



UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Certified as a true copy and issued as the mandate on May 18, 2016

HALLMARK-PHOENIX 3, LLC
Petitioner/Cross-Respondent
v.
NATIONAL LABOR RELATIONS BOARD
Respondent/Cross-Petitioner

Attest: [Signature] Clerk, U.S. Court of Appeals, Fifth Circuit

No. 15-60011

JUDGMENT

Before: JOLLY, HIGGINBOTHAM, and SMITH, Circuit Judges.

THIS CAUSE came to be heard upon a petition filed by the Hallmark-Phoenix 3, LLC to review an Order of the National Labor Relations Board dated December 22, 2014, in Case 12-CA-090718 and 12-CA-094037, reported at 361 NLRB No. 146, and upon a cross-application for enforcement filed by the National Labor Relations Board to enforce said Order. The Court heard argument of the parties and considered the briefs and agency record filed in this cause. On March 24, 2016, the Court, handed down its opinion granting in part the petition of Hallmark-Phoenix 3, LLC and granting in part the Board's cross-petition for enforcement. In conformity therewith, it is hereby

ORDERED AND ADJUDGED by the United States Court of Appeals for the Fifth Circuit that the Petitioner/Cross-Respondent Hallmark-Phoenix 3, LLC, Cocoa, Florida, its officers, agents, successors, and assigns, shall:

- 1. Cease and desist from
(a) Adding waiver language on the back of employees' paychecks, stating that the employee acknowledges the check represents the full amount owed to the employee, without first notifying the employees' collective-bargaining representative, International Alliance of Theatrical Stages Employees and Motion Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada, Local 780, AFL-CIO (IATSE), and giving it an opportunity to bargain.
(b) Failing and refusing to deduct union dues from the paychecks of employees in the IATSE-represented unit, and failing to transmit these

- dues to IATSE, as required under its collective-bargaining agreement with IATSE.
- (c) Failing and refusing to pay employees their severance pay and all of their accrued vacation pay in a timely manner, as required under its collective-bargaining agreements with IATSE and Transport Workers Union of America, Local 525, AFL–CIO (TWU).
 - (d) Failing to include the \$1.50 wage differential in its lead employees’ vacation and severance payments, as required under its collective-bargaining agreement with IATSE.
 - (e) Failing to include the \$1.50 wage differential in its lead employees’ vacation payments, as required under its collective-bargaining agreement with TWU.
 - (f) 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) Pay its TWU- and IATSE-represented employees their accrued vacation pay and severance pay, including any applicable wage differential, in the amounts set forth in Appendixes A and B, respectively, plus interest accrued to the date of payment, at the rate prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), and minus tax withholdings required by Federal and State laws.
 - (b) Rescind the waiver language placed on the back of the paychecks of its IATSE-represented employees.
 - (c) Compensate employees for any adverse tax consequences of receiving lump-sum backpay awards, and file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each employee.
 - (d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for 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.
 - (e) Within 14 days after service by the Region, mail to employees, at its own expense and after being signed by the Respondent’s authorized

representative, copies of the attached notice marked "Appendix." The Respondent shall mail copies of the notice, together with Appendixes A and B, to all employees employed by the Respondent at the Cape Canaveral Air Force Station and the Patrick Air Force Base as of August 31, 2012, at their last known address. In addition, the 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.

- (f) Within 21 days after service by the Region, file with the Regional Director for Region 12 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.

Mandate shall issue forthwith

ENTERED: May 18, 2016

Hallmark-Phoenix 3, LLC
 Cases: 12-CA-090718
 12-CA-094037

APPENDIX A*
 TWU LOCAL 525 UNIT
 VACATION PAY AND
 SEVERANCE PAY

Employee name	Hourly wage rate	Unpaid accrued vacation hours	Vacation pay owed based on unpaid accrued vacation hours (includes lead differential)	Accrued vacation hours for which lead pay differential (\$1.50) is owed	Vacation pay owed based on unpaid lead differential for hours already paid	Total vacation pay owed	Weeks of severance pay owed	Hours severance pay owed	Severance pay owed
Brown, Walter	\$29.60						13	520	\$15,392.00
Castro, Joseph	\$29.60						5	200	\$5,920.00
Crowley, Joe	\$29.60						13	520	\$15,392.00
Davis, Schevella	31.10(Lead)			104.37	\$156.56		13	520	
Harper, Tim	\$29.60						0	0	\$0.00
Hubbard, Brian	\$29.60						13	520	\$15,392.00
Lockhart, Leon	\$29.60						13	520	\$15,392.00
Peterson, Craig	31.10(Lead)			182.6	\$273.90		11	440	
Weidner, Mark	\$29.60						9	360	\$10,656.00
Totals					\$430.46				

Notes:
 Employees whose names are in bold (Schevella Davis and Craig Peterson) were lead employees.

* Shaded portions remanded to the Board for recalculation consistent with the Court's opinion of March 24, 2016

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APPENDIX B (AS FURTHER AMENDED APRIL 7, 2014)
 IATSE LOCAL 780 UNIT VACATION PAY
 AND SEVERANCE PAY OWED

Employee name	Original hire date	Hourly wage rate	Vacation hours paid on 9/14/12 and 4/2013 for which lead pay of \$1.50 per hour is owed	Lead pay of \$1.50 per hour owed for vacation hours paid on 9/14/12 and 4/2013	Weeks of Severance pay owed	Hours of severance pay owed	Severance pay owed
Anderson, Donald I.	8/2/2002	\$32.51			11	440	\$14,304.40
Carpenter, Reid M.	7/24/1987	\$32.51			18	720	\$23,407.20
Chick, Daniel J.	4/23/2009	\$32.51			4	160	\$5,201.60
Garrett, Mary L.	5/14/1996	\$27.31			17	680	\$18,570.80
Gorr, Thomas P.	4/1/1994	\$32.51			18	720	\$23,407.20
Grove, John C.	9/20/2011	\$30.04			1	40	\$1,201.60
Harmon, Richard E.	5/21/2002	\$28.89			11	440	\$12,711.60
Harris, James Y.	4/1/1994	\$30.39	154.5	\$231.75	18	720	\$21,880.80
Hudec, Ralph	1/26/2011	\$28.91			2	80	\$2,312.80
James, Jerry J.	4/1/1994	\$34.01	348	\$522.00	18	720	\$24,487.20
Kelley, Nathan C.	2/23/2003	\$32.51			10	400	\$13,004.00
Lemieux, Timothy A.	10/1/2008	\$25.53			4	160	\$4,084.80
McDougall, Josephine M.	8/29/2005	\$28.89			8	320	\$9,244.80
Phillips, Kevin	4/27/2009	\$32.51			4	160	\$5,201.60
Ratliff, Kevin w.	4/1/1994	\$28.89			18	720	\$20,800.80
Rice, Kristine M.	9/20/2011	\$21.69			1	40	\$867.60
Scott III, Wilson	10/1/1994	\$34.01	100	\$150.00	18	720	\$24,487.20
Sewell, Kenneth R.	10/4/2004	\$32.51			8	320	\$10,403.20
Veltri, Thomas J.	10/1/1985	\$34.01	296.64	\$444.96	18	720	\$24,487.20
Totals				\$1,348.71			\$260,066.40

Note: Employees whose names are in bold (James Y. Harris, Jerry J. James, Wilson Scott III and Thomas J. Veltri) were lead employees.

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APPENDIX

NOTICE TO EMPLOYEES

**POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES
COURT OF APPEALS ENFORCING AN 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 add waiver language on the back of your paycheck, stating that you acknowledge the check represents the full amount owed you, without first notifying your collective-bargaining representative and giving it an opportunity to bargain.

WE WILL NOT fail and refuse to deduct union dues from your paycheck and fail to transmit these dues to your collective-bargaining representative.

WE WILL NOT fail or refuse to pay you severance pay and all of the accrued vacation pay in a timely manner, as required under our collective-bargaining agreements with International Alliance of Theatrical Stage Employees and Motion Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada, Local 780, AFL-CIO (IATSE) and Transport Workers Union of America, Local 525, AFL-CIO (TWU).

WE WILL NOT fail and refuse to include the \$1.50 hourly wage differential in our lead employees' severance payments, as required under our collective-bargaining agreement with IATSE.

WE WILL NOT fail and refuse to include the \$1.50 hourly wage differential in our lead employees' vacation payments, as required under our collective-bargaining agreements with IATSE and TWU.

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 pay you for your accrued vacation pay and severance pay, including any applicable wage differential, plus interest accrued to the date of payment, and minus tax withholdings required by Federal and State laws.

WE WILL rescind the waiver language placed on the back of the paychecks of IATSE-represented employees.

WE WILL compensate you for any adverse tax consequences of receiving a lump-sum backpay award, and WE WILL file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters for each of you.

HALLMARK-PHOENIX 3, LLC

The Board's decision can be found at www.nlr.gov/case/12-CA-090718 or by using 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.



**UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

HALLMARK-PHOENIX 3, LLC	:	
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	:	No. 15-60011
v.	:	
	:	
NATIONAL LABOR RELATIONS BOARD	:	
	:	
Respondent/Cross-Petitioner	:	

CERTIFICATE OF SERVICE

I hereby certify that on April 6, 2016, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. I further certify that the participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/Linda Dreeben
Linda Dreeben
Deputy Associate General Counsel
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570

Dated at Washington, D.C.
this 6th day of April, 2016