

Landmark Family Foods, Inc. d/b/a Church Square Supermarket and United Food and Commercial Workers Union, Local 880. Cases 08–CA–037667 and 08–CA–038794

February 7, 2013

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS GRIFFIN
AND BLOCK

On May 31, 2011, the National Labor Relations Board issued a Decision and Order¹ that, among other things, ordered the Respondent, Landmark Family Foods, Inc. d/b/a Church Square Supermarket, to make all delinquent contributions to the pension and health and welfare funds of United Food and Commercial Workers Union, Local 880, on behalf of unit employees that had not been made since September 6, 2007, including any additional amounts due to the funds,² as a result of the Respondent's violation of Section 8(a)(5) and (1) of the Act.

On November 30, 2011, a controversy having arisen as to the amounts owed to the pension and health and welfare funds under the terms of the Board's Order, the Regional Director for Region 8 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 Respondent filed an answer to the compliance specification on December 22, 2011, and filed an amended answer on January 18, 2012.³ On March 6, in response to the contentions set forth in the Respondent's amended answer, the Regional Director issued an amended compliance specification and notice of hearing setting forth an adjusted amount due under the Board's Order,⁴ and notifying the Respondent that it was required to file an answer in conformity with the Board's Rules.

On April 20, the Respondent filed an answer to the amended compliance specification. In its answer, the Respondent stated that it "admits and acknowledges the truth of the allegations set forth in the Amended Compliance Specification." The Respondent's answer further

stated "that any stipulations made on the part of Respondent were made in an effort to settle this matter both timely and amicably, but certain acts of the Board have prevented both the timely and amicable resolution of this matter." The answer does not identify or further describe the "acts of the Board" to which it refers.

On September 28, the Acting General Counsel filed with the Board a Motion for Summary Judgment. On October 2, 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. In response to the Notice to Show Cause, on October 16 the Respondent filed an opposition to the Acting General Counsel's Motion for Summary Judgment, contending that the admissions in its answer to the amended compliance specification were made only for settlement purposes and, as no settlement has been reached, no valid admissions exist. In the alternative, the Respondent's opposition contends that any admission offered was under duress or false pretenses. The Acting General Counsel filed a reply to the Respondent's opposition on November 23.

Ruling on Motion for Summary Judgment

Section 102.56(b) and (c) of the Board's Rules and Regulations provides 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 with-

¹ 356 NLRB 1357 (2011).

² The Board also ordered the Respondent to make unit employees whole for any expenses ensuing from its failure to make the required pension fund and health and welfare fund contributions, with interest. As set forth in the amended compliance specification, no expenses have been claimed as of March 6, 2012.

³ All dates hereafter refer to 2012, unless otherwise noted.

⁴ The Respondent's amended answer provided a detailed basis for denying the amounts owed to the funds on behalf of employees Terry Lyons, Willie Nettles, Dalton Preston, Patricia Stokes, and Jade Haughton. Employees Terry Lyons and Dalton Preston, and the alleged amounts owed on their behalf were not included in the amended compliance specification.

out 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.

The Respondent’s answer, as set forth above, admits the allegations in the amended compliance specification. Although it also states that “any stipulations . . . were made in an effort to settle this matter,” this additional statement is insufficient to establish a dispute over the amount due, which is the only relevant issue in this stage of the proceeding. See *Dunn Bindery, Inc.*, 325 NLRB 720, 721 (1998) (summary judgment granted where respondent’s amended answer consisted of admissions with statements that it reserved the right to challenge inadvertent or mathematical errors and that it had insufficient assets to pay). Moreover, even assuming the Respondent intended to effectuate a withdrawal of its admission (because of the absence of settlement), any such withdrawal—without more—would fail to answer the amended compliance specification or, at most, constitute a general denial of the allegations, either of which would warrant a grant of judgment against the Respondent under the Board’s Rules. See generally *Maislin Transport*, 274 NLRB 529, 529 (1985) (“[W]ithdrawal of [an] answer has the same effect as failure to file an answer.”).⁵

The Respondent contends in the alternative that it offered its admission under duress or false pretenses. We find no merit to this contention. Although the Respondent asserts that it was informed “by Acting General Counsel and/or the Board” that it must admit the allegations in the amended compliance specification in order to settle “the matter,” the Respondent offered no explanation or evidence to support its assertion. In the absence of any support, such bare assertions do not warrant a

⁵ We recognize that the Respondent is acting pro se, and that “the Board has shown some leniency toward respondents” proceeding without legal representation. See, e.g., *Advanced Architectural Metals, Inc.*, 355 NLRB 921, 922 (2010). However, no such leniency is warranted here. In its amended answer to the original compliance specification, the Respondent properly set forth a detailed basis for disputing the amounts owed to the funds on behalf of five unit employees. This answer demonstrates an understanding of the Board’s requirements for answering a compliance specification. Therefore, the Respondent’s failure, in its answer to the amended compliance specification, to properly dispute the amounts owed cannot be reasonably attributed to its lack of legal representation. Id.

denial of summary judgment. See *Circus Circus Hotel*, 316 NLRB 1235, 1235 fn. 1 (1995) (summary judgment granted where respondent offered no explanation or evidence to support affirmative defenses asserted in its answer); cf. *Bardaville Electric Co.*, 315 NLRB 759, 761 fn. 10 (1994) (summary judgment denied where pro se respondent’s response to notice to show cause included documentation of efforts to specifically dispute allegations in the compliance specification, and demonstrated confusion due to Regional Office communications with respondent). In any event, as explained above, even if the admission was treated as a nullity, judgment against the Respondent would be warranted.

Accordingly, having found the allegations of the amended compliance specification to be admitted as true, and as the Respondent has provided no basis for questioning the validity of the admission, we grant the Acting General Counsel’s Motion for Summary Judgment. We conclude, therefore, that the amounts due are as set forth in the amended compliance specification, and we will order the Respondent to pay these amounts, plus interest and liquidated damages, and any additional amounts accrued to the date of payment.⁶

ORDER

The National Labor Relations Board orders that the Respondent, Landmark Family Foods, Inc. d/b/a Church Square Supermarket, Cleveland, Ohio, its officers, agents, successors, and assigns, shall make the payments due to the pension fund and health and welfare fund of United Food and Commercial Workers Union, Local 880, on behalf of the individuals named in the amended compliance specification, plus interest and liquidated damages for unpaid fund contributions as prescribed in the collective-bargaining agreement, in the amounts set forth below, plus any additional amounts accrued to the date of payment,⁷ as prescribed in *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).

FUND	AMOUNT OWED	INTEREST	LIQUIDATED DAMAGES	TOTALS
Pension	\$ 48,735.22	\$3,896.72	\$ 9,747.04	\$ 62,378.98
Health & Welfare	116,039.00	9,222.78	23,207.80	148,469.58

⁶ As set forth in the amended compliance specification, the Respondent has not provided the Union with documents necessary to calculate the amounts owed for periods after June 30, 2011, and the Respondent’s obligations under the Board’s Order in the underlying decision therefore continue.

⁷ The periods covered and methods used to calculate the amounts below are set forth in the amended compliance specification.