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MK Electric; Mitchell Kaady Individually; Mitchell Kaady Individually d/b/a MK Electric; B.V.K. Enterprises, Inc.; B.V.K. Enterprises, Inc., d/b/a R.C.I. Electric and Design and International Brotherhood of Electrical Workers, Local 413.
Case 31–CA–22956

May 24, 2001

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS TRUESDALE
AND WALSH

On April 29, 1998, the National Labor Relations Board issued an unpublished Order, *inter alia*, directing MK Electric to make whole the discriminatees, Manuel Bravo and Daniel Prekker, with interest, for any loss of earnings and other benefits resulting from the discrimination against them, in violation of the National Labor Relations Act. On September 8, 2000, the United States Court of Appeals for the Ninth Circuit entered its judgment enforcing in full the Board's Order.¹

A controversy having arisen over the amount of backpay due the discriminatees for the period from June 16, 1997, to March 30, 1998, the Regional Director for Region 31 on January 30, 2001, issued a compliance specification and notice of hearing alleging the amounts due under the Board's Order, and notifying MK Electric; Mitchell Kaady individually; Mitchell Kaady individually d/b/a MK Electric; B.V.K. Enterprises, Inc.; B.V.K. Enterprises, Inc. d/b/a R.C.I. Electric and Design (collectively, the Respondent) that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with copies of the compliance specification, the Respondent failed to file an answer.²

By letter dated March 16, 2001, the Acting General Counsel advised the Respondent that no answer to the compliance specification had been received and that unless

¹ Case 00–70626. The compliance specification inadvertently states that this case was enforced by the U.S. Court of Appeals for the District of Columbia Circuit.

² The Respondent's representative of record at the time, David Carvantes, was served with the compliance specification, and the Acting General Counsel has attached to his motion a copy of the executed return receipt as proof of that service. Copies of the compliance specification also were served by certified mail on the Respondent at nine of its various addresses. All nine of the copies of the specification sent to the Respondent at these addresses were subsequently returned marked as "unclaimed." The Respondent's failure or refusal to accept certified mail cannot serve to defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986).

an appropriate answer was filed by March 23, 2001, summary judgment would be sought. The Acting General Counsel attached to this letter a complete copy of Section 102.56 of the Board's Rules and Regulations, which deals with answers to compliance specifications, and the letter highlighted certain parts of that section of the Rules. The Respondent filed no answer.³

On April 12, 2001, the Acting General Counsel filed with the Board a Motion for Summary Judgment, with exhibits attached. On April 18, 2001, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On April 30, 2001, Respondent Mitchell Kaady filed a response.

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 further states:

(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. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. 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 speci-

³ By letter dated March 22, 2001, the Respondent Mitchell Kaady's attorney informed the Region that Kaady had filed for Chapter 7 Bankruptcy on March 7, 2001. The attorney stated that based on Kaady's bankruptcy filing, the Acting General Counsel should cease the compliance proceedings in this matter pursuant to the automatic stay provision contained in 11 U.S.C. § 362 of the Bankruptcy Code. By letter dated March 26, 2001, the Region's compliance officer advised Kaady's attorney that the compliance proceedings would continue because they are expressly exempted from the automatic stay provisions under 11 U.S.C. § 362(b)(4) and (5) of the Bankruptcy Code. Thus, although Respondent Kaady claims to be in bankruptcy, it is well established that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. See, e.g., *Cardinal Services*, 295 NLRB 933 fn. 2 (1989), and cases cited there. Board proceedings fall within the exception to the automatic stay provisions for proceedings by a governmental unit to enforce its police or regulatory powers. See *id.*, and cases cited therein.

fication 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 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. 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.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. As mentioned above, on April 30, 2001, Respondent Mitchell Kaady filed a letter, with attachments, responding to the Notice to Show Cause. In this response, Kaady does not purport to answer the compliance specification with any degree of specificity required by Section 102.56(b) of the Board's Rules. Rather, Kaady's April 30 submission sets forth arguments that appear to relate to the merits of the allegations in the underlying unfair labor practice case, and the findings made by the administrative law judge and the Board on those allegations. In addition, Kaady's April 30 letter suggests that certain of the Respondents named in the compliance specification do not fall within the Board's statutory jurisdiction or satisfy the Board's discretionary jurisdictional standards. Further, Kaady's letter apparently alleges that the Respondent is financially unable to comply with the Board's order. In this regard, Kaady's letter concludes with the following statements: "The gross receipts of MK Electric was less than allegations would accommodate. BVK Enterprises is longer [sic] in business. It was closed down by the IRS. MK Electric, is no longer in business. RCI Electric has no income. Mitchell Kaady is Bankrupt."

We find that the letter submitted by Respondent Kaady on April 30, 2001, does not satisfy the requirements of Section 102.56 of the Board's Rules and Regulations, and

therefore does not constitute an adequate answer to the compliance specification.⁴ The letter fails to specifically admit, deny, or explain each and every allegation of the specification, as required by Section 102.56(b).

Further, even assuming that we were to consider the April 2001 letter to be an answer to the compliance specification, we would find that it was untimely filed, with no explanation given by the Respondent for its untimeliness, and that in any event it is not responsive to the allegations of the specification in any way that raises an issue warranting a hearing.

In the absence of good cause for the Respondent's failure to file a timely answer, we deem the allegations in the compliance specification to be admitted as true, and grant the Acting General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the net backpay due the discriminatees is as stated in the compliance specification and we will order payment by the Respondent of the amounts to the discriminatees, plus interest accrued on the amounts to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondent, MK Electric; Mitchell Kaady Individually; Mitchell Kaady Individually d/b/a MK Electric; B.V.K. Enterprises, Inc.; B.V.K. Enterprises, Inc., d/b/a R.C.I. Electric and Design, Toluca Lake, California, its officers, agents, successors, and assigns, shall make whole the individuals named below, by paying them the amounts following their names, plus interest on the backpay as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and State laws:

⁴ The denied allegations of the compliance specification and the Motion for Summary Judgment fully support a finding that it is appropriate in the circumstances here to hold MK Electric; Mitchell Kaady, individually; Mitchell Kaady individually d/b/a MK Electric; B.V.K. Enterprises, Inc.; and B.V.K. Enterprises, Inc. d/b/a R.C.I. Electric and Design, individually and collectively liable for complying with the Board's Order in this case, as enforced.

Manuel Bravo \$ 1,980.00
Daniel Prekker \$17,356.25
Total: **\$19,336.25**

Dated, Washington, D.C. May 24, 2001

Peter J. Hurtgen, Chairman

John C. Truesdale, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD