

**Body Fit of Puerto Rico, Inc. and Sindicato Internacional de Trabajadores de Vestuario Fememino, I.L.G.W.U., AFL-CIO, Puerto Rico District Council, Local 600.** Cases 24-CA-6346, 24-CA-6395, and 24-CA-6440

July 22, 1992

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND  
RAUDABAUGH

Upon a charge filed by the Union on June 6, 1991, in Case 24-CA-6346, the General Counsel of the National Labor Relations Board issued a complaint on July 19, 1991, against Body Fit of Puerto Rico, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act.<sup>1</sup> On August 3 (1991), the Respondent filed a response to the complaint denying that it violated the Act.<sup>2</sup>

Following the Union's September 18, 1991 charge in Case 24-CA-6395, which it amended on November 14 and 27, 1991, the General Counsel issued a consolidated amended complaint in Cases 24-CA-6346 and 24-CA-6395 on November 29, 1991, alleging that the Respondent violated Section 8(a)(5) and (1) of the Act.<sup>3</sup> The Respondent was served with the charge, as amended, and the consolidated amended complaint. The November 27, 1991 amended charge in Case 24-CA-6395 and the consolidated amended complaint were also served on the Respondent's trustee in bankruptcy, Diego Ferrer;<sup>4</sup> however, no answer was filed.

On November 27, 1991, the Union filed a charge in Case 24-CA-6440, which it subsequently amended. On January 31, 1992,<sup>5</sup> the General Counsel issued a second consolidated amended complaint in Cases 24-CA-6346, 24-CA-6395, and 24-CA-6440 alleging that the Respondent violated Section 8(a)(1), (3), and (5) of the Act.<sup>6</sup> Although the Re-

spondent, its attorney, and its trustee in bankruptcy were served with copies of the charge, as amended, and the second consolidated amended complaint, no answer was filed.

On February 27, 1992, the Regional attorney wrote the Respondent's bankruptcy trustee, Ferrer, that no answer had been received to the November 23, 1991 consolidated amended complaint or to the January 31, 1992 second consolidated amended complaint. The Region advised Ferrer that as the Respondent was in Chapter 7 bankruptcy proceedings, he was responsible for filing an answer. The Region further informed Ferrer that if an answer was not received by March 9, a Motion for Summary Judgment would be filed with the Board.

Because the February 27 letter to Ferrer was incorrectly addressed, the Regional attorney again wrote the bankruptcy trustee on March 17, enclosing the February 27 letter and the second consolidated amended complaint. Although the trustee was served with the March 17 materials, no answer was filed.

On March 17, the Regional Director issued an Order postponing the scheduled hearing in Cases 24-CA-6395 and 24-CA-6440 because no answer had been filed. The Respondent, its attorney, and Ferrer were served with the March 17 Order.

On April 16, the General Counsel filed a Motion for Summary Judgment, with attached exhibits. The General Counsel requests in his motion that summary judgment be granted for all allegations in the consolidated amended and second consolidated amended complaints which the Respondent did not deny in its August 31, 1991 answer. Contingent on the Board granting summary judgment, the General Counsel further moves to withdraw the allegations in the July 19, 1991 complaint on the basis that these allegations were mooted by the Respondent's cessation of operations, and to permit the entry of a final order of summary judgment.

On April 20, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the Motion for Summary Judgment should not be granted. No response was filed. 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.

<sup>1</sup> The complaint alleges that, contrary to established past practice, the Respondent denied the Union access to its facility to meet with unit employees without notifying the Union or providing it with a reasonable opportunity to bargain.

<sup>2</sup> The response followed the Regional Director's August 9, 1991 letter to the Respondent stating that summary judgment would be sought if an answer was not filed by August 23, 1991.

<sup>3</sup> In addition to the allegations discussed in fn. 1, the consolidated amended complaint alleged that the Respondent unlawfully withdrew recognition from the Union and violated Sec. 8(a)(1) by threatening and reprimanding ("chastising") employees because of their union membership and activities, and by promising employees increased benefits if they repudiated the Union.

<sup>4</sup> The consolidated amended complaint alleges that the Respondent petitioned for bankruptcy under Sec. 11 of the Bankruptcy Code on March 27, 1991. (Case 91-02019 (SEK).) On November 6, 1991, this petition was voluntarily converted to a petition under Sec. 7 of the Bankruptcy Act. Subsequently Ferrer was appointed trustee of the Respondent's estate.

<sup>5</sup> All subsequent dates are in 1992 unless noted.

<sup>6</sup> In addition to the allegations in the consolidated amended complaint, the second consolidated amended complaint alleges that the Respondent

violated Sec. 8(a)(3) by reducing employees' hours of work and by laying off an employee, and Sec. 8(a)(1) by: informing employees that it would close operations and reopen nonunion; telling employees that union supporters would be laid off or have their hours reduced if they continued to support the Union; and promising employees increased benefits if they repudiated the Union.

### Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that allegations in a 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 November 29, 1991 consolidated amended complaint states that unless an answer is filed within 14 days of service, "all of the allegations in the Consolidated Amended Complaint shall be deemed to be admitted by it to be true and may be so found by the Board." The January 31, 1992 second consolidated amended complaint similarly states that in the absence of a timely answer, "all of the allegations in the Second Consolidated Amended Complaint may be deemed to be admitted to be true and may be so found by the Board." Although served with the November 29, 1991 and January 31, 1992 complaints, and provided an extension of time to answer them, neither the Respondent nor its bankruptcy trustee filed answers or responded to the Notice to Show Cause.

In the absence of good cause being shown for the failure to timely answer the consolidated amended complaint and the second consolidated amended complaint,<sup>7</sup> we grant the General Counsel's Motion for Summary Judgment as to all allegations in the November 29, 1991 and January 31, 1992 complaints that the Respondent did not deny in its August 31, 1991 answer. Accordingly, all of these unanswered allegations are deemed admitted. Additionally, in the absence of opposition, we grant the General Counsel's request to withdraw the 8(5) and (1) allegations in the July 19, 1991 complaint.

On the entire record, the Board makes the following

#### FINDINGS OF FACT

##### I. JURISDICTION

The Respondent, a Puerto Rico corporation with a facility in Ceiba, Puerto Rico, manufactured women's foundation garments. During the 12-month calendar periods preceding the consolidated amended complaint and the second consolidated amended complaint, the Respondent sold and shipped goods and products valued in excess of \$50,000 directly to customers outside the Commonwealth of Puerto Rico. During these calendar periods the Respondent additionally purchased and received raw materials valued in excess of \$50,000 directly from suppliers located outside the Commonwealth of Puerto Rico.

<sup>7</sup> It is well settled that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction to process unfair labor practice cases. *FJN Mfg.*, 305 NLRB No. 79, slip op. at 4 fn. 8 (Nov. 21, 1991).

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

##### A. *The Representative Status of the Union*

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

All workers employed by the Respondent in connection with any and all operations in the manufacture of garments produced in its shop located in Ceiba, Puerto Rico, including cutters, slickers, spreaders, operators, shipping employees, packers, boxers, folders, cleaners, examiners and floor girls, and also including maintenance employees, machinists, mechanics, assistant mechanics, drivers, porters, and gardeners, but excluding therefrom the clerical and office force, watchmen, designers, executives, foremen, foreladies, and assistant foremen and foreladies, professional, administrative, and executive employees, guards and supervisors as defined in the Act.

At all material times, and at least since August 16, 1989, the Union has been the exclusive bargaining representative of all employees in the unit under Section 9(a) of the Act.

##### B. *Withdrawal of Recognition*

About March 27, 1991, the Respondent withdrew its recognition from the Union as the exclusive collective-bargaining representative of the unit. We find that this withdrawal violates Section 8(a)(5) and (1) of the Act.

##### C. *Reduced Hours*

From about June 7 through about July 18, 1991, the Respondent reduced the hours of work of its employees Santa Garcia and Maria Pimentel because they assisted the Union and engaged in concerted activities, and in order to discourage employees from engaging in these activities. We find that this reduction in hours violates Section 8(a)(3) and (1) of the Act.

##### D. *Layoff*

In about late July 1991, the Respondent indefinitely laid off its employee, Juan Ramos, and failed and refused to recall Ramos to his former position, because Ramos assisted the Union and engaged in

concerted activities, and in order to discourage employees from engaging in these activities. We find that the layoff of Juan Ramos and refusal to recall him violates Section 8(a)(3) and (1) of the Act.

#### E. Section 8(a)(1) Violations

(1) In about May 1991, the Respondent chastised its employees because of their membership in and activities on behalf of the Union.

(2) In about May 1991, the Respondent informed its employees that union supporters would be laid off or have their hours of work reduced if they continued supporting the Union, and stated that employees declaring their opposition to the Union would receive additional hours of work.

(3) In about July 1991, the Respondent threatened employees with cessation of operations if they continued to support the Union.

(4) In about July 1991, the Respondent promised employees increased benefits and promotions in exchange for their repudiating the Union.

(5) In about September 1991, the Respondent informed its employees that it would close operations and reopen elsewhere without hiring union members and supporters.

We find that each of these acts violates Section 8(a)(1).

#### CONCLUSIONS OF LAW

1. By withdrawing recognition from the Union, the Respondent has failed and refused, and is failing and refusing, to bargain collectively and in good faith with the Union as the exclusive representative of employees in the unit, and thereby has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

2. By reducing the hours of work of employees Santa Garcia and Maria Pimentel, and by laying off and refusing to recall employee Juan Ramos, the Respondent has discriminated, and continues to discriminate, against employees in regard to hire or tenure of employment, or any term or condition of employment, to discourage union or other protected concerted activities, and thereby has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) of the Act.

3. By chastising employees because of their membership in and activities on behalf of the Union; by informing employees that union supporters would be laid off or have their work hours reduced if they continued supporting the Union, and that employees opposing the Union would get additional hours; by threatening employees with cessation of operations if they continued to support the Union; by promising employees increased benefits and promotions if they repudiated the Union;

and by informing employees that it would close its operations and reopen elsewhere without hiring union members and supporters, the Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing employees in the exercise of their rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

4. These unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has violated Section 8(a)(1), (3), and (5) of the Act, 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 the Respondent, on request, to bargain with the Union as the exclusive representative of its unit employees. We shall order the Respondent to offer employee Juan Ramos immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights or privileges previously enjoyed, and to make him whole for any loss of earnings or other benefits suffered as a result of the discrimination against him. We shall also order the Respondent to make whole employees Santa Garcia and Maria Pimentel for any loss of earnings or benefits they suffered as a result of their unlawfully reduced hours of work. The backpay due Ramos, Garcia, and Pimentel shall be computed in the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed under *New Horizons for the Retarded*, 282 NLRB 1173 (1987). We shall order the Respondent to remove from its files any reference to the unlawful layoff of Juan Ramos, or to the unlawful reduction of Santa Garcia's and Maria Pimentel's hours of work. The Respondent is further ordered to notify these three employees in writing that this has been done and that the layoff or reduced hours will not be used against them in any way. Finally, as the General Counsel contends in his Motion for Summary Judgment that the Respondent has ceased operating its Ceiba facility, we shall require that the notice be mailed to the employees.

#### ORDER

The National Labor Relations Board orders that the Respondent, Body Fit of Puerto Rico, Inc., Ceiba, Puerto Rico, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize or bargain collectively with the Sindicato Internacional De Trabajadores De Vestuario Fememino, I.L.G.W.U., AFL-CIO, Puerto Rico District Council, Local 600, as the exclusive bargaining representative of the employees in the following unit:

All workers employed by the Respondent in connection with any and all operations in the manufacture of garments produced in its shop located in Ceiba, Puerto Rico, including cutters, slickers, spreaders, operators, shipping employees, packers, boxers, folders, cleaners, examiners and floor girls, and also including maintenance employees, machinists, mechanics, assistant mechanics, drivers, porters, and gardeners, but excluding therefrom the clerical and office force, watchmen, designers, executives, foremen, foreladies, and assistant foremen and foreladies, professional, administrative, and executive employees, guards and supervisors as defined in the Act.

(b) Laying off and refusing to recall employees, reducing employees' hours, or otherwise discriminating against employees because they assisted the Union, engaged in concerted activities, or in order to discourage employees from engaging in these activities.

(c) Chastising employees because of their membership in and activities on behalf of the Union.

(d) Informing employees that union supporters would be laid off or have their hours of work reduced if they continued to support the Union, and stating that employees declaring their opposition to the Union would receive additional hours of work.

(e) Threatening employees with cessation of operations if they continued to support the Union.

(f) Promising employees increased benefits, promotions, and hours of work in exchange for their repudiation of the Union.

(g) Informing employees that it would close operations and reopen elsewhere without hiring union members or supporters.

(h) 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 Sindicato Internacional De Trabajadores De Vestuario Fememino, I.L.G.W.U., AFL-CIO, Puerto Rico District Council, Local 600, as the exclusive bargaining representative of the employees in the following unit:

All workers employed by the Respondent in connection with any and all operations in the manufacture of garments produced in its shop located in Ceiba, Puerto Rico, including cutters, slickers, spreaders, operators, shipping employees, packers, boxers, folders, cleaners, examiners and floor girls, and also including maintenance employees, machinists, mechanics, assistant mechanics, drivers, porters, and gardeners, but excluding therefrom the clerical and office force, watchmen, designers, executives, foremen, foreladies, and assistant foremen and foreladies, professional, administrative, and executive employees, guards and supervisors as defined in the Act.

(b) Offer Juan Ramos immediate reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights or privileges previously enjoyed, and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of this decision.

(c) Make whole employees Santa Garcia and Maria Pimentel for any losses they suffered as a result of the Respondent's reduction in their hours from approximately June 7 through July 18, 1991.

(d) Expunge from its files any reference to the unlawful layoff of employee Ramos or the unlawful reduction in hours of employees Garcia and Pimentel. Notify these employees, in writing, that this has been done and that the unlawful layoffs or reduced hours will not be used against them in any way.

(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 amount of backpay due under the terms of this Order.

(f) Mail signed and dated copies of the attached notice marked "Appendix"<sup>8</sup> to the Union and to all unit employees employed as of the date the Respondent closed its Ceiba facility. Copies of the notice, on forms provided by the Regional Director for Region 24, 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.

<sup>8</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 of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(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 the notice.

WE WILL NOT refuse to bargain collectively with the Sindicato Internacional De Trabajadores De Vestuario Fememino, I.L.G.W.U., AFL-CIO, Puerto Rico District Council, Local 600, as the exclusive bargaining representative of the employees in the following unit:

All workers employed by the Respondent in connection with any and all operations in the manufacture of garments produced in its shop located in Ceiba, Puerto Rico, including cutters, slickers, spreaders, operators, shipping employees, packers, boxers, folders, cleaners, examiners and floor girls, and also including maintenance employees, machinists, mechanics, assistant mechanics, drivers, porters, and gardeners, but excluding therefrom the clerical and office force, watchmen, designers, executives, foremen, foreladies, and assistant foremen and foreladies, professional, administrative, and executive employees, guards and supervisors as defined in the Act.

WE WILL NOT layoff and refuse to recall our employees, reduce our employees' hours of work, or otherwise discriminate against our employees because they assist the Union, engage in concerted activities, or in order to discourage our employees from engaging in these activities.

WE WILL NOT chastise employees because of their membership in and activities on behalf of the Union.

WE WILL NOT inform employees that union supporters will be laid off or have their hours of work reduced if they continued to support the Union, or state that employees declaring their opposition to the Union will receive additional hours of work.

WE WILL NOT threaten employees with cessation of operations if they continue to support the Union.

WE WILL NOT promise employees increased benefits, promotions, and hours of work in exchange for their repudiation of the Union.

WE WILL NOT inform employees that we will close operations and reopen elsewhere without hiring union members or supporters.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, on request, bargain with the Sindicato Internacional De Trabajadores De Vestuario Fememino, I.L.G.W.U., AFL-CIO, Puerto Rico District Council, Local 600, as the exclusive representative of our employees in the unit described above.

WE WILL offer Jose Ramos immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights or privileges previously enjoyed, and *we will* make him whole for any loss of earnings and other benefits resulting from our discrimination against him, with interest.

WE WILL make whole employees Santa Garcia and Maria Pimentel for any losses they suffered as a result of our reduction of their hours of work.

WE WILL notify Juan Ramos, Santa Garcia, and Maria Pimentel that we have removed from our files any references to their unlawful layoffs or reductions in hours and that we will not use the layoffs or reduced hours against them in any way.

BODY FIT OF PUERTO RICO, INC.