

Impressive Textiles, Inc. and Linen Star, Inc. and their alter egos Boomerang Enterprises and Lexus Merchandising, Inc. and International Ladies' Garment Workers' Union, AFL-CIO and Elizabeth Gonzalez. Cases 29-CA-16114, 29-CA-16399, 29-CA-16537, 29-CA-16828, 29-CA-17130, 29-CA-17205, and 29-CA-16161

April 25, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND TRUESDALE

On December 23, 1994, Administrative Law Judge Eleanor MacDonald issued the attached decision. The General Counsel filed exceptions and a supporting brief.

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 brief and has decided to affirm the judge's rulings, findings, and conclusions.¹ We adopt the recommended remedy and Order as modified, however, to reflect those conclusions and findings. Specifically, as the General Counsel's exceptions note, in view of the Respondent's failure to bargain in good faith with the Union, which was certified on December 18, 1991, we are extending the initial certification period for 1 year from the date good-faith bargaining begins. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962). In addition we are adding provisions to the recommended Order and notice to conform to the unfair labor practices found by the judge.

ORDER

The Respondents, Impressive Textiles, Inc., Linen Star, Inc., Boomerang Enterprises, and Lexus Merchandising, Inc., Brooklyn, New York, and Newark, New Jersey, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Prohibiting employees from discussing the Union in the factory, prohibiting employees from visiting other departments on their breaktimes, and physically pushing employees back to their own departments.

(b) Threatening to close the factory if employees select the Union as their collective-bargaining representative.

(c) Threatening to discharge employees if they engage in union activities.

(d) Discharging employees because they engage in union activities.

¹No exceptions have been filed to the substantive violations found by the judge.

(e) Engaging in surveillance of employees' union activities or creating the impression that employees' union activities are under surveillance.

(f) Implying that employees' grievances will be remedied if they stop discussing the Union.

(g) Informing employees that there is no work because they support the Union.

(h) Laying off employees because they have selected the Union as their bargaining representative.

(i) Providing damaged goods to employees and warning and discharging employees for working on damaged goods because they support the Union and provide statements to the Regional Office.

(j) Informing employees that they are not receiving a raise because of the Union.

(k) Laying off employees because they provide statements to the Regional Office.

(l) Informing employees that unit work is being subcontracted because they have selected the Union as their bargaining representative.

(m) Interrogating employees about their support for the Union.

(n) Subcontracting unit work and laying off employees without notice to the Union and an opportunity to bargain over the decision and the effects of subcontracting the work and of laying off employees.

(o) Implying to undocumented employees that they will be reported to the Immigration and Naturalization Service (INS) if they select the Union as their bargaining representative.

(p) Refusing to recognize and bargain with the Union.

(q) In any other 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 as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time production, maintenance, shipping and receiving employees, including cutters, sewing machine operators, folders, packers, floor persons, general helpers and warehousemen employed in the manufacture, distribution and sale of table cloths, bedding and related products at Respondents' facility at 136 Tichenor Street, Newark, NJ, and at any reestablished Brooklyn, NY facility, but excluding all other employees, management personnel, office clericals, guards and supervisors as defined by the Act.

(b) Offer Ibrahima Diop and Francklin Auguste and all the employees laid off in November 1991 and in

April, May, and June 1992, immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

(c) Reestablish and resume production operations in Brooklyn, New York, in a manner consistent with the level and manner of operation that existed before the operation was subcontracted in November 1991 and before the employees were laid off, and offer reinstatement to all employees laid off in November 1991, in the appropriate unit found above in the manner discussed in the remedy section of this decision, and make whole the employees in the manner specified in the remedy section.

(d) Remove from employees' files any reference to their unlawful warnings, discharges, and layoffs and notify the employees in writing that this has been done and that the warnings, discharges, and layoffs 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, time-cards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Immediately on request of the Union, and continuing during the period of negotiations for a collective-bargaining agreement, grant the International Ladies' Garment Workers' Union, AFL-CIO (ILGWU) reasonable access to Respondents' bulletin boards and other places where notices to employees are customarily posted, for the posting of union notices, bulletins, and other literature.

(g) Immediately on request of the Union, make available to the Union without delay a list of the names and addresses of all the employees since November 1, 1991, in the manner set forth in the remedy section.

(h) Pay to the Union the costs and expenses incurred in the conduct of the instant cases in the manner set forth in the remedy section.

(i) Post at their facility in Newark, New Jersey, and at any facility reestablished pursuant to this Order, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 29, in English, Spanish, Creole, and French, after being signed by the Respond-

ents' authorized representative, shall be posted by the Respondents 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 Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In addition, mail copies of the notice, in the appropriate translation, to each employee employed in the unit since November 1, 1991.

(j) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondents have taken to comply.

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

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 you or lay you off or otherwise discriminate against any of you for supporting the International Ladies' Garment Workers' Union, AFL-CIO or any other union.

WE WILL NOT prohibit you from discussing the Union at the factory, prohibit you from visiting other departments on your breaks, and physically push you back to your own departments.

WE WILL NOT threaten to close the factory because you selected the Union to represent you, and WE WILL NOT threaten to lay you off and send the work outside because you support the Union.

WE WILL NOT engage in surveillance of your union activities.

WE WILL NOT create the impression that your union activities are under surveillance and WE WILL NOT interrogate you about your union activities.

WE WILL NOT imply that your grievances will be remedied if you stop discussing the Union.

²If 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."

WE WILL NOT provide damaged goods to employees because they support the Union.

WE WILL NOT discriminate against you because you provide statements to the National Labor Relations Board.

WE WILL NOT inform you that you are not receiving a raise because you support the Union.

WE WILL NOT threaten undocumented employees because they support the Union.

WE WILL NOT subcontract work and lay off employees without notice to the Union and without bargaining with the Union and WE WILL NOT refuse to recognize and bargain with the Union.

WE WILL NOT in any other 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 with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time production, maintenance, shipping and receiving employees, including cutters, sewing machine operators, folders, packers, floor persons, general helpers and warehousemen employed in the manufacture, distribution and sale of table cloths, bedding and related products at our facility at 136 Tichenor Street, Newark, NJ, and at any reestablished Brooklyn, NY facility, but excluding all other employees, management personnel, office clericals, guards and supervisors as defined by the Act.

WE WILL offer Ibrahima Diop and Francklin Auguste and all the employees laid off in November 1991 and in April, May, and June 1992, immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions without prejudice to their seniority or any other rights or privileges previously enjoyed and WE WILL make them whole for any loss of earnings and other benefits resulting from their discharges and layoffs, less any net interim earnings, plus interest.

WE WILL notify each of them that we have removed from our files any reference to their warnings, discharges, and layoffs and that the warnings, discharges, and layoffs will not be used against them in any way.

WE WILL reestablish and resume production operations in Brooklyn, New York, in a manner consistent with the level and manner of operation that existed before November 1991.

WE WILL immediately grant the Union access to our bulletin boards.

WE WILL give the Union immediately a list of the names and addresses of all employees since November 1, 1991.

WE WILL pay to the Union the costs and expenses incurred in the conduct of the instant cases.

IMPRESSIVE TEXTILES, INC., LINEN STAR, INC., BOOMERANG ENTERPRISES, AND LEXUS MERCHANDISING, INC.

Kevin R. Kitchen, Esq. and *Haydee Rosario, Esq.*, for the General Counsel.

Steven B. Horowitz, Esq. (Horowitz & Pollack), of South Orange, New Jersey, for Respondents Boomerang Enterprises and Lexus Merchandising, Inc.

Lori M. Smith, Esq. and *Brent Garren, Esq.*, of New York, New York, for the Union.

DECISION

STATEMENT OF THE CASE

ELEANOR MACDONALD, Administrative Law Judge. This case was tried in Brooklyn and New York, New York, on August 2, 3, and 5 and October 3 and 6, 1994. The fourth amended consolidated complaint alleges that Impressive Textiles, Inc. and Linen Star, Inc. are a single employer and that Impressive, Linen Star, Lexus Merchandising, Inc., and Boomerang Enterprises are alter egos and a single employer. The complaint alleges that the Respondents committed numerous violations of Section 8(a)(1), (3), (4), and (5) of the Act. Respondents Impressive and Linen Star submitted answers denying the unfair labor practices to the consolidated complaint and to the first and second amended consolidated complaints in which they were the only named Respondents; they did not answer the third consolidated complaint which named them as the only Respondents, and no answers were submitted by any Respondents to the fourth consolidated complaint which added Lexus and Boomerang as alter egos.

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 Charging Party Union on November 23, 1994, I make the following¹

FINDINGS OF FACT

I. PRELIMINARY ISSUES

The consolidated complaint and the first and second amended consolidated complaints were issued in March, May, and June 1992, respectively. Answers were filed, respectively, in April, May, and July 1992, by Steven B. Horowitz, Esq., of Horowitz & Pollack, P.C., on behalf of Impressive Textiles, Inc. and Linen Star, Inc., the two named Respondents. The third amended consolidated complaint was issued on October 30, 1992, also naming Impressive and Linen Star as Respondents; no answer was filed to this complaint. The fourth amended consolidated complaint was issued on May 28, 1993, naming Impressive and Linen Star and adding Boomerang Enterprises and Lexus Merchandising, Inc., as the alter egos of Impressive and Linen Star. No answer was filed to this complaint. By letter of September 29, 1993, Attorney Horowitz informed the Regional Director for Region 29 that his firm did not represent any of the Respondents in

¹ Certain errors in the transcript are noted and corrected.

the instant case. Thereafter, the Region engaged in correspondence and telephone communications with Naftoli Schlesinger, the individual alleged to be the owner of Lexus Merchandising, about the failure of Respondents to file an answer to the fourth amended consolidated complaint. By letter of November 5, 1993, the Region advised Schlesinger that he must file an answer immediately and that a hearing was scheduled for December 13, 1993. Enclosed with the letter was a copy of the fourth amended consolidated complaint and notice of hearing. The postal service obtained a receipt for delivery of this letter to Schlesinger on November 19, 1993. Thereafter, the Regional Office apparently engaged in discussions with Schlesinger during which he asserted that the alter ego allegations should be dismissed. By letter of April 21, 1994, the Board [sic] attorney informed Schlesinger that he should present any further evidence in his possession concerning the alter ego issue to the Region; the letter also stated that the hearing on the consolidated cases was postponed from April 26 to August 2, 1994, to allow for further investigation of the matters disputed by Schlesinger.² On July 18, 1994, Schlesinger wrote to the Regional Director restating his position that Linen Star had ceased to exist because of tax and rent liabilities, and urging that all proceedings be ended because "to conduct a hearing before an administrative law judge is a waste of useful time for the Board and myself." Schlesinger also stated that at one time he had believed that because one charge had been dismissed on December 16, 1993, all proceedings in the instant case were closed, but that he had later learned that the case was still proceeding. By letter dated August 1, 1994, to the associate chief administrative law judge, Schlesinger requested an adjournment of the instant hearing in order to obtain counsel. The letter stated that after December 1993, he had been under the impression that the case was over and that he did not know that the hearing would proceed on August 2 until July 12, 1994. The request for adjournment was referred to me for disposition. At the hearing on August 2, 1994, Attorney Horowitz stated that he was contacted "recently" by Schlesinger and that Schlesinger did not know until August 1 that a hearing before an administrative law judge would be conducted. Attorney Horowitz renewed his request for an adjournment and cited as an additional ground his own schedule. At the hearing, I denied Respondents' requests for adjournment. Shortly after this ruling, Attorney Horowitz left the hearing room and did not reappear on any of the hearing days. The brief summary of the facts given above shows that, despite the protestations of Schlesinger and Horowitz, Respondents were aware that a hearing was scheduled and that any claimed misunderstanding about the status of the case could not have failed to have been dispelled by the Region's letter of April 21, 1994, which informed Schlesinger that the hearing would take place on August 2, 1994. It is clear to me that Respondents have not shown any reason why the hearing should not have proceeded as scheduled on August 2. The time between April 21 and August 2 was sufficient to retain counsel and prepare for the instant hearing.

Before he left the instant hearing, Attorney Horowitz made "an oral motion to answer the most recent amended complaint as it pertains to Boomerang Enterprises and Lexus Merchandising to deny each and every allegation of . . .

those complaints . . . and to further raise the affirmative defense of 10(b)." I reserved judgment. Respondents did not present this motion nor any proposed answer in writing. Section 102.20 of the Board's Rules and Regulations provide that an answer shall be filed within 14 days from the service of the complaint. The answer must be signed by either an attorney of record or by a party. No extension for filing an answer was ever sought nor obtained by Boomerang and Lexus. In fact, Respondents were warned by the Region on November 5, 1993, that an answer must be filed immediately. Respondents have not shown any reason why an answer was not filed. Indeed, Schlesinger was engaging in extensive communications with the Region and he should have heeded the instruction that he file an answer. Pursuant to the Rule, I shall deem admitted all the allegations in the fourth amended consolidated complaint as they pertain to Boomerang and Lexus. As no answer was filed to the third amended consolidated complaint and as no amendment was made to the answer filed to the second amended consolidated complaint, I shall deem admitted the new allegations against Impressive and Linen Star contained in the complaints subsequent to the second amended consolidated complaint.

The General Counsel served upon Boomerang Enterprises and Lexus Merchandising a subpoena duces tecum, served upon Schlesinger a subpoena ad testificandum, served upon Impressive Textiles/Linen Star a subpoena duces tecum, and served upon Isaac Braun a subpoena ad testificandum. The Charging Party served subpoenas duces tecum upon Impressive Textiles, Linen Star, LCI, Boomerang Enterprises, and Lexus Merchandising.³ No petitions to revoke any of these subpoenas were ever filed. The information sought in all these subpoenas relates to subjects including jurisdiction, the single employer and alter ego status of the various business entities, and the duties and identities of all persons employed by the various business entities.⁴ At the hearing, I ruled that because the subpoenas had not been complied with I would permit secondary evidence to be introduced to establish facts relating to the subpoenaed material. I will take administrative notice of the Decision and Direction of Election in Case 29-RC-7835 issued on July 10, 1991. I note that the employer in that case, Impressive and Linen Star, chose not to appear for those proceedings and did not comply with subpoenas issued by the Board. The Decision and Direction of Election contains a finding that the "Employer and his counsel were given adequate notice of this proceeding and chose not to attend and fully participate in it." It is well established that issues that could have been litigated in the prior representation proceeding may not be relitigated in the instant proceeding. The *Excelsior* list supplied by the employer for the election will be considered the best available evidence of the employees in the unit at issue here.

II. JURISDICTION

At all times material, until a date in late July 1992, Impressive Textiles, Inc., a New York corporation, maintained its place of business at 140 58th Street, Brooklyn, New York, where it manufactured, distributed, and sold tablecloths, bedding, and related products and shipped directly

³ Boomerang operated under the name of LCI on occasion.

⁴ Attorney Horowitz was given copies of all the subpoenas before he left the instant hearing.

² This letter was erroneously dated in 1993.

outside the State of New York goods valued in excess of \$50,000. At all times material, until a date in late July 1992, Linen Star, Inc., a New York corporation, maintained its place of business at 140 58th Street, Brooklyn, New York, where it manufactured, distributed, and sold tablecloths, bedding, and related products and shipped directly outside the State of New York goods valued in excess of \$50,000. At all times material, Lexus Merchandising, Inc., a New York corporation with its place of business located at 750 Kent Avenue, in Brooklyn, New York, has manufactured and distributed women's knitted outerwear and gold jewelry and has shipped goods valued in excess of \$50,000 directly outside the State of New York. At all times material since early August 1992, Boomerang Enterprises, an enterprise licensed in New Jersey with a place of business at 136 Tichenor Street, Newark, New Jersey, has manufactured, distributed, and sold tablecloths, bedding, and related products and shipped goods valued in excess of \$50,000 directly outside the State of New Jersey.

At all times until late July 1992, Respondent Impressive and Respondent Linen Star had been affiliated business enterprises with common officers, owners, directors, operators, management, and supervision; had formulated and administered a common labor policy; had shared common premises, facilities, advertising and telephone lines; had made sales to each other; had held themselves out to the public as a single-integrated business enterprise and constituted a single employer within the meaning of the Act. At all times material, Respondent Lexus and Respondent Impressive/Linen Star have been affiliated business enterprises with common owners, officers, directors, operators, managers, and supervision; have formulated and administered a common labor policy; and have shared common equipment and made sales to each other. On a date in late July 1992, Respondent Lexus purportedly closed and ceased Respondents Impressive/Linen Star's operations.

Since early August 1992, Isaac Braun, owner and manager of Respondent Impressive/Linen, and Naftoli Schlesinger, owner of Respondent Lexus and Respondent Boomerang, have continued to manufacture and distribute tablecloths, bedding, and related products under the name of Boomerang Enterprises at 136 Tichenor Street in Newark, New Jersey, with substantially the same supervisors as were employed by Respondents Impressive/Linen, using the same equipment and servicing the same customers as serviced by Respondents Impressive/Linen. Respondent Boomerang was established by Respondents Lexus, Impressive, and Linen as a subordinate instrument to and a disguised continuation of Respondents Impressive and Linen Star and is the alter ego of Respondents Impressive and Linen Star, and Respondents Impressive, Linen Star, Boomerang, and Lexus are a single employer within the meaning of the Act. Respondents Impressive, Linen Star, Lexus, and Boomerang, individually and collectively, are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

International Ladies' Garment Workers' Union, AFL-CIO (ILG) is a labor organization within the meaning of Section 2(5) of the Act.

III. OWNERS, MANAGERS, AND SUPERVISORS

Based on the Decision and Direction of Election and the uncontradicted testimony of the witnesses in the instant hear-

ing, I find that Isaac Braun is the owner and manager of Respondents Impressive/Linen Star.⁵ Braun made the decisions about layoffs and he told the employees whether he had money to pay them or not. Moshe Fetman, who reported directly to Braun, was a supervisor of Impressive/Linen Star. Fetman hired and fired employees of Impressive/Linen Star, he assigned work to employees, and he imposed discipline. Lamarre Deronceray, who reported directly to Braun, also supervised the Impressive/Linen Star employees, assigned work to them, and imposed discipline. In May 1992, Deronceray left Respondents' employ. A new supervisor, Lloyd Finley, had the authority to discharge employees.

Naftoli Schlesinger is the owner and a supervisor of Respondent Lexus and of Respondent Boomerang. Isaac Braun is a manager of Boomerang and Finley is a supervisor of Boomerang.

IV. STATUS OF THE UNION

On June 6, 1991, United Production Workers Union, Local 17-18 filed a petition in Case 29-RC-7835; thereafter, the International Ladies' Garment Workers' Union, AFL-CIO intervened. The election, which took place on November 8, 1991, resulted in the certification of the ILG on December 18, 1991, as the representative of the Impressive/Linen Star employees in the following appropriate unit:

All full-time and regular part-time production, maintenance, shipping and receiving employees, including cutters, sewing machine operators, folders, packers, floor persons, general helpers and warehousemen employed by Impressive/Linen at the Brooklyn facility, but excluding all other employees, management personnel, office clericals, guards and supervisors as defined by the Act.

V. VIOLATIONS OF THE ACT

The uncontradicted testimony shows that Ibrahima Diop was hired by Moshe Fetman to work as a sewer at the Brooklyn factory location in mid-July 1991. Diop's pay stub showed the company name as Linen Star. After he began work, Diop met the ILG organizers and he assisted the Union by obtaining the names and telephone numbers of the employees, speaking on behalf of the Union during his breaktimes, and acting as the union observer on the day of the election. On one occasion, Isaac Braun saw Diop speaking to Maurice in the cutting department during the employees' break and he instructed Diop to return to his own department. When Diop replied that he was on his break, Braun said he was the owner and he pushed Diop and told him to return to his place. Diop said he would return to his department but that Braun should not push him. Braun then instructed Fetman to throw Diop out, but Fetman protested to Braun that Diop was a good worker. Later, Fetman approached Diop at his work station and told him not to talk about the Union any more in this place because the boss did not want that; the boss had wanted to fire Diop but he had come to Diop's defense. The next day, Diop was taking employee addresses on his breaktime when Fetman came over

⁵Isaac Braun is also called Itshak Braun. The record shows that Braun told employees of Impressive/Linen that he was the "owner of this place."

and asked what he was doing. Diop said he was assisting employee Maggie Desai with a work permit. Fetman left and then returned to tell Diop that he knew the latter was taking names for the Union. Fetman said he had told Diop not to talk about the Union. When Diop pointed out that he was on his break, Fetman told him not to talk about the Union, break or no break. After the break, Fetman instructed Diop not to talk about the Union and to see him if Diop had a problem. On November 5, just before the election, Deronceray told Diop that if the Union won the election, the factory would be closed down. I find that Respondents violated Section 8(a)(1) of the Act by prohibiting employees from discussing the Union during their breaktimes or at any time in the factory by threatening to close the factory if employees selected the Union as their collective-bargaining representative, by threatening to discharge Diop if he engaged in union activities, by implementing a new rule prohibiting employees from visiting other departments because they engaged in union activities, by pushing Diop out of the cutting department, by creating the impression of surveillance of the employees' union activities, and by implying to Diop that his grievances would be remedied if he stopped talking about the Union.

On the Monday after the November 8 election, Fetman told a group of about 20 or 30 employees including Diop that because they now had a union, they must all show their green cards and social security cards to management. Diop protested that the employees were protected because they had participated in the election, but Fetman told him to shut up and added that he intended to fire some employees. That same day, Diop and five other employees were sent home. Fetman told them to call before they returned to work. The next day, Diop went to work at 8 a.m. Deronceray was there and he told Diop that if he had come to work that was OK, but that if Diop had come to talk about the Union, he could forget about it. Fetman came in later and told Diop that he had made a mistake bringing the Union to the factory. Fetman said that Braun was going to fire everybody in the sewing department and that Diop would then have to ask the Union for a job. Fetman said if the sewing department employees were fired, then he himself would also be without a job. Eventually, all the sewing department employees were laid off in November 1991. I find that Respondents violated Section 8(a)(1) of the Act by using their employees' undocumented immigration status to retaliate for their union activities and for their selection of the Union as their collective-bargaining representative by impliedly threatening to report them to the Immigration and Naturalization Service (INS). *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883, 894 (1984). Respondents also violated Section 8(a)(1) of the Act by telling their employees that they would be fired because they selected the Union as their collective-bargaining representative and by instructing employees not to discuss the Union at work. Respondents violated Section 8(a)(3) of the Act by laying off their employees in November 1991 because they had selected the Union as their bargaining representative.

Diop was recalled and he returned to work on April 27, 1992. Deronceray was now in charge of the sewing department and he gave Diop an application. Diop saw that between 10 and 20 sewers were at work of whom 5 were new employees. When Diop began to sew he noticed that some of the material he had been given was damaged. Then Deronceray and Braun came over and told Diop not to sew

damaged goods. As it happened, more than half of the goods Diop was given to sew were damaged and he had to discard them. Braun came over to Diop's work station and shouted that Diop should not sew damaged goods. Then, Braun sent Diop to the folding department. Eventually, Braun gave Diop a document and asked that he sign it. The paper was a warning notice that if Diop sewed damaged goods, he would be fired. When Diop refused to sign the paper, Braun refused to let Diop sew at a machine. The next day, however, Braun and Deronceray permitted Diop to return to his sewing job, but they continued to give him damaged goods to work with. When Diop asked for good materials, Braun replied that he would give him what he pleased. Shortly after this, Braun fired Diop. I find that Respondents, in violation of Section 8(a)(1) and (3) of the Act, and as a result of Diop's union activities, gave Diop damaged goods to sew, issued a warning to Diop, and then discharged Diop. Before Diop's recall on April 27, 1992, the consolidated complaint had issued on March 27, 1992, naming Diop in more than one paragraph as an employee who had been the target of Respondents' unlawful actions. It is fair to infer that Respondents' actions against Diop which culminated in his discharge shortly after his recall from layoff were motivated by the fact that Diop gave a statement to the Region which resulted in the issuance of a complaint. I find that Respondents' actions also violated Section 8(a)(4) of the Act.

Aida Naranjo, a sewing machine operator for Linen Star beginning in May 1985, was paid on checks drawn by both Linen Star and Impressive Textiles. Naranjo saw Fetman lay off 10 sewers right after the election. A few weeks later, Naranjo herself was laid off. Although Fetman stated that the layoffs were for lack of material, Naranjo saw some employees packaging materials in cartons. On November 29, 1991, when Naranjo went to collect her pay, Fetman told her that there was no more work because they did not want to pay the salaries required by the Union. Naranjo was recalled in April 1992, but Braun and Deronceray asked for her green card and her social security card; because she could not produce these documents, she never worked for Respondents again. I find that Respondents violated Section 8(a)(1) of the Act by informing Naranjo that there was no work because they did not want to pay the wages requested by the Union and by requiring her to produce immigration documents upon her recall which constituted an implied threat to report her to the INS in retaliation for the employees' support of the Union.

Marie Carmel Menelas, a sewer since 1988, recalled that before the election Braun and Fetman told her that they were not happy about the Union and that they urged employees not to vote for the Union. After the election, Menelas was not given any work. Although Menelas returned to the factory on several occasions to work, she was told there was no work. Menelas observed some new sewing machine operators, however, and she saw some women taking work home. On November 26, 1991, Menelas called the factory and asked Fetman when she could come back to work. Fetman replied that he had told her not to vote for the Union, and he hung up the telephone. Menelas returned to work briefly in April 1992; she saw some new sewing employees working at that time. I find that Respondents, in violation of Section 8(a)(1) of the Act, implied to Menelas that there was no work for her because she supported the Union.

Elizabeth Gonzalez, a sewing machine operator, received pay stubs identifying her employer as Linen Star. Gonzalez was hired by Fetman in August 1991; after a few weeks, she asked him for a raise and he replied that she was a good worker and that she would receive a wage increase after the Jewish holidays. The next time Gonzalez inquired about a raise, Fetman said he could not give her an increase because of problems with the Union. At the end of October 1991, when the organizing campaign was underway, Gonzalez heard Fetman tell a group of employees sitting at her table during lunch that if they elected the ILG, he would fire them all. At this time, Gonzalez noticed that Fetman followed groups of workers in order to overhear their conversations. When Gonzalez went to work on the Monday after the election, Fetman and Braun asked everyone for a green card and a social security card; Fetman said they needed the cards due to problems with the Union. Then, Fetman told a group of about 30 employees not to talk about the Union or he would let them go. On November 26, 1991, Fetman told Gonzalez that there was no more work. Gonzalez saw that there was work on the tables, however, and the next day she called the factory and was told to come to work. After 1 day, she was again told there was no work for her. A few days later, Gonzalez went to collect the wages that were owing to her, but Fetman said he had no cash. On this occasion, Gonzalez asked for work, and Fetman explained that there was no work for her because Braun was sending the work out of the factory. Indeed, Gonzalez saw two cutters working and some cut work on the table ready for the sewing machine operator. On December 11, 1991, Gonzalez returned to get her pay and Fetman told her there was no more work because of problems with the Union. Eventually, Gonzalez telephoned the factory to ask for her W-2 form. The person in the office told her that she had been working for Impressive Textiles and Braun sent her a letter on Linen Star stationery saying that she had worked for Impressive but that he would try to get the Impressive records. In fact, Gonzalez received a W-2 form listing her employer as Impressive. On April 13, 1992, Braun wrote to Gonzalez on Linen Star stationery recalling her to her former position. When Gonzalez went back to work, she was closely watched by Braun; on her second day back, Fetman told her not to talk about the Union. Gonzalez noted the presence of six new sewing machine operators. At a goodbye party for Deronceray in May 1992, Braun showed everyone an official document naming Gonzalez as a Charging Party in a Board proceeding. He asked all the employees whether he had mistreated them and told Gonzalez that because of her he had to go to court. In mid-May 1992, Braun sent Gonzalez away for lack of work. On the day of her layoff, Gonzalez saw seven or eight sewers and two cutters working in the factory. I find that Respondents, in violation of Section 8(a)(1), (3), and (4) of the Act, informed Gonzalez that she was not getting a raise because of the Union, informed employees that they would be fired if the Union was elected as their representative, instructed employees not to discuss the Union, engaged in surveillance of employees' union activities, informed employees that there was no work because of the Union, informed employees that work was being subcontracted because of the Union, and laid off Gonzalez in mid-May 1992. In view of Braun's expression of hostility to Gonzalez at the party for Deronceray, it is fair to infer that her layoff was motivated in part by her

statements to the Region which led to the issuance of the complaint naming her as an individual Charging Party.

Leila Hernandez, a sewing machine operator from April 1989, was given her pay by Fetman on the day of the election; he told her not to vote for the Union as he paid her. On the Monday after the election, Fetman called a meeting during the break and told the assembled employees that it was a mistake for the Union to win and that Braun had told him that there would now be less work. Fetman said that there was no money, that Braun would not buy any more material, and work would go down. That day, Fetman sent eight employees home. On November 15, Fetman laid off more workers including Hernandez. As she left, about five or six cutters were still at work and the same numbers of sewers. At the end of November, a group of employees went to the factory to collect wages owed to them; Hernandez saw cutters working, she saw cut material on the tables and she saw a person taking home material ready for sewing. Hernandez was never recalled. I find that Hernandez' testimony supports the violations discussed above.

Francklin Auguste was a cutter in the factory beginning in February 1986. His pay stub bore the name of Linen Star. Braun hired Auguste and told him that Deronceray would be his manager; thereafter Deronceray assigned work to Auguste. After he was hired, Auguste became acquainted with representatives of the ILG and he discussed the benefits of representation by the Union with his coworkers. In November 1991, before the election, Braun came over to Auguste's work table and told the assembled cutters that if people voted for the Union, there would be a problem and he would shut the factory down. Braun often spoke about the Union; he kept saying that if they voted for the Union he would send the workers home. After the election, Fetman asked the cutters who had voted for the Union. All the cutters responded that they had done so. Fetman told them to bring in their green cards but the employees said that when they were hired they had not been asked for green cards or social security cards. Fetman insisted that they had to bring the cards to work, however, and that those who were for the Union would have a problem. One week after the election, Auguste was discharged without his pay and without any document for the unemployment office. He had to return to the factory several times before he could obtain the money and the document. On November 22, 1991, Auguste was in the cafeteria drinking coffee with other laid-off workers when Fetman came over and asked what they were doing. Auguste replied that they had an appointment with Braun whereupon Fetman said that Braun had laid them off because he was afraid of having to pay them more money because of the Union. Auguste saw Braun later the same day and asked why he had been sent home. When Braun responded that Auguste never listened to him, Auguste pointed out that he had been there 6 years and that it was unfair to fire him while keeping other cutters on the job. Auguste was recalled in April 1992; upon his return he was given an application form by Deronceray. Auguste refused to sign the application because he was not a new employee. When he resumed his work, August saw 40 or 50 sewing machine operators, many of whom were new employees. Eventually, Auguste was fired by Lloyd Finley, the manager who replaced Deronceray. I find that Respondents, in violation of Section 8(a)(1) and (3) of the Act, threatened employees that the factory

would close if they selected the Union as their representative, threatened to cause problems for undocumented workers because of their support for the Union, discharged Auguste because he supported the Union, and informed employees that they had been laid off because of their support for the Union.

Eclairne Louiny folded sheets at the factory. She recalled that before the election, Fetman told a number of employees working at her table that if they voted yes for the Union, they would be fired. After the election, Fetman said that they had all voted for the Union and that they should all bring their green cards the next day. Louiny was sent home on the next day but she was not paid the wages owed to her. Louiny was recalled in April 1992 and she was asked to fill out an application; when she refused to complete the application, Fetman told her there was no work. Although Louiny called Fetman many times asking for work, he repeatedly told her that there was no work for her. I find that Respondents, in violation of Section 8(a)(1), threatened to discharge employees if they voted for the Union and informed employees that the requirement to present immigration documents was imposed because the Union had been elected to represent them.

Jean Migel Blaise began work in the factory in 1986. On the Monday after the election, Fetman asked Blaise whether he had voted yes or no. When Blaise replied that he had voted yes, Fetman told him that the Union should give him work. Thereafter, Fetman did not give Blaise any more work and he repeated that Blaise should go to the Union for work. Blaise was recalled in 1992, but after 2 weeks Braun told him that there was no more work. Although Blaise called the factory on several occasions, he was never given any more work. I find that Respondents, in violation of Section 8(a)(1) and (3), interrogated Blaise about his support for the Union, informed him that because he supported the Union there was no more work for him, and laid him off because he supported the Union. The complaint alleges that Blaise was discharged, but the record does not support that allegation.

Ken Thorbourne, an organizer for the ILG who was in charge of the Union's efforts at the Respondents' factory, visited the factory in January 1992. He saw 17 new workers on the shop floor and he spoke to some of them. They told him that they had worked at the factory for a few weeks. In March 1992, Thorbourne met with Respondents' representative Burt Horowitz and he asked that the laid-off employees be put back to work. As a result, some of the workers were recalled but they were soon laid off again. In July 1992, Thorbourne visited the shop location in Brooklyn, but he found that the factory was no longer there. The Union had not been given any notice that the Respondents were closing their business. Eventually, Thorbourne found that the factory had relocated to Tichenor Street in Newark and he went to that location on September 19, 1992. The building had a sign which identified the shop as LCI. Thorbourne saw employees and a supervisor whom he knew from the Brooklyn location come out of the factory that afternoon. Thorbourne returned to the factory in October 1992 when he served some papers on Braun. In addition to Braun, who was standing in the middle of the shop floor, Thorbourne recognized Supervisor Finley who had worked at the Brooklyn location.

Xiao Chang Jim worked for the Union as an organizer from 1990 to 1993. On September 21, 1992, Jim went to 136 Tichenor Street in Newark, New Jersey, and asked for Linen

Star. He was directed to the third floor. After being admitted to the premises, Jim asked for Isaac Braun and he then met a man who identified himself as Isaac Braun. Jim told Braun that he owned a small store and that he wanted to buy some sheets. Braun sold Jim a set of sheets wrapped in packaging material that identified the contents as being made in the U.S.A. by Linen Star Inc. in Brooklyn, New York. Braun gave Jim a receipt at the latter's request; it was issued in the name of LCI and was signed by Lloyd. Jim observed cutters, sewing machine operators, and packers working on the premises.

The testimony of many of the laid-off workers who saw work being performed in the factory while they were on layoff, who saw work being taken home while they were on layoff, who saw new employees working on the factory floor while they were on layoff, and who had been told by Respondents before and after the election in November 1991 that if the Union won the election they would no longer have any work, supports the contention of the General Counsel that Respondents engaged in a mass layoff of employees in November 1991 because the employees had selected the Union as their collective-bargaining representative. Thus, the layoff violated Section 8(a)(3) and (1) of the Act. The evidence also shows that Respondents subcontracted the sewing work while the employees were on layoff. Respondents failed to give notice to the Union and an opportunity to bargain over the decision and the effects of subcontracting the sewing work and Respondents thus violated Section 8(a)(5) and (1) of the Act. *Fibreboard Corp. v. NLRB*, 379 U.S. 203, 215 (1964).

As discussed above, Respondents failed to file an answer to the third amended consolidated complaint. Based on the testimony of the employees and on the allegations which I shall deem admitted, I find that in April, May, and June 1992, Respondents laid off a number of employees and have refused to recall them. The layoff was because the employees had selected the Union to represent them and the layoff constituted a violation of Section 8(a)(3) and (1) of the Act. Further, the layoff was accomplished without giving the Union notice and an opportunity to bargain over the decision and effects of the layoff. This was a violation of Section 8(a)(5) and (1) of the Act.

Based on the allegations of the fourth amended consolidated complaint which I shall deem admitted, I find that in September 1992 Thorbourne asked Respondents Boomerang and Lexus, the alter egos of Respondents Impressive/Linen, to recognize and bargain with the Union as the exclusive bargaining representative of the unit employees. Respondents Boomerang and Lexus refused to recognize and bargain with the Union. Respondents thus violated Section 8(a)(5) and (1) of the Act.

I do not find that Respondents delayed wage payments to their employees because the employees supported the Union. The testimony shows that even before the union campaign at the factory, Braun had often told the employees that he did not have the money to pay them. On these occasions, the employees were paid days after the usual payday at the factory. Furthermore, there is not sufficient evidence in the record to support the allegations that certain employees were not paid all the sums owing to them; the employees' testimony on this point lacked specificity. I have also considered allegations in the complaints in addition to those discussed

specifically in this decision, but I have found that there is no evidence to support them in the record.

CONCLUSIONS OF LAW

1. Respondent Boomerang is the alter ego of Respondents Impressive and Linen Star and Respondents Impressive, Linen Star, Boomerang, and Lexus are a single employer within the meaning of the Act.

2. The following employees of Respondents Impressive, Linen Star, Boomerang, and Lexus constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production, maintenance, shipping and receiving employees, including cutters, sewing machine operators, folders, packers, floor persons, general helpers and warehousemen employed in the manufacture, distribution and sale of table cloths, bedding and related products, at Respondents' facility at 136 Tichenor Street, Newark, New Jersey, excluding all other employees, management personnel, office clericals, guards and supervisors as defined by the Act.

3. Since December 18, 1991, International Ladies' Garment Workers' Union, AFL-CIO has been the certified exclusive representative of all employees within the appropriate unit described above for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

4. By implementing a rule prohibiting employees from discussing the Union at any time in the factory and by implementing a rule prohibiting employees from visiting other departments on their breaktimes and physically pushing an employee back to his own department, Respondents violated Section 8(a)(1) of the Act.

5. By threatening to close the factory if the employees selected the Union as their collective-bargaining representative, Respondents violated Section 8(a)(1) of the Act.

6. By threatening to discharge employees if they engaged in union activities, Respondents violated Section 8(a)(1) of the Act.

7. By discharging Francklin Auguste because he engaged in union activities, Respondents violated Section 8(a)(3) and (1) of the Act.

8. By creating the impression that their employees' union activities were under surveillance, Respondents violated Section 8(a)(1) of the Act.

9. By implying that employees' grievances would be remedied if they stopped discussing the Union, Respondents violated Section 8(a)(1) of the Act.

10. By impliedly threatening to report their undocumented employees to the INS because the employees selected the Union as their representative, Respondents violated Section 8(a)(1) of the Act.

11. By informing their employees that there was no work because they had supported the Union, Respondents violated Section 8(a)(1) of the Act.

12. By laying off their employees in November 1991 because they selected the Union as their bargaining representative, Respondents violated Section 8(a)(3) and (1) of the Act.

