

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ELECTRICAL WORKERS PENSION
TRUST FUND OF LOCAL UNION #58,
IBEW, et al.

Plaintiffs,

CASE NO. 09-10523

-vs-

HONORABLE ARTHUR J. TARNOW

SKY LITE ELECTRIC, INC. and
D & M ELECTRIC, INC.,

Defendants.

**ORDER DENYING DEFENDANTS' MOTION FOR
RECONSIDERATION AND GRANTING
DEFENDANTS' MOTION FOR RELIEF FROM JUDGMENT**

This matter has been brought before the Court pursuant to Defendants' Motion for Reconsideration of Order Rejecting Report and Recommendation and Granting Plaintiffs' Motion for Summary Judgment and Motion for Relief from Judgment, with a response having been filed by Plaintiffs.

With respect to Defendants' Motion for Reconsideration, Eastern District of Michigan Local Rule 7.1(g)(3) provides for reconsideration if the movant demonstrates a palpable defect by which the court and the parties have been misled, and further demonstrates that correcting the defect will result in a different disposition of the case. "A 'palpable defect' is a defect which is obvious, clear, unmistakable, manifest, or plain." *Fleck v. Titan Tire Corp.*, 177 F. Supp. 2d 605, 624 (E.D. Mich. 2001). "[T]he court will not grant motions for rehearing or reconsideration that merely present the same issues ruled upon by the court, either expressly or by reasonable implication." L.R. 7.1(g)(3).

Defendants have failed to make the required showing for reconsideration. Therefore, Defendants' Motion for Reconsideration is **DENIED**.

With respect to Defendants' Motion for Relief for Judgment, having considered the Defendants' arguments, and the Plaintiffs' response to those arguments, the Motion is **GRANTED** as follows:

IT IS HEREBY ORDERED that The Conclusion Section of the Order Rejecting Report and Recommendation and Granting Plaintiffs' Motion for Summary Judgment [39] is deleted and replaced with the following:

IV. CONCLUSION

The Court having reviewed the record, the Magistrate's Report and Recommendation, and the parties' pleadings in this case, and being fully advised in the premises,

IT IS HEREBY ORDERED that Plaintiffs' Objections [36] are ***SUSTAINED***, and the disposition proposed in the Report and Recommendation [34] is ***REJECTED***.

IT IS FURTHER ORDERED that Plaintiffs' Motion for Summary Judgment [20] is hereby ***GRANTED***. Accordingly,

IT IS FURTHER ORDERED that Defendants shall be required to make available to an auditor appointed by Plaintiffs all of their books, records and accounts only through July 21, 2007 showing work performed by employees, hours worked by employees, and any sums paid to Plaintiffs and to employees covered by the collective bargaining agreement;

IT IS FURTHER ORDERED that, based upon the auditor's review of those records, Plaintiffs shall prepare an audit reflecting all amounts that Plaintiffs claim are owed by Defendants to Plaintiffs, including delinquent contributions and liquidated damages, with Defendants having the right to dispute both the amounts owed and the duration of their obligation under the collective bargaining agreement to contribute to Plaintiffs.

IT IS FURTHER ORDERED that the Judgment [40] is vacated.

S/ARTHUR J. TARNOW
Arthur J. Tarnow
Senior United States District Judge

Dated: February 7, 2011

I hereby certify that a copy of the foregoing document was served upon counsel of record on February 7, 2011, by electronic and/or ordinary mail.

S/LISA M. WARE
Case Manager

Stipulated as to form:

SACHS WALDMAN

SCHWARTZ LAW FIRM

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