

267 NLRB No. 85

JZH

D--9943
Detroit, MI

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

E. A. FULLER BENTLEYS, INC. d/b/a
BENTLEYS LOUNGE AND E. AND W.
MANAGEMENT, INC. d/b/a THE TOKEN
LOUNGE AND DAVID ERF, A SOLE
PROPRIETORSHIP d/b/a PETE AND
ANN'S ¹

and

Case 7--CA--17824

PAM PINCH, an Individual

SUPPLEMENTAL DECISION AND ORDER

On 5 November 1981 the National Labor Relations Board issued an unpublished Order in the above-entitled proceeding, adopting, in the absence of exceptions, the findings, conclusions, and recommendations of the Administrative Law Judge as contained in his Decision, and directing Respondent, inter alia, to make whole the discriminatees for any loss of earnings suffered as a result of Respondent's unfair labor practices. On 18 June 1982 the United States Court of Appeals for the Sixth Circuit, in Case 82--1336, issued its mandate enforcing the Board's Order. A controversy having arisen over the amount of backpay due the

¹ In the underlying unfair practice case Respondents were found to be a single employer within the meaning of Sec. 2(6) and (7) of the Act, and herein shall be referred to as Respondent.

discriminatees under the terms of the Board's Order, as enforced by the court, the Acting Regional Director for Region 7, on 25 August 1982, issued a backpay specification and notice of hearing, alleging the amount of backpay due. Subsequently, on 31 August 1982, Respondent filed an answer generally denying each allegation of the backpay specification.

On 13 September 1982 the General Counsel, by counsel, filed with the Board a "'Motion to Strike Certain Responses of Answer to Backpay Specification and Motion for Partial Summary Judgment.'" Thereafter, on 17 September 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's motions should not be granted. On 1 October 1982 Respondent filed a response to the Notice To Show Cause. Finding that Respondent's response to the Notice To Show Cause constituted an amended answer to the backpay specification, the Board, on 6 December 1982, denied the General Counsel's Motion for Partial Summary Judgment and remanded the proceeding to the Regional Director for Region 7 so that a hearing on the amount of backpay owed to the discriminatees could be conducted.²

Thereafter, on 23 May 1983,³ counsel for the General Counsel filed with the Board a "'Motion to Transfer Case to and Continue Proceedings Before the Board and Motion for Summary Judgment,'" with attachments, alleging, inter alia, that, by letter dated 16 May to counsel for the General Counsel, Respondent: (1) withdrew

² 265 NLRB No. 88 (1982).

³ Hereafter all dates refer to 1983.

its answer to the backpay specification; (2) admitted those allegations not previously admitted; and (3) waived a hearing regarding the backpay allegations. On 26 May the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's motions should not be granted. To date, Respondent has not filed a response to the Notice To Show Cause.

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

Respondent's 16 May letter to counsel for the General Counsel states:

This is to advise that the respondent hereby withdraws its answer to the backpay allegations and, therefore, admits those allegations not previously admitted. The respondent further waives the hearing regarding said backpay allegations.

Thus, the letter makes clear that Respondent admits all of the allegations of the backpay specification. Further, although the Notice To Show Cause specified that a response thereto must be filed with the Board on or before 9 June, no such response was filed. Hence, the allegations of the specification having been admitted and no good cause to the contrary having been shown, the allegations of the backpay specification are found to be true. Accordingly, we shall grant the Motion for Summary Judgment.

On the basis of the allegations of the specification, which are accepted as true, the Board finds the facts as set forth therein, concludes that the net backpay due each of the employees is as stated in the computations of the specification,⁴ and orders that payment thereof be made by Respondent as set forth below.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, E. A. Fuller Bentleys, Inc. d/b/a Bentleys Lounge and E. and W. Management, Inc. d/b/a The Token Lounge and David Erf, a sole proprietorship d/b/a Pete and Ann's, Detroit, Michigan, its officers, agents, successors, and assigns, shall make whole each of the employees named below by payment to them of the amounts set forth adjacent to their names, plus interest computed in the manner described in Florida Steel Corporation, 231 NLRB 651 (1977) (see, generally, Isis Plumbing & Heating Co., 138 NLRB 716 (1962)), and accrued to the date of payment, minus tax withholdings required by Federal and state laws:

⁴ Due to an inadvertent arithmetic error in the computations of Elizabeth Filko's third-quarter 1980 interim earnings, the backpay specification incorrectly alleges that Respondent's liability to her is \$7,745.44. In the Order set forth below we have corrected the error, thereby reducing Respondent's liability to \$7,745.43.

Pam Pinch	\$13,452.43
Debbie Williams	9,626.45
Elizabeth Filko	7,745.43
Jonie Zuzindlak	10,395.19
Cherie Christie	10,270.00

Dated, Washington, D.C. 26 August 1983

Howard Jenkins, Jr., Member

Don A. Zimmerman, Member

Robert P. Hunter, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD