

**Smith's Bakeries-Hillcrest and United Food and Commercial Workers International Union, Local 1036, AFL-CIO, CLC. Case 31-CA-20116**

December 8, 1994

**SUPPLEMENTAL DECISION AND ORDER**

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

On February 9, 1994, the National Labor Relations Board issued a Decision and Order,<sup>1</sup> inter alia, ordering Smith's Bakeries-Hillcrest to make whole certain of its unit employees for any loss of benefits or other expenses as a result of the Respondent's termination of the existing health plan on or about August 8, 1993, in violation of the National Labor Relations Act. The United States Court of Appeals for the Ninth Circuit, on July 27, 1994, entered its judgment enforcing in full the Board's Order, including the monetary provisions.

A controversy having arisen over the amounts due the unit employees, on September 19, 1994, the Regional Director for Region 31 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 letter dated October 11, 1994, 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 17, 1994, summary judgment would be sought. The Respondent filed no answer.

On November 14, 1994, the General Counsel filed with the Board a Motion to Transfer Case to the Board and for Summary Judgment, with exhibits attached. On November 16, 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 net back-pay due the employees is as stated in the compliance specification and we will order payment by the Respondent of said amounts to the employees, plus interest accrued on said amounts to the date of payment.

**ORDER**

The National Labor Relations Board orders that the Respondent, Smith's Bakeries-Hillcrest, Sacramento, California, its officers, agents, successors, and assigns, shall make whole the individuals named below, by paying them the amounts following their names, plus interest pursuant to *New Horizons for the Retarded*, 283 NLRB 1173 (1987):

Barbara Barker	\$739.07
Victor Calderon	300.00
Margaret Peters	300.00
Bobbie J. Tidwell	371.11
Joyce E. Wheeler	403.83

Dated, Washington, D.C. December 8, 1994

\_\_\_\_\_  
William B. Gould IV, Chairman

\_\_\_\_\_  
James M. Stephens, Member

\_\_\_\_\_  
Margaret A. Browning, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

<sup>1</sup> 313 NLRB No. 99 (not published in Board volumes).