U-Bee, Ltd. *and* Local 76, International Ladies' Garment Workers' Union, AFL–CIO. Case 13–CA–31153

November 29, 1994

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND BROWNING

Upon a charge filed by the Union on August 20, 1992, the General Counsel of the National Labor Relations Board issued a complaint on October 30, 1992, against U-Bee, Ltd., the Respondent, alleging that it violated Section 8(a)(3) and (1) of the National Labor Relations Act. On December 1, 1992, the Respondent filed an answer denying the complaint's unfair labor practice allegations.

Thereafter, on June 11, 1993, the Respondent entered into a settlement agreement which was approved by the Regional Director for Region 13 on June 22, 1993. The settlement agreement stated that:

> The Charged Party agrees that in case of noncompliance with any of the terms of this Settlement Agreement by the Charged Party, including but not limited to, failure to make timely installment payment of monies as set forth above, and after 15 days notice from the Regional Director of the National Labor Relations Board, on motion for summary judgment by the General Counsel, the Answer of the Charged Party shall be considered withdrawn. Thereupon, the Board shall issue an Order requiring the Charged Party to Show Cause why said Motion of General Counsel should not be granted. The Board may then, without necessity of trial, find all allegations of the Complaint to be true and make findings of fact and conclusions of law consistent with those allegations, adverse to the Charged Party, on all issues raised by the pleadings. The Board may then issue an Order providing full remedy for the violations so found as is customary to remedy such violations, including but not limited to the provisions of this Settlement Agreement. The parties further agree that a Board Order and a U.S. Court of Appeals Judgment may be entered hereon *ex parte*.

By letter dated November 19, 1993, the Respondent was requested by the Compliance Officer to comply with the terms of the settlement agreement by remitting payment to the discriminatee that had been due on November 1, 1993. The letter further stated that if the Region did not receive the payment by November 26, 1993, a collection action would commence against the Respondent with the filing of a Motion for Summary Judgment.

By letter dated December 8, 1993, the Respondent was again requested by the Compliance Officer to comply with the terms of the settlement agreement by remitting payment to the discriminatee that had been due on November 1 and December 1, 1993. The letter further stated that if the Region did not receive the payment by December 15, 1993, a collection action would commence against the Respondent with the filing of a Motion for Summary Judgment.

No payment being received from the Respondent by February 22, 1994, counsel for the General Counsel filed its original motion to transfer proceedings to the Board and Motion for Summary Judgment. The Board issued an order transferring the proceeding to the Board and Notice to Show Cause on March 3, 1994.

On March 7, 1994, counsel for the General Counsel filed a motion to withdraw the motions advising the Board that the Respondent had brought up to date its monthly obligations according to the terms of the settlement agreement. On March 9, 1994, the Board granted counsel for the General Counsel's motion without prejudice and the proceeding was remanded to the Regional Director for further action.

By certified letter dated June 8, 1994, the Respondent was requested by the Compliance Officer to comply with the terms of the settlement agreement by remitting payment to the discriminatee that was due on June 1, 1994. The letter further stated that if the Region did not receive payment by June 17, 1994, the Region would refile its Motion for Summary Judgment.

By certified letter dated July 8, 1994, the Respondent was again requested to comply with the terms of the settlement agreement by remitting payments to the discriminatees due on June 1 and July 1, 1994. The letter also stated that the Region would refile it Motion for Summary Judgment if the Respondent's payment was not received by July 15, 1994. Thereafter, the Respondent remitted the June 1, 1994 payment.

By certified letter dated August 11, 1994, the Respondent was again requested by the Compliance Officer to comply with the terms of the settlement agreement by remitting payments due to the discriminatee on July 1 and August 1, 1994, by August 19, 1994, or the Region would refile its Motion for Summary Judgment.

No such payment having been received from the Respondent, on October 31, 1994, the General Counsel filed the instant motion to transfer the proceedings to the Board and for summary judgment. On November 2, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

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

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted.

Here, according to the uncontroverted allegations in the Motion for Summary Judgment, although the Respondent initially filed an answer to the complaint, it subsequently entered into a settlement agreement which provided for the withdrawal of the answer in the event of noncompliance with the settlement agreement, and such noncompliance has occurred. Accordingly, we find that the Respondent's answer has been withdrawn by the terms of the settlement stipulation, and that, as further provided in the settlement stipulation, all the allegations of the complaint are true.[1]

Accordingly, 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 Chicago, Illinois, has been engaged in the manufacture of women's garments. During the calendar year ending December 31, 1991, the year preceding issuance of the complaint, the Respondent purchased and received at its Chicago, Illinois facility goods valued in excess of $50,000 from enterprises located within the State of Illinois, each of which had received these goods directly from points outside the State of Illinois. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

About August 10, 1992, the Respondent interrogated its employees about their union membership, activities, and sympathies, and threatened its employees with the Respondent's closure because they had engaged in protected concerted activities.

About August 12, 1992, the Respondent interrogated its employees about their union membership, activities, and sympathies, and solicited employees to give it union authorization cards signed by the employees.

About August 19, 1992, the Respondent interrogated its employees about their union membership, activities, and sympathies, and created an impression among its employees that their union activities were under surveillance by the Respondent.

About August 12 and 19, 1992, respectively, the Respondent discharged and has since failed to reinstate Margarite Olvera and Yolanda Cazares, because they assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing employees, and has been discriminating in regard to the hire, tenure, terms, and conditions of employment of its employees, thereby discouraging membership in a labor organization, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) 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.

Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by discharging Margarite Olvera and Yolanda Cazares, we shall order the Respondent to offer the discriminatees immediate and full reinstatement to their former jobs, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest thereon to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to expunge from its files any and all references to the unlawful discharges, and to notify the discriminatees in writing that this has been done. Finally, consistent with the terms of the settlement agreement, we shall require the Respondent to post the notice to employees in Spanish as well as English.

ORDER

The National Labor Relations Board orders that the Respondent, U-Bee, Ltd., Chicago, Illinois, its officers, agents, successors, and assigns, shall

[1] See *F L Trucking Corp.*, 313 NLRB 1172 (1994).

1. Cease and desist from

(a) Interrogating its employees about their union membership, activities, and sympathies; threatening employees with closure of its facility because they had engaged in protected concerted activities; creating an impression among its employees that their union activities were under surveillance by the Respondent; and soliciting its employees to give it union authorization cards that were signed by the employees.

(b) Discharging or otherwise discriminating against any employee for supporting Local 76, International Ladies' Garment Workers' Union, AFL–CIO, or any other labor organization.

(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) Offer Margarite Olvera and Yolanda Cazares immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the Respondent's discrimination against them, with interest, in the manner set forth in the remedy section of this decision.

(b) Remove from its records any reference to the discharge of Margarite Olvera and Yolanda Cazares and notify them in writing that this has been done.

(c) 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 amount of backpay due under the terms of this Order.

(d) Post at its facility in Chicago, Illinois, copies of the attached notice marked ''Appendix.''[2] Copies of the notice, in English and Spanish, on forms provided by the Regional Director for Region 13, 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.

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

[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 interrogate our employees about their union membership, activities, and sympathies; threaten employees with closure of our facility because they had engaged in protected concerted activities; create an impression among our employees that their union activities were under surveillance by us; and solicit our employees to give to us their union authorization cards that were signed by the employees.

WE WILL NOT discharge or otherwise discriminate against any employee for supporting Local 76, International Ladies' Garment Workers' Union, AFL–CIO, or any other labor organization.

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 offer Margarite Olvera and Yolanda Cazares immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and WE WILL make them whole for any loss of earnings and other benefits suffered as a result of our discrimination against them, with interest.

WE WILL remove from our records any reference to the discharge of Margarite Olvera and Yolanda Cazares and notify them in writing that this has been done.

U-BEE, LTD.