

Nicholas Morrone and Robert M. Verbosky d/b/a Nick and Bob Partners d/b/a VMI Cabinets and Millwork, and/or VMI Cabinets and Millwork, Inc. and/or Nicholas Morrone, and/or Robert M. Verbosky, Alter Egos and Greater Pennsylvania Regional Council of Carpenters a/w United Brotherhood of Carpenters and Joiners of America. Case 6–CA–33210

September 30, 2005

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND SCHAUMBER

On November 28, 2003, the National Labor Relations Board issued a Decision and Order¹ directing the Respondents to make unit employees whole for any loss of wages and other benefits that they suffered as a result of certain unfair labor practices found. On April 30, 2004, the United States Court of Appeals for the Third Circuit entered a judgment enforcing the Board's Order.²

A controversy having arisen over the amounts of backpay and benefit fund contributions due, on March 24, 2005,³ the Regional Director for Region 6 issued a compliance specification and notice of hearing identifying the amount due under the Board's Order and notifying the Respondents that they must file a timely answer complying with the Board's Rules and Regulations.

By telephone, Respondent Nicholas Morrone asked the Regional Director to extend the deadline for filing an answer. On April 26, the Regional Director issued an order extending the deadline to May 10.

On June 3, the General Counsel filed with the Board a motion for default judgment and, in the alternative, for summary judgment. The General Counsel alleges that on May 10, the Respondents submitted a letter that purported to be an answer to the compliance specification.⁴ The letter is unsigned and contains no mailing addresses.

¹ 340 NLRB 1196 (2003).

² Case No. 04-1525.

³ All dates are in 2005, unless otherwise noted.

⁴ Only Respondent Morrone's name appears on the letter. It does not contain the names of the other three Respondents. The General Counsel concedes that Respondent Morrone filed the letter on behalf of himself and the Respondent Partnership and the Respondent Corporation. The General Counsel argues that Respondent Verbosky, in contrast, has filed no answer and therefore default judgment is appropriate against him. The Board will not grant judgment against a respondent for failing to file an answer if his liability depends on his status as an alter ego of a named respondent and that named respondent has filed a timely answer. *Media One Inc.*, 313 NLRB 876, 876 fn. 4 (1994); cf. *Imac Energy, Inc.*, 322 NLRB 892 (1997). Respondent Verbosky's individual liability depends on his status as an alter ego of the Respondent Partnership and the Respondent Corporation. Consequently, we shall treat Respondent Verbosky the same as the other three Respondents when resolving the General Counsel's motions.

The Respondents did not serve it on the Charging Party. In their letter, the Respondents state that they have no objection to the specification's allegations regarding the identities of the adversely affected employees, their "times," or their wage rates. The letter does claim that the specification's "estimates" are high for some employees, but concedes that the Respondents lack any records to support this claim and further concedes that they therefore have "no recourse." Additionally, the letter states that the Respondents did not subcontract work as asserted in the backpay specification.

The General Counsel argues that the Respondents' letter is not a legally sufficient answer under Section 102.56(a) because it is not signed or sworn to, lacks the Respondents' mailing addresses, and was not served on the other parties. Further, the General Counsel argues that the letter is not legally sufficient under Section 102.56(b) because it fails to specifically admit, deny, or explain any allegation in the compliance specification. Absent a legally sufficient answer, the General Counsel urges the Board to grant default judgment.

Assuming arguendo that the letter is a legally sufficient answer under Section 102.56, the General Counsel moves for summary judgment on the ground that the Respondents have failed to raise a genuine issue of material fact warranting a hearing.

On June 8, 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. The Respondents did not file a response. The allegations in the motion are therefore undisputed.

On the entire record in this case, the Board makes the following

Ruling on the Motion for Summary Judgment

Section 102.56 of the Board's Rules and Regulations states:

(a) *Filing and service of answer; form.*—Each respondent alleged in the specification to have compliance obligations shall, within 21 days from the service of the specification, file an original and four copies of an answer thereto with the Regional Director issuing the specification, and shall immediately serve a copy thereof on the other parties. 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 mailing address of the respondent.

(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 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.

When applying Section 102.56, “the Board has shown some leniency toward respondents who proceed without benefit of counsel.” *Convergence Communications, Inc.*, 342 NLRB 918, 919 (2004).

We find it unnecessary to rule on the General Counsel's motion for default judgment. We assume, without deciding, that the letter filed by the pro se Respondents is a legally sufficient answer under Section 102.56 to avoid default judgment. Cf. *Convergence Communications*, supra (granting the General Counsel's motion for default judgment where respondent filed a purported answer that failed to address “at all” the compliance specification's allegations).

We nevertheless grant the General Counsel's motion for summary judgment. Summary judgment is appropriate when a respondent does not raise a genuine issue of material fact. *Alpha Associates*, 344 NLRB No. 95, slip

op. at 5 (2005). The letter, even when considered in light of the Respondents' pro se status, does not raise a genuine issue of material fact. As stated above, it admits the identities of the adversely affected employees, their “times,” and their wage rates. The letter states that the specification's “estimates” are high, but then admits that the Respondents lack any evidence to support a lesser backpay liability and concedes that they are without recourse. Further, the letter seeks to explain that the Respondents did not subcontract work. This explanation, however, is entirely inappropriate here, as this issue was decided in the underlying unfair labor practice proceeding and cannot be relitigated in this backpay proceeding. *Convergence Communications*, supra, 342 NLRB at 919. Additionally, the Respondents failed to file a response to the Board's Notice to Show Cause why the General Counsel's motion should not be granted. Under these circumstances, we find that the Respondents have failed to raise a genuine issue of material fact warranting a hearing and therefore we grant the General Counsel's motion for summary judgment.⁵

ORDER

It is ordered that the General Counsel's Motion for Summary Judgment is granted.

IT IS FURTHER ORDERED that the Respondents, Nicholas Morrone and Robert M. Verbosky d/b/a Nick and Bob Partners d/b/a VMI Cabinets and Millwork, and/or VMI Cabinets and Millwork, Inc., and/or Nicholas Morrone, and/or Robert M. Verbosky, alter egos, Lemont Furnace, Pennsylvania, their officers, agents, successors, and assigns, shall make whole the individuals named below, by paying them the backpay amounts following their names, plus interest as set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and minus tax withholdings required by Federal and State laws, and by paying to the Carpenters' Combined Funds the amount listed as the subtotal of the fund contribution column:

⁵ Our concurring colleague expresses concern that the General Counsel does not represent that he complied with the notice requirement of the Casehandling Manual (Part Three), Compliance Sec. 10624.2, by informing the Respondent of the deficiencies in its answering letter, before the General Counsel moved for summary judgment. While compliance with that requirement is the better practice, it is not a legal mandate. “Neither the Board's Rules and Regulations nor our decisions require the Region to grant a respondent an opportunity to amend a defective answer before the General Counsel files for summary judgment.” *Aquatech, Inc.*, 306 NLRB 975, 975 fn. 6 (1991). See, e.g., *Houston Building Services*, 321 NLRB 123, 126 (1996).

DECISIONS OF THE NATIONAL LABOR RELATIONS BOARD

<i>NAME</i>	<i>BACKPAY</i>	<i>FUND CONTRI- BUTION</i>
Robert W. Boyer	\$ 13,912.00	\$ 4,391.48
Richard Brooks	10,050.40	3,118.31
Martin Cowden	13,912.00	4,391.48
Curtis Craft	9,186.80	3,297.42
Fred Cutere Jr.	22,697.30	6,113.18
Vincent DeMarco	11,825.20	3,732.76
Steven Joos	10,396.00	3,065.34
Patrick Jordan	16,167.00	5,342.93
Robert Kirby	24,346.00	7,685.10
Damian Kozel	11,791.20	3,727.15
Bernard Martin	12,977.80	3,267.30
Mark Maynard	19,205.92	5,217.82
Joseph Munizza	14,712.00	4,523.48
William Nichols	16,700.80	4,537.23
James Pappasergi	7,684.00	2,265.69
Hans Prew Jr.	8,867.20	2,960.94
David Sonita	13,912.00	4,391.48
Darren Vitikacs	9,506.40	3,271.31
Paul M. Wedge	15,984.00	6,725.80
Ricky R. Fowler	1,664.10	510.37
James Brangard	18,390.00	5,654.37

Frank Thomas	20,876.00	5,671.54
Keith Bowers	18,564.00	5,613.01
SUBTOTALS	323,328.12	99,475.49
<i>GRAND TOTAL</i>	<i>\$422,803.61</i>	

MEMBER SCHAUMBER, concurring.

I concur with my colleagues in granting the General Counsel's motion for summary judgment. The Respondent, a pro se litigant, is in bankruptcy. It represents to us that it is without financial resources to retain counsel to represent it. At the same time, the General Counsel in his motion papers does not represent to us that before filing his motion he notified the Respondent that its answering letter was insufficient and how it was deficient. Such notification is required by NLRB Casehandling Manual (Part Three) Compliance, Section 10624.2. While the Board follows a more lenient policy in enforcing its rules against pro se litigants and the failure of the General Counsel to make a representation with regard to its compliance with Section 10624.2 gives me pause, the Respondent in its answering letter effectively concedes that it is unable to raise a genuine issue of material fact as to the figures set forth in the compliance specification. With that admission, summary judgment is appropriate.