

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

MARTIN E. KEZLER ROOFING CO., AND  
ITS ALTER EGO, KEICO ROOFING, INC.

and

Case 3-CA-15052

ROOFERS LOCAL UNION NO. 241, UNITED  
UNION OF ROOFERS, WATERPROOFERS  
AND ALLIED WORKERS, AFL-CIO

*September 27, 1991*

SUPPLEMENTAL DECISION AND ORDER

*By Members Devaney, Oviatt, and Raudabaugh*

On February 26, 1990, the National Labor Relations Board issued a Decision and Order,<sup>1</sup> inter alia, ordering the Respondent to remit contractually required working assessment contributions to union funds pursuant to the applicable collective-bargaining agreement. On December 5, 1990,<sup>2</sup> the United States Court of Appeals for the Second Circuit enforced the Board's Order in its entirety.<sup>3</sup>

A controversy having arisen over the amount of contributions due, on March 28, 1991, the Regional Director for Region 3 issued a compliance specification and notice of hearing.

In a letter dated April 25, 1991, the Regional Director for Region 3 notified the Respondent that he had not received an answer to the compliance

<sup>1</sup> 297 NLRB No. 129. Members Oviatt and Raudabaugh did not participate in the underlying Decision.  
<sup>2</sup> The General Counsel, in its Motion for Summary Judgment, inadvertently stated in par. 2 that the United States Court of Appeals for the Second Circuit issued its order of enforcement on August 5, 1990.  
<sup>3</sup> Docket No. 90--4145 (unpublished judgment).

specification and notice of hearing and that, unless an answer was received by the close of business on May 3, 1991, summary judgment would be sought. The Respondent failed to file an answer to the compliance specification by that date.

On May 13, 1991, the General Counsel filed with the Board a motion to transfer the case and to continue proceeding before the Board and for summary judgment and issuance of a Decision and Order, with exhibits attached, dated May 9, 1991. On May 10, 1991, the Regional Office received a communication, dated May 7, 1991, from Respondent Martin E. Keller Roofing Co.,<sup>4</sup> which, although not entitled an "answer," contained general denials to the compliance specification.

On May 17, 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.

On May 28, 1991, the General Counsel filed with the Board a "Motion to Revoke Notice to Show Cause and Supplement to Motion to Transfer Case and to Continue Proceeding Before the Board and for Summary Judgment and Issuance of a Decision and Order." In his motion, the General Counsel requests that the Board reject the Respondent's communication as being an untimely answer, and therefore find that the allegations in the compliance specification are deemed to be admitted to be true. The General Counsel also contends that if the Respondent's communication was timely, it would nevertheless constitute an insufficient answer to the compliance specification.

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

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<sup>4</sup> The envelope for the May 7, 1991 communication indicates the date of mailing was May 8, 1991.

## Ruling on Motion for Summary 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 and single employer and alter ego, Kelco Roofing, Inc., shall file with the [Regional Director] . . . an original and four (4) copies of an Answer to the said Compliance Specification within twenty-one (21) days from [the date listed below] . . . '' The compliance specification states further that

to the extent that such Answer fails to deny any allegation of the Compliance Specification in the manner required under Section 102.56(b) of the Board's Rules and Regulations, and the failure to do so is not adequately explained, such allegation shall be deemed to be admitted to be true and the Respondent shall be precluded from introducing any evidence controverting said allegation.

The Regional Director's communication of April 25, 1991, advised the Respondent that summary judgment would be sought if an answer was not received by May 3, 1991. The Respondent's May 7, 1991 communication was received by the Regional Office on May 10, 1991, 7 days beyond the May 3, 1991 deadline. The Respondent has offered no explanation for its failure to file a timely answer. In the absence of good cause being shown by the Respondent for the failure to file a timely answer, we find the Respondent's answer to be untimely. See Kasper Disposal Service, 292 NLRB 265 (1989), and Burger King Restaurant, 265 NLRB 175 (1982).

Even assuming that the Respondent's purported answer was timely, we would find that it is substantively deficient with respect to paragraphs 8, 9, 10, and 11 of the compliance specification because it contains general denials concerning those matters within the Respondent's knowledge. Section 102.56(b) of the Board's Rules and Regulations, which contains the rules governing the contents of answers to compliance specifications, states in relevant part that:

As to 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.

Also, Section 102.56(c) states that, in relevant part, if an answer to the specification is filed, but it fails to deny any allegation in the manner required by paragraph (b) of this section, and such failure 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 the Respondent's untimely communication to the Regional Office, its response to paragraphs 8, 9, 10, and 11 (which relate respectively to the total hours of work for which the Respondent's employees were paid, the total gross amounts owed to the funds and for the work assessment fees, the contributions Respondent has already made to the funds, and the calculations for the net monthly amounts owed to each fund minus the contributions already made), were merely general denials without explanation of the basis for the

denials,<sup>5</sup> and without offers of any calculations in support of those general denials. We find that these matters clearly were within the Respondent's knowledge.

Such general denials concerning matters within the Respondent's knowledge are insufficient answers because they fail fairly to meet the substance of the allegations of the specification, nor do they reveal any basis for disagreement with the specification or its allegations, or set forth in detail any supporting figures or alternative premises. Challenge-Cook Bros. of Ohio, 295 NLRB No. 50, slip op. at 8 (June 15, 1989); Sneva's Rent-A-Car, 270 NLRB 1316, 1317 (1984). See also Norco Products, 297 NLRB No. 134, slip op. at 4 (Feb. 23, 1990). Thus, Respondent's communication, notwithstanding its untimeliness, is substantively deficient as an answer to paragraphs 8, 9, 10, and 11 of the compliance specification.

Since we have rejected the Respondent's communication as untimely and substantively deficient, in accordance with the Board's Rules and Regulations, the allegations of the backpay specification are deemed to be admitted as true, and we grant the General Counsel's Motion for Summary Judgment.<sup>6</sup>

Accordingly, the Board concludes that the amount of working assessment contributions due is as stated in the computations of the specification, and orders payment by the Respondent to the union fund and the Union.

#### ORDER

The National Labor Relations Board orders that the Respondent, Martin E. Keller Roofing Co., and its alter ego, Kelco Roofing, Inc., Schenectady, New

<sup>5</sup> In Respondent's May 7, 1991, communication to the Regional Office, its responses to paragraphs 8, 9, and 11 were "we disagree," and its response to paragraph 10 was simply "we disagree, we have more funds applied and paid than this."

<sup>6</sup> The General Counsel's motion to revoke Notice to Show Cause is denied.

York, its officers, agents, successors, and assigns, shall forward immediately to the Union and the union funds listed in the specification, contributions in the amounts listed in the specification, plus any additional amounts required under Merryweather Optical Co., 240 NLRB 1213, 1216 fn. 7 (1979).

Dated, Washington, D.C. September 27, 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