents that their answer did not satisfy the standards set forth in Section 102.56(b) of the Board's Rules and Regulations, and stated that, if the Respondents failed to file an amended answer by the third business day following receipt of the letter, a Motion for Default Judgment would be filed with the Board. The Respondents did not file an amended answer.

¹ 355 NLRB No. 214 (not reported in Board volumes).

² 10-4324.

³ "The Respondents" refers collectively to Gloria J. Verno d/b/a Joe's Painting, Joe's Painting, Inc., T&M Painting, Inc., and Joseph P. Verno.

⁴ On February 23, 2012, the Regional Director issued an amendment to the specification only to correct an inadvertent error by substituting an appendix and to specify the time of the hearing. We attach no significance to the Respondents' neglecting to indicate that they were also answering the amendment.

On May 8, 2012, the Acting General Counsel moved for partial summary judgment as to particular paragraphs of the specification to which the Respondents' answer either attempted to raise matters that had been decided in the underlying unfair labor practice proceeding or failed to meet the specificity requirements of Section 102.56(b). On May 9, 2012, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the Acting General Counsel's motion should not be granted. The Respondents filed no response to the Notice to Show Cause.

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

On the entire record, the Board makes the following

Ruling on Motion for Partial Summary Judgment

Section 102.56(b) and (c) of the Board's Rules and Regulations provides that:

(b) *Contents of answer to specification.* The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(c) *Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification.* 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. If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may

be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

Paragraph 3 of the specification alleges that Gloria J. Verno is personally liable for the amount owed because she is the sole proprietor of Gloria J. Verno d/b/a Joe's Painting. The Respondents deny this allegation, contending that Verno is not personally liable or, in any event, is not personally liable as president of Joe's Painting, Inc. The Acting General Counsel argues that Verno's personal liability has already been decided in the underlying proceeding. We agree with the Acting General Counsel.

In the underlying proceeding, the Board found that Verno was the sole proprietor of Gloria J. Verno d/b/a Joe's Painting and that Joe's Painting, Inc. was the alter ego of the sole proprietorship. The Board ordered "Gloria J. Verno d/b/a Joe's Painting and its alter ego Joe's Painting, Inc." to take the remedial action. Those findings and that Order establish that Verno is personally liable for the entire remedy. See *Las Villas Produce, Inc.*, 279 NLRB 883, 883 (1986) (alter egos are jointly and severally liable); *Wayne Electric, Inc.*, 241 NLRB 1056, 1057-1058 (1979) (sole proprietors are personally liable), enfd. mem. 636 F.2d 1227 (9th Cir. 1980). And it is well settled that a respondent may not relitigate matters in the compliance stage that were decided in the underlying unfair labor practice proceeding. See *Willis Roof Consulting*, 355 NLRB 280, 280 fn. 1 (2010); *Paolicelli*, 335 NLRB 881, 883 (2001). In addition, we have no jurisdiction to modify the Order enforced by the Third Circuit. See *Willis Roof Consulting*, supra, 355 NLRB at 280 fn. 1.

Paragraph 15 of the specification alleges that an appendix lists all "individual discriminatees" who performed bargaining unit work during the remedial period. Although admitting that the appendix contains a list of former employees, the Respondents deny the allegation on the ground that they did not discriminate against anyone. We find no merit in this contention. The term "discriminatee" is inapposite here, but it is abundantly clear from the context that it refers to bargaining unit employees who were affected by the unlawful conduct decided in the underlying proceeding. The Respondents do not raise any issue of fact by denying this paragraph.

Paragraphs 17-23 and 28-31 of the specification allege the amounts of backpay and benefit contributions due. The Respondents do not dispute the accuracy of the calculations. Instead, the Respondents assert, as an affirmative defense to each paragraph, that the Union fraudulently induced the Respondents to enter into the collective-bargaining agreement, and therefore that the Respondents were not bound to pay bargaining unit employees under its terms. The Acting General Counsel argues that the Respondents are attempting to dispute the Board's findings in the underlying proceeding that the Respondents were a party to the agreement and failed to comply with its terms.

Again, we agree with the Acting General Counsel. The Board found that Respondent Gloria J. Verno d/b/a Joe's Painting entered into a collective-bargaining agreement with the Union and that Respondents Gloria J. Verno d/b/a Joe's Painting and Joe's Painting, Inc., as alter egos, violated Section 8(a)(5) and (1) of the Act by failing to adhere to its terms. As discussed above, the Respondents may not raise matters decided in the underlying proceeding, and we cannot modify the court-enforced Order.⁵

Because the Respondents only raise matters decided in the underlying proceeding and do not dispute the accuracy of the calculations, we grant the Acting General Counsel's motion, deem the allegations in paragraphs 3, 15, 17-23, and 28-31 of the specification to be true, and preclude the Respondents from introducing evidence challenging them.⁶

ORDER

IT IS ORDERED that the Acting General Counsel's Motion for Partial Summary Judgment is granted as to paragraphs 3, 15, 17-23 and 28-31 of the compliance specification, and that those allegations are deemed to be true.

⁵ The Acting General Counsel seeks to hold Respondents T&M Painting, Inc., and Joseph P. Verno derivatively liable, not liable as parties to the agreement. As the Acting General Counsel acknowledges, the liability, if any, of those Respondents must be determined at the hearing.

⁶ As noted above, an administrative law judge will need to make findings as to the derivative liability of T&M Painting, Inc., the personal liability of Joseph P. Verno, and also whether the collective-bargaining agreement ceased being effective on May 31, 2011. Because there are still issues to be resolved at a hearing, we decline the Acting General Counsel's request to order the entities found liable at the hearing to pay the amounts in the specification.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 6 for the purpose of arranging a hearing before an administrative law judge limited to taking evidence concerning the paragraphs of the compliance specification as to which summary judgment is not granted.

Dated, Washington, D.C. June 26, 2012

Brian E. Hayes, Member

Richard F. Griffin, Jr., Member

Sharon Block, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD