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Art to Frames, Inc. and Catholic Migration Services.
Case 29–CA–266298

March 16, 2021

DECISION AND ORDER

BY CHAIRMAN MCFERRAN AND MEMBERS EMANUEL
AND RING

The Acting General Counsel seeks a default judgment in this case on the ground that Art to Frames, Inc. (the Respondent) has failed to file an answer to the complaint. Upon a charge and amended charges filed by Catholic Migration Services on September 17, September 29, October 9, and December 10, 2020, respectively, the General Counsel issued a complaint and notice of hearing against the Respondent on December 15, 2020, alleging that it has violated Section 8(a)(1) of the Act. The Respondent failed to file an answer.

On January 27, 2021, the Acting General Counsel filed with the National Labor Relations Board a Motion for Default Judgment. On January 28, 2021, 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 Default Judgment

Section 102.20 of the Board’s Rules and Regulations provides that the allegations in a 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 states that unless an answer is received on or before December 29, 2020, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the Acting General Counsel’s motion disclose that the Region, by letter dated January 8, 2021 (which enclosed a copy of the complaint), advised the Respondent that unless an answer was received by January 15, 2021,¹ a motion for default judgment would be filed. Nevertheless, the Respondent failed to file an answer.

In the absence of good cause being shown for the failure to file an answer, we deem the allegations of the complaint

¹ The motion for default judgment inadvertently states that the dates for this letter and its given response date are in “2020” rather than in 2021.

to be admitted as true, and we grant the Acting General Counsel’s Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a domestic corporation with an office and place of business located at 770 5th Avenue, Brooklyn, New York (Brooklyn facility), and has been engaged in the retail sale of custom picture frames and home decor.

In conducting its business operations described above during the 12-month period preceding issuance of the complaint, a period which is representative of its annual operations generally, the Respondent derived gross revenues in excess of \$500,000, and purchased and received goods and materials valued in excess of \$5000 at its Brooklyn facility directly from entities located 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.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Schneur Minsky	-	Owner
Yossi Prus	-	Production Manager

The following events occurred giving rise to this proceeding.

1. About March 19, 2020, the Respondent’s employees Enrique Maza, Araceli Pulido, Awilda Jiminian, Digna Rivera, Betzaida Arellano, Dulce Maria Nunez, Eddy Lopez, Laura Escalante, Ramon Rosario Begazo, Socorro Hernandez, Tayde Flores, Jesus Rivera Lopez, Yolanda Arias, Veronica Rodriguez, Maria Santos, Mandy Williams, Jose Luis Garcia, Jonathan Garcia, Isiah Lopez, Diego Lopez, Denny Cruz, Fanny Alvarado, Carlos Martinez, and Paola de la Cruz engaged in the following conduct:

a) concertedly complained to the Respondent’s Production Manager Prus regarding the wages, hours, and working conditions of the Respondent’s employees, including the lack of safe working conditions due to the

Respondent's failure to provide employees with personal protective equipment; and

b) concertedly ceased work and commenced protesting on a public sidewalk outside of the Respondent's Brooklyn facility regarding the Respondent's employees' unsafe working conditions.

2. (a) About March 20, 2020, the Respondent laid off its employees named in paragraph 1 above.

(b) From about March 20 to about December 4, 2020, the Respondent failed or refused to reinstate its employees Enrique Maza, Araceli Pulido, Awilda Jiminian, Digna Rivera, Betzaida Arellano, Dulce Maria Nunez, Laura Escalante, Ramon Rosario Begazo, Socorro Hernandez, Tayde Flores, Jesus Rivera Lopez, Yolanda Arias, Veronica Rodriguez, Maria Santos, Mandy Williams, Jose Luis Garcia, Isiah Lopez, Diego Lopez, Denny Cruz, Fanny Alvarado, Carlos Martinez, and Paola de la Cruz.

(c) From about March 20 to about April 23, 2020, the Respondent failed or refused to reinstate its employee Eddy Lopez.

(d) From about March 20 to a date presently unknown in April 2020, the Respondent failed or refused to reinstate its employee Jonathan Garcia.

3. The Respondent engaged in the conduct described above in paragraph 2 because the employees named above in paragraph 1 engaged in the conduct described in paragraph 1, and to discourage employees from engaging in these or other concerted activities.

CONCLUSION OF LAW

By the conduct described above in paragraphs 2 and 3, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act. The unfair labor practices of the Respondent described above 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 violated Section 8(a)(1) by laying off the following employees on March 20, 2020, and by failing or refusing to reinstate them for the following time periods—for employees Enrique Maza, Araceli Pulido, Awilda Jiminian, Digna Rivera, Betzaida Arellano, Dulce Maria Nunez, Laura Escalante, Ramon Rosario Begazo, Socorro Hernandez, Tayde Flores, Jesus Rivera Lopez, Yolanda Arias, Veronica Rodriguez, Maria Santos, Mandy Williams, Jose Luis Garcia, Isiah Lopez, Diego

Lopez, Denny Cruz, Fanny Alvarado, Carlos Martinez, and Paola de la Cruz from about March 20 to December 4, 2020; for employee Eddy Lopez from about March 20 to April 23, 2020; and for employee Jonathan Garcia from about March 20 to a date presently unknown in April 2020—because they engaged in protected concerted activity, we shall order the Respondent to make these employees whole for any loss of earnings and other benefits suffered as a result of the unlawful layoffs. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

In accordance with our decision in *King Soopers, Inc.*, 364 NLRB No. 93 (2016), enfd. in relevant part 859 F.3d 23 (D.C. Cir. 2017), we shall also order the Respondent to compensate the above employees for their search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

In addition, we shall order the Respondent to compensate the affected employees for any adverse tax consequences of receiving a lump-sum backpay award and to file a report with the Regional Director for Region 29 allocating the backpay award to the appropriate calendar year(s) for each employee. *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016). In addition to the backpay-allocation report, we shall order the Respondent to file with the Regional Director for Region 29 a copy of each backpay recipient's corresponding W-2 form(s) reflecting the backpay award. *Cascades Containerboard Packaging*, 370 NLRB No. 76 (2021).

The Respondent shall also be required to remove from its files any reference to the unlawful layoffs of the above employees and the failure and refusal to reinstate them, and to notify them in writing that this has been done and that the unlawful actions will not be used against them in any way.

ORDER

The National Labor Relations Board orders that the Respondent, Art to Frames, Inc., Brooklyn, New York, its officers, agents, successors, and assigns shall:

1. Cease and desist from

(a) Laying off or otherwise discriminating against employees because they engage in protected concerted

activities or to discourage other employees from engaging in these activities.

(b) Failing or refusing to reinstate employees because they engage in protected concerted activities or to discourage other employees from engaging in these 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) Make Enrique Maza, Araceli Pulido, Awilda Jiminian, Digna Rivera, Betzaida Arellano, Dulce Maria Nunez, Eddy Lopez, Laura Escalante, Ramon Rosario Begazo, Socorro Hernandez, Tayde Flores, Jesus Rivera Lopez, Yolanda Arias, Veronica Rodriguez, Maria Santos, Mandy Williams, Jose Luis Garcia, Jonathan Garcia, Isiah Lopez, Diego Lopez, Denny Cruz, Fanny Alvarado, Carlos Martinez, and Paola de la Cruz whole for any loss of earnings and other benefits suffered as a result of the unlawful layoffs, in the manner set forth in the remedy section of this decision.

(b) Compensate the affected employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 29, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year(s) for each employee.

(c) File with the Regional Director for Region 29 a copy of each backpay recipient's corresponding W-2 form(s) reflecting the backpay award.

(d) Within 14 days from the date of this Order, remove from its files any reference to the unlawful layoffs of and the failure or refusal to reinstate Enrique Maza, Araceli Pulido, Awilda Jiminian, Digna Rivera, Betzaida Arellano, Dulce Maria Nunez, Eddy Lopez, Laura Escalante, Ramon Rosario Begazo, Socorro Hernandez, Tayde Flores, Jesus Rivera Lopez, Yolanda Arias, Veronica Rodriguez, Maria Santos, Mandy Williams, Jose Luis Garcia, Jonathan Garcia, Isiah Lopez, Diego Lopez, Denny Cruz, Fanny Alvarado, Carlos Martinez, and Paola de la Cruz, and within 3 days thereafter, notify them in writing that this has been done and that the layoffs and failure or refusal to reinstate will not be used against them in any way.

(e) 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.

(f) Post at its facility in Brooklyn, New York, copies of the attached notice marked "Appendix."² 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. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If 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 March 20, 2020.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 29 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. March 16, 2021

Lauren McFerran,

Chairman

William J. Emanuel,

Member

² If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting

of paper notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its employees by electronic means. 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."

John F. Ring, 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 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 layoff or otherwise discriminate against any of you because you engage in protected concerted activities or to discourage other employees from engaging in these activities.

WE WILL NOT fail or refuse to reinstate any of you because you engage in protected concerted activities or to discourage other employees from engaging in these activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL make Enrique Maza, Araceli Pulido, Awilda Jiminian, Digna Rivera, Betzaida Arellano, Dulce Maria Nunez, Eddy Lopez, Laura Escalante, Ramon Rosario Begazo, Socorro Hernandez, Tayde Flores, Jesus Rivera Lopez, Yolanda Arias, Veronica Rodriguez, Maria Santos, Mandy Williams, Jose Luis Garcia, Jonathan Garcia, Isiah Lopez, Diego Lopez, Denny Cruz, Fanny Alvarado, Carlos Martinez, and Paola de la Cruz whole for any loss of earnings and other benefits suffered as a result of their unlawful layoffs, less any net interim earnings, plus interest, and WE WILL also make them whole for reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate the affected employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 29, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a

report allocating the backpay award to the appropriate calendar year(s) for each employee.

WE WILL file with the Regional Director for Region 29 a copy of each backpay recipient's corresponding W-2 form(s) reflecting the backpay award.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to our unlawful layoffs of and our failure or refusal to reinstate Enrique Maza, Araceli Pulido, Awilda Jiminian, Digna Rivera, Betzaida Arellano, Dulce Maria Nunez, Eddy Lopez, Laura Escalante, Ramon Rosario Begazo, Socorro Hernandez, Tayde Flores, Jesus Rivera Lopez, Yolanda Arias, Veronica Rodriguez, Maria Santos, Mandy Williams, Jose Luis Garcia, Jonathan Garcia, Isiah Lopez, Diego Lopez, Denny Cruz, Fanny Alvarado, Carlos Martinez, and Paola de la Cruz and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the layoffs and failure or refusal to reinstate will not be used against them in any way.

ART TO FRAMES, INC.

The Board's decision can be found at www.nlr.gov/case/29-CA-266298 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

