Ron Simmons, d/b/a Bell Construction Co., Inc. ***and*** **Operating Engineers Local Union No. 3.** Case 20-CA-15694

November 12, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, and Section 102.48 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the National Labor Relations Board issued an unpublished Order in the above-entitled proceeding on December 16, 1981,[1] in which it adopted the findings and conclusions of the Administrative Law Judge as contained in his Decision of October 6, 1981. The Administrative Law Judge's Decision, *inter alia*, found that Respondent violated Section 8(a)(3) and (1) of the Act by discharging Ernie Killinger for engaging in activity on behalf of the Union and ordered Respondent to, *inter alia*, offer full reinstatement to Ernie Killinger and make him whole for any loss of earnings by payment to him of a sum of money equal to the amount he normally would have earned as wages from the date of his discharge to the date of Respondent's offer of reinstatement, less net interim earnings, plus interest thereon, computed in accordance with Board precedent. On May 3, 1982, the United States Court of Appeals for the Ninth Circuit entered its decree granting the Board's application for summary entry of a judgment enforcing in full the Board's Order. The Regional Director for Region 20 thereafter duly issued and served on Respondent and Respondent's attorney the backpay specification herein which sets forth the amounts of backpay allegedly due Killinger. Respondent has failed to timely file an answer to the backpay specification, and its allegations, therefore, stand uncontroverted.

On September 7, 1982, counsel for the General Counsel filed a Motion for Summary Judgment, with appendixes attached. Subsequently, on September 10, 1982, the Board issued an Order Transferring the Proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent did not file a response to the Notice To Show Cause and therefore the allegations of the Motion for Summary Judgment stand uncontroverted.

[1] There were no exceptions filed to the Administrative Law Judge's Decision and recommended Order.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.54(c) of the National Labor Relations Board Rules and Regulations, Series, 8, as amended, provides in relevant part with respect to a backpay specification:

> (c) *Effect of failure to answer or to plead specifically and in detail to the specification.*—If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without . . . notice to the respondent, find the specification to be true and enter such order as may be appropriate.

The Regional Director's backpay specification and notice of hearing, dated May 21, 1982, were served on Respondent and by certified mail on Respondent's attorney. Respondent's answer not having been received, the Acting Regional Attorney for Region 20 on July 1, 1982, sent by certified mail additional copies of the backpay specification to Respondent and Respondent's attorney, stating by cover letter that if an answer was not received within 7 days, a Motion for Summary Judgment would be filed with the Board. No answer to the backpay specification had been filed as of the date of the filing of the Motion for Summary Judgment. Respondent has not filed any response to the Notice To Show Cause.

No good cause for failure to file an answer having been shown, in accordance with the rule set forth above, the Board deems Respondent to have admitted all allegations of the backpay specification to be true and thus there are no matters in issue requiring a hearing. Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the basis of the backpay specification and the entire record in this case, the Board makes the following findings of fact:

We find that Ernie Killinger is entitled to be made whole under the Board's Order and the court's decree by payment to him of the amount summarized and calculated in the backpay specification; namely, by payment of a sum of $1,637.06, plus interest accrued to the date of payment, minus the tax withholdings required by Federal and state laws.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Ron Simmons, d/b/a Bell Construction Co., Inc., Chico, California, its officers, agents, successors, and assigns, shall pay Ernie Killinger a sum of $1,637.06. Interest thereon is to be computed in the manner prescribed in *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962), and *Florida Steel Corporation*, 231 NLRB 651 (1977), minus the tax withholdings required by Federal and state laws.