

American Intercable, Inc. and International Brotherhood of Electrical Workers, Local 166, AFL-CIO. Case 3-CA-15981

SUPPLEMENTAL DECISION AND ORDER

**BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT**

On April 5, 1991, the National Labor Relations Board issued a Decision and Order,¹ inter alia, ordering American Intercable, Inc., to make whole its unit employees by making contributions to the pension fund that it had unlawfully refused to make, and by reimbursing its employees for any expenses resulting from the Respondent's unlawful failure to make these contractually required pension contributions. The Respondent was further ordered to remit to the Union contractually required union working dues that the Respondent had failed to do, all in violation of the National Labor Relations Act. On March 24, 1992, the United States Court of Appeals for the Second Circuit entered a judgment enforcing the Board's Order.

A controversy having arisen over the amount of reimbursement due under the terms of the Order, on January 20, 1993, the Regional Director for Region 3, issued a compliance specification and notice of hearing alleging the amount due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent has failed to file an answer.

By letter dated March 29, 1993, the compliance officer advised the Respondent that no answer to the compliance specification had been received and that unless an appropriate answer was filed by April 6, 1993, the filing of a Motion for Summary Judgment would be seriously considered. The Respondent filed no answer.

On April 12, 1993, the General Counsel filed with the Board a motion to transfer proceedings before the Board and for summary judgment, with exhibits attached. On April 15, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent again filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer

¹ 302 NLRB No. 72 (1991), not reported in Board volumes.

within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

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.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the net back-pay due the discriminatees is as stated in the compliance specification and we will order payment by the Respondent to the discriminatees.

ORDER

The National Labor Relations Board orders that the Respondent, American Intercable, Inc., Latham, New York, its officers, agents, successors, and assigns, shall make whole the pension fund and the Union by paying the amounts listed below, with interest on the union dues to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987):

Union Dues	\$554.92
Pension Fund	1,067.74

Dated, Washington, D.C. May 13, 1993

James M. Stephens, Chairman

Dennis M. Devaney, Member

Clifford R. Oviatt, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD