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Performance Plumbing, LLC and United Association of Journeymen and Apprentices of The Plumbing and Pipe Fitting Industry of The United States and Canada, AFL-CIO, Plumbers and Pipefitters Local 296. Cases 27-CA-331749 and 27-CA-332447

February 26, 2026

DECISION AND ORDER

BY MEMBERS PROUTY, MURPHY, AND MAYER

The Acting General Counsel seeks a default judgment in this case on the ground that Performance Plumbing, LLC (the Respondent) has failed to file an answer to the complaint. Upon charges and amended charges filed by the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO, Plumbers Local 296 (the Union) on various dates from December 13, 2023 through December 16, 2024, the Acting General Counsel issued a consolidated complaint and notice of hearing on February 25, 2025, against the Respondent, alleging that it violated Section 8(a)(3) and (1) of the National Labor Relations Act. The Respondent failed to file an answer.

On May 29, 2025, the Acting General Counsel filed with the National Labor Relations Board a Motion for Default Judgment. On June 13, 2025, 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 filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively states that unless an answer is received on or before March 11, 2025, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Nevertheless, the Respondent failed to file an answer.

In the absence of good cause being shown for the failure to file an answer, we deem the allegations of the consolidated complaint to be admitted as true, and we grant the Acting General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

¹ We take administrative notice of the Stipulated Election Agreement in Cases 27-RC-329144 and 27-RM-329569, in which the parties

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been an Idaho limited liability company with an office and place of business in Nampa, Idaho (the Respondent's facility) where it has been engaged in the business of installing plumbing and gas piping.

Annually, in conducting its operations described above, the Respondent purchased and received goods valued in excess of \$50,000 directly from points outside the State of Idaho.

Accordingly, we find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.¹

II. ALLEGED UNFAIR LABOR PRACTICES

1(a) At all material times, the following individuals held the position set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and/or agents of the Respondent within the meaning of Section 2(13) of the Act:

Jonathan Carter	-	Owner/CEO
John Inouye	-	Executive Director
Chris Barron	-	General Manager
Steve Cooper	-	Project Manager
Brandon Emig	-	General Foreman
Brennan Falck	-	General Foreman
Brian (unknown)	-	Unknown

(b) At all material times, Brooke Carter has been an agent of Respondent within the meaning of Section 2(13) of the Act.

2(a) On about October 13, 2023, the Respondent, by General Manager Chris Barron, at the Respondent's facility, threatened an employee with termination if the employee discussed his wage rate with other employees.

(b) About early November 2023, by Chris Barron, at the Respondent's jobsite in Boise, Idaho, interrogated an employee about the union activity of the employee and the employee's coworkers.

(c) In early December 2023, the Respondent promised employees benefits, including paid time off and holiday pay, in order to discourage them from supporting the Union.

stipulated that the Union is a labor organization within the meaning of Sec. 2(5) of the Act.

(d) On about December 15, 2023, the Respondent, by Owner/CEO Jonathan Carter, at the Respondent's facility, threatened employees with job loss if they supported the Union.

(e) On about December 15, 2023, the Respondent, by Owner/CEO Jonathan Carter, at the Respondent's facility, promised employees benefits, including paid time off and holiday pay, if employees refrained from supporting the Union.

3(a) In about December 2023, the Respondent increased benefits of its employees by providing employees with paid time off and holiday pay.

(b) On about October 26, 2023, the Respondent was hiring or had concrete plans to hire an undisclosed number of employees.

(c) On about October 26, 2023, the Respondent refused to consider for hire or hire the following applicants for employment: Colton Lee, Brian McKee, Austin Peck, Cole Silcox, Sonny Welch, and Shain West.

(d) On about December 21, 2023, the Respondent laid off employees Rebecca Arnold, Ryan Heinbach, and Felix Rosado.

(e) The Respondent engaged in the conduct described above in paragraph 3(a), 3(c), and 3(d) because both named and unnamed employees of the Respondent formed, joined, or assisted the Union in concerted activities, and to discourage employees from engaging in these activities.

CONCLUSIONS OF LAW

By the conduct described above in paragraphs 2(a) through 2(d) above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

By the conduct described above in paragraphs 3(a), 3(c) and 3(d) above, the Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(3) and (1) of the Act.

The Respondent's unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(3) and (1) of the Act by laying off employees Rebecca Arnold, Ryan Heinbach, and Felix Rosado, and by refusing to consider for hire, or hire, employees Colton Lee, Brian McKee, Austin Peck, Cole Silcox, Sonny Welch, and Shain West, we shall order the Respondent to offer Arnold, Heinbach, and Rosado full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed. We shall also order the Respondent to offer Lee, McKee, Peck, Silcox, Welch, and West reinstatement to the positions for which they applied, or if such positions no longer exist, to substantially equivalent positions. In addition, we shall order the Respondent to make Arnold, Heinbach, Rosado, Lee, McKee, Peck, Silcox, Welch, and West (the discriminatees) whole, with interest, for any loss of earnings and other benefits suffered as a result of the Respondent's unfair labor practices. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

In accordance with our decision in *King Soopers, Inc.*, 364 NLRB 1153 (2016), enfd. in relevant part 859 F.3d 23 (D.C. Cir. 2017), we shall also order the Respondent to compensate the discriminatees for their search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra. In addition, in accordance with our decision in *Thryv, Inc.*, 372 NLRB No. 22 (2022), the Respondent shall also compensate the discriminatees for any other direct or foreseeable pecuniary harms incurred as a result of the unlawful discharge, if any, regardless of whether these expenses exceed interim earnings.² Compensation for these harms

² As stated in *Lodi Volunteer Ambulance Rescue Squad, Inc.*, 374 NLRB No. 26, slip op. at 3 fn. 3 (2026), Members Murphy and Mayer find no need at this time to express an opinion whether the novel remedies announced by the Board majority in *Thryv* are permissible under the Act. They would be open to reconsideration of that precedent in a future proceeding, but in the absence of a three-member majority to overrule it at this time, they agree to apply *Thryv*. Members Murphy and Mayer note that they are mindful of Acting General Counsel Memo 25-06, in which Acting General Counsel Cowen discussed his interpretation of the

phrase "direct and foreseeable pecuniary harm" in light of *Thryv's* failure to define that phrase. Id. at pp. 3-4; see also Acting General Counsel Memo 25-05 (rescinding General Counsel Memos 24-04 and 21-06). They also note that determinations regarding the legality of any specific forms of novel relief suggested by *Thryv* are premature at this initial litigation stage. Such remedies will be addressed only if and when they are actually sought in a subsequent compliance proceeding.

shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.³

Further, we shall order the Respondent to compensate the discriminatees for the adverse tax consequences, if any, of receiving a lump-sum backpay award and to file a report with the Regional Director for Region 27 allocating the backpay award to the appropriate calendar year(s). *AdvoServ of New Jersey, Inc.*, 363 NLRB 1324 (2016). In addition to the backpay allocation report, we shall order the Respondent to file with the Regional Director for Region 27 a copy of the discriminatees' corresponding W-2 form(s) reflecting the backpay award. *Cascade Containerboard Packaging—Niagara*, 370 NLRB No. 76 (2021), as modified in 371 NLRB No. 25 (2021).

The Respondent shall also be required to remove from its files any reference to the unlawful layoffs or refusal to consider for hire, or hire, the discriminatees and to notify them in writing that this has been done and that the unlawful layoffs, refusal to hire, or consider for hire, will not be used against them in any way.

ORDER

The National Labor Relations Board orders that the Respondent, Performance Plumbing, LLC, Nampa, Idaho, its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Threatening employees with termination if they discuss their wage rate with coworkers.

(b) Interrogating employees about their union activities and the union activities of their coworkers.

(c) Promising benefits to employees, including paid time off and holiday pay, if employees refrained from supporting the Union and in order to discourage them from doing so.

(d) Threatening employees with job loss for supporting the Union.

(e) Increasing employee benefits by providing employees with paid time off and holiday pay.

(f) Refusing to consider for hire, or hire, applicants because they formed, joined, or assisted the Union in concerted activities, and to discourage employees from engaging in these activities.

(g) Laying off or otherwise discriminating against employees because they formed, joined, or assisted the Union

in concerted activities, and to discourage employees from engaging in these activities.

(h) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer employment to Colton Lee, Brian McKee, Austin Peck, Cole Silcox, Sonny Welch, and Shain West in the positions for which they applied or, if such positions no longer exist, in substantially equivalent positions.

(b) Within 14 days from the date of this Order, offer Rebecca Arnold, Ryan Heinbach, and Felix Rosado full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(c) Make Arnold, Heinbach, Rosado, Lee, McKee, Peck, Silcox, Welch, and West whole for any loss of earnings and other benefits, and for any other direct or foreseeable pecuniary harms suffered as a result of the Respondent's unlawful conduct, in the manner set forth in the remedy section of this decision.

(d) Compensate Arnold, Heinbach, Rosado, Lee, McKee, Peck, Silcox, Welch, and West for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 27 within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year(s).

(e) File with the Regional Director for Region 27, within 21 days of the date the amount of backpay is fixed by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copy of the discriminatees' corresponding W-2 form(s) reflecting the backpay award.

(f) Within 14 days from the date of this Order, remove from its files any reference to the unlawful layoffs or refusal to hire or consider for hire, the discriminatees, and within 3 days thereafter, notify them in writing that this has been done and that the unlawful actions will not be used against them in any way.

(g) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for

³ The Acting General Counsel further requests that we order the Respondent to mail and electronically distribute the Notice to Employees via any text-based mobile messaging platform (e.g., SMS, iMessage, WhatsApp, etc.), if the Respondent customarily communicates with its employees through such electronic means, to all employees who were employed between December 13, 2023, and January 18, 2024; and electronically distribute the Notice to all its supervisors and managers. We

deny these requests because the Acting General Counsel has not shown that these additional measures are needed to remedy the effects of the Respondent's unfair labor practices. See, e.g., *KM Building Care, Inc.*, 372 NLRB No. 38, slip op. at 3 fn. 3 (2022); *Environmental Contractors, Inc.*, 366 NLRB No. 41, slip op. at 4 fn. 6 (2018).

good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(h) Within 14 days after service by the Region, post at its facility in Nampa, Idaho, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 27, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 13, 2023.

(i) Within 21 days after service by the Region, file with the Regional Director for Region 27 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

(j) Within 21 days after service by the Region, file with the Regional Director for Region 27 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 26, 2026

David M. Prouty, Member

James R. Murphy, Member

Scott A. Mayer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT threaten you with termination if you discuss your wage rate with your coworkers.

WE WILL NOT interrogate you about your union activities and the activities of your coworkers.

WE WILL NOT promise you benefits, including paid time off and holiday pay, if you refrain from supporting the Union in order to discourage you from doing so.

WE WILL NOT threaten you will job loss for supporting the Union.

WE WILL NOT increase your benefits by providing you with paid time off and holiday pay.

WE WILL NOT refuse to hire, or consider for hire, applicants because they formed, joined, or assisted the Union in concerted activities, and to discourage you from engaging in these activities.

WE WILL NOT lay off or otherwise discriminate against you because you formed, joined, or assisted the Union in concerted activities, and to discourage you from engaging in these activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, within 14 days from the date of the Board's Order, offer Rebecca Arnold, Ryan Heinbach, and Felix

⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the

Rosado full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights previously enjoyed.

WE WILL, within 14 days from the date of the Board's Order, offer Colton Lee, Brian McKee, Austin Peck, Cole Silcox, Sonny Welch, and Shain West employment to the positions for which they applied or, if such positions no longer exist, to substantially equivalent positions.

WE WILL make Arnold, Heinbach, Rosado, Lee, McKee, Peck, Silcox, Welch, and West whole for any loss of earnings and other benefits resulting from our discrimination against them, less any net interim earnings, plus interest, and WE WILL also make them whole for any other direct or foreseeable pecuniary harms suffered as a result of our unlawful conduct, including reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate Arnold, Heinbach, Rosado, Lee, McKee, Peck, Silcox, Welch, and West for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 27, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year(s).

WE WILL file with the Regional Director for Region 27, within 21 days of the date the amount of backpay is fixed by agreement or Board order or such additional time as the

Regional Director may allow for good cause shown, a copy of each backpay recipient's corresponding W-2 form(s) reflecting the backpay award.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to our unlawful layoff or refusal to hire or consider for hire Arnold, Heinbach, Rosado, Lee, McKee, Peck, Silcox, Welch, and West, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the discharge will not be used against her in any way.

PERFORMANCE PLUMBING, LLC

The Board's decision can be found at <https://www.nlr.gov/case/27-CA-331749> or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940

