

**Robincrest Landscaping & Construction, Inc. and Joaquin Lopez.** Case 13-CA-27857

June 12, 1991

## SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS CRACRAFT, DEVANEY, AND OVIATT

On November 27, 1989, the National Labor Relations Board issued an unpublished Order directing the Respondent, *inter alia*, to make whole employee Carlos Serpa for any loss of earnings and other benefits resulting from the Respondent's unfair labor practices in violation of Section 8(a)(1) of the Act. On June 13, 1990, the United States Court of Appeals for the Seventh Circuit granted enforcement of the Board's Order.<sup>1</sup> A controversy having arisen over the amount of backpay due Serpa under the Board's Order, on November 1, 1990, the Regional Director for Region 13 issued and duly served on the Respondent a compliance specification and notice of hearing alleging the amount of backpay due this discriminatee.

Subsequently, the Respondent filed an answer to the backpay specification admitting certain paragraphs, generally denying certain paragraphs, and denying certain other paragraphs by disputing the accuracy of the formula and the figures used in the computation of gross backpay. In this regard, the Respondent asserts that the gross backpay formula, which uses the average daily rate Serpa would have earned, is erroneous because there was no such rate. Rather, it contends Serpa was paid based on the type and number of loads he would haul per day. The Respondent—without offering supporting evidence—further asserts that the formula is erroneous because it is based on Serpa working 6 days per week, and it contends that Serpa did not normally work 6 days per week and typically hauled fewer loads than other employees. The Respondent does not set forth an alternative formula with appropriate supporting figures. The Respondent further denies the specification paragraph concerning interim earnings, submitting affirmative defenses.

Thereafter, on March 22, 1991, the General Counsel filed with the Board a motion to strike portions of the Respondent's answer and for partial summary judgment, with exhibits attached. The General Counsel essentially alleges that, except as to the issue of interim earnings, the Respondent's answer denying certain paragraphs does not comply with the substantive requirements of Section 102.56(b) and (c) of the Board's Rules and Regulations. Accordingly, the General Counsel essentially requests that paragraphs III, IV, VI, and VII of the backpay specification be stricken as deficient insofar as they do not conform to the Board's requirements as to these compliance matters within the

Respondent's knowledge, and that these paragraphs be deemed to be admitted as true without taking evidence. The General Counsel also moves that a partial summary judgment be granted. On April 1, 1991, 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.

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 and for Partial  
Summary Judgment

Section 102.56(b) and (c) of the 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, 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 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

<sup>1</sup> Case 90-2010 (unpublished).

of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

The specification duly served on the Respondent states that, pursuant to Section 102.56 of the Board's Rules and Regulations, the Respondent "shall, within 21 days from the date of the Specification, file . . . an Answer . . . . To the extent that such Answer fails to deny allegations of the Specification in the manner required under the Board's Revised Rules and Regulations, and the 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."

As indicated above, the General Counsel filed a motion to strike in part the Respondent's answer on the basis of alleged substantive deficiencies. We find that the answer is substantively deficient insofar as it contains general denials concerning those matters within the Respondent's knowledge. Those denials are insufficient because they do not fairly meet the substance of the allegations of the specification, nor do they reveal any specific basis for disagreement with the specification's allegations, or offer or set forth in detail supporting figures, and alternative premises.<sup>2</sup> Additionally, as to the Respondent's denials concerning the computation of gross backpay, we find these denials similarly insufficient because they fail to offer an alternative formula for computing the backpay amount with appropriate alternative figures, including an alternative to the use of daily rates and an alternative number of days which would have been worked by the discriminatee involved.<sup>3</sup> Thus, we agree with the Gen-

eral Counsel that paragraphs III, IV, VI, and VII (except with respect to interim earnings) of the Respondent's answer fail to comply with the requirements of Section 102.56(b) and (c). We therefore grant the General Counsel's motion in effect to strike these paragraphs from the answer.

Accordingly, we shall grant the General Counsel's Motion for Partial Summary Judgment and shall direct a hearing limited to determining the amount of Serpa's interim earnings. Because we have found that the Respondent has either admitted all other allegations in the specification or denied them in a manner insufficient under Section 102.56(b) and (c) of the Board's Rules and Regulations, we deem the Respondent to have admitted all other allegations to be true.

#### ORDER

It is ordered that the General Counsel's motion to strike the Respondent's answer to the backpay specification in part is granted as to paragraphs III, IV, VI, and VII (insofar as par. VII involves gross backpay).

IT IS FURTHER ORDERED that the General Counsel's Motion for Partial Summary Judgment is granted except with regard to the allegations concerning the amount of interim earnings.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 13 for the purpose of issuing a notice of hearing and scheduling a hearing before an administrative law judge for the purpose of taking evidence concerning the amount of interim earnings. The judge shall prepare and serve on the parties a 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.

<sup>2</sup> *Challenge-Cook Bros. of Ohio*, 295 NLRB 435, 436 (1989).

<sup>3</sup> See, e.g., *Unico Replacement Parts*, 286 NLRB 738 (1987); *Heck's Inc.*, 282 NLRB 263 (1986); and *East Belden Corp.*, 267 NLRB 262 (1983).