

**Ariga Textile Corp. and International Ladies' Garment Workers' Union, Local 415-475, AFL-CIO.**  
Case 12-CA-6758

May 3, 1979

**DECISION AND ORDER**

BY CHAIRMAN FANNING AND MEMBERS JENKINS  
AND MURPHY

On April 20, 1976, the National Labor Relations Board issued an unreported Order adopting, absent exceptions, the Administrative Law Judge's Decision directing Respondent, *inter alia*, to offer reinstatement to Fernando Basso, Victor Giordano, and Eduardo Lopez, and to make them whole for any loss of pay resulting from Respondent's unfair labor practices against them in violation of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended. On December 27, 1976, the United States Court of Appeals for the Fifth Circuit entered its judgment enforcing the Board's Order. A controversy having arisen over compliance issues, including Respondent's refusal to offer reinstatement to Fernando Basso and its corollary effect on the length of his backpay period and the amount of backpay owed him, and also the backpay due Victor Giordano and Eduardo Lopez, on December 22, 1978, the Regional Director for Region 12 issued and served on the parties his backpay specification and notice of hearing, alleging the amount of backpay due. On January 31, 1979, Respondent filed an answer to the backpay specification.

On February 22, 1979, counsel for the General Counsel filed with the Board a motion to strike Respondent's answer to backpay specification and a Motion for Summary Judgment with exhibits attached.<sup>1</sup> Subsequently, on March 6, 1979, the Board issued an Order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's motion to strike Respondent's answer to backpay specification and Motion for Summary Judgment should not be granted. Respondent did not file a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

<sup>1</sup> On February 26, 1979, the Regional Director for Region 12 issued an Order postponing the hearing indefinitely pending the Board's ruling on the General Counsel's motion.

**Ruling on the Motion To Strike Respondent's Answer to Backpay Specification and for Summary Judgment**

Section 102.54(b) and (c) of the National Labor Relations Board Rules and Regulations, Series 8, as amended, provides as follows:

(b) *Contents of the answer to specification.*—The answer to the specification shall be in writing, the original being signed and sworn to by the respondent or by a duly authorized agent with appropriate power of attorney affixed, and shall contain the post office address of the respondent. The respondent 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 denied. 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, he shall specifically state the basis for his disagreement, setting forth in detail his 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 the 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 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 subsection (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 said allegation.

The backpay specification duly served on Respondent states that "Respondent shall file with the Regional Director, acting in this matter as agent of the

National Labor Relations Board, within 15 days from the service of this Specification, an original and four copies of an answer to said Specification." The backpay specification also states that to the extent Respondent's answer to said specification "fails to deny allegations of the Specification in the manner required under the Board's Rules and Regulations and the failure to do so is not adequately explained, such allegations shall be deemed to be admitted to be true and the Respondent shall be precluded from introducing any evidence controverting them."

The motion to strike Respondent's answer to backpay specification and Motion for Summary Judgment allege that on January 5, 1979, Respondent filed with the Regional Director for Region 12 a "letter" in which Respondent generally denied the allegations of the backpay specification. On January 19, 1979, Respondent was notified by registered mail that, in the Regional Director's view, its "letter" did not meet the requirements of the Board's Rules and Regulations regarding an answer to a backpay specification. On January 31, 1979, after being furnished with a copy of Section 102.52 through Section 102.59 of the Board's Rules and Regulations, Respondent filed with the Regional Director for Region 12 a document entitled "Answer to Backpay Specification," which, in content, is the same letter with an affidavit attached.

Copies of both Respondent's "letter" of January 5, 1979, and its "Answer" of January 31, 1979, are attached to the motion to strike Respondent's answer to backpay specification and Motion for Summary Judgment as exhibits, and are uncontroverted by Respondent. Our examination of Respondent's "letter" and "Answer" reveals that both merely state that offers of rehire were made to two of the claimants, Victor Giordano and Eduardo Lopez. Regarding the third claimant, Fernando Basso, both Respondent's "letter" and "Answer" state that his services "were unsatisfactory," and that, "[A]lthough it was requested that we rehire him, we did not make any such offer due to the fact that he was already employed."

The General Counsel submits that Respondent's answer to the backpay specification fails to comply with the requirements of Section 102.54 (b) and (c) of the Board's Rules and Regulations. We agree.

As indicated, no response to the Notice To Show Cause has been filed by Respondent. No good cause to the contrary having been shown, in accordance with the rule set forth above, the Board deems Respondent to have admitted all allegations of the backpay specification to be true. Accordingly, we grant the General Counsel's motion to strike Respondent's answer to backpay specification; and, because there are no matters in issue requiring a hearing, we hereby grant the General Counsel's Motion for Summary

Judgment; and we shall issue an appropriate Order.<sup>2</sup>

On the basis of the backpay specification and the entire record in this case, the Board makes the following findings of fact:

We find that Victor Giordano, Eduardo Lopez, and Fernando Basso are entitled to be made whole under the Board's Order and the court's decree by payment to them of the amounts as summarized and calculated in the General Counsel's backpay specification; namely, by payments of \$1,094.07 and \$381.78 to Victor Giordano and Eduardo Lopez, respectively, plus interest accrued to the date of payment, minus the tax withholdings, if any, as required by Federal and state laws. We further find that Fernando Basso is entitled to payment of \$19,247.10 for backpay through the end of 1977, plus whatever additional sum is computed by the compliance officer for Region 12 for 1978 and any period of time thereafter until such date as Respondent makes him a valid offer of reinstatement, plus interest accrued to date of payment, minus any required tax withholdings.

#### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Ariga Textile Corp., Hialeah, Florida, its agents, successors, and assigns, shall pay to the employees involved in this proceeding as net backpay the following amounts:

Victor Giordano	\$ 1,094.07
Eduardo Lopez	381.78
Fernando Basso	19,247.10
	(net backpay through 1977)

IT IS FURTHER ORDERED that the compliance officer for Region 12 submit an additional backpay computation regarding Fernando Basso for 1978 and any period of time thereafter until Respondent makes him a valid offer of reinstatement.

<sup>2</sup> The backpay specification sets forth specifically and in detail for each of the three discriminatee claimants the backpay periods broken down by calendar quarters, the specific figures and basis of computation as to gross backpay and interim earnings, the expenses for each quarter, the net backpay due, and information regarding computation of the backpay due the claimants.

While stating that the backpay periods for claimants Giordano and Lopez end on May 27, 1976, and June 9, 1976, respectively, the backpay specification sets forth the amount of backpay owed to claimant Basso only through the end of 1977 and advises Respondent that, because it has refused to offer reinstatement to Basso, the backpay period for him has not been tolled and shall continue until a valid offer of reinstatement is made.

In our Order, we shall specify that the compliance officer for Region 12 be directed to submit backpay computation for claimant Basso for 1978 and any period of time thereafter until Respondent makes a valid offer of reinstatement.