Adorabee, Inc. and Real Curtain, Inc. *and* Greater New York Joint Board, Textile Workers Union of America, AFL–CIO. Case 2–CA–13211

October 31, 1974

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS JENKINS AND KENNEDY

Upon a charge and an amended charge filed on January 25, 1974, and March 21, 1974, respectively, by Greater New York Joint Board, Textile Workers Union of America, AFL–CIO, herein called the Union, and duly served on Adorabee, Inc. and Real Curtain, Inc., herein called the Respondents, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 2, issued a complaint on March 26, 1974, against Respondents, alleging that Respondents had engaged in and were engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5), (3), and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, amended charge, complaint, and notice of hearing before an Administrative Law Judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices the complaint alleges, in substance, that on or about October 1, 1973, after Respondent Adorabee had purchased the stock of Respondent Real Curtain, it began operating the business of Real Curtain, and, since then, the Respondents have refused to recognize or bargain with the Union; that since on or about July 25, 1973, Respondents, by refusing to comply with the provisions of the collective-bargaining agreement with Respondent Real Curtain, have discriminated in regard to hire and tenure and terms and conditions of employment of their employees; and that Respondents interfered with, restrained, and coerced their employees; and that Respondents interfered with, restrained, and coerced their employees in the exercise of rights guaranteed in Section 7 of the Act. By the acts described above the complaint alleges that Respondents have violated Section 8(a)(5), (3), and (1) of the Act. Respondents failed to file an answer to the complaint.

On June 16, 1974, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment and for issuance of Decision and Order based on Respondent's failure to file a timely answer as required by the Board's Rules and Regulations, Series 8, as amended. On July 3, 1974, 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. Respondents did not file a response to the notice to show cause.

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 allegations 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 served on the Respondents specifically stated that unless an answer was filed to the complaint within 10 days from the service thereof "all of the allegations of the complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, according to the uncontroverted averments, in the Motion for Summary Judgment, before the time for filing an answer had expired, counsel for the General Counsel on March 28, 1974, advised the president of both Respondents that he should retain an attorney and file an answer to the complaint. Time for filing an answer to the complaint expired April 8, 1974. On April 11, 1974, counsel for the General Counsel again telephoned Respondents' president who was unavailable and therefore he told the latter's plant foreman to remind the president that he should appear at a pretrial conference on April 15, 1974. On April 15, 1974, shortly before the scheduled pretrial conference, counsel for the General Counsel called Respondents. Meanwhile, the Respondents' president had left him a telephone message that the former had offered to settle the matter with the Union

and that he would do nothing until he heard from the Union. On May 8, 1974, the Union's attorney advised the Regional Office that the parties had not reached an agreement. To date, Respondents have failed to file and answer to the complaint, or to request an extension of time to file an answer, and have given no reason for the failure to do so. Since Respondents have not filed an answer within 10 days from the service of the complaint, or at any other time, and since no good cause for such failure has been shown, in accordance with the rule set forth above, the allegations of the complaint are deemed to be admitted to be true and are so found to be true. We shall, accordingly, grant the Motion for Summary Judgment.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENTS

Respondent Real Curtain, a New York corporation with its office and place of business at 152 West 25th Street, New York, New York, was engaged, until about September 1973, in the business of drapery contracting. Respondent Adorabee, a New York corporation, has its office and place of business likewise at 152 West 25th Street, New York, New York, where it is engaged in the business of drapery contracting and has continued as the *alter ego* of Respondent Real Curtain since September 1973, having previously on October 1, 1972, purchased the stock of Real Curtain. During calendar year 1973 Respondents performed services valued in excess of $50,000 for enterprises, among others an enterprise which produces goods valued in excess of $50,000, and which ships such goods directly from the State in which it is located.

We find, on the basis of the foregoing, that Respondents are, and have been at all times material herein, employers 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 ORGANIZATIONS INVOLVED

Greater New York Joint Board, Textile Workers Union of America, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The 8(a)(5) Violations*

The following employees of the Respondents constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All production and maintenance employees of the Respondents employed at their West 25th Street plant, exclusive of office clerical employees, sales employees, administrative employees, executives, and all supervisors as defined in Section 2(11) of the Act.

On or about December 1, 1961, the Regional Director certified the Union as the exclusive collective-bargaining representative of the employees of Respondent Real Curtain in the unit described above and, at all times since said date, the Union, by virtue of Section 9(a) of the Act, has been, and is now, the exclusive representative of all the employees in said unit for the purposes of collective bargaining. On or about July 1, 1971, Respondent Real Curtain executed the latest of a series of collective-bargaining agreements effective from July 1, 1971, to June 30, 1974, in which Respondent Real Curtain, *inter alia*, recognized and agreed to bargain with the Union. Respondent Adorabee purchased the stock of Respondent Real Curtain on or about October 1, 1972. On or about September 30, 1973, Respondent Real Curtain ceased operating the plant and since on or about October 1, 1973, Respondent Adorabee has engaged in substantially the same business operations and employs substantially the same employees and supervisors as had Respondent Real Curtain. Since then Respondents have refused to recognize or bargain with the Union as the exclusive bargaining representative of the employees in the appropriate unit in violation of Section 8(a)(5) of the Act.

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

By refusing, since on or about July 25, 1973, to comply with the provisions of the current collective-bargaining agreement, in order to undermine the Union and to destroy its majority status, Respondents have engaged in and are engaging in unfair labor practices in violation of Section 8(a)(3) of the Act.

We find, accordingly, that Respondents, by the conduct described in section III above, have since on or about July 25, 1973, and October 1, 1973, engaged in and are engaging in unfair labor practices within

the meaning of Section 8(a)(5), (3), and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondents, set forth in section III, above, occurring in connection with their 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 Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(a)(5), (3), and (1) 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.

CONCLUSIONS OF LAW

1. Adorabee, Inc., and Real Curtain, Inc., are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Greater New York Joint Board, Textile Workers Union of America, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.
3. All production and maintenance employees of the Respondent engaged at their West 25th Street plant, exclusive of office clerical employees, sales employees, administrative employees, executives, and all supervisors as defined in Section 2(11) of the Act constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.
4. Since on or about October 1, 1973, Respondents have refused to recognize the Union as the exclusive collective-bargaining representative of the employees in the unit described in the preceding paragraph and since on or about October 1, 1973, Respondents have refused to bargain collectively with the Union as the exclusive collective-bargaining representative of the employees in the aforesaid appropriate unit in violation of Section 8(a)(5) of the Act.
5. By refusing since on or about July 25, 1973, to comply with the terms of the collective-bargaining agreement with the Union, in order to undermine the Union and to destroy its majority status, Respondents have violated Section 8(a)(3) of the Act.
6. By the acts described in section III, above, Respondents have interfered with, restrained, and coerced, and are interfering with, restraining, and coercing, employees in the exercise of rights guaranteed to them in Section 7 of the Act, and thereby have engaged in and are engaging in unfair labor practices within the meaning of Section 8(a)(5), (3), and (1) 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 Respondents, Adorabee, Inc., and Real Curtain, Inc., New York, New York, their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment and refusing to comply with the provisions of the existing collective-bargaining agreement with Greater New York Joint Board, Textile Workers Union of America, AFL–CIO, in derogation of its status as exclusive bargaining representative of the employees in the following appropriate unit:

> All production and maintenance employees of the Respondents employed at their West 25th Street plant, exclusive of office clerical employees, sales employees, administrative employees, executives, and all supervisors as defined in Section 2(11) of the Act.

(b) Discouraging membership in, or activities on behalf of, Greater New York Joint Board, Textile Workers Union of America, AFL–CIO, or any other labor organization by refusing to comply with the provisions of the current collective-bargaining agreement, in order to undermine the Union and destroy its majority status among the unit employees, and by discriminating in regard to hire or tenure of employment or any terms or conditions of employment of any of its employees because of their concerted protected activity, membership in, and sympathies of Greater New York Joint Board, Textile Workers of America, AFL–CIO.

(c) In any other manner interfering with, restraining, or coercing employees in the exercise of 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) Upon request, bargain with the aforesaid labor organization as the exclusive collective-bargaining representative of all employees in the aforesaid ap-

propriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement and to comply with the provisions of any existing agreement.

(b) Post at the West 25th Street plant copies of the attached notice marked "Appendix." [1] Copies of said notice, on forms provided by the Regional Director for Region 2, after being duly signed by Respondent's representative, shall be posted by Respondent 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.

(c) Notify the Regional Director for Region 2, in writing, within 20 days from the date of this Order, what steps the Respondents have taken to comply herewith.

[1] 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."

APPENDIX

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

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment and refuse to comply with the provisions of the existing collective-bargaining agreement with Greater New York Joint Board, Textile Workers Union of America, AFL–CIO, in derogation of its status as exclusive bargaining representative of the employees in the bargaining unit described below.

WE WILL NOT discourage membership in, or activities on behalf of, the Union or any other labor organization by refusing to comply with the provisions of the current collective-bargaining agreement, in order to undermine the Union and destroy its majority status among the unit employees, and by discriminating in regard to hire or tenure of employment or any terms or conditions of employment of any of our employees because of their concerted protected activity, membership in, and sympathies for the Union.

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

WE WILL, upon request, bargain with the aforesaid Union as the exclusive collective-bargaining representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement and to comply with the provisions of any existing agreement.

All production and maintenance employees of the Respondents employed at their West 25th Street, plant, exclusive of office clerical employees, sales employees, administrative employees, executives, and all supervisors are defined in Section 2(11) of the Act.

ADORABEE, INC. AND REAL CURTAIN, INC.