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**Pacific Coatings Company and Robert Tackett and International Brotherhood of Painters and Allied Trades, Local 1595, AFL-CIO.** Cases 31-CA-20031 and 31-CA-20394

August 21, 1995

**SUPPLEMENTAL DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS BROWNING  
AND COHEN

On August 8, 1994, the National Labor Relations Board issued a Decision and Order,<sup>1</sup> ordering Pacific Coatings Company to, inter alia, make whole Robert Tackett and Kent D. L. Gates for any loss of earnings and other benefits suffered as a result of the Respondent's discrimination against them in violation of the National Labor Relations Act. On December 6, 1994, the United States Court of Appeals for the Ninth Circuit entered its judgment enforcing in full the Board's Order.

A controversy having arisen over the amount of backpay due the discriminatees, on April 7, 1995, 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 May 1, 1995, counsel for the General Counsel advised the Respondent that no answer to the compliance specification had been received and that unless an answer which complies with the Board's Rules and Regulations was filed by May 12, 1995, a Motion for Summary Judgment would be filed. The Respondent filed no answer.<sup>2</sup>

On July 28, 1995, the General Counsel filed with the Board a Motion to Transfer Case to the Board and for Summary Judgment on Compliance Specification, with exhibits attached. On August 1, 1995, 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

<sup>1</sup> 314 NLRB No. 114 (summary judgment decision not reported in this volume).

<sup>2</sup> The General Counsel's motion indicates that the letter, which was sent by certified mail, was returned as unclaimed. However, the Respondent's failure or refusal to claim certified mail cannot serve to defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986).

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 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 net backpay due the discriminatees is as stated in the compliance specification and we will order payment by the Respondent of the amounts to the discriminatees, plus interest accrued on the amounts to the date of payment.

**ORDER**

The National Labor Relations Board orders that the Respondent, Pacific Coatings Company, Mission Hills, California, its officers, agents, successors, and assigns, shall make whole the individuals named below, by paying them the amounts following their names for the backpay periods set forth in the compliance specification,<sup>3</sup> with interest thereon to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and state laws:

Robert Tackett	\$37,213
Kent Gates	39,664

<sup>3</sup> The compliance specification reserves for future determination the Respondent's backpay obligation for periods subsequent to March 31, 1995.

Dated, Washington, D.C. August 21, 1995

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William B. Gould IV,            Chairman

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Margaret A. Browning,        Member

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Charles I. Cohen,            Member

(SEAL)        NATIONAL LABOR RELATIONS BOARD