

MBC Headwear, Inc. and Cap Makers' Union Local 2-H, New York-New Jersey Joint Board, Amalgamated Clothing and Textile Workers Union, AFL-CIO. Cases 29-CA-17137, 29-CA-17222, 29-CA-17308-1, and 29-CA-17308-2

October 31, 1994

DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND COHEN

On May 20, 1994, Administrative Law Judge Eleanor MacDonald issued the attached decision. The Respondent filed exceptions, a supporting brief, and an answering brief. The General Counsel filed an exception and a brief in support of the judge's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions² and to adopt the recommended Order.³

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, MBC Headwear, Inc., Brooklyn, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

¹The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

²In adopting the judge's conclusion that the Respondent violated Sec. 8(a)(5) and (1) of the Act by refusing to provide the Union with the names, addresses, and social security numbers of all newly hired unit employees, we note that, although social security numbers are not presumptively relevant, *Sea-Jet Trucking Corp.*, 304 NLRB 67 (1991), the Respondent here is required to furnish social security numbers under the parties' agreement.

In adopting the judge's conclusion that the discharge of Ibrahim Haidara violated Sec. 8(a)(3) and (1) of the Act, we note that although the judge did not explicitly analyze the discharge under *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), her findings are consistent with that decision.

³Contrary to the Respondent's arguments, we agree with the General Counsel that terms and conditions of employment that are part of an expired collective-bargaining agreement, including benefit fund plans and related reporting requirements, survive contract expiration and cannot be altered without bargaining. *Parkview Furniture Mfg. Co.*, 284 NLRB 947, 971-972 (1987), citing *Cauthorne Trucking*, 256 NLRB 721 (1981).

Thomas M. Maher, Esq., for the General Counsel.
Stuart Bochner, Esq. (Horowitz & Pollack), of South Orange, New Jersey, for the Respondent.

Larry Magarik, Esq. (Sipsper, Weinstock, Harper & Dorn), of New York, New York, for the Charging Party.

DECISION

STATEMENT OF THE CASE

ELEANOR MACDONALD, Administrative Law Judge. This case was tried in Brooklyn and New York, New York, on January 3 and 4, 1994. The consolidated complaint alleges that Respondent, in violation of Section 8(a)(1), (3), and (5) of the Act, refused to provide information to the Union, interrogated employees, made promises to employees, threatened employees, discharged employees, denied access to the Union, refused to contribute to union funds, and refused to deduct and remit dues and fees to the Union. The Respondent denies that it has engaged in any violations of the Act and asserts that the allegations of the complaint are barred by Section 10(b) of the Act.¹

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent in February 1994, I make the following²

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a New York corporation with its place of business on Franklin Avenue, in Brooklyn, New York, is engaged in the manufacture and distribution of cloth hats, caps, novelties, and related products. Respondent annually purchases goods valued in excess of \$50,000 directly from firms outside New York State and ships products valued in excess of \$50,000 to firms in New York State directly engaged in interstate commerce. Respondent admits and I find that it 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

A. *Background*³

The Union is the exclusive collective-bargaining representative of Respondent's employees in the following unit:

¹General Counsel has withdrawn the allegation that employee Tidiana Thiam was unlawfully discharged, that Respondent threatened to cease granting loans to employees, and that Respondent solicited employee signatures on a document repudiating the Union.

²Respondent called no witnesses in the instant hearing.

³Respondent argues that certain allegations are barred by Sec. 10(b) of the Act. The charge served on February 3, 1993, alleged threats against union members and to get rid of the Union and the discharge of an employee for union activity. The amended charge served on March 12, 1993, alleged threats to withhold loans, directions to abandon the Union, and directions to sign an antiunion petition. The charge served on March 17, 1993, alleged discharges of employees for union activity. A charge served on May 3, 1993, alleged directions to abandon the Union and promises of health coverage, threats to cease recognizing the Union and to close the shop, interrogations of employees and promises of benefits, failure to comply with the agreement to submit employee information, dues, and fees and contribution, and denial of access to the Union. A charge served on May 3, 1993, alleged failure to provide information for

All production employees employed by Respondent at its Franklin Avenue facility, excluding all office clerical employees, watchmen, guards and supervisors within the meaning of the Act.

Respondent and the Union have been parties to a series of collective-bargaining agreements the latest of which had a term from July 1, 1990, to June 30, 1993.

At section 3, union security, the contract provides that employees shall become members of the Union after 30 days employment and that the Employer shall deduct and remit to the Union dues and initiation fees from employees on written authorization.

Section 5(c) of the collective-bargaining agreement requires that:

The Employer shall provide the Union with a written list containing the names and addresses of all new employees who have completed thirty (30) days of employment. Such list shall be provided to the Union within seven (7) days after the completion of the employee's thirtieth (30th) day of employment.

Section 20 of the contract provides for employer contributions to the Cap Makers' Health Benefit Fund and to the Retirement Fund.

Section 22 of the collective-bargaining agreement provides that employees shall receive vacation pay based on their years of service and calculated as a percentage of their earnings during the previous calendar year.

Section 27 provides that:

A duly authorized officer . . . of the Union shall have access to the factory . . . at all times, for the purpose of investigating the conditions of the shops with reference to sanitation, fire prevention and general safety, and for the purpose of ascertaining whether the provisions of this Agreement are fully complied with

On July 13, 1992, representatives of the Union and Respondent concluded an agreement resolving disputes concerning payment of dues and initiation fees, vacation pay and health and pension contributions. On September 17, 1992, the Union wrote to Respondent concerning delinquencies in paying vacation benefits, remitting dues and initiation fees to the Union and in submitting reports and contributions to the Health Benefit and Retirement Funds.⁴ The letter recited the agreement that Respondent would begin to comply with the collective-bargaining agreement and would remit \$500 weekly for arrears to the funds, but the letter stated that dues and reports had not been forwarded and that the \$500 payments were not being made regularly. On November 1, 1992, the

contract administration, refusing to comply with a subpoena in an arbitration, denial of access to the Union and failing to provide employee information, dues, and fund payments.

⁴The Union's charge alleging failure to comply with the collective-bargaining contract including failure to submit names, addresses, social security numbers, dues, initiation fees, and pension and welfare fund contributions for employees, vacation pay for employees, or to submit reported hours and earnings of new employees was served on May 3, 1993. Thus the 10(b) period for that charge commenced on November 3, 1992.

Union wrote again to Respondent concerning its failure to make reports and contributions to the funds and to otherwise abide by the contract. On December 2, 1992, the Union sent another letter to Respondent mentioning the previously discussed violations of the collective-bargaining agreement and requesting information about sums recently paid to employees as vacation pay. On December 3, 1992, the Union began the process leading to the appointment of an arbitrator to hear the dispute relating to the failure to deduct and remit initiation fees and dues, the failure to provide required reports to the benefits funds, to pay vacation and certain other matters. A subpoena duces tecum was served on Respondent in the arbitration proceeding on March 9, 1993, requesting, inter alia, the names and dates of employment for all new employees from July 1, 1990, the initiation fees and dues deducted from such employees, and records of vacation pay for 1992.

B. Denial of Information and Failure to Remit Dues and Fees

Edgar deJesus, the manager of Local 2-H, testified that he visited the Respondent's shop in March 1993 and saw new employees working there. DeJesus spoke to Pinchus Kupferstein, the president and owner of Respondent, and told him that he wanted information about the new employees who had been working in the shop for over 30 days. Kupferstein said he did not have the information, so deJesus went on the shop floor and tried to get the information directly from the employees. DeJesus testified that he wanted copies of the employees' W-2 forms to be sure that proper health and pension contributions had been made on behalf of the employees, to monitor who was working in the factory, and to ensure that vacation pay was paid to the employees on a proper basis. DeJesus stated that the Union had information about less than half of the employees on the shop floor. When deJesus served the above-described March 9 subpoena on Kupferstein and told him that he needed information for the arbitration, Kupferstein laughed at him. Although Respondent was present at the arbitration hearing, it has never provided the information to the Union.

On March 10, 1993, the Union informed Respondent in writing that it had information that new employees had been hired but that Respondent had not provided the Union with their names, addresses, and social security numbers. The letter requested that Respondent furnish the information to the Union. Finally, on April 6, 1993, the Union sent a letter to Respondent stating that it had received copies of the W-2 forms for only 18 of the 40 to 45 employees working in the shop and requesting complete information by April 14. Attached to the letter was a list of employees for whom the Union had no information beyond the day they began work. The letter stated that if the information was not provided, the Union would proceed with the grievance procedure. DeJesus testified that this information was never provided.

DeJesus testified that based on the information he was able to obtain, he believed that Respondent remitted dues to the Union for the veteran employees for the entire contract period ending in June 1993, albeit these dues were sent belatedly and only after repeated union complaints. However, Respondent remitted dues for newly hired employees only from January 1 to June 30, 1993. Even for the period in 1993, Respondent did not report as required to the Union when it

hired a new employee. Only after the Union discovered the existence of a new employee on the shop floor, obtained an authorization and dues-deduction card, and confronted the Respondent with the information, did the Respondent deduct and remit dues for that employee. DeJesus was certain that he had never received any information about some new employees because they would not speak to him when he went up to them on the shop floor. In this way, Respondent evaded the requirements of the union-security clause of the contract. DeJesus explained that he needed the employees' W-2 forms because many employees had complained to him that they were not receiving proper vacation pay. The only way he could verify whether an employee's vacation pay had been properly computed was to examine the W-2 form which would show the earnings for the calendar year.

DeJesus testified that he has not been permitted to examine the Employer's payroll records nor has the Union audited the Respondent's books.⁵ The lack of information affects the employees' health benefits; the Union could not enroll the employees in the health fund and no payments were made on their behalf. As a result, the employees were not able to receive health coverage.

C. Denial of Access

DeJesus testified that on February 3, 1993, he went to the shop to speak to the workers. After telling Kupferstein that he was visiting the factory and wanted information from the workers, deJesus asked Kupferstein for the names of the new workers whom he saw on the shop floor. Kupferstein refused to give deJesus any information whereupon deJesus said that he would get the information on the shop floor. Kupferstein told him not to disrupt the factory; deJesus replied that he would not even talk to anybody if Respondent would give him the information he sought. DeJesus then proceeded to speak to some employees on the shop floor individually. This was a lengthy process because the employees did not speak English and deJesus needed a translator. While deJesus was with the second employee he was attempting to interview, Kupferstein came up to him and said he was taking too much time and disrupting the factory. DeJesus replied that if Respondent had provided the information to the Union, he would not be taking the time on the shop floor. Kupferstein announced that he would call the police. According to deJesus, between 30 and 40 employees were there when Kupferstein made this statement. Nevertheless, deJesus stayed and got the information he wanted. DeJesus heard that the police came to the shop after he left.

D. Failure to Contribute to the Funds

Stewart Goldberg administers collections for the Cap Makers' Union Health Benefit Fund and the Retirement Fund of the Cloth Hat and Cap Industry of New York. Each employer covered by the collective-bargaining agreement is obligated to submit monthly reports and payments to the funds. The reports are on forms provided by the funds and indicate the names, social security numbers, earnings, and hours worked of each employee for the month. Based on these reports, the employees are eligible for health and pension benefits. Goldberg testified that the last report and payment the

funds received from Respondent was for April 1992. In August 1992, the funds began receiving \$500 checks from Respondent on a sporadic basis.⁶ However, no report accompanied these checks and Goldberg called Kupferstein and asked for an explanation. Kupferstein replied that the checks were for outstanding obligations. Goldberg stated that the funds had no indication which employees were still employed by Respondent and had no information about newly hired employees. Goldberg testified that the funds send requests for payment and information to the Respondent monthly.

