A&R Fashions, Inc. *and* Joint Board Cloak, Skirt and Dressmakers' Union, International Ladies' Garment Workers' Union, AFL–CIO. Case 1–CA–29153

July 22, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

Upon a charge filed by the Union on March 3, 1992, the General Counsel of the National Labor Relations Board issued a complaint against A&R Fashions, Inc., the Respondent, alleging that it has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) and Section 8(d) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On June 18, 1992, the General Counsel filed a Motion for Summary Judgment. On June 24, 1992, 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

Section 102.20 of the Board's Rules and Regulations provides 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. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the complaint shall be considered to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that by letter dated May 13, 1992, the Regional attorney notified the Respondent that unless an answer was received by the close of business on May 20, 1992, a Motion for Summary Judgment would be filed. To date, no answer has been filed by the Respondent.

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.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation with an office and place of business in Boston, Massachusetts, has been engaged in the manufacture of clothing. Annually, the Respondent provides stitching services valued in excess of $50,000 for Herman Geist, Inc., located in Norwood, Massachusetts, which annually sells and ships from its Norwood, Massachusetts facility garments valued in excess of $50,000 directly to points located outside the Commonwealth of Massachusetts. We find that the Respondent is an employer engaged in commerce within the meaning of Section 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

Since about 1969, and at all relevant times, the Union has been the designated exclusive collective-bargaining representative of the Respondent's employees in an appropriate unit within the meaning of Section 9(b) of the Act, and has, since then, been recognized as such by the Respondent, such recognition having been embodied in successive collective-bargaining agreements the most recent of which is effective from June 15, 1991, to June 15, 1993. At all times since 1969, the Union, by virtue of Section 9(a) of the Act, has been the exclusive collective-bargaining representative of the unit employees. The appropriate bargaining unit consists of:

> All non-supervisory production, maintenance, packing and shipping workers employed by Respondent at its Boston, Massachusetts location, excluding office clerical employees, professional employees, guards and all supervisors as defined in the Act.

Article XVIII of the parties' current agreement requires the Respondent to make contributions on behalf of unit employees to a Health and Welfare Fund, the ILGWU National Retirement Fund, and the ILGWU Health Services Plan. Since about September 3, 1991, the Respondent has failed and refused to make the required payments to these benefit funds. By failing and refusing to make such payments, the Respondent has failed and refused and is failing and refusing to bargain collectively with the Union, in violation of Section 8(a)(5) and (1), and within the meaning of Section 8(d) of the Act.

CONCLUSIONS OF LAW

By failing and refusing, since about September 3, 1991, to make payments on behalf of unit employees to the Health and Welfare Fund, the ILGWU National Retirement Fund, and the ILGWU Health Services Plan, as required under article XVIII of its collective-bargaining agreement with the Union, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 8(d), and 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.

The Respondent shall be ordered to make contributions on behalf of unit employees to the Health and Welfare Fund, the ILGWU National Retirement Fund, and the ILGWU Health Services Plan that have not been made since about September 3, 1991,[1] and to make whole unit employees for any expenses they may incurred as a result of the Respondent's failure to comply with its contractual obligations as set for in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), with interest in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, A&R Fashions, Inc., Boston, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to adhere to the terms of its collective-bargaining agreement with Joint Board Cloak, Skirt and Dressmakers' Union, International Ladies' Garment Workers' Union, AFL–CIO, which is the designated collective-bargaining representative of the Respondent's employees in an appropriate unit, by failing and refusing to make contributions to the Health and Welfare Fund, the ILGWU National Retirement Fund, and the ILGWU Health Services Plan, as required by article XVIII of that agreement. The bargaining unit consists of:

> All non-supervisory production, maintenance, packing and shipping workers employed by Respondent at its Boston, Massachusetts location, excluding office clerical employees, professional employees, guards and all supervisors as defined in the Act.

(b) 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) Comply with article XVIII of its agreement with the Union by remitting contributions to the Health and Welfare Fund, the ILGWU National Retirement Fund, and the ILGWU Health Services Plan that have not been made since about September 3, 1991, and make whole unit employees for any expenses they may have incurred as a result of the Respondent's failure and refusal to make such contributions, with interest as described in the remedy section of this decision.

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

(c) Post at its facility in Boston, Massachusetts, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt 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.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[1] Any additional amounts applicable to those payments shall be computed in the manner prescribed in *Merryweather Optical Co.*, 240 NLRB 1213 (1979).

[2] 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."

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.

WE WILL NOT fail and refuse to adhere to the terms of our collective-bargaining agreement with Joint Board Cloak, Shirt and Dressmakers' Union, International Ladies' Garment Workers' Union, AFL–CIO, which is the designated collective-bargaining representative of our employees in an appropriate unit, by failing and refusing to make contributions on behalf of unit employees to the Health and Welfare Fund, the ILGWU National Retirement Fund, and ILGWU Health Services Plan, as required by article XVIII of our agreement. The bargaining unit consists of:

All non-supervisory production, maintenance, packing and shipping workers employed by Respondent at its Boston, Massachusetts location, excluding office clerical employees, professional employees, guards and all supervisors as defined in the Act.

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 comply with article XVIII of our agreement with the Union by making all contributions to the Health and Welfare Fund, the ILGWU National Retirement Fund, and the ILGWU Health Services Plan that have not been made since about September 3, 1991, and WE WILL make whole unit employees for any expenses they may have incurred as a result of our failure and refusal to make such contribution, with interest.

A&R FASHIONS, INC.