

Gold State Acoustics & Drywall, Inc. and its alter ego, Gold State Acoustics, Inc. and United Brotherhood of Carpenters and Joiners of America Local Union 203 and Fund Trustees, AFL-CIO. Case 3-CA-15711

March 3, 1993

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT
AND RAUDABAUGH

On January 17, 1991, the National Labor Relations Board issued a Decision and Order in this proceeding¹ directing Gold State Acoustics & Drywall, Inc. and its alter ego, Gold State Acoustics, Inc., collectively the Respondent, to give full force and effect to an 8(f) collective-bargaining agreement, including making contractually required payments owing to benefit funds of United Brotherhood of Carpenters and Joiners of America Local Union 203, AFL-CIO, the Charging Party, arising during the term of that agreement. The Board also ordered the Respondent to make whole all bargaining unit employees for any losses suffered as result of the Respondent's failure to comply with the bargaining agreement. On November 26, 1991, the United States Court of Appeals for the Second Circuit, by unpublished decision, enforced the Board's Order.² On October 13, 1992, the Regional Director for Region 3 issued an amended compliance specification and notice of hearing, setting forth allegations with respect to the amount of money owing to various Carpenters' funds. On November 16, 1992, the Respondent filed an answer to the amended compliance specification.

On November 30, 1992, the General Counsel filed with the Board a Motion to Transfer Proceeding to the Board and for Summary Judgment, with exhibits attached. The General Counsel contends that portions of the answer to the amended compliance specification fail to conform to the requirements of Section 102.56 of the Board's Rules and Regulations because they lack specificity and that certain issues raised in the answer are barred from further litigation by the doctrine of res judicata. The General Counsel also moved to strike as substantively deficient certain paragraphs of the Respondent's answer.

On December 2, 1992, 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. Thereafter, the Respondent filed a response.

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

On the entire record, the Board makes the following

Ruling on Motion for Summary Judgment

Section 102.56(b) and (c) of the National Labor Relations Board's Rules and Regulations states, in pertinent part:

(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 plead specifically and in detail to backpay allegations of specification.*— . . . 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 of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

As indicated above, the General Counsel has moved for summary judgment and to strike portions of the Respondent's answer on the basis of alleged substantive deficiencies. We find merit in the General Counsel's motion.

The amended specification sets forth the amounts allegedly owing to various Carpenters' benefit funds on behalf of four bargaining unit employees based on the number of hours worked by each employee at the applicable hourly contribution rate. The amended specification also sets forth the amount of interest allegedly owing to the funds for delinquencies in payment and for attorney fees incurred, as set forth in the applicable collective-bargaining agreement.

The Respondent's amended answer admits that the backpay period begins January 1, 1990, and ends May 31, 1990, and that an appropriate measure of the

¹ 301 NLRB No. 21 (not printed in bound volumes).

² Docket No. 91-4182.

amounts owing to the various funds is based on the number of hours worked by each bargaining unit employee multiplied by the applicable hourly contribution rate as set forth in the amended backpay specification. However, with respect to the alleged amounts owing to the funds on behalf of the four alleged bargaining unit employees specifically named in the amended specification, the Respondent contends that it “will not bargain with [the] union as representative of these employees” because under New York state law these employees have not designated the Charging Party as their bargaining agent and that the Charging Party has not been certified or recognized as representing a majority of the Respondent’s employees. The Respondent contends, therefore, that the gross amounts allegedly owing to each fund and the interest payments, as set forth in the amended specification, are “not applicable,” that it owes no attorney fees to the funds “since there are no amounts due to the [f]unds,” and that in the absence of the selection of the Charging Party by a majority of unit employees, it “owes nothing” to the funds. The Respondent also contends that its employees have stated that they would prefer to receive directly any money owed, if any, because otherwise they would receive no benefit as they are not members of the Charging Party. In its response to the Notice to Show Cause, the Respondent states, inter alia, that the Charging Party has never represented its employees.

Insofar as the Respondent contends in its amended answer that the Charging Party must establish a showing of majority status in order to be entitled to enforce the provisions of the applicable bargaining agreement, we find that this answer constitutes an attempt to relitigate issues determined in the underlying unfair labor practice proceeding enforced by the court of appeals. As the Board found in the underlying proceeding, under the principles of *John Deklewa & Sons*, 282 NLRB 1375 (1987), enfd. sub nom. *Iron Workers*

Local 3 v. NLRB, 843 F.2d 770 (3d Cir. 1988), the Charging Party was the limited exclusive collective-bargaining representative of the Respondent’s employees and the provisions of the applicable 8(f) prehire agreement were enforceable under Section 8(a)(5) and (1) of the Act.

As the Respondent’s amended answer does not otherwise take issue with the allegations set forth in the amended specification concerning the obligations arising under the terms of the applicable bargaining agreement, irrespective of union membership, and does not fairly meet the substance of the allegations or reveal any substantive disagreement with the amended specification’s allegations, or offer or set forth in detail supporting figures or alternative premises, we find that portions of the amended answer are substantively deficient. Thus, we agree with the General Counsel that paragraphs 3, 5, 6, 7, 8, and 9 of the Respondent’s amended answer fail to comply with the requirements of Section 102.56(b) and (c), and we shall grant the General Counsel’s motion to strike these paragraphs from the answer. We therefore deem all the allegations of the amended specification to be admitted as true. Accordingly, we shall grant the General Counsel’s Motion for Summary Judgment.

ORDER

It is ordered that the General Counsel’s motion to strike in part the Respondent’s amended answer is granted.

IT IS FURTHER ORDERED that the General Counsel’s Motion for Summary Judgment is granted and the Respondent, Gold State Acoustics & Drywall, Inc., and its alter ego, Gold State Acoustics, Inc., its officers, agents, successors, and assigns, shall make whole the various Carpenters’ funds, as set forth in the General Counsel’s amended compliance specification, by payment to the funds in the amount of \$4,206.12.