

**Carpentry Contractors, Inc. and Local Union No. 1234, United Brotherhood of Carpenters and Joiners of America, AFL-CIO. Case 7-CA-35375**

August 22, 1994

**DECISION AND ORDER DENYING MOTION FOR SUMMARY JUDGMENT AND REMANDING**

**BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND BROWNING**

Upon a charge filed by the Union on December 27, 1993, the Acting General Counsel of the National Labor Relations Board issued a complaint on February 3, 1994,<sup>1</sup> against Carpentry Contractors, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Copies of the charge and complaint were properly served on the Respondent. The Respondent filed letters apparently purporting to be answers to the complaint on March 15 and April 3.<sup>2</sup> On April 15, the General Counsel filed a Motion for Default Summary Judgment with exhibits attached, asserting, inter alia, that the Respondent has failed and refused to file a “sufficient Answer to the Complaint.”

On April 19, 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 to the notice. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**1. Procedural history**

The February 3 complaint alleges, inter alia, that the Respondent has violated Section 8(a)(1) and (5) of the Act by failing and refusing, since about June 27, 1993, to pay bargaining unit employees the wages required by the Respondent’s collective-bargaining agreement with the Union, and to make contributions to the Union and to the Union’s Fringe Benefit Trust Funds on behalf of bargaining unit employees, as mandated by the collective-bargaining agreement. The Respondent did not file an answer to the complaint within the

<sup>1</sup> All subsequent dates are 1994 unless otherwise stated.  
<sup>2</sup> The April 3 letter is inadvertently dated “1993.”

14-day time period set forth in Section 102.20 of the Board’s Rules and Regulations.<sup>3</sup>

On March 2, the Board’s Regional Attorney notified the Respondent that an answer to the complaint had not been received, that the time for filing an answer was being extended to March 16, and that if no answer was filed by that deadline, the General Counsel would seek a default judgment from the Board against the Respondent, which, if granted, would result in all of the allegations in the complaint being deemed to be admitted to be true.

On March 15, the Respondent’s president and owner, Bryson Maddick, wrote to the Regional Director, stating in pertinent part:

It is my understanding that I may request a time extension on this hearing, to May 2, 1994. . . . I will explain briefly my answer to each allegation as I explained in my affidavit to Eric Cockrell.<sup>4</sup>

- Charge 1. Payed [sic] employees wages according [to] their job sites (wages are different)
- 2. Have payed [sic] some fringes, but am late on some.

On March 17, the Regional Director issued an order extending the time for the Respondent to file an answer to the complaint to April 4.

On April 3, Maddick again wrote to the Regional Director, stating in pertinent part:

In answer to the complaint filed against Carpentry Contractors Inc. by Carpenters Local 1234.

**Complaint #1**

Due to the various wage scales regarding type of construction (commercial, residential, multi-family[]) and apprentices and work in the Ann Arbor area.

<sup>3</sup>Sec. 102.20 of the Rules and Regulations states, in full:

The respondent shall, within 14 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

<sup>4</sup>Eric Cockrell is not identified in the record.

Enclosed is a[n] affidavit from employees and wage scale.<sup>5</sup>

Complaint #2

We have contributed fringes for 1993 but are still behind.

On April 7, the Regional Attorney again wrote to Maddick, acknowledging receipt of what the Regional Attorney described as Maddick's April 3 "Response to Complaint," and advising him that "since your April 3 . . . Response is intended to be an answer to the complaint herein, it is not sufficient for this purpose." More specifically, the Regional Attorney told Maddick that his letter was deficient because it failed to respond to each complaint paragraph by admitting or denying the allegations, or by offering an explanation as to why an answer could not be provided. The Regional Attorney further advised Maddick that unless he complied with the Board's Rules and Regulations in regard to filing an appropriate answer by April 11, a Motion for Default Judgment would be filed with the Board. The Respondent did not respond to the Regional Attorney's letter.

In his motion, the General Counsel asserts that the Respondent's March 15 and April 3 letters are not sufficient answers to the complaint because they do not comply with Section 102.20 of the Board's Rules and Regulations, *supra*. Thus, the General Counsel contends that no sufficient answer to the complaint has been filed, and that, in accordance with the provisions of Section 102.20 of the Board's Rules and Regulations, all allegations in the complaint should be deemed to be admitted to be true and should be so found by the Board, and that the Respondent should consequently be found to have violated Section 8(a)(1) and (5) of the complaint, as alleged.

<sup>5</sup> There are two attachments to the Respondent's April 3 letter:

1. A "To Whom It May Concern" letter dated March 11, styled (but not in fact) "AFFIDAVIT," with 6 signatures, stating:

[typed]

Let it be known that as a Rough Carpenter I am aware of the variances in pay scales designated by the Carpenters Union for working on residential, multi family, and commercial, we also work in the Ann Arbor area under their wage scale.

I am in agreement with the wage I am being paid.

[handwritten]

I an [sic] agreement with Carpenters [two letters, indecipherable]

[6 signatures, one of which is Bryson Maddick] [handwritten]

2. A typed or printed page, showing different hourly wage scales effective August 16, 1993 for Detroit journeyman and apprentice carpenters according to (a) multi-family—condominium and (b) single family dwelling projects.

## 2. Discussion

The Board, having considered the matter, finds that summary judgment is not appropriate here. The Respondent's March 15 and April 3 *pro se* letters reasonably, albeit not artfully, appear to be denials of the complaint allegation that the Respondent has been failing and refusing to pay bargaining unit employees the wage rates required by the collective-bargaining agreement. Thus, although—as the General Counsel contends—the Respondent's letters are not in a form that comports with Section 102.20 of the Board's Rules and Regulations, the letters do respond effectively in the negative to the complaint allegations containing the operative facts of the alleged failure to pay contractually required wage rates.<sup>6</sup> And the letters do attempt to provide an explanation for the Respondent's conduct in regard to wage rates paid.<sup>7</sup>

The Respondent's letters do not, to be sure, respond to each and every allegation in the complaint.<sup>8</sup> Indeed, they do not address most of the facts alleged in the complaint. However, even if those unaddressed facts were deemed to be admitted to be true, the Respondent's effective denials of the substance of the complaint allegation of failure to pay contractual wages has raised substantial and material issues of fact warranting a hearing before an administrative law judge.<sup>9</sup>

Under the circumstances, because the Respondent's letters were filed without benefit of counsel, and also because they constitute a sufficiently clear denial of the allegation regarding failure to pay contractual wage rates, we will not preclude a determination on the merits simply because of the Respondent's failure to comply with all of our procedural rules.<sup>10</sup>

Based on all of the above considerations, we conclude that the General Counsel's Motion for Summary Judgment should be denied.

## ORDER

The General Counsel's Motion for Summary Judgment is denied.

<sup>6</sup> See *Tri-Way Security*, 310 NLRB 1222 (1993).

<sup>7</sup> See *Dismantlement Consultants*, 312 NLRB 650 (1993); *Steeltec, Inc.*, 302 NLRB 980 (1991).

<sup>8</sup> See *Acme Building Maintenance*, 307 NLRB 358 (1992).

<sup>9</sup> See *Dismantlement Consultants*, *supra*; *Steeltec*, *supra*.

<sup>10</sup> See *Dismantlement Consultants*, *supra*; *Tri-Way Security*, *supra*; *Acme Building Maintenance*, *supra*; *Steeltec*, *supra*.

The Respondent's letters, on the other hand, do seem to concede at least some degree of failure to pay contractually required fringe benefits, as alleged in the complaint. Nevertheless, because there are material factual allegations at issue, as discussed above, summary judgment is not appropriate in this case.

Finally, although it does not appear that the Respondent's letters were served on the Charging Party as required by Sec. 102.21 of the Board's Rules and Regulations, we again note the *pro se* basis on which the Respondent was proceeding. See *Dismantlement Consultants*, *supra*; *Tri-Way Security*, *supra*; *Acme Building Maintenance*, *supra*.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 7 for further appropriate action.

MEMBER STEPHENS, dissenting in part.

In my view the Respondent's letters answering the complaint substantially admit that the Respondent had failed to adhere to the contractual requirement of timely payments to fringe benefit trust funds. I would

therefore grant the General Counsel's Motion for Summary Judgment as to those allegations, finding a violation of Section 8(a)(5) and (1) on that basis, and leaving to compliance the matter of what sums must be paid to remedy it. I agree with my colleagues that the Respondent has raised a factual issue as to the wage rate allegations and thus I join them in denying summary judgment as to that portion of the complaint.