

GDT Electrical, Inc. d/b/a Gardner Electrical Corp. and Teller Electrical Corp. d/b/a Gardner Electrical Corp. and Sun Power and Electric, LLC, as alter egos and International Brotherhood of Electrical Workers, Local No. 80

GDT Electrical, Inc. d/b/a Gardner Electrical Corp. and Teller Electrical Corp. d/b/a Gardner Electrical Corp. and Sun Power and Electric, LLC, as alter egos and International Brotherhood of Electrical Workers, Local No. 1340. Cases 05–CA–034956 and 05–CA–034957

August 10, 2012

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HAYES
AND BLOCK

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

On May 9, 2011, the Board issued a Decision and Order,¹ finding that Respondent GDT Electrical Inc. d/b/a Gardner Electrical Corp. (GDT) violated Section 8(a)(5), (3), and (1) of the Act. The Board ordered GDT, among other things, to make whole discriminatee Michael Rodney Cartwright for any loss of earnings and other benefits he may have suffered as a result of his unlawful discharge, and make all contractually required health and welfare fund and local pension fund contributions that have not been made since about November 5, 2008.

A controversy having arisen over the amount of back-pay due the discriminatee and contributions due the Unions' benefit funds,² the Regional Director issued a compliance specification and notice of hearing on March 28, 2012, alleging the amounts due under the Board's Order. Although not parties to the original unfair labor practice litigation, Respondent Teller Electrical Corp. d/b/a Gardner Electrical Corp. (Teller Electrical) and Respondent Sun Power and Electric, LLC (Sun Power) were added to the compliance specification and were alleged to have derivative liability, jointly and severally, for GDT's unfair labor practices as alter egos and disguised continuances of GDT.

The compliance specification notified the Respondents that they should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondents failed to file an answer. By letter dated

April 25, 2012, the Region's compliance officer reminded the Respondents of the need to file an answer to the compliance specification and indicated that if no answer was received by May 2, 2012, a motion for default judgment would be filed. The Respondents again failed to file an answer.

The compliance specification sets forth the following allegations in support of the contentions that Teller Electrical is a disguised continuation of GDT and that Sun Power is a disguised continuation of Teller Electrical, and that both are jointly and severally liable with GDT, as alter egos, to fulfill the remedial obligations of the Board's Order.

At all material times, and continuing until about June 10, 2009, GDT, a Virginia corporation, with an office and place of business in Norfolk, Virginia, was an electrical contractor in the building and construction industry doing commercial and industrial construction. Since an unspecified time in 2008 through about June 10, 2009, Raymond (Gregg) Teller (Gregg Teller) was the president and vice president of GDT; together with Deborah Teller (Deborah Teller), owned 100 percent of its stock; and was a supervisor and an agent of GDT within the meaning of Section 2(11) and (13) of the Act. Since an unspecified time in 2008 through about June 12, 2009, Deborah Teller served as the secretary of GDT and was an agent of GDT within the meaning of Section 2(13) of the Act.

Since about April 14, 2009, and continuing to about August 31, 2010, Teller Electrical, a Virginia corporation, with an office and place and business in Norfolk, Virginia, was an electrical contractor in the building and construction industry doing commercial and industrial construction. Since about April 14, 2009, through about June 22, 2010, Gregg Teller was the owner, vice president, and a member of the board of directors of Teller Electrical; together with Deborah Teller, owned 100 percent of its stock; and was a supervisor and agent of Teller Electrical within the meaning of Section 2(11) and (13) of the Act. Since about April 14, 2009, through about June 22, 2010, Deborah Teller was the president and a member of the board of directors of Teller Electrical, and was an agent of Teller Electrical within the meaning of Section 2(13) of the Act. At all times from about April 14, 2009, to about June 22, 2010, Teller Electrical has maintained the same business address, business telephone, business name, and goodwill as GDT; and at all times since April 14, 2009, Teller Electrical has employed at least three individuals who were previously employed by GDT. At all times since about April 15, 2009, GDT, Gregg Teller, and Deborah Teller have shown a lack of respect for the separate identity of the

¹ 356 NLRB No. 154 (not reported in Board volumes).

² The Unions are International Brotherhood of Electrical Workers, Local 80, and International Brotherhood of Electrical Workers, Local 1340.

corporation and a lack of an arm's-length transaction by inadequately documenting the sale of GDT's property and assets to Teller Electrical, and by representing that the entities were the same company.

Since April 14, 2009, and continuing until June 22, 2010, Teller Electrical displayed the business name of GDT on its work trucks and used the same bucket trucks and work vans and the same Department of Transportation registration number as GDT. Since about April 14, 2009, and continuing until an unknown date, Teller Electrical used the same construction trailers, equipment, and vehicles previously used by GDT. At all times since about May 21, 2009, Teller Electrical used GDT's account experience with the Virginia Employment Commission to pay a lower unemployment tax assessment than it would have paid had it established a new account. At all times since June 25, 2009, Teller Electrical modified and used a line of credit with Monarch Bank previously extended to GDT. At all material times since June 25, 2009, Gregg Teller's signature was required on all loan documents as director of Teller Electrical.

At all material times, GDT and Teller Electrical have had substantially identical management, business purposes, operations, equipment, customers, and supervision, as well as ownership. At all material times, Gregg Teller made all major business decisions for both entities, including but not limited to, corporate activities, daily labor relations, work to be performed, and financial matters. Based on the above, the compliance specification alleges that about April 14, 2009, Teller Electrical was established by GDT, Gregg Teller, and Deborah Teller as a subordinate instrument to and a disguised continuation of GDT; that GDT established Teller Electrical for the purpose of evading its responsibilities under the Act and its obligations under the Board's Order; and that GDT and Teller Electrical are, and have been at all material times, alter egos within the meaning of the Act.

Since about June 22, 2010, and continuing to date, Sun Power, a Virginia limited liability company, with an office and place of business in Suffolk, Virginia, has been an electrical contractor in the building and construction industry doing commercial and industrial construction. Since about June 22, 2010, Gregg Teller has been the president, chief executive officer, and operations manager of Sun Power, as well as a supervisor and agent within the meaning of Section 2(11) and (13) of the Act. At all times since June 22, 2012, Sun Power employed at least three individuals who were previously employed by

Teller Electrical. In addition, since that date, Gregg Teller has negotiated with suppliers, including but not limited to Mayer Electric and Rexel, on behalf of Sun Power. Since about June 22, 2010, and continuing to date, lines of credit issued by suppliers, including but not limited to Mayer Electric and Rexel, to Teller Electrical were used by Sun Power. Also since about June 22, 2012, Sun Power assumed Teller Electrical's debts to suppliers and has completed work on contracts by performing services commenced by Teller Electrical. At all material times, Teller Electrical and Sun Power have had substantially identical management, business purposes, operations, customers, and supervision. At all material times, Gregg Teller made all major business decisions for Teller Electrical and Sun Power, including but not limited to, corporate activities, daily labor relations, work to be performed, and financial matters. Based on the above, the compliance specification alleges that about June 22, 2010, Sun Power was established by GDT and Teller Electrical as a subordinate instrument to and a disguised continuation of Teller Electrical and GDT; that Teller Electrical and GDT established Sun Power for the purpose of evading their responsibilities under the Act and their obligations under the Board's Order; and that GDT, Teller Electrical, and Sun Power are, and have been at all material times, alter egos within the meaning of the Act.

On May 15, 2012, the Acting General Counsel filed with the Board a Motion to Transfer Proceedings to the Board and Motion for Default Judgment, with exhibits attached. On May 16, 2012, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On June 7, 2012, a revised Notice to Show Cause was served on the Respondents by certified mail because the original notice was not served by certified mail at all of the Respondents' known addresses. The Respondents filed no response to either notice. The allegations in the motion and in the compliance specification are therefore undisputed.

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

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 Respondents, despite having been advised of the filing requirements, have failed to file an answer to the compliance specification. In the absence of good cause for the Respondents' 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.

Based on the above, the compliance specification alleges, and we find, that Teller Electrical was established by Gregg Teller and Deborah Teller and Sun Power was established by GDT and Teller Electrical, both for the purpose of evading the Respondents' responsibilities under the Act. We further find that at all material times Teller Electrical and Sun Power have been disguised continuations of GDT. As such, GDT, Teller Electrical, and Sun Power, as alter egos, are jointly and severally liable for remedying GDT's unfair labor practices. We further conclude that the net backpay due Michael Rodney Cartwright is as stated in the compliance specification, and we will order the Respondents to pay that amount of backpay, plus interest accrued to the date of payment, plus the Respondents' share of FICA contributions. In addition, we find that the amounts to be paid to the Unions' fringe benefit funds are as stated in the compliance specification, and we will order the Respondents to pay those amounts, plus interest accrued to the date of payment.³ The backpay and loss of benefits continue to accrue for and on behalf of Michael Rodney Cartwright

³ The compliance specification specifically alleged, and we find, that the amounts due the funds will continue to accrue, subject to changes to contractual contribution rates, number of employees employed in the units, and number of hours worked, plus interest to date of payment.

until the Respondents make a valid offer of reinstatement to him.⁴

ORDER

The National Labor Relations Board orders that the Respondents, GDT Electrical, Inc. d/b/a Gardner Electrical Corp. and Teller Electrical Corp. d/b/a Gardner Electrical Corp. and Sun Power and Electric, LLC, alter egos, Norfolk and Suffolk, Virginia, their officers, agents, successors, and assigns, shall jointly and severally make whole Michael Rodney Cartwright by paying him \$22,492 in net backpay and \$1297 in expenses, plus additional backpay that may accrue in the absence of a valid offer of reinstatement, plus interest accrued to the date of payment, at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as set forth in *Kentucky River Medical Center*, 356 NLRB 6 (2010), enf. denied on other grounds sub nom. *Jackson Hospital Corp. v. NLRB*, 647 F.3d 1137 (D.C. Cir. 2011), plus the Respondents' share of FICA contributions, and minus all tax withholdings required by Federal and State laws. The Respondent shall also make the payments due the following benefit funds in the amounts set forth, plus interest accrued to the date of payment as prescribed in *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).

⁴ The compliance specification alleges that the Respondents have failed to comply with any provision of the Board's Order and are obligated to reinstate Cartwright; remove from their records all references to Cartwright's discharge and notify him in writing that this has been done and that the unlawful discharge will not be used against him; recognize and bargain with the Unions as the limited exclusive bargaining representatives of the employees in their respective jurisdictions and to honor and comply with their agreements and any automatic extensions thereof; furnish Local 80 with requested information; and post the notice to employees. By failing to file an answer, the Respondents have effectively admitted that they have failed to take these actions. Nevertheless, we find it unnecessary in this proceeding to order the Respondents to take these actions, as they are included in our previous Order.

DECISIONS OF THE NATIONAL LABOR RELATIONS BOARD

	Unit	Cartwright	Total
National Electrical			
Benefit Fund (NEBF)–Local 80	\$10,214.22	\$4,454.59	\$14,668.81
Tidewater Electrical Industry			
Health Fund (TEIH)–Local 80	\$66,433.50	\$28,885.50	\$95,319.00
Tidewater Electrical Industry			
Pension Fund (TEIP)–Local 80	\$29,938.51	\$12,431.75	\$42,370.26
Southern Electrical Retirement			
Fund (SERF)–Local 80	\$5,594.25	\$2,611.00	\$8,205.25
Joint Apprenticeship and Training			
Fund (JATF)–Local 80	\$7,696.86	\$3,439.25	\$11,136.11
National Electrical Benefit			
Fund (NEBF)–Local 1340	\$4,690.05		
NECA/IBEW Family Medical Care			
Trust Fund (Medical Fund)–Local 1340	\$32,302.20		
Southern Electrical Retirement			
Fund (SERF)–Local 1340	\$11,791.81		
Joint Apprenticeship and Training			
Fund (JATF)–Local 1340	\$3,115.67		

Total Amount Due to Cartwright: \$23,789.00

Total Amount Due to the Funds: \$223,599.16

Total Amount Due to the Funds and Cartwright: \$247,388.16