

**Sentry Parking, Inc. d/b/a Century Parking, Inc. and
Service Employees International Union, Local
200-C.** Case 3–CA–20973

October 30, 1998

ORDER DENYING MOTIONS

BY MEMBERS FOX, HURTGEN, AND BRAME

Upon a charge filed by the Union on November 6, 1997, the General Counsel of the National Labor Relations Board issued a complaint on January 29, 1998, against the Respondent, Sentry Parking, Inc. d/b/a Century Parking, Inc., alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act.¹ Although properly served copies of the charge and complaint, the Respondent failed to file an answer within 14 days of service of the complaint, as required pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations.

By mail and by facsimile letter on February 13, 1998, the General Counsel advised the Respondent of its failure to file an answer and granted an extension of time to file an answer until the close of business on February 20, 1998.² The General Counsel further advised the Respondent that he would file a Motion for Summary Judgment if the Respondent failed to file a timely answer. At 7:42 p.m., EST, on February 20, 1998, a letter addressed to the Regional Director for Region 3 from the Respondent's vice president,³ Thomas C. Hall, was received in the Regional Office via facsimile machine.⁴ Hall was not represented by counsel. The Regional Office received a hard copy of the Respondent's letter on February 23, 1998.⁵ In its letter, the Respondent said the following:

Sentry Parking, Inc., d/b/a Century Parking, Inc., categorically denies all of the allegations made by Local 200C in the above referenced case. We welcome the opportunity to meet in Buffalo, N.Y., on April 14, 1998, at 10:00 a.m., to resolve this matter.

On February 26, 1998, the General Counsel filed a Motion for Summary Judgment contending, in essence, that the Respondent did not properly file a timely, sufficient answer. On February 27, 1998, the Board issued an Order Transfer-

¹ The complaint served notice that a hearing was scheduled for April 14, 1998, in Buffalo, New York.

² Sec. 102.111(b) of the Board's Rules provide that "[w]hen the Act or any of these rules require the filing of a motion, brief, exception, or other paper in any proceeding, such document must be received by the Board or the officer or agent designated to receive such matter before the official closing time of the receiving office on the last day of the time limit." In this case, the close of business in the receiving office, i.e., the Board's Buffalo, New York Regional Office, is 5 p.m., EST.

³ The letter was transmitted from Hall's office located at the Respondent's facility in Los Angeles, California.

⁴ Sec. 102.114(g) of the Board's Rules provides that answers to complaints are among those documents which may not be filed by facsimile transmission.

⁵ The Respondent did not provide a statement of service indicating that it has served a copy of its February 20 letter on the Charging Party, as required by Sec. 102.21 of the Board's Rules.

ring Proceeding to the Board and Notice to Show Cause why the motion should not be granted. The Board advised the Respondent that cause must be shown, in writing, filed with the Board in Washington, D.C., on or before March 13, 1998. On March 20, 1998, the Respondent, now represented by counsel,⁶ filed an opposition to the General Counsel's Motion for Summary Judgment and a document titled "Respondent's First Amended Answer to Complaint and Notice of Hearing." On March 23, the General Counsel filed a brief in support of its summary judgment motion.⁷

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

Ruling on Motion for Summary Judgment

We deny the General Counsel's Motion for Summary Judgment for the reasons that follow.

In support of its motion, the General Counsel contends that the Respondent's "purported answer," i.e., its February 20, 1998 letter, should be rejected because: it was not filed by the close of business on February 20, 1998; it was impermissibly filed by facsimile transmission; it fails to "specifically admit, deny or explain each of the facts alleged in the complaint," as required by Section 102.20 of the Board's Rules; and, the Respondent did not comply with the requirement that a copy of an answer be served on the Charging Party. The General Counsel further contends that the Board should not excuse these procedural defects because the Respondent proceeded without counsel until March 11, 1998. The General Counsel asserts that the Respondent was notified of its right to be represented by counsel on the filing of the charge. Further, the General Counsel asserts that the Respondent's "cavalier, even frivolous approach to this matter is demonstrated by its general denial of all the complaint's allegations," including the allegation that the Union is the certified collective-bargaining representa-

⁶ By letter to the Board's Executive Secretary dated March 11, 1998, the Respondent advised the Board that it had retained counsel. The Respondent sent a copy of this letter to the Board's Regional Office, along with a request for an extension of time to file a response to the Notice to Show Cause. An extension of time to March 20 was granted.

⁷ On April 28, 1998, the Respondent filed a "Motion to Strike Acting General Counsel's Brief in Support of His Motion for Summary Judgment." The Respondent contends that the General Counsel's brief should be rejected because the General Counsel failed to serve a copy on the Respondent's counsel. The General Counsel filed an opposition. We deny the Respondent's motion. The General Counsel timely served a copy of his brief on the Respondent on March 19. On that date, the Respondent's counsel, who had been retained on March 11, had not yet filed a standard notice of appearance with the Regional Director. The General Counsel did not serve a copy of his brief on the Respondent's counsel until he learned, on April 21, that the Respondent's counsel had not received a copy. Sec. 102.114 of the Board's Rules provides that the Board "may" reject a document not properly served on the parties. It does not require the document's rejection. As noted, the General Counsel properly served the Respondent. Moreover, the Board generally will not reject an improperly served document absent a showing of prejudice to a party. *M. K. Morse Co.*, 302 NLRB 924 fn. 1 (1991). The Respondent has not claimed that it has been prejudiced by the delay.

tive of the unit employees and other facts to which the Respondent previously has stipulated.⁸

The Respondent does not dispute the procedural defects cited by the General Counsel.⁹ The Respondent contends that, acting pro se, it made a good-faith attempt to respond to the allegations of the complaint in its February 20, 1998 letter, which manifested a clear intent to cooperate to “resolve this matter.” It further contends that its first amended answer, filed with assistance of counsel, fully complies with the Board’s Rules and cures the procedural defects in the original. It contends that the General Counsel has not shown any prejudice that would arise if Board were to accept its first amended answer. The Respondent relies on Section 102.23 of the Board’s Rules, which permits a respondent to amend its answer at any time prior to the hearing, and on Section 102.121, which provides for liberal construction of the Rules to effectuate the purposes of the Act. Thus, the Respondent contends that the Board should deny the General Counsel’s Motion for Summary Judgment premised on the Respondent’s alleged failure to properly and timely file a legally sufficient answer.

⁸ On February 21, 1997, in a Stipulated Election Agreement in Case 3-RC-10504, involving these same parties, the Respondent stipulated to facts alleged in pars. II, III, IV, and VI(a) of the instant complaint which it denied in its February 20 letter, i.e., commerce and jurisdiction, the Charging Party’s status as a labor organization, the agency of the Respondent’s vice president, Thomas Hall, and the appropriateness of the unit. As discussed, *infra*, the Respondent’s “First Amended Answer” admits all these allegations. The complaint accurately alleges that on March 17, 1997 (in Case 3-RC-10504), the Union was certified as the collective-bargaining representative of the unit employees. In the Respondent’s February 20, 1998 letter the Respondent denied “all of the allegations” of the complaint. In its “First Amended Answer,” it contends that “[o]n information and belief, Respondent did not receive the Certification of the Union.”

⁹ In any case, the cases cited by the General Counsel are distinguishable from the instant case. In *Jay-Lor Drains & Piping*, 300 NLRB 464 (1990), and *Able Aluminum Co.*, 321 NLRB 1071 (1996), the Board rejected the respondents’ purported answers, in which they selectively admitted, explained, or denied only some of the complaint allegations. In *Kelly Food Products*, 323 NLRB 671 (1997), the Board found that a letter from the trustee in bankruptcy stating that the company had ceased doing business was not an adequate answer. In contrast, here the Respondent categorically denied “all the allegations made by [the Union] in [this] case.”

We find merit in the Respondent’s contentions. There is no question that the Respondent’s February 20 answer was procedurally defective. We note, however, that the Respondent filed its original answer pro se and the Board typically views procedural deficiencies in answers filed pro se with some leniency. See, e.g., *Tri-Way Security*, 310 NLRB 1222, 1223 (1993). More importantly, however, we note that, after the General Counsel filed his Motion for Summary Judgment, the Respondent retained counsel who promptly filed a first amended answer curing each of the procedural defects in the Respondent’s February 20 answer. The Board’s Rules permit a party to amend a pleading at any time prior to the hearing and the General Counsel has not demonstrated that he would be prejudiced in any way by our adherence to this rule.¹⁰ Accordingly, we shall deny the General Counsel’s Motion for Summary Judgment.

ORDER

IT IS ORDERED that the General Counsel’s Motion for Summary Judgment is denied.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 3 for the purpose of ordering and scheduling a hearing before an administrative law judge.

IT IS FURTHER ORDERED that the administrative law judge shall prepare and serve on the parties a decision containing findings of fact, conclusions of law, and recommendations based on 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 apply.

¹⁰ Sec. 102.23 of the Board’s Rules and Regulations provides:

The respondent may amend his answer at any time prior to the hearing. During the hearing or subsequent thereto, he may amend his answer in any case where the complaint has been amended, within such period as may be fixed by the administrative law judge or the Board. Whether or not the complaint has been amended, the answer may, in the discretion of the administrative law judge or the Board, upon motion, be amended upon such terms and within such periods as may be fixed by the administrative law judge or the Board.