

Crystal Soda Water Company, Inc. and International Brotherhood of Teamsters, Local 229. Case 04–CA–038046

October 31, 2012

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS GRIFFIN
AND BLOCK

On November 10, 2011, the National Labor Relations Board issued a Decision and Order¹ that, among other things, ordered the Respondent, Crystal Soda Water Company, Inc., to make whole its unit employees for any loss of earnings and other benefits suffered as a result of the Respondent's unfair labor practices in violation of Section 8(a)(5) and (1) of the Act.

A controversy having arisen as to the amount of backpay due under the terms of the Board's Order, the Regional Director for Region 4 issued a compliance specification and notice of hearing setting forth the amounts due under the Board's Order, and notifying the Respondent that it was required to file an answer in conformity with the Board's Rules and Regulations. The specification stated that an answer was required by July 20, 2012, or a motion for default judgment might be filed.

By letter dated August 7, 2012,² the Respondent was advised that its answer had not been received and that unless it filed an answer by August 14, a Motion for Default Judgment would be filed. On August 15, the Acting General Counsel filed with the Board a Motion for Default Judgment, contending that the Respondent failed to file an answer to the compliance specification.

On August 16, the Acting General Counsel filed with the Board a supplement to its motion, stating that the Respondent had in fact responded to the compliance specification. The supplement explained that by letter dated July 18 the Respondent answered the compliance specification by stating that (a) the Respondent "does not challenge the figures presented," and (b) the Respondent does not have the funds to satisfy the amounts owed as alleged in the compliance specification.³ The supplement further stated that, because the Respondent's July 18

letter does not challenge the amounts in the compliance specification, and effectively admits its allegations, the Acting General Counsel now moves for summary judgment rather than default judgment. On August 17, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the Acting General Counsel's motion should not be granted. The Respondent filed no response to the Notice to Show Cause.

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

Ruling on Motion for Summary Judgment

Sections 102.56(b) and (c) of the Board's Rules and Regulation specify, in relevant part, that:

(b) *Contents of answer to specification.* The answer 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 at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. 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. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(c) *Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification.* 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. If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (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 the allegation.

¹ 357 NLRB No. 110 (not reported in Board volume).

² All dates hereafter are in 2012, unless otherwise noted.

³ The body of the letter, sent by the Respondent's president, states in its entirety:

Please be advised that the Crystal Soda Water Company does not challenge the figures presenteed [sic] within the compliance specifications and notice of hearing received on or about July 2, 2012 and mailed from Philadelphia on June 29, 2012.

The company does not have sufficient funds to satisfy this complaint as the majority of its remainig [sic] funds were used to satisfy an IRS lien.

Current funds are less than \$1000 and are hardly worthy of a settlement offer.

As set forth above, the Respondent does not deny any allegation in the specification. Rather, it asserts only that it is unable to pay the amounts owed. The Respondent's assertion is not a relevant consideration in a compliance proceeding, where "the issue is the amount due and not whether [the Respondent is] able to pay." *Diversified Enterprises, Inc.*, 358 NLRB 434, 435 (2012), quoting *Star Grocery Co.*, 245 NLRB 196, 197 (1979).

Accordingly, as the Respondent's answer only raises an issue that is immaterial to the allegations in the compliance specification, we find the allegations in the compliance specification to be admitted as true and shall grant the Acting General Counsel's Motion for Summary Judgment. We conclude, therefore, that the amounts due are as set forth in the compliance specification, and we will order the Respondent to pay these amounts, plus interest accrued on the amounts to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondent, Crystal Soda Water Company, Inc., Scranton, Pennsylvania, its officers, agents, successors, and assigns, shall make whole the employees identified in the compliance specification by paying them the amounts following their names, plus interest accrued to the date of payment as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as set forth in *Kentucky River Medical Center*, 356 NLRB 6 (2010), and minus tax withholdings required by Federal and State laws; and by making the health insurance premium payments due to Blue Care HMO of Wilkes Barre, Pennsylvania, in the amount set forth below, plus interest accrued to the date of payment, as prescribed in *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).

Bob Fridley	\$2648.80
Joe Addio	3010.00
Barry Reider	3732.40
Dave Lydon	4214.00
Jim Karlavage	3070.20
Morrill Reid	3250.80
Jim McCormack	3371.20
Gary Carroll	3371.20
Tony Loureiro	3010.00
Jack Loureiro	3491.60
Alan Backus	2408.00
Frank Ratay	2558.64
<u>Steve Werner</u>	<u>1630.72</u>
SUBTOTAL	\$39,467.56
Blue Care HMO of Wilkes Barre, PA	\$15,853.39
TOTAL	\$55,320.95