

**Tri-Way Security & Escort Service, Inc. and Donald B. Hall and Mark Stanberry and Willy France.** Cases 22-CA-18210, 22-CA-18277(1), and 22-CA-18277(2)

April 30, 1993

ORDER DENYING MOTION FOR SUMMARY JUDGMENT AND REMANDING

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT AND RAUDABAUGH

Upon charges filed by individuals Donald B. Hall, Mark Stanberry, and Willy France on January 8 and February 10 and 11, 1992,<sup>1</sup> respectively, the General Counsel of the National Labor Relations Board issued an order consolidating cases and consolidated complaint on August 28, 1992, against Tri-Way Security & Escort Service, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Copies of the charges and consolidated complaint were properly served on the Respondent. On September 17, 1992, the Respondent filed a letter purporting to be an answer to the complaint.

On December 22, the General Counsel filed a Motion for Summary Judgment, with attached exhibits. On December 31, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. After securing an extension of time from the Board, the Respondent filed a response to the Notice to Show Cause on February 5, 1993.

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

According to the Motion for Summary Judgment and its attached exhibits, the August 28, 1992 consolidated complaint was duly served on the Respondent alleging that it unlawfully suspended and then discharged Donald Hall, Mark Stanberry, and Willy France.

On September 16, the Acting Regional Attorney notified the Respondent that an answer to the consolidated complaint had not been received, that the time to file an answer was being extended until September 23, and that if no answer was filed with the Region by that deadline, a "default judgment" would be sought.

On September 17, the Respondent's chief coordinator, Ivan O'Connor, wrote to the Regional Director stating, inter alia, that the Respondent did not discriminate in discharging employees Hall, Stanberry, and France because they were discharged for cause and that its actions were not an attempt to discourage em-

ployees from engaging in concerted activities. The Respondent also stated that there had been an arbitration hearing regarding this same issue which resulted in the reinstatement of Stanberry and France and that Hall had refused reinstatement. The Respondent further stated that at the time of the discharges, it was unaware of any union activity by Local 1.<sup>2</sup>

On September 30, the Regional Director wrote the Respondent, detailing the requirements of Section 102.21 of the Board's Rules and Regulations,<sup>3</sup> and stating that the Respondent's September 17 letter failed to adequately answer the consolidated complaint. The Regional Director also notified the Respondent that "if your answer to the consolidated complaint in accordance with Section 102.20 is not received in the Region by October 13, a Motion for Summary Judgment will be filed." On October 22, the Respondent orally requested an extension of time to file an answer to November 9 because it had recently retained an attorney. Although the Regional Director granted the request, the Respondent did not file a further answer.

The General Counsel, while acknowledging the Respondent's September 17 letter, nonetheless asserts that the answer fails to admit, deny, or explain specifically each of the facts alleged in the complaint, and that the Respondent has also failed to serve the parties with its September 17 "answer" pursuant to Section 102.21 of the Board's Rules and Regulations. In these circumstances, the General Counsel contends that the Respondent has failed to file an adequate answer after multiple extensions. Accordingly, the General Counsel moves that "the allegations of the Complaint should be deemed admitted and found by the Board to be true . . . [and] that there exists no factual issue litigable before the Board, and therefore, no matter requiring a hearing . . . [and] [c]onsequently, Respondent is in default in this matter and [an] entry of Summary Judgement against [the] Respondent is warranted."

In its response to the Notice to Show Cause,<sup>4</sup> the Respondent contends that its attempted answer of September 17 did in fact deny the relevant allegations set forth in the complaint and that only the form was improper. The Respondent argues that its subsequent failure to respond adequately to the complaint resulted from extenuating circumstances. First, it points out that it was not represented by counsel when its chief coor-

<sup>2</sup> The Independent Brotherhood of Security Employees, Guards and Watchmen of America, Local 1.

<sup>3</sup> Sec. 102.20 of the Board's Rules and Regulations provides that allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. Sec. 102.21 requires that the answer be filed with the Region and served on the other parties.

<sup>4</sup> Styled as a motion in opposition to counsel to the General Counsel's Motion for Summary Judgment. Annexed to the response is a properly prepared answer which the Respondent requests the Board to accept as timely. In light of our finding below, we find it unnecessary to rule on this request.

<sup>1</sup> All dates are 1992 unless noted.

dinator filed its September 17 letter with the Region, and did not understand the consequences of its failure to conform with the requirements of Section 102.21 of the Board's Rules. Second, it asserts that it had believed that the agreements reached as a result of the arbitration hearing had settled the matter and that the employees would withdraw their charges. Third, it explains that it is currently in Chapter 11 bankruptcy and that it failed to file a corrected answer because it was attempting to secure several large contracts in the New England area crucial to its emergence from bankruptcy. The Respondent further asserts that because its attention was focused on obtaining those contracts, it was unable to give this matter the urgent attention that it warranted.

The Board, having duly considered the matter, finds that summary judgment is not appropriate here. The Respondent's September 17 pro se letter from O'Connor specifically denies the 8(a)(3) consolidated complaint allegations that the Respondent unlawfully terminated employees Hall, Stanberry, and France because of their union activities. Although the letter does not respond to each and every allegation in the complaint, nor is it in a form that comports with the Board's Rules and Regulations, it nevertheless clearly

denies the complaint paragraph containing the operative facts of the alleged unfair labor practices and effectively denies consolidated complaint paragraph 14, which alleges that the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1). Because the letter was filed without benefit of counsel and because it constitutes a clear denial of the essential unfair labor practice allegations of the complaint, we will not preclude a determination on the merits simply because of the Respondent's initial failure to comply with all our procedural rules.<sup>5</sup>

Accordingly, the General Counsel's Motion for Summary Judgment is denied.

#### ORDER

It is ordered that the General Counsel's Motion for Summary Judgment is denied.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 22 for further appropriate action.

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<sup>5</sup>See *Steeltec Inc.*, 302 NLRB 980 (1991), and *Acme Building Maintenance*, 307 NLRB 358 (1992). The Respondent also apparently failed to serve its letter on the Charging Parties, but we again note the pro se basis on which the Respondent was then proceeding. See *Acme Building Maintenance*, supra at fn. 6.