NOTICE: This opinion is subject to formal revision before publication in the Board volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Yerger Trucking, Inc. and Yerger Landscaping and Paving, Inc. *and* Teamsters Local Union No. 429 a/w International Brotherhood of Teamsters, AFL–CIO. Case 4–CA–19810

April 30, 1996

SECOND SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND COHEN

On May 15, 1992, the National Labor Relations Board issued a Decision and Order,[1] inter alia, ordering the Respondent to make whole employees for their losses resulting from the Respondent's unfair labor practices. On July 25, 1994, the United States Court of Appeals for the Third Circuit entered its judgment enforcing the Board's Order.

A controversy having arisen over the amount of backpay due discriminatees, on March 30, 1995, the Regional Director for Region 4 issued a compliance specification and notice of hearing alleging the amount 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. On April 27, 1995, the Respondent filed an answer to the compliance specification, admitting in part and denying in part the allegations in the compliance specification.

On August 9, 1995, the General Counsel filed with the Board a Motion to Strike Portions of Answer and for Partial Summary Judgment. On September 19, 1995, the Board granted the General Counsel's motion and remanded the proceeding for a hearing limited to the issues of the discriminatees' interim earnings and the resulting net backpay, and the applicable interest rate to be assessed.

Thereafter, prior to the scheduled hearing, by letter dated February 2, 1996, the Respondent withdrew its answer to the compliance specification. Accordingly, on March 22, 1996, the General Counsel filed with the Board a Motion to Transfer Case to the Board and for Summary Judgment, with exhibits attached. On March 26, 1996, 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 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 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.

Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Respondent has withdrawn its answer. Such a withdrawal has the same effect as a failure to file an answer, i.e., the allegations in the compliance specification must be considered to be admitted to be true.[2]

Accordingly, based on the withdrawal of the Respondent's answer on February 2, 1996, we grant the General Counsel's Motion for Summary Judgment and conclude that the net backpay due the discriminatees is as stated in the compliance specification. We will therefore order payment by the Respondent of those amounts to the discriminatees, plus interest accrued on those amounts to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondent, Yerger Trucking, Inc. and Yerger Landscaping and Paving, Inc., Sinking Spring, Pennsylvania, its officers, agents, successors, and assigns, shall make whole the discriminatees by payment to them of the following amounts, plus interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and minus tax withholdings required by Federal and state laws:

E. Beck Jr.	$467.93
L. Engle Jr.	615.74
J. Fox	662.41
M. Hoch	679.86
W. Ressler	687.71
J. Seitzinger	698.70
K. Spayd	743.89
G. Wartzenluft	433.23
L. Wartzenluft	736.20
S. Weidenhammer	642.63
Donald Decarr	5,546.63

[1] 307 NLRB 567.

[2] See *Maislin Transport*, 274 NLRB 529 (1985).

Randall Frazer	8,525.56
Steve Hermany	27,206.35
Keith Hotzman	11,701.86
Edward Nolan Jr.	11,317.64
Charles Riegel Jr.	3,962.69
Scott Roboski	36,002.49
Merlin Ulrich	10,863.53
TOTAL:	$121,495.05

Dated, Washington, D.C. April 30, 1996

William B. Gould IV, Chairman

Margaret A. Browning, Member

Charles I. Cohen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD