

Endicott Forging & Manufacturing, Inc. and Local Lodge DS-190, District Lodge 58, International Association of Machinists and Aerospace Workers, AFL-CIO and International Brotherhood of Boilermakers, Iron Ship Builders, & Helpers, AFL-CIO, Local Union No. 1101. Cases 3-CA-18477, 3-CA-19050, 3-CA-19024, and 3-CA-19889

December 28, 1998

SECOND SUPPLEMENTAL DECISION AND ORDER
BY MEMBERS LIEBMAN, HURTGEN, AND
BRAME

On September 19, 1995, the National Labor Relations Board issued a Decision and Order in Cases 3-CA-18477 and 3-CA-19050,¹ in which it ordered the Respondent, *inter alia*, to pay all delinquent Pension Fund contributions to the IAM National Pension Fund, to restore the health and dental insurance coverage to bargaining unit employees represented by Local Lodge DS-190, District Lodge 58, International Association of Machinists and Aerospace Workers, AFL-CIO (IAM), and to make the employees whole by reimbursing them for any expenses, with interest, ensuing from the Respondent's failure to maintain insurance coverage. On April 16, 1996, the United States Court of Appeals for the Second Circuit entered a judgment enforcing in full the make-whole provisions of the Board Order.²

On September 29, 1995, the Board issued a Decision and Order in Case 3-CA-19024,³ ordering the Respondent, *inter alia*, to restore the medical and dental insurance coverage to bargaining unit employees represented by International Brotherhood of Boilermakers, Iron Ship Builders & Helpers, AFL-CIO, Local Union No. 1101 (Boilermakers). The Board also ordered the Respondent to make those employees whole by reimbursing them for any losses or expenses they incurred during the period in which the Respondent failed to maintain contractually required medical and dental coverage and failed to pay medical claims under a program of self-insurance. On April 16, 1996, the United States Court of Appeals for the Second Circuit entered a judgment enforcing in full the make-whole provisions of the Board Order.⁴

On August 29, 1996, the Board issued a Decision and Order in Case 3-CA-19889,⁵ in which it ordered the Respondent, *inter alia*, to make all required payments and remit any loan repayments into the contractual 401(k) pension plan that have not been made or remitted since August 20, 1995, and reimburse the employees employed in the bargaining unit represented by the Boilermakers for any expenses incurred, with interest. In addition, the

Board directed the Respondent to make annual and quarterly contractual bonus payments, and make whole the unit employees represented by the Boilermakers for any loss of earnings as a result of the Respondent's failure to do so since November 20, 1995, with interest. On April 1, 1997, the United States Court of Appeals for the Second Circuit entered a judgment enforcing in full the provisions of the Board's Order.⁶

A controversy having arisen over the amounts of backpay due under the terms of the Board's Orders of September 19 and 29, 1995, the Regional Director for Region 3, pursuant to authority conferred by the Board, issued an order consolidating cases, consolidated compliance specification and notice of hearing in Cases 3-CA-18477, 3-CA-19050, and 3-CA-19024, on December 31, 1996. An amendment to the order consolidating cases, consolidated compliance specification and notice of hearing, was issued on February 20, 1997. The amendment alleges that the IAM National Pension Fund and employees John Avery, Douglas T. Bronson, Thomas J. Duffy, George B. Gelatt, and Robert S. Warriner were due certain sums of money as a result of their losses occasioned by the Respondent's unfair labor practices. On April 17, 1997, the General Counsel filed a Motion for Summary Judgment.

On May 13, 1997, the Board issued a Supplemental Decision and Order in Cases 3-CA-18477, 3-CA-19050, and 3-CA-19024 granting the General Counsel's motion.⁷ On December 9, 1997, the Regional Director for Region 3 issued an order further consolidating cases, amended consolidated compliance specification and notice of hearing (compliance specification) seeking additional amounts for medical expenses not encompassed in the Board's Supplemental Decision and Order in Cases 3-CA-18477, 3-CA-19050, and 3-CA-19024. The compliance specification also seeks 401(k) loan repayments and annual and quarterly bonus payments due under the terms of the Board's Decision and Order in Case 3-CA-19889 and notifies the Respondent that it must file a timely answer complying with the Board's Rules and Regulations. The Respondent subsequently filed an answer to the compliance specification.

On July 17, 1998, the Acting General Counsel filed with the Board a Motion for Summary Judgment contending that the Respondent's answer to the compliance specification fails to meet the requirements of Sections 102.56(b) and (c) of the Board's Rules and Regulations. On July 21, 1998, 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 did not file a response to the Notice to Show Cause.

¹ 319 NLRB 1.

² 96-4054 (unpublished).

³ 319 NLRB 180.

⁴ 96-4056 (unpublished).

⁵ 322 NLRB No. 4 (not reported in Board volumes).

⁶ 97-4024 (unpublished).

⁷ 323 NLRB No. 128 (not reported in Board volumes).

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 to Transfer Cases to and Continue Proceedings Before the Board and for Summary Judgment and Issuance of a Supplemental Decision and Order Section 102.56(b) and (c) of the National Labor Relations Board's Rules and Regulations states, in pertinent part:

(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.

Cases 3-CA-18477, 3-CA-19050, and 3-CA-19024

1. (a) The Respondent's answer does not dispute that, as alleged in paragraph 1(a) of the compliance specification, the backpay period regarding employees in the IAM-represented bargaining unit begins as early as June 1993 and ends on or about April 1995. We, therefore, grant summary judgment regarding this allegation.

(b) Paragraph 1(b) of the compliance specification states that Exhibit 1, attached thereto, sets forth the amounts owing to employees in the IAM-represented bargaining unit for reimbursement of medical expenses. Exhibit 1 lists only one employee, Robert Warriner. The Respondent in its answer to paragraph 1(b) states that Warriner has requested in writing that the Respondent stop reimbursement payments to him. We find that the

Respondent's answer is sufficient to warrant a hearing on this allegation.

2. (a) The Respondent does not dispute that, as alleged in paragraph 2(a) of the compliance specification, the backpay period for employees in the bargaining unit represented by the Boilermakers begins as early as May 1993 and ends on March 19, 1995. We, therefore, grant summary judgment as to this allegation.

(b) Paragraph 2(b) of the compliance specification alleges that the amounts set forth in Exhibits 2(a)-(r) attached thereto are owed to employees in the bargaining unit represented by the Boilermakers for reimbursement of medical expenses during the backpay period. In its answer the Respondent states that the amount listed for Donald Stewart in Exhibit 2(q) has been paid directly to him. The Respondent does not otherwise dispute the gross amount of the employees' medical expenses. Therefore, we shall grant summary judgment regarding the gross amounts of medical expenses owed to these employees. We find, however, that the Respondent's answer is sufficient to warrant a hearing as to whether Donald Stewart has already been paid the amount listed for him in Exhibit 2(q).⁸

(c) Paragraph 2(c) of the compliance specification alleges that the amounts set forth in Exhibit 3, attached thereto, constitute the total additional amounts owed for unpaid medical bills in Cases 3-CA-18477, 3-CA-19050, and 3-CA-19024 that were not included in the Board's Supplemental Decision and Order, dated May 13, 1997, because of the Respondent's failure to disclose their unpaid status. The Respondent in its answer argues that it is responsible for only 80 percent of these amounts in accord with the major medical copay provision of commercial insurance. The Respondent further alleges that it has a right to negotiate amounts due to medical providers and has done so in several instances. In addition, as noted in paragraph 2(b) above, the Respondent states that Donald Stewart has already been paid the amount listed in Exhibit 2(q). We find that the Respondent, by providing a formula by which it contends its liability should be computed, and by alleging that certain money has been paid, has raised issues warranting a hearing. Thus, although we have granted summary judgment on the total amount of medical expenses al-

⁸ The Respondent also states that it has already paid or is presently paying certain amounts "listed on page 3" of the compliance specification as owed to Douglas Bronson, George Gelatt, and Thomas Duffy. The medical expense amounts to which the Respondent and the cited portion of the specification refer were found to be due by the Board in an earlier decision, granting summary judgment on a prior compliance specification. 323 NLRB No. 128 (May 13, 1997) (not reported in Board volumes). Whether or not the Respondent has paid those amounts, they are not at issue in the present proceeding. The Respondent does not owe Bronson anything more for medical expenses under par. 2(b) of the specification at issue here. However, par. 2(b) alleges *additional* amounts due Gelatt and Duffy for unpaid medical expenses. Regarding those additional amounts, the Respondent's answer does not raise any issue warranting a hearing.

leged in paragraph 2(b) above, we deny summary judgment on the actual amount of the Respondent's liability for those expenses and remand that issue for hearing.

Case 3–CA–19889

3. Paragraph 3 of the compliance specification alleges that Exhibit 4, attached thereto, shows the quarterly bonuses that the Respondent failed to pay since November 20, 1995, and that were due bargaining unit employees represented by the Boilermakers who worked on the projects during the quarters between May 1995 and May 31, 1996, when the bonus program ended. The Respondent does not controvert these amounts, but states only that they “are accurate to the best of my recollection providing they are consistent with the information previously provided.” The Respondent does not specifically deny the accuracy of the figures in the specification nor does it state any basis for disagreement as required by Section 102.56(b) and (c). We find that the Respondent has raised no issue warranting a hearing, and we grant the General Counsel's Motion for Summary Judgment on bonuses alleged to be due in paragraph 3 of the compliance specification.

4. (a) Paragraph 4(a) of the compliance specification alleges that Exhibit 5 sets forth the amount of the annual bonuses that the Respondent failed to pay since November 20, 1995, and that were due all employees in the bargaining unit represented by the Boilermakers during the Respondent's 1995 fiscal year. The Respondent does not deny this allegation. We grant the General Counsel's Motion for Summary Judgment regarding the amounts owed each employee for the 1995 annual bonus.

(b) Paragraph 4(b) of the compliance specification alleges that, as shown on Exhibit 5, there is a total of \$3,937.17 owing to bargaining unit employees for the 1996 annual bonus. The paragraph further states that the Region has been unable to calculate the 1996 bonus due each employee because the Respondent has not provided the necessary figures concerning hours worked by each employee. The Respondent's answer states that the amounts for 1996 “would be payable based on attendance and who is still employed as of the date payable. Therefore, the amounts due are unknown at this time.” It is not clear that the answer contests any aspect of paragraph 4(b) and supporting Exhibit 5. Assuming that it does dispute either the gross amount of bonuses due for 1996 or the failure of the specification to allege the amounts due each employee, the necessary figures for computing the amounts in question are within the Respondent's knowledge and control. Its failure to set forth fully its position concerning the applicable premises or to furnish appropriate supporting figures is therefore contrary to the specificity requirements of Section 102.56(b) and (c). *United States Service Industries*, 325 NLRB 485 (1998). We shall, therefore, grant the General Counsel's Motion for Summary Judgment and order that the total of

\$3,937.17 owed for 1996 annual bonuses shall be paid to the Regional Director for Region 3 to be held in escrow until the amount to be paid to each individual employee can be ascertained by the Regional Director.⁹

5. Paragraph 5 of the compliance specification alleges that the amounts owing to employees in the bargaining unit represented by the Boilermakers as a result of the Respondent's failure to remit their loan repayments to the 401(k) pension plan are set forth in Exhibit 6 to the compliance specification. The Respondent in its answer does not contest the amount, but states that it “appears correct, providing it is based on information supplied by Endicott Forging.” This answer is not sufficient to raise issues warranting a hearing. The Respondent does not specifically deny the accuracy of the figures in the specification nor does it state any basis for disagreement as required by Section 102.56(b) and (c). We find that the Respondent has raised no issue warranting a hearing, and we grant the General Counsel's Motion for Summary Judgment as to the amounts owed bargaining unit employees as shown on Exhibit 6.

ORDER

It is ordered that the General Counsel's Motion for Summary Judgment is granted as to paragraphs 1(a), 2(a)–(b) except regarding Donald Stewart, paragraphs 3, 4(a)–(b), and 5 of the compliance specification. The General Counsel's Motion for Summary Judgment is denied regarding paragraphs 1(b), 2(b) regarding Donald Stewart, and 2(c).

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 administrative law judge limited to the issues of the percentage of the total medical expenses set forth in Exhibit 3 to the compliance specification for which the Respondent is liable, whether employee Robert Warriner has requested that payments to him be stopped, and whether Donald Stewart has been paid the money owed him for medical expenses.

IT IS FURTHER ORDERED that the 1996 annual bonus money found due the employees in Exhibit 5 to the compliance specification shall be paid to the Regional Director for Region 3 to be held in escrow until the Regional Director determines the specific amount due each individual employee who is entitled to the bonus.

IT IS FURTHER ORDERED that the Respondent, Endicott Forging & Manufacturing, Inc., Endicott, New York, its officers, agents, successors, and assigns, shall make whole the following individuals by paying them the amounts set forth below, plus interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Additional amounts due these employees for medical

⁹ Cf. *Starlite Cutting*, 280 NLRB 1071 (1986), supplemented by 284 NLRB 620 (1987).

expenses and 1996 annual bonuses shall be determined at a later date as prescribed in this decision.

Group A: The amounts set forth below are in addition to any amounts later determined to be due these employees for 1996 bonuses.

<i>Employee</i>	<i>Amount</i>
Allard, Bruce	\$ 740.50
Bronson, Douglas	1,559.41
Carrico, Ira	883.06
Decker, Fred	1,567.69
Harrington, Douglas	2,373.35
Hoag, Kenneth	3,857.78
Kelly, Harold	1,923.39
Lewis, David	353.73
McRorie, Wayne	424.53
Miller, Edward	1,343.23
Nalepa, Robert	965.84
Patterson, Russ	334.07
Pickens, Russell	219.60
Rudolph, Claude	957.94
Seeley, William	288.00
Taber, Gilbert	373.16
Williamson, Jack	<u>975.76</u>
TOTAL GROUP A	\$19,141.04

Group B: The amounts set forth below are in addition to any amounts later determined to be due these employees for 1996 bonuses and for medical expenses.

<i>Employee Name</i>	<i>Amount</i>
Avery, John	\$1,374.62
Belon, Steve	—
Carrico, Martin	—
Delaney, James	410.57
Duffy, Thomas J.	—
Garringer, Thomas	—
Gelatt, George	201.60
Maciotok, Edward	1,045.45
McFadden, Thomas	2,073.92
Merwin, Robert	3,381.20
Minnich, Charles	2,073.29
Morton, Thomas	2,352.79
Nalepa, Leon	345.60
Reh, Joseph	2,197.59
Rogers, Roy	2,286.25
Sechrist, Gene	300.60
Stewart, Donald	—
Warriner, Robert	—
Wood, Robert	<u>322.20</u>
TOTAL GROUP B	\$18,365.68
Regional Director in Escrow	\$3,937.17
TOTAL	\$41,443.89