

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8**

BEBLEY ENTERPRISES, INC.

and

Case 08-CA-038181

**INTERNATIONAL UNION OF PAINTERS
AND ALLIED TRADES, AFL-CIO, LOCAL
UNION NO. 7 A/W INTERNATIONAL UNION
OF PAINTERS AND ALLIED TRADES**

**MOTION TO THE NATIONAL LABOR
RELATIONS BOARD FOR DEFAULT JUDGMENT**

Counsel for the Acting General Counsel respectfully moves the National Labor Relations Board (Board) for default judgment in this case, requesting that the allegations in the Amended Compliance Specification issued in this matter be found to be true, that the Board make findings of fact and conclusions of law based upon these allegations and that the Board issue an appropriate Supplemental Decision and Order.¹

MEMORANDUM IN SUPPORT

I. FACTS

An Amended Compliance Specification and Notice of Hearing (Amended Compliance Specification) issued in this case on January 26, 2012. (Exhibit A) It was served on Bebley Enterprises, Inc. (Respondent) by certified mail on the same date. (Exhibits B and C)

¹ This Motion was initially prepared and served on the parties on February 21, 2012. Due to inadvertence, the Motion was mailed to the Division of Judges rather than to the Board. This oversight was only recently discovered. Accordingly, the Motion is now being re-filed in the appropriate manner.

The Amended Compliance Specification provides notice to the Respondent that it must file an answer by February 16, 2012. It further advises the Respondent that, "If no answer is filed, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true." (Exhibit A) The Respondent failed to file an answer by the date provided by the Board's Rules and Regulations.

Rather than file an answer, on January 31, 2012, the Respondent faxed and the Regional Office received, a waiver of the Respondent's right to file an answer. In its communication to the Region (Exhibit D), the Respondent stated that it did not intend to file an answer and that it was withdrawing any answer it had previously filed in response to the original Compliance Specification. In addition, the correspondence from the Respondent, signed by its President Thomas Bebley, expressed the Respondent's agreement with the allegations, including the total backpay liability, set forth in the Amended Compliance Specification.

The undersigned Counsel for the Acting General Counsel represents that the Respondent's President was informed throughout the compliance stage of this proceeding of his right to have an attorney represent him in this matter. At all times, Mr. Bebley elected to proceed without an attorney and affirmatively waived the right to such legal representation. His most recent acknowledgement of this waiver is included in Exhibit D.

After issuance of the original Compliance Specification, Mr. Bebley met with the Region to discuss settlement as well as certain objections he had to the Specification primarily concerning the dates of the alleged backpay period. In response to Mr. Bebley's concerns, the Region issued the Amended Compliance Specification in which it

significantly addressed those concerns by changing the dates of the alleged backpay period. Based upon the amendments to the Specification, Bebley expressed his agreement with the backpay calculation and provided the Region with the statement included in Exhibit D in which he waived the right to counsel and accepted the allegations in the Amended Backpay Specification as being true and correct. He further stated that he would not be filing an answer and was withdrawing any previously filed answer.

II. LEGAL ANALYSIS

Section 102.56 of the Board's Rules and Regulations provides that the allegations in the Amended Compliance Specification shall be deemed admitted to be true if an answer is not filed within 21 days from service of the compliance specification, unless good cause is shown. The instant Amended Compliance Specification stated that an answer must be received by the Regional Office on or before February 16, 2012 or be postmarked on or before February 15, 2012. As noted above, the Amended Compliance Specification stated that if no answer is filed, "the Board may find, pursuant to a Motion for Default Judgment that the allegations in the Amended Compliance Specification are true."

The Board has consistently granted motions for default judgment where there is an absence of good cause shown by a respondent for its failure to file a timely answer. *See, e.g., Apollo Detective Inc., 358 NLRB No. 1 (January 31, 2012); Rosedale Fabricators, LLC, 340 NLRB 508 (2003); Malik Roofing Corp., 338 NLRB 930 (2003).*

Counsel for the Acting General Counsel notes that the Respondent has, to date, proceeded without legal representation in this case. In assessing summary judgment

motions, the Board has given some leniency towards respondents who proceed without the benefit of counsel. **Kenco Electric & Signs, 325 NLRB 1118 (1998)**. Board law, however, recognizes that merely being unrepresented by counsel does not establish a good cause explanation for failing to file a timely answer. ***Id.*** In the instant case, the Respondent has expressly waived its right to counsel as well as its right to file an answer.

Accordingly, as Respondent has indicated that it declines to file an answer to the Amended Compliance Specification despite being given written notice, the Board should grant this Motion for Default Judgment, find that the allegations in the Amended Compliance Specification are true and issue an appropriate Supplemental Decision and Order.

Dated at Cleveland, Ohio this 1st day of October 2012.

Respectfully submitted,

/s/ Catherine A. Modic

Catherine A. Modic
Counsel for the Acting General Counsel
National Labor Relations Board
Region 8

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed electronically and served electronically on October 1, 2012 to the following:

LESTER A. HELTZER
EXECUTIVE SECRETARY
NATIONAL LABOR RELATIONS BOARD
1099 14th ST., N.W.
WASHINGTON, D.C. 20570-0001

I further certify that copies of the foregoing were served by electronic mail on October 1, 2012 on the following:

THOMAS BEBLEY
BEBLEY ENTERPRISES, INC.
P. O. BOX 2847
TOLEDO, OH 43606
tbebley@bebleyenterprises.com

MARILYN L. WIDMAN, Esq.
ALLOTTA AND FARLEY CO., L.P.A.
2222 CENTENNIAL RD
TOLEDO, OH 43617-1870
mwidman@aflaw.com

INTERNATIONAL UNION
OF PAINTERS AND ALLIED
TRADES, LOCAL UNION NO. 7
1308 W. SYLVANIA AVE.
TOLEDO, OH 43612
jamiiep@iupat-dc6.org

/s/ Catherine A. Modic

Catherine A. Modic
Counsel for the Acting General Counsel
National Labor Relations Board
Region 8

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8**

BEBLEY ENTERPRISES, INC.

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Case No. 8-CA-38181

**INTERNATIONAL UNION OF PAINTERS
AND ALLIED TRADES, AFL-CIO, LOCAL
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OF PAINTERS AND ALLIED TRADES**

AMENDED COMPLIANCE SPECIFICATION AND NOTICE OF HEARING

The National Labor Relations Board, herein referred to as the Board, having on December 29, 2010, issued its Decision and Order¹ directing Bebley Enterprises, Inc., its officers, agents, successors, and assigns, herein referred to as the Respondent, to take certain affirmative actions as a result of Respondent's violation of Section 8(a)(1), (3) and (5) of the National Labor Relations Act, herein the Act, including:

A. making Bobby Hill whole for any loss of earnings and other benefits suffered, with interest; and,

B. making contractually-required contributions to fringe benefit funds and deducting dues pursuant to valid checkoff authorizations.

On July 12, 2011, the United States Court of Appeals for the Sixth Circuit entered its judgment enforcing in full the provisions of the Board's Order.

¹Bebley Enterprises, Inc., 356 NLRB No. 64 (2010).

A controversy has arisen over the amount of backpay owed to Bobby Hill and the amounts owed for union dues and to the health fund under the terms of the enforced Board's Order.

The Regional Director of the Board for Region 8, hereby issues this Amended Compliance Specification and Notice of Hearing and alleges as follows:

1. The backpay period for Hill commences on December 15, 2008 when Hill's hours of work were discriminatorily reduced through January 19, 2009² and continues when he was discriminatorily discharged on February 2, 2009. Hill's backpay period ends on November 27, 2010.

2. An appropriate measure of gross backpay Hill would have earned during his backpay period is the sum of his straight time hours and overtime pay at time and a half had he been continually employed in his former position.

3. An appropriate measure of the weekly straight time and overtime hours Hill would have worked during the backpay period when his hours were discriminatorily reduced is the difference between the actual hours Hill worked and the actual hours of Lamar Hogue who was hired by the Respondent in December 2008. See Appendix A.

4. An appropriate measure of the weekly straight time and overtime hours Hill would have worked during the backpay period when he was discriminatorily discharged is the hours worked by Hogue from February 2009 through June 2009 and the hours of comparable employees including Hogue during the remaining backpay period.³

5. Hill's regular rate of pay immediately prior to the unfair labor practices of the Respondent was \$11.00 an hour. His overtime rate at time and a half was \$16.50. These

² Hill was placed on restricted duty from January 21, 2009 through January 29, 2009 due to an injury and thus accrued no backpay during that period.

³ The actual hours worked by Mark Bell, Colen Williams, Taylor Winfrey, Hogue, and Gordon Scott were utilized during the backpay period. During this time period, the hours of these employees were reduced and there were periods when there were no hours available.

rates of pay were utilized throughout the backpay period except for periods when comparable employees were assigned work paying higher rates of pay. See Appendix A.

6. Hill's gross backpay is summarized in Appendix B.

7. The backpay period for the contractually required health fund contributions and Union dues began February 2009 and ended June 2009 when the Respondent's industrial cleaning work ceased.

8. Health Fund and Liquidated Damages: contribution amounts owed were calculated based on the hours worked by the employees at the health insurance rate per hour as set forth in Appendices C and D. Pursuant to the collective bargaining agreement, the Respondent is obligated to pay liquidated damages.

9. Union Dues: pursuant to the contract, the Respondent was obligated to deduct union dues in the amount of \$0.20 per hour and remit the deductions to the Union by the 15th of each month.

10. Summarizing the facts and calculations specified in Paragraphs 1 through 9, the Respondent's obligation under the Board's Order as enforced by the Sixth Circuit Court, to pay backpay to Bobby Hill and health fund contributions, dues, and liquidated damages to the Union will be discharged by payment of the amounts summarized below.

		Interest⁴	Liquidated Damages	Total
Backpay Owed to Hill	\$ 8,461.00	\$801.00	-----	\$ 9,262.00
Union Health Fund	\$21,000.43	-----	\$4,200.10	\$25,200.53
Union Dues	\$ 831.70	\$ 83.03	-----	\$ 914.73

ANSWER REQUIREMENT

⁴ Interest has been estimated through November 30, 2011.

Respondent is notified that, pursuant to Section 102.56 of the Board's Rules and Regulations, it must file an answer to the amended compliance specification. The answer must be **received by this office on or before February 16, 2012, or postmarked on or before February 15, 2012.** Unless filed electronically in a pdf format, Respondent should file an original and two copies of the answer with this office.

An answer may be filed electronically by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at <http://www.nlr.gov>, click on **E-Gov**, then click on the **E-Filing** link on the pull-down menu. Click on the "File Documents" button under "Regional, Subregional and Resident Offices" and then follow the directions. 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 such answer be signed and sworn to by the respondent or by a duly authorized agent with appropriate power of attorney affixed. See Section 102.56(a). If the answer is 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 compliance specification is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature 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 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 amended 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.

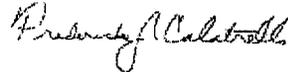
If no answer is filed or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the amended compliance specification are true. If the answer fails to deny allegations of the amended compliance specification in the manner required under Section 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 amended compliance specification are true and preclude Respondent from introducing any evidence controverting those allegations.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on a date, time and place to be designated later, if necessary, 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 amended 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 Cleveland, Ohio this 26th day of January 2012.



Frederick J. Calatrello
Regional Director
National Labor Relations Board
Region 8

Attachments

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE REGARDING ULP CASE HEARINGS

Case 08-CA-038181

Hearing Cancellation Based on Agreement of Parties: The issuance of the Notice of Hearing in this case does not mean that the matter cannot be resolved by agreement of the parties. On the contrary, the NLRB encourages prompt voluntary adjustments. The Board agent assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end. An agreement between the parties, approved by me, will cancel the hearing.

Postponement of the Hearing: Postponement of the hearing *will not be granted* unless good and sufficient grounds are shown *and* the following requirements are met:

- (1) The request must be in writing and be filed with the Regional Director;
- (2) Copies of the request must be simultaneously served on all other parties, and that fact must be noted on the request;
- (3) Absent extraordinary circumstances, the request must be received no later than 24 hours before the hearing is scheduled to begin;
- (4) Requests for postponement of the hearing to a date more than 14 days after the petition was filed will normally not be granted absent extraordinary circumstances;
- (5) Grounds must be set forth in *detail*, e.g., the unavailability of counsel and all other counsel in the law firm due to previously scheduled federal court or other U.S. Agency hearings or trials;
- (6) Alternative dates for any rescheduled hearing must be given; and
- (7) The positions of all other parties regarding the postponement and alternative hearing dates must be ascertained in advance by the requesting party and set forth in the request.

Approval of a postponement request may be conditioned upon one or more of the following:

- (1) The agreement of all parties to participate at a conference to be held at the Regional Office at least one full day before the rescheduled hearing date;
- (2) Agreement by the requestor that extensions of time for filing of briefs will not be sought or granted; and/or
- (3) The requestor's execution of stipulations on matters not in dispute, e.g., jurisdiction, labor organization status, appropriate unit.

Consecutive Days of Hearing: Once opened, it is expected the hearing will continue on consecutive business days until concluded.

THOMAS BEBLEY
BEBLEY ENTERPRISES, INC.
P. O. BOX 2847
TOLEDO, OH 43606

MARILYN L. WIDMAN, Esq.
ALLOTTA AND FARLEY CO., L.P.A.
2222 CENTENNIAL RD
TOLEDO, OH 43617-1870

INTERNATIONAL UNION OF
PAINTERS AND ALLIED
TRADES, LOCAL UNION NO. 7
1308 W. SYLVANIA AVE.
TOLEDO, OH 43612

ADMINISTRATIVE LAW JUDGES
1099 14TH STREET, N.W.
WASHINGTON, D.C. 20570

BACKPAY HOURS AND RATES OF PAY

Year/Quarter	Regular Hours	Regular Pay Rate	Overtime Hours	Overtime Pay Rate
2008/IV ¹ (12/15/08-12/31/08)	18.0	\$11.00/hr.	7.50	\$16.50/hr.
2009/I ² (1/09)	26.25	11.00/hr.	11.50	16.50/hr.
(2/09 & 3/09)	199.0	11.00/hr.	27.75	16.50/hr.
2009/II ³	176.5	11.00/hr.	7.00	16.50/hr.
2009/III	64.0 ⁴ 72.5 ⁵	11.00/hr. 15.00/hr.	----- 5.00	----- 22.50/hr.
2009/IV ⁶	39.0 2.0	11.00/hr. 23.06/hr.	3.00 -----	16.50/hr. -----
2010/IV ⁷	48.0	11.00/hr.	-----	-----

¹ The difference between the actual hours worked by Hill and by Hogue.

² The difference between the actual hours worked by Hill and by Hogue.

³ The hours worked by Hogue.

⁴ The hours worked by Bell, Williams and by Winfrey.

⁵ The regular and overtime hours worked by Hogue and Bell.

⁶ The regular and overtime hours worked by Scott on 10/3/09 and the regular and overtime hours worked by Williams on 10/10/09.

⁷ The hours worked by Bell.

APPENDIX A

NLRB Backpay Calculation

Case Name: Bebley Enterprises, Inc.

Case Number: 8-CA-38181

Claimant: Bobby Hill

Backpay period:

12/15/08-11/27/10

Interest calculated to: 11/30/2011

Year	Qtr		Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2008	4	Total	322		322	-	-	322
2009	1	Total	3,125		3,125	-	-	3,125
2009	2	Total	2,057		2,057	-	-	2,057
2009	3	Total	1,904		1,904	-	-	1,904
2009	4	Total	525		525	-	-	525
2010	4	Total	528		528	-	-	528

Totals	8,461	-	-	8,461
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Daily Compound Interest 801

Total Backpay, Expenses and Interest 9,262

Notes

HOURS WORKED BY EMPLOYEES

Bebley
8-CA-38181

	FEB	MARCH	APRIL	MAY	JUNE
	2009	2009	2009	2009	2009
Barnett, Leon	130.50	175.75	140.50	90.50	52.75
Bell, Mark	72.50	67.75	83.50	51.75	119.00
Hill, Bobby	116.50	136.25	102.50	47.00	26.50
Pino, Simon	33.75	73.50	96.75	62.50	106.75
Scott, Gordon	79.50	42.50			
Taylor, Charlie	162.50	215.00	240.75	170.00	155.50
Williams, Colen	73.50	130.50	99.00	72.25	103.00
Winfrey, Taylor	24.25	83.25	81.00	50.25	119.00
Hogue, Sr, LaMar	120.00	143.00	121.75	59.00	26.50

HEALTH FUND CONTRIBUTIONS OWED

Bebley 8-CA-38181			
PERIOD	HOURS WORKED	RATE PER HOUR	TOTAL OWED
2/09 thru 6/09	4158.5	\$5.05 per hour	\$21,000.43
		SUBTOTAL	\$21,000.43
		20% Liquidated Damage Assessment	\$4,200.10
		Total Amount Owed to Health Fund	\$25,200.53

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

BEBLEY ENTERPRISES, INC.

and

Case No. 8-CA-38181

**INTERNATIONAL UNION OF PAINTERS
AND ALLIED TRADES, AFL-CIO, LOCAL
UNION NO. 7 A/W INTERNATIONAL UNION
OF PAINTERS AND ALLIED TRADES**

DATE OF MAILING 1/26/12

**AFFIDAVIT OF SERVICE OF AMENDED COMPLIANCE SPECIFICATION AND
NOTICE OF HEARING (w/NLRB forms and Appendices)**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by regular U.S. Mail upon the following persons, addressed to them at the following addresses:

Thomas Bebley
Bebley Enterprises, Inc.
P. O. Box 2847
Toledo, OH 43606

Marilyn L. Widman, Esq.
Allotta, Farley & Widman Co. LPA
2222 Centennial Rd
Toledo, OH 43617-1870

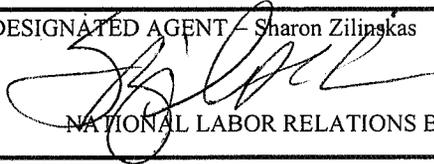
International Union of Painters and Allied
Trades, Local Union No. 7
1308 W. Sylvania Ave.
Toledo, OH 43612

Administrative Law Judges
1099 14th Street, N.W.
Washington, D.C. 20570

Subscribed and sworn to before me this 26th

day of January 2012

DESIGNATED AGENT - Sharon Zilinskas


NATIONAL LABOR RELATIONS BOARD

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

THOMAS BEBLEY
BEBLEY ENTERPRISES, INC.
P. O. BOX 2847
TOLEDO, OH 43606

08-CA-038181; AM COMP SPEC; 1/26/12; SZ

COMPLETE THIS SECTION ON DELIVERY

A. Signature X <i>Thomas Bebley</i>	<input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee
B. Received by (Printed Name) <i>Thomas Bebley</i>	C. Date of Delivery <i>1/30/12</i>
D. Is delivery address different from item 1? If YES, enter delivery address below: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

3. Service Type

- | | |
|---|---|
| <input type="checkbox"/> Certified Mail | <input type="checkbox"/> Express Mail |
| <input type="checkbox"/> Registered | <input type="checkbox"/> Return Receipt for Merchandise |
| <input type="checkbox"/> Insured Mail | <input type="checkbox"/> C.O.D. |

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number
(Transfer from service label)

7011 0470 0002 5014 4004

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

CAM

**FAX
TRANSMISSION
COVER SHEET**



DATE: 31 Jan 12

TO: Catherine A. Modic

NLRB

FAX NUMBER: 216-522-2418

FROM: BEBLEY ENTERPRISES, INC

P.O. BOX 2847

TOLEDO, OH 43606

OUR PHONE: 419-389-9424

OUR FAX: 419-389-9417

NO. OF PAGES: 2

MESSAGE:

EXHIBIT D

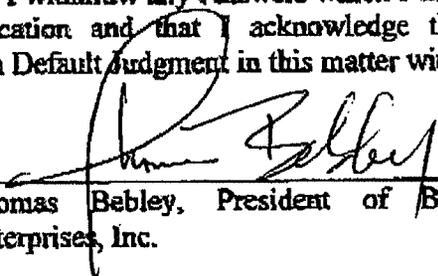
Bebley Enterprises, Inc.
Case No. 8-CA-38181

I, Thomas Bebley, President of Bebley Enterprises, Inc. have been informed of my right to have an attorney represent me during the compliance phase in this case. Knowing that I have a right to have an attorney represent me, I nevertheless elect to proceed in this matter without an attorney and waive my right to such legal representation.

I have received the Amended Compliance Specification and Notice of Hearing issued by the Regional Director in this case which alleges a revised total backpay liability of \$35,377.26. The Amended Compliance Specification corrects and resolves objections I made to the original Compliance Specification. I have no objection to the allegations in the Amended Compliance Specification.

I hereby confirm my January 25, 2012 commitment that I will not file an answer to the Amended Compliance Specification, that I withdraw any Answers which I filed in response to any earlier Compliance Specification and that I acknowledge that I understand that the NLRB may elect to pursue a Default Judgment in this matter with the Board.

By:


Thomas Bebley, President of Bebley Enterprises, Inc.

Dated: 31 Jan 12

