

Allied Crane and Equipment Service, Inc., Allied Crane Service and Equipment, Inc. and International Union of Operating Engineers, Local 478, AFL-CIO. Case 34-CA-5604

DECISION AND ORDER

**BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH**

On November 13, 1992, the National Labor Relations Board issued an unpublished Order, inter alia, ordering the Respondents, Allied Crane and Equipment Service, Inc., and Allied Crane Service and Equipment, Inc.,¹ to pay all delinquent contributions to the Union's health and welfare fund, pension fund, annuity fund, supplemental unemployment fund, and apprenticeship fund for the period of September 1 to December 31, 1991. On April 7, 1993, the United States Court of Appeals for the Second Circuit enforced the Board's Order in full.

A controversy having arisen over the amount due under the Board's Order, on June 24, 1993, the Acting Regional Director for Region 34 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.

On or about July 12, 1993, the Respondent filed an answer to the compliance specification. In its answer, the Respondent admitted each of the allegations in the compliance specification. The Respondent further averred, however, that from September 1 to December 31, 1991, Respondent Allied Crane and Equipment Service, Inc. was under the jurisdiction of the United States Bankruptcy Court, that it was liquidated under the auspices of that court and commencing January 1, 1992, Respondent Allied Crane Service and Equipment, Inc. became the "owning and operating entity." The Respondent further averred in the answer that it is "not financially able to meet the obligation at issue in this [compliance] proceeding."

On July 19, 1993, the Regional Attorney for Region 34 filed with the Board a Motion for Summary Judgment and for issuance of Board Supplemental Decision and Order, with exhibits attached. The motion asserted, inter alia, that summary judgment is appropriate be-

¹The Respondents were found to be alter egos and a single employer, and shall hereafter be referred to as the Respondent.

cause the answer filed admitted all the allegations set forth in the compliance specification.

On July 21, 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 filed no response.

Ruling on Motion For Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that a respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(b) of the Board's Rules and Regulations provides:

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.

In the instant case, the Respondent filed an answer to the compliance specification which admitted all of the allegations in the compliance specification, including the allegations that the Respondent owes certain amounts, with interest, as delinquent contributions to the Union's fringe benefit funds. Although the answer filed admitted all the allegations in the compliance specification, the Respondent asserted a defense based on its involvement in bankruptcy proceedings. It is well established, however, that bankruptcy proceedings do not deprive the Board of its authority to entertain and process an unfair labor practice case to its final disposition. *Cardinal Services*, 295 NLRB 933 fn.2 (1989). In addition, the Respondent's asserted inability to fund the monetary liability at issue in this proceeding is not a sufficient response to a compliance specification. It is well settled that the issue in a backpay proceeding is the amount due and not a respondent's ability to pay. *Scotch & Sirloin Restaurant*, 287 NLRB 1318, 1320 (1988).

Accordingly, because the answer filed admitted as true all the allegations in the compliance specification, we grant the General Counsel's Motion for Summary Judgment. We accordingly conclude that the delinquent contributions owed to the Union's fringe benefit funds are as stated in the compliance specification and we will order payment by the Respondent to the Union's fringe benefit funds.

ORDER

The National Labor Relations Board orders that the Respondent, Allied Crane and Equipment Service, Inc., Allied Crane Service and Equipment, Inc., New London, Connecticut, its officers, agents, successors, and assigns, shall make whole the Union's fringe benefit funds, by making payment to each of the funds in the amount set forth below opposite their names, with any additional amounts to be computed in the manner prescribed in *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979):

Health and Welfare Fund	\$34,229.27
Pension Fund	23,649.30
Annuity Fund	13,850.35
Supplemental Unemployment Fund	5,792.00

Apprenticeship Fund 3,511.14
 Dated, Washington, D.C. August 31, 1993

James M. Stephens, Chairman

Dennis M. Devaney, Member

John Neil Raudabaugh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD