

Viola Industries-Elevator Division, Inc. and its alter ego Viola Industries, Inc. and International Union of Elevator Contractors. Case 5-CA-15990 (formerly 3-CA-11918)

February 23, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND TRUESDALE

On September 30, 1987, the National Labor Relations Board issued its Decision and Order in the instant case,¹ directing the Respondent to honor and apply to bargaining unit employees the terms and conditions contained in the collective-bargaining agreement agreed to by the Respondent and the Union, which was effective from December 14, 1982, to July 8, 1987. That decision also ordered the Respondent to make whole, with interest, unit employees for any resulting loss of wages and benefits they may have suffered, including contributions to employee benefit trust funds. On November 2, 1992, the United States Court of Appeals for the Tenth Circuit enforced the Board's Order.²

On March 31, 1994, the Regional Director for Region 5 issued a compliance specification and notice of hearing because a controversy had arisen over the amount of backpay due under the terms of the Board's and the Tenth Circuit Court of Appeals' Orders. On April 27, 1994, the Respondent filed a timely answer that denied generally paragraphs 2, 3, and 4 of the compliance specification. Those paragraphs addressed the formula for computing gross backpay, the definition of interim wages, and the formula for computing net backpay, respectively. Noting the Respondent's failure to set forth alternative formulas, definitions, or computations in its denial, as required by Section 102.56(b) of the Board's Rules and Regulations,³ the General Counsel filed a Motion for Partial Summary Judgment on September 2, 1994. That motion requested that the Board strike the Respondent's answer to paragraphs 2, 3, and 4 of the compliance specification, deem those paragraphs to be admitted as true, and to be so found, and issue a Decision and Order granting partial summary judgment concerning the matters

covered by paragraphs 2, 3, and 4. Subsequently, on September 8, 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 filed a timely response and the General Counsel filed an answer to that response.

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

On the entire record in this case, the Board makes the following

Ruling on Motion for Summary Judgment

The Respondent's answer to the Notice to Show Cause contends that certain categories of individuals are not covered by the Board's make-whole remedy and denies specific amounts of money listed in the compliance specification for those individuals.⁴ The General Counsel's Motion for Partial Summary Judgment, however, states in paragraph 5 that the specific identification of individuals to be covered by the Board's Order is not part of the motion. The Respondent does note in its response to the Notice to Show Cause that it is merely denying the calculations of gross backpay, interim earnings, and calendar quarter net backpay, and not the definition of those items or the method by which the calculations were made. The Respondent's bare denials concerning the backpay issues covered in the General Counsel's Motion for Partial Summary Judgment do not contain the requisite specificity or alternatives as required by Section 102.56 of the Board's Rules and Regulations. Consequently, we find that the portions of the answer concerning the definitions and formulas to be used in computing gross backpay, interim earnings, and net backpay in paragraphs 2 through 4 of the specification are insufficient under Section 102.56, and we grant the General Counsel's motion to strike those portions of the answer. Pursuant to Section 102.56(c), we deem those allegations of the specification to have been admitted to be true. Accordingly, we grant the General Counsel's Motion for Partial Summary Judgment.

ORDER

It is ordered that the General Counsel's motion to strike the portions of Respondent Viola Industries-Elevator Division, Inc. and its alter ego Viola Industries, Inc.'s answer to the compliance specification in Case 5-CA-15990 concerning the definitions of gross back-

¹ 286 NLRB 306.

² 979 F.2d 1384.

³ Sec. 102.56(b) provides in pertinent part that:

As to all matter within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

⁴ The Respondent also reiterates its denial that the employees referred to in pars. 2, 3, and 4, as well as in other paragraphs of the compliance specification, are "discriminatees." We agree that the term is a misnomer for the Respondent's bargaining unit employees who are claimants in this proceeding as a result of the Respondent's violations of Sec. 8(a)(5) and (1) of the Act. This incorrect reference to the claimants as discriminatees, however, has no substantive effect on the matters at issue.

pay, interim earnings, and net backpay and the formulas for computing those items is granted.

IT IS FURTHER ORDERED that the General Counsel's Motion for Partial Summary Judgment in Case 5-CA-15990 against Respondent Viola Industries-Elevator Division, Inc. and its alter ego Viola Industries, Inc. is granted.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 5 for the purpose of arranging a hearing before an administra-

tive law judge on the remaining issues in the compliance specification for Case 5-CA-15990.

IT IS FURTHER ORDERED that the administrative law judge shall prepare and serve on the parties a decision containing findings of fact, conclusions of law, and recommendations based on all the record evidence. Following service of the administrative law judge's decision on the parties, the provisions of Section 102.46 of the Board's Rules shall be applicable.