

Jim Rodgers d/b/a Jim Rodgers Superior Insulation and Superior Abatement, Inc., All State Insulation, and Construction Services, Alter Egos and Heat and Frost Insulators and Asbestos Workers Local No. 16, a/w International Association of Heat and Frost Insulators and Asbestos Workers, AFL-CIO. Case 32-CA-9650

October 29, 1990

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS CRACRAFT, DEVANEY, AND
RAUDABAUGH

On September 8, 1989, the Board issued a Decision and Order in this proceeding,¹ ordering, inter alia, that the Respondent, Jim Rodgers d/b/a Jim Rodgers Superior Insulation, comply with its collective-bargaining agreement with Heat and Frost Insulators and Asbestos Workers Local No. 16, a/w International Association of Heat and Frost Insulators and Asbestos Workers, AFL-CIO (the Union), effective by its terms from August 1, 1986, through July 31, 1989; pay all fringe benefits contributions, including vacation and health and welfare and pension contributions, required by the collective-bargaining agreement; make its unit employees whole for any losses resulting from its repudiation of the collective-bargaining agreement and reimburse them for expenses ensuing from its failure to pay fringe benefit contributions; reinstate unfair labor practice strikers on their application; and make any employee improperly denied reinstatement whole for any loss of earnings. On March 22, 1990, the United States Court of Appeals for the Ninth Circuit entered a judgment enforcing the Board's Order in full.²

On April 20, 1990, the Acting Regional Director for Region 32 issued a compliance specification and notice of hearing (the specification) that set forth the Respondent's liability for failing to make fringe benefit contributions and deduct dues³ from April 1988, when it unilaterally ceased the contributions and the deduction of dues, until July 31, 1989, when its collective-bargaining agreement with the Union expired. The specification also set forth the Respondent's liability under article IX, section 8 of the collective-bargaining agreement for liquidated damages and interest for its failure to make fringe benefit contributions. A copy of the specification was sent by certified mail to the Respondent which the Respondent did not claim. On May 15, 1990, the Region's compliance officer sent a letter to the Respondent, by certified mail, notifying the Respondent that no answer had been received to the spec-

ification, and that unless the Respondent filed an answer by May 21, 1990, the Region would institute summary judgment proceedings. The Respondent did not claim the May 14, 1990 letter.

On July 3, 1990, the compliance officer sent individually, by certified and regular mail, copies of the specification with cover letters to Superior Abatement, Inc., All State Insulation, and Construction Services advising them that, as alleged alter egos in the specification, they had to be accorded an opportunity to answer the specification and that they had until July 30, 1990, to file an answer. The certified letters were not claimed. The letters sent by regular mail, however, were not returned to the Regional Office as undelivered or undeliverable. To date, no answer to the specification has been filed by the Respondent, Superior Abatement, Inc., All State Insulation, or Construction Services.

On August 2, 1990, the General Counsel filed a Motion for Summary Judgment. On August 6, 1990, the Board issued an order transferring proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent, Superior Abatement, Inc., All State Insulation, and Construction Services failed to file a response. The allegations in the motion are therefore undisputed.

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

On the entire record in this proceeding, the Board makes the following

Ruling on Motion for Summary Judgment

Section 102.56(c)⁴ of the Board's Rules and Regulations provides that if the Respondent fails to file an answer within 21 days from service of the specification, the Board may find the specification to be true and enter such order as may be appropriate. It is apparent from the evidence and representations submitted by the General Counsel that the failure of the Respondent, Superior Abatement, Inc., All State Insulation, and Construction Services to answer or otherwise respond to either the specification or the Motion for Summary Judgment is not due to their lack of knowledge of these documents.

As we noted in *Michigan Expediting Services*, 282 NLRB 210 fn. 6 (1986), "The Respondent's refusal or failure to claim certified mail should not serve to defeat the purposes of the Act." Therefore, we deem the

¹ 296 NLRB No. 66 (not reported in Board volume).

² The court's judgment was numbered 89-70539.

³ The Respondent was obligated under its collective-bargaining agreement with the Union to remit 76 cents per employee hour in union dues to the Union on behalf of all employees who had signed dues-deduction authorization forms.

⁴ Sec. 102.56(c) states, in relevant part, as follows:

(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 taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

allegations to be true,⁵ find the alleged amounts of fringe benefit contributions, dues, and liquidated damages set forth in the specification to be correct, and grant the Motion for Summary Judgment.⁶

ORDER

The National Labor Relations Board orders that the Respondent, Jim Rodgers d/b/a Jim Rodgers Superior Insulation, and its alter egos Superior Abatement, Inc., All State Insulation, and Construction Services, Anti-

och, California, their officers, agents, successors, and assigns, shall pay to the Western States Asbestos Workers Fringe Benefit Plans and Heat and Frost Insulators and Asbestos Workers Local No. 16, a/w International Association of Heat and Frost Insulators and Asbestos Workers, AFL-CIO, \$186,930.96 in fringe benefit contributions and dues,⁷ \$37,386.19 in liquidated damages,⁸ and interest on these two amounts until paid.⁹

⁵The specification alleges, and we find, that Superior Abatement, Inc., All State Insulation, and Construction Services are alter egos of the Respondent and of each other and are therefore liable for all liabilities arising under the Board Order.

⁶The General Counsel concedes, and we find, that all the unfair labor practice strikers named in the specification either had interim earnings in excess of the Respondent's gross backpay liability or were unavailable during the applicable calendar quarter and that the Respondent has to date incurred no backpay liability as a result of its failure to reinstate unfair labor practice strikers. The Respondent, however, will incur a future backpay liability to unfair labor practice strikers if it employs other employees into the appropriate unit at wages that exceed offsetting interim earnings of unfair labor practice strikers.

⁷The specification combines the amount owed the benefit plans for fringe benefit contributions with the amount owed the Union for dues and alleges the total amount due as \$186,930.96. Of this amount, it appears that \$1,581.94 is owed to the Union for dues, and \$185,349.02 is owed to the benefit plans for fringe benefit contributions.

⁸This amount is owed to the benefit plans.

⁹In accordance with Board policy, interest on the amount due the Union for dues will be calculated in the manner set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Interest on the amounts due the benefit funds will be calculated at the rate of 7 percent per annum as set forth in the collective-bargaining agreement. See *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).