

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SPENGLER ENTERPRISES, INC.
d/b/a RGS MECHANICAL

and

Case 1--CA--26818

SHEET METAL WORKERS, LOCAL 17,
a/w SHEET METAL WORKERS
INTERNATIONAL ASSOCIATION

SUPPLEMENTAL DECISION AND ORDER

By Chairman Stephens and Members Cracraft and Oviatt
On April 16, 1990, the National Labor Relations Board issued a Decision

and Order in this proceeding,¹ directing Spengler Enterprises, Inc. d/b/a RGS Mechanical, the Respondent, inter alia, to pay the fringe benefit amounts owed since May 15, 1989, and to make whole employees for losses resulting from its unfair labor practices. On July 20, 1990, the Regional Director for Region 1 issued a compliance specification and notice of hearing, alleging that a controversy had arisen over the amount of backpay due under the terms of the Board's Order, and notifying the Respondent that it must file a timely answer complying with the Board's Rules and Regulations.² By letter dated October 5, 1990, the Regional Office notified the Respondent's attorney that an answer to the compliance specification and notice of hearing was required. The letter

¹ 298 NLRB No. 19.

² On January 24, 1990, the Respondent filed a petition with the Bankruptcy Court, District of Massachusetts, under chapter 11 of the Bankruptcy Code. On April 27, 1990, the Regional Director filed a proof of claim in that proceeding. The compliance specification sets forth the bankruptcy priority of the fringe benefit delinquencies.

advised that the Respondent had until October 26, 1990, to file an answer, or a Motion for Summary Judgment might issue. On October 25, 1990, the Respondent answered by letter from its attorney, stating only that the Respondent was in a chapter 11 bankruptcy proceeding and that "no further action can be taken against this Company while it is in the bankruptcy proceeding."

On January 3, 1991, the General Counsel filed with the Board in Washington, D.C., a Motion to Transfer to Board for Decision and for Summary Judgment. On January 8, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's motion should not be granted.³ The Respondent has filed no response.⁴

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 Motion for Summary Judgment

Section 102.56(b) and (c) of the National Labor Relations Board's Rules and Regulations states:

(b) Contents of answer to specification.---The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegation of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent,

³ The Board's Order and notice specified that the response must be filed with the Board in Washington, D.C., on or before January 22, 1991.

⁴ On February 4, 1991, the Respondent's attorney filed a letter with the Board in Washington, D.C., notifying the Board that the Respondent had filed for bankruptcy protection under chapter 7 of the United States Bankruptcy Code. Documents included with the letter indicate that the Respondent's bankruptcy was converted from chapter 11 to chapter 7 on July 27, 1990.

The Respondent's February 4, 1991 letter clearly does not constitute a timely response to the Notice to Show Cause, inasmuch as that response was to have been filed no later than January 22, 1991.

including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(c) Effect of failure to answer or to plead specifically and in detail to backpay allegations of 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. If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

The Respondent has raised no objection to any of the allegations in the compliance specification and has not offered any explanation for its failure to do so. To the extent that the Respondent has suggested that the bankruptcy proceeding precludes the Board from proceeding with this matter, the Respondent has attempted to invoke the automatic stay provisions of the Bankruptcy Code. It is well settled, however, that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to process an unfair labor practice case to its final disposition. Board proceedings fall within 11 U.S.C. § 362(b)(4) and (5), the exception to the automatic stay provision for proceedings by a governmental unit to enforce its police or regulatory powers. Phoenix Co., 274 NLRB 995 (1985). Therefore, we conclude that the Respondent has not filed an answer contesting the allegations in the compliance specification, and has offered no explanation for its failure to do so.

As the Respondent has not filed an answer contesting the allegations in the compliance specification and has not offered any explanation for its

failure to do so, in accordance with the rules set forth above, the allegations of the specification are deemed to be true and we so find. Accordingly, we grant the General Counsel's Motion for Summary Judgment, conclude that the fringe benefit contribution amounts due are as stated in the compliance specification, and order that payment be made by the Respondent as set forth below.

ORDER

The National Labor Relations Board orders that the Respondent, Spengler Enterprises, Inc. d/b/a RGS Mechanical, Dracut, Massachusetts, its officers, agents, successors, and assigns, shall pay the fringe benefit fund contribution amounts set forth in the compliance specification, plus any additional amounts computed in accordance with Merryweather Optical Co., 240 NLRB 1213, 1216 fn. 7 (1979).

Dated, Washington, D.C. February 28, 1991

James M. Stephens, Chairman

Mary Miller Cracraft, Member

Clifford R. Oviatt, Jr., Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD