

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ENGEL EXCAVATING, INC.

and

Case ~~17--CA--28667~~

UNITED CONSTRUCTION WORKERS,
LOCAL 10, AFFILIATED WITH
CHRISTIAN LABOR ASSOCIATION
OF THE USA

March 29, 1991
SUPPLEMENTAL DECISION AND ORDER

By Members Levany, Swartz, and Boudabaugh
On June 8, 1989, the National Labor Relations Board issued a Decision and

Order,¹ inter alia, ordering the Respondent to forward dues deducted from employees' paychecks pursuant to their duly executed and unrevoked authorizations, with interest. On February 21, 1990, the United States Court of Appeals for the Sixth Circuit enforced the Board's Order in full.²

A controversy having arisen over the amount of dues and fees owed to the Union, on December 10, 1990,³ the Acting Regional Director for Region 7 issued a compliance specification and notice of hearing. The Respondent failed to file an answer to the compliance specification.

On February 14, 1991, the General Counsel filed with the Board a Motion to Transfer the Case to the Board and for Default Judgment, with exhibits

¹ 294 NLRB No. 66.

² Docket No. 89--6508 (unpublished judgment).

³ The General Counsel, in his Motion to Transfer the Case to the Board and for Default Judgment, inadvertently stated in par. 2 that the compliance specification was issued April 19, 1990, when in fact it was issued December 10, 1990.

attached. On February 20, 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 again filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

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

Ruling on Motion for Default Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

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.

The compliance specification served on the Respondent states that
"pursuant to Section 102.56 of the Board's Rules and Regulations, . . . [the] Respondent shall, within twenty-one (21) days from the date listed below, file with the [Acting] Regional Director, . . . an original and four (4) copies of the Answer to this Specification." The compliance specification states further that

to the extent that such Answer fails to deny allegations of the Specification in the manner required under the Board's Rules and Regulations, and failure to do so is not adequately explained, such allegations shall be deemed to be admitted to be true and the Respondent shall be precluded from introducing any evidence controverting them.

Further, the undisputed allegations in the Motion for Default Judgment disclose that the Regional attorney for Region 7, by letter dated January 3,

1991,⁴ notified the Respondent that unless an answer was filed by January 13, 1991, a Motion for Default Judgment would be filed. Respondent did not reply to this letter or file an answer to the compliance specification.

In the absence of good cause being shown for the failure to file a timely answer to the compliance specification and as no explanation or response to the Notice to Show Cause has been filed, we grant the General Counsel's Motion for Default Judgment. Accordingly, we find the computations in the specification of the dues and initiation fees owing to the Union and of the backpay period to be true. We shall order the Respondent to pay these amounts plus interest.

ORDER

The National Labor Relations Board orders that the Respondent, Engel Excavating, Inc., Kalamazoo, Michigan, its officers, agents, successors, and assigns, shall forward immediately to the Union dues withheld from employees' paychecks in the amount of \$3302, plus interest to be computed in the

⁴ The letter of January 3, 1991, is erroneously dated January 3, 1990. Because the letter correctly sets forth January 13, 1991, as the last chance to file a timely answer, we find that the Respondent was not prejudiced by this inadvertent error.

manner prescribed in New Horizons for the Retarded,⁵ and accrued to the date of payment.

Dated, Washington, D.C. March 29, 1991

Dennis M. Devaney, Member

Clifford R. Oviatt, Jr., Member

John N. Raudabaugh, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

⁵ _____
283 NLRB 1173 (1987).