

**Rozell, Inc. and Plumbers and Pipefitters Local Union No. 773, affiliated with the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO. Case 3-CA-16865**

June 24, 1994

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS DEVANEY  
AND BROWNING

On May 19, 1993, the National Labor Relations Board issued an order adopting, in the absence of exceptions, the decision of the administrative law judge, inter alia, ordering Rozell, Inc., its officers, agents, successors, and assigns, to pay to the Plumbers and Pipefitters Local Union No. 773, affiliated with the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO the amounts required in article VI, section 7(c) of the collective-bargaining agreement and owed as a result of the Respondent's failure to abide by the terms of the contract with the Union in violation of the National Labor Relations Act. On October 26, 1993, the United States Court of Appeals for the Second Circuit entered its judgment enforcing the Board's Order.

A controversy having arisen over the amount of backpay due discriminatees, on January 31, 1994, the Regional Director for Region 3 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. Although properly served with a copy of the compliance specification, the Respondent failed to file an answer.

By letter dated April 12, 1994, the Regional attorney advised the Respondent, that no answer to the compliance specification had been received and that unless an appropriate answer was filed by close of business on Tuesday, April 19, 1994, summary judgment would be sought. The Respondent filed no answer.

On May 23, 1994, the General Counsel filed with the Board a Motion to Transfer Case and to Continue Proceeding Before the Board and for Summary Judgment and Issuance of a Supplemental Decision and Order, with exhibits attached. On May 25, 1994, 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.

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

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

**ORDER**

The National Labor Relations Board orders that the Respondent, Rozell, Inc., Glens Falls, New York, its officers, agents, successors, and assigns, shall make whole the Union, by paying the amounts listed below, with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987):

10-percent penalty	\$6,360
Attorney fees	\$1,260