

Central States Xpress, Inc. and Rick A. Steele and Patrick T. London and General Teamsters Union, Local 406, International Brotherhood of Teamsters, AFL-CIO. Cases 7-CA-38329, 7-CA-38330, and 7-CA-38544

September 25, 1997

DECISION AND ORDER DENYING MOTION
FOR SUMMARY JUDGMENT AND
REMANDING

BY CHAIRMAN GOULD AND MEMBERS FOX AND
HIGGINS

Upon separate charges filed on March 25, 1996,¹ by Charging Parties Rick A. Steele and Patrick T. London in Cases 7-CA-38329 and 7-CA-38330, respectively, and on a charge filed on May 15 by the Charging Party Union (the Union) in Case 7-CA-38544, the General Counsel of the National Labor Relations Board on May 17 issued an order consolidating cases and a consolidated complaint and notice of hearing against Central States Xpress, Inc., the Respondent.² The complaint alleges that the Respondent has violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act.

On June 19, the Respondent's director of personnel and administration, Steven Hegrans, acting pro se, filed a letter with the Board's Regional Director for Region 7, in which he asserted that the Respondent had sent an April 19 letter (a copy of which was enclosed with the June 19 letter) to Board Agent Craig Sizer of the Board's Grand Rapids Resident Office (who had been assigned to investigate the charges), and further asserted that the April 19 letter responded to "most of the allegations" subsequently included in the May 17 complaint.

On August 22, the General Counsel filed with the Board a Motion for Default Summary Judgment with exhibits attached, asserting, inter alia, that the Respondent has failed to file an answer to the complaint or any document purporting to be an appropriate answer, and has thus failed to comply with Section 102.20 of the Board's Rules and Regulations.³ On Au-

gust 26, 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 to the notice to show cause, and the allegations in the motion are therefore undisputed.

1. Procedural history

The May 17 complaint alleges, inter alia, that from about June 1990 until about January 5, 1996, a company named Fore-Way Express (Fore-Way) maintained a trucking terminal on Chestnut Street in Grand Rapids, and that throughout that period of time Fore-Way recognized the Union as the exclusive collective-bargaining representative of its Grand Rapids drivers, and was signatory to the National Master Freight Agreement covering these drivers and embodying that recognition. The complaint further alleges that about January 29 (i.e., about 3 weeks after Fore-Way ceased business operations), the Respondent commenced business operations as a regional freight carrier at the same Chestnut Street terminal that had been used by Fore-Way, and thereafter continued to operate the business of Fore-Way in basically unchanged form, employing former Fore-Way employees as a majority of the Respondent's employees. The complaint additionally alleges that the Respondent has continued the Fore-Way employing entity, that it is a successor to Fore-Way, and that since about January 29 the Union has been the designated exclusive collective-bargaining representative of the unit employees.⁴

The complaint also alleges that the Respondent has violated Section 8(a)(1), (3), and (5) of the Act by ceasing business operations at its Grand Rapids terminal on about March 24, and terminating the employment of all of its employees there: (a) because its unit employees sought to be covered by a collective-bargaining agreement, assisted the Union, and engaged in concerted activities; (b) to discourage employees from engaging in such activities; and (c) without notifying the Union in advance and without affording it a meaningful opportunity to bargain over either the decision to close the Grand Rapids terminal or the effects of the closure on the unit.

The Respondent did not file an answer to the complaint within the 14-day time period set forth in Sec-

¹All dates are 1996, unless otherwise stated.

²Copies of the charges in Cases 7-CA-38329 and 7-CA-38330 were served on the Respondent at its Grand Rapids, Michigan facility by regular mail on March 25. These mailings were returned unopened to the Board's Grand Rapids Resident Office, with the envelopes stamped "RETURNED TO SENDER[;] ADDRESSEE UNKNOWN." A copy of the charge in Case 7-CA-38544 was served on the Respondent at its Minneapolis, Minnesota address by regular mail on May 15. It was received and acknowledged by the Respondent. The complaint was served on the Respondent by certified mail on May 17 and was received by the Respondent on May 21.

³Sec. 102.20 of the Rules and Regulations states, in full:

The respondent shall, within 14 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the

complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

⁴The complaint alleges the unit to be:

All city and road drivers employed by [the] Respondent at and out of its terminal located at 665 Chestnut, S.W., Grand Rapids, Michigan; but excluding all guards and supervisors as defined in the Act.

tion 102.20 of the Board's Rules and Regulations. On June 12, counsel for the General Counsel served on the Respondent at its Minneapolis address a letter informing the Respondent that unless it filed an answer to the May 17 complaint by June 24, a Motion for Default Summary Judgment would be filed with the Board, and that if the motion were granted, all the allegations in the complaint would be deemed admitted to be true. The letter also informed the Respondent that any answer to the complaint filed at that point would in any event be untimely and should be accompanied by a statement indicating the reason for its late submission. Finally, the letter informed the Respondent that if it was having problems meeting the time requirements for filing an answer, it could receive an extension of time in which to file an answer by submitting a letter of proper cause for an extension to the Regional Director.

The Respondent replied to this June 12 letter with the above-mentioned June 19 letter from Hegranes to the Regional Director in Detroit, in which he asserted that his enclosed April 19 letter sent to the Board's agent in the Grand Rapids Resident Office who had been assigned to investigate the charges was a response to "most of the allegations" that were subsequently included in the May 17 complaint.

Hegranes' April 19 letter states in pertinent part that (1) it was in response to Board Agent Sizer's letter of April 10, regarding the closing of the Respondent's Grand Rapids facility; (2) the administrative staff at Grand Rapids had been advised on several occasions by the Respondent's executive vice president of sales, Alex Fuentes, that current sales and revenue levels were insufficient to justify the expenses incurred in keeping the Grand Rapids facility open; (3) the final decision to close the Grand Rapids facility was made during the week of March 18 by the Respondent's president and sole shareholder, George Wintz, for the economic reasons stated above; (4) the facility was closed because it was losing money due to inadequate sales and operational performance (i.e., operational expenses were significantly in excess of actual and projected income); (5) the employees were informed of the closure on the day of closure, March 25; (6) there was no direct communication between the Union and management at the corporate office in St. Paul; (7) Hegranes received no messages from the Union, and Wintz did not recall receiving any specific messages from the Union in Grand Rapids; (8) the Respondent's Grand Rapids terminal had opened in January, following Fore-Way Express' closure of operations, and the first several drivers that were hired were former Fore-Way employees; (9) the above newly hired employees were informed that the Respondent had a collective-bargaining agreement in effect at that time with a different Teamsters affiliate, and that they would be sub-

ject to the provisions of that agreement; and (10) the provisions of that agreement were in fact applied to the Respondent's employees. Hegranes' letter closes by stating:

In summary, Central States Xpress made a business decision to expand operations into the Grand Rapids area as the direct result of the closing of Foreway Express. A terminal was opened and staff, including drivers, was hired. An attempt was made to secure the customers formerly serviced by Foreway and this attempt failed. Consequently, the Company was forced to make another business decision in March, 1996, that this facility would not generate enough revenue to make this location profitable in the near future. Therefore, the facility was closed.

The decision to close the Grand Rapids terminal was based purely on current and projected revenues and expenses.

In his June 19 letter to the Regional Director, transmitting a copy of his April 19 letter to the Board agent, Hegranes also stated in response to the complaint allegations regarding the operations of Fore-Way that he had no knowledge regarding those operations.

2. Discussion

Pro se respondents who fail to answer complaints as required in Section 102.20 of the Board's Rules and Regulations do so at their peril, including pro se respondents who, as here, rely on postcharge, precomplaint statements of position in lieu of an answer to the complaint itself. It is a well-established general rule that statements of position, including information submitted during the postcharge, precomplaint investigative stage, are insufficient to constitute answers to complaints.⁵ Indeed, the purpose of an unfair labor practice charge is to set in motion the machinery of a Board-conducted inquiry,⁶ and a respondent's statement of position in response to a charge is intended to be simply an aid to the General Counsel in his investigation of the charge. It is on the basis of this investigation—including consideration of a respondent's statement of position in regard to the charge—that the General Counsel may then decide whether to issue a complaint. It is the complaint, not the charge, that specifically and formally gives notice of the matters that are potentially at issue in the case and of the potential scope of the case. It is, therefore, the answer to the complaint, not the earlier statement of position in response to the charge, that ultimately frames the issues

⁵E.g., *Mail Handlers Local 329 (Postal Service)*, 319 NLRB 847 (1995); *Bricklayers Local 31*, 309 NLRB 970 (1992), *enfd.* 992 F.2d 1217 (6th Cir. 1993); and *Wheeler Mfg. Corp.*, 296 NLRB 6 (1989).

⁶*LP Enterprises*, 314 NLRB 580, 581 (1994), citing *NLRB v. Fant Milling Co.*, 360 U.S. 301, 307 (1959).

in dispute, defines the scope, and thus sets the parameters of the case. Consequently, statements of position in response to charges, by their nature and their limited preliminary role, are rarely sufficient subsequently to stand in the place of answers to complaints. For these reasons, we shall continue to scrutinize carefully and strictly such postcharge statements of position, submitted by pro se litigants, that are offered in lieu of the formal answers to complaints that are required by Section 102.20 of the Board's Rules and Regulations. We anticipate that we will only rarely encounter circumstances where we will find that such statements of position are procedurally acceptable in lieu of answers to complaints. Nevertheless, having duly considered the matter, we find that this case presents such circumstances.

Here, company official Hegranes, acting pro se, resubmitted his April 19 statement of position to the Regional Office on June 19, and stated in the cover letter that the April 19 letter was the Respondent's response to the allegations of the complaint. Equally important, Hegranes' April 19 letter can reasonably be construed as denying the complaint allegations that the Respondent ceased operation of its Grand Rapids terminal and terminated the employment of all its unit employees because of and to discourage their union activities. Hegranes' April 19 letter provides a detailed explanation of the Respondent's asserted economic justification for shutting down the terminal, together with an express assertion that the Respondent's decision to close the Grand Rapids terminal was based purely on current and projected revenues and expenses—many specific aspects of which are set forth in the letter and in an attachment thereto. In addition, other aspects of Hegranes' April 19 letter, as summarized above, could

reasonably be construed as implicit denials that the Respondent is a statutory successor to Fore-Way, and also as effectively raising an affirmative defense to the allegation that it unlawfully failed to bargain with the Union about the closure of the facility. Accordingly, we find that Hegranes' April 19 letter has effectively denied certain central complaint allegations, and thus has raised substantial and material issues of fact warranting a hearing before an administrative law judge.⁷

Under these unusual circumstances, because the Respondent was proceeding without benefit of counsel, because the Respondent resubmitted its April 19 statement of position on June 19 and intended it to serve as an answer to the complaint, and because the April 19 letter constitutes a sufficiently clear denial of the allegations of the complaint, we will not preclude a determination of the complaint's allegations on the merits because of the Respondent's failure to comply with the Board's procedural requirements.

Based on all of the above considerations, we conclude that the General Counsel's Motion for Default Summary Judgment should be denied.

ORDER

The General Counsel's Motion for Default Summary Judgment is denied.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 7 for further appropriate action.

⁷See *Harborview Electric Construction Co.*, 315 NLRB 301 (1994), and *Carpentry Contractors*, 314 NLRB 824 (1994), and cases cited therein; cf. *Wheeler Mfg. Corp.*, supra, where the Board expressly found that the precomplaint data resubmitted by the respondent in that case was unresponsive to the complaint and inadequate as an answer to it.