UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 606, Plaintiff, v. JAM ELECTRIC, LLC, Defendant.	Case No. 6:24-cv-213-CEM-RMN

REPORT AND RECOMMENDATION

This cause comes before the Court for consideration without oral argument on Plaintiff's Second Motion for Entry of Default Judgment on Enforcement of Arbitration Award (Dkt. 32), filed August 23, 2024 ("Motion"). The Motion is referred to me for a report and recommendation. After careful consideration, I respectfully recommend the Court grant the Motion in part and deny it in part.

I. BACKGROUND

Plaintiff, a union representing electricians in Central Florida, sues Defendant, an employer bound by a collective bargaining agreement. Dkt. 23 ("Am. Comp.") ¶¶ 1, 2, 5; *see also* Dkts. 23-1 (agreement), 23-2 (letter of assent). The collective bargaining agreement requires the parties

to the agreement to resolve their disputes using a grievance process. *See* Dkt. 23-1 at 6 (sections 1.05 through 1.10). The process requires representatives from the union and employer to "adjust" all grievances or "questions in dispute." *Id.* (section 1.06). If the representative cannot resolve a grievance, it is referred to the Labor-Management Committee, which consists of three union representatives and three employer representatives. *Id.* (sections 1.05 and 1.06). Under the collective bargaining agreement, the Labor-Management Committee decides grievances referred to it by majority vote. *Id.* (section 1.07). The collective bargaining agreement also provides that, if a grievance is not made "in writing within ten working days of its occurrence," the grievance "shall be deemed to no longer exist." *Id.* (section 1.10).

The union submitted a grievance to the Labor-Management Committee that alleged Defendant was (1) not paying its workers in accordance with the wage and benefits requirements of the collective bargaining agreement and (2) hiring non-union workers in violation of the collective bargaining agreement's referral requirement. Am. Comp. ¶ 7. The Labor-Management Committee considered the union's grievance on January 30, 2023. *Id.* ¶ 8. After considering statements from the union and Defendant's representative, the committee determined by a unanimous vote that Defendant violated the collective bargaining

agreement. *Id*. ¶ 9. In a decision memorialized in its meeting minutes, the committee directed Defendant to "pay all employees for hours work [sic] that they have not been paid for" and "pay waiting time to all employees not paid in full until they have been paid in full." *Id*.; *see also* Dkt. 23-3 (minutes). The committee also determined that Defendant hired non-union employees, violating the collective bargaining agreement's referral requirement. Am. Comp. ¶ 9; *see also* Dkt. 23-3 (minutes). For this violation, the committee found Defendant "liable to all funds." Dkt. 23-3.

The union alleges Defendant has failed to abide by the award. Am. Comp. ¶ 16. In the amended complaint, the union brings its claims in two counts, one to confirm and enforce the grievance decision and a second to require Defendant to submit to an audit so that the union can determine what amounts are due to the employees and the benefits fund. *Id*. ¶¶ 20–26.

II. LEGAL STANDARDS

The Federal Rules of Civil Procedure establish a two-step process for obtaining default judgment. First, when a party against whom a judgment for affirmative relief is sought fails to plead or otherwise defend as provided by the Federal Rules, the Clerk may enter default. Fed. R. Civ. P. 55(a). Second, after obtaining a clerk's default, the Plaintiff must

move for default judgment. Fed. R. Civ. P. 55(b). Before entering default judgment, the Court must ensure that it has jurisdiction over the claims and parties, and that the well-pled factual allegations, which are assumed to be true, adequately state a claim for which relief may be granted. *Nishimatsu Constr. Co. v. Houston Nat'l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975). If default judgment is warranted, the Court must next consider whether the Plaintiff is entitled to the relief requested. "A default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings." *See* Fed. R. Civ. P. 54(c).

III. ANALYSIS

A. Jurisdiction

This Court has subject matter jurisdiction here under 28 U.S.C. § 1331 because Count I of the amended complaint raises a federal question. The Court has personal jurisdiction over Defendant because it is a Florida limited liability company doing business in Florida.

B. Entry of Default

Plaintiff properly served the original and amended complaints on Defendant. Dkts. 9, 28; Fed. R. Civ. P. 4(h); Fla. Stat. § 48.91. Defendant did not appear. No responsive pleading was filed. The Clerk of Court entered Clerk's Default on the amended complaint on July 19, 2024. Dkt. 31.

C. Liability

1. Count I: Enforcement of the Labor-Management Committee's January 30, 2023 Decision

In Count I, Plaintiff asks the Court to confirm and enforce a decision of the Labor-Management Committee, dated January 30, 2023, under 29 U.S.C. § 185, which is section 301 of the Labor Management Relations Act ("LMRA"). *See* Am. Comp. ¶¶ 3, 5, 7, 9, 21–22.

"An arbitration award pursuant to an arbitration provision in a collective bargaining agreement is treated as a contractual obligation that can be enforced through a § 301 LMRA lawsuit." *United Steel v. Wise Alloys, LLC*, 642 F.3d 1344, 1349 (11th Cir. 2011) (quotations and citations omitted). "The decision of a joint labor-management grievance committee . . . is entitled to the same deference due the decision of an arbitrator." *Eichleay Corp. v. International Ass'n of Bridge, Structural and Ornamental Iron Workers*, 944 F.2d 1047, 1055-56 & n.7 (3d Cir. 1991). Such review is "exceedingly narrow." *Armstrong County Memorial Hosp. v. United Steel*, 419 F. App'x 217, 221 (3d Cir. 2011).

The district court must defer to the committee's decision unless (1) it does not "draw its essence" from the collective bargaining agreement, (2) it is tainted by fraud or misconduct, or (3) the union breached its duty of fair representation before the committee. *Griesmann v. Chemical Leaman Tank Lines, Inc.*, 176 F.2d 66, 74 (3d Cir. 1985). A decision "draws

its essence" from a collective bargaining agreement if "its interpretation can in any rational way be derived from the agreement, viewed in light of its language, its context, and any other indicia of the parties' intentions." *Brentwood Med. Assocs. v. United Mine Workers of Am.*, 396 F.3d 237, 240 (3d Cir. 2005) (citations omitted).

The Labor-Management Committee's decision directs Defendant to comply with the terms of the collective bargaining agreement, pay workers the wages due under that agreement, and compensate the union benefits fund for the deductions that should have been, but were not, paid to the fund because Defendant employed non-union workers. *See* Dkt. 23-3. Each finding draws its essence from the collective bargaining agreement and is rationally connected to it. There is no indication the decision is tainted by fraud or misconduct, and no evidence the union breached its duty of fair representation.

Thus, based on the well-pleaded allegations in the amended complaint, Plaintiff is entitled to enforce the Labor-Management Committee's January 30, 2023 decision.

2. Count II: Audit

In the amended complaint, Plaintiff also contends that it is entitled to audit Defendant because Defendant has not complied with the record and reporting requirements of the collective bargaining agreement. *See*

Am. Comp. ¶¶ 24–25 (Count II). In its Motion, Plaintiff does not separately argue a default on Count II. *See* Dkt. 32 at 8–15. Instead, Plaintiff simply states that courts enforce "the right to audit an employer's books and records 'when a collective bargaining agreement gives trustees the right to audit.'" *Id*. at 15 (quoting *Trustees of Fla. Carpenters Pension Fund v. Cook Retail Constr. Servs., LLC*, No. 5:23-cv-76, 2023 WL 5182524, at *3 (M.D. Fla. July 13, 2023)). There are two problems with Plaintiff's conclusory argument.

First, Plaintiff identifies no provision in the collective bargaining agreement that requires an employer to open its books for an audit. *See* Dkt. 32 at 14. To be sure, the collective bargaining agreement requires an employer to pay professional fees, including auditor fees, if the union is required to engage an auditing firm to collect delinquent payments. *See* Dkt. 23-1 at 26–27 (Sections 9.01, 9.02, and 9.04). So unlike the agreement at issue in *Carpenters Pension Fund*, the agreement here contains no provision that requires an employer to consent to an audit. *See id*. For this and other reasons, the *Carpenters Pension Fund* case is inapposite.

Without any citation to the collective bargaining agreement, Plaintiff also argues in its Motion that "the books of [Defendant] are the only way to determine Referral Procedure records." Dkt. 32 at 14. So far as I can tell, this argument refers to Section 4.17 of the collective

bargaining agreement, entitled "Inspection of Referral Records." Dkt. 23-1 at 18. However, that provision does not give the union a right to access an employer's records. *See id.* Rather, it provides employers the right to inspect the union's records. *Id.* And so, Section 4.17 provides no basis for Plaintiff's claim in Count II.

