

Sun Cadillac Buick Sterling, Inc. and Automobile Mechanics Local 701, International Association of Machinists and Aerospace Workers, AFL-CIO. Case 13-CA-30931

October 20, 1993

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On September 9, 1992, the National Labor Relations Board issued a Decision and Order,¹ *inter alia*, ordering Sun Cadillac Buick Sterling, Inc. to make whole its unit employees and pay all delinquent contributions to the welfare and pension funds which were not paid on behalf of its employees in violation of the National Labor Relations Act. On April 8, 1993, the United States Court of Appeals for the Seventh Circuit issued its judgment enforcing in full the Board's Order.

A controversy having arisen over the amount of backpay due discriminatees, on June 30, 1993, the Regional Director for Region 13 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 failed to file an answer.

By letter dated August 11, 1993, an attorney in the Regional Office advised the Respondent, that no answer to the compliance specification had been received and that unless an appropriate answer was received by close of business on Thursday, August 20, 1993, summary judgment would be sought. The Respondent filed no answer.

On September 17, 1993, the General Counsel filed with the Board a Motion for Summary Judgment and for Issuance of Board Supplemental Decision and Order, with exhibits attached. On September 22, 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.

Ruling on the 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:

¹ 308 NLRB 753.

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 amounts due the funds on behalf of the bargaining unit employees are as stated in the compliance specification and we will order payment by the Respondent of the amounts, plus interest.

ORDER

The National Labor Relations Board orders that the Respondent, Sun Cadillac Buick Sterling, Inc., Chicago, Illinois, its officers, agents, successors, and assigns, shall make whole the fringe benefit funds by paying the Union's health and welfare and pension funds the amounts listed below, with interest and penalties, to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and make unit employees whole for any losses they may have suffered as a result of the failure to make such payments, with interest.

Union and Industry Welfare Fund	\$11,739.20
Union and Industry Pension Fund	5,400.00

Dated, Washington, D.C. October 20, 1993

James M. Stephens, Chairman

Dennis M. Devaney, Member

John Neil Raudabaugh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD