

Steeltec Incorporated and International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, Shopmen's Local Union No. 518. Case 14-CA-21170

May 15, 1991

ORDER DENYING MOTION FOR SUMMARY JUDGMENT AND REMANDING

BY CHAIRMAN STEPHENS AND MEMBERS CRACRAFT AND OVIATT

Upon a charge filed by International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, Shopmen's Local Union No. 518, the Union, December 18, 1990, and amended January 10, and February 4, 1991, the General Counsel of the National Labor Relations Board issued a complaint February 8, 1991, against Steeltec Incorporated, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Copies of the charge, amended charges, and complaint were properly served on the Respondent. On March 1, 1991, the Respondent filed a letter purporting to be an answer to the complaint.¹

On March 12, 1991, the General Counsel filed a Motion for Summary Judgment, with exhibits attached. On March 15, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no 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.

According to the Motion for Summary Judgment, on receiving the Respondent's answer March 1, 1991, counsel for the General Counsel met personally on the same day with the Respondent's president to inform him that the answer was insufficient to satisfy the requirements for answers to complaints, as set forth in Section 102.20 of the Board's Rules and Regulations.²

¹ On February 19, 1991, the Respondent, by its representative, filed a request for an extension of time for filing an answer in order to enable the Respondent to obtain substitute representation. The Regional Director issued an order February 20, 1991, granting the extension of time to file an answer until March 1, 1991.

Because Respondent's president, Keith R. Gansner, filed the March 1, 1991 answer himself, it appears that the Respondent is not represented by counsel in this proceeding.

² Sec. 102.20 of the Rules and Regulations provides:

The respondent shall, within 14 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

On the same day, counsel for the General Counsel also sent the Respondent a letter by certified mail, as well as an identical letter by regular mail, informing the Respondent of the answer's insufficiency and setting forth the requirements of Section 102.20 of the Rules and Regulations. The General Counsel's letters further informed the Respondent that if a sufficient answer was not filed by March 6, 1991, a Motion for Summary Judgment could be filed. The Respondent did not file a further answer.

The General Counsel, although acknowledging the Respondent's March 1, 1991 answer, nonetheless asserts that the answer fails to admit, deny, or explain specifically each of the facts alleged in the complaint and the General Counsel moves that "the Board strike Respondent's answer, deem all the allegations contained in the General Counsel's Complaint and Notice of Hearing to be admitted and enter an order providing for an appropriate remedy, without the holding of a hearing and without taking evidence in support of said allegations."

The complaint alleges, inter alia, that the Respondent violated Section 8(a)(5) and (1) by refusing since July 23, 1990, to execute a written collective-bargaining agreement embodying the terms of the agreement reached between the Respondent and the Union on November 6, 1989. The complaint further alleges that the Respondent has repudiated the November 6, 1989 agreement since July 23, 1990, by failing to apply the terms of the agreement to the unit employees, in violation of Section 8(a)(5) and (1). In its answer, the Respondent, inter alia, "denies that its officers, agents and representatives since Monday July 23, 1990, have failed and refused to bargain collectively and in good faith with the International Association of Bridge, Structural and Ornamental Iron Workers Local 518 by refusing to execute an agreed upon collective bargaining agreement and by failing to apply the terms of such agreement to its employees and by repudiating such agreement." Additionally, the answer specifically admits some of the complaint's factual allegations and asserts that the parties never reached agreement on contract terms including, but not limited to, the effective date and termination date of the contract.

The Board, having duly considered the matter, finds that summary judgment is not appropriate here. The Respondent's March 1, 1991 letter specifically denies that the Respondent engaged in the conduct alleged to violate Section 8(a)(5) and (1) of the Act. Despite the General Counsel's characterization of the answer as "a rambling narrative which only generally alludes to the substance of some of the complaint allegations," we note that the answer, in addition to the specific denials, contains an explanation of the Respondent's conduct. We note that the answer does not address each fact alleged in the complaint; however, even if those unaddressed facts were deemed to be admitted to be

true, the Respondent's specific denial of the substance of the complaint has raised substantial and material issues of fact and law warranting a hearing before an administrative law judge.³ Thus, we conclude that the Respondent's March 1, 1991 answer to the complaint is sufficient under Section 102.20 of the Board's Rules and Regulations.

³ See *M. J. McNally, Inc.*, 302 NLRB 120 (1991). Chairman Stephens, who dissented in *McNally*, finds that the Respondent's pro se answer in this case, unlike that in *McNally*, clearly raises factual issues that warrant a hearing.

Accordingly, the General Counsel's Motion for Summary Judgment shall be denied.

ORDER

It is ordered that the General Counsel's Motion for Summary Judgment is denied.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 14 for further appropriate action.