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Bass & Bass Security, d/b/a Bass & Bass Watchguard and Patrol and Local 819, Security Workers of America. Case 29–CA–25420

October 31, 2005

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND SCHAUMBER

The Acting General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the compliance specification.

On October 31, 2003, the Board issued a Decision and Order¹ that, among other things, ordered the Respondent to make whole unit employees for any loss of earnings and other benefits suffered as a result of its unlawful unilateral changes to wages and other benefits made since November 3, 2002; restore unit employees' health benefits and make all required benefit fund payments or contributions that have not been made since November 3, 2002; and reimburse unit employees for any expenses resulting from its unlawful termination of their health benefits. On April 28, 2004, the United States Court of Appeals for the Second Circuit entered its judgment enforcing in full the Board's Order.²

A controversy having arisen over the amount of holiday pay and medical expenses due the unit employees and the contributions due the United Health and Welfare Fund, on August 18, 2005, the Regional Director issued a compliance specification and notice of hearing alleging the amounts due under the Board's Order. The compliance specification notified the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent failed to file an answer.³

On September 15, 2005, the Acting General Counsel filed with the Board a motion for default judgment, with exhibits attached. On September 19, 2005, 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 Respondent did not file a response. The

¹ 340 NLRB 962.

² 04-0738.

³ Copies of the compliance specification were sent to the Respondent by certified mail and by regular mail. The Respondent has not claimed the copy sent by certified mail. The copy sent by regular mail has not been returned as undelivered. It is well settled that a respondent's failure or refusal to accept certified mail or to provide for appropriate service cannot serve to defeat the purposes of the Act. See, e.g., *I.C.E. Electric, Inc.*, 339 NLRB 247 fn. 2 (2003), and cases cited there. In any event, the failure of the Postal Service to return documents sent by regular mail indicates actual receipt. See, e.g., *I.C.E. Electric*, supra.

allegations in the motion and in the compliance specification are therefore undisputed.

Ruling on the Motion for Default Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that a respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) provides that if the respondent fails to file an 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 Default Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the Acting General Counsel's Motion for Default Judgment. Accordingly, we conclude that the net backpay due the unit employees and the contributions due the Fund are as stated in the compliance specification, and we will order the Respondent to pay those amounts to the employees and the Fund, plus interest accrued on the backpay amounts to the date of payment, minus tax withholdings required by Federal, State, and local laws.⁴

ORDER

The National Labor Relations Board orders that the Respondent, Bass & Bass Security, d/b/a Bass & Bass Watchguard and Patrol, St. Albans, New York, its officers, agents, successors, and assigns, shall make whole the individuals named in the attached Appendices A and B, by paying them the amounts opposite their names, plus interest as set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and minus tax withholdings required by Federal, State, and local laws. The Respondent also shall make whole those individuals for payments due the United Health and Welfare Fund by paying the Fund the amount set forth in the attached Appendix C, plus any additional amounts accruing on the fund contributions, as prescribed in *Merryweather Optical Co.*, 240 NLRB 1213, 1216 (1979).

In summary, the amounts owed by the Respondent are as follows:

⁴ The compliance specification states that the Respondent has failed to provide all its payroll records, as required by the Board's Order and the Court's Judgment, and an Order issued by the United States District Court for the Eastern District of New York requiring compliance with a subpoena duces tecum issued by the Board on November 9, 2004. The Regional Director reserved the right to amend the compliance specification to include other, unnamed unit employees, upon receipt of additional payroll records.

Holiday Pay due to unit employees: \$19,910.56
 Out-of-Pocket Medical Expenses: \$ 231.76
 Health and Welfare Fund Contributions: \$33,660.00
 TOTAL: \$53,802.32

Wilma B. Liebman, Member

Dated, Washington, D.C. October 31, 2005

Peter C. Schaumber, Member

Robert J. Battista, Chairman

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX A

Holiday Pay

LAST NAME	FIRST NAME	HOURLY WAGE RATE							HOLIDAYS					TOTAL
		4Q 2002	1Q 2003	2Q 2003	3Q 2003	4Q 2003	1Q 2004	2Q 2004	PRES 2003	MEM 2003	IND 2003	LAB 2003	PRES 2004	
Acheam-pong	Alex		-				10.10	10.10	-	-	-	-	80.80	80.80
Adesi	Eric Oduro	9.69	9.69	9.69	9.69	9.69	-	-	77.52	77.52	77.52	77.52	-	310.08
Ali	Mohammed	9.69	9.69	9.69	9.69	9.69	10.10	10.10	77.52	77.52	77.52	77.52	80.80	80.80
Asiedu	Isaac	-	-					10.10	-	-	-	-	-	-
Baidoo	Lawrence	-	-				10.10	10.10	-	-	-	-	80.80	80.80
Baxter	Noel	9.69	9.69	9.69	9.69	9.69	10.10	10.10	77.52	77.52	77.52	77.52	80.80	390.88
Boakyre	Augustina	-	-				10.10	-	-	-	-	-	80.80	80.80
Brown Sr.	Rene	11.69					-	-	-	-	-	-	-	-
Brown	Scian	9.69	9.69	9.69	9.69	9.69	12.10	12.10	77.52	77.52	77.52	77.52	96.80	406.88
Burgos	Eduardo	11.69	11.69	11.69	11.69	11.69	12.10	12.10	93.52	93.52	93.52	93.52	96.80	470.88
Chaudhry	Mohammad	9.69	9.69	9.69	9.69	9.69	10.10	10.10	77.52	77.52	77.52	77.52	80.80	390.88
Cook	James	9.69	9.69	9.69	9.69	9.69	10.10	10.10	77.52	77.52	77.52	77.52	80.80	390.88
Crawley	Gene	9.69	9.69	9.69	9.69	9.69	12.10	12.10	77.52	77.52	77.52	77.52	96.80	406.88
Delain	oDIS	-	-				10.10	10.10	-	-	-	-	80.80	80.80
Diaz	Victor	9.69	9.69	9.69	9.69	9.69	10.10	10.10	77.52	77.52	77.52	77.52	80.80	390.00
Dibble	Shateema	9.69	9.69	9.69	9.69	9.69	-	-	77.52	77.52	77.52	77.52	-	310.08
Echandyy	Rosa	9.69	9.69	9.69	9.69	9.69	-	-	77.52	77.52	77.52	77.52	-	310.08
Fogle	Joseph	9.69	9.69	9.69	9.69	9.69	10.10	-	77.52	77.52	77.52	77.52	80.80	390.88
Frazier	Danielle	-	-				10.10	10.10	-	-	-	-	80.80	80.80
Gonzalez	Donna	9.69	11.69	11.69	11.69	11.69	-	-	93.52	93.52	93.52	93.52	-	374.08
Gonzalez	Natasha	-	-				10.10	10.10	-	-	-	-	80.80	80.80
Green	Ryan	9.69	9.69	9.69	9.69	9.69	10.10	10.10	77.52	77.52	77.52	77.52	80.80	390.88
Halikias	Themis	-	-				10.10	10.10	-	-	-	-	80.80	80.80
Herring	Claudette	11.69	11.69	11.69	11.69	11.69	12.10	12.10	93.52	93.52	93.52	93.52	96.80	470.88
Huelgo	Hugo	9.69	9.69	9.69	9.69	9.69	10.10	10.10	77.52	77.52	77.52	77.52	80.80	390.88
Hughes	George	9.69	9.69	9.69	9.69	9.69	10.10	10.10	77.52	77.52	77.52	77.52	80.80	390.88
Jackson	Napoleon	9.69	9.69	9.69	9.69	9.69	-	-	77.52	77.52	77.52	77.52	-	310.08
James	Craig	11.69	11.69	11.69	11.69	11.69	12.10	12.10	93.52	93.52	93.52	93.52	96.80	470.88
Johnson	Carol	9.69	9.69	9.69	9.69	9.69	10.10	10.10	77.52	77.52	77.52	77.52	80.80	390.88
Lopez	Edwin	9.69	9.69	9.69	9.69	9.69	10.10	10.10	77.52	77.52	77.52	77.52	80.80	390.88
Mack	Lamont	-	-				10.10	10.10	-	-	-	-	80.80	80.80
Maharaj	Mohan	9.69	9.69	9.69	9.69	9.69	-	-	77.52	77.52	77.52	77.52	-	310.08
Maraj	Jelani						10.10	-	-	-	-	-	80.80	80.80
McColley, Jr.	Walter	9.69	9.69	9.69	9.69	9.69	10.10	10.10	77.52	77.52	77.52	77.52	80.80	390.88
McDonald	Carol	9.69	9.69	9.69	9.69	9.69	10.10	-	77.52	77.52	77.52	77.52	80.80	390.88
Mendah	John	9.69	9.69	9.69	9.69	9.69	10.10	10.10	77.52	77.52	77.52	77.52	80.80	390.88
Merland	Monel	-	-				10.10	10.10	-	-	-	-	80.80	80.80
Mojica	Lexter	9.69	9.69	9.69	9.69	9.69	10.10	10.10	77.52	77.52	77.52	77.52	80.80	390.88
Murray	Rah-King	9.69	9.69	9.69	9.69	9.69	-	-	77.52	77.52	77.52	77.52	-	310.08
Myles	Sonia	9.69	9.69	9.69	9.69	9.69	10.10	10.10	77.52	77.52	77.52	77.52	80.80	390.88
Nieves	Edgar Jovan	9.69	9.69	9.69	9.69	9.69	10.10	10.10	77.52	77.52	77.52	77.52	80.80	390.88
Osmond	Yvette	9.69	9.69	9.69	9.69	9.69	10.10	10.10	77.52	77.52	77.52	77.52	80.80	390.88
Pacheco	Augustine	9.69	11.69	11.69	11.69	11.69	10.10	10.10	93.52	93.52	93.52	93.52	80.80	454.88
Pierre	Dudley	11.69	11.69	11.69	11.69	11.69	12.10	12.10	93.52	93.52	93.52	93.52	96.80	470.88

Quiros	Ovalle	9.69	9.69	9.69	9.69	9.69	-	-	77.52	77.52	77.52	77.52	-	310.08
Ralph	James	9.69	9.69	9.69	9.69	9.69	-	-	77.52	77.52	77.52	77.52	-	310.08
Rivera	Michelle	-	-				12.10	12.10	-	-	-	-	96.80	96.80
Robinson	Gary	-	-				10.10	10.10	-	-	-	-	80.80	80.80
Roman	Audelis	9.69	9.69	9.69	9.69	9.69	10.10	10.10	77.52	77.52	77.52	77.52	80.80	390.88

APPENDIX A
Holiday Pay—Continued

LAST NAME	FIRST NAME	HOURLY WAGE RATE							HOLIDAYS					TOTAL
		4Q 2002	1Q 2003	2Q 2003	3Q 2003	4Q 2003	1Q 2004	2Q 2004	PRES 2003	MEM 2003	IND 2003	LAB 2003	PRES 2004	
Rossmango	Michael	11.69	11.69	11.69	11.69	11.69	12.10	12.10	93.52	93.52	93.52	93.52	96.80	470.88
Ruiz	Robert	11.69	9.69	9.69	9.69	9.69	12.10	12.10	77.52	77.52	77.52	77.52		
Sampson	Clyde	9.69	9.69	9.69	9.69	9.69	10.10	10.10	77.52	77.52	77.52	77.52	80.80	390.88
Santiago	Albert	11.69	9.69	11.69	11.69	11.69	12.10	12.10	93.52	93.52	93.52	93.52	96.80	470.88
Saunders	Addie	9.69	9.69	9.69	9.69	9.69	10.10	10.10	77.52	77.52	77.52	77.52	80.80	390.88
Scott	Jacqueline	-	-				10.10	10.10	-	-	-	-	80.80	80.80
Sealey	Aubyn	-	12.00	12.00	12.00	12.00	-	-	96.00	96.00	96.00	96.00	-	384.00
Singh	Dennis	9.69	9.69	9.69	9.69	9.69	10.10	10.10	77.52	77.52	77.52	77.52	80.80	390.88
Skipper	Stack	9.69	9.69	9.69	9.69	9.69	10.10	10.10	77.52	77.52	77.52	77.52	80.80	390.88
Smith	Anthony	11.69	11.69	11.69	11.69	11.69	12.10	12.10	93.52	93.52	93.52	93.52	96.80	470.88
Stevens	Patela	-	-				10.10	10.10	-	-	-	-	80.80	80.80
Taylor	LaToya	-	-				10.10	10.10	-	-	-	-	80.80	80.80
Vailes	Jodi	9.69	9.69	9.69	9.69	9.69	10.10	10.10	77.52	77.52	77.52	77.52	80.80	390.88
Weston	Robert	9.69	9.69	9.69	9.69	9.69	-	-	77.52	77.52	77.52	77.52	-	310.08
Williams	Kensley	11.69	11.69	11.69	11.69	11.69	12.10	12.10	93.52	93.52	93.52	93.52	96.80	470.88
Williams	Lakisha	9.69	9.69	9.69	9.69	9.69	-	-	77.52	77.52	77.52	77.52	-	310.08
	TOTAL								3,899.44	3,899.44	3,899.44	3,899.44	4,312.80	19,910.56

APPENDIX B

Out-of-Pocket Medical Expenses

LAST NAME	FIRST NAME	EXPENSE
Huelgo	Hugo	81.76
Singh	Dennis	150.00
TOTAL		231.76

APPENDIX C

Welfare Fund

LAST NAME	FIRST NAME	4Q 2002	1Q 2003	2Q 2003	3Q 2003	4Q 2003	1Q 2004	TOTAL
		2 months @ \$55.00 per month	3 months @ \$55.00 per month	3 months @ \$55.00 per month	3 months @ \$55.00 per month	3 months @ \$55.00 per month	3 months @ \$55.00 per month	
Ali	Mohammed	110	165	165	165	165	165	935.00
Baxter	Noel	110	165	165	165	165	165	935.00
Burgos	Eduardo	110	165	165	165	165	165	935.00
Chaudhry	Mohammad	110	165	165	165	165	165	935.00
Crawley	Gene	110	165	165	165	165	165	935.00
Diaz	Victor	110	165	165	165	165	165	935.00
Echandy	Rosa	110	165	165	165	165	165	935.00
Gonzalez	Donna	110	165	165	165	165	165	935.00
Green	Ryan	110	165	165	165	165	165	935.00
Huelgo	Hugo	110	165	165	165	165	165	935.00
Hughes	George	110	165	165	165	165	165	935.00
James	Craig	110	165	165	165	165	165	935.00
Johnson	Carol	110	165	165	165	165	165	935.00
Lopez	Edwin	110	165	165	165	165	165	935.00
Maharaj	Mohan	110	165	165	165	165	165	935.00
McColley Jr.	Walter	110	165	165	165	165	165	935.00
McDonald	Carol	110	165	165	165	165	165	935.00