13. By giving employee Ibrahima Diop damaged goods to work with, issuing a warning to Diop, and discharging Diop because he supported the Union and because he gave a state-

ment to the Region, Respondents violated Section 8(a)(1), (3), and (4) of the Act.

14. By informing employee Elizabeth Gonzalez that she was not receiving a raise because of the Union and by laying off Gonzalez in mid-May 1992 because she supported the Union and because she gave a statement to the Region, Respondents violated Section 8(a)(1), (3), and (4) of the Act.

15. By informing employees that unit work was being subcontracted because they had selected the Union, Respondents violated Section 8(a)(1) of the Act.

16. By interrogating employees about their support for the Union, Respondent violated Section 8(a)(1) of the Act.

17. By laying off their employees in April, May, and June 1992 because they supported the Union, Respondents violated Section 8(a)(3) and (1) of the Act.

18. By subcontracting unit work in November 1991 without notice to the Union and an opportunity to bargain over the decision and the effects of subcontracting the work, Respondents violated Section 8(a)(5) and (1) of the Act.

19. By laying off employees in April, May, and June 1992 without giving the Union notice and an opportunity to bargain over the decision and effects of the layoff, Respondents violated Section 8(a)(5) and (1) of the Act.

20. By refusing to recognize and bargain with the Union upon the Union's request in September 1992, Respondents violated Section 8(a)(5) and (1) of the Act.

21. The General Counsel has not proved that Respondents engaged in any other violations of the Act.

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 employees Ibrahima Diop and Francklin Auguste, must offer them reinstatement and make them 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). Similarly, the unlawfully laid-off employees must be reinstated and must be made whole. At the compliance stage of the proceedings, the exact identities of the laid-off employees may be established based on the *Excelsior* list and any other available evidence.

The General Counsel seeks an order requiring Respondents to reinstate their cutting and sewing operations as they existed prior to November 11, 1991, when some or all of the unit work was subcontracted as a result of the Union's victory in the election. This is an appropriate remedy in view of Respondents' unlawful subcontracting of work without providing the Union notice or an opportunity to bargain. Respondents may introduce previously unavailable evidence, however, if any, at the compliance stage of this proceeding to demonstrate that the reinstatement of those operations is unduly burdensome. *Lear Siegler, Inc.*, 295 NLRB 857 (1989).

Because of the Respondents' egregious and widespread misconduct, demonstrating a general disregard for the employees' fundamental rights, I find it necessary to issue a broad Order requiring the Respondents to cease and desist

from infringing in any other manner on rights guaranteed employees by Section 7 of the Act. *Hickmott Foods*, 242 NLRB 1357 (1979). The notice shall be translated into Spanish, Creole, and French and shall be mailed by Respondents to all those employed in the unit since November 1991 as well as posted at Respondents' facility.

The Union requests that Braun be required to read the Order and be present when it is read to employees by a Board agent.⁶ The General Counsel has not requested this remedy. I note that Braun engaged in some of the unlawful activities but that most of them were committed by supervisors, albeit acting in Braun's name. I decline to recommend this remedy based on the Board's discussion in *Three Sisters Sportswear Co.*, 312 NLRB 853 (1993).

The Union requests that Respondents be ordered to grant it access to Respondents' facilities where unit work is being performed, the use of a bulletin board, and a list of names and addresses of all employees since November 1, 1991. The Union also requests that Respondents be ordered to pay to the Union organizing costs and litigation costs. Respondents in this case have engaged in outrageous behavior before the election; employees were interrogated, threatened, surveilled, and discriminated against in the many instances discussed above. After the election, employees were immediately laid off or discharged in retaliation for their selection of the Union and the work was subcontracted. Then a sham recall was staged, soon followed by another illegal layoff. Finally, the shop ran away to New Jersey where it operates under a different name in an alter ego arrangement. Moreover, Respondents have occasioned frivolous litigation for the sole purpose of delaying the time when the Union might actually represent the employees. Respondents did not appear at the representation hearing nor comply with Board subpoenas in the representation proceeding. Before the instant hearing, Respondents made frivolous requests for adjournments both to the Region and to the Division of Judges. Respondents did not comply with any of the subpoenas issued for the instant hearing despite engaging in discussions with counsel for the General Counsel concerning possible production of material both before and during the course of the hearing and it is

⁶In those cases where the requested remedy has been ordered, the respondent's representative has been required to read only the posted notice.

clear that those discussions were entered into only for the purpose of delaying the completion of the instant hearing. Thus, although denying most of the allegations of some of the complaints issued, Respondents did not attend the instant hearing after the first morning session, they presented no witnesses, and they did not even cross-examine General Counsel's witnesses. I am convinced that all these tactics were designed to frustrate the employees' rights to union representation. I find that it is appropriate to order some special remedies. In order that the employees may have ready access to information from the Union concerning all aspects of unionization and the collective-bargaining negotiations which should take place, the Union should be given reasonable access to Respondents' bulletin boards and other places where notices to employees are customarily posted, during the period of contract negotiations, for the posting of union notices, bulletins, and other literature. Further, the Respondents should furnish the Union with a list of the names and addresses of all its employees since November 1, 1991, and keep this list current for a 1-year period. Moreover, in order to discourage frivolous litigation such as was engaged in here over a 4-year period for the sole purpose of denying their lawful rights to employees, and in order to remedy the effects of the lengthy delay in the exercise of the employees' rights occasioned by Respondents' frivolous litigation, it is just and proper to order Respondents to reimburse the Union for its expenses incurred in the investigation, preparation, presentation, and conduct of the instant cases, including the following costs: reasonable counsel fees, salaries, witness fees, transcript and record costs, printing costs, travel expenses, and per diem and other reasonable costs and expenses.⁷ *Tiