

Martin J. Fears d/b/a Guarantee Drywall and Painters District Council No. 2 and Trustees of the Painters District Council No. 2 Trust Funds, Case 14-CA-21735

March 29, 1993

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

On March 24, 1992, the National Labor Relations Board issued a Decision and Order, inter alia, ordering the Respondent Martin J. Fears d/b/a Guarantee Drywall, to make whole certain of its unit employees for loss of earnings and other benefits resulting from their discharges in violation of the National Labor Relations Act.¹ On October 16, 1992, the United States Court of Appeals for the Eighth Circuit entered its judgment enforcing the Board's Order.

A controversy having arisen over the amount of backpay due discriminatees, on January 21, 1993, the Regional Director for Region 14 issued a compliance specification and notice of hearing alleging the amount due under the Board's Order and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent has failed to file an answer.

By letter dated February 12, 1993, counsel for the General Counsel advised the Respondent that no answer to the compliance specification had been received and that unless an appropriate answer was filed by February 17, 1993, summary judgment would be sought. The Respondent filed no answer.

On March 1, 1993, the General Counsel filed with the Board a Motion for Default Summary Judgment on Compliance Specification and Notice of Hearing for Failure to File an Answer, with exhibits attached. On March 5, 1993, 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.

¹ 306 NLRB No. 154.

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 the 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.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true and grant the General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the contractually required contributions and union dues now owing are as stated in the compliance specification and we will order payment by the Respondent to the specified entities.

ORDER

The National Labor Relations Board orders that the Respondent, Martin J. Fears d/b/a Guarantee Drywall, O'Fallon, Missouri, its officers, agents, successors, and assigns, shall make whole the entities named below, by paying into them the following amounts, plus interest accrued to the date of such payments:

Painters District Council No. 2 Welfare Trust	\$3,155.60
Painters District Council No. 2 Pension Trust	2,141.30
Painters District Council No. 2 Vacation Trust	1,127.00
Painters District Council No. 2 Apprenticeship and Training Fund	180.32
Painters District Council No. 2	432.81