

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**Employers and operating
Engineers local 520 et al.,**

Plaintiff,

vs.

SHERRELL CONSTRUCTION, INC.,

Defendant.

No. 16-cv-213-DRH-SCW

ORDER

HERNDON, District Judge:

Plaintiffs, Employers and Operating Engineers Local 520, et al. (“plaintiffs” or “Local 520”), filed the instant lawsuit pursuant to the Employee Retirement Income Security Act (ERISA), 29 U.S.C. §1132 and pursuant to the Labor Management Relations Act, 29 U.S.C. §185 (“LMRA”), against defendant, Sherrell Construction, Inc. (“Sherrell”), seeking to collect delinquent fringe benefit contributions, union dues and liquidated damages. Currently before the Court is plaintiffs' motion for summary judgment. Sherrell has failed to respond to the motion. The Court may, in its discretion, construe a party's failure to file a timely response as an admission of the merits of the motion, and the Court will do so in this case. Local Rule 7.1(c). Accordingly, the Court departs from the customary practice of construing facts in the light most favorable to the non-moving party, and instead admits all properly supported facts set forth in the record. *See, e.g., Smith v. Lamz*, 321 F.3d 680, 683 (7th Cir. 2003).

The following facts and claims are undisputed:

Sherrell is party to a collective bargaining agreement with Operating Engineers Local 520 which requires the payment of fringe benefit contributions for each hour of covered work, requires the submission of monthly report forms, provides for the payment of ten percent (10%) liquidated damages on delinquent contributions, and requires the payment of the plaintiffs' attorneys' fees by delinquent employers.

Sherrell executed the prior collective bargaining agreement, but not the current one. However, Sherrell has employed union members and has submitted fringe benefit reports under the contract for the current period. The report form states that the submission of the report makes the employer a signatory party to the collective bargaining agreement.

The record shows that Sherrell has been delinquent in the payment of its fringe benefit contributions. Specifically, Sherrell submitted its contribution reports without payment for the months of July, August and December 2015, and therefore owes \$17,319.71 in contributions. Sherrell paid its contributions late for April, August, September, October, November and December 2014 and April and June 2015. For the period of April 2014 through December 2015, Sherrell owes liquidated damages of \$5,005.94, for a total of \$22,325.65.

In addition, the collective bargaining agreement provides for the payment of plaintiffs' attorneys' fees and court costs. Plaintiffs' have incurred fees and costs of \$682.00.

For the foregoing reasons, plaintiffs are entitled to a summary judgment against defendant Sherrell Construction, Inc. in the total amount of \$22,325.65 for contributions and liquidated damages, plus attorneys' fees and court costs of \$682.00, for a total of \$23,007.65.

Accordingly, the Court finds the plaintiffs are entitled to summary judgment against Sherrell in the total amount of \$22,325.65 for contributions and liquidated damages, plus attorneys' fees and court costs of \$682.00, for a total of \$23,007.65. FURTHER, the Court DIRECTS the Clerk to enter judgment reflecting the same.

IT IS SO ORDERED.

Signed this 18th day of October, 2016.

David R. Herndon



Digitally signed by Judge
David R. Herndon
Date: 2016.10.18 11:19:55
-05'00'

United States District Judge