

Indiana Personnel Services d/b/a Indiana Temporary Services and its alter egos Indiana Temporary Services, Inc. and Indiana Temporary Services East, Inc. and its Joint Employer Koorsen Protection Services, Inc. Party in Interest and Road Sprinkler Fitters Local Union No. 669, U.A., AFL-CIO, a/w United Association of Journeyman and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO. Cases 25-CA-24069 Amended and 25-CA-24189 Amended

October 14, 2003

SUPPLEMENTAL DECISION AND ORDER
BY CHAIRMAN BATTISTA AND MEMBERS
SCHAUMBER AND WALSH

The General Counsel seeks a default judgment¹ in this case on the ground that Respondent Indiana Temporary Services (ITS) has failed to answer a compliance specification. The compliance specification implements a board Order² requiring ITS to make whole employees Melvin Curtis, Kirk Bickell, David Fulkerson, Gary Garr, John Marye, Gary Ray,³ and David Douglas, in the amounts specified, for their losses suffered as a result of ITS's refusal to hire them and consider them for employment.

The compliance specification alleged, inter alia, the backpay amount owed by ITS pursuant to the Board's Order.⁴ It also notified ITS it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, ITS failed to file an answer as specified in NLRB Rules and Regulations Section 102.56(b) and (c).⁵

¹ The General Counsel seeks summary judgment on the ground that the Respondent has failed to file an answer to the compliance specification. Accordingly, we construe the General Counsel's motion as a motion for default judgment.

² Unpub. (July 14, 1998), enfd. sub nom. *NLRB v. Indiana Temporary Services*, No. 98-3872, Unpub. (July 21, 1999).

³ Ray's quarterly interim earnings exceeded, and thus offset, the amount of backpay to which he was entitled. Accordingly, the compliance specification contains no backpay computation for him.

⁴ The specification contained a chart summarizing the total backpay obligation of joint employers ITS and Koorsen, the amount previously paid by party-in-interest Koorsen, and the outstanding backpay obligation of ITS.

⁵ Sec. 102.56(b) of the Board's Rules and Regulations requires that the "answer specifically admit, deny, or explain each and every allegation of the specification." Sec. 102.56(c) provides, inter alia, that if the respondent fails to answer the specification, the Board may find the specification to be true and enter an appropriate order.

A copy of the compliance specification served by certified mail to ITS's Indianapolis, Indiana address was returned to the Regional Office undelivered. Attorney, Robert Epstein, who is ITS's resident agent for service in Indiana, was successfully served by regular mail. In re-

By letter dated January 2, 2003, counsel for the General Counsel advised ITS that no answer to the compliance specification had been received, and that unless ITS contacted the Region by the close of business on January 13, 2003, summary judgment would be sought. ITS did not respond.

On February 5, 2003, the General Counsel filed a Motion for Summary Judgment with the Board. On February 13, 2003, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. ITS did not file a 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 Default Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that a respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) provides that if the respondent fails to file an answer to the specification within the time proscribed 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. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated January 2, 2003, notified ITS that unless an answer was received by close of business on January 13, 2003, a Motion for Default Judgment would be filed.

In the absence of good cause being shown for ITS's failure to file a timely answer, we grant the General Counsel's Motion for Default Judgment.⁶

Epstein sent a letter to the Regional Director asserting that ITS is no longer in business.

⁶ Charges were filed against ITS and Koorsen Protection Services, as joint employers, alleging various unfair labor practices. Each entered into a separate, informal settlement agreement with the Charging Party, agreeing, inter alia, to pay a specified share of the total backpay due the named discriminatees under the settlement, and to be residually liable for each other's backpay obligation in the event of the other's default. Koorsen complied with the agreement by remitting the specified backpay amount. ITS did not comply. As a result, the General Counsel revived the unfair labor practice complaint and successfully litigated the case, leading to this compliance proceeding.

Koorsen Protection Services filed an objection to the Motion for Summary Judgment, "to the extent the General Counsel seeks an order declaring as true any allegations in the compliance specification concerning Koorsen and to any remedy that adversely affects it." Koorsen's interest in this compliance proceeding against ITS arises as a result of Koorsen's above-referenced settlement. The settlement agreement provided that Koorsen would pay a portion of the total backpay provided for each employee and would "pay the remainder of each such amount only on being informed by the Regional Director that efforts to

obtain payment from Charged Party, Indiana Personnel Services, Inc. d/b/a Indiana Temporary Services have failed.” In light of ITS’s default, Koorsen contends that summary judgment is not appropriate here because Koorsen “may have many defenses available to it in the unlikely event that the Region attempts to collect any further amounts from [it].”

We find that Koorsen’s objection to the Motion for Summary Judgment against ITS is premature and, thus, lacks merit. We take no position regarding any legal obligation Koorsen might have, or any defenses it might raise, with regard to any remaining backpay liability resulting from its settlement agreement with the Charging Party and from this proceeding. Indeed, we need not do so. This summary judgment proceeding is against ITS, in an attempt to establish and collect the amount of backpay owed as a result of the Board’s Order against ITS. If the General Counsel is unsuccessful in collecting ITS’s backpay obligation, and if, as a result, any party to these proceedings attempts to proceed against Koorsen, Koorsen then will be able to raise such defenses as it sees fit.

ORDER

The National Labor Relations Board orders that the Respondent, Indiana Personnel Services, Inc. d/b/a Indiana Temporary Services, Indianapolis, Indiana, its officers, agents, successors, and assigns, shall make whole the individuals named below by paying them the amounts following their names, plus interest and minus tax withholdings required by Federal and State laws:

Bickel	\$10,748	Curtis	\$12,560
Douglas	\$ 1,636	Fulkerson	\$ 6,310
Garr	\$ 1,578	Marye	\$ 6,653