

C.R. Fenwick and Frank J. Larsen, a Partnership d/b/a Suncolor Lithographing Company and Phoenix Local 225, Lithographers & Photo Engravers International Union, AFL-CIO. Case 28-CA-2221

January 18, 1973

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS JENKINS
AND KENNEDY

On July 16, 1971, the National Labor Relations Board issued an Order adopting, in the absence of exceptions, the Decision of the Administrative Law Judge¹ directing the Respondents, *inter alia*, to offer reinstatement to and to make whole Harold Wenthe for loss of pay suffered by reason of Respondents' discrimination against him. On January 6, 1972, the United States Court of Appeals for the Ninth Circuit entered a consent judgment summarily enforcing the Board's Order. A controversy having arisen over the amount of backpay due under the terms of the Board's Order, as enforced by the court, the Acting Regional Director for Region 28, on August 30, 1972, issued a backpay specification and notice of hearing setting forth certain allegations with respect to the amount of backpay due said discriminatee. Subsequently, Respondent, C.R. Fenwick, filed a letter response with the Acting Regional Director. The other Respondent, Frank J. Larsen, filed his answer to the specification, admitting the allegations *in toto*.

Thereafter, on October 12, 1972, counsel for the General Counsel filed directly with the Board, in Washington, D.C., a Motion for Summary Judgment on the pleadings and issuance of a Board Order and Decision, submitting that Respondent Fenwick's answer fails to meet the requirements of Section 102.54 of the Board's Rules and Regulations and Statements of Procedure. On October 18, 1972, the Board issued an Order transferring the proceeding to the Board and Notice To Show Cause why the General Counsel's Motion for Summary Judgment on the pleadings should not be granted. Respondents failed to 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:

Ruling on the Motion for Summary Judgment

Section 102.54 of the Board's Rules and Regulations provides in pertinent part as follows:

(a) . . . The respondent shall, within 15 days from the service of the specification, if any, file an answer thereto

* * * * *

(c) . . . 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, issued and served on Respondents on August 30, 1972, specifically states that Respondents shall, within 15 days from the date of the specification, file an answer to the specification with the Acting Regional Director for Region 28 and that, if the answer fails to deny the 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. Respondent Fenwick's letter of September 7, 1972, to the Acting Regional Director explained that Respondents had ceased doing business and raised matters previously litigated before an Administrative Law Judge and decided by the Board. The letter did not address itself to the allegations of the specification. Since Respondent Larsen's answer admits all allegations of the specification and Respondent Fenwick's letter of September 7, 1972, does not meet the requirements of Section 102.54 of the Board's Rules and Regulations, no triable issue is presented. Respondents failed to file a response to the Notice To Show Cause and, therefore, the allegations of the Motion for Summary Judgment stand uncontroverted and are deemed to be admitted to be true and so found by the Board without the taking of evidence in support of the said allegations.

Accordingly, on the basis of the allegations of the specification which are accepted as true, the Board finds the facts as set forth therein, concludes that the net backpay due Harold Wenthe is as stated in the computations of the specification, and hereinafter

¹ The title of "Trial Examiner" was changed to "Administrative Law Judge" effective August 19, 1972.

orders the payment thereof by the Respondents to Harold Wenthe.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondents, C.R. Fenwick and Frank J. Larsen, a Partnership d/b/a Suncolor Lithographing Company, Phoenix,

Arizona, their agents, successors, and assigns, shall, jointly and severally, make whole Harold Wenthe by payment to him of the amount set forth adjacent to his name below, plus interest accrued at the rate of 6 percent per annum to be computed in the manner specified in *Isis Plumbing & Heating Co.*, 138 NLRB 716, until payment of all backpay due, less the tax withholdings required by Federal and state laws:
Harold Wenthe—\$3,528.01