

**Marko Contractors, Inc. and Laborers' District Council of West Virginia, affiliated with the Laborers' International Union of North America, AFL-CIO. Case 9-CA-19708-3**

13 April 1984

**DECISION AND ORDER**

**BY CHAIRMAN DOTSON AND MEMBERS  
ZIMMERMAN AND HUNTER**

Upon a charge and amended charge filed by the Union on 26 May 1983 and 14 July 1983,<sup>1</sup> respectively, the General Counsel of the National Labor Relations Board issued a complaint on 15 July against Marko Contractors, Inc., the Respondent, alleging that it has violated Section 8(a)(3) and (1) of the National Labor Relations Act.

On 21 July the Respondent filed answer admitting certain allegations, but denying in part the allegations of the complaint. Specifically, the Respondent denied the 8(a)(1) and (3) allegations and as an affirmative defense alleged that it has engaged in no unfair labor practices.

On 19 September the General Counsel filed an amended complaint alleging violations of Section 8(a)(1) in addition to those alleged in the 15 July complaint. On 20 September the Regional Director for Region 9 issued an order consolidating proceedings, backpay specifications, and notice of hearing. Although properly served with both of

<sup>1</sup> All dates are 1983 unless otherwise noted.

these documents the Respondent has failed to file an answer.<sup>2</sup>

In its answer the Respondent denied the 8(a)(1) and (3) allegations of the complaint and asserted that it had committed no unfair labor practices. Thus the Respondent has denied the allegation which must be proved true prior to consideration of the backpay specifications for which the General Counsel now seeks summary judgment. Furthermore, the Respondent has generally and specifically denied the commission of acts violative of Section 8(a)(1)—the same substantive basis on which the amended complaint's additional allegations rely. In so doing the Respondent has raised litigable issues. We find that granting a Motion for Summary Judgment pursuant to Section 102.20 of the Board's Rules in these circumstances is not appropriate.<sup>3</sup> We shall therefore deny the motion.

**ORDER**

It is hereby ordered that the General Counsel's Motion for Summary Judgment in the above-captioned proceeding be denied.

IT IS FURTHER ORDERED that the above-entitled proceeding be remanded to the Regional Director for Region 9 for further appropriate action.

<sup>2</sup> The General Counsel sent a telegram to the Respondent's attorney on 5 October to confirm their phone conversation of that same date during which the Respondent's attorney informed the General Counsel that it did not intend to file an answer to the amended complaint or backpay specification.

<sup>3</sup> *WUSS Radio*, 236 NLRB 1529 (1978).