

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

In the Matter of

DIVERSIFIED ENTERPRISES, INC.

Case 9-CA-43110

and

MID-ATLANTIC REGIONAL COUNCIL OF
CARPENTERS WEST VIRGINIA DISTRICT,
UNITED BROTHERHOOD OF CARPENTERS
AND JOINERS OF AMERICA

MOTION FOR SUMMARY JUDGMENT

COMES NOW THE ACTING GENERAL COUNSEL, by the undersigned Counsel for the Acting General Counsel, and moves that:

1. Pursuant to Section 102.56 of the Board's Rules and Regulations, Series 8, as amended, all allegations of the compliance specification in this matter be deemed as admitted to be true and be so found by the Board for the failure of Respondent, Diversified Enterprises, Inc., to file an adequate answer to the compliance specification. (A true copy of the Compliance Specification and Notice of Hearing with affidavit of service is attached hereto as Exhibit A).
2. A decision issue, including findings of fact and conclusions of law in accordance with paragraph 1 above, and a remedial order issue for the reasons set forth in the supporting memorandum filed herewith.

Dated at Cincinnati, Ohio this 2nd day of 2012.

Respectfully submitted,



Zuzana Murarova
Counsel for the Acting General Counsel
Region 9, National Labor Relations Board
3003 John Weld Peck Federal Building
550 Main Street
Cincinnati, Ohio 45202-3271

Attachment: Exhibit A

12/20/11

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

In the Matter of

DIVERSIFIED ENTERPRISES, INC.

and

Cases 9-CA-43110

MID-ATLANTIC REGIONAL COUNCIL OF
CARPENTERS WEST VIRGINIA DISTRICT,
UNITED BROTHERHOOD OF CARPENTERS
AND JOINERS OF AMERICA

COMPLIANCE SPECIFICATION
AND
NOTICE OF HEARING

On August 13, 2010, the National Labor Relations Board, herein called the Board, issued its Decision and Order (355 NLRB No. 88), herein called the Order, in the above-styled case adopting the Decision of Administrative Law Judge Eric M. Fine, which, among other things, requires that Diversified Enterprises, Inc, herein called Respondent, make whole employee Robert Hornsby, herein called Hornsby, for the elimination of certain privileges, including the use of a company truck and gas charge cards, in violation of Section 8(a)(1) and (3) of the National Labor Relations Act, herein called the Act. On July 13, 2011, the United States Court of Appeals for the Fourth Circuit issued its Judgment (Case No. 10-1950) enforcing the Board's Order as described herein. On September 6, 2011, the Court issued its Mandate in the case.

Controversy having arisen over the amounts due to Hornsby under the Board's Order, as described above herein, the undersigned pursuant to Section 102.54 of the Rules and Regulations of the Board, hereby issues this Compliance Specification and Notice of Hearing and alleges as follows:

EXHIBIT A

1. The backpay owed to Hornsby is for reimbursement for the loss of the use of a gas credit card and a company-provided vehicle for the period October 23, 2006, when Hornsby returned from medical leave, to December 14, 2006, when Hornsby voluntarily quit his employment. Reimbursement is calculated by multiplying the number of miles Hornsby drove round trip each day from his home to his place of employment (34 miles) by 44.5 cents per mile, the mileage rate in effect during the applicable period to compensate Federal employees for use of their personal vehicle, by the number of work days in the reimbursement period (34) for a total of \$514.42.

2. Summarizing the facts and calculations specified above, the obligation of Respondent under the terms of the Board's Order, as described above herein, to make Hornsby whole for losses suffered as a result of Respondent's unlawful conduct will be discharged by payment to Hornsby of \$514.42, with interest accruing on the entire backpay amount to the date of payment.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Section 102.56 of the Board's Rules and Regulations, it must file an answer to the compliance specification. The answer must be received by this office on or before **January 3, 2012**, or postmarked on or before set forth **January 2, 2012**. Unless filed electronically in a pdf format, Respondent should file an original and four copies of the answer with this office.

An answer may also be filed electronically through the Agency's website. *To file electronically, go to www.nlr.gov, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.* The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after

12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

Service of the answer on each of the other parties must be accomplished in conformance with the requirements of Section 102.114 of the Board's Rules and Regulations. The answer may not be filed by facsimile transmission.

As to all matters set forth in the compliance specification that are within the knowledge of Respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial is not sufficient. See Section 102.56(b) of the Board's Rules and Regulations, a copy of which is attached. Rather, the answer must state the basis for any disagreement with any allegations that are within the Respondent's knowledge, and set forth in

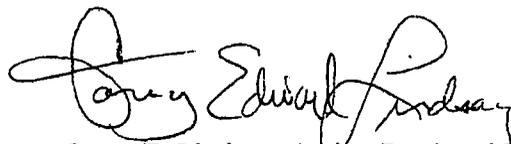
detail Respondent's position as to the applicable premises and furnish the appropriate supporting figures.

If no answer is filed or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the compliance specification are true. If the answer fails to deny allegations of the compliance specification in the manner required under Section 102.56(b) of the Board's Rules and Regulations, and the failure to do so is not adequately explained, the Board may find those allegations in the compliance specification are true and preclude Respondent from introducing any evidence controverting those allegations.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on **February 21, 2012, 1 p.m., at a place to be hereinafter scheduled in Charleston, West Virginia,** and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this compliance specification. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Cincinnati, Ohio this 20th day of December 2011.



Garey E. Lindsay, Acting Regional Director
Region 9, National Labor Relations Board
3003 John Weld Peck Federal Building
550 Main Street
Cincinnati, Ohio 45202-3271

Attachments