(a) All employees in the styrene and butadiene steam plants and the dehydrogenation plant, excluding all other employees and supervisors as defined in the Act.

(b) All production and maintenance employees, including truck-drivers, and warehouse and shipping employees; but excluding the styrene and butadiene steam plant and dehydrogenation plant employees, office and plant clerical employees, electricians, laboratory employees, professional employees, guards, and supervisors as defined in the Act.

If a majority of the employees in voting group (a) select Operating Engineers, that group will be taken to have indicated their desire to constitute a separate bargaining unit, which the Board, under those circumstances, finds to be appropriate for purposes of collective bargaining, and the Regional Director conducting the elections is hereby instructed to issue a certification of representatives to such union for such unit. In that event, if a majority of employees in voting group (b) select Oil Workers, then the Regional Director is instructed to issue a certification of representatives to that union for a unit of such employees, which the Board under the circumstances finds to be appropriate for purposes of collective bargaining.

However, if a majority of the employees in voting group (a) do not vote for Operating Engineers, such group will be appropriately included in the same unit with the employees in voting group (b) and their votes will be pooled with those in that voting group.[3] If a majority of employees in the pooled group select Oil Workers, the Regional Director is instructed to issue a certification of representatives to that union for such unit, which under such circumstances the Board finds to be appropriate for purposes of collective bargaining.

[Text of Direction of Elections omitted from publication.]

[3] If the votes are pooled, they are to be tallied in the following manner: The votes for Operating Engineers shall be counted as valid votes, but neither for nor against the union seeking the production and maintenance employees; all other votes are to be accorded their face value, whether for representation by a union or for no union.

Knickerbocker Plastic Co., Inc. *and* **International Association of Machinists, District Lodge No. 727.** *Case No. 21–CA–1111. October 15, 1957*

FINDINGS AND ORDER

On April 3, 1957, the Board issued and served upon the parties herein specifications for back pay, medical and hospitalization expenses, and death benefits. On May 20, 1957, the Respondent filed an answer to the specifications. On June 13, 1957, the General Counsel filed a

motion requesting the Board to find the allegations in the specifications to be true and to issue an order precluding the Respondent from introducing evidence controverting said allegations and striking the affirmative defenses in said answer.[1] On June 23, 1957, the Respondent filed an amended answer to the specifications, and on July 9, 1957, the General Counsel renewed his previous motion in the light of the amended answer. An opposition and response to such motion was filed by the Respondent on July 19, 1957.

The Board has considered all the foregoing papers, and the entire record in this case, and finds as follows:

The General Counsel alleges that the Respondent's amended answer fails to meet the requirements set forth in Section 102.51 c (b) of the Board's Rules and Regulations relating to the contents of an answer to back-pay specifications. We shall consider the issues raised by the General Counsel *seriatim.*

1. Paragraph A of schedule I of the specifications sets forth the gross back pay for each claimant, based on information furnished by the Respondent. The General Counsel contends that the amended answer is deficient in that, while disputing the accuracy of the gross back-pay figures in the specifications, it fails as required by Section 102.51 c (b) of the Board's Rules to "state the basis for [its] disagreement" with the specifications, "setting forth in detail [its] position as to the applicable premises and furnishing the appropriate supporting figures."

While the amended answer itself is somewhat ambiguous in this respect, the statement in opposition to the General Counsel's motion makes it clear that the Respondent admits the accuracy of the computations of gross back pay in the specifications (except as modified by the figures listed in the exhibit attached to the amended answer), and that the Respondent merely questions that the claimants would have worked throughout the back-pay period had they not been discharged. This is, in effect, merely a refusal to admit that the claimants would have been willing or able to work throughout that period. That is, however, an issue separate and distinct from the accuracy of the gross back-pay figures as a statement of the wages which the claimants would have received during particular quarters had they actually worked during those quarters. As that is the only purpose for which the gross back-pay figures may properly be offered by the General Counsel and as the Respondent has, in effect, admitted that they are an accurate statement for that purpose, we find no violation of the Board's Rules here.

2. The specifications set forth the amount of back pay alleged to be due to 79 named persons. Paragraph III of the amended answer states

[1] On July 10, 1957, the Board received from the Respondent a statement in opposition to that motion.

that Respondent has no knowledge as to the identity of the persons who were ordered reinstated with back pay by the United States Court of Appeals in enforcing the Board's Order in this case, and for that reason denies that any of the 79 is entitled to back pay. The Board's Order, as enforced, required Respondent to reinstate with back pay two named employees (Goff and Rounsavell) and "all of the employees discharged on July 10 and 11, 1951." [2] In its opposition to the motion, the Respondent admits only that the persons named in the specifications were employed by its before the strike,[3] and reaffirms its position that it does not know what persons were ordered reinstated, as such persons were not specifically named by the Board or the court. However, as the Board and the court identified those entitled to reinstatement and back pay (other than Goff and Rounsavell) as "all of the employees discharged" on certain dates, the Respondent's position is in effect that it does not know whom it discharged on those dates. Absent any explanation of such lack of knowledge, we do not deem this a sufficient answer under Section 102.51 c (b) of the Board's Rules. However, we shall give the Respondent an opportunity to file within 10 days from the date of this Order an amendment to its amended answer either (a) stating which of the 79 persons for whom back pay is claimed in the specifications were, or were not, discharged on July 10 or 11, 1957, or (b) explaining why it is unable to furnish such information. Failure to file such an amendment shall be deemed an admission that all such 79 persons were discharged on those dates.

3. Schedule II of the specifications sets forth claims for benefits due the claimants under Respondent's 1952 insurance plan, which, the specifications allege, was in effect during 1952 and throughout the balance of the back-pay period, ending on April 1955. While apparently denying in its amended answer that its 1952 plan was in effect during such periods, Respondent attached to its amended answer a copy of the plan, dated January 10, 1952, which it admits was in effect during the back-pay period. General Counsel contends that the latter admission is inconsistent with the prior denial. However, in its statement opposing the motion, Respondent unequivocally asserts that the 1952 plan "was applicable on and after 1952." Under these circumstances, we find that the Respondent has admitted that the 1952 plan was applicable during 1952 and during the balance of the back-pay period covered by the specifications.

4. Schedule III of the specifications sets forth the claims of certain reinstated employees for back pay because of the alleged discriminatory failure of the Respondent to pay them the rate of wages to which they were entitled upon reinstatement. It is not entirely clear whether

[2] The strike herein began on July 9, 1951.

[3] Respondent admits also in its statement opposing the motion of July 9 that Goff and Rounsavell are entitled to relief under the court's decree, and amends its amended answer to that effect.

the amended answer denies the correctness of the amounts alleged to have been actually paid or merely asserts that such amounts were not discriminatory. General Counsel takes the former view, and contends that such denial is defective under the Rules in that it fails to set forth a countercomputation. However, in its opposition to the motion Respondent disavows any attack on the accuracy of the figures, and states that its sole contention is that the amounts paid were not discriminatory. Accordingly, we find that Respondent has admitted that the wages alleged in schedule III to have been paid are those actually paid to the employees involved.

5. Schedule V of the specifications sets forth the amounts of vacation pay alleged to be due certain of the claimants with respect to the period preceding their discharge. The amended answer denies that such amounts are due to the "persons listed" in the specifications. General Counsel contends that this denial is insufficient under the Rules as it is not supported by any explanation or countercomputation. However, in its opposition to the motion, Respondent disclaims any disagreement with the computation in schedule V, but explains that it is merely challenging the right of the persons named in schedule V to any relief under the decree of the court, in view of the failure of the court and the Board to list by name the beneficiaries of the back-pay remedy. This raises merely the same issue as is discussed in paragraph 2, above. We find, therefore, that the Respondent has admitted that the persons listed in schedule V earned vacation pay in 1951 in the amounts set forth therein, but denies that such persons are the ones entitled to relief under the decree of the court in this case. For reasons stated in paragraph 2, above, we deem such denial insufficient under the Board's Rules.[4]

6. Schedule VII of the specifications recapitulates the sums due each claimant under the other schedules. Paragraph VIII of the amended answer denies, "for the reasons set forth . . . above" that any of such sums are due to the persons listed. General Counsel contends that such a general denial is insufficient under the Board's Rules, since many of the matters embraced in the computation in schedule VII are within the Respondent's knowledge. However, we find that in this paragraph of its amended answer Respondent is merely incorporating by reference all its previously stated objections to the specifications. Accordingly, the sufficiency of paragraph VIII depends upon that of the preceding paragraphs of the amended answer, and raises no new issue.

7. The General Counsel moves the Board to strike various affirmative defenses pleaded by the Respondent. In these defenses, the Re-

[4] However, we shall not here require any amendment of the amended answer, as in paragraph 2, above, since the persons listed in schedule V are included among the 79 persons referred to in paragraph 2, and any disposition of the issue raised as to those 79 persons will presumably settle the question here raised.

spondent, *inter alia*, challenges the authority of the Board to proceed in this matter, and contends that the Respondent has been denied due process.[5] Without passing on the merits of the affirmative defenses, we do not believe that Respondent should be foreclosed from urging them in this proceeding.

In conclusion, we find, for reasons stated above, that the amended answer, as modified and clarified by the Respondent's statement in opposition to the General Counsel's motion on July 9, complies with the Board's Rules, except in the respects noted in paragraphs 2 and 5, above. We will accordingly deny the General Counsel's motion except to the extent indicated in paragraph 2, above.[6]

ORDER

IT IS HEREBY ORDERED that, unless the Respondent, within 10 days from the date of this Order, amends its amended answer by either (a) stating which of the 79 persons for whom back pay is claimed in the specifications were, or were not, discharged on July 10, or 11, 1957, or (b) explaining why it cannot furnish this information, such 79 persons will be deemed to have been discharged on those dates by Respondent and it will be precluded from introducing any evidence to the contrary at the hearing in this case.

IT IS FURTHER ORDERED that the General Counsel's motion of June 13, 1957, as renewed on July 9, be, and it hereby is, denied in all other respects.

[5] We note, in passing, Respondent's characterization of the back pay claimed in the specifications as "grossly exaggerated" and as based upon "false and fraudulent statements" of claimants. Such characterization is difficult to reconcile with Respondent's admission that the gross back-pay figures are accurate, except for some relatively minor corrections, and its assertion in paragraph I (B) of the amended answer that it has no "knowledge or information sufficient to form a belief" as to the interim earnings and deductible expenses of the claimants or as to their search for work.

[6] Respondent contends in its opposition to the motion that there is no authority in the Board's Rules for filing the instant motion. However, Section 102.51 c (c) of the Rules authorizes the Board, in an appropriate case, to grant the relief here sought by the General Counsel. Such provision necessarily implies that the General Counsel may seek such relief from the Board through an appropriate pleading.

Natvar Corporation *and* Stephen Huszar, Petitioner *and* United Paperworkers of America, AFL–CIO.[1] *Case No. 22–RD–4. October 15, 1957*

DECISION AND ORDER

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Alan Zurlnick, hear-

[1] We have been administratively advised that the Union, United Paperworkers of America, AFL–CIO, and the International Brotherhood of Papermakers, AFL–CIO, merged, effective March 8, 1957; and the merged name appears as United Papermakers and Paperworkers of America, AFL–CIO.