

**Morel Jewelry Displays, Inc. and Local No. 2682,
United Brotherhood of Carpenters and Joiners
of America, AFL-CIO. Case 2-CA-25478**

July 22, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

Upon a charge and amended charge filed by the Union, the General Counsel of the National Labor Relations Board issued a complaint on April 16, 1992, against Morel Jewelry Displays, Inc., the Respondent, alleging that it has violated Section 8(a)(1) 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.

On June 19, 1992, the General Counsel filed a Motion for Summary Judgment. On June 23, 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 by letter dated May 12, 1992, the Region notified the Respondent that unless an answer was received by close of business May 20, 1992, a Motion for Summary Judgment would be filed.

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 New York corporation, with an office and place of business at 517 West 29th Street, New York, New York, has been engaged in the manufacture and wholesale sale of retail store fixture display case inserts and related products. During the 1991 calendar year, the Respondent, in the course and conduct of its business operations, derived gross revenues in excess of \$500,000. During the 1991 calendar year, the Respondent purchased and received at its facility, fabric and other goods and materials valued in excess of \$50,000 directly from firms located outside the State of New York. 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

Since about 1972, the Respondent has recognized the Union as the exclusive collective-bargaining representative of the employees in the following unit which is appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time factory workers engaged in the production, shipping and receiving of goods employed at the Respondent's facility; but excluding all foremen, porters, messengers, errand persons and guards and supervisors as defined in the Act.

This recognition has been embodied in successive collective-bargaining agreements the most recent of which was effective by its terms for the period October 1, 1988, to September 30, 1991. At all times since about 1972, the Union has been the exclusive collective-bargaining representative of the employees in the bargaining unit pursuant to Section 9(a) of the Act.

On or about November 14, 1991, the Union and the Respondent reached a full and complete agreement with respect to terms and conditions of employment of the employees in the unit by agreeing to extend the prior collective-bargaining agreement for a 1-year period to be effective from October 1, 1991, through September 30, 1992, to be incorporated as a successor collective-bargaining agreement between the Union and the Respondent.

Since on or about November 16, 1991, the Union has requested that the Respondent execute a written contract embodying the November 14, 1991 agreement. Since on or about November 16, 1991, the Respondent has failed and refused to execute a written contract embodying the November 14, 1991 agreement.

Since on or about June 18, 1991, the Respondent has failed to continue in effect all the terms and

conditions of the November 14, 1991 agreement by failing and refusing to remit union dues to the Union. Since on or about December 1991, the Respondent has failed and refused to continue in effect all the terms and conditions of the November 14, 1991 agreement by failing and refusing to pay its employees the wages and benefits incorporated in the November 14, 1991 agreement and by failing and refusing to remit monetary payments to the Union Security Pension Fund and the Union Security Trust Fund, as required by the November 14, 1991 agreement. The Respondent engaged in these acts without the consent of the Union. The terms and conditions of employment described above are mandatory subjects of bargaining.

On or about February 5, 1992, and again, on or about February 7, 1992, the Respondent bypassed the Union and dealt directly with its employees in the bargaining unit with respect to their terms and conditions of employment.

CONCLUSIONS OF LAW

1. By its failure on and after November 16, 1991, to execute a written contract embodying its agreement with the Union, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

2. By its failure on and after June 18, 1991, to continue in effect all the terms and conditions of its November 14, 1991 agreement with the Union by failing and refusing to remit union dues to the Union, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

3. By its failure in or about December 1991, to continue in effect all the terms and conditions of its November 14, 1991 agreement with the Union by failing and refusing to pay its employees the wages and benefits incorporated in that agreement and by failing and refusing to remit monetary payments to the Union Security Pension Fund and the Union Security Trust Fund, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

4. By bypassing the Union and dealing directly with unit employees regarding their terms and conditions of employment on or about February 5, 1992, and on or about February 7, 1992, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) 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.

We shall order that the Respondent execute the agreement reached with the Union on November 14, 1991, to extend the terms and conditions of employment of the employees in the unit pursuant to the 1988--1991 contract for a 1-year period to be effective from October 1, 1991, through September 30, 1992.

We shall order the Respondent to continue all the terms and conditions of employment set forth in that agreement by remitting union dues to the Union, paying wages and benefits pursuant to the contract, and remitting monetary payments to the pension and trust funds¹ all with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

The Respondent shall also make its employees whole for any losses attributable to its failure to make the contractually required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. 661 F.2d 940 (9th Cir. 1981), with interest as prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Morel Jewelry Displays, Inc., New York, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with Local No. 2682, United Brotherhood of Carpenters and Joiners of America, AFL-CIO as the exclusive representative of its employees in the bargaining unit by

(1) failing to execute a written contract embodying its November 14, 1991 agreement with the Union to extend the prior collective-bargaining agreement for a 1-year period to be effective from October 1, 1991, through September 30, 1992.

(2) failing to continue in effect all the terms and conditions of its November 14, 1991 agreement by

(i) failing and refusing to remit union dues to the Union;

¹ Because the provisions of employee benefit fund agreements are variable and complex, we leave to the compliance stage the question of whether the Respondent must pay any additional amounts into the benefit funds in order to satisfy our "make whole" remedy. See *Merryweather Optical Co.*, 240 NLRB 1213, 1216 (1979).

(ii) failing and refusing to pay its employees the applicable wages and benefits; and

(iii) failing and refusing to remit monetary payments to the Union Security Pension Fund and the Union Security Trust Fund.

(3) bypassing the Union and dealing directly with its employees in the bargaining unit with respect to their terms and conditions of employment.

(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) Execute a written contract embodying the November 14, 1991 agreement with the Union to extend the prior collective-bargaining agreement for a 1-year period to be effective from October 1, 1991, through September 30, 1992.

(b) Continue in full force and effect all the terms and conditions of the November 14, 1991 agreement with the exclusive representative of the employees in the following appropriate unit:

All full-time and regular part-time factory workers engaged in the production, shipping and receiving of goods employed at the Respondent's facility; but excluding all foremen, porters, messengers, errand persons and guards and supervisors as defined in the Act.

(c) Make the Union, unit employees, and the union funds whole by making all payments required by the November 14, 1991 agreement including remitting union dues to the Union, paying unit employees all contractual wages and benefits, and making monetary payments to the Union Security Pension Fund and the Union Security Trust Fund in the manner prescribed in the remedy section of this decision.

(d) Recognize and bargain with the Union as the exclusive representative of the employees in the unit with regard to their terms and conditions of employment.

(e) 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 amounts due under the terms of this Order.

(f) Post at its facility in New York, New York, copies of the attached notice marked "Appendix."²

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."

Copies of the notice, on forms provided by the Regional Director for Region 2, 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.

(g) 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 collectively with Local No. 2682, United Brotherhood of Carpenters and Joiners of America, AFL-CIO as the exclusive representative of the employees in the following bargaining unit:

All full-time and regular part-time factory workers engaged in the production, shipping and receiving of goods employed at the Respondent's facility; but excluding all foremen, porters, messengers, errand persons and guards and supervisors as defined in the Act.

WE WILL NOT fail and refuse to execute our agreement with the Union to extend the terms and conditions of employment of the employees in the unit pursuant to the 1988-1991 contract for the further period October 1, 1991, through September 30, 1992.

WE WILL NOT fail and refuse to continue in effect all the terms and conditions of our agreement to extend the contract by failing and refusing to remit union dues to the Union; failing and refusing to pay our employees the applicable wages and benefits; and failing and refusing to remit monetary payments to the Union Security Pension Fund and the Union Security Trust Fund.

WE WILL NOT bypass the Union and deal directly with our employees with respect to their terms and conditions of employment.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exer-

cise of the rights guaranteed you by Section 7 of the Act.

WE WILL NOT execute a contract embodying our agreement with the Union to extend the terms of the 1988-1991 contract for the period October 1, 1991, through September 30, 1992.

WE WILL continue in full force and effect all the terms and conditions of our agreement with the Union to extend the contract by remitting union dues to the Union, paying our employees the applicable wages and benefits, and remitting monetary payments to the Union Security Pension Fund and the Union Security Trust Fund.

WE WILL recognize and bargain with the Union as the exclusive representative of the employees in the unit with regard to the employees' terms and conditions of employment.

WE WILL make our unit employees whole for any loss of benefits or other expenses suffered as a result of our failure to remit union dues, pay contractual wages and benefits, and remit monetary payments to the Union Security Pension Fund and the Union Security Trust Fund.

MOREL JEWELRY DISPLAYS, INC.