

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

AJM Printing Co., Inc. and Local 2179, United Automobile, Aerospace, Agricultural Implement Workers Of America, UAW, AFL-CIO. Case 2-CA-32714

August 2, 2001

DECISION AND ORDER

BY MEMBERS LIEBMAN, TRUESDALE, AND WALSH

Upon a charge and amended charges filed by Local 2179, United Automobile, Aerospace, Agricultural Implement Workers of America, UAW, AFL-CIO, the Union, on January 20, March 10, and July 26, 2000, the General Counsel of the National Labor Relations Board issued a complaint on February 27, 2001, against AJM Printing Co., Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act.¹ Although properly served copies of the charges and complaint, the Respondent failed to file an answer.

On June 25, 2001, the General Counsel filed a Motion for Summary Judgment with the Board. On June 27, 2001, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

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

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated May 22, 2001, notified the Respondent that unless an answer was received by June 1, 2001, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

¹ On June 14, 2001, the Acting Regional Director for Region 2 issued an Order Correcting Complaint, which added the alleged discriminatee's first name to par. 7(a) of the complaint.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a New York corporation, with an office and place of business at 243 West 39th St., Suite 4200, New York, New York, has been engaged in the business of commercial printing. During the 12 months preceding the issuance of the complaint, the Respondent, in the course and conduct of its business operations, has purchased and received at its New York, New York facility products, goods, and materials valued in excess of \$50,000 directly from points outside the State of New York. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Jay Nissinoff has been a part owner of the Respondent, and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent acting on its behalf.

The Respondent, by its agent, Jay Nissinoff, at the Respondent's facility, on several occasions within the period commencing 6 months before the filing and service of the charge, and in about mid-May 2000, promised its employees benefits, including money, to induce its employees to withdraw from union membership.²

On about June 23, 2000, the Respondent discharged its employee Mahamood Ali.

Since about June 23, 2000, the Respondent has failed and refused to reinstate, or offer to reinstate, Ali to his former position of employment. The Respondent discharged Ali and refuses to reinstate him because of Ali's continued membership in the Union, and to discourage employees from union membership.

² The complaint states that these promises occurred "on several occasions within the period commencing six months *after* the filing and service of the charge, and in or about mid-May 2000." (Emphasis added.) In context, it is apparent that the use of the word "after" was an inadvertent error, particularly since par. 6 of the complaint refers to alleged unlawful promises in mid-May 2000, which is less than 6 months after the filing of the charge on January 20, 2000. Thus, we find it reasonable to conclude that this complaint paragraph alleges that these promises were made commencing 6 months prior to the filing of the charge, i.e., within the limitations period set forth in Sec. 10(b) of the Act.

CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

By discharging employee Ali and refusing to offer him reinstatement, the Respondent has also discriminated in regard to the hire, tenure, or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(3) of the Act. These unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist, and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by discharging Mahamood Ali, we shall order the Respondent to offer Ali full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed. Further, we shall order the Respondent to make Ali whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent also shall be required to remove from its files any reference to Ali's unlawful discharge, and to notify Ali in writing that this has been done and that the discharge will not be used against him in any way.

ORDER

The National Labor Relations Board orders that the Respondent, AJM Printing Co., Inc., New York, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Promising employees benefits, including money, to induce employees to withdraw from union membership with Local 2179, United Automobile, Aerospace, Agricultural Implement Workers of America, UAW, AFL-CIO, or any other union.

(b) Discharging or otherwise discriminating against employees because they support a union or engage in union or protected concerted activities.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Mahamood Ali full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Mahamood Ali whole for any loss of earnings and other benefits suffered as a result of his unlawful discharge, with interest, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge of Mahamood Ali, and within 3 days thereafter, notify him in writing that this has been done and that the unlawful discharge will not be used against him in any way.

(d) Preserve and, within 14 days of a 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, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in New York, New York, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 2000.

³ If 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."

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 2, 2001

Wilma B. Liebman, Member

John C. Truesdale, Member

Dennis P. Walsh, Member

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

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT promise employees benefits, including money, to induce employees to withdraw from union membership with Local 2179, United Automobile, Aerospace, Agricultural Implement Workers of America, UAW, AFL-CIO, or any other union.

WE WILL NOT discharge or otherwise discriminate against you because you support a union or engage in union or protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Mahamood Ali full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Mahamood Ali whole for any loss of earnings and other benefits suffered as a result of his unlawful discharge, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharge of Mahamood Ali, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the unlawful discharge will not be used against him in any way.

AJM PRINTING CO., INC.