Goldberg testified that the funds instituted an arbitration proceeding against Respondent and were awarded the right to conduct an audit of Respondent's payroll documents. The audit, conducted in July 1993, resulted in a finding that Respondent had underreported or failed to report its payroll for dates from 1990 to 1993. Goldberg stated that the checks for \$500 mailed sporadically by Respondent were never enough to cover Respondent's obligations to the funds. Thus, on November 3, 1992, the beginning of the 10(b) period applicable to the instant case, Respondent was in arrears to the funds, and at no time did the \$500 checks bring Respondent up to date. Although the documents placed into evidence do not permit a finding of Respondent's actual indebtedness for each quarter beginning November 3, 1992, Goldberg's testimony was convincing that at all times from November 3, 1992, to the present, Respondent has failed to pay its entire obligation to the funds. It must also be noted in this connection that Respondent has not at any time since November 3, 1992, submitted the required monthly reports to the funds showing the names, hours, and earnings of the unit employees. Further, Respondent declined to comply with a subpoena duces tecum served by the General Counsel which required, inter alia, the production of the Company's payroll books and records and personnel files.⁷ At the instant hearing, I ordered that Respondent would be precluded from introducing any evidence relating the matter requested in General Counsel's subpoena and I permitted General Counsel to introduce secondary evidence relating to material that should have been produced by Respondent pursuant to the subpoena.⁸ It follows that any failure on the part of General Counsel to prove exactly the sums by which Respondent was in arrears at any particular time after November 3, 1992, may be ascribed to Respondent's failure to produce those records which would have shown how many employees were on the payroll and what they earned. In fact, Respondent's refusal to produce the subpoenaed records which would have permitted General Counsel to prove the amounts of arrears after November 3, 1992, leads me to infer that those records would have been unfavorable to Respondent.⁹ Respondent can hardly complain that I credit Goldberg's testimony that at no time were the sporadic \$500 payments sufficient to meet Respondent's obligations to the funds. The exact amounts due may be computed during a later compliance proceeding.

⁶ The checks came on a less-than-weekly basis, about three checks per month.

⁷ Respondent did not file any petition to revoke the subpoena.

⁸ *Bannon Mills*, 146 NLRB 611 (1964).

⁹ *Auto Workers v. NLRB*, 459 F.2d 1329, 1336-1339 (D.C. Cir. 1972).

⁵ The funds conducted an audit which will be discussed below.

E. Alleged Violations of Section 8(a)(1) and (3)

Employee Sindou Cisse testified that he joined the Union in November 1992. Cisse testified that in December 1992 and January 1993, his boss, Pinchus Kupferstein, often urged him to abandon the Union. Kupferstein asked Cisse if he was going to the Union and Cisse replied that he was going to the Union for health benefits. Kupferstein told Cisse that the company could give Cisse better health benefits than the Union. In December 1992, Kupferstein told Cisse to think about getting out of the Union; the Union only wanted his money and it would not protect him. Kupferstein said that he was the boss and that the Union had nothing to do with the factory. By July, there would not be any more Union, according to Kupferstein, because he would not sign any more contracts with the Union. Kupferstein said that the Union cost the factory a lot of money and caused a lot of problems and that the factory would be closed. The 10(b) period for these allegations commenced on November 3, 1992.

Employee Abdoulaya Diane testified that he joined the Union in September 1992.¹⁰ In November 1992, Kupferstein called him into the office and asked why he wanted to go to the Union. Kupferstein said the Union was no good and had cost him \$15,000. Kupferstein went on to state that the Union took the employees' money but could do nothing for them. When Diane replied that the Union paid holiday and vacation checks, Kupferstein promised that if Diane gave up the Union, he would give the holiday and vacation checks and give employees a big raise. In December, Kupferstein called Diane to his office once more and told him that when the collective-bargaining agreement expired there would be no more contracts. The 10(b) period for these allegations commenced on November 3, 1992.

Ibrahim Haidara worked for Respondent from July 1990 until September 1992. He joined the Union in November 1991.¹¹ Haidara testified that Kupferstein had told him not to become a member of the Union; the Union would take his money but could do nothing for him. In May and June 1992, on various occasions in Kupferstein's office, Kupferstein told Haidara that he should have nothing to do with the Union because the Union had cost him \$15,000. In June 1992, Kupferstein again told Haidara to leave the Union. When Haidara told Kupferstein that a lot of other people were in the Union, Kupferstein responded that he had heard that

Haidara was urging his fellow employees to join the Union. Haidara denied that he had engaged in this activity. Kupferstein then told Haidara that he would give him 2 months to leave the Union and that he would give Haidara some money if he resigned. Kupferstein said that others would follow Haidara's example. Two months later, Kupferstein asked Haidara if he was abandoning the Union. When Haidara replied that he could not resign as his membership card had not expired, Kupferstein told him to tell the Union he could no longer afford the dues. On September 19, 1992, Haidara arrived at work at 8:30 a.m. as usual. Kupferstein came in between 9 and 9:30 a.m. and checked Haidara's work and said it was good. At this time, Haidara was sewing flowers on hats. The method used was that another worker marked the hat to indicate the place for attaching the flowers and Haidara used the mark to guide him. Haidara worked on more than 200 hats that day. At 4 p.m., Kupferstein returned to Haidara's workstation and picked up one hat, telling Haidara that it was no good. Haidara explained that this particular hat had come to him without any mark for sewing the flowers, but Kupferstein was mad and told Haidara to leave the job. Haidara explained again to Kupferstein about the lack of a mark and he continued to work until 6 p.m. The next day, Kupferstein came to Haidara's workstation at 9:30 a.m. and told him to leave; if Haidara continued to work, he would not be paid. At this point, Haidara left the factory. Haidara testified that there had never been problems with his work before this time. Because of the requirements of Section 10(b), only the discharge of Haidara is alleged as a violation. The rest of his testimony was introduced to show Respondent's knowledge of Haidara's support of the Union and Respondent's hostility to Haidara's union membership.

E. Discussion and Conclusions

The uncontradicted testimony establishes that despite the contractual provisions requiring Respondent to furnish the Union with the names, addresses, and social security numbers of all newly hired unit employees, and despite the Union's requests for this information and for the employees' W-2 forms both in writing by letters of December 2, 1992, and March 10 and April 6, 1993, and by subpoena duces tecum on March 9, 1993, Respondent never furnished the Union with the employees' names, addresses, and social security numbers nor with their W-2 forms. Although the Union through its own efforts was able to obtain some of this information belatedly, the Union never obtained complete information concerning the unit employees. Nor did Respondent respond to the Union's repeated requests for information about sums purportedly paid to employees as vacation pay. Manifestly, the Union was entitled to this information which was necessary for it to carry out its duties. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967). Information about unit employees, including their wages and hours, is presumptively relevant. Further, information necessary to process grievances must be turned over to the Union. By refusing to provide information to the Union, Respondent violated Section 8(a)(5) and (1) of the Act.

The uncontradicted evidence shows that the Union had been making constant efforts to bring Respondent into compliance with its obligation to deduct and remit dues and initiation fees. On December 2, 1992, the Union wrote to Re-

¹⁰Diane is also known as Bangamy Kouyate, his given name. Diane is his friend's name which he adopted so that he could work without inviting questions about his immigration status. Diane admitted that he was not working legally and he stated that Kupferstein was aware of his status and had urged him to use a friend's papers to avoid trouble with the authorities. Contrary to the suggestion of Respondent, I do not find that his irregular work status shows that Diane's testimony is untruthful. Indeed, Diane's ready admission of the facts convinces me that he is a truthful witness. I specifically reject Respondent's suggestion that any person working illegally in this country is for that reason alone an incredible witness. Compliance with the immigration laws should be enforced by the appropriate authorities. Working without the proper permit should by no means be condoned, but a failure to adhere to the rules concerning proper working papers does not require branding the transgressor a liar. In this instance, moreover, Respondent encouraged Diane to use someone else's working papers.

¹¹Haidara's given name is Mamadou Sarr. He used his friend's name and papers to come work in this country.

spondent concerning this matter and it instituted an arbitration proceeding to enforce the contract. The uncontradicted evidence shows that Respondent was late in remitting dues for the veteran workers although it had deducted those dues from the employees' paychecks. For newly hired workers, Respondent deducted and remitted no dues or fees until sometime in 1993, and it never deducted nor remitted dues and fees for some employees whom the Union was not able to interview. This unilateral change violated Section 8(a)(5) and (1) of the Act. The charge relating to this violation was served on Respondent on May 3, 1993, and the remedy is therefore limited to a period commencing November 3, 1992. However, the complaint is not barred in its entirety by Section 10(b) as contended by Respondent. Although the Union was aware long before May 3, 1993, that Respondent was delinquent in its obligations under the collective-bargaining agreement, Respondent was complying in some respects by remitting dues for veteran employees in 1992. Further, the Union was engaged in vigorous and repeated efforts to bring Respondent into compliance with the contract. Thus, Respondent purported to enter into a settlement of all outstanding obligations in July 1992, and the Union spent several months trying to obtain Respondent's effectuation of that agreement. Finally, it is well settled that each monthly failure to deduct and remit dues to the Union was a separate violation of the Act. See *Farmingdale Iron Works*, 249 NLRB 98 (1980).

The uncontradicted testimony shows that on February 3, 1993, deJesus was obtaining information from an employee on the shop floor when Pinchus Kupferstein confronted him and announced that he would call the police because deJesus was taking too much time. Kupferstein did not testify here and there is no evidence that deJesus was taking too much time nor disrupting the shop in any way. In fact, the only record evidence shows that deJesus was obtaining information to which the Union had a right but which Respondent was failing to provide. Further, the collective-bargaining agreement specifically authorized deJesus' presence in the factory. The record is undisputed that Respondent stated it would call the police to put a stop to the union agent's conversation with the employee on the shop floor. Respondent thereby violated Section 8(a)(5) and (1) of the Act. *Heck's, Inc.*, 293 NLRB 1111, 1116-1117 (1989).

The uncontradicted evidence shows that Respondent unilaterally failed to remit monthly reports of employee earnings and failed to make proper contributions to the Health Benefit Fund and the Retirement Fund. The funds sent requests for employee reports and for payment to Respondent on a monthly basis. I find that Respondent violated Section 8(a)(5) and (1) of the Act by failing to file monthly reports and by failing to make monthly contributions from November 3, 1992.

The uncontradicted testimony shows that Kupferstein asked employee Cisse if he was going to the Union and promised Cisse that he would give Cisse better health benefits than the Union did. On another occasion, Kupferstein told Cisse to think about getting out of the Union; Kupferstein said that there would not be any Union because he would not sign any more contracts, that he was the boss and the Union had nothing to do with the factory, and that the Union cost a lot of money and the factory would be closed. Respondent violated Section 8(a)(1) of the Act by

urging its employee to abandon the Union and promising better health benefits if he did. In the context of the unlawful promise, Kupferstein's question whether Cisse thought of going to the Union was coercive and constituted an unlawful interrogation. Respondent also violated Section 8(a)(1) when it threatened not to recognize the Union and not to sign a contract. Finally, Respondent's threat to close the factory and its concomitant direction to the employee to think about getting out of the Union constituted a violation of Section 8(a)(1).

The uncontradicted testimony shows that Kupferstein promised Diane that he would give a raise if the employee gave up the Union and that he asked Diane why he wanted to go to the Union; Respondent coercively interrogated the employee and promised him a benefit in violation of Section 8(a)(1) of the Act. Respondent also violated Section 8(a)(1) when Kupferstein told Diane that once the collective-bargaining agreement expired there would be no more contracts.

The uncontradicted evidence shows that Respondent was well aware of Haidara's support for and membership in the Union. Kupferstein urged Haidara to abandon the Union and to take other employees out of the Union with him. The evidence shows that Respondent was aware that Haidara had not abandoned the Union as Respondent had directed. Haidara's testimony, which was not controverted by any Respondent witness, proves that Kupferstein had never complained about the quality of his work until September 19, 1992, when Haidara sewed a flower on a hat that did not contain the proper marking to guide Haidara. Although Haidara explained to Kupferstein that the hat had not been marked, Kupferstein discharged him. Given Respondent's knowledge of and open hostility to Haidara's support for and activities in behalf of the Union, and given Respondent's expressed wish that Haidara lead other employees out of the Union, I find that Respondent violated Section 8(a)(3) and (1) when it discharged Haidara for a single event that was caused by another employee's mistake. I find that Respondent used the improperly placed flower as a pretext to rid itself of a union supporter whose example kept other employees in the Union.

CONCLUSIONS OF LAW

1. Cap Makers' Union Local 2-H, New York-New Jersey Joint Board, Amalgamated Clothing and Textile Workers Union, AFL-CIO is the exclusive collective-bargaining representative of Respondent's employees in the following unit:

All production employees employed by Respondent at its Franklin Avenue facility, excluding all office clerical employees, watchmen, guards and supervisors within the meaning of the Act.

2. By refusing to provide to the Union the names, addresses, and social security numbers of all newly hired unit employees, by refusing to provide to the Union the W-2 forms for all employees, and by refusing to provide to the Union with information about vacation payments made to employees, Respondent violated Section 8(a)(5) and (1) of the Act.

3. By failing to deduct dues and initiation fees and remit them to the Union, Respondent violated Section 8(a)(5) and (1) of the Act.

4. By threatening to deny access to the Union on February 3, 1993, Respondent violated Section 8(a)(5) and (1) of the Act.

5. By failing to file monthly reports and make monthly contributions to the Cap Makers' Union Health Benefit Fund and the Retirement Fund of the Cloth Hat and Cap Industry of New York, Respondent violated Section 8(a)(5) and (1) of the Act.

6. By urging its employees to abandon the Union, by promising its employees a raise and improved health benefits if they abandoned the Union, by interrogating its employees about their support for the Union, by threatening to close the factory if the employees continued to support the Union, and by threatening not to recognize and bargain with the Union, Respondent violated Section 8(a)(1) of the Act.

7. By discharging Ibrahim Haidara because he belonged to and supported the Union, Respondent violated Section 8(a)(3) and (1) of the Act.

8. The General Counsel has not shown that Respondent engaged in any other violations of the Act.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily discharged an employee, it must offer him reinstatement and make him whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Any questions concerning Haidara's reinstatement and backpay which may be subject to his immigration status are reserved for the compliance proceeding. *Ideal Dyeing Co.*, 300 NLRB 303, 322 (1990). See *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883, 902-903 (1984).

Respondent must make whole its employees by transmitting to the Cap Makers' Union Health Benefit Fund and the Retirement Fund of the Cloth Hat and Cap Industry of New York the required contributions which Respondent unlawfully withheld, and Respondent must make the employees whole by reimbursing them for any losses ensuing from Respondent's unlawful failure to make the contributions, with interest computed in the manner prescribed by *New Horizons for the Retarded*, supra. See *Merryweather Optical Co.*, 240 NLRB 1213 (1979); *Kraft Plumbing & Heating*, 252 NLRB 891 (1980).

Respondent must make whole the Union for any loss of dues and initiation fees suffered, with interest, as a result of Respondent's failure to comply with the collective-bargaining agreement between Respondent and the Union. *El Centro Community Mental Health Center*, 266 NLRB 1 (1983).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹²

¹²If no exceptions are filed as provided by Sec. 102.46 of the Boards Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The Respondent, MBC Headwear, Inc., Brooklyn, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against any employee for supporting Cap Makers' Union Local 2-H, New York-New Jersey Joint Board Amalgamated Clothing and Textile Workers Union, AFL-CIO, or any other union.

(b) Refusing to provide to the Union the names, addresses, and social security numbers of all newly hired unit employees, refusing to provide to the Union the W-2 forms for all employees, and refusing to provide the Union with information about vacation payments made to employees.

(c) Failing to deduct and remit dues and initiation fees to the Union.

(d) Threatening to deny access to the Union.

(e) Failing to file monthly reports and make monthly contributions to the Cap Makers' Union Health Benefit Fund and the Retirement Fund of the Cloth Hat and Cap Industry of New York.

(f) Urging its employees to abandon the Union, promising its employees a raise and improved health benefits if they abandon the Union, interrogating its employees about their support for the Union, threatening to close the factory if the employees continue to support the Union, and threatening not to recognize and bargain with the Union.

(g) 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) Offer Ibrahim Haidara 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 any 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 the decision.

(b) Remove from its files any reference to the unlawful discharge and notify the employee in writing that this has been done and that the discharge will not be used against him in any way.

(c) Provide to the Union the names, addresses, and social security numbers of all newly hired unit employees, W-2 forms for all employees and information about vacation payments made to employees.

(d) Make whole the Union for any loss of dues and initiation fees suffered as a result of Respondent's unlawful failure to comply with the collective-bargaining agreement.

(e) Grant access to the Union to the factory according to the terms of the collective-bargaining agreement.

(f) Make whole the employees for its unlawful failure to make contributions and file the monthly reports and transmit the contributions to the Cap Makers' Union Health Benefit Fund and the Retirement Fund of the Cloth Hat and Cap Industry of New York in the manner set forth in the remedy section above.

(g) 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 and other sums due to the employees and the Union under the terms of this Order.

(h) Post at its facility in Brooklyn, New York, copies of the attached notice marked "Appendix."¹³ Copies of the notice, on forms provided by the Regional Director for Region 29, 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.

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

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

¹³If 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.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT discharge or otherwise discriminate against any of you for supporting Cap Makers' Union Local 2-H,

New York-New Jersey Joint Board Amalgamated Clothing and Textile Workers Union, AFL-CIO, or any other union.

WE WILL NOT coercively question you about your union support or activities.

WE WILL NOT refuse to provide to the Union the names, addresses, and social security numbers of all newly hired unit employees, the W-2 forms for all employees and information about vacation payments made to employees.

WE WILL NOT fail to deduct and remit dues and initiation fees to the Union.

WE WILL NOT threaten to deny union agents access to the shop.

WE WILL NOT fail to file monthly reports and make monthly contributions to the Cap Makers' Union Health Benefit Fund and to the Retirement Fund of the Cloth Hat and Cap Industry of New York.

WE WILL NOT urge you to abandon the Union, promise you a raise and improved health benefits if you abandon the Union, threaten to close the factory if you support the Union, nor threaten not to recognize and bargain with the Union.

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 offer Ibrahim Haidara 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 any other rights or privileges previously enjoyed and WE WILL make him whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest.

WE WILL notify him that we have removed from our files any reference to his discharge and that the discharge will not be used against him in any way.

WE WILL provide to the Union the names, addresses, and social security numbers of all newly hired unit employees, W-2 forms for all employees, and information about vacation payments made to employees.

WE WILL make whole the Union for dues and initiation fees which we unlawfully failed to transmit.

WE WILL grant access to union agents to visit the factory.

WE WILL make you whole, with interest, for any losses you may have suffered as a result of our unlawful failure to make contributions to the union health and pension funds, and WE WILL file monthly reports and make contributions to those funds.

MBC HEADWEAR, INC.