

Sam Martin & Sons, Inc. and its alter ego, Martin Painting, Inc. and Richard D. Furlong for District Council No. 4, International Brotherhood of Painters & Allied Trades of America and Canada, AFL-CIO. Case 3-CA-16000

July 13, 1994

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND DEVANEY

On July 16, 1993, the National Labor Relations Board issued a Decision and Order,¹ *inter alia*, ordering Sam Martin & Sons, Inc. and its alter ego, Martin Painting, Inc. to make whole certain of its unit employees for losses from its failure to apply its contract with District Council No. 4, International Brotherhood of Painters & Allied Trades of America and Canada, AFL-CIO and to make whole the fringe benefit funds for its failure to make contractually required payments all in violation of the National Labor Relations Act. On December 29, 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 March 11, 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 13, 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 April 20, 1994, summary judgment would be sought. The Respondent filed no answer.

On June 6, 1994, the General Counsel filed with the Board a Motion to Transfer Case to the Board and for Summary Judgment, with exhibits attached. On June 9, 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.

¹ 311 NLRB No. 139. Summary judgment decision not reported in Board volume.

Ruling on the 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 employees, the Union, and the funds are as stated in the compliance specification and we will order payment by the Respondent of those amounts, plus interest, and, further, delinquency penalties and attorney fees and expenses which may accrue on those amounts to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondent, Sam Martin & Sons, Inc. and its alter ego, Martin Painting, Inc., Kenmore, New York, its officers, agents, successors, and assigns, shall make the payments as they are alleged in the specification to the benefit funds, the Union, and the individuals in the amounts listed, with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Wage payments shall be minus tax withholdings required by Federal and state laws:

EMPLOYEE WAGES

Coville, Scott	\$	5248.13
DiNatale, Joseph		3668.60
Farkas, John		0
Garguilo, R. Dominic		1601.45
Gonzales, Daniel		88.40
Leidenfrost, Ronald		1314.95
Nelson, Ronald		2971.41
Petrus, James		5034.92
Primiano, Kevin		5034.92
Sheridan, James		4594.05

TOTAL WAGES: \$28,323.09

BENEFIT CONTRIBUTIONS

Painters District Council No. 4
Health Trust Fund \$ 8883.68

Apprentice Trust Fund of
Painter's District Council No. 4 1281.30

Painter's District Council No. 4
Supplemental Unemployment Fund 4484.55

National Apprentice Program 42.71

I.B.P.A.T. Union and Industry
National Pension Fund 9823.30

TOTAL BENEFIT
CONTRIBUTIONS: \$24,515.54

DELINQUENCY PENALTIES

Late Payment Penalty \$ 2451.55

Late Reporting Penalty 3500.00

TOTAL PENALTIES: 5951.55

ATTORNEY FEES AND EXPENSES

TOTAL: \$ 3945.75
Dated, Washington, D.C. July 13, 1994

William B. Gould IV, Chairman

James M. Stephens, Member

Dennis M. Devaney, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD