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Village Plumbing & Heating NY Inc. and New York State Pipe Trades Association. Cases 29–CA–289082 and 29–CA–292397

April 15, 2026

DECISION AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS PROUTY
AND MAYER

The General Counsel seeks a default judgment in this matter pursuant to the terms of an informal settlement agreement. New York State Pipe Trades Association (the Union) filed a charge in Case 29–CA–289082 on January 18, 2022, and a charge in Case 29–CA–292397 on March 15, 2022. The charges allege that Village Plumbing & Heating NY Inc. (the Respondent) violated Section 8(a)(3) and (1) of the Act.

Subsequently, on May 11, 2023, the Regional Director for Region 29 approved a unilateral Informal Settlement Agreement. The settlement agreement required the Respondent to, among other things: (1) immediately accept from Marjan Pejkoic and David McIntosh unconditional offers to return to their prior positions, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed; (2) immediately offer employment to Paul Cotto in the position to which he applied in January 2022, or to a similar position if that position no longer exists; (3) offer Joseph Squicciarini employment in the position to which he applied in November 2021, or to a similar position if that position no longer exists, provided that he present the Respondent with a copy of his up-to-date SST credential within sixty days of the Regional Director's approval of the settlement agreement. The settlement agreement also contains the following provision:

Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if the Charging Party does not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Party of notice that no review has been requested or that the General Counsel has sustained the Regional Director.

The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days' notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the

Charged Party, the Regional Director will issue a Complaint that includes the allegations covered by the Notice to Employees, as identified in the Scope of Agreement section, as well as filing and service of the charge(s), commerce facts necessary to establish Board jurisdiction, labor organization status, appropriate bargaining unit (if applicable), and any other allegations the General Counsel would ordinarily plead to establish the unfair labor practices. Thereafter, the General Counsel may file a Motion for Default Judgment with the Board on the allegations of the Complaint. The Charged Party understands and agrees that the allegations of the Complaint will be deemed admitted and that it will have waived its right to file an Answer to such Complaint. The only issue that the Charged Party may raise before the Board will be whether it defaulted on the terms of this Settlement Agreement. The General Counsel may seek, and the Board may impose, a full remedy for each unfair labor practice identified in the Notice to Employees. The Board may then, without necessity of trial or any other proceeding, find all allegations of the Complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an Order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board Order *ex parte*, after service or attempted service upon Charged Party at the last address provided to the General Counsel.

The Union appealed the Regional Director's approval of the settlement agreement. On September 28, 2023, the General Counsel sustained the Regional Director's approval. By electronic mail and letter dated September 29, 2023, the Region sent the Respondent a copy of the approved and fully executed settlement agreement, with a cover letter explaining the remedial actions it was required to take. That communication emphasized that, under the terms of the settlement agreement, the Respondent had 14 days, until October 13, 2023, to comply with its terms. On October 12, 2023, the Region granted the Respondent an extension until October 19, 2023, to comply. By electronic mail dated October 24, 2023, the Regional Director advised the Respondent of the deficiencies in its compliance with the settlement agreement and warned that if it did not fully comply within the next 14 days, the Regional Director would revoke the settlement and issue the complaint. By letter dated November 7, 2023, the Respondent made offers of employment to Cotto and Squicciarini. By letter dated November 18, 2023, counsel for the Union, on behalf of Pejkoic and McIntosh, made unconditional

offers to return to work and, on behalf of Cotto and Squicciarini, accepted employment on terms consistent with the settlement. The letter stated that all four individuals would report to work on November 27, 2023, unless the Respondent directed otherwise. The Respondent did not reply.

On November 27, 2023, when the discriminatees arrived for work, the Respondent advised them that their services were not needed. On December 5, 2023, the Region contacted the Respondent by email for its position. The Respondent claims that it responded on December 14, 2023, asking the Region to schedule a phone call, but the Region counters that it did not receive the Respondent's email. Neither party disputes that, by that date, the Respondent had not reinstated Pejkoivic and McIntosh or instated Cotto and Squicciarini. Pursuant to the terms of the noncompliance provisions of the settlement agreement, on December 6, 2024, the Regional Director issued a Consolidated Complaint Based on Breach of Affirmative Provisions of Settlement Agreement.

Under the terms of the settlement agreement, the Respondent waived its right to file an answer to the Consolidated Complaint. Accordingly, on December 9, 2024, the General Counsel filed with the National Labor Relations Board a Motion to Transfer Proceedings to the Board and Motion for Default Judgment, requesting that the Board find that the Respondent waived its right, under the terms of the settlement agreement, to file an answer to the reinstated complaint, that the allegations of the reinstated complaint are deemed to be true, and that no hearing is necessary. Moreover, the General Counsel requests that the Board issue a Decision containing findings of fact and conclusions of law based on, and in accordance with, the allegations of the reinstated complaint, remedying such unfair labor practices, including requiring the Respondent to comply with all the terms of the settlement, and granting other relief as may be just and proper to remedy the violations described in the reinstated complaint.

On December 11, 2024, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. In response, the Respondent filed three affidavits, each disputing that it violated the settlement agreement and asserting that the discriminatees' actions prevented the Respondent from

fulfilling its obligations under the agreement's terms. The Respondent admits that it received the Union's letter making unconditional offers to return to work on behalf of Pejkoivic and McIntosh and accepting offers of instatement on behalf of Cotto and Squicciarini, and then turning them away when they reported to the Respondent's corporate offices for work on November 27, 2023. However, the Respondent asserts that it did so because work assignments are given the night before so that employees can travel to the job site on their own; there was no work for the discriminatees on November 27, 2023; the Respondent has not had work for them since; they did not bring tools and were not appropriately dressed to perform work; they refused to provide current telephone numbers for the future assignment of work; and they were rude, used profanity, and stated that they would never work for the Respondent. On January 6, 2025, the General Counsel filed a reply, arguing that these purported defenses were meritless in fact and law.

Ruling on Motion for Default Judgment

To warrant a default judgment, the General Counsel, as the moving party, has the burden of establishing that there are no genuine issues of material fact regarding whether the Respondent violated the settlement agreement. See, e.g., *ThyssenKrupp Stainless USA, LLC*, 362 NLRB 621 (2015) (denying default judgment motion where genuine issues of material fact existed as to whether settlement agreement had been breached); *Vocell Bus Co.*, 357 NLRB 1730, 1731 (2011) (denying default/summary judgment motion given factual dispute about non-compliance with settlement).

Having duly considered the matter, we find that default judgment is not appropriate in the circumstances of this case because, based on the conflicting representations of the parties, a genuine issue of material fact exists that prevents a final determination as to whether the terms of the settlement agreement have been breached. As detailed above, the General Counsel contends that the Respondent has failed to reinstate Pejkoivic and McIntosh and instate Cotto and Squicciarini. By contrast, the Respondent maintains that the discriminatees, by their actions, forfeited their right to reinstatement.¹ We find that a hearing is required to resolve this factual dispute.²

¹ To the extent that the Respondent argues that it cannot reinstate Pejkoivic and McIntosh and instate Cotto and Squicciarini due to a decrease in business, that is not a legitimate defense for failing to comply with the terms of a settlement agreement and is not a basis for denying this motion for default judgment. See e.g., *Key Handling Systems, Inc.*, 361 NLRB No. 2, slip op. at 2 fn. 2 (2014).

² Our dissenting colleague maintains that the General Counsel has met her burden of proving that no genuine issue of material fact exists to warrant a hearing. Specifically, the dissent contends that the undisputed

facts "show that the discriminatees, who were entitled to reinstatement or instatement, showed up to work at the appointed date and time, and the Respondent did not reinstate or hire them." Our colleague finds that the discriminatees' alleged conduct discussed above does not create a genuine issue of material fact because, in his view, it occurred after the Respondent had already failed to reinstate them. We respectfully disagree. As we have explained, the parties have presented conflicting versions of the discriminatees' conduct on November 27 at the Respondent's facility. In light of that conflict, there is a genuine issue of fact as

ORDER

For the foregoing reasons, it is ordered that the General Counsel's Motion for Default Judgment is denied. It is further ordered that this proceeding is remanded to the Regional Director for Region 29 for the purpose of issuing a notice of hearing and scheduling a hearing before an administrative law judge, limiting such proceeding to determining whether the Respondent has fully complied with the terms of the settlement agreement.

Dated, Washington, D.C. April 15, 2026

James R. Murphy, Chairman

Scott A. Mayer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER PROUTY, dissenting.

Contrary to my colleagues, I would grant the General Counsel's Motion for Default Judgment. In my view, there is no genuine issue of fact about whether the Respondent breached the settlement agreement. Pursuant to the terms of the settlement agreement, the Respondent agreed, among other things, to accept unconditional offers to return to work from Marjan Pejokvic and David McIntosh and to offer employment to Paul Cotto and Joseph Squicciarini. The facts show that the discriminatees, who were entitled to reinstatement or instatement, showed up to work at the appointed date and time, and the Respondent did not reinstate or hire them. The Respondent's affidavits filed in support of their opposition to the Motion for Default Judgment show only that they said they "would" reinstate (or hire) the discriminatees but present no facts showing they actually did it. Thus, there is no genuine issue of material fact regarding whether the discriminatees were reinstated/instanted, and that completely ends the inquiry for purposes of the motion before us.

Although the record is absent of any affirmative act the Respondent did to complete the instatement or reinstatement of these discriminatees, my colleagues find that the Respondent has raised a genuine issue of material fact

to whether the alleged conduct preceded or followed the denial of reinstatement or instatement. Moreover, while a respondent is generally relieved of its duty to reinstate only in "extraordinary situation[s]," such as when a discriminatee has engaged in "misconduct so flagrant as to render [the discriminatee] unfit for further service," whether the discriminatees' alleged actions, if true, meet this threshold involves factual questions that

about whether the discriminatees forfeited their right to reinstatement by their conduct on the date they reported for work. Even assuming the facts as stated by the Respondent are true, they do not raise a genuine material issue regarding the breach of the settlement agreement. Here, the Respondent attempts to justify its failure to reinstate/instate the discriminatees by raising alleged facts that were created only by—and after—the Respondent's own initial failure to act in good faith. The Respondent, after unquestionably learning that the discriminatees planned to report to headquarters on a set date, did not tell them in advance that they should report elsewhere, or on a different date—nor did the Respondent inform them in advance of the required dress and tools needed. Moreover, the Respondent's claim that the discriminatees refused to leave their current contact information does not begin to absolve the Respondent of its obligations to comply with the settlement agreement. As former employees or job applicants, the Respondent was already in possession of contact information for each discriminatee. The Respondent has not asserted that it was not, or that the contact information already in its possession was incorrect. Alternatively, the Respondent could have contacted, and still can contact, the discriminatees through union counsel. Finally, Respondent's claims regarding a decline in business, and the discriminatees' purported statements about whether they would work for the Respondent in the future, are immaterial to the question before us: the breach of the settlement agreement by Respondent's failure to rehire or instate them.

In sum, the Respondent dragged out the process of offering reinstatement and employment to these discriminatees for almost 3 years after it entered into a voluntary settlement agreement over the Union's objections. The Respondent had numerous ways it could have gone about fulfilling its duties under the settlement agreement, that would have showed a modicum—even a particle—of good faith, and it has shown none. For the above reasons, I would find that the General Counsel is entitled to default judgment.

cannot be determined in a summary proceeding. See *Hawaii Tribune-Herald*, 356 NLRB 661, 662–663 (2011), *enfd.* 677 F.3d 1241 (D.C. Cir. 2012); *Timet*, 251 NLRB 1180, 1180–1181 (1980), *enfd.* 671 F.2d 973 (6th Cir. 1982). Accordingly, whether the Respondent complied with the settlement agreement is a matter best suited for determination after a hearing at which a full evidentiary record can be developed.

Dated, Washington, D.C. April 15, 2026

David M. Prouty, Member

NATIONAL LABOR RELATIONS BOARD