Second, even assuming the collective bargaining agreement requires Defendant to open its books for an audit, there are no well-pleaded allegations in the amended complaint establishing that Plaintiff asked Defendant to participate in an audit or raised the issue of Defendant's failure to submit to an audit to the Labor-Management Committee, as required by the agreement's exclusive dispute resolution procedures. *See, e.g.*, Dkt. 23-1 at 6 (requiring, in Section 1.06, "[a]ll grievances or questions in dispute" to be "adjusted" and, if not resolved in two days, referred to the Labor-Management Committee for a decision). Such allegations are required because, according to Section 1.10 of the collective bargaining agreement, any "grievance or dispute in question" that is not raised within ten working days is "deemed to no longer exist." *See id.* If Plaintiff did not timely initiate a grievance on the audit issue, the plain language of the collective bargaining agreement forecloses the remedy it seeks here. *See, e.g.*, *Int'l Bhd. of Elec. Workers v. SPE Util. Contractors FD, LLC*, No. 8:14-cv-193, 2015 WL 5895442, at *3 (M.D. Fla.

Oct. 6, 2015) (interpreting a collective bargaining agreement with similar exclusive grievance provisions).

In short, because the amended complaint does not demonstrate a factual basis for the claims in Count II, it does not support a default judgment. *Nishimatsu Const. Co. v. Houston Nat. Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975). I therefore respectfully recommend the Court deny Plaintiff's Motion to the extent that it seeks a default judgment on the claims in Count II.

D. Remedy

In this Motion and its original Motion for Default Judgment, Plaintiff asks the Court for "an entry of default judgment as to liability." Dkt. 32 at 15. As I explained to counsel at a hearing on Plaintiff's first Motion, although I recognize Plaintiff wishes the Court to ultimately enter a final money judgment accounting for the compensation due to union members and the union fund, the Court cannot enter one here. This is due in part because Plaintiff does not know what amounts are due and cannot make that determination until after it examines Defendant's employment and payroll records. Until Plaintiff can offer a basis for its damages, the Court cannot enter a default money judgment. *See SEC v. Smyth*, 420 F.3d 1225, 1231 (11th Cir. 2005); *see also* Fed. R. Civ. P. 55(b)(2). Plaintiff recognizes this issue, which is why it asks for a default judgment as to

liability and an order directing Defendant to submit to an accounting followed by a determination of damages. Dkt. 23 at 6.

To be sure, the Court could proceed as Plaintiff proposes. An arbitration award made pursuant to an arbitration provision in a collective bargaining agreement is considered a contractual obligation. *Textile Workers Union of Am. v. Lincoln Mills of Ala.*, 353 U.S. 448, 451 (1957). Thus, the Court could grant the Motion, require Plaintiff to engage in discovery as to damages, and hold a hearing or trial to determine the amount of damages due. *See Smyth*, 420 F.3d at 1231. Under Federal Rule of Civil Procedure 55(b)(2), the Court could also require an accounting. But I am not convinced that is the most efficient path for the parties or the Court.

Instead, I respectfully recommend instead that the Court enter a final default judgment on Count I that requires Defendant to comply with the directions contained in the Labor-Management Committee's January 30, 2023 decision. Such an injunction is a traditional equitable remedy. *State of Ala. v. United States*, 304 F.2d 583, 590 (5th Cir. 1962) ("Mandatory injunctions affirmatively compelling the doing of some act . . . are a traditional tool of equity.').

The well-pleaded allegations of the amended complaint establish the elements for permanent injunctive relief. *See eBay Inc. v.*

MercExchange, LLC, 547 U.S. 388, 391 (2006). By its default, Defendant admits it must comply with the January 30, 2023 decision and has not. *Nishimatsu Const. Co.*, 515 F.2d at 1206. Plaintiff has thus established it suffered an irreparable injury. It also has no remedies available at law because Defendant has not voluntarily made its records available or properly documented the wages earned by its workers. And the records needed to determine Defendant's liabilities under the decision are possessed by Defendant or should be. Consequently, Defendant is better positioned than Plaintiff to prove compliance with the decision's directives. The balance of hardships thus tips in favor of imposing a mandatory injunction. Lastly, as demonstrated by the enactment of LMRA, enforcement of decisions based on the grievance process in labor contracts is in the public interest. *See, e.g.*, 29 U.S.C. § 151.

To be clear, my recommendation that the Court enter judgment turns on Defendant's decision not to participate in this action. If the Court were to proceed as Plaintiff suggests, the Court and Plaintiff could very well end up some time from now in the same place if Defendant's lack of participation continues. Only Defendant has information and records about its use of non-union workers. Absent Defendant's participation and cooperation, Plaintiff will not be able to obtain evidence supporting the full measure of its damages. Plaintiff would also need to move for orders

requiring Defendant to respond to discovery and possibly to impose sanctions on Defendant if its recalcitrance continues. Furthermore, the absence of evidence could complicate the Court's damages determination and, if severe enough, even prevent the entry of a final judgment.

By entering a final default judgment imposing a mandatory injunction now, the Court would give the Plaintiff all the tools needed to enforce the Labor-Management Committee's decision. Plaintiff can execute the judgment immediately. It can conduct post-judgment discovery to acquire information and records from Defendant using the procedures provided by the Federal Rules or those of "the state where the court is located. *See* Fed. R. Civ. P. 69(a)(2); *see also In re Clerici*, 481 F.3d 1324,1336 (11th Cir. 2007) ("Rule 69(a) itself does not prescribe a practice or procedure for gathering evidence, but gives the judgment creditor the choice of federal or state discovery rules."). A judgment thus broadens the discovery mechanisms available to Plaintiff. Likewise, if Plaintiff moves in a timely manner for an award of attorney's fees, it may collect any fees awarded from Defendant immediately while it executes the judgment.

By entering a final default judgment imposing a mandatory injunction now, the Court also provides Plaintiff a tool it would not have if it received a money judgment: the ability to enforce the judgment through a civil contempt proceeding. *See Combs v. Ryan's Coal Co.*, 785

F.2d 970, 980 (11th Cir. 1986) ("[W]hen a party fails to satisfy a court-imposed money judgment the appropriate remedy is a writ of execution, not a finding of contempt") (citation omitted). The remedies available to Plaintiff and the Court in such a proceeding would allow the Court to reach "beyond the matters immediately underlying its equitable jurisdiction and decide whatever other issues and give whatever other relief may be necessary" to achieve complete justice. *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946) (citing *Camp v. Boyd*, 229 U.S. 530, 551 (1913)). The possibility of civil contempt sanctions might be all the incentive needed to convince Defendant to cooperate with Plaintiff and pay the funds due to Plaintiff, its workers, and the funds.

IV. RECOMMENDATIONS

Accordingly, I respectively **RECOMMEND** that the Court:

1. **GRANT IN PART** and **DENY IN PART** Plaintiff's Second Motion for Entry of Default Judgment on Enforcement of Arbitration Award (Dkt. 32);

2. **DISMISS** Count II of the Amended Complaint;

3. **DIRECT** the Clerk to enter a default judgment as follows and close this case:

> **IT IS ORDERED AND ADJUDGED**
>
> that judgment be entered in favor of Plaintiff, International Brotherhood of Electrical Workers, Local

606, and against Defendant, JAM Electric, LLC, on Count I of the Amended Complaint.

Defendant, JAM Electric, LLC, shall pay (1) all employees for hours worked, (2) waiting time to all employees not paid in full, and (3) all amounts due under the collective bargaining agreement for benefits and other contributions, as required by the Labor-Management Committee's January 30, 2023 decision.

3. **DIRECT** Plaintiff to move for an award of attorney's fees and nontaxable costs no later than 45 days after the issuance of an order adopting this Report and Recommendation.[1]

NOTICE TO PARTIES

"Within 14 days after being served with a copy of [a report and recommendation], a party may serve and file specific written objections to the proposed findings and recommendations." Fed. R. Civ. P. 72(b)(2). "A party may respond to another party's objections within 14 days after being served with a copy." *Id*. A party's failure to serve and file specific objections to the proposed findings and recommendations alters review by the district judge and the United States Court of Appeals for the Eleventh Circuit, including waiver of the right to challenge anything to which no objection was made. *See* Fed. R. Civ. P. 72(b)(3); 28 U.S.C. § 636(b)(1)(B); 11th Cir. R. 3-1.

[1] Plaintiff may ask the Clerk to tax costs taxable under 28 U.S.C. § 1920 using the procedure set forth in Federal Rule of Civil Procedure 54(d)(1).

Entered in Orlando, Florida, on December 20, 2024.

ROBERT M. NORWAY
United States Magistrate Judge

Copies furnished to:

Counsel of Record