

**Horizons Hotel Corporation d/b/a Carib Inn Tennis Club and Casino and/or Hotel Associates, Incorporated and Union de Trabajadores de la Industria Gastronomica de Puerto Rico, Local 610, Hotel Employees and Restaurant Employees International Union, AFL-CIO.** Case 24-CA-5423

March 29, 1996

SUPPLEMENTAL DECISION AND ORDER  
REMANDING

BY CHAIRMAN GOULD AND MEMBERS BROWNING  
AND COHEN

On November 22, 1993, the National Labor Relations Board issued a Decision and Order in this proceeding<sup>1</sup> in which it ordered Respondent Horizons Hotel Corporation d/b/a Carib Inn Tennis Club and Casino (Horizons), inter alia, to make whole its predecessor's former employees in both the service and the casino bargaining units for the loss of earnings they suffered by reason of the Respondent's discriminatory failure to hire them and the Respondent's unlawful unilateral changes on commencing operations. On March 3, 1995, the United States Court of Appeals for the First Circuit entered a judgment enforcing the Board's Order.<sup>2</sup>

A controversy having arisen over the amount of backpay due the discriminatees under the Board's Order, the Regional Director for Region 24 issued a compliance specification and notice of hearing on July 13, 1994, alleging that Respondent Hotel Associates, Incorporated is a successor, a joint employer, a single employer, and/or an alter ego of Respondent Horizons and that they are jointly and severally liable for the amounts of backpay owed to the individual discriminatees which are set forth in that document. The compliance specification also notified both Respondents that they must file a timely answer complying with the Board's Rules and Regulations. On August 19 and September 10, 1994, respectively, Respondent Hotel Associates and Respondent Horizons separately filed answers to the compliance specification.

On November 2, 1995, the General Counsel filed a Motion to Transfer Case to and Continue Proceeding before the Board and for Partial Summary Judgment, with exhibits attached. The General Counsel's motion contended that the Respondents' separate answers to paragraphs 12 through 14 of the compliance specification fail to meet the requirements of Section 102.56(b) and (c) of the Board's Rules and Regulations because they constitute "general denials" to matters which are within each of the Respondent's knowledge. The General Counsel moved that the Board deem paragraphs

12 through 14 of the compliance specification to be admitted as true and grant the General Counsel's Motion for Partial Summary Judgment on these allegations.

On November 13, 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 Respondents have not filed a response to the Notice to Show Cause.

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 the Motion for Partial  
Summary Judgment

Section 102.56(b) and (c) of the Board's Rules and Regulations states:

(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. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. 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 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. 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 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 evi-

<sup>1</sup> 312 NLRB 1212.

<sup>2</sup> Docket Nos. 94-1294 and 94-1303.

dence supporting such allegation, and the respondent shall be precluded from introducing evidence supporting the allegation.

We agree with the General Counsel that the Respondents' separate answers are not sufficient to raise any litigable issue regarding paragraphs 12 and 13 of the compliance specification and paragraph 14 to the extent it sets out gross backpay totals.<sup>3</sup> Paragraph 12 alleges that the backpay period for the service employees began on June 1, 1986, and ends on the date that they either are reinstated or reject a valid reinstatement offer; that the applicable rate of pay is their earnings immediately before Respondent Horizons committed the unfair labor practices; and that the service unit employees worked an average of 40 hours immediately before the violations occurred. Paragraph 13 alleges that the backpay period for the casino unit employees began on June 1, 1986, and terminated on June 23, 1986, when Respondent Horizons ceased casino operations; that the applicable rate of pay is their earnings immediately before the unfair labor practices commenced; and that they also worked an average of 40 hours per week. Paragraph 14 summarizes the facts and calculations regarding the gross backpay and reinstatement obligation of Respondent Horizons and/or Respondent Hotel Associates.

Respondent Horizons' answer generally denies paragraphs 13 and 14 of the specification but fails to either admit or deny paragraph 12. These matters regarding gross backpay computations are within Respondent Horizons' knowledge and control and its failure to set forth fully its position as to the applicable premises or to furnish appropriate supporting figures or alternative calculations is contrary to the specificity requirements of Section 102.56(b) of the Board's Rules and Regulations.<sup>4</sup>

<sup>3</sup>We disagree, however, with the General Counsel's contention that the Respondents' separate answers are deficient with respect to all the allegations claimed in par. 14. Because par. 14 alleges, in addition to the amounts claimed, that Respondent Hotel Associates is liable for the amounts due, and because this Respondent has generally denied any backpay liability here under the theories advanced by the General Counsel, we shall grant the General Counsel's motion regarding par. 14 only with respect to the specific amounts claimed in that paragraph. See *Pallazola Electric*, 312 NLRB 569 (1993).

<sup>4</sup>See *Pallazola Electric*, supra; *Scotch & Sirloin Restaurant*, 287 NLRB 1318 (1988). Respondent Hotel Associates' answer states that it "[p]rovides sufficient information to form an opinion as to the allegations contained in paragraphs '12,' '13,' '14.'" Although the Board ordinarily presumes that the various factors entering into the computation of gross backpay are within the knowledge of a respondent employer, at this stage of the proceeding Respondent Hotel Associates has not been shown to be an "employer" of the discriminatees. Rather, as indicated in fn. 3, supra, Respondent Hotel Associates' denial that it is a successor, a joint employer, a single employer, or an alter ego of Respondent Horizons raises issues that must be resolved at a hearing.

Although the Respondents also raise various affirmative defenses in their respective answers, these defenses also are insufficient to warrant a hearing, because they do not raise any issue with respect to paragraphs 12 and 13, and paragraph 14 as it relates to gross backpay. Thus, Respondent Horizons is improperly attempting to relitigate issues previously decided in the unfair labor practice case by arguing that the Board's make-whole remedy is inappropriate because "it is based on the salaries and/or benefits which the employees earned prior to the commencement of operations by Horizons." As the counsel for the General Counsel stresses in her motion, the Board previously decided that, as part of its remedy, the Respondent was required to rescind the unilateral changes it made on commencing operations and to reinstate the unit employees' prior terms and conditions of employment.<sup>5</sup> Respondent Horizons' other affirmative defenses involve the discriminatees' interim earnings and their efforts to mitigate damages which the Respondent is entitled to mitigate fully at the compliance hearing directed below.<sup>6</sup> Finally, contrary to Respondent Hotel Associates' argument, the bankruptcy petition that it purportedly filed in the United States Bankruptcy Court does not stay this proceeding because the Board is exempt from the automatic stay provision of the Federal Bankruptcy Code.<sup>7</sup>

Therefore, pursuant to Section 102.56(b) and (c) of the Board's Rules, we find that Respondent Horizons has admitted to be true paragraphs 12 and 13, and paragraph 14 of the compliance specification regarding gross backpay. Accordingly, we grant the General Counsel's Motion for Partial Summary Judgment and shall direct a hearing limited to the remaining paragraphs of the specification.

#### ORDER

It is ordered that the General Counsel's Motion to the Board for Partial Summary Judgment is granted with respect to the compliance specification's para-

We need not decide the question of the adequacy of Respondent Hotel Associates' answer to the gross backpay allegations of the specification. Resolution of the derivative liability issue will necessarily resolve that question as well. If Respondent Hotel Associates is not a successor, a joint employer, a single employer, or an alter ego of Respondent Horizons, then it will not be liable for any backpay. If, on the other hand, the General Counsel establishes that such a relationship exists between the Respondents, then Respondent Hotel Associates will be bound by the failure of Respondent Horizons to provide an adequate answer to the gross backpay computations of the specifications. See *Denart Coal Co.*, 301 NLRB 391, 392 (1991).

<sup>5</sup>*Carib Inn of San Juan*, 312 NLRB 1212 at fn. 4 (1993).

<sup>6</sup>See, e.g., *Dews Construction*, 246 NLRB 945, 947 (1979), where the Board held that a general denial, as here, was sufficient to place interim earnings into issue.

<sup>7</sup>See *NLRB v. Continental Hagen Corp.*, 932 F.2d 828 (9th Cir. 1991).

graphs 12 and 13, and paragraph 14 regarding gross backpay.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 24 for the purposes of issuing a notice of hearing and scheduling the hearing before an administrative law judge, which shall be limited to taking evidence concerning paragraphs 1 through 11 of the compliance specification.

IT IS FURTHER ORDERED that the administrative law judge shall prepare and serve on the parties a supplemental 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.