

**Sharlyn Fashions, Inc. and Local 251, International
Ladies' Garment Workers' Union, AFL-CIO.
Case 22-CA-18167**

April 15, 1992

DECISION AND ORDER

**BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH**

Upon a charge filed by the Union on December 11, 1991, the General Counsel of the National Labor Relations Board issued a complaint against Sharlyn Fashions, Inc., the Respondent, alleging that it has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) and Section 8(d) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On March 16, 1992, the General Counsel filed a Motion for Summary Judgment. On March 18, 1992, 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." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Regional attorney for Region 22, by letter dated February 18, 1992, notified the Respondent that unless an answer was received by the close of business on February 25, 1992, a Motion for Default Judgment would be filed. To date, no answer has been filed by the Respondent.

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 corporation with an office and place of business in East Newark, New Jersey, has been engaged in the wholesale sale and distribution of garments and related products. During a 12-month period ending July 1991 the Respondent, in the course and conduct of its business operations, purchased and received at its East Newark, New Jersey facility products, goods, and materials valued in excess of \$50,000 directly from points outside the State of New Jersey. We find that the Respondent is an employer engaged in commerce within the meaning of Section 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

On or about January 1, 1977, a majority of the Respondent's employees in an appropriate bargaining unit designated and selected the Union as their representative for purposes of collective bargaining and, since at least 1977, the Union has been the unit employees' exclusive bargaining representative within the meaning of Section 9(a) for purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment. The Respondent's recognition of the Union as the exclusive bargaining representative of the unit employees has been embodied in successive collective-bargaining agreements between the parties. The appropriate bargaining unit consists of:

All full-time and part-time cutters, ironers, pinners, examiners, packers and shipping and receiving employees, employed at Respondent's East Newark, New Jersey facility, but excluding all other employees, guards and supervisors as defined in the Act.

By letter dated December 9, 1991, the Union requested negotiations with the Respondent concerning the effects of the shutdown of its facility located at 900 Passaic Avenue, East Newark, New Jersey, which is a mandatory subject of bargaining, and, since on or about that date, the Respondent has failed and refused and continues to fail and refuse to do so. The Respondent's refusal to bargain with the Union over the effects of the shutdown of its East Newark facility constitutes unfair labor practices within the meaning of Section 8(a)(1) and (5) and Section 8(d) of the Act.

CONCLUSIONS OF LAW

By refusing to bargain with the Union concerning the effects of the shutdown of its facility at 900 Passaic Avenue, East Newark, New Jersey, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and 8(d), 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.

To remedy the Respondent's unlawful failure and refusal to bargain with the Union about the effects of the shutdown of its facility at 900 Passaic Avenue, East Newark, New Jersey, we shall order it to bargain with the Union, on request, concerning the effects of that decision. To ensure that meaningful bargaining occurs and to effectuate the policies of the Act, the Respondent shall be ordered to pay its employees backpay at the rate of normal wages when last in the Respondent's employ from 5 days after the date of this decision until the occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on the effects on unit employees of the shutdown of its East Newark facility; (2) a bona fide impasse in bargaining; (3) the failure of the Union to request bargaining within 5 days of the Respondent's notice of its desire to bargain with the Union; (4) the subsequent failure of the Union to bargain in good faith; but in no event shall the sum paid to any of these employees exceed the amount the employees would have earned as wages from the date on which the Respondent shut down its East Newark, New Jersey facility to the time the employee secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain, whichever occurs sooner; provided, however, that in no event shall this sum be less than these employees would have earned for a 2-week period at a rate of their normal wages when last in the Respondent's employ. See *Transmarine Corp.*, 170 NLRB 389 (1968). Interest on all sums shall be paid in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Finally, in view of the shutdown of its East Newark facility, the Respondent shall be required to mail copies of the Board's notice to all unit employees.

ORDER

The National Labor Relations Board orders that the Respondent, Sharlyn Fashions, Inc., East Newark, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively with Local 251, International Ladies' Garment Workers' Union, AFL-CIO, as the exclusive collective-bargaining representative of the employees in the bargaining unit about the effects of the Respondent's shutdown of its facility at 900 Passaic Avenue, East Newark, New Jersey, on unit employees. The bargaining unit consists of:

All full-time and part-time cutters, ironers, pinners, examiners, packers and shipping and receiving employees, employed at Respondent's East Newark, New Jersey facility, but excluding all other employees, guards and supervisors as defined in the Act.

(b) 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) On request, bargain with the Union over the effects on unit employees of the shutdown of its East Newark, New Jersey facility, reduce to writing any agreement reached as a result of such bargaining, and pay limited backpay in the manner set forth in the remedy section of this Decision and Order, with interest.

(b) 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.

(c) Mail signed and dated copies of the attached notice marked "Appendix"¹ to the Union and to all unit employees employed as of the date the Respondent shut down its East Newark, New Jersey facility. Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be mailed immediately upon receipt by the Respondent to the last known address of each employee.

¹ 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."

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

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 fail and refuse to bargain with Local 251, International Ladies' Garment Workers' Union, AFL-CIO, as the exclusive collective-bargaining representative of employees in the bargaining unit about the effects of the shutdown of our facility at 900 Passaic Avenue, East Newark, New Jersey, on the unit employees. The appropriate bargaining unit includes:

All full-time and part-time cutters, ironers, pinners, examiners, packers and shipping and receiving employees, employed at Respondent's East Newark, New Jersey facility, but excluding all other employees, guards and supervisors as defined in the Act.

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, on request, bargain in good faith with the Union regarding the effects of the shutdown of our East Newark, New Jersey facility on the unit employees, and will put in writing any agreement reached as a result of such bargaining, and WE WILL pay unit employees limited backpay as required by the National Labor Relations Board, with interest.

SHARLYN FASHIONS, INC.