

~~UNITED STATES OF AMERICA~~

~~BEFORE THE NATIONAL LABOR RELATIONS BOARD~~

~~PALISADES GAS & WASH INCORPORATED~~  
~~d/b/a USA CAR WASH~~

and

Case 31-7CA-717497

~~ROMULO ANTONIO SAMAYOA, an Individual~~

SUPPLEMENTAL DECISION AND ORDER REMANDING

On January 23, 1990, the National Labor Relations Board ordered <sup>1</sup> the Respondent, Palisades Gas & Wash Incorporated d/b/a USA Car Wash, inter alia, to make whole Romulo Antonio Samayoa for any loss of pay he may have suffered as a result of the Respondent's unfair labor practices against him in violation of Section 8(a)(3) and (1) of the Act. On September 24, 1990, the United States Court of Appeals for the Ninth Circuit entered a judgment enforcing the Board's Order.<sup>2</sup> A controversy having arisen over the amount of backpay due under the terms of the Board's Order, the Regional Director for Region 31 on December 19, 1990, issued a compliance specification and notice of hearing alleging the amount of backpay due under the terms of the Board's Order and notifying the Respondent that it must file an answer complying with the Board's Rules and Regulations.

The Respondent filed an answer on January 16, 1991, in which it admitted the allegation in paragraph 1. It alleged with respect to paragraphs 2 through

<sup>1</sup> Palisades Gas & Wash Inc., 31--CA--17497, January 23, 1990 (not reported in Board volumes).

<sup>2</sup> No. 90--70302 (unpublished).

5 that, because its work is seasonal, the representative period of employment in the compliance specification should be viewed as establishing a maximum average of hours worked that should be reduced during other periods when the workload is lower. The Respondent denied that specification paragraphs 6 through 11 accurately reflect interim earnings and expenses, based on the General Counsel's failure to provide the Respondent with confirming information.

By certified letter dated February 6, 1991, the General Counsel advised the Respondent that its answer did not comply fully with Section 102.56(b) of the Board's Rules and Regulations because the Respondent failed to provide appropriate supporting figures in connection with its denial of paragraphs 2 through 5. The Respondent was advised that if it did not file an amended answer by February 11, 1991, a Motion for Partial Summary Judgment would be filed. To date no amended answer has been filed.

On February 21, 1991, the General Counsel filed with the Board a Motion to Transfer Case to the Board and for Partial Summary Judgment on the compliance specification, with exhibits attached.

On February 26, 1991, the Board issued an order transferring the proceeding to the Board and Notice to Show Cause why the General Counsel's Motion for Partial Summary Judgment should not be granted. No response has been filed.

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 the Motion for Partial Summary Judgment  
on Compliance Specification

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 . . . . As to all matters within the knowledge of 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 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.

In his motion, the General Counsel contends, and we agree, that the Respondent's denials of paragraphs 2 through 5 fail to comply with the requirements of Section 102.56(b) and (c) as to compliance matters within its knowledge---namely, calculation of gross backpay. The Respondent has failed to set forth in detail an alternative formula or to furnish appropriate supporting figures for computing the amounts owed. Section 102.56(b) mandates that if the respondent disputes the premises on which figures in the compliance specification are based, it shall specifically state the basis for disagreement and set forth in detail the respondent's position as to the applicable premises and furnish the appropriate supporting figures. Although the Respondent disputes the applicability of the period determined to be

representative, it does not set forth alternatives with supporting figures nor has it explained its failure to do so.

Accordingly, pursuant to Section 102.56(c), we grant the General Counsel's Motion for Partial Summary Judgment and find the allegations concerning gross backpay to be true and that the Respondent is precluded from introducing any evidence controverting any allegations other than those relating to the amount of interim earnings and expenses.

As the General Counsel does not seek summary judgment with respect to paragraphs 6 through 11 of the compliance specification concerning the amount of interim earnings and expenses, we shall order a hearing on those issues.

ORDER

It is ordered that the General Counsel's Motion for Partial Summary Judgment on compliance specification is granted with respect to all allegations regarding gross backpay computations in paragraphs 2 through 5 of the compliance specification.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 31 for the purpose of arranging a hearing before an administrative law judge on the allegations regarding interim earnings and expenses in paragraphs 6 through 11 of the compliance specification.

IT IS FURTHER ORDERED that the administrative law judge shall prepare and serve on the parties a decision containing findings, conclusions, and recommendations based on all the record evidence. Following the service of the

representative, it does not set forth alternatives with supporting figures nor has it explained its failure to do so.

Accordingly, pursuant to Section 102.56(c), we grant the General Counsel's Motion for Partial Summary Judgment and find the allegations concerning gross backpay to be true and that the Respondent is precluded from introducing any evidence controverting any allegations other than those relating to the amount of interim earnings and expenses.

As the General Counsel does not seek summary judgment with respect to paragraphs 6 through 11 of the compliance specification concerning the amount of interim earnings and expenses, we shall order a hearing on those issues.

ORDER

It is ordered that the General Counsel's Motion for Partial Summary Judgment on compliance specification is granted with respect to all allegations regarding gross backpay computations in paragraphs 2 through 5 of the compliance specification.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 31 for the purpose of arranging a hearing before an administrative law judge on the allegations regarding interim earnings and expenses in paragraphs 6 through 11 of the compliance specification.

IT IS FURTHER ORDERED that the administrative law judge shall prepare and serve on the parties a decision containing findings, conclusions, and recommendations based on all the record evidence. Following the service of the

administrative law judge's decision on the parties, the provisions of Section 102.46 of the Board's Rules and Regulations shall apply.

Dated, Washington, D.C. May 9, 1991

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Dennis M. Devaney, Member

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Clifford R. Oviatt, Jr., Member

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John N. Raudabaugh, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD