

ASA Construction Company and International Brotherhood of Painters and Allied Trades, Local Union No. 891. Case 11-CA-14809

November 26, 1993

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On September 30, 1992, the National Labor Relations Board issued a Decision and Order, inter alia, ordering ASA Construction Company, the Respondent, to make whole International Brotherhood of Painters and Allied Trades, Local Union No. 891, the Union, for its failure to deduct union dues and to make whole certain of its unit employees for loss of benefits resulting from the Respondent's failure to bargain in good faith in violation of the National Labor Relations Act.¹ On April 14, 1993, the Court of Appeals for the Fourth Circuit entered its judgment enforcing the Board's Order.

A controversy having arisen over the amounts due, on July 15, 1993, the Regional Director for Region 11 issued a compliance specification and notice of hearing alleging the amounts 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 letters dated September 24 and October 4, 1993, the Region advised the Respondent that no answer to the compliance specification had been received and that unless an appropriate answer was filed by October 1 and 12, 1993, respectively, summary judgment would be sought.² The Respondent filed no answer.

On November 4, 1992, the General Counsel filed with the Board a motion to transfer case to the Board and for summary judgment, with exhibits attached. On November 8, 1992, 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.

¹ The Board's decision is reported at 309 NLRB No. 13 (Sept. 30, 1992) (not included in bound volume).

² Copies of these letters were forwarded by certified as well as regular mail. The certified letters were returned unclaimed. The letters forwarded by regular mail were not returned. The Respondent's failure or refusal to claim certified mail cannot serve to defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986). Moreover, these letters were sent merely as a courtesy to the Respondent. There was no requirement that the Respondent be afforded further opportunity to answer.

Ruling on 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:

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 net amounts due are as stated in the compliance specification and we will order payment by the Respondent of the amounts, plus interest accrued on the amounts to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondent, ASA Construction Company, Roanoke, Virginia, its officers, agents, successors, and assigns, shall pay the amounts set forth below, plus interest:

Hospital and health benefits	\$2475.63
Pension fund	3203.75
Apprenticeship fund	618.23
Union dues	617.44

Dated, Washington, D.C. November 26, 1993

James M. Stephens, Chairman

Dennis M. Devaney, Member

John Neil Raudabaugh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD