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Taylor Machine Products, Inc. *and* Woodrow Fay Singleton *and* Paul Edward Marguess *and* James Howells and Local Lodge 82, District Lodge 60, International Association of Machinists and Aerospace, AFL–CIO–CLC. Cases 7–CA–33135, 7–CA–33187, 7–CA–33484, 7–CA–33585, 7–CA–33809(1) and 7–CA–33809(2)

August 27, 2001

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN AND TRUESDALE

On July 21, 1995, the National Labor Relations Board issued a Decision and Order in this proceeding[1] in which it found, inter alia, that the Respondent discharged or laid off employees James M. Howells, Vernadette Bader, Ruth Cecil, Josephine Mallia, Floria Russell, Rosemary Smith, and Bonnie Warren in violation of Section 8(a)(3) of the Act. The Board ordered the Respondent to offer the named discriminatees employment in the same or substantially equivalent positions which they previously held and to make them whole for any losses suffered as a result of the Respondent's discrimination against them. On February 18, 1998, the United States Court of Appeals for the Sixth Circuit entered a judgment enforcing the Board's Order in this respect.[2]

On October 26, 1999, the Regional Director for Region 7 issued a compliance specification and notice of hearing alleging, inter alia, that a controversy had arisen over the amount of backpay due under the terms of the Board's Order. On December 10, 1999, the Respondent filed an answer to the compliance specification and a request for information and documentation.[3] On December 22, 1999, the regional attorney for Region 7 advised the Respondent that several of its numbered answers did not comport with the Board's Rules and Regulations.[4] The regional attorney further advised the Respondent that if it failed to file an amended answer correcting the deficiencies by January 4, 2000,[5] a motion for partial summary judgment would be filed with the Board. The Respondent filed no amended answer to the compliance specification within the designated time.

On January 28, 2000, the General Counsel filed the instant motion for partial summary judgment of compliance specification paragraphs 5(a), 5(b), 5(c), 8, 10(a), 10(b), 14, 17, and a portion of paragraph 11.

On February 3, 2000, the Board issued an order and notice to show cause, transferring the proceeding to the Board and postponing indefinitely the hearing scheduled in this case.[6] On March 6, 2000, the Respondent filed its response to the General Counsel's motion to transfer the case to the Board and for partial summary judgment, and on November 20, 2000, the General Counsel filed its reply.[7] The General Counsel argues that the Respondent failed to follow the requirements set forth in Section 102.56(b) and (c) of the Board's Rules and Regulations. The General Counsel contends that the Respondent's answers lack specificity because they provide no alternative figures or methodology. The Respondent argues, inter alia, that it cannot provide the required specificity in the absence of the information and documentation requested from the General Counsel.[8]

[1] 317 NLRB 1187 (1995).

[2] 136 F.3d 507 (1998).

[3] The Respondent repeated the request for information and documentation in its facsimile to the General Counsel dated January 7, 2000.

[4] The General Counsel cited pars. 5(a), 5(b), 5(c), 8, 10(a), 10(b), 14, 17 and a portion of paragraph 11.

[5] The Respondent requested an extension of time, and the General Counsel granted such request until January 13, 2000.

[6] The hearing was scheduled for January 10, 2000, but was rescheduled for March 20, 2000.

[7] The time lapse between these latter two documents—the Respondent's response and the General Counsel's reply—occurred because the General Counsel contended that he had not received a copy of the Respondent's response. After various motions by the parties, the Board denied the General Counsel's motion to reject the Respondent's response and afforded the General Counsel an opportunity to reply to the Respondent's response.

[8] The Respondent cited provisions of the Board's 1989 Casehandling Manual for Compliance Proceedings. The comparable provision in the current (1993) manual is as follows:

> 10622.6 Disclosure of Factual Information Relevant to the Compilation: It is Board policy to make available to the respondent, on request, and after issuance of the compliance specification, all factual information or documents obtained or prepared by the Regional Office that are relevant to the computation of net backpay, restitution, or reimbursement. This policy does not apply where the respondent has refused to cooperate in the Region's backpay investigation.
>
> This disclosure policy extends to information contained in documents in the possession of the Regional Office, including affidavits or other documents concerning discriminatee interim employment and earnings, search for employment, or availability for employment.
>
> The disclosure policy pertains only to backpay or related computations, and does not require disclosure of information relating to other issues, such as successor employer, joint employer, or alter ego.
>
> Disclosure prior to issuance of a compliance specification is not required. Requests for disclosure prior thereto should be refused, unless the Regional Director determines that such disclosure will enhance possibilities of settlement.
>
> The disclosure obligation will normally be satisfied by making the materials available for inspection and copying. It should

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

Ruling on Motion for Partial Summary Judgment

Board Rule 102.56(b) states that with respect to "all matters within the knowledge of the respondent" concerning "factors entering into the computation of gross backpay, a general denial [to a compliance specification] shall not suffice." The rule continues:

> 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.

Under Rule 102.56(c), to the extent that a respondent's answer fails to comply with the specificity requirements of Rule 102.56(b), "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 answers contain no "supporting figures" or specific statement of "the basis for its disagreement" with respect to the accuracy of the General Counsel's premises and figures pertaining to gross backpay. For example, five of the disputed paragraphs—5(a), 5(b), 5(c), 10(a), 10(b)—deal specifically with gross backpay, and the Respondent provides no methodology and supporting figures in its answer to the General Counsel's backpay specification. All such information is within the knowledge and possession of the Respondent. The General Counsel is accordingly entitled to partial summary judgment on these matters under Board Rule 102.56(b) and (c). *Emsing's Supermarket*, 299 NLRB 569, 570–572 (1990).[9]

Paragraphs 8 and 14 include statements that net backpay is the difference between gross backpay and interim earnings. These paragraphs also set forth tabulations which include the figure for gross backpay. Again, the Respondent provides no methodology and supporting figures in its answer to the General Counsel's backpay specification. The General Counsel is entitled to partial summary judgment on these portions of the paragraphs.

Paragraph 11 sets forth, inter alia, the periods of interim earnings of the discriminatees. In response, the Respondent appears to contend that, during these periods, it sold machinery and equipment and that this sale should operate to toll the gross backpay period. However, the Respondent has admitted the accuracy of the gross backpay period. Thus, the Respondent's answer as to paragraph 11 raises no issue that is relevant to that paragraph. Accordingly, we grant summary judgment as to the periods of interim earnings as set forth in paragraph 11.

Finally, paragraph 17 includes a general statement of the Respondent's obligation to make whole the discriminatees. The General Counsel is entitled to partial summary judgment as to this portion of the paragraph.[10]

ORDER

IT IS ORDERED that the General Counsel's Motion for Partial Summary Judgment is granted with respect to issues of gross backpay only and as designated above.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 7 for the purpose of issuing a notice of hearing and scheduling the hearing before an administrative law judge, which shall be limited to taking evidence concerning those issues not subject to our grant of partial summary judgment.

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be made clear to persons requesting the information that it is not routine public information, and it is to be supplied only for use in the proceeding.

Because the policy extends only to factual information relevant to the computation of net backpay, disclosure is not required of documents that contain information reflecting (a) deliberative or policy-making processes of the agency; (b) the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation; (c) other information that would not normally be available to a party in private litigation;(d) the identification of confidential sources of information to the Agency; or (e) intimate details of a personal nature having only slight relevance to the backpay inquiry.

[9] *Francis Building Corp.*, 330 NLRB No. 48 (1999). We note that in pars. 10(a) and 10(b) there is a discrepancy between Bader's average weekly wages figure in Schedule F and Bader's average weekly earnings in Schedule G. We anticipate that this discrepancy will be resolved in the remand of this proceeding.

[10] The Respondent's contention that the General Counsel has failed to comply with the Casehandling Manual for Compliance Proceedings Sec. 10622.6 regarding net backpay is irrelevant to the Respondent's obligations under Board Rule 102.56(b) and (c) regarding gross backpay.

IT IS FURTHER ORDERED that the administrative law judge shall prepare and serve on the parties a supplemental decision containing findings of fact, conclusions of law, and recommendations based on all the record evidence. Following service of the administrative law judge's decision on the parties, the provisions of Section 102.46 to 102.51 of the Board's Rules shall be applicable.

Dated, Washington, D.C. August 27, 2001

Peter J. Hurtgen, Chairman

Wilma B. Liebman, Member

John C. Truesdale, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD