

Michael J. Pallazola d/b/a Pallazola Electric and High Tech Electrical Contractors, Inc. and Local 103, International Brotherhood of Electrical Workers, AFL-CIO. Cases 1-CA-25048 and 1-CA-28622

September 30, 1993

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On February 22, 1991, an administrative law judge of the National Labor Relations Board issued his decision in Case 1-CA-25048, ordering Respondent Michael J. Pallazola d/b/a Pallazola Electric (Pallazola), his heirs, devisees, successors, and assigns to make its employees whole, with interest, for any losses they may have suffered as the result of Pallazola's failure to observe the terms of the collective-bargaining agreements to which it was bound, to make all required contributions to the union fringe benefit funds, to transmit union dues (if any) withheld from employees' salaries pursuant to the agreements, and to reimburse employees for any expenses resulting from Pallazola's failure to make the required contributions. In the absence of exceptions, the Board on April 3, 1991, issued an unpublished Order adopting the judge's decision.

A controversy having arisen over the amounts of money owed under the terms of the Board's Order, the Regional Director for Region 1 on October 30, 1992, issued an order consolidating cases and consolidated compliance specification and notice of hearing. On November 9, 1992, the Regional Director issued an amendment to the specification. In addition to stating the sums claimed and the basis for those claims, the specification asserts that Respondent High Tech Electrical Contractors, Inc. (High Tech) is a single employer with, and alter ego and successor of, Pallazola and is liable for the amounts claimed.¹ The Respondents filed an answer to the amended specification.² In the answer, the Respondents denied that High Tech is the alter ego or successor of, or a single employer with, Pallazola; that High Tech is liable for the amounts claimed in the specification; and that either Pallazola or High Tech is engaged in the construction industry. The answer also denies all of the allegations

¹ High Tech was not a party in Case 1-CA-25048, and it has not been found to have violated the Act. The charge filed in Case 1-CA-28622 alleges that High Tech is Pallazola's alter ego and, as such, is liable for "amounts outstanding." See, e.g., *Scotch & Sirloin Restaurant*, 287 NLRB 1318, 1320-1321 (1988).

² The General Counsel asserts that the Respondents failed to answer the amendments to the specification. We disagree. The answer is dated November 19, 1992, several days after the specification was amended. Under the circumstances, we infer that the allegations responded to in the answer are those of the specification as amended.

in the specification regarding the amounts claimed on behalf of the employees of Pallazola. Finally, the answer asserts as an affirmative defense Michael Pallazola's discharge in bankruptcy about August 13, 1991.³

On May 25, 1993, the General Counsel filed with the Board a motion to transfer proceeding to the Board, to strike portions of Respondents' answer and Motion for Partial Summary Judgment, with exhibits attached. In the motion, the General Counsel alleges that by letter dated January 15, 1993, the Regional Office informed the Respondents' counsel that the answer to the specification was insufficient under the Board's Rules and Regulations.⁴ The General Counsel further alleges that the Respondents were notified that they had until February 5, 1993, to file an amended answer in conformity with the Board's Rules and Regulations and that unless the Region received a sufficient answer by that date, a Motion for Partial Summary Judgment would be filed regarding paragraphs 10 through 18 of the specification. By letter dated February 4, 1993, the General Counsel continues, Michael Pallazola informed Region 1 that the Respondents were no longer represented by their former counsel but by Michael Pallazola himself, and requested an additional week in which to file an amended answer. The General Counsel also alleges that the Regional Attorney granted the Respondents an extension of time until February 16 to file an amended answer and, upon Michael Pallazola's request for an additional extension of time, granted a second extension of time until March 9 to file an answer. The General Counsel alleges that the Respondents have never filed an amended answer. The General Counsel therefore asserts that the Respondents have failed to file a sufficient answer, and that the allegations in paragraphs 10 through 18 of the amended specification should be deemed to be admitted and found to be true. The General Counsel also moves to strike the portions of the Respondents' answer that allegedly fail to conform to the Board's Rules and Regulations.

On May 28, 1993, the Board issued an order transferring this proceeding to the Board and Notice to Show Cause why the General Counsel's motion should not be granted. Michael Pallazola filed a response, presumably on behalf of both Respondents, asserting that High Tech is not the alter ego of Pallazola. The response also asserts that no money is owed because (1)

³ Pallazola's discharge from bankruptcy is not contested.

⁴ The General Counsel asserts that the Respondents' answer contains only general denials of the allegations in pars. 10 through 18 of the amended specification, contrary to Sec. 102.56 of the Board's Rules and Regulations. (See discussion in text, below.) The General Counsel states that the Respondent was provided a copy of the applicable rules in the Regional Office's January 15 letter. (The motion actually characterizes the letter as having been sent on December 4, 1992; that apparently is an inadvertent error.)

payments had been made to the Union on behalf of one employee, (2) the Union was listed as a creditor in the bankruptcy petition of Michael Pallazola but failed to timely file an objection to his discharge in bankruptcy, (3) all but one of the employees did not want to be in the Union, and (4) the Respondents have insufficient assets to satisfy the claims in the specification.

On the entire record in this case, the Board makes the following

Ruling on Motion to Strike and for Partial
Summary Judgment

Section 102.56 of the 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 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 to 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.

We agree with the General Counsel that portions of the Respondents' answer to the amended specification do not meet the requirements of Section 102.56 of the Board's Rules and Regulations. Paragraphs 10 through 17 of the specification explain the basis for the claims for backpay owed to Pallazola's employees and for the

contributions owed to the fringe benefit funds on their behalf.⁵ Paragraph 18, as amended, contains, inter alia, the specific amounts claimed on behalf of each of the named employees. Section 102.56(b) makes clear that general denials of those matters are insufficient. Rather, if the Respondents dispute the accuracy of the figures contained in the specification or the premises on which they are based, the Respondents must state why they disagree, what they consider to be the applicable premises, and furnish the relevant supporting figures. As the General Counsel notes, the Respondents' answer contains only a general denial of those allegations, and no explanation has been given for the failure to answer them in the manner required by Section 102.56.

The assertions in Michael Pallazola's response to the Notice to Show Cause are also insufficient explanations of the Respondents' failure to answer the specification as required. The claim that most of the employees did not want to be "in the Union" is without merit, for two reasons. First, it is an attempt to relitigate an issue that was decided in the affirmative in the unfair labor practice case—*whether* to afford make-whole relief to Pallazola's employees. The specification is concerned not with *whether* make-whole relief is due, but with *how much* is due. Second, the Respondent's contention is irrelevant. Pallazola's contracts with the Union were governed by Section 8(f) of the Act, under which collective-bargaining agreements in the construction industry are enforceable even without a showing of employee support for the Union. See *John Deklewa & Sons*, 282 NLRB 1375 (1987). The contention that payments were made to the Union on behalf of John Santinello is insufficient under Section 102.56 because it identifies neither the amounts of the payments assertedly made, nor even whether those payments were for union dues (as Michael Pallazola indicated at the hearing in the unfair labor practice proceeding) or for one or more of the industry's fringe benefit funds. The allegation that the Respondents have insufficient assets to satisfy the claims made in the specification is also irrelevant to this proceeding. The issue in a compliance proceeding is the amounts due, not whether the Respondents are able to pay. See, e.g., *Scotch & Sirloin Restaurant*, supra, 287 NLRB at 1320. Pallazola's release from bankruptcy, and the Union's failure to object to it, are likewise irrelevant to the quantum of relief required to make the employees whole as provided in the Board's previous Order.

Thus, we agree with the General Counsel that paragraphs 10 through 17 of the Respondents' answer, and paragraph 18 insofar as it denies the amounts claimed on behalf of the named employees, fail to comply with the requirements of Section 102.56(b) and (c). We

⁵The specification states that the amount of dues owed to the Union is unknown.

therefore grant the General Counsel's motion to strike those portions of the answer, and we deem the allegations of paragraphs 10 through 17 of the specification, and of the claims advanced on behalf of the employees in paragraph 18, to be admitted as true.

We disagree, however, with the General Counsel's contention that the Respondents' general denial of *all* the allegations contained in paragraph 18 of the amended specification is deficient. Amended paragraph 18 alleges, in addition to the amounts claimed, that *High Tech* is liable for the amounts due. The issue of High Tech's liability depends on the resolution of other matters, principally whether High Tech is, as alleged, the alter ego or successor of, or a single employer with, Pallazola and the question of the effect of Michael Pallazola's release from bankruptcy on these proceedings. The General Counsel has not moved for summary judgment on those issues, which must be decided at a hearing.⁶ Accordingly, to the extent paragraph 18 of the amended specification alleges that High Tech is liable for the amounts claimed, we find that the Respondents' general denial meets the requirements of the Board's Rules and Regulations, and we deny the motion to strike and for Partial Summary Judgment concerning the alleged liability of High Tech.⁷

In summary, we shall grant the General Counsel's motion to strike and for Partial Summary Judgment

⁶In any event, see *Best Roofing Co.*, 304 NLRB 727, 728 (1991) (general denial of single employer, alter ego, or successor status sufficient to warrant a hearing).

⁷Similarly, the General Counsel has not moved for summary judgment on the issue of the Respondents' status as employers in the construction industry. That issue also must be decided at a hearing, albeit we note that in the unfair labor practice stage of Case 1-CA-25048, no exceptions were taken to the judge's finding that Respondent Pallazola was engaged in the construction industry.

with regard to the issues raised in paragraphs 10 through 17, and the specific amounts claimed in paragraph 18, of the amended compliance specification. We shall direct a hearing limited to the remaining issues raised in the amended specification and answer.

ORDER

It is ordered that the General Counsel's motion to strike portions of the Respondents' answer to the amended compliance specification is granted with regard to paragraphs 10 through 17 of the answer, and to paragraph 18 insofar as it denies the amounts claimed on behalf of the named employees.

IT IS FURTHER ORDERED that the General Counsel's Motion for Partial Summary Judgment is granted with regard to the allegations contained in paragraphs 10 through 17, and to the amounts claimed on behalf of the named employees in paragraph 18, of the amended specification.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 1 for the purpose of issuing a notice of hearing and scheduling a hearing before an administrative law judge for the purpose of taking evidence concerning the allegations that High Tech is a single employer with or the alter ego or successor of Pallazola and that Pallazola and High Tech are engaged in the construction industry; concerning the effect of Michael Pallazola's discharge from bankruptcy on these proceedings; and concerning the alleged liability of High Tech for the amounts claimed. The judge shall prepare and serve on the parties a decision containing findings of fact, conclusions of law, and recommendations based on all the record evidence. Following service of the judge's decision on the parties, the provisions of Section 102.46 of the Board's Rules and Regulations shall apply.