

**South Coast Refuse Corp. and Package and General Delivery Utility Drivers, Local 396, International Brotherhood of Teamsters, AFL-CIO.**  
Cases 21-CA-32555, 21-CA-32627, and 21-CA-32639

July 19, 2002

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN  
AND COWEN

On July 21, 2000, the National Labor Relations Board issued a Decision and Order in this proceeding. On January 31, 2001, the United States Court of Appeals for the Ninth Circuit entered a judgment enforcing in full the Board's Order. A controversy having arisen over the amount of backpay due the discriminatees under the Board's Order, as enforced by the court, the Regional Director for Region 21 on April 9, 2001, issued a compliance specification and notice of hearing alleging the amounts of backpay due and notifying the Respondent that it must file a timely answer in compliance with Section 102.56 of the Board's Rules and Regulations. The Respondent subsequently filed a timely answer.

Thereafter, on May 11, 2001, the General Counsel filed a motion to the Board for Partial Summary Judgment and to Strike Affirmative Defenses and Memorandum in Support, with exhibits attached.

On May 14, 2001, 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. On May 29, 2001, the Respondent filed a memorandum in opposition to the General Counsel's motion. The General Counsel filed a reply.

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

On the entire record, the Board makes the following

Ruling on the Motion to Strike Affirmative Defenses and for Partial Summary Judgment

Calculation of Backpay

The specification contains allegations concerning a total of 32 discriminatees. The General Counsel seeks summary judgment for all issues relating to the calculation of the gross backpay owed to the discriminatees. The specification alleges the hourly pay rates that each discriminatee would have been paid as well as the hours that they would have worked. The specification also sets forth a backpay formula used to calculate the approximate amount owed to each discriminatee. The Respondent's answer to these allegations consists of one word: "Denied." The General Counsel argues that the Respon-

dent's answer to the allegations concerning backpay fails to meet the specificity requirements of the Board's Rules and Regulations.

Section 102.56(b) and (c) of the Board's Rules and Regulations 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 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 as to backpay allegations of the 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 to controvert the allegation.

We agree with the General Counsel's contentions. A general denial is not sufficient to refute allegations pertaining to gross backpay calculations. See *U.S. Industries*, 325 NLRB 485, 486 (1998). The Respondent failed to provide alternative figures or calculations. Neither did the Respondent specify the basis for its disagreement. Because the data at issue is within the Respondent's knowledge and control, its failure to set forth fully its position as to the applicable premises or to furnish appropriate supporting figures is contrary to the specificity requirements of Section 102.56(b) and (c). See *Quality Hotel*, 323 NLRB 864 (1997) (finding the respondent's general denial of backpay computation insufficient because it fails to set forth respondent's posi-

tion as to applicable premises without any supporting figures). Therefore, we grant the General Counsel's Motion for Summary Judgment with respect to the specification paragraphs concerning backpay calculation, except as may be affected by litigation of issues concerning backpay periods, see *infra*, and find the allegations concerning the computation of backpay to be substantiated. The Respondent is thus precluded from introducing any evidence to controvert any allegations other than those relating to the amount of interim earnings and expenses, except as noted above.

The Board's Order required the Respondent to, *inter alia*, offer reinstatement to all of the discriminatees. In its response to the General Counsel's motion, the Respondent states that it sent letters dated July 6, 1999, offering reinstatement to 27 of the discriminatees and sent letters dated July 29, 1999, offering reinstatement to 18 of the discriminatees.<sup>1</sup> The Respondent argues that these offers were valid offers of reinstatement, and that, therefore, these offers must be considered in calculating any backpay obligation of the Respondent. In his reply, the General Counsel concedes that the Respondent's response raises an issue as to duration of the backpay period for the discriminatees to whom the Respondent purportedly sent the letters offering reinstatement. Thus, the General Counsel does not seek summary judgment of allegations concerning the appropriate backpay period for those 27 discriminatees.

However, the General Counsel does seek summary judgment regarding the backpay period for the five discriminatees whom the Respondent reinstated to their former positions: Gregorio Hernandez, Hugo Olivas, Raymond Perez, Miguel Portillo, and Emigdio Reyes. The specification alleges the dates that the Respondent reinstated the five discriminatees to their former positions. The Respondent's answer to the allegations concerning the dates of reinstatement consists of a general denial. The Board agrees with the General Counsel that a general denial is not sufficient to refute allegations pertaining to the backpay period. See *U.S. Service Industries*, *supra* at 485. Therefore, we grant the General Counsel's Motion for Partial Summary Judgment as to the allegations concerning the duration of the five discriminatees' backpay periods.

#### Res Judicata

The General Counsel also seeks summary judgment regarding the allegations in paragraphs 1, 3, 5, and 7 of

<sup>1</sup> The Respondent attached to its response copies of the reinstatement letters, which contain the following language: "Interim reinstatement to your former job at [South Coast] is hereby offered. If you desire reinstatement please contact our office at [phone number provided]."

the specification on the basis that the Respondent seeks to resolve issues already litigated. Those paragraphs address the identity of the discriminatees, the starting date of the backpay period for all discriminatees, the validity of the Respondent's previous offers of reinstatement, and the continuation of the backpay period until the Respondent tenders a valid reinstatement offer. The Respondent's answer to these allegations is a general denial lacking further information or explanation. The General Counsel asserts that, because the Respondent provided only a general denial of those allegations, it raises no issues not barred by the doctrine of *res judicata*.

As stated in *Transport Service Co.*, 314 NLRB 458, 459 (1994), "[i]ssues litigated and decided in an unfair labor practice proceeding may not be relitigated in the ensuing backpay proceeding." Here, the judge, in the underlying decision, identified the discriminatees, determined the effective starting date for the backpay period, and ruled that the Respondent's reinstatement offers were invalid. By denying the paragraphs in the specification relating to those issues, the Respondent seeks to relitigate those matters. However, because the Respondent cannot relitigate matters already decided, we grant the General Counsel's Motion for Partial Summary Judgment as to paragraphs 1, 3, 5, and 7. We also note that, in its response, the Respondent agrees that these issues are not subject to litigation in the compliance proceeding.

#### Motion to Strike

As an affirmative defense to the General Counsel's motion, the Respondent contends that the Regional Director has no basis to obtain the relief it seeks. Aside from this conclusory assertion, the Respondent provides no support for its contention. The General Counsel moves to strike Respondent's affirmative defense, arguing that the Board's Rules and Regulations permit the General Counsel to obtain the relief it seeks in the specification.

Section 102.54(a) of the Board's Rules and Regulations authorize the Regional Director to issue a compliance specification following entry of a court judgment enforcing a Board Order.

If it appears that controversy exists with respect to compliance with an order of the Board which cannot be resolved without a formal proceeding, the Regional Director may issue and serve on all parties a compliance specification in the name of the Board.

Further, Section 102.55(b) provides that the Regional Director, when issuing its specification, can petition for "remedial acts . . . necessary for compliance by the respondent." Thus,

the Respondent's defense that no basis exists for the relief sought in the specification is without merit. We grant the General Counsel's motion to strike insofar as it pertains to the Respondent's first affirmative defense.<sup>2</sup>

#### ORDER

It is ordered that the General Counsel's Motion for Partial Summary Judgment on compliance specification is granted with respect to the allegations contained in the following paragraphs:

(1) Paragraphs 1, 3, 5, and 7 concerning the identity of the discriminatees, the commencement date of the backpay period for all of the discriminatees, the invalidity of the Respondent's previous reinstatement offers, and the continuation of the backpay period until the Respondent tenders a valid reinstatement offer.

(2) Paragraphs 56, 92, 98, 122, and 134 concerning the dates of reinstatement for the five discriminatees, Gregorio Hernandez, Hugo Olivas, Raymond Perez, Miguel Portillo, and Emigdio Reyes.

(3) All paragraphs setting forth the hours that all of the discriminatees would have worked (except to the extent backpay periods may be litigated as set

forth supra), and the hourly rates that they would have been paid;<sup>3</sup>

(4) All paragraphs setting forth the gross backpay formulas for all 32 discriminatees.<sup>4</sup>

It is further ordered that this proceeding is remanded to the Regional Director for Region 21 for a hearing before an administrative law judge limited to the determination of the backpay periods for 27 of the discriminatees, interim earnings for all of the discriminatees, and the Respondent's net backpay liability.

It is further ordered that the administrative law judge shall prepare and serve on the parties a decision containing findings, conclusions, and recommendations based on all the record evidence. Following the service of the administrative law judge's decision on all the parties, the provisions of Section 102.46 of the Board's Rules and Regulations shall apply.

It is further ordered that the General Counsel's motion to strike the first affirmative defense is granted, and the Charging Party's request for expenses and attorneys' fees is denied.

<sup>2</sup> The General Counsel has withdrawn his motion to strike the Respondent's second affirmative defense.

The Charging Party requests that the Board require the Respondent to pay the Charging Party's expenses and attorneys' fees incurred in this matter. We find that this request is lacking in merit and is therefore denied.

<sup>3</sup> Those pars. are 2, 4, 9, 10, 15, 16, 22, 27, 28, 33, 34, 39, 40, 45, 46, 51, 52, 57, 58, 63, 64, 69, 70, 75, 76, 81, 82, 87, 88, 93, 94, 99, 100, 105, 106, 111, 112, 117, 118, 123, 124, 129, 130, 135, 136, 141, 142, 147, 148, 153, 154, 159, 160, 165, 166, 171, 172, 177, 178, 183, 184, 189, 190, 195, and 196.

<sup>4</sup> Those pars. are 11, 17, 23, 29, 35, 41, 47, 53, 59, 65, 71, 77, 83, 89, 95, 101, 107, 113, 119, 125, 131, 137, 143, 149, 155, 161, 167, 173, 179, 185, 191, and 197.