

**Lite Flight, Inc. and Jump Shack, Inc. and John B. Sherman and Chicago and Central States Joint Board, Amalgamated Clothing and Textile Workers Union, AFL-CIO. Case 7-CA-21990**

21 May 1984

**DECISION AND ORDER**

**BY MEMBERS ZIMMERMAN, HUNTER, AND DENNIS**

Upon a charge filed by the Union 14 April 1983 and an amended charge filed 20 May 1983, the General Counsel of the National Labor Relations Board issued a complaint 31 May 1983 against Lite Flite, Inc. and Jump Shack, Inc. and John B. Sherman, collectively called the Respondent, alleging violations of Section 8(a)(1), (3), and (5) of the National Labor Relations Act. Although properly served copies of the charge, amended charge, and complaint, the Respondent has failed to file an answer.<sup>1</sup>

On 19 September 1983 the General Counsel filed a Motion for Summary Judgment. On 23 September 1983 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 with 10 days from the service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 10 days of service "all the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board." The undisputed allegations in the Motion for Summary Judgment disclose that, by letters dated 29 June and 2 September 1983, the General Counsel's representatives notified the Re-

<sup>1</sup> A copy of the charge was served by certified mail on Lite Flite, Inc. A copy of the amended charge was served 20 May 1983, by certified mail, on Lite Flite, Inc., Jump Shack, Inc., and John B. Sherman. On 24 May 1983 a copy of the amended charge was served by certified mail on Sherman at his home address and returned to the Regional Office marked "refused." Also on 24 May 1983 a copy of the amended charge was served by ordinary mail on Sherman; this letter has not been returned to the Regional Office. On 1 September 1983 a copy of the amended charge was personally served on Lite Flite, Inc. and Sherman. A copy of the complaint was served by certified mail on the Respondent and also by ordinary mail on Sherman. Sherman's copy of the complaint served by certified mail was returned to the Regional Office marked "unclaimed"; the copy sent by ordinary mail has not been returned to the Regional Office.

spondent that unless an answer was received by 11 July and 9 September 1983, respectively, a Motion for Summary Judgment would be filed.

On 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**

Lite Flite and Jump Shack, Michigan corporation, each maintains its principal office and place of business at 29706 Grand River, in Farmington Hills, Michigan (the Farmington Hills facility), where each is engaged either in the manufacture and/or sale and distribution of parachutes, parachute harnesses, containers, sports bags, and related products.<sup>2</sup>

During the year ending 31 December 1982, Lite Flite manufactured, sold, and distributed at its Farmington Hills facility products valued in excess of \$100,000 of which products valued in excess of \$50,000 were furnished to Jump Shack. During the same period, Jump Shack had gross revenues from nonretail and retail sales in excess of \$50,000 and purchased materials valued in excess of \$50,000, and had the materials transported and delivered from outside Michigan directly to its Farmington Hills facility.

By virtue of John B. Sherman's being personally involved in the acts and conduct referred to in "II. Alleged Unfair Labor Practices," below, he is an employer within the meaning of Section 2(2) of the Act.<sup>3</sup>

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 Chicago and Central States Joint Board, Amalgamated Clothing and Textile Workers Union, AFL-CIO, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

**A. The Employer Relationship and the Union's Representative Status**

At all times material herein Lite Flite and Jump Shack have been affiliated business enterprises with common officers, ownership, directors, manage-

<sup>2</sup> Jump Shack maintains another facility in the State of Florida but only its Farmington Hills facility is involved in this proceeding.

<sup>3</sup> Member Dennis would not find John B. Sherman personally liable as she believes the allegations of the complaint are legally insufficient to warrant such a finding. See generally *Contris Packing Co.*, 268 NLRB 113 (1983), and cases cited therein.

ment, and a supervision; have formulated and administered a common labor policy affecting employees of said operations; have shared common facilities and equipment; have provided services for each other; and have interchanged personnel with each other; and Lite Flite has sold virtually all its produced goods to Jump Shack. Accordingly, we find that Lite Flite and Jump Shack constitute a single integrated business enterprise and a single or joint employer within the meaning of the Act, and that by virtue of their substantially identical management, labor and personnel policies, business purposes, operations, equipment, and supervision of employees of Lite Flite, at their shared Farmington Hills facility, and by virtue of the acts and conduct described below are alter egos of each other.

At all times material John B. Sherman has been the president of Lite Flite, and the president or vice president of Jump Shack, and E. Diane Sherman has been the secretary-treasurer of Lite Flite, and the president or vice president of Jump Shack. Each of the Shermans is an agent of the Respondent and a supervisor within the meaning of Section 2(11) of the Act.

The Union was certified 23 March 1983 as the collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time production employees, including cutters, laborers, sewers and inspectors employed by Lite Flite, Inc., at the Farmington Hills facility; but excluding all guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

#### *B. The 8(a)(1) Violations*

1. About 7 and 11 January 1983 the Respondent's agent John B. Sherman informed Lite Flite's employees that it would be futile for them to select the Union as their bargaining representative because the Farmington Hills facility would never be unionized, or would not operate as a unionized facility. Also on the latter date, Sherman coercively interrogated Lite Flite's employees concerning their membership in, sympathies for, and activities on behalf of the Union; attempted to poll them concerning their sympathies for and support of the Union without providing the legally required assurances and safeguards; threatened them with plant closure and subcontracting of bargaining unit work if they selected the Union as their bargaining representative; created the impression of surveillance of their union activities by stating to them that the Respondent was aware of which employees were behind the Union's organizing campaign; and at-

tempted to undermine the Union's organizing campaign by soliciting grievances from employees and implying that said grievances would be favorably resolved and by suggesting to them that they negotiate a collective-bargaining agreement directly with the Respondent.

2. About 11 January 1983 Sherman attempted to gerrymander the bargaining unit by declaring two bargaining unit employees to be supervisors.

3. About 24 January 1983 Sherman informed an employee of Lite Flite that the shop was being closed and bargaining unit work was being sent south because of problems the Respondent was having with the National Labor Relations Board as a result of the employees' attempts to have the Union become their bargaining representative.

4. About 10 February 1983 Sherman threatened plant closure by implying to the unit employees that continued production at the Farmington Hills facility was contingent on the employees abandoning their support of the Union.

We find that the Respondent, by its conduct described in paragraphs 1 through 4, violated Section 8(a)(1) of the Act.

#### *C. The 8(a)(3) and (1) Violations*

About 24 January and 29 April 1983, respectively, the Respondent laid off all employees in the bargaining unit. In between those dates, about 10 February 1983, it diverted bargaining unit work from the Farmington Hills facility to a plant in North Carolina.

The Respondent laid off the employees and diverted bargaining unit work because employees in the bargaining unit supported and assisted the Union and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection, and in order to discourage employees from engaging in such activities.

Accordingly, we find that the Respondent, by this conduct, discriminated against the bargaining unit employees in violation of Section 8(a)(3) and (1) of the Act.

#### *D. Refusals to Bargain*

Since about 23 March 1983 the Respondent, through John B. Sherman, its agent, has refused to meet and bargain with the Union with respect to wages, hours, and other terms and conditions of employment of the employees in the bargaining unit, despite written requests for such bargaining dated 23 and 30 March and 27 April 1983.

The Respondent has also failed and refused to provide the Union, as it requested by letter dated 23 March 1983, with information necessary for, and relevant to, the Union's performance of its function

as the exclusive collective-bargaining representative of the bargaining unit employees. The requested information included, inter alia, the birth dates, hiring dates, proper classifications, dates of last wage increase, and earnings histories of the unit employees.

Finally, about 29 April 1983, the Respondent laid off the bargaining unit employees without prior notice to the Union and without affording it an opportunity to meaningfully negotiate and bargain over the layoff and its effects on the unit employees.<sup>4</sup>

The Respondent engaged in these refusals to bargain in order to undermine the Union's status as the exclusive collective-bargaining representative of the employees in the bargaining unit.

We find that this conduct by the Respondent constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

#### CONCLUSIONS OF LAW

1. Lite Flite, Inc., Jump Shack, Inc., and John B. Sherman are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Chicago and Central States Joint Board, Amalgamated Clothing and Textile Workers Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. Lite Flite, Inc. and Jump Shack, Inc. constitute a single integrated business enterprise and a single or joint employer within the meaning of the Act and are alter egos of each other.

4. John B. Sherman and E. Diane Sherman are agents of the Respondent and supervisors within the meaning of Section 2(11) of the Act.

5. At all times material herein the Union has been and now is the exclusive bargaining representative of all employees in the following unit appropriate for the purpose of collective bargaining with respect to wages, hours, and other terms and conditions of employment:

All full-time and regular part-time production employees, including cutters, laborers, sewers and inspectors employed by Lite Flite, Inc. at the Farmington Hills facility; but excluding all guards and supervisors as defined in the Act.

6. By informing its employees that it would be futile for them to select the Union as their bargaining representative by stating that the Farmington Hills facility would never be unionized or would not operate as a unionized facility; by coercively

interrogating them concerning their membership in, sympathies for, and activities on behalf of the Union; by attempting to poll them concerning their support of the Union without providing the legally required assurances and safeguards; by threatening them with plant closure and subcontracting of bargaining unit work if they selected the Union as their bargaining representative; by creating the impression of surveillance of their union activities by stating to them that the Respondent was aware of which employees were behind the Union's organizing campaign; by attempting to undermine the Union's organizing campaign by soliciting grievances from the employees and implying that said grievances would be favorably resolved and by suggesting to them that they negotiate a collective-bargaining agreement directly with the Respondent; by attempting to gerrymander the bargaining unit by declaring two bargaining unit employees to be supervisors; by informing an employee that the shop was being closed and bargaining unit work was being sent south because of problems the Respondent was having with the National Labor Relations Board as a result of the employees' attempts to have the Union become their bargaining representative; and by threatening plant closure by implying to employees that continued production at the Farmington Hills facility was contingent on the employees' abandoning their support of the Union, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. By laying off all employees in the bargaining unit about 24 January 1983 and 29 April 1983, and by diverting bargaining unit work from the Farmington Hills facility to a plant in North Carolina about 10 February 1983, because its employees supported and assisted the Union and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection, and in order to discourage employees from engaging in such activities, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

8. By refusing since about 23 March 1983 to meet and bargain with the Union, as requested, with respect to wages, hours, and other terms and conditions of employment of employees in the bargaining unit; by failing and refusing since that date to provide the Union, as it requested by letter dated 23 March 1983, with information necessary for, and relevant to, the Union's performance of its function as the exclusive collective-bargaining representative of the bargaining unit employees; and by laying off bargaining unit employees about 29 April 1983, without prior notice to the Union and

<sup>4</sup> In view of the finding that the Respondent violated Sec. 8(a)(3) by laying off its employees, Member Hunter finds it unnecessary to pass on the 8(a)(5) allegation.

without affording it an opportunity to meaningfully negotiate and bargain over the layoff and its effects on the unit employees—all in order to undermine the Union's status as the exclusive collective-bargaining representative of the employees in the bargaining unit—the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

#### THE REMEDY

Having found that the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1), (3), and (5) of the Act, we shall order it to cease and desist therefrom, and to take certain affirmative action designed to effectuate the purposes of the Act.

With respect to the Respondent's unlawful diversion of bargaining unit work from its Farmington Hills facility to a plant in North Carolina, we shall order the Respondent to return the diverted bargaining unit work to the Farmington Hills facility.

With respect to the Respondent's unlawful layoff of the unit employees about 24 January 1983 and 29 April 1983, respectively, we shall order the Respondent to recall these employees to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights or privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits resulting from their unlawful layoffs, in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *Florida Steel Corp.*, 231 NLRB 651 (1977).<sup>5</sup>

As for the Respondent's unlawful refusal to meet and bargain with the Union, we shall order the Respondent, on request, to bargain with the Union regarding wages, hours, and other terms and conditions of employment of the unit employees and, if an understanding is reached, to embody the understanding in a signed agreement. We shall also order the Respondent to provide the Union with the information it requested 23 March 1983 and, on request, to bargain with the Union regarding the 29 April 1983 layoff of unit employees and its effect on those employees and, if an understanding is reached, to embody the understanding in a signed agreement.

#### ORDER

The National Labor Relations Board orders that the Respondent, Lite Flite, Inc. and Jump Shack, Inc. and John B. Sherman, Farmington Hills,

Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Informing its employees that it would be futile for them to select Chicago and Central States Joint Board, Amalgamated Clothing and Textile Workers Union, AFL-CIO, or any other labor organization, as their bargaining representative by stating that the Farmington Hills facility would never be unionized or would not operate as a unionized facility.

(b) Interrogating its employees concerning their membership in, sympathies for, and activities on behalf of the Union.

(c) Attempting to poll its employees concerning their support of the Union without providing the legally required assurances and safeguards.

(d) Threatening its employees with plant closure and subcontracting of bargaining unit work if they select the Union as their bargaining representative.

(e) Creating the impression of surveillance of its employees' union activities by stating to them that it was aware of which employees were behind the Union's organizing campaign.

(f) Attempting to undermine the Union's organizing campaign by soliciting grievances from its employees and implying that said grievances would be favorably resolved and by suggesting to them that they negotiate a collective-bargaining agreement directly with the Respondent.

(g) Attempting to gerrymander the bargaining unit described below by declaring bargaining unit employees to be supervisors.

(h) Informing employees that the shop was being closed and bargaining unit work was being sent south because of problems it was having with the National Labor Relations Board as a result of the employees' attempts to have the Union become their bargaining representative.

(i) Threatening plant closure by implying to employees that continued production at the Farmington Hills facility was contingent on the employees' abandoning their support of the Union.

(j) Discriminating against its employees by laying off all employees in the bargaining unit described below, and diverting bargaining unit work from the Farmington Hills facility to a plant in North Carolina, because its employees supported and assisted the Union and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection, and in order to discourage employees from engaging in such activities.

(k) Refusing to meet and bargain with the Union as the exclusive representative of its employees in the appropriate bargaining unit described below

<sup>5</sup> See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).

concerning their wages, hours, and other terms and conditions of employment. The appropriate unit is:

All full-time and regular part-time production employees, including cutters, laborers, sewers and inspectors employed by Lite-Flite, Inc. at the Farmington Hills facility; but excluding all guards and supervisors as defined in the Act.

(l) Failing and refusing to provide the Union, on request, with information necessary for, and relevant to, the Union's performance of its function as the exclusive collective-bargaining representative of the bargaining unit employees.

(m) Laying off employees in the bargaining unit without prior notice to the Union and without affording the Union an opportunity to meaningfully negotiate and bargain over the layoff and its effects on the unit employees.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act.

(a) Return the bargaining unit work unlawfully diverted from its Farmington Hills facility back to its Farmington Hills facility.

(b) Recall the employees in the bargaining unit who were laid off as a result of their union activities or the unlawful diversion of bargaining unit work to their former jobs or, if those jobs no longer exist, to substantially equivalent positions of employment, without prejudice to their seniority or other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits resulting from their layoffs in the manner set forth in "The Remedy."

(c) On request, bargain in good faith with the Union as the exclusive bargaining representative of the employees in the bargaining unit regarding their wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(d) On request, provide the Union with the information it requested 23 March 1983 or any other information which is relevant to its function as the exclusive representative of the bargaining unit employees.

(e) On request, bargain in good faith with the Union regarding the 29 April 1983 layoff of bargaining unit employees and its effect on these employees and, if an understanding is reached, embody the understanding in a signed agreement.

(f) Post at its facility in Farmington Hills, Michigan, copies of the attached notice marked "Appendix."<sup>6</sup> Copies of said notice, on forms provided by

the Regional Director for Region 7, 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 said notices are not altered, defaced, or covered by any other material.

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

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 inform our employees that it would be futile for them to select Chicago and Central States Joint Board, Amalgamated Clothing and Textile Workers Union, AFL-CIO, or any other labor organization, as their bargaining representative by stating that the Farmington Hills facility would never be unionized or would not operate as a unionized facility.

WE WILL NOT interrogate our employees concerning their membership in, sympathies for, and activities on behalf of the Union.

WE WILL NOT attempt to poll our employees concerning their support of the Union without providing the legally required assurances and safeguards.

WE WILL NOT threaten our employees with plant closure and subcontracting of bargaining unit work if they select the Union as their bargaining representative.

WE WILL NOT create the impression of surveillance of our employees' union activities by stating to them that we were aware of which employees were behind the Union's organizing campaign.

WE WILL NOT attempt to undermine the Union's organizing campaign by soliciting grievances from our employees and implying that said grievances would be favorably resolved and by suggesting to them that they negotiate a collective-bargaining agreement directly with us.

<sup>6</sup> 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

**WE WILL NOT** attempt to gerrymander the bargaining unit described below by declaring bargaining unit employees to be supervisors.

**WE WILL NOT** inform employees that the shop was being closed and bargaining unit work was being sent south because of problems we were having with the National Labor Relations Board as a result of the employees' attempts to have the Union become their bargaining representative.

**WE WILL NOT** threaten plant closure by implying to employees that continued production at the Farmington Hills facility is contingent on the employees' abandoning their support of the Union.

**WE WILL NOT** discriminate against our employees by laying off all employees in the bargaining unit described below, and diverting bargaining unit work from the Farmington Hills facility to a plant in North Carolina, because our employee supported and assisted the Union and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection, and in order to discourage employees from engaging in such activities.

**WE WILL NOT** refuse to meet and bargain with the Union as the exclusive representative of our employees in the appropriate bargaining unit described below concerning their wages, hours, and other terms and conditions of employment. The appropriate unit is:

All full-time and regular part-time production employees, including cutters, laborers, sewers and inspectors employed by Lite-Flite, Inc. at the Farmington Hills facility; but excluding all guards and supervisors as defined in the Act.

**WE WILL NOT** fail and refuse to provide the Union, on request, with information necessary for, and relevant to, the Union's performance of its function as the exclusive collective-bargaining representative of the bargaining unit employees.

**WE WILL NOT** lay off employees in the bargaining unit without prior notice to the Union and without affording the Union an opportunity to meaningfully negotiate and bargain over the layoff and its effects on the unit employees.

**WE WILL NOT** in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

**WE WILL** return the bargaining unit work unlawfully diverted from our Farmington Hills facility back to our Farmington Hills facility.

**WE WILL** recall the employees in the bargaining unit who were laid off as a result of their union activities or the unlawful diversion of bargaining unit work to their former jobs or, if those jobs no longer exist, to substantially equivalent position of employment, without prejudice to their seniority or other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits resulting from their layoffs, less any net interim earnings, plus interest.

**WE WILL**, on request, bargain in good faith with the Union as the exclusive bargaining representative of the employees in the bargaining unit regarding their wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

**WE WILL**, on request, provide the Union with the information it requested 23 March 1983 or any other information which is relevant to its function as the exclusive representative of the bargaining unit employees.

**WE WILL**, bargain in good faith with the Union regarding the 29 April 1983 layoff of bargaining unit employees and its effect on those employees and, if an understanding is reached, embody the understanding in a signed agreement.

LITE FLITE, INC. AND JUMP SHACK,  
INC. AND JOHN B. SHERMAN