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302 NLRB No. 47

D--1878
Boston, MA

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

A & R FASHIONS, INC.

and

Case 1--CA--26575

JOINT BOARD, CLOAK, SKIRT AND
DRESSMAKERS' UNION, INTERNATIONAL
LADIES GARMENT WORKERS' UNION, AFL--CIO

March 29, 1991

SUPPLEMENTAL DECISION AND ORDER

By Members Cracraft, Devaney, and Oviatt

On April 16, 1990, the National Labor Relations Board issued a Decision and Order [1] in this proceeding in which it ordered the Respondent, A & R Fashions, Inc., to make whole the employees in the appropriate bargaining unit by making all contractual fringe benefit fund payments that the Respondent has unlawfully failed to make pursuant to the terms of the current collective-bargaining agreement and a January 12, 1989 agreement governing the Respondent's arrearages at that time. On July 5, 1990, the Respondent entered into a stipulation conceding the propriety of the Board's Order and the facts and conclusions underlying the Order, and providing for the issuance of a compliance specification to resolve any disputes concerning the amount of backpay due under the Order.

[1] 298 NLRB No. 23.

A controversy having arisen over the amount of contractual benefit fund contributions due under the terms of the Board's Order, the Acting Regional Director for Region 1 issued a compliance specification and notice of hearing on September 27, 1990, alleging the amount of money due. On October 19, 1990, the Respondent filed an answer admitting all allegations in the compliance specification, but alleging that it should be credited for monthly payments of $1000 made throughout the backpay period.

On January 30, 1991, the General Counsel filed a Motion to Transfer Proceeding to the Board and for Summary Judgment, with exhibits attached. On February 1, 1991, the Board issued an order transferring proceeding to the Board and a Notice to Show Cause why the General Counsel's motion should not be granted. The Respondent did not file a response.

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

Ruling on the Motion for Summary Judgment

In its answer to the compliance specification, the Respondent admitted all allegations in the specification. Based on the Respondent's admissions, we find the allegations of the specification to be true. In the absence of any substantial and material issues warranting a hearing, we grant the General Counsel's Motion for Summary Judgment.[2]

Accordingly, we find that the amount of benefit fund contributions owed on behalf of the unit employees is as stated in the computations of the

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[2] In his Motion for Summary Judgment, the General Counsel states that [i]t is anticipated that Respondent will be credited with such monies already paid toward the total gross amount owed by it . . . .''

compliance specification, and we shall order that the Respondent pay this amount, subject to the appropriate credit for payments already made.[3]

ORDER

The National Labor Relations Board orders that the Respondent, A & R Fashions, Inc., Boston, Massachusetts, its officers, agents, successors, and assigns, shall pay into the contractual fringe benefit funds the amounts stated in the compliance specification, subject to appropriate credit for payments already made.

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

Mary Miller Cracraft, Member

Dennis M. Devaney, Member

Clifford R. Oviatt, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[3] The compliance specification requests that the amounts due include ''interest computed . . . in accordance with current Board policy.'' Because the provisions of employee benefit fund agreements are variable and complex, we leave to further compliance proceedings the question of whether the Respondent must pay any additional amounts into the benefit funds to satisfy our make-whole remedy. These additional amounts may be determined depending on the circumstances of each case, by reference to the provisions in the documents governing the funds at issue and, when there are no governing provisions, to evidence of any loss directly attributed to the unlawful withholding, which might include the loss of return on investment of the portion of funds withheld, additional administrative costs, etc., but not collateral losses. See Merryweather Optical Co., 240 NLRB 1213, 1216 fn. 7 (1979).