UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

JUNG SUN LAUNDRY GROUP CORPORATION

and Case 29−CA−29946

LAUNDRY, DRY-CLEANING AND ALLIED WORKERS JOINT BOARD, WORKERS UNITED, A SERVICE EMPLOYEES INTERNATIONAL UNION AFFILIATE

Annie Hsu and Brent Childerhose, Esqs.,
for General Counsel.
Richard Milman, Esq. and Michael J. Mauro, Esq. (Milman, Labuda Law Group, PPLLC), of Lake Success, New York,
for Respondent.
Liz Vladeck, Esq., of New York, New York,
for Charging Party.

DECISION

STATEMENT OF THE CASE

KELTNER W. LOCKE, Administrative Law Judge. This case was tried in Brooklyn, New York, for 9 days in the summer of 2010. The complaint, as amended during the trial, alleges that Respondent unilaterally modified the terms and conditions of employment of employees represented by the Charging Party Union (the Union) by delaying the payment of contractually required contributions to the applicable fringe benefit funds, unilaterally changing its method of paying employees, failing to pay employees accrued unused sick leave under the parties' collective-bargaining agreement, and prematurely declaring impasse in negotiations for a new agreement, all in violation of Section 8(a)(5) and (1) of the Act.

The complaint also alleges that Respondent violated Section 8(a)(3) and (1) of the Act by refusing to allow striking employees to return to work after they had made an unconditional offer to return, even though it had not at that point replaced those employees, and by thereafter failing and refusing to reinstate those employees. The complaint further alleges that Respondent, through its president, Steven Moy, promised employees benefits for ceasing their union activities and threatened to discharge them because of those activities, in violation of Section 8(a)(1) of the Act. Respondent filed an answer denying the essential elements of the complaint.

After the conclusion of the trial, I received the briefs of the General Counsel and Respondent, which I have carefully read and considered. Based on the entire record,[1] including

[1] In the bound copies of exhibits received from the reporting service, a second copy of G.C. Exh. 28 is erroneously marked as G.C. Exh. 27. I have stapled a copy of G.C. Exh. 27, a

Continued

the testimony of the witnesses, and my observation of their demeanor, I make the following

Findings of Fact

I. Jurisdiction

Respondent, a domestic corporation with a principal office and place of business located in Long Island City, New York, is engaged in providing laundry services to various hotels in the New York metropolitan area. During a representative 1-year period, Respondent, in the course and conduct of its business operations, purchased and received at its Long Island City facility, goods and materials valued in excess of $50,000 directly from suppliers located outside the State of New York. Accordingly, I find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. In addition, the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. The Alleged Unfair Labor Practices

The Bargaining Relationship Between Respondent and the Charging Party

Respondent has been in business for about 50 years. It has been operated by the family of Respondent's president, Steven Moy, throughout its existence. In 2008, upon the retirement of his brother, Steven Moy formed a partnership with Tony Yang. Yang functions as a general manager and operates Respondent's laundry on a day-to-day basis.

The Union has represented Respondent's employees since the 1970s. Up until 2003, Respondent negotiated with the Union as part of a multiemployer association. In 2003, the Union negotiated with Respondent individually for the first time. The Union began negotiations with the approximately 30 to 40 laundry employers by negotiating with a single employer. Then the Union asked the other laundry employers to sign the same agreement as the "model employer."

Respondent resisted signing the above agreement and the Union called a strike at Respondent's facility the day after its collective-bargaining agreement expired on November 27, 2003. The strike lasted less than 1 day. Respondent then signed the model agreement. In 2006, Respondent signed the same collective-bargaining agreement as other New York City laundry employers.

The term of that contract was from November 28, 2006, to November 27, 2009. The contract provided that it would be automatically renewed from year to year unless either party

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December 7, 2009 letter from Respondent to the Union regarding the replacement of strikers, to the mislabeled document in the bound exhibits.

In its post trial brief, the General Counsel withdrew complaint para. 13(b), which alleged that Respondent violated the Act by informing the Union that it was going to permanently replace striking employees.

Respondent introduced a compact disc (CD), R. Exh. 59 (which includes R. Exh. 7), with the promise to make copies and submit them after the conclusion of the hearing. Respondent has not submitted copies of the CD for inclusion in the official record, although I viewed the CD during the trial. The CD contains video footage of a November 27 speech by an official of Respondent and union pickets at Respondent's facility during the Union's strike 3 days later.

notified the other 60 days prior to the expiration of its desire to propose changes or terminate the agreement.

Respondent's Failure to Make Payments to the Union's Health, Retirement and Legal Assistance Funds; Settlement and Additional Noncompliance

Pursuant to the November 28, 2006 to November 27, 2009 collective-bargaining agreement, Respondent was required to contribute to the Laundry, Dry-Cleaning Workers & Allied Industries Health, Retirement and Legal Assistance Funds (the Funds). The agreement required that payments be made no later than the 10th day of the month following the month for which contributions were to be made.

Respondent failed to pay its contractually required contributions to the Funds for the period from June 15, 2008, through August 30, 2009. By the end of August 2009, Respondent owed the Funds $234,783.04 in principal, plus $14,089.11 in interest. Due to Respondent's failure to contribute to the Funds, the Funds terminated health insurance coverage for Respondent's employees on June 1, 2009.

On August 26, 2009, Respondent entered into a settlement agreement with the Funds. It agreed to pay, and the Funds agreed to accept, $286,725.20 in full satisfaction of the Funds' claims against Respondent for the period January 21, 2008, through August 30, 2009. The settlement agreement provided that Respondent make an initial payment of $57,890.23 to be applied to the period October 1 through November 30, 2008. It required that the balance be paid in 324 equal weekly installments of $1000 each due each Wednesday of each week.

The settlement also required Respondent to stay current in making required contributions to the Funds as required by its collective-bargaining agreement with the Union. The settlement agreement provided that if Respondent failed to make any payments within 5 days of its due date the Funds would give Respondent written notice of such failure. The failure of Respondent to make payments within 10 calendar days of that notice constituted a default under the agreement. Pursuant to the settlement agreement, the Funds reinstated the health coverage of Respondent's employees retroactive to June 1, 2009, the date coverage was canceled.

Respondent's checks for the current contribution for the first 3 weeks of September 2009 were rejected for insufficient funds. In common parlance, they bounced. A replacement for the September payments dated October 22, 2009, also bounced. Respondent also failed to comply with the settlement agreement regarding its initial payment. Instead of $57,890.23, it had remitted only $20,000 by November 9.

On October 26, 2009, Amalgamated Life Insurance Company (Amalgamated), which administers the Funds, sent Respondent a letter, entitled first notice, informing Respondent of the delinquency and demanding immediate payment. A second and final notice was sent to Respondent on November 5. Also, on November 3 and 5, 2009, Amalgamated sent letters to the bargaining unit members informing them that their health and welfare coverage would be terminated effective November 9.[2]

[2] Not one of the General Counsel's employee witnesses testified to receiving such a letter; however, whether or not the employees received such a letter has no bearing on any issue in this case.

On about November 24, 2009, Respondent mailed a check to the Funds in the amount of $37,890.30, which satisfied all its obligations to the Funds through November 30, with the possible exception of its contribution for the week ending September 11, 2009.[3]

Respondent argues that the Funds and the Union dealt with it in bad faith regarding the payments to the benefit funds. However, it is unclear when the Funds and the Union were aware that the November 24 check cleared. Given Respondent's propensity for failing to comply with the terms of the collective-bargaining agreement in this respect, the August 2009 settlement, and the bounced checks, I find that Respondent's arguments predicated upon the response of the Funds to its delinquencies to be totally irrelevant to any issue in this case.

Respondent's contributions to the Funds for the weeks ending September 4 and 18, 2009 were due on October 10, and were not paid until November 2 and 24, respectively. The contribution due for the week ending September 11, 2009, may still be delinquent and certainly was not paid on time. The contribution for the week ending October 30, which was due on November 10, was not paid until November 24. The payments for the weeks ending November 13 and 20, which were due on December 10, were not received until December 14. I shall discuss the issue of whether Respondent's conduct in this respect violated the Act later in this decision.

Collective-Bargaining Negotiations

October 29, 2009

Meanwhile, Respondent and the Union agreed to commence collective-bargaining negotiations for a successor agreement. They met first on October 29, 2009. Tony Yang and Stanley Israel, an attorney who also represents other laundry employers in their negotiations with the Union, represented Respondent. Yang had no prior experience in collective-bargaining negotiations. Wilfredo Larancuent, the Union's president, was its principal bargaining representative.

At the October 29 meeting, the Union presented Respondent a one-page proposal containing wage rates, proposed wage increases, fund contributions, a provision to delete the most-favored nations clause in the 2006-2009 contract, and a 3-year term. The Respondent did not present a proposal at this session.

At about this time, Respondent, by letter, asked the Union to extend the term of the collective-bargaining agreement from November 27 to December 10, 2009. The Union, by letter, rejected this request. Extending the term of the collective-bargaining agreement was never discussed in any of the parties' bargaining sessions.

Disputed Date of Second Bargaining Session

The Union contends that the second bargaining session took place on November 17, 2009. Respondent's witnesses testified that a second session occurred on November 9 and that the November 17 session was the third session.

[3] Respondent contends that it was fully paid up by November 30. The record is not clear on this point, but it has no bearing on any issue in this case. Respondent was clearly delinquent in its payments to the Funds when Amalgamated suspended employees' health benefits and clearly did not pay its contribution for the week ending September 11 when it was due.

Tony Yang testified that on November 9 he and his attorney, Stanley Israel, met with the same union representatives that they met with on October 29. These representatives were Wilfredo Larancuent, Alberto Arroyo, Joseph Isidore, and unit members Felix Soto and Geronimo LanFranco. Yang testified that he gave the Union Respondent's first proposal, which is dated November 2. Yang also testified that after a break Larancuent verbally gave him another proposal which he said was "their best proposal, the best they can do for us." (Tr. 1139.) According to Yang, Larancuent proposed no wage increase for the first year of the contract, 30 cents increase in the second year, 30 cents in the third year, and a 1 percent contribution to the each of the Union's funds.

Stanley Israel also testified that he was involved in two negotiating sessions after October 29, and, equivocally (Tr. 1114-1115), that the second one took place on November 9. At the hearing, Respondent's counsel asked Israel:

> Q. Now, I see in your notes [R. Exh. 55] midway down on the November 9th negotiations it says best and final offer, Union–best and final offer with an underline.
>
> Can you explain that language?
>
> A. Yeah. And I have no specific recollection of the use of the words, but those are my notes, so I assume I was reflecting what the Union had said.
>
> . . . .
>
> And as best I can figure out and what I believe, based on this note and the subsequent meeting on the 17th, what the Union was saying was that with respect to the economic portions of its offer, and once again I'm emphasizing its offer.
>
> . . . .
>
> Its being the Union, which had two components to it. One was the wages for the three year period that was being discussed, and the second was the Fund contributions for that three-year period. This was the final – this was the Union's final position.

(Tr. 1115-1116.)

Wilfredo Larancuent and Albert Arroyo testified that they did not recall a bargaining session on November 9 and that the only bargaining session that month took place on November 17. Laurancuent testified that he received Respondent's first contract proposal at his office, not at a bargaining session. I find, on the basis of Stanley Israel's testimony, that a second bargaining session took place on November 9. However, I credit Larancuent that he never told Respondent that any of the Union's proposals were its "best and final offer." I make this finding based on the self-serving nature of Yang's testimony, the tentative nature of Israel's testimony on this issue, the consistency of Larancuent's testimony, and the Union's conduct.

Indeed, from Israel's testimony, it is just as likely that it was Yang who used the phrase "best and final," as it was that Larancuent used this term. Larancuent's use of the term would have been very significant and, if he did so, Israel's notes or memory would be much more certain on this point that it was at the hearing.

The union witnesses vehemently deny that they ever characterized any of their proposals as their best and final offer. I credit that testimony. None of their proposals is so characterized on paper and Wilfredo Larancuent testified that on November 17 Yang asked him whether the Union's November 17 proposal was its best and final offer; he said it was not. He also testified, without contradiction, that on November 20 he refused to sign a letter written by Respondent inviting the Union to confirm that its November 17 proposals constituted its final and best offer. Moreover, on November 27, Larancuent faxed Respondent a letter specifically denying that the Union had given Respondent a final and last offer in writing. He also denied that the parties were at impasse and stated the Union was prepared to continue bargaining on December 4.[4]

Third Bargaining Session on November 17, 2009

On November 17, the Union presented a proposal and told Respondent that it wanted a response by Friday, November 20. For the first time, the parties discussed Respondent's proposal. Yang told the Union that he did not want collective-bargaining negotiations tied to a potential settlement of the amount Respondent owed the Union's health, retirement and legal assistance funds. Yang also asked that contract provisions guaranteeing certain employees 35 or 40 hours of work per week be eliminated from the contract.

Yang and Larancuent discussed the guarantee of hours at some length. There had been no discussion of Respondent's proposal to eliminate the guarantee prior to November 17. Larancuent said he would look at Yang's proposal to eliminate the guarantee.

November 17 was the last bargaining session at which Stanley Israel represented Respondent. His assessment of the state of negotiations at this point, which I credit, is as follows:

> The Union's proposals were quite simple, quite simple on their face. Other than changing names, they had two components. One was contributions to the Funds and the other was contributions — I'm sorry — increases in payments in the nature of wages and/or bonuses.
>
> There were different levels of complexity involved there for an Employer to determine, hey, can I afford it, can I not afford it. That's complex. Employers have many factors to consider in determining, you know, what their cost structure is, but my sense was that the Union's positions were relatively simple to comprehend because there were so few.
>
> Tony's proposals were far more complex. Tony had proposals which dealt with language, grievances, fringe benefits, that item I mentioned, which was the working hours. There were a number of pages and we hadn't gotten to them yet.
>
> And by the conclusion of the third meeting, with the exception of a discussion between Wilfredo and Tony on the issue

[4] Larancuent also credibly testified that he did not have any conversation with Yang on November 27, as Yang claimed in his letter to Larancuent on that date, G.C. Exh. 20. Yang did not contradict Larancuent on this point.

> of the guaranteed hours, which is a major component in this particular contract, we hadn't even started.

(Tr. 1132-1133.)

Respondent's contract proposals contained significant changes from the 2006-2009 collective-bargaining agreement. They were not discussed in any bargaining session. For example, the 2006-2009 contract provided unit employees with 6 sick days per year and entitled them to compensation for any sick days that they did not use. Respondent's proposals allowed for only 4 sick days, which could not be carried over.

Under the 2006-2009 contract, employees with more than 11 years of service to Respondent were entitled to 4 weeks of vacation. Respondent's proposals for a new agreement capped all employees' vacation benefits at 3 weeks. As Tony Yang conceded, all these provisions have an economic impact on Respondent and were never discussed in the 2009 negotiations.

Respondent's November 24 proposal

Respondent submitted a proposal to the Union on November 24, 2009, which it styled as its, "Final & Best Proposals (Language & Economics)". However, there was no bargaining session on that date. This proposal was not identical to Respondent's previous proposal that was discussed at the November 17, 2009 bargaining session. With regard to sick days, it was regressive in that it stated that employees were entitled to three paid sick days a year, whereas its November 17 proposal stated that employees were to receive 4 sick days. On the other hand, Respondent increased its contribution rate to the Health Fund from $28 to $38.

Events of November 27

Respondent posted its November 24 proposal on a wall of the facility on November 27. On the afternoon of that day, its general manager, Tony Yang, gave a speech to unit employees in which he discussed Respondent's November 24 proposal. Copies of Yang's speech were given to unit employees with their paychecks.[5] Copies of Respondent's November 24 proposal were attached to the speech. An employee provided a copy of Yang's speech, with the November 24 proposal attached, to the Union.

The written version of Tony Yang's speech stated, as did the November 24 proposal, that wages would be frozen for the first year of the agreement and that there would be a 20-cent per hour increase in the second and third years of the agreement. This replicated subparagraphs a, b, and c of Respondent's November 24 proposal on wages. In addition, however, the written version of the speech also contained two more subparagraphs: (d) "4th year-modification for starting pay" and (e) "5th year-Modification for Probationary Period." The written version of the speech did not contain any wage proposals for current employees in the 4th and 5th years (G.C. Exh. 19).

At the end of the day on November 27, the day the collective-bargaining agreement expired, the Union faxed Respondent a request for a bargaining session on December 4.

[5] As noted at p. 41 of Respondent's brief in fn. 11, although the Union filed a charge alleging that distribution of the speech constituted illegal "direct dealing" with unit employees, the complaint made no such allegation.

The November 30, 2009 strike

The collective-bargaining agreement between the Union and Respondent expired at midnight, Friday, November 27, 2009. The next workday was Monday, November 30.

On November 30, pursuant to instructions from the Union, 30 to 40 employees went on their morning break at 8:40 a.m., but did not return when the break ended 15 minutes later. Instead, they went on strike and picketed Respondent. Some of the pickets chanted, "No contract, No work." There was also testimony that employees were protesting the cancellation of their health insurance. Union Representative Larancuent was unclear as to why the Union called the strike, but he acknowledged that the Union had the right to strike over the Respondent's late and delinquent payment of the fringe benefit contributions, even before the expiration of the contract.

When the employees did not return from their break, at the direction of Tony Yang, Respondent's security guard, Kurt Schaffner, closed the main door to the facility and locked it. At about noon, three of the striking employees attempted to reenter the plant. They told security guard Schaffner that they wished to return to work. Schaffner consulted with Steve Moy, who told him that no strikers were to be allowed back in the plant. Schaffner conveyed this directive to the three employees.

At about 1:30, Steve Moy, who had arrived at the plant earlier that morning, came outside and handed a piece of paper to Union Organizer Joseph Isidore. The paper, (G.C. Exh. 33) stated: "We are not permitting the strikers into our premises."[6] Employees and union officials disseminated Respondent's policy not to allow any strikers into the plant to employees who had not been informed of this policy by management. Thus, when second-shift employees arrived at the plant in the afternoon, they were told by other employees or union officials that strikers were not being allowed into the facility.

At about 4 p.m., about a half hour after their shift was to begin, second-shift employees Clara Martinez, Jose Perez, Melissa Prado, Michael Gonzalez, and Joseph White attempted to go to work. They were not allowed into the plant by Respondent's security guards, pursuant to Respondent's policy directives.[7]

Alleged 8(a)(1) Violations on November 30

Complaint paragraph 10 alleges that Respondent, by Steven Moy, violated Section 8(a)(1) of the Act by promising its employees benefits in exchange for ceasing their union activities and by threatening employees with discharge because of their Union activities.

[6] The testimony of Isidore and Alvaro Bottaro that Moy handed this document to Isidore is uncontradicted and therefore credited.

[7] Security guard Kurt Schaffner typically worked the first shift. Another security guard, Frank Signarelli, generally was on duty during the second shift. On November 30, Schaffner also obtained the services of two other security guards on a temporary basis. Of the four security guards allegedly on duty on November 27, only Schaffner testified in this hearing. It is unclear which security guard was stationed at the front door of the plant at various times during the afternoon. Thus, the testimony of the unit employees who sought to go to work in the afternoon is uncontradicted.

Employee Felix Soto testified that between 10 and 10:30 a.m., while he was on strike, he encountered Respondent's president, Steven Moy, outside Respondent's plant. Moy was inspecting the perimeter of the facility. Soto testified that Moy told him that if he broke with the Union he would guarantee Soto's work.

Moy concedes that he spoke with Soto and two other employees that morning. However, Moy testified that the conversation transpired as follows:

> They came over to me and I think, I'm not sure, one of them said Poppy, I guess my nickname, that you know, what's going on, what's the strike? I said I don't know. I need you guys to come back to work.
>
> I think Mr. Soto said they were having some problems with my general manager, with Mr. Yang. I said, you know, you can always come and talk to me. If you have problems, you know, I'll take care, you know, I will always work it out for you. You know.
>
> And I said, you know, I need help. You guys should come back, come back, come in and go back to work.
>
> . . . .
>
> They said they had some issues with Tony, you know, and basically – and that, you know, the Union called them out.

(Tr. 1229.)

It is not clear that Soto's testimony about what Moy said to him amounts to a promise of benefit and a threat of discharge, as alleged in the complaint. The testimony is ambiguous, but, at best, it simply shows a plea by Moy for Soto to return to work. There is no basis for the inference that Moy's guarantee of work meant anything more than a guarantee of work during the strike. Moy's testimony is another matter. Even taking Moy's testimony at face value, he implicitly, if not explicitly, promised to redress the employees' grievances with Tony Yang if they ended their strike. That promise violated Section 8(a)(1) because it suggested a quid pro quo for the employees ceasing their protected activity and thus amounted to an unlawful promise of benefits. See *Berger Transfer & Storage, Inc.,* 253 NLRB 5, 12 (1980).[8]

Respondent's December 1 letter

At some point in late November, Respondent replaced Israel as its counsel. On December 1, 2009, Respondent's new counsel, Richard Milman, wrote the Union a letter, essentially accusing it of bad faith. The second to last paragraph of the letter states:

> Notwithstanding the foregoing, if the Union truly is interested in negotiating a successor CBA in the parties' best interests, the Company is prepared to meet the afternoon of December 4 at any location that is convenient.

(R. Exh. 61.)

[8] In accordance with the above analysis, that part of the complaint that alleges a threat of discharge is dismissed.

Respondent's December 3 letter regarding paychecks

On December 3, 2009, Respondent, by its new counsel, wrote the Union that the Respondent would be mailing paychecks directly to the employees. Prior to the strike employees received their paychecks in person at the plant. As a result of this change, at least one employee, Clara Martinez, did not receive her last two paychecks on time. She had moved and Respondent apparently did not send her checks to her correct address. Such a change had never been discussed in any of the bargaining sessions before Respondent's December 3 letter. Respondent did not offer an explanation for this change at the hearing and did not discuss the issue in its brief.

The December 4, 2009 meeting

On December 4, Tony Yang, Steven Moy, and Respondent's new counsel, Richard Milman, met with union representatives, including 20 bargaining unit employees. For Moy, who unlike Yang, had extensive experience in collective bargaining, this was the first collective-bargaining session he had attended in 2009.

At the December 4 meeting, the Union objected to Respondent's mailing of employees' paychecks. It also made an information request to which Respondent responded, albeit unsatisfactorily in the Union's view. Specifically, the Union asked Respondent to substantiate its claim to have lost 30 percent of its business. Respondent did not provide this information.

The Union also presented a proposal to Respondent for a 5-year agreement, which was much different from its prior proposals. (See G.C. Exh. 25.) It proposed greater wage increases than it had in its prior proposals and proposed deleting the most-favored-nations clause. The Union stated that this proposal was in response to the printed version of Tony Yang's speech to unit employees at Respondent's plant on November 27.

Milman answered that the written version of Yang's speech was a mistake. However, a copy of the speech was put in employees' paychecks and provided a basis for further negotiations on December 4, as to whether either party was amenable to a 5-year agreement. Thus, it was reasonable for the Union to believe that the written version of the speech reflected Respondent's current bargaining position.

Respondent also gave the Union a copy of its November 24 proposal (G.C. Exh. 23), which differed from the version it had given the Union previously (G.C. Exh. 18). For example, the Employer's contribution to the Union health plan was $28 rather than $38, as in the prior version. Respondent's counsel stated at hearing that the version presented to the Union on December 4 (G.C. Exh. 23) was an earlier draft of its November 24 proposal, rather than a new proposal. However, there is no record testimony to this effect.

Respondent stated that its final proposal was the first version of the November 24 proposal (G.C. Exh. 18) and it refused to consider the Union's December 4 proposal. The Union reviewed Respondent's November 24 proposals and pointed out the differences between them. (See G.C. Exhs. 18 and 23.)

Respondent asked the union representatives to put Respondent's November 24 proposal before the unit members for a ratification vote. The Union declined, but asked the 20 unit members present at the December 4 meeting for a show of hands as to whether they found this proposal acceptable. The 20 employees indicated by a show of hands they did not.

Respondent insisted that the Union accept or reject its November 24 proposal. The Union rejected it.

Respondent's declaration of impasse and statement that it was hiring permanent replacements

On December 7, Respondent, by letter, informed the Union that it determined that a bargaining impasse existed, that it had implemented its November 24 proposal on December 5, and was going to permanently replace the striking employees. However, Respondent did not provide its employees with health insurance coverage, either as provided in the 2006–2009 collective-bargaining agreement, in its November 24 proposal, or by other means. The Union immediately responded, contending that no impasse existed and notifying Respondent that it expected a counteroffer to its December 4 proposal.

December 21 meeting

The parties met for the last time on December 21. The Union asked Respondent to make a counteroffer to its December 4 proposal. Respondent declined, insisted the parties were at impasse, and ended the meeting.

Failure to pay employees for sick days that were not used in 2009

The parties' November 28, 2006 to November 27, 2009 collective-bargaining agreement generally entitled employees to 6 days of sick leave on the second anniversary of their employment and every anniversary date thereafter. Article 13, D, 2 of the agreement provided that as much of an employee's sick leave that was not used during the year was to be regarded as additional vacation with pay to which the employee was entitled at the end of the year. For employees otherwise entitled to 2 weeks' vacation pay, Respondent had the option of granting unused sick leave as additional vacation with pay or monetarily compensating the employee for the unused leave.

A number of the strikers had unused sick leave days in 2009. They were not paid for these unused sick leave days. Since, they were never recalled to work, they obviously were not accorded additional vacation days either. The testimony on this matter was uncontradicted.

Analysis

Delaying contributions to the Union Health Fund Prior to the Expiration of the Collective-Bargaining Agreement

It is well established that an employer's failure to make timely, contractually required payments to benefit funds without consent of the Union constitutes a unilateral modification of the terms of the collective-bargaining agreement in violation of Section 8(a)(1) and (5) of the Act. An employer's inability to pay is no defense. See *Quirk Tire*, 330 NLRB 917, 924 (2000); *R. T. Jones Lumber Co.,* 313 NLRB 726, 727 (1994); and *King Manor Care Center*, 308 NLRB 884, 887 (1992).

Respondent acknowledges problems in making timely fringe benefit payments. But it contends that by November 30 it was paid up through that date, and that payments were not due until the 15th of the month. It is not clear that Respondent is correct that it was fully paid up by November 30. But that is essentially irrelevant in view of its chronic delinquency in making payments. There is no question that Respondent did not make the payments for the weeks of September 4, 11, and 18 and October 30 on time, even under its view that the payments were

due by the 15th and not the 10th of the month. Moreover, it is undisputed that Respondent was chronically late making the required contractual payments, even after the August 2009 settlement, and bounced several checks thereafter. This led the Funds to suspend the health insurance coverage of unit employees. In these circumstances, Respondent's failure to abide by the contractually required terms and conditions of employment was far from de minimis and constitutes a violation of Section 8(a) (5) and (1) of the Act, as alleged.

Failure to Reinstate Striking Employees

The respective rights of economic strikers and replacement workers are well established. An economic striker who unconditionally offers to return to work is entitled to immediate reinstatement, unless the employer can show a legitimate and substantial business justification for refusing to reinstate the former striker. *NLRB v. Fleetwood Trailer Co.*, 389 U.S. 375, 378 (1967). One such legitimate and substantial business justification is an employer's permanent replacement of economic strikers as a means of continuing its business operations during a strike. *Mackay Radio & Telegraph Co. v. NLRB*, 304 U.S. 333, 345–346 (1938). Thus, at the conclusion of a strike, an employer is not bound to discharge those hired to fill the places of economic strikers if it made assurances to those replacements that their employment would be permanent. *Id*.

The hiring of permanent replacements is an affirmative defense to an alleged refusal to reinstate economic strikers. The employer has the burden of proving that it hired permanent replacements. *Associated Grocers*, 253 NLRB 31 (1980), enf. 672 F.2d 892 (D.C. Cir. 1981), cert. denied 459 U.S. 825 (1982). Otherwise, there is a presumption that the replacements were temporary employees. To meet its burden, the employer must show a mutual understanding with the replacements that they are permanent. *Consolidated Delivery & Logistics*, 337 NLRB 524, 526 (2002); *Hansen Bros. Enterprises*, 279 NLRB 741 (1986), enf. mem. 812 F.2d 1443 (D.C. Cir. 1987), cert. denied 484 U.S. 845 (1987). In particular, the term permanent replacement "connotes a replacement who will not be displaced by returning strikers when the strike is over." *Capehorn Industry,* 336 NLRB 364, 365 (2001).

In the instant case, Respondent has not met its burden of proving that it hired permanent replacements. It stipulated that it had not hired any permanent replacements as of December 7, 2009. Moreover, Respondent presented no evidence that it has ever hired permanent replacements for the strikers. It has merely baldly asserted that it has done so. There is, for example, absolutely no evidence of a mutual understanding between any of the replacements and Respondent that they were hired as permanent employees. Thus, the Respondent was not free to refuse to reinstate the employees in this case after they ended their strike and offered to return to work.

Nor has the Respondent shown that the strikers did not make an unconditional offer to return to work after their short strike during the day on November 30, an issue upon which the Respondent bears the burden of proof. See *Dilling Mechanical Contractors, Inc. v. NLRB*, 107 F.3d 521, 524 (7th Cir. 1997).[9] An offer to return to work "will not be treated as conditional unless it gives the employer reason to conclude that any offer of equivalent employment would be rejected." *United States Service Industries*, 315 NLRB 285, 286 (1994), citing authorities. It

[9] *Dilling* also makes clear that a resumption of picketing is not inconsistent with an unconditional offer to return to work. Id. at 525.

is clear that unconditional offers to return to work may be made orally or through physical attempts to return to work. See *Fun Striders, Inc.*, 255 NLRB 1351, 1360 (1981). A refusal to permit employees to enter a plant in the face of attempts by employees to enter at the conclusion of a strike may constitute a refusal to reinstate returning strikers in violation of the Act. See *Irvin H. Whitehouse & Sons Co.*, 252 NLRB 997 (1980).

In the instant case, Respondent specifically refused to reinstate approximately eight strikers who individually offered to return to work without condition. These employees are Clara Martinez, Jose Perez, Melissa Prado, Michael Gonzalez, and Joseph White, who offered to return to work in the afternoon and three unidentified employees who tried to return to work at about noon. By coming to the plant door and proclaiming their desire to return to work, these employees were seeking reinstatement. See *Fun Striders,* above at 1360. Nothing in their conduct suggests their offer was conditional and there is no evidence that they or any of the other strikers insisted on conditions before returning to work. See *Leon Ferenbach, Inc.,* 212 NLRB 896, 900 (1974).

Moreover, it appears that other groups of employees congregated at the locked doors in an attempt to return to work, including the second shift employees, who were scheduled to begin work at 4 p.m. All were prevented from returning to work. Not only were the doors to the plant locked, but the head security guard was instructed by Respondent's managers and owners not to permit the striking employees to enter the premises. Indeed, Respondent passed a written notice to union officials, at about 1:30 p.m., stating that the strikers would not be permitted to return to the plant. There was no ambiguity in that notice. Even if each individual striker did not personally make a specific offer to return, the Respondent, by its overall conduct, demonstrated that all strikers would not be permitted to return. Thus, any additional specific request to return would have been futile and Respondent illegally refused to reinstate all strikers. As stated in a somewhat different context, "the Board has frequently said that it will not require a person to perform a futile act." *Abilities & Goodwill,* 241 NLRB 27, 27 (1979). By categorically telling the eight employees who approached the plant door on November 30 that strikers would not be allowed back into the plant and by giving written notice to the Union to that effect, Respondent rendered futile any attempt by any other employee to return to work. See *Sigma Service Corp.,* 230 NLRB 316, 317-318 (1977).[10]

In sum, I find that all strikers effectively offered to return to work after their brief strike on November 30 and that nothing in this record showed that those offers had any conditions attached to them. Thus, Respondent's failure to reinstate all strikers violated Section 8(a)(3) and (1) of the Act.

[10] Although several employees testified that Moy told them they were fired when they attempted to return to work, Moy denied that he told any employees they were fired. The General Counsel's brief seems to argue that the strikers were discharged, but the complaint makes no such allegation. The allegation is that they were refused reinstatement upon their unconditional offer to return to work. That allegation has been sustained and it is not necessary to make a finding that the strikers were discharged, although, to a striker refused access to the plant after the end of a strike, that refusal may seem to be the equivalent of a discharge. Nevertheless, the testimony of the employees that they felt they had been fired enhances my finding that the Respondent meant to refuse to permit all strikers to return to work and rendered any individual offer to return to work futile.

The Bargaining Violations

Was There an Impasse?

Section 8(a)(5) and (1) prohibits an employer from unilaterally instituting changes regarding wages, hours, and other terms and conditions of employment before reaching a good-faith impasse in bargaining. *NLRB v. Katz,* 369 U.S. 736 (1962), and *Tom Ryan Distributors,* 314 NLRB 600, 604 (1994). An impasse is considered to exist when the collective-bargaining process has been exhausted, *DC Liquor Wholesalers*, 292 NLRB 1234, 1234 (1989), enf. sub nom. *Teamsters Local 639 v. NLRB*, 924 F.2d 1078 (D.C. Cir. 1991), and, "despite the parties best efforts to reach an agreement, neither party is willing to move from its position." *Excavation-Construction,* 248 NLRB 649, 650 (1980), enf. denied 660 F.2d 1015 (4th Cir. 1981). An impasse exists when both sides, not just one side, have decided that further negotiations are futile. The burden of establishing the existence of an impasse is on the party asserting it as the basis for its unilateral actions. *Tom Ryan Distributors,* above at 604; *North Star Steel Co.,* 305 NLRB 45 (1991).

The relevant factors to be considered in determining whether a bargaining impasse exists were set forth by the Board in *Taft Broadcasting Co.,* 163 NLRB 475 (1967), enf. sub nom. *Television & Radio Artists AFTRA v. NLRB*, 395 F.2d 622 (D.C. Cir. 1968). The Board held that, "after bargaining to impasse. . . . an employer does not violate the Act by making unilateral changes that are reasonably comprehended within his pre-impasse proposals." Determining whether a bargaining impasse exists involves a fact-intensive analysis, guided by various factors:

> Whether a bargaining impasse exists is a matter of judgment. The bargaining history, the good faith of the parties in negotiations, the importance of the issue or issues on which there is disagreement, the contemporaneous understanding of the parties as to the state of negotiations are all relevant factors to be considered in deciding whether an impasse in bargaining existed.

Id. at 478.[11]

As indicated above, Respondent declared an impasse in negotiations on December 7, 2009, 3 days after the December 4 bargaining session. In that declaration, Respondent also stated that it had implemented its November 24 proposal on December 5. I find that, on this record, Respondent has not met its burden of showing that both parties were at impasse at that point.

The bargaining history of the parties does not support a finding of impasse. For years the Union bargained with Respondent as part of a multiemployer association. Then, in 2003 and 2006, the Union bargained with one laundry employer and then succeeded in having the other laundry employers to agree to the same terms. In 2003, Respondent agreed to such terms only after a brief strike. Unlike the earlier negotiations, the instant negotiations were obviously taking longer, in part because of the complexity and importance of the issues. In

[11] Those who bargain collectively are under an obligation to continue negotiating to impasse on all mandatory subjects. The law relieves them of that duty, however, when a single issue looms so large that a stalemate as to that issue may fairly be said to cripple the prospects of any agreement. *Calmat Co.,* 331 NLRB 1084, 1097 fn. 49 (2000), citing *NLRB v. Tomco Communications, Inc.,* 567 F.2d 871, 881 (9th Cir. 1978). No such issue exists in this case.

addition, Respondent had new players on the scene. The Respondent's general manager, Tony Yang, who took an active role in these negotiations, had never before participated in collective bargaining for this or any other employer. Respondent also changed its lawyer and chief negotiator after three bargaining sessions. Its new lawyer and chief negotiator, Richard Milman, did not join the talks until the fourth session, on December 4, after which Respondent declared impasse. Respondent's previous lawyer and chief negotiator, Stanley Israel, participated in the first three bargaining sessions. Israel, who had represented Respondent in previous negotiations, testified that, when he left the negotiations after the November 17 session, Respondent's economic proposals were "far more complex" than the Union's proposals and, except for the issue of guaranteed hours, "we hadn't even started" discussing Respondent's economic proposals. In these circumstances, it is highly unlikely that, as an objective matter, an impasse existed after only one additional meeting. A striking fact in this case is how few bargaining sessions had taken place and how little time had elapsed before Respondent began to threaten to declare impasse. "While it is true that the number of negotiating sessions is not controlling, generally, the more meetings, the better the chance of finding an impasse." *PRC Recording Co.,* 280 NLRB 615, 635 (1986), enf. 836 F.2d 289 (7th Cir. 1987). See also *Day Automotive Group,* 348 NLRB 1257, 1264 (2006).

Indeed, after the November 17 bargaining session, Respondent proposed two different versions of its next economic proposal, one on November 24, and a different one on November 27, when Yang delivered a speech setting forth that proposal, which was distributed to employees in written form with their paychecks. The Union prepared a new counterproposal for the December 4 meeting, based, in part, on its understanding of Respondent's second version of its November 24 proposal. It was not until the next meeting, on December 4, that Millman labeled that second version a "mistake" and reverted to the original November 24 proposal. Respondent's moving target rendered the December 4 meeting less substantive than it otherwise would have been. At the very least, it cannot be concluded that the matter would have been resolved or concluded after only one meeting. Thus, the bargaining history, the complexity of the issues involved, the paucity of bargaining sessions, and the new bargaining team for Respondent all supports the finding that no impasse was reached after the December 4 bargaining session.[12]

Other factors also militate against a finding of impasse. The parties had not yet exhausted the subject of guaranteed hours, and, although there were still many disputed issues, including wages and fringe benefit contributions, there does not appear to have been any particular issue on which further movement was precluded. The difference between the parties' last proposal on wages—10 cents per hour in the second and third years of the contract—did not, on its face, appear to be irreconcilable. Given the fact that there had been little or no discussion of many aspects of Respondent's proposal, such as vacations, sick days, and other issues, there was a distinct possibility that the Union would be open to further concessions. Nor did Respondent comply with the Union's December 4 request for substantiation of its claim that it had lost 30 percent of its business and thus could not afford increases in wages or fringe benefit contributions.

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[12] It would be startling to conclude that an impasse would have occurred after only four bargaining sessions with the Union, when, as Moy testified (Tr. 1249-1250, 1266, 1271), Respondent had been bargaining for over 6 months with the union it recognized after it declared impasse in bargaining with the Union, which was the lawful bargaining representative of its employees. Obviously, in view of my findings in this case, Respondent's recognition of that new union and any agreements it may have concluded with that union would be illegal.

Contrary to Respondent's contention, it was the Union which was flexible, as it demonstrated in responding to the dual November 24 proposals, and it was the Union which was willing to continue bargaining. On the other hand, it was Respondent who was inflexible. Respondent essentially took a take it or leave it posture on its November 24 proposal before it had even been discussed in a bargaining session. Indeed, it took great pains to label—erroneously, as I have found—the Union's November 17 proposal as the Union's last and final offer. And, in order to artificially support its quick declaration of impasse, Respondent took the incongruous position that neither the meetings of December 4 or December 21 constituted bargaining sessions. (See Tr. 1275.) It is, however, well understood that, in labor negotiations, after final offers come more offers. See *Tom Ryan Distributors*, above at 604, quoting from *Chicago Typographical Union Local 16 v. Chicago Sun Times*, 935 F.2d 1501, 1508 (7th Cir. 1991). As noted in *PRC Recording Co.,* above, at 635, in collective bargaining, both sides often maintain hard positions and indicate to the other that they are standing pat. But, unless both parties believe that they are unwilling to compromise, there is no impasse. *Grinnell Fire Protection Systems Co.,* 328 NLRB 585, 585 (1999), enf. 236 F.3d 187 (4th Cir. 2000).

Contrary to Respondent's assertions in its brief (pp. 43-44), the Union was not locked into insisting on the same economic terms as it negotiated in its master agreement with other laundry employers. For example, the Union's November 17 proposal to Respondent did not contain the one-time $350 bonus contained in the master agreement. (See R. Exh. 49, G.C. Exh. 15, Tr. 983.) Respondent also argues, at page 48 of its brief, that the fact that the Union's November 17 proposal retained the "most-favored-nations" clause in the previous agreement of the parties demonstrates the Union's unwillingness to give Respondent any different terms that it had given to other laundry employers and this is critical to the determination of whether or not the parties had reached a bargaining impasse. It is difficult to follow Respondent's argument, but it is without merit. Most-favored-nations clauses generally tend to benefit employers because it permits them to obtain concessions that a union negotiates with other employers. See *The Developing Labor Law* (5th Edition, 2006), Volume I, Chapter 16 IV.C.2.n., p. 1356 fn. 579; and *Dolly Madison Industries*, 182 NLRB 1037 (1970), cited therein. And there is no evidence that the issue of a most-favored-nations clause was even discussed in these negotiations, much less caused or even contributed to the asserted impasse. In any event, in its December 4 proposal, the Union deleted the most-favored-nations clause, thus demonstrating its flexibility. To the extent that Respondent's argument refers to the most-favored-nations provision in the master collective-bargaining agreement between the Union and other laundry employers, that argument is likewise without merit. It is essentially irrelevant to the issue whether impasse existed in the separate negotiations between the Union and Respondent. There is no evidence that the parties even discussed the most-favored-nations clause in the master agreement or its effect on the Union's position in its negotiations with Respondent. Moreover, it would be speculative at best to opine how that clause would affect the other laundry employers, much less the Union's position in the negotiations with the Respondent.

Respondent also contends that the Union's strike on November 30, 2009, demonstrated that there was an impasse. Board law, however, is to the contrary. As noted in *Inta-Roto, Inc.,* 252 NLRB 764, 769 (1980):

> The Board has held that a work stoppage is not in and of itself proof of an impasse, and that it may well be a device to speed up negotiations. *Seven Motors, Ltd. d/ b/a Mazda South, et al.*, 233 NLRB 1198 (1977). As the Supreme Court stated in *N.L.R.B. v. Insurance Agents' International Union, AFL-CIO [Prudential Insurance Company of America]*, 361 U.S. 477, 495 (1960), there is "no inconsistency between the application

of economic pressure and good faith bargaining," 495, and "economic pressure. . . is part and parcel of the process of collective bargaining."

In this case, the brief strike of November 30 had nothing to do with whether an impasse existed. Far more relevant, and of more lasting effect, was the Respondent's unlawful refusal to permit the strikers to return to work later in the day on November 30.

It is settled law that "a lawful impasse cannot be reached in the presence of unremedied unfair labor practices," at least where they may have contributed to or had an effect on the alleged bargaining stalemate. *CJC Holdings*, 320 NLRB 1041, 1044 (1996). Here, as I have found, Respondent violated the Act by virtue of its chronic delinquencies in making contractually required fringe benefit contributions, an important issue in the negotiations, and a circumstance that led to cancellation of the employees' health insurance and may have contributed to the strike of November 30. More importantly, as I have also found, Respondent unlawfully refused and failed to reinstate the striking employees. It did not permit them to return to work later in the day on November 30 and has never, at least as of the date of the trial, made an offer to reinstate them. It cannot be gainsaid that their removal from the workplace sapped the bargaining strength of their legitimate bargaining representative. Not only did Respondent's unlawful conduct affect the bargaining process, but to find an impasse in the face of such serious unremedied unfair labor practices would, in effect, reward a wrongdoer.

In sum, the Respondent has failed to satisfy its burden of demonstrating that both parties, not just itself, were at a stalemate and that a lawful impasse existed. Thus, the Respondent was not privileged unilaterally to declare an impasse and unilaterally to fail to adhere to, or change, existing terms and conditions of employment, including those reflected in the expired collective-bargaining agreement.

Unilateral changes as a result of the premature declaration of impasse

It is uncontested that the expired contract required, among other things, that Respondent make contributions to the Union Health, Retirement and Legal Education Funds and pay employees for unused sick leave. Those requirements, as well as other requirements in the expired contract, remained existing terms and conditions of employment. It is settled law that an employer has a statutory obligation to continue to follow the terms and conditions of employment governing the employer-employee relationship in an expired contract until a new agreement is concluded or good faith bargaining leads to a valid impasse. See, in addition to *Quirk Tire*, above, 330 NLRB at 924, *R.E.C. Corp.,* 296 NLRB 1293, 1293 (1989). It is uncontested that Respondent unilaterally changed the contractually established sick day policy. It did not pay employees for unused sick days accrued by employees under the terms of the expired agreement. In addition, except for continuing to make payments to the Funds under the settlement agreement, the Respondent failed to make current contributions to the Funds after expiration of the collective-bargaining agreement. See Tr. 1181−1184. It is also uncontested that, even though it was not a contractual requirement, the distribution of paychecks to employees in person was an existing condition of employment. That policy was changed on December 3, when the Respondent unilaterally instituted a policy of mailing paychecks to employees at their homes or, at least, the home addresses on file with Respondent.

Since I have concluded that the parties had not reached a legal impasse during their November and December 2009 bargaining, Respondent violated, and continues to violate, Section 8(a)(5) and (1) of the Act by unilaterally failing to make contributions the Funds, changing its policy of distributing paychecks, and failing to pay employees for unused sick days.

See *Made 4 Film, Inc.,* 337 NLRB 1152, 1152 (2002); *Castle Hill Health Center,* 355 NLRB No. 196 (2010).[13]

Conclusions of Law

1. By promising employees benefits for ceasing their union activities, Respondent violated Section 8(a)(1) of the Act.

2. By failing to reinstate striking employees upon their offer to return to work without conditions, Respondent violated Section 8(a)(3) and (1) of the Act.

3. By delaying making contractually required contributions to the Union's Health, Retirement and Legal Education Funds, by unilaterally failing to continue to make such contributions after the expiration of the collective bargaining agreement of the parties, unilaterally changing the method by which employees were paid and failing to pay employees contractually required sick pay, and by unilaterally imposing the terms of its November 24 contract proposal, thus changing the terms and conditions of employment of union represented employees in the absence of a lawful impasse, Respondent violated Section 8(a)(5) and (1) of the Act.

4. The above violations constitute unfair labor practices within the meaning of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. Respondent will be directed to offer reinstatement to all strikers who were not permitted to return to work on November 30, 2009, and to make them whole for any loss of earnings or other benefits, less any net interim earnings, computed as prescribed in *F. W. Woolworth Co.,* 90 NLRB 289 (1950), plus interest as set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Respondent will also be required to make whole union represented employees who suffered losses due to Respondent's unlawful unilateral changes in their terms and conditions of employment. Such amounts will be computed either as indicated above or in conformity with *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1971), with interest as set forth in *New Horizons for the Retarded*, above. Respondent will also be directed to restore the terms and conditions of employment of the union represented employees as they existed prior to its unlawful conduct, as well as any additional unilateral changes undertaken thereafter, and continue them in effect until the parties reach either an agreement or come to a good-faith lawful impasse. Any fringe benefit contributions required to made to the Funds because of Respondent's unilateral failure to make them shall be computed as set forth in *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 6 (1979). To the extent that employees suffered additional expenses because of Respondent's failure to make such contributions, Respondent shall reimburse employees for

[13] Respondent's change in the distribution of paychecks is not de minimis. A unilateral change is unlawful if it is "material, substantial and significant." *Flambeau Airmold Corp.,* 334 NLRB 165, 165 (2001). I find that mailing employees' checks instead of handing them out in person is material, substantial, and significant. It could result, as it did in Clara Martinez' case, in delaying the receipt of an employee's wages. This is particularly significant in this case where the wages of employees were relatively low and they are more likely than higher-paid employees to be living from paycheck to paycheck.

such additional expenses, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed as set forth in *Ogle Protection*, above, with interest as prescribed in *New Horizons for the Retarded*, above. Finally, I shall order the Respondent to bargain in good faith with the Union.[14]

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[15]

ORDER

The Respondent, Jung Sun Laundry Group Corporation, Long Island City, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing or refusing to bargain in good faith with the Laundry, Dry-Cleaning and Allied Workers Joint Board, Workers United, A Service Employees International Union Affiliate (the Union) in the following appropriate unit: All of the employees of Respondent except guards and supervisors as defined in the National Labor Relations Act.

(b) Unilaterally imposing or changing terms and conditions of employment for the above union represented employees, including, but not limited to, those terms and conditions in the most recent expired collective-bargaining agreement of the parties, in the absence of a lawful impasse.

(c) Failing or delaying to make contractually required contributions to the Union's Health, Retirement and Education and Legal Assistance Funds.

(d) Failing and refusing to allow strikers to return to work upon their offer to return to work without conditions.

(e) Promising employees benefits in exchange for their ceasing union activities.

(f) 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) On request, bargain with the Union as the exclusive representative in the above-described unit and, if an understanding is reached, embody the understanding in a signed agreement.

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[14] The number and names of the strikers who were not permitted to return to work on November 30 and who are thus entitled to reinstatement and backpay are unclear on this record. The details on this matter may be determined in the compliance phase of this case.

[15] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) Restore to the union represented employees the terms and conditions of employment that were in effect prior to the unilateral changes it effectuated after the expiration of the collective-bargaining agreement that expired on November 27, 2009, including those terms and conditions embodied in that agreement, as set forth in the remedy section of this decision, and continue those in effect until the parties reach either an agreement or a good-faith impasse in bargaining. Nothing in this order, however, shall require the rescission of benefits granted.

(c) Pay the union represented employees for unused sick days earned under the expired collective-bargaining agreement and provide the employees their paychecks in person rather than by mail.

(d) Offer full reinstatement to all employees who engaged in the strike of November 30, 2009, and who were not previously reinstated to their former jobs or, if those jobs no longer exist, to a substantially equivalent job, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(e) Make all the striking employees whole for any loss of earnings and other benefits suffered as a result of Respondent's failure to reinstate them since November 30, 2009, with interest; and, in addition, reimburse the Union Health, Retirement and Legal Education Funds for any and all contributions due and owing as a result of its unlawful failure to adhere to existing terms and conditions of employment, and make all employees whole for any and all losses incurred as a result of Respondent's unlawful changes in their terms and conditions of employment, with interest, as set forth in the remedy section of this decision.

(f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, 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.

(g) Within 14 days after service by the Region, post at its Long Island City, New York facility, copies of the attached notice marked "Appendix" in English and in Spanish.[16] Copies of the notice, on forms provided by the Regional Director for Region 29, 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 October 10, 2009.

[16] 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."

(h) 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.

It is further ordered that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated at Washington, D.C. October 21, 2010

_____
Keltner W. Locke
Administrative Law Judge

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 Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT fail to bargain with the Union, the Laundry, Dry-Cleaning and Allied Workers, Joint Board, Workers United, A Service Employees International Union Affiliate, in the following unit: All of our employees, except guards and supervisors as defined in the National Labor Relations Act.

WE WILL NOT unilaterally impose or change the above employees' terms and conditions of employment, including, but not limited to, those terms and conditions embodied in the collective-bargaining agreement that expired on November 27, 2009, in the absence of a lawful impasse.

WE WILL NOT fail to make or delay making contractually required contributions to the Union's Health, Retirement and Legal Assistance Funds.

WE WILL NOT fail or refuse to allow striking employees to return to work upon their offer to return to work without conditions.

WE WILL NOT promise employees benefits in exchange for their ceasing union 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 on request, bargain with the Union as the exclusive representative in the above-described unit and, if an understanding is reached, embody the understanding in a signed agreement.

WE WILL restore to our union represented employees the terms and conditions of employment that were in effect prior to the unilateral changes we effectuated after the expiration of the collective-bargaining agreement that expired on November 27, 2009, including those terms and conditions embodied in that agreement, and WE WILL continue those terms and conditions in effect until we reach either an agreement with the Union or a good-faith impasse in bargaining.

WE WILL pay our union represented employees for unused sick days earned under the expired collective-bargaining agreement and provide them their paychecks in person rather than by mail.

WE WILL offer full reinstatement to all employees who engaged in the strike of November 30, 2009 and who were not previously reinstated to their former jobs, or, if those jobs no longer exist, to a substantially equivalent job, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make all striking employees whole, with interest, for any loss of wages and other benefits suffered as a result of our failure to reinstate them since November 30, 2009; and, in addition, WE WILL reimburse the Union Health, Retirement and Legal Education Funds for any and all contributions due and owning as a result of our unlawful failure to adhere to existing terms and conditions of employment; and WE WILL make all our employees whole for any and all losses incurred as a result of our unlawful changes in their terms and conditions of employment.

JUNG SUN LAUNDRY GROUP CORPORATION

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

One MetroTech Center (North), Jay Street and Myrtle Avenue, 10th Floor

Brooklyn, New York 11201-4201

Hours: 9 a.m. to 5:30 p.m.

718-330-7713.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 718-330-2862.