Starlite Cutting, Inc. and its alter ego Petal Pink Novelty, Inc.; and Joseph Fornaro, an Individual *and* Children's Dress, Infants' Wear, Housedress and Bathrobe Makers' Union, Local 91, International Ladies' Garment Workers' Union. Case 2-CA-18563

December 1, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND ZIMMERMAN

Upon a charge and an amended charge filed on February 2 and February 9, 1982,[1] respectively, by Children's Dress, Infants' Wear, Housedress and Bathrobe Makers' Union, Local 91, International Ladies' Garment Workers' Union, herein called the Union, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 2, issued a complaint on March 19, alleging that Starlite Cutting, Inc., and its *alter ego* Petal Pink Novelty, Inc., and Joseph Fornaro, an individual, herein called the Respondents, had engaged in and were engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5), (3), and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charges and the complaint and notice of hearing before an administrative law judge were duly served on the parties to the proceeding.[2] On August 24, the General Counsel, by counsel, filed with the Board a Motion for Summary Judgment and Issuance of Decision and Order, and a petition in support thereof, stating that Respondents had been advised that no answer to the complaint had been received, and that if no answer were filed by July 15, the General Counsel intended to move for summary judgment. The General Counsel further stated that Respondents filed no answer and did not request an extension of time to do so. On September 8, the Board issued an order transferring the proceeding to the Board and a notice to show cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondents failed to respond.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record herein, and pursuant to Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, we hereby deem Respondents to have admitted all the allegations of the complaint to be true, and we so find. Accordingly, we hereby grant the General Counsel's Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENTS

Respondent Starlite Cutting, Inc., a domestic corporation with an office and place of business in New York, New York, was engaged, until in or about September 1981, in cutting ladies' garments. Since in or about September 1981, Respondent Petal Pink Novelty, Inc., a domestic corporation with an office and place of business in New York, New York, has been engaged in cutting ladies' garments. In or about September 1981, Respondent Petal was established by Respondent Starlite as a subordinate instrument and disguised continuation of Respondent Starlite. Respondents Petal and Starlite are, and have been since September 1981, affiliated business enterprises with common owners, management, and supervisors; they have formulated and administered a common labor relations policy affecting the employees of each, have shared common premises and facilities, and have interchanged personnel with each other. Thus Respondent Petal has been, and is now, the alter ego of Respondent Starlite, and Respondents Starlite and Petal are a single employer within the meaning of the Act.

At all times material herein, Respondents Starlite and Petal have been employer-members of the Metropolitan Area Apparel Contractors' Association, Inc., herein called the Association, an organization of employers in the garment industry which, *inter alia*, represents its employer-members in collective bargaining with the Union. Annually, the employer-members of the Association, in the course and conduct of their business operations, collectively derive gross revenues in excess of $500,000, and collectively purchase and receive at their respective facilities products, goods, and materials valued in excess of $50,000 either directly from points outside the State in which their respective facilities are located, or from other enterprises located within the State in which their respective enterprises are located, each of which other enterprises receive the said products, goods, and materials from points outside the State in which said enterprises are located. Annually, the employer-members of the Association collectively sell and ship from their respective facilities products, goods, and materials valued in excess of $50,000 directly to points outside the State of New York, or to other

[1] All dates are in 1982, unless otherwise indicated.

[2] The original charge named and was served on Respondent Petal Pink Novelty, Inc. The amended charge, which was otherwise identical, also named and was served on Respondents Starlite Cutting and Fornaro.

enterprises located within the State of New York which themselves are directly engaged in interstate commerce and meet a Board standard for the assertion of jurisdiction, exclusive of indirect outflow or inflow.

We find, on the basis of the foregoing, that Respondents Starlite and Petal are, and have been at all times material herein, a single integrated business enterprise and a single employer within the meaning of the Act and engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Children's Dress, Infants' Wear, Housedress and Bathrobe Makers' Union, Local 91, International Ladies' Garment Workers' Union, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

At all times material herein, Respondent Joseph Fornaro has been Respondent Starlite's sole proprietor; he is now, and has been at all times material herein, a supervisor of Respondents Starlite and Petal within the meaning of Section 2(11) of the Act, and an agent of Respondents Starlite and Petal, acting on their behalf. At all times material herein, Rose Marie Bhaggan has been a supervisor of Respondent Petal within the meaning of Section 2(11) of the Act, and its agent acting on its behalf.

The following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All employees employed by the employer-members of the Metropolitan Area Apparel Contractors' Association, Inc., who are associated with the manufacture of the garments produced by them, including stretchers, cutters, and stock employees, but excluding foremen, foreladies, patternmakers, designers, and assistant managers.

At all times material herein, the Union has been the designated collective-bargaining representative of the employees of Respondents Starlite and Petal in the unit described above, and at all times material herein the Union has been recognized as such by Respondents Starlite and Petal. Such recognition has been embodied in successive collective-bargaining agreements between the Association and the Union, including an agreement effective by its terms for the period June 1, 1979, through May 31, 1982. The Union is the exclusive representative of the employees in the unit described above, within the meaning of Section 9(a) of the Act. Since in or about September 1981, Respondents have withdrawn recognition of the Union as the exclusive representative of their employees in the unit described, and have refused to adhere to the existing collective-bargaining agreement. By the aforesaid conduct Respondents have failed and refused, and are failing and refusing, to bargain collectively and in good faith with the representative of their employees, and thereby have been engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

On or about December 24, 1981, Respondents discharged their employee Domingo Candelaria, and since then have failed and refused to reinstate, or offer to reinstate, him to his former position. On or about December 31, 1981, Respondents discharged their employee Roberto Rubi, and since then have failed and refused to reinstate, or offer to reinstate, him to his former position. Respondents engaged in the aforesaid conduct because the named employees joined, supported, or assisted the Union, and in order to discourage employees from engaging in such activities or other concerted activities for the purpose of collective bargaining or other mutual aid or protection. By the aforesaid conduct, Respondents have discriminated, and are discriminating, in regard to the hire or tenure or terms or conditions of employment of their employees, in order to discourage membership in a labor organization, thereby engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

By all the aforesaid conduct, Respondents have interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed them in Section 7 of the Act, thereby engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondents set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(a)(1), (3), and (5) of the Act, we shall order that Respondents cease and

desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. We shall order Respondents to recognize and, upon request, bargain collectively and in good faith with the Union as the exclusive representative of all employees in the appropriate unit, and to apply, in the appropriate bargaining unit described above, the terms and conditions of employment contained in the collective-bargaining agreement between the Union and the Association effective through May 31, 1982, and any successor agreement. We shall also order Respondents to make their employees whole for any loss of earnings or other benefits they may have sustained as a result of Respondents' refusal to apply such terms and conditions of employment, and to reimburse the Union for any dues or other revenues it may have lost as a result of the unfair labor practice.

We shall also order Respondents to offer employees Domingo Candelaria and Roberto Rubi immediate and full reinstatement to their former positions or, if such positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and to make them whole for any loss of wages or other benefits either may have suffered as a result of the discrimination against him, and expunge from its files any reference to these discharges or other unlawful discipline against said employees.

The amounts due under this Order shall be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977),[3] except that if Respondents unlawfully withheld any contributions to employee benefit funds, the amount due such funds shall be computed in accordance with *Merryweather Optical Company*, 240 NLRB 1213, 1216, fn. 7 (1979).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Respondents Starlite Cutting, Inc., and Petal Pink Novelty, Inc., are a single employer within the meaning of the Act, and are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Children's Dress, Infants' Wear, Housedress and Bathrobe Makers' Union, Local 91, International Ladies' Garment Workers' Union, is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondents Starlite Cutting, Inc., and Petal Pink Novelty, Inc., are employer-members of the Metropolitan Area Apparel Contractors' Association, Inc.

4. All employees employed by the employer-members of the aforesaid Association who are associated with the manufacture of the garments produced by them, including stretchers, cutters, and stock employees, but excluding foremen, foreladies, patternmakers, designers, and assistant managers, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

5. At all times material herein, the aforesaid Union represented a majority of the employees in the above-described unit, and has been, and is, the exclusive representative of all such employees for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

6. By withdrawing recognition from the Union as the exclusive representative of its employees in the appropriate bargaining unit described above, and by refusing to apply the terms and conditions of employment contained in the collective-bargaining agreement between the Union and the Association, Respondents have failed and refused to bargain collectively and in good faith with the representative of their employees, and thereby have engaged in and are engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

7. By discharging employees Domingo Candelaria and Roberto Rubi, because those employees joined, supported, or assisted the Union, and in order to discourage employees from engaging in union or other concerted activities, Respondents have discriminated in regard to the hire or tenure or terms or conditions of employment of their employees in order to discourage membership in a labor organization, and thereby have engaged in and are engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

8. By the acts described above, Respondents have interfered with, restrained, and coerced employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby have engaged in and are engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

9. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondents, Starlite Cutting, Inc. and its alter ego Petal Pink Novelty, Inc., and Joseph Fornaro, New York,

[3] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

New York, their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to recognize and bargain in good faith with Children's Dress, Infants' Wear, Housedress and Bathrobe Makers' Union, Local 91, International Ladies' Garment Workers' Union, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All employees employed by the employer-members of the Metropolitan Area Apparel Contractors' Association, Inc., who are associated with the manufacture of garments produced by them, including stretchers, cutters, and stock employees, but excluding foremen, foreladies, patternmakers, designers, and assistant managers.

(b) Refusing to apply, in the appropriate bargaining unit described above, the terms and conditions of employment contained in the collective-bargaining agreement between the aforesaid Union and the aforesaid Association, effective through May 31, 1982, and any successor agreement.

(c) Discharging its employees because they join, support, or assist the Union or any other labor organization.

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

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

(a) Recognize and, upon request, bargain collectively and in good faith with Children's Dress, Infants' Wear, Housedress and Bathrobe Makers' Union, Local 91, International Ladies' Garment Workers' Union, as the exclusive bargaining representative of its employees in the appropriate unit described above, with respect to rates of pay, wages, hours, and other terms and conditions of employment.

(b) Apply, in the appropriate bargaining unit described above, the terms and conditions of employment contained in the collective-bargaining agreement between the aforesaid Union and the Metropolitan Area Apparel Contractors' Association, Inc., effective through May 31, 1982, and any successor agreement.

(c) Make whole the aforesaid Union and the employees in the appropriate bargaining unit described above, for any loss of earnings, benefits or revenues they may have sustained as a result of Respondents' failure to apply the terms and conditions of employment contained in the aforesaid collective-bargaining agreement between the aforesaid Union and the aforesaid Association, and any successor agreement, in the manner set forth in the remedy section above.

(d) Offer Domingo Candelaria and Roberto Rubi immediate and full reinstatement to their former positions or, if such positions are no longer available, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole for any loss of earnings or benefits which either may have sustained as a result of the discrimination against him, in the manner set forth in the remedy section above.

(e) Expunge from the records of Domingo Candelaria and Roberto Rubi any and all written reports, notations, or memoranda reflecting their discharge or other unlawful discipline, and notify each in writing that this has been done and that evidence of this discharge or other unlawful discipline will not be used as a basis for future discipline against him.

(f) Preserve and, upon 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.

(g) Post at their New York, New York, place of business copies of the attached notice marked "Appendix."[4] Copies of said notice, on forms provided by the Regional Director for Region 2, after being duly signed by Respondents' representative, shall be posted by Respondents immediately upon receipt thereof, and be maintained by them for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondents to ensure that said notices are not altered, defaced, or covered by any other material.

(h) Notify the Regional Director for Region 2, in writing, within 20 days from the date of this Order, what steps Respondents have taken to comply herewith.

[4] In the event that 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

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

WE WILL NOT refuse to recognize or bargain in good faith with Children's Dress, Infants' Wear, Housedress and Bathrobe Makers' Union, Local 91, International Ladies' Garment Workers' Union, as the representative of our employees in the following appropriate bargaining unit:

All employees employed by the employer-members of the Metropolitan Area Apparel Contractors' Association, Inc., who are associated with the manufacture of garments produced by them, including stretchers, cutters, and stock employees, but excluding foremen, foreladies, patternmakers, designers, and assistant managers.

WE WILL NOT refuse to apply, in the appropriate bargaining unit described above, the terms and conditions of employment contained in the collective-bargaining agreement between the Union and the Association named above, effective through May 31, 1982, and any successor agreement.

WE WILL NOT discharge or otherwise discriminate against our employees because they join, support, or assist Children's Dress, Infants' Wear, Housedress and Bathrobe Makers' Union, Local 91, International Ladies' Garment Workers' Union, or any other labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by the National Labor Relations Act.

WE WILL recognize Children's Dress, Infants' Wear, Housedress and Bathrobe Makers' Union, Local 91, International Ladies' Garment Workers' Union, as the exclusive bargaining representative of our employees in the appropriate bargaining unit described above, and WE WILL, upon request, bargain with that Union in good faith with respect to rates of pay, wages, hours, and other terms and conditions of employment.

WE WILL apply, in the appropriate bargaining unit described above, the terms and conditions of employment contained in the collective-bargaining agreement between the Union and the Association, named above, effective through May 31, 1982, and any successor agreement.

WE WILL make whole the Union and our employees in the appropriate bargaining unit described above, for any loss of earnings, benefits, or revenues they may have sustained as a result of our refusal to apply the terms and conditions of employment contained in any collective-bargaining agreement between the Union and the Association, named above.

WE WILL offer Domingo Candelaria and Roberto Rubi immediate and full reinstatement to their former positions or, if those positions are no longer available, to substantially equivalent positions, without prejudice to their rights and benefits previously enjoyed, and WE WILL make each of them whole for any loss of earnings or other benefits he may have sustained as a result of our discrimination against him, with interest.

WE WILL expunge from the records of Domingo Candelaria and Roberto Rubi any and all written reports, notations, or memoranda reflecting their discharge or other unlawful discipline against them, and WE WILL notify each of them in writing that this has been done and that evidence of this discharge or other unlawful discipline will not be used as a basis for future discipline against him.

STARLITE CUTTING, INC., AND ITS ALTER EGO PETAL PINK NOVELTY INC.; AND JOSEPH FORNARO