

William Minter Masonry Contractor, Inc. and International Union of Bricklayers and Allied Craftsmen, Local No. 1 of Tucson, Arizona and Southern Arizona Masonry Association and International Union of Bricklayers and Allied Craftsmen, Local No. 1, Tucson, Arizona, Health and Welfare Trust Fund and Tucson Bricklayers Pension Trust Fund. Cases 28-CA-5764-1 and 28-CA-5764-2

March 22, 1982

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND ZIMMERMAN

On September 15, 1980, the National Labor Relations Board issued its Decision and Order¹ in the above-entitled proceeding in which it concluded, *inter alia*, that Respondent had violated Section 8(a)(1) and (5) of the Act by unilaterally discontinuing making payments and reports to trust funds and remitting dues deducted from employees as required by articles X and XI of the collective-bargaining agreement between International Union of Bricklayers and Allied Craftsmen, Local Union No. 1 of Tucson, Arizona (herein called the Union), and Southern Arizona Masonry Association, effective from July 1, 1978, through June 30, 1982. The Board ordered Respondent to make whole its employees by making reports and payments to the trust fund as required by article X of the agreement and remitting the sums deducted from its employees for union dues to the depository designated by the Union as required by article XI of the agreement. Thereafter, on June 24, 1981, the United States Court of Appeals for the Ninth Circuit entered its judgment enforcing the Board's Order. A controversy having arisen over the amounts of fringe benefits and payments due under the Board's Order, as enforced by the court, the Acting Regional Director for Region 28, on September 11, 1981, issued and duly served Respondent by certified mail a backpay specification and notice of hearing alleging the amounts of fringe benefit payments due to the Union's respective fringe benefit funds on behalf of certain unit employees and the amounts of union dues that should have been checked off and remitted to the Union. The backpay specification and the affidavit of service of the backpay specification with the post office receipt attached show that Respondent was duly served. Thereafter, on September 22, 1981, Respondent filed its answer to the specification in the

form of a letter stating its financial inability to make the payments due under the Board's Order.

On October 5, 1981, counsel for the General Counsel caused to be served on Respondent, by certified mail, a letter informing Respondent of its duty to timely answer the backpay specification and the requirements of the answer. On October 11, 1981, Respondent served by ordinary mail a letter generally denying the allegations in the specification and again stating its financial inability to make the payments due under the Board's Order.

On November 4, 1981, counsel for the General Counsel filed directly with the Board a motion for judgment on the pleadings in accordance with the specification, herein called Motion for Summary Judgment. Subsequently, on November 9, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause on or before November 27, 1981.

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, Series 8, as amended, 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

(b) . . . 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. . . . 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. . . .

(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 pre-

¹ 252 NLRB 130 (1980).

cluded from introducing any evidence controverting said allegation.

The backpay specification duly issued, served, and received by Respondent states that an answer shall be filed within 15 days after service of the specification and that, to the extent that the answer denies, without adequate explanation, the allegations of the specification in the manner required by the Board's Rules and Regulations, such allegations shall be deemed to be admitted to be true and Respondent precluded from introducing any evidence controverting them. According to the Motion for Summary Judgment, by letters dated September 22 and October 11, 1981, Respondent filed an answer stating that "all allegations are not true," and asserted financial inability to pay anything.

Respondent's answer merely contains a general denial of the allegations of the backpay specification and does not specifically deny the allegations as required by Section 102.54(b) of the Board's Rules and Regulations. The failure to so deny is not adequately explained. Accordingly, as the answer fails to comply with the provision of Section 102.54(b), the allegations of the specification are deemed to be admitted to be true and are so found by the Board without taking evidence in support of 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 and concludes the fringe benefit and dues payments that should have been remitted to the Union are as stated in the computation of the specification. The Board orders that fringe benefit payments be made by Respondent to the joint board of trustees designated to administer the Union's Health and Welfare, Pension and Apprenticeship Training Funds

and to the trust fund designated to administer the Southern Arizona Masonry Association Industry Program and that dues payments be made to a depository designated by the Union for the collection of union dues.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, William Minter Masonry Contractor, Inc., Tucson, Arizona, its officers, agents, successors, and assigns, shall make whole the employees in the appropriate unit by making all fringe benefit trust fund payments to the joint board of trustees designated to administer the Union's Health and Welfare, Pension and Apprenticeship Training Funds in the amount of \$28,312.75 and to the trust fund designated to administer the Southern Arizona Masonry Association Industries Program in the amount of \$2,535.47; and by remitting the sum of \$2,072.25 that it deducted from its employees' wages for union dues to the depository designated by the Union. Interest on the dues shall be computed in the manner prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977).²

² See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962). Because the provisions of employee benefit fund agreements are variable and complex, the Board does not provide at the adjudicatory stage of a proceeding for the addition of interest at a fixed rate on unlawfully withheld fund payments. We leave to the compliance stage the question of whether Respondent must pay any additional amounts into the benefit funds in order to satisfy our "make-whole" remedy. These amounts may be determined, depending on the circumstances of each case, by reference to provisions in the documents governing the funds at issue and, where there are no governing provisions, to evidence of any loss directly attributable to the unlawful withholding action, which might include the loss of return on investment of the portion of funds withheld, additional administrative costs, etc., but not collateral losses. See *Merryweather Optical Co.*, 240 NLRB 1213, 1216 (1979).