

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

DONALD EUGENE HARDING d/b/a UNIFORM FLAGGING
OF OREGON

and

Case 36--CA--4095 *and*

OREGON, SOUTHERN IDAHO, WYOMING & UTAH DISTRICT
COUNCIL OF LABORERS, LABORERS' INTERNATIONAL
UNION OF NORTH AMERICA, AFL--CIO

DONALD EUGENE HARDING d/b/a BROTHERS CONCRETE
CUTTING OF EUGENE

and

36--CA--4189

OREGON, SOUTHERN IDAHO, WYOMING & UTAH DISTRICT
COUNCIL OF LABORERS, LABORERS' INTERNATIONAL
UNION OF NORTH AMERICA, AFL--CIO

SUPPLEMENTAL DECISION AND ORDER

On 30 September 1982 the National Labor Relations Board issued a Decision and Order in Case 36--CA--4095,¹ and on 31 January 1983 a Decision and Order in Case 36--CA--4189,² in which it ordered the Respondent, inter alia, to make whole employees in the collective-bargaining unit for their losses resulting from the Respondent's unfair labor practices in violation of Section 8(a)(5) and (1) of the National Labor Relations Act. On 25 April and 16 June 1983,

¹ 264 NLRB No. 167 (not reported in Board volumes).
² 266 NLRB No. 21.

respectively, the United States Court of Appeals for the Ninth Circuit entered its Judgments enforcing the Board's Orders.

A controversy having arisen over the amount of contributions due under the Board's Orders, the Regional Director for Region 19, on 29 July 1983, issued a backpay specification and notice of hearing in Case 36--CA--4095, alleging the amounts of back contributions due the employees of Uniform Flagging of Oregon from 15 October 1981 through 31 July 1982. The Respondent did not file an answer to the backpay specification. On 26 August 1983 the Acting Regional Director for Region 19 issued a backpay specification in Case 36--CA--4189, alleging the amounts of back contributions due the employees of Brothers Concrete Cutting of Eugene from 15 February through 31 August 1982, an amended backpay specification in Case 36--CA--4095, and an order consolidating cases and notice of hearing. The Respondent filed no answers to the specifications, and the General Counsel filed a Motion for Partial Summary Judgment with the Division of Administrative Law Judges. Partial summary judgment was sought because the General Counsel had been unable to obtain from the Respondent the necessary records on which to predicate specific figures for the amounts due beyond 31 July 1982 in Case 36--CA--4095 and beyond 31 August 1982 in Case 36--CA--4189. Associate Chief Administrative Law Judge Pannier issued an Order to Show Cause why the General Counsel's Motion for Partial Summary Judgment should not be granted. The Respondent failed to file a response to the Order to Show Cause. On 22 November 1983 Judge Pannier granted the General Counsel's Motion for Partial Summary Judgment and ordered that the backpay specification in Case 36--CA--4189 and the amended backpay specification in Case 36--CA--4095 be held true.

The Respondent failed to appear at the hearing held in Eugene, Oregon, 30 November 1983, and the judge remanded the matter to the Regional Director

until such time as an amendment to the specifications could be issued. Subsequently, the Respondent provided the required information and, on the basis of that information, on 15 December 1983 the Regional Director issued amendments to the backpay specifications and a new notice of hearing. The Respondent failed to file an answer to the 15 December amendments. Thereafter, on 27 February 1984, the General Counsel filed directly with the Board a Motion for Summary Judgment, based on the Respondent's failure to file an answer to the 15 December amendments to the backpay specifications, and for confirmation of the partial summary judgment granted by Judge Pannier. Subsequently, on 2 March 1984, the Board issued an order transferring the proceedings to the Board and a Notice to Show Cause why the General Counsel's motion should not be granted. The Respondent filed no response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.54 of the Board's Rules and Regulations provides that if an answer is not filed within 15 days from the service of the specification the Board may find the specification to be true.

The amended backpay specification states that the Respondent shall file an answer within 15 days from the date of the amended specification, and that if the answer fails to deny the amended specification's allegations in the manner required under the Board's Rules and Regulations, and the failure to do so is not adequately explained, the allegations shall be deemed to be true. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the General Counsel, by letter dated 13 February 1984, notified the

Respondent that, if an answer was not filed by 21 February 1984, a Motion for Summary Judgment would be filed.

In the absence of any explanation for the Respondent's failure to file timely answers, we grant the General Counsel's Motion for Summary Judgment.³

Accordingly, the Board concludes that the back contributions due the specified trust funds are as stated in the computations of the amended backpay specification and orders the Respondent to pay those amounts to the specified trust funds.

ORDER

1. The National Labor Relations Board orders that the Respondent, Donald Eugene Harding d/b/a Uniform Flaggging of Oregon, Eugene, Oregon, its officers, agents, successors, and assigns, shall make whole the bargaining unit employees by payment to the trust funds as provided in the applicable collective-bargaining agreements between the Respondent and Oregon, Southern Idaho, Wyoming & Utah District Council of Laborers, Laborers' International Union of North America, AFL--CIO, the sum of \$5,619.96 with interest accruing at the rate of \$501.46 per month after 20 January 1984.

2. The National Labor Relations Board orders that the Respondent, Donald Eugene Harding d/b/a Brothers Concrete Cutting of Eugene, Eugene, Oregon, its officers, agents, successors, and assigns, shall make whole the bargaining unit employees by payment to the trust funds as provided in the applicable collective-bargaining agreements between the Respondent and Oregon, Southern

³ In granting the Motion for Summary Judgment we are confirming the 22 November 1983 partial summary judgment granted by Judge Pannier. In granting the General Counsel's Motion for Summary Judgment, Chairman Dotson specifically relies on the total failure of the Respondent to respond to the allegations of the General Counsel's amended backpay specification. Thus, the Chairman regards this proceeding as being essentially a default judgment which is without precedential value.

Idaho, Wyoming & Utah District Council of Laborers, Laborers' International Union of North America, AFL--CIO, the sum of \$18,635.65 with interest accruing at the rate of \$1,774.82 per month after 20 January 1984.

Dated, Washington, D.C. 30 April 1984

Donald L. Dotson, Chairman

Don A. Zimmerman, Member

Patricia Diaz Dennis, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)