

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ACADEMY OF SCIENTIFIC HAIR
DESIGN, INC.

and

Case 15--CA--11117

ROSE MOORE GAMMEL, an Individual

DECISION AND ORDER

By Chairman Stephens and members Cavanaugh andweeney
Upon a charge filed by Rose Moore Gammel, an individual, on January 22,

1990, and an amended charge filed on March 13, 1990, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing on March 5, 1990, against Academy of Scientific Hair Design, Inc., the Respondent, alleging that it has violated Section 8(a)(1) of the National Labor Relations Act. Subsequently, the Respondent filed answers dated March 27 and 28, 1990, admitting in part and denying in part the allegations of the complaint. Subsequently, on August 1, 1990, the Respondent by letter withdrew its previously filed answers.

On August 8, 1990, the General Counsel filed a motion to transfer case and continue case before the Board and a Motion for Summary Judgment, with exhibits attached. On August 14, 1990, as corrected on August 17, 1990, 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 of 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, although the Respondent initially filed answers to the complaint, it subsequently withdrew those answers. The Respondent's withdrawal of its answers has the same effect as a failure to file an answer.¹ In such circumstances, the allegations of the complaint must be deemed admitted to be true. 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 Louisiana corporation, with an office and place of business in New Orleans, Louisiana, has been engaged in the operation of a school teaching hairstyling and related subjects and in the retail sale of hairstyling and related services. During the 12-month period ending February 28, 1990, the Respondent, in the course and conduct of its business operations, had gross revenues in excess of \$500,000. During the same period,

¹ See Maislin Transport, 274 NLRB 529 (1985).

the Respondent, in the course and conduct of its operations, purchased and received at its facility goods, products, and materials valued in excess of \$5000 directly from points outside the State of Louisiana. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. Alleged Unfair Labor Practices

About September 1, 1989, the Respondent promulgated and thereafter maintained the following rule:

(8) Distributing written or printed matter of any description on the premises without written management permission.

About November 29, 1989, the Respondent, through its secretary, supervisor, and agent Laretta Moore, interrogated its employees regarding their protected concerted activities and the protected concerted activities of their fellow employees, and threatened its employees with discharge because they engaged in protected concerted activities.

About November 29, 1989, the Respondent's employee, Rose Moore Gammel, concertedly complained to the Respondent regarding the wages, hours, and working conditions of the Respondent's employees. About November 30, 1989, the Respondent discharged Rose Moore Gammel because she had engaged in protected concerted activity 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. We find that by its acts on September 1 and November 29 and 30, 1989, as set out above, the Respondent has interfered with, restrained, and coerced its employees in the exercise of their Section 7 rights and the Respondent has thereby violated Section 8(a)(1) of the Act.

Conclusions of Law

By promulgating and maintaining an overbroad no-distribution rule, by interrogating its employees regarding their protected concerted activities and the protected concerted activities of their fellow employees, by threatening its employees with discharge because they engaged in protected concerted activities, and by discharging Rose Moore Gammel because she concertedly complained to the Respondent regarding the wages, hours, and working conditions of the Respondent's employees, the Respondent has engaged in unfair labor practices that affect commerce within the meaning of Section 8(a)(1) 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 necessary to effectuate the policies of the Act.² Having found that the Respondent unlawfully discharged employee Rose Moore Gammel, we shall order the Respondent to make her whole for any loss of earnings and other benefits she may have suffered by reason of the Respondent's unlawful discharge and, in the event the Respondent reopens, to offer her immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent one, without prejudice to her seniority or any other rights or privileges previously enjoyed. Backpay shall be computed in the manner 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

² In view of the General Counsel's representation that the Respondent is "currently out of business," the General Counsel does not currently appear to seek Gammel's reinstatement and does seek the mailing of the notice. Accordingly, we shall provide for mailing the notice and for reinstatement for Gammel only in the event the Respondent reopens.

Retarded, 283 NLRB 1173 (1987). Additionally, we shall order the Respondent to remove from its files any references to the unlawful discharge and to notify Gammel in writing that this has been done and that evidence of the unlawful discharge will not be used against her in any way.

ORDER

The National Labor Relations Board orders that the Respondent, Academy of Scientific Hair Design, Inc., New Orleans, Louisiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Promulgating and maintaining an overbroad no-distribution rule.

(b) Interrogating employees regarding their protected concerted activities and the protected concerted activities of their fellow employees.

(c) Threatening employees with discharge because they engaged in protected concerted activities.

(d) Discharging or otherwise discriminating against an employee because she has engaged in protected concerted activities.

(e) 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) Rescind its overbroad no-distribution rule.

(b) Make whole Rose Moore Gammel for any loss of earnings and other benefits suffered as a result of the discrimination against her, in the manner set forth in the remedy section of this decision and, in the event the Respondent reopens, to offer her immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent one,

without prejudice to her seniority or any other rights or privileges previously enjoyed.

(c) Remove from its files any reference to the unlawful discharge of Gammel and notify her in writing that this has been done and that this unlawful action will not be used against her in any way.

(d) 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.

(e) Mail a copy of the attached notice marked 'Appendix'³ to all employees who were employed by the Respondent immediately prior to the Respondent's cessation of operations. Copies of the notice, on forms provided by the Regional Director for Region 15, shall be mailed immediately upon receipt.

³ 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 promulgate and maintain an overbroad no-distribution rule.

WE WILL NOT interrogate employees regarding their protected concerted activities and the protected concerted activities of their fellow employees.

WE WILL NOT threaten employees with discharge because they engaged in protected concerted activities.

WE WILL NOT discharge or otherwise discriminate against you because you have engaged in protected concerted activities.

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 rescind our overbroad no-distribution rule.

WE WILL make Rose Moore Gammel whole for any loss of earnings and other benefits resulting from her unlawful discharge, less any net interim earnings, plus interest, and in the event the Respondent reopens, WE WILL offer her immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent one, without prejudice to her seniority or any other rights or privileges previously enjoyed.

