

Arpel, Inc. and Local 162, International Ladies' Garment Workers' Union, AFL-CIO. Case 22-CA-8975

October 23, 1979

DECISION AND ORDER

BY MEMBERS JENKINS, MURPHY, AND TRUESDALE

Upon a charge filed on January 30, 1979, by Local 162, International Ladies' Garment Workers' Union, AFL-CIO, herein called the Union or Local 162, and duly served on Arpel, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Acting Regional Director for Region 22, issued a complaint and notice of hearing on March 30, 1979, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, complaint, and notice of hearing before an administrative law judge were duly served on the parties to this proceeding. Respondent failed to file an answer to the complaint.

On August 20, 1979, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on August 29, 1979, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent failed to file a response to the Notice To Show Cause and therefore the allegations of the Motion for Summary Judgment stand uncontroverted.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides as follows:

The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allega-

tions in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing specifically states that, unless an answer to the complaint is filed within 10 days from the service thereof, "all of the allegations contained in the Complaint shall be deemed to be admitted to be true and may be so found by the Board." As of the date of filing of the Motion for Summary Judgment, no answer had been filed by Respondent. Furthermore, Respondent has failed to file a response to the Notice To Show Cause in which it could have attempted to explain its failure to answer.

In view of Respondent's failure to answer, and no good cause having been shown therefor, the uncontroverted allegations of the complaint are deemed admitted and found to be true in accordance with the rule set forth above. Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent, a New Jersey corporation, at all times material herein, has maintained its principal office and place of business at 620 Gotham Parkway, Carlstadt, New Jersey, where it has engaged in the purchase, sale, and distribution of garments and related products. Respondent's Carlstadt place of business is its only facility involved in this proceeding. In the 12 months preceding issuance of the complaint, Respondent caused to be purchased, transferred, and delivered to its Carlstadt place of business goods and materials valued in excess of \$50,000, of which goods and materials valued in excess of \$50,000 were transported to said place of business in interstate commerce directly from States of the United States other than the State of New Jersey.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Local 162, International Ladies' Garment Workers' Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Independent 8(a)(1) Violations*

Respondent, at its Carlstadt place of business (1) at various times during the week of December 11, 1978, by its president, Anival Aison, and its foreman, Juan Bayron, interrogated its employees concerning their union membership and activities; (2) on or about December 14, 1978, by Juan Bayron, threatened employees with reprisals if they became or remained members of the Union, or gave assistance or support to the Union; and (3) on or about December 14, 1978, by Anival Aison and Juan Bayron, engaged in surveillance of the meeting places, meetings, and activities of Local 162, and other concerted activities of its employees.

Accordingly, we find that, by the aforesaid conduct, Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed under Section 7 of the Act, and that, by such conduct, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

B. *The 8(a)(3) Violations*

1. On or about December 14, 1978, Respondent discharged Victor Castillo, an employee at its Carlstadt facility, because he joined or assisted Local 162 or engaged in other concerted activities for the purpose of collective bargaining, or mutual aid or protection. Respondent has failed and refused to reinstate Castillo to his former or a substantially equivalent position of employment.

2. On or about December 15, 1978, Respondent laid off Jimmy Tandazzo, Felix Santiago, Jean Robert Castel, and Martha Jimenez, employees at its Carlstadt facility, because they joined or assisted Local 162 or engaged in other concerted activities for the purpose of collective bargaining, or mutual aid or protection. Respondent has failed and refused to reinstate Tandazzo, Santiago, Castel, and Jimenez to their former or substantially equivalent positions of employment.

3. From on or about December 18, 1978, to on or about January 12, 1979, certain employees of Respondent employed at its Carlstadt facility ceased work concertedly and went out on strike. This strike was caused by all of the unfair labor practices of Re-

spondent listed above. On or about January 10, 1979, the following striking employees made unconditional offers to return to their former or substantially equivalent positions of employment:¹

Armando Chavez	Roosevelt Anderson
Blanca Santiago	Jean Robert Castel
James Kelly	Mercedes Delgado
Jose P. Fernandez	Jose R. Rodriguez
Hector Rodriguez	Martha Jimenez
Jimmy O. Tandazo	Victor Jose Castillo
Jose L. Correa	Betty Alcalde
Octavio De Jesus	Pablo Herrera
John Edward	
Hundley	Alex Fernandez
Olga Luna	Genoveta Kaban

Since on or about January 12, 1979, Respondent had failed and refused to reinstate these 20 employees because they had joined or assisted Local 162, engaged in other concerted activities for the purpose of collective bargaining or mutual aid or protection, and participated in the strike.

Accordingly, we find that, by the aforesaid conduct, Respondent has discriminated in regard to the terms and conditions of employment of its employees, thereby discouraging membership in the Union or any other labor organization and that, by such conduct, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act, we shall order that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent discriminatorily terminated the employment of Victor Castillo, Jimmy

¹ It appears that there may be among the unfair labor practice strikers who unconditionally offered to return to work employees who we have found were discriminatorily terminated prior to the commencement of the strike. It is well settled that employees who are unlawfully terminated before a strike are entitled to backpay for the entire duration of the strike. See, e.g., *Polyne-sian Cultural Center, Inc.*, 222 NLRB 1192, 1194, fn. 12 (1976).

Tandazzo, Felix Santiago, Jean Robert Castel, and Martha Jimenez, we shall order Respondent to offer them immediate and full reinstatement to their former jobs or, if such jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and to make them whole for any loss of earnings they may have suffered because of the discrimination against them by payment to them of sums of money equal to the amounts which they normally would have earned from the date of their termination to the date of Respondent's offer of reinstatement, less any net interim earnings. Such backpay shall be computed, with interest thereon, in the manner set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).²

Having also found that Respondent unlawfully failed and refused to restore the unfair labor practice strikers named below to their former jobs upon their unconditional applications to return to work, we shall also order Respondent to offer to them full and immediate reinstatement to their former jobs or, if such jobs no longer exist, to substantially equivalent positions without prejudice to their seniority or other rights and privileges, dismissing, if necessary, any employees hired as replacements, and make said striking employees whole for any loss of earnings they may have suffered because of Respondent's discrimination against them by paying them the sums of money equal to that which they normally would have earned from January 10, 1979, the date that their unconditional offer to return to work was tendered, to the date of Respondent's offer of reinstatement, less any net interim earnings. Their backpay shall be computed in the same manner as that of the unlawfully terminated employees named above. The unfair labor practice strikers are:

Armando Chavez	Roosevelt Anderson
Blanca Santiago	Jean Robert Castel
James Kelly	Mercedes Delgado
Jose P. Fernandez	Jose R. Rodriguez
Hector Rodriguez	Martha Jimenez
Jimmy O. Tandazzo	Victor Jose Castillo
Jose L. Correa	Betty Alcalde
Octavio De Jesus	Pablo Herrera
John Edward Hundley	Alex Fernandez
Olga Luna	Genoveta Kaban

Further, as Respondent has engaged in such egregious and widespread misconduct as to demonstrate a general disregard for its employees' fundamental statutory rights, we shall order Respondent to cease and desist from infringing in any other manner upon

the rights of employees guaranteed by Section 7 of the Act.³

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Arpel, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local 162, International Ladies' Garment Workers' Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. The strike which began on or about December 18, 1978, was in its inception, and continued thereafter to be, an unfair labor practice strike.

4. By the acts described in section III, B, above, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

5. By the acts described in section III, A and B, above, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Arpel, Inc., Carlstadt, New Jersey, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating its employees concerning their membership in, activities on behalf of, and sympathy in Local 162.

(b) Threatening its employees with reprisals if they become or remain members of Local 162, or give any assistance or support to it.

(c) Keeping under surveillance the meeting places, meetings, and activities of Local 162 and other concerted activities its employees engage in for the purpose of collective bargaining or other mutual aid or protection.

(d) Discouraging membership in, or activities on behalf of, Local 162, International Ladies' Garment Workers' Union, AFL-CIO, or any other labor organization, by its employees by discriminatorily discharging or laying off its employees, or by otherwise discriminating in regard to the hire or tenure of any of its employees because they join or assist the above-named Union, or any other labor organization, or engage in other concerted activity for the purposes of collective bargaining or mutual aid and protection.

² See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

³ See *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979).

(e) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer Victor Castillo, Jimmy Tandazzo, Felix Santiago, Jean Robert Castel, and Martha Jimenez immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole for any loss of earnings they may have suffered because of the discrimination practiced against them, in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Offer the following employees reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions without prejudice to their seniority and other rights and privileges, dismissing, if necessary, any employees hired as replacements, and make them whole for any loss of earnings they may have suffered because of the discrimination practiced against them in the manner set forth in the section of this Decision entitled "The Remedy":

Armando Chavez	Roosevelt Anderson
Blanca Santiago	Jean Robert Castel
James Kelly	Mercedes Delgado
Jose P. Fernandez	Jose R. Rodriguez
Hector Rodriguez	Martha Jimenez
Jimmy O. Tandazzo	Victor Jose Castillo
Jose L. Correa	Betty Alcalde
Octavio De Jesus	Pablo Herrera
John Edward Hundley	Alex Fernandez
Olga Luna	Genoveta Kaban

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its place of business in Carlstadt, New Jersey, copies of the attached notice marked "Appendix."⁴ Copies of said notice, on forms provided by the Regional Director for Region 22, after being duly signed by Respondent's representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable

steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 22, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT interrogate our employees concerning their membership in, activities on behalf of, and sympathy in Local 162.

WE WILL NOT threaten our employees with reprisals if they become or remain members of Local 162, or give any assistance or support to it.

WE WILL NOT keep under surveillance the meeting places, meetings, and activities of Local 162 and other concerted activities our employees engage in for the purpose of collective bargaining or other mutual aid or protection.

WE WILL NOT discourage membership in, or activities on behalf of, Local 162, International Ladies' Garment Workers' Union, AFL CIO, or any other labor organization, by our employees by discriminatorily discharging or laying off our employees, or by otherwise discriminating in regard to the hire or tenure of any of our employees because they join or assist the above-named Union, or any other labor organization, or engage in other concerted activity for the purpose of collective bargaining or mutual aid and protection.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL offer Victor Castillo, Jimmy Tandazzo, Felix Santiago, Jean Robert Castel, and Martha Jimenez reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions without prejudice to their seniority or other rights and privileges previously enjoyed, and WE WILL make them whole for any loss of earnings they may have suffered because of the discrimination practiced against them, plus interest.

WE WILL offer immediate and full reinstatement to the following unfair labor practice strikers to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, with-

⁴ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

out prejudice to their seniority or other rights and privileges previously enjoyed, dismissing, if necessary, any employees hired as replacements, and WE WILL make them whole for any loss of earnings they may have suffered because of the discrimination practiced against them, plus interest:

Armando Chavez	Roosevelt Anderson
Blanca Santiago	Jean Robert Castel
James Kelly	Mercedes Delgado

Jose P. Fernandez	Jose R. Rodriguez
Hector Rodriguez	Martha Jimenez
Jimmy O. Tandazo	Victor Jose Castillo
Jose L. Correa	Betty Alcalde
Octavio De Jesus	Pablo Herrera
John Edward Hundley	Alex Fernandez
Olga Luna	Genoveta Kaban

ARPEL, INC.