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Ware Plumbing and Heating Co., Inc. and United Association of the Plumbing and Pipefitting Industry of the United States and Canada (AFL-CIO) Local Union No. 55. Case 8-CA-26585

May 24, 1999

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX AND
LIEBMAN

On May 24, 1995, the National Labor Relations Board issued a Decision and Order,¹ inter alia, ordering Ware Plumbing and Heating Co., Inc., the Respondent, to take certain affirmative action including making the contractually required contributions to the Union's health and welfare and pension funds and making dues and assessment payments to the Union, which the Respondent failed to make from January 29, 1994, to November 30, 1994, in violation of the National Labor Relations Act.² On November 21, 1995, the United States Court of Appeals for the Sixth Circuit enforced the Board's Order.

A controversy having arisen over the amount of back-pay owed to the funds, on February 25, 1999, the Acting Regional Director for Region 8 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 failed to file an answer.

By letter dated March 18, 1999, the General Counsel advised the Respondent that no answer to the compliance specification had been received and that unless an appropriate answer was filed by March 26, 1999, summary judgment would be sought. The Respondent filed no answer.³

On April 21, 1999, the General Counsel filed with the Board a Motion for Summary Judgment, with exhibits attached. On April 27, 1999, 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

¹ 317 NLRB No. 88 (1995) (not included in Bound volume).

² The compliance specification acknowledges that the Respondent resumed payments on November 30, 1994.

³ The General Counsel's letter further advised the Respondent that if it did not wish to file an answer, it could sign an acknowledgement of that fact and return it to the Regional Office. The General Counsel's Motion for Summary Judgment reports that on March 18, 1999, Arthur Eulinberg telephoned the Regional Office and advised that his father, Ben S. Eulinberg, the former owner of Respondent, was deceased, that he (Arthur) now owned the Company and that he did not intend to dispute the allegations set forth in the compliance specification. Thereafter, the Regional Office received the signed acknowledgement. (See Motion Exh. E.)

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 the Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer 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 amounts due the funds are as stated in the compliance specification and we will order payment by the Respondent of those amounts, plus interest accrued on those amounts to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondent, Ware Plumbing and Heating Co., Inc., Cleveland, Ohio, its officers, agents, successors, and assigns, shall make whole the funds and the Union by paying the amounts set forth below, plus interest accrued to the date of payment:

Fund Contributions	\$46,096.51
Wage Deductions	19,707.32
Liquidated Damages	4,609.62
Monthly Interest	<u>22,396.53</u>
TOTAL	\$92,809.98

Dated, Washington, D.C. May 24, 1999

John C. Truesdale,	Chairman
Sarah M. Fox,	Member
Wilma B. Liebman,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD