

A & R Fashions, Inc. and Joint Board, Cloak, Skirt and Dressmakers Union, International Ladies' Garment Workers Union, AFL-CIO. Cases 1-CA-26575 and 1-CA-29153

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On April 16, 1990, the National Labor Relations Board issued its Decision and Order¹ in Case 1-CA-26575, directing the Respondent to make whole its employees in the appropriate bargaining unit by paying all contractual fringe benefit fund payments, with interest, that the Respondent has unlawfully failed to make, and by reimbursing employees for expenses created by the Respondent's failure to make such payments pursuant to the terms of the June 15, 1988-June 15, 1991 collective-bargaining agreement with the Union (the 1988 agreement) and January 12, 1989 agreement with the Union for the payment of arrearages (the arrearages agreement). On September 27, 1990, the Acting Regional Director issued a compliance specification and notice of hearing (specification) alleging the amount of money owed by the Respondent to the Union's benefit funds through the payroll period ending July 21, 1990, under the 1988 agreement. The specification also alleged the amounts owed for payment due through September 1, 1990, under the arrearages agreement. The specification reserved accrual of additional benefits beyond the quarters for which computation had been done. The Respondent filed an answer on October 19, 1990, admitting all allegations. On January 28, 1991, the General Counsel filed a motion to transfer proceeding to the Board and for summary judgment with the Board. On March 29, 1991, the Board issued a Supplemental Decision and Order,² in which it required the Respondent to pay into the contractual fringe benefit funds the amounts stated in the compliance specification. On December 18, 1991, the United States Court of Appeals for the First Circuit issued its judgment enforcing a supplemental order of the National Labor Relations Board.³

On July 22, 1992, the Board issued its Decision and Order⁴ in Case 1-CA-29153, directing the Respondent to comply with article XVIII of its June 15, 1991-June 15, 1994 collective-bargaining agreement with the Union. The Board ordered the Respondent to remit contractually required contributions to the Health and Welfare Fund, ILGWU National Retirement Fund, the ILGWU Health Services Plan, and to make employees whole for expenses incurred due to the Respondent's failure to make the required benefit fund contributions.

On October 30, 1992, the Regional Director issued an order consolidating cases, consolidated supplemental compliance specification, and notice of hearing (consolidated specification), in Cases 1-CA-26575 and 1-CA-29153, alleging that a controversy exists as to the amounts owed since July 21, 1990, for contributions under the 1988 agreement, the amounts due since September 1, 1990, under the arrearages agreement, and the payments due since September 3, 1991, per the Board's Order in Case 1-CA-29153. The consolidated specification reserved accrual of additional benefits beyond the quarters for which computation had been made. The Respondent filed its answer on November 23, 1992, admitting to its contractual obligations and the computation methods as set forth in paragraphs 1(a)-(b), 2(a)-(d), and 3(a)-(c), but denying the amounts delinquent and owed as set forth in paragraphs 2(d)-(e), 3(b)-(d), 4, and 5. The Respondent presented no basis for disagreement or any alternate formula for establishing the amount due. The Respondent was advised by certified letter⁵ dated January 14, 1993, that its answer was insufficient and did not comply with Section 102.56 of the Board's Rules and Regulations. The Respondent was also advised that if no amended answers were received by the close of business February 4, 1993, a Motion for Summary Judgment would be filed. No response or amended answer has been received. On May 27, 1993, the General Counsel filed a motion to transfer proceeding to the Board, strike portions of the Respondent's answer, and for summary judgment. On June 2, 1993, the Board issued an order transferring proceeding to the Board and Notice to Show Cause why the General Counsel's motion should not be granted. The Respondent has filed no response.

On the entire record in this case, 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:

(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

⁵ The original letter was not returned to the Regional Office, and the return receipt is not available. It is presumed that the document was not claimed by the Respondent. As previously stated by the Board, the Respondent's refusal or failure to claim certified mail should not serve to defeat the purposes of the Act. See *Aslin Management Co.*, 291 NLRB No. 33 (Sept. 30, 1988) (unpublished) and *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986).

¹ 298 NLRB No. 23.

² 302 NLRB No. 47 (unpublished).

³ No. 91-2105 (unpublished).

⁴ 307 NLRB No. 218.

to deny only 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 back pay, 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 to plead specifically and in detail to back pay allegations of specification.*—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. 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.

In his Motion for Summary Judgment the General Counsel contends that with respect to the total amounts delinquent and owed, as set forth in paragraphs 2(d)-(e), 3(b)-(d), 4, and 5 of the consolidated specification, the Respondent's general denials do not meet the substance of the allegations as required by Section 102.56, because they fail to state specifically the basis for disagreement with the computations or set forth in detail the Respondent's position as to the applicable premises together with supporting figures. Accordingly, the General Counsel requests that the allegations contained in the compliance specification be deemed to be true.

We agree. The matters denied concern the amounts owed under the 1988 agreement, the arrearages agree-

ment, and the 1991 agreement. As to these matters, the rules require more than a general denial. The Respondent must specifically state the basis for disagreement, setting forth in detail its position as to the applicable premises and furnishing the appropriate supporting figures. The consolidated specification clearly stated that the Respondent must file an answer "pursuant to Section 102.56 of the Board's Rules and Regulations." Furthermore, the letter of January 14, 1993, advised the Respondent that its answer failed to comply with Section 102.56 of the Board's Rules and Regulations and provided Respondent with a copy of the applicable Rule. This letter also explained that because the Respondent's denials are matters "either within the general knowledge of Respondent and/or concern the calculation of fringe benefit contributions due and owing, the Respondent must specifically state the basis for any disagreement, setting forth in detail the basis for the disagreement with supporting figures." The Respondent clearly failed to file an adequate answer under Section 102.56(b) and (c) of the Board's Rules and Regulations. We therefore grant the General Counsel's Motion for Summary Judgment and deem all the allegations to be true.

ORDER

The National Labor Relations Board orders that the Respondent, A & R Fashions, Inc., Boston, Massachusetts, its officers, agents, successors, and assigns, shall pay into the contractual fringe benefit funds the amounts stated in the consolidated compliance specification.

Dated, Washington, D.C.

September 17, 1993

James M. Stephens, Chairman

Dennis M. Devaney, Member

John Neil Raudabaugh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD