

Eckert Fire Protection Company and Indiana State Pipe Trades Association, United Association of Plumbers and Pipefitters, AFL-CIO and Road Sprinkler Fitters Local Union No. 669, U.A., AFL-CIO a/w United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO. Case 25-CA-26184

October 28, 1999

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX,
LIEBMAN, HURTGEN, AND BRAME

Upon a charge filed by the Unions on August 20, 1998, and amended charges filed November 16 and December 15, 1998, respectively, the General Counsel of the National Labor Relations Board issued a complaint on December 29, 1998, against Eckert Fire Protection Company, the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Copies of the charge, amended charges and complaint were properly served on the Respondent. On February 9, 1999, the Respondent faxed to the Region a one-page memorandum purporting to be an answer to the complaint.

On June 24, 1999, the General Counsel filed a Motion for Summary Judgment with the Board. On June 25, 1999, 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 are therefore undisputed.

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

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated January 28, 1999, notified the Respondent that unless an answer were received by February 8, 1999, a Motion for Summary Judgment would be filed.

On February 9, 1999, the Respondent's president faxed a memorandum, dated February 8, 1999, to the Region, stating that "[a]fter talking with my attorney, I have the following response to the charges: I deny any and all charges referenced above. As you know and we discussed on the phone, I have closed my business. There is not an operating enterprise or any assets."

The Motion for Summary Judgment also states without contradiction that the Region, on May 27, 1999, sent a letter to the Respondent advising that the February 8, 1999 memorandum was an insufficient response to the complaint. The letter again set forth the requirements of Section 102.20 of the Rules and Regulations and enclosed a copy of Sections 102.20 and 102.21. Finally, the letter advised the Respondent that a sufficient answer should be filed by June 9, 1999, and that failure to do so would result in the filing of a Motion for Summary Judgment. No further answer was filed.

We find that the Respondent's memorandum, dated February 8, 1999, does not constitute a proper answer to the complaint allegations under Section 102.20 of the Board's Rules and Regulations because it fails to address any of the factual or legal allegations of the complaint, and therefore is legally insufficient under the Board's Rules. See *American Gem Sprinkler Co.*, 316 NLRB 102, 103 (1995) (respondent's apparently pro se answer stating that it does not "agree with the Union's position" too vague to constitute an acceptable answer).¹

Our dissenting colleagues emphasize that the Board accepts answers that specifically deny individual paragraphs of a complaint. Of course, the reason why the Board does so is that such answers are in full compliance with Section 102.20 of the Board's Rules, which states that the "respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint." By contrast, as we have taken pains to point out above, the Respondent's answer here fails to specifically deny any of the complaint allegations.

In addition, our dissenting colleagues suggest that the Board would accept a boilerplate answer that mechani-

¹ Because the Respondent's president, Wayne Bennett, filed the February 8, 1999 answer himself, it appears that the Respondent is not represented by counsel, despite Bennett's reference to "talking with my attorney." We have therefore evaluated the Respondent's answer under the more lenient standard applicable to pro se respondents. See, e.g., *American Gem*, supra, 316 NLRB at 103 fn. 5. However, even under that standard, the Respondent's answer is still inadequate because it fails to specifically address the substance of any complaint allegations. *Id.* Accord, *Triple H Fire Protection*, 326 NLRB 463 (1998) (even assuming that the respondent was proceeding pro se, its letter stating that it "den[ies] any and all accusations" still does not constitute a proper answer because it does not specifically deny any of the complaint allegations).

In *Triple H Fire*, the Board cited the following additional cases which further support our decision: *Breeden Painting Co.*, 314 NLRB 870 (1994) (respondent's apparently pro se answer stating that it "denies the complaint" not sufficient); *Parisian Manicure Mfg. Co.*, 258 NLRB 203 (1981) (respondent's apparently pro se answer stating that "we deny the allegations stated in the notice you sent us" not sufficient); *Lloyd's Laundry & Dry Cleaning*, 250 NLRB 1369 (1980) (respondent's apparently pro se answer stating that it "protest[s] that all allegations filed in this complaint are false" does not comport with the Board's rule); *Pipeline Construction Workers Local 692 (Fulghum Construction Corp.)*, 248 NLRB 1315 (1980) (respondent union's apparently pro se answer stating that it does "not find any basis for a charge as per Section 8(b), Subsections 1(A) and (2) of the National Labor Relations Act" not in compliance with the Board's rule).

cally denies each and every allegation of the complaint. We disagree. Denials must be reasonably based on fact and not simply mechanical. Under Section 102.21 of the Board's Rules, an answer must be signed; "to the best of [the] knowledge, information, and belief" of the individual signing the answer, there must be "good ground to support it"; and the answer must "not [be] interposed for delay." An answer "signed with intent to defeat the purpose of this section" may be stricken "as sham and false." Thus, under the Board's rule, a respondent cannot answer a NLRB complaint by arbitrarily writing the word "denied" 10 times on a piece of paper.

Finally, there is no merit in our dissenting colleagues' claim that the result we reach "elevate[s] form over substance." In promulgating the specificity requirement of Section 102.20, the Board was clearly concerned with the substantive rights of the parties. As the Board explained in *Fulghum Construction*, supra, "The reasons [for the rule] are as manifest here as in other judicial and administrative proceedings: viz, to facilitate the joining of issues and reduce the area of litigation, and in order that the rights of parties may be more quickly established and wrongs sooner rectified." 248 NLRB at 1316. In sum, our dissenting colleagues' position is inconsistent with the plain language of Section 102.20 of the Board's Rules and established precedent.

In the absence of good cause being shown for the failure to file a sufficient answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with an office and place of business in Indianapolis, Indiana, has been engaged in the design, installation, inspection, maintenance and service of fire protection systems. During the 12 months preceding issuance of the complaint, the Respondent, in conducting its business operations, purchased and received at its Indianapolis, Indiana facility goods valued in excess of \$50,000 directly from points located outside the State of Indiana. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Unions, Indiana State Pipe Trades Association, United Association of Plumbers and Pipefitters, AFL-CIO, and the Road Sprinkler Fitters Local Union No. 669, U.A., AFL-CIO a/w United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The Respondent, by its president, Wayne Bennett, at its facility: about mid-May 1998, and again on May 26,

1998, threatened its employees with plant closure if they selected the Unions as their collective-bargaining representative; about April or May 1998, informed its employees that the Respondent would cease its practice of lending money to employees if they selected the Unions as their collective-bargaining representative; about May 26, 1998, threatened its employees with adverse changes in their terms and conditions of employment, including a reduction in wages, cessation of the Respondent's practice of lending money to employees, elimination of paid holidays, and elimination of personal use of the Respondent's vehicles, if they selected the Unions as their collective-bargaining representative; and about June 1998, informed its employees that it would not consider employees for raises until after the outcome of the union election.

About July 1998, the Respondent, through its Vice President Kevin Douthitt, at the Respondent's facility, informed employees that adverse changes were being made in their working conditions, including a stricter enforcement of the Respondent's attendance policy, stricter enforcement of employees' breaktime and lunchtimes, cessation of the Respondent's practice of lending money to employees, and elimination of personal use of the Respondent's vehicles, because of their support for and activities on behalf of the Unions.

From about June 1997 to June 9, 1998, from about April 10 to June 9, 1998, and from about June 2 - 9, 1998, certain employees of the Respondent employed at the Respondent's facility ceased work concertedly and engaged in a strike. About June 9, 1998, by letter, the Unions, on behalf of the following employees who had engaged in the strikes described above, made an unconditional offer for the following individuals to return to their former positions of employment: Richard Alexander, Mike Brooks, Brad Henry, Marvin Howard, Richard Klementowicz, Lance Lambrith, Allen Liby, Steve Miller, Eric Scott, and Ronald J. Whitman. Since about June 9, 1998, the Respondent has failed and refused to reinstate or offer to reinstate these employees to their former positions of employment.

The Respondent has refused to hire or consider for hire the following applicants on the following dates: since about April 1998, Scott Duncan and Paul Knott Jr.; since about April 10, 1998, Bradley Hutchins, Rodney Smith, Lee Thompson, and Jack Neal Jr.; since about April 14, 1998, Kenneth Cheatham, Brian Currie, Mark Gray, Paul Key, and Larry Shepard; since about April 16, 1998, Todd Johnson and Mike Schellar; since about May 1998, Dillo Bush and William Kriech; and since about June 1998, Keith Myron Harris.

About April 11, 1998, the Respondent increased the wages of its employee Robert Green, and about April 17, 1998, the Respondent increased the wages of its em-

ployee Joseph Sherman. About July 1998,² the Respondent changed its work rules by: more strictly enforcing its attendance policy; more strictly enforcing its policy on lunchtime and breaktimes; ceasing its policy of loaning money to employees; and prohibiting the use of the Respondent's vehicles for personal use. The Respondent engaged in this conduct because its employees formed, joined, and assisted the Unions and engaged in concerted activities and to discourage other employees from engaging in these activities.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act, in violation of Section 8(a)(1) of the Act. In addition, by failing and refusing to reinstate the above named striking employees upon their unconditional offer to return to work, by refusing to hire or consider for hire the above named applicants, by increasing employees' wages and by changing its work rules, the Respondent has been discriminating in regard to the hire or tenure or terms and conditions of employment of its employees and applicants for employment, thereby discouraging membership in a labor organization, violating Section 8(a)(1) and (3) of the Act.

By the conduct described above, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by failing and refusing to reinstate certain striking employees upon their unconditional offer to return to work, we shall order the Respondent to offer the discriminatees, and, upon their application, any other strikers, full reinstatement to their former jobs, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to remove from its files any and all references to the unlawful failure to reinstate, and to notify the discriminatees in writing that this has been done.

² This date was inadvertently referred to in complaint par. 7(i) as July 1997.

Further, having found that the Respondent violated Section 8(a)(3) and (1) by refusing to hire or consider for hire the individuals named above, we shall order the Respondent to offer them immediate employment to the jobs they would have had, but for the unlawful discrimination against them, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra. The Respondent shall also be required to expunge from its files any and all references to the unlawful refusal to hire or consider for hire, and to notify the discriminatees in writing that this has been done.

In addition, having found that the Respondent violated Section 8(a)(3) and (1) by changing its work rules, we shall order the Respondent to rescind these changes.

ORDER

The National Labor Relations Board orders that the Respondent, Eckert Fire Protection Company, Indianapolis, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening its employees with plant closure if they select the Unions as their collective-bargaining representative.

(b) Informing its employees that it would cease its practice of lending money to employees if they selected the Unions as their collective-bargaining representative.

(c) Threatening its employees with adverse changes in their terms and conditions of employment if they selected the Unions as their collective-bargaining representative.

(d) Informing its employees that it would not consider employees for raises until after the outcome of the union election.

(e) Making adverse changes in its employees' working conditions, including a stricter enforcement of its attendance policy, stricter enforcement of employees' breaktime and lunchtime, cessation of its practice of lending money to employees, and elimination of personal use of its vehicles, because of employees' support for and activities on behalf of the Unions.

(f) Failing and refusing to reinstate to their former positions of employment or offer reinstatement to striking employees Richard Alexander, Mike Brooks, Brad Henry, Marvin Howard, Richard Klementowicz, Lance Lambrith, Allen Liby, Steve Miller, Eric Scott, and Ronald J. Whitman upon their unconditional offer to return to work.

(g) Refusing to hire or consider for hire applicants Scott Duncan, Paul Knott Jr., Bradley Hutchins, Rodney Smith, Lee Thompson, Jack Neal Jr., Kenneth Cheatham, Brian Currie, Mark Gray, Paul Key, Larry Shepard, Todd Johnson, Mike Schellar, Dillo Bush, William Kriech, and Keith Myron Harris.

(h) Increasing the wages of employees, thereby discriminating in regard to the hire or tenure or terms and conditions of employment, and discouraging membership in a labor organization.

(i) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the adverse changes in its employees' working conditions, including a stricter enforcement of its attendance policy, stricter enforcement of employees' breaktime and lunchtime, cessation of its practice of lending money to employees, and elimination of personal use of its vehicles.

(b) Within 14 days of this Order, offer full reinstatement to Richard Alexander, Mike Brooks, Brad Henry, Marvin Howard, Richard Klementowicz, Lance Lambrith, Allen Liby, Steve Miller, Eric Scott, and Ronald J. Whitman to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed.

(c) Make employees whole for any loss of earnings and other benefits suffered as a result of the unlawful failure to reinstate and the unlawful refusals to hire, in the manner set forth in the remedy section of this decision.

(d) Accord all striking employees from the strike which began in June 1997 the rights and privileges accorded to strikers, including, on their unconditional application, offering strikers not heretofore reinstated immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and making them whole for any loss of earnings and other benefits suffered as a result of the unlawful failure to reinstate, in the manner set forth in the remedy section of this decision.

(e) Within 14 days from the date of this Order, offer Scott Duncan, Paul Knott Jr., Bradley Hutchins, Rodney Smith, Lee Thompson, Jack Neal Jr., Kenneth Cheatham, Brian Currie, Mark Gray, Paul Key, Larry Shepard, Todd Johnson, Mike Schellar, Dillo Bush, William Kriech, and Keith Myron Harris immediate employment in the same positions they would have had but for the unlawful discrimination against them or, if those jobs no longer exist, to substantially equivalent positions.

(f) Within 14 days from the date of this Order, remove from its files any reference to the unlawful refusals to reinstate and unlawful refusals to hire or consider for hire, and within 3 days thereafter notify the employees and applicants in writing that this has been done and that the unlawful refusals to reinstate and unlawful refusals to

hire or consider for hire will not be used against them in any way.

(g) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of back-pay due under the terms of this Order.

(h) Within 14 days after service by the Region, post at its facility in Indianapolis, Indiana, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 25, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 1998.

(i) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

MEMBERS HURTGEN AND BRAME, dissenting.

We would deny the General Counsel's Motion for Summary Judgment. The unrepresented employer has acknowledged receipt of the papers and timely responded. In response to the complaint, the pro se Respondent said that it denied any and all of the allegations. The Respondent clearly puts the General Counsel's allegations in issue, and we believe that this is a sufficient denial to put the General Counsel to his proof at a hearing.

Our colleagues assert that the answer is not sufficiently specific. However, we note that it is not unusual for a respondent, represented by able counsel, to file an answer which simply says "denied" with respect to individual paragraphs of a complaint. Such answers are routinely accepted.¹ Accordingly, if the Respondent in this case had said "denied" 10 times (to the 10 paragraphs of the complaint), that would have been acceptable.² Our

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

¹ Our colleagues do not quarrel with this assertion.

² Our colleagues say that if a respondent *arbitrarily* says "denied" 10 times, that answer would be stricken as sham and false. However, the

colleagues concede that such an answer would be specific, but they assert that the instant denial of “any and all charges” is not specific. In our view, our colleagues have elevated form over substance. We would particularly decline to do this with respect to a pro se Respondent.

Our colleagues also say that answers which are interposed for delay, and those which are signed with a malevolent purpose, may be stricken. However, there is no allegation or evidence that Respondent here is guilty of any such conduct.

Based on the above, we would not foreclose this pro se Respondent from an opportunity to defend itself.³

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten our employees with plant closure if they select the Unions as their collective-bargaining representative.

WE WILL NOT inform our employees that we will cease our practice of lending money to employees if they select the Unions as their collective-bargaining representative.

WE WILL NOT threaten our employees with adverse changes in their terms and conditions of employment if they select the Unions as their collective-bargaining representative.

WE WILL NOT inform our employees that we will not consider employees for raises until after the outcome of the union election.

WE WILL NOT make adverse changes in our employees’ working conditions, including a stricter enforcement of our attendance policy, stricter enforcement of employees’ breaktime and lunchtime, cessation of our practice of lending money to employees, and elimination of personal use of our vehicles, because of employees’ support for and activities on behalf of the Unions.

WE WILL NOT fail and refuse to reinstate to their former positions of employment employees Richard Alexander, Mike Brooks, Brad Henry, Marvin Howard, Richard Klementowicz, Lance Lambrith, Allen Liby, Steve Miller, Eric Scott, and Ronald J. Whitman upon their unconditional offer to return to work.

WE WILL NOT refuse to hire or consider for hire applicants Scott Duncan, Paul Knott Jr., Bradley Hutchins, Rodney Smith, Lee Thompson, Jack Neal Jr., Kenneth Cheatham, Brian Currie, Mark Gray, Paul Key, Larry Shepard, Todd Johnson, Mike Schellar, Dillo Bush, William Kriech, and Keith Myron Harris.

WE WILL NOT increase the wages of our employees, thereby discriminating in regard to the hire or tenure or terms and conditions of employment, and discouraging membership in a labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind the adverse changes in our employees’ working conditions, including a stricter enforcement of our attendance policy, stricter enforcement of employees’ breaktime and lunchtime, cessation of our practice of lending money to employees, and elimination of personal use of our vehicles.

WE WILL, within 14 days from the date of the Board’s Order, offer full reinstatement to Richard Alexander, Mike Brooks, Brad Henry, Marvin Howard, Richard Klementowicz, Lance Lambrith, Allen Liby, Steve Miller, Eric Scott, and Ronald J. Whitman, to their former jobs, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed.

WE WILL accord all striking employees from the strike which began in June 1997, the rights and privileges accorded to strikers, including, on their unconditional application, offering strikers not heretofore reinstated immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and making them whole for any loss of earnings and other benefits suffered as a result of the unlawful failure to reinstate.

WE WILL, within 14 days from the date of the Board’s Order, offer applicants Scott Duncan, Paul Knott Jr., Bradley Hutchins, Rodney Smith, Lee Thompson, Jack Neal Jr., Kenneth Cheatham, Brian Currie, Mark Gray, Paul Key, Larry Shepard, Todd Johnson, Mike Schellar, Dillo Bush, William Kriech, and Keith Myron the jobs they would have had but for our unlawful discrimination against them or, if those jobs no longer exist, substantially equivalent ones.

WE WILL make employees whole for any loss of earnings and other benefits suffered as a result of the unlawful failure to reinstate and the unlawful refusals to hire, with interest.

proponent of the motion to dismiss (the General Counsel) must establish that a denial is arbitrary, sham, and false. There is no such showing here. Indeed, the General Counsel argues only a lack of specificity.

³ See Member Hurtgen’s dissent in *Triple H Fire Protection*, 326 NLRB 463 (1998), in which he indicated his disagreement with the cases cited therein, to the extent that they are inconsistent with his views set forth there and here.

WE WILL within 14 days from the date of this Order, remove from our files any reference to the unlawful refusals to reinstate and unlawful refusals to hire or consider for hire, and within 3 days thereafter notify the employees and applicants in writing that this has been done

and that the unlawful refusals to reinstate and unlawful refusals to hire or consider for hire will not be used against them in any way.

ECKERT FIRE PROTECTION COMPANY