

**DeMuth Electric, Inc. and International Brotherhood of Electrical Workers, Local 139.** Case 3-CA-17527

December 12, 1995

DECISION AND SUPPLEMENTAL ORDER  
REMANDING

BY CHAIRMAN GOULD AND MEMBERS BROWNING  
AND COHEN

On November 30, 1993, the National Labor Relations Board issued an unpublished Order in this proceeding in which the Board, in the absence of exceptions, adopted the decision of the administrative law judge directing the Respondent, inter alia, to offer William Morich immediate reinstatement to his former position and to make him whole for losses resulting from the Respondent's unfair labor practices. On April 26, 1994, the United States Court of Appeals for the Second Circuit entered its judgment enforcing the Board's Order.<sup>1</sup>

A controversy having arisen over the amounts due under the terms of the Board's Order, the Acting Regional Director for Region 3 issued a compliance specification and notice of hearing on August 25, 1995, alleging the amounts due and notifying the Respondent that it must file a timely answer complying with the Board's Rules and Regulations. On September 21, 1995, the Respondent filed an answer to the compliance specification.

On October 16, 1995, the General Counsel filed with the Board a Motion to Transfer Case to and Continue Proceeding before the Board and for Summary Judgment, with exhibits attached. On October 19, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's motion should not be granted. The Respondent has failed to file a response. The allegations in the motion are therefore undisputed.

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

On the entire record, the Board makes the following

Ruling on Motion for Summary Judgment

Section 102.56(b) and (c) of the Board's Rules and Regulations provides, inter alia,

(b) *Contents of answer to specification.*—The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the

specification at issue. . . . As to all matters 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.

(c) *Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification.* . . . If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

The General Counsel alleges that the Respondent's answer is insufficient to raise any litigable issues regarding the compliance specification. The General Counsel contends that as to matters within its knowledge, the Respondent has filed a general denial disputing the accuracy of the figures in the compliance specification without setting forth in detail the Respondent's position as to the applicable premises for such denial and without furnishing the appropriate supporting figures.

Paragraph 1 of the compliance specification alleges that the backpay period begins on October 1, 1992, and ends October 14, 1993. In paragraph 1 of its answer, the Respondent denies the backpay period set forth in the compliance specification and states that "testimony at the original hearing . . . indicated that [the Respondent] made several attempts to contact and reemploy immediately upon Morich leaving the employment of [the Respondent]." The Respondent notes that the judge in the original hearing indicated that it appeared that the Respondent attempted to contact Morich within a day, but that Morich never returned the calls. Thus, backpay would "appear to be minimal."

The General Counsel contends that this answer is insufficient because the matter is within the Respondent's knowledge, and the answer fails to state the Respondent's position as to the applicable premises on which the backpay figures should be based and does not furnish supporting figures. Specifically, the General Counsel contends that the answer does not state if

<sup>1</sup>No. 94-4058 (unpublished).

or when the Respondent made an offer of reinstatement, what position was offered, or any other details about any such offer.

We agree with the General Counsel that this answer does not comport with Section 102.56 of the Board's Rules and Regulations. The Respondent, while contending that it made several attempts to reinstate Morich, has not provided specific details concerning the alleged attempts. In particular, the Respondent has not specifically alleged that it actually made any offers of reinstatement. Nor has the Respondent specified exactly when it made such offers, what position was offered, and the terms of any such offers. The Respondent's answer states that Morich did not return the Respondent's calls, but does not allege whether the Respondent ever attempted to offer reinstatement in writing. In light of the lack of specificity in the Respondent's answer, we find that the Respondent has not raised any issues warranting a hearing concerning the length of the backpay period. See *Ornamental Iron Work Co.*, 307 NLRB 20 (1992).

Paragraph 2 of the compliance specification alleges that Morich's gross backpay should be based on the earnings of Larry J. Parsons, the next senior employee. Paragraph 3 alleges that based on Parsons' employment, Morich would have received a raise, premium hourly wage rates, and overtime wage rates during the backpay period. In its answer, the Respondent states that it does not schedule work based on seniority and that raises are not given at "any particular calendar time frame (annually)." Further, the Respondent states that prevailing wage jobs and overtime hours are not assigned by seniority.

The General Counsel argues that this answer does not comport with Section 102.56(b) of the Board's Rules and Regulations because it is a general denial which does not fairly meet the substance of the allegations in the compliance specification. The General Counsel contends that the answer does not reveal any specific basis for disagreement with the allegations in the compliance specification and does not set forth in detail supporting figures and an alternative formula for computing backpay.

We agree with the General Counsel that the Respondent's answer to paragraphs 2 and 3 is insufficient. The Board has held that respondents are required to do more than simply criticize the bases for the specification, and must affirmatively provide an alternative formula and supporting figures.<sup>2</sup> Although the answer expresses disagreement with the General Counsel's allegations, it does not set forth in detail the Respondent's position as to the applicable premises and does not furnish the appropriate supporting figures. Thus, we find the Respondent's answer to be inadequate under Section 102.56. Accordingly, we deem the alle-

gations in paragraphs 2 and 3 of the compliance specification to be true and the Respondent shall be precluded from introducing evidence controverting them.

Paragraph 4 of the compliance specification alleges that Morich incurred additional expenses in his search for work, and that Morich should be reimbursed for the number of miles traveled multiplied by 25 cents per mile. The Respondent's answer discusses the Union's procedure for searching for work and asserts that it "should not be held liable to losses caused by conditions of employment inherent to membership to a union that the employer is not a party to." Paragraphs 5, 6, and 7 of the compliance specification allege amounts of Morich's interim earnings and expenses, and set forth the amount of net backpay owed to Morich. The Respondent's answer to these allegations contends, inter alia, that "[e]arnings and expenses at quarters indicated are not accurate to reflect any lost income to Morich."

The General Counsel contends that the Respondent's answer to paragraphs 4 through 7 is insufficient because it does not specifically admit, deny, explain, or fairly meet the substance of the allegations in the compliance specification.

We disagree with the General Counsel's contention that the Respondent's answer to paragraphs 4 through 7 is insufficient to warrant a hearing on those allegations. It is well established that a general denial is sufficient to defeat a Motion for Summary Judgment as to those issues not within the knowledge of the Respondent.<sup>3</sup> The General Counsel has not alleged, nor do we find, that the amounts of Morich's interim earnings and expenses are within the knowledge of the Respondent. Accordingly, we find that a hearing is warranted as to paragraphs 4 through 7 of the compliance specification and we deny the General Counsel's Motion for Summary Judgment as to those paragraphs.

For the reasons set forth above, we grant the General Counsel's Motion for Summary Judgment with respect to paragraphs 1 through 3 of the compliance specification and shall remand this proceeding for a hearing limited to the issues of Morich's interim earnings, expenses, and the resulting net backpay.

#### ORDER

It is ordered that the Respondent's answer to paragraphs 1 through 3 of the compliance specification is stricken, those allegations are deemed to be true, and the General Counsel's Motion for Summary Judgment is granted with respect to all issues except William Morich's interim earnings and expenses.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 3 for the purpose of arranging a hearing before an administra-

<sup>2</sup> *United Enviro Systems*, 314 NLRB 1130 (1994).

<sup>3</sup> See, e.g., *Dews Construction Corp.*, 246 NLRB 945, 947 (1979).

tive law judge limited to the issues of Morich's interim earnings and expenses. The administrative law judge shall prepare and serve on the parties a decision containing findings of fact, conclusions of law, and rec-

ommendations 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.