

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

MIDDLE EARTH GRAPHICS, INC. and/or  
THE BINDERY, INC.<sup>1</sup>

and

JAMES CANNON, JR., an Individual

LIDELL FORD, JR., an Individual

WAYNE FORD, an Individual

KAREN ROOT, an Individual

CLARK OLSON, an Individual

GARRY ROOT, an Individual

UNITED PAPER WORKERS INTERNATIONAL  
UNION, AFL--CIO--CLC

Cases 7--CA--24013(1),  
7--CA--24019,  
7--CA--24013(2),  
7--CA--24914(1),  
7--CA--24013(3),  
7--CA--24856(2),  
7--CA--24030(1),  
7--CA--25033  
7--CA--24030(2),  
7--CA--24856(3),  
7--CA--24914(2),  
7--CA--24953,  
7--CA--24030(5), and  
7--CA--24921

SUPPLEMENTAL DECISION AND ORDER REMANDING

*By Chairman Stephens and Members Cracraft and Raudabaugh*  
On May 19, 1987, the National Labor Relations Board issued a Decision and

Order in this proceeding.<sup>2</sup> On April 24, 1989, the United States Court of

<sup>1</sup> The name of the Respondent in the caption reflects alleged changes in the identity of the respondent employing entity since the unfair labor practice stage of this proceeding. Paragraphs 1, 2, and 3 of the backpay specification allege The Bindery, Inc., as being either a single employer with Middle Earth Graphics, Inc., the original Respondent, or a joint employer with the latter party. Only the Respondent Middle Earth Graphics has filed an answer to the specification. For our purposes here, all references in this decision and order to "the Respondent" refer to the respondent identified in the caption. Such references, however, should not be construed to mean that a determination on the merits has been made as to the single and/or joint employer issue raised in the specification.

<sup>2</sup> 283 NLRB 1049.

Appeals for the Sixth Circuit entered judgment enforcing the Board's Order.<sup>3</sup> A controversy having arisen over the amount of backpay due under the Board's Order, as enforced by the court, the Regional Director for Region 7 on August 16, 1990, issued a compliance specification and notice of hearing, alleging the amounts of backpay due and owing to the discriminatees named therein. The Respondent filed a timely answer to the compliance specification generally denying the allegations of the specification and, in addition, claiming several affirmative defenses.

On October 12, 1990, the General Counsel filed with the Board a Motion to Strike in Part the Respondent's Answer and Motion for Partial Summary Judgment, with exhibits attached. On October 17, 1990, 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. The Respondent has not filed a response to the Notice to Show Cause.

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

On the entire record in this case, the Board makes the following  
Ruling on Motion to Strike in Part Respondent's Answer and Motion for  
Partial Summary Judgment

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

(b) Contents of the 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 allegations 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

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<sup>3</sup> 872 F.2d 1027 (1989), cert. denied Jan. 16, 1990.

the respondent, 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 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 General Counsel has moved to strike paragraphs 4, 5, 6, and 7 of the Respondent's answer because those paragraphs allegedly do not comply with the requirements of Section 102.56(b) and (c); he further seeks to have stricken the Respondent's fourth, fifth, sixth, and seventh affirmative defenses because they allegedly constitute improper attempts to relitigate issues previously decided in the underlying unfair labor practice proceeding, and enforced by the court. The General Counsel has also moved for partial summary judgment with regard to the paragraphs of the specification corresponding to paragraphs 4, 5, 6, and 7 of the answer, because the striking of the latter paragraphs would remove as issues the corresponding allegations in the specification. We find merit in the General Counsel's motions.

The general denials in paragraphs 4, 5, 6, and 7 of the Respondent's answer are insufficient because they do not reveal any basis for disagreement with the specification's allegations to which they are addressed, namely, the identity of the discriminatees to whom backpay is owing; the respective backpay periods; the formulae used to compute gross backpay and the amount thereof; and the benefit payments due and owing certain of the discriminatees. Further, the general denials to the identity of the discriminatees and the commencement of the backpay period for each constitute attempts to relitigate

issues determined in the underlying unfair labor practice proceeding. And the general denials to the other allegations described above fail to offer alternative premises or formulas, or furnish appropriate supporting figures, even though all data at issue with respect to gross backpay are within the Respondent's knowledge and control. Consequently, those denials do not meet the substance of these allegations of the specification and, hence, the specificity requirements of Section 102.56(b). We therefore grant the General Counsel's motion to strike paragraphs 4, 5, 6, and 7 of the answer. We also strike the four affirmative defenses designated above because they constitute an attempt to relitigate issues already decided.<sup>4</sup>

Having granted the motion to strike in all its particulars, we deem the allegations of paragraphs 4, 5, 6, and 7 of the backpay specification to be admitted as true, in accordance with Section 102.56(c). Accordingly, we grant the General Counsel's Motion for Partial Summary Judgment.<sup>5</sup>

The General Counsel does not seek summary judgment with respect to the specification's allegations relating to interim earnings because information relating to such allegations is not generally within the knowledge of a respondent. Dews Construction Corp., 246 NLRB 945 (1979). Nor does he seek summary judgment regarding the single and/or joint employer allegations. Therefore, we shall remand this matter for a hearing concerning the allegations of the compliance specification still in issue.

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<sup>4</sup> The General Counsel states that the General Counsel previously attacked the third affirmative defense in a motion filed September 18, 1990, with the Chief Administrative Law Judge.

<sup>5</sup> Challenge Cook Bros., 295 NLRB No. 50, slip op. at 8--9 (June 15, 1989). Even without the motion to strike we would grant partial summary judgment as requested because the parts of the answer in question would not be in compliance with Sec. 102.56(b) for the reasons indicated above and, therefore, under Sec. 102.56(c) the corresponding specification allegations would be deemed to be admitted. See, e.g., Sneva's Rent-A-Car, 270 NLRB 1316, 1317 (1984).

## ORDER

It is ordered that the General Counsel's motion to strike in part the Respondent's answer to the compliance specification is granted as to paragraphs 4, 5, 6, and 7 of the answer and as to the Respondent's fourth, fifth, sixth, and seventh affirmative defenses.

IT IS FURTHER ORDERED that the General Counsel's Motion for Partial Summary Judgment is granted except with regard to issues raised in paragraphs 1, 2, and 3 of the compliance specification and those issues concerning the amounts of interim earnings by the discriminatees.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 7 for the purposes of issuing a notice of hearing and scheduling the hearing before an administrative law judge, which shall be for the purpose of taking evidence concerning the unresolved issues. The judge shall prepare and serve on the parties a supplemental decision containing findings of fact, conclusions of law, and recommendations based on all the record evidence. Following service of the judge's decision on the parties, the provisions of Section 102.46 of the Board's Rules and Regulations shall be applicable.

Dated, Washington, D.C. January 18, 1991

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James M. Stephens, Chairman

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Mary Miller Cracraft, Member

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John N. Raudabaugh, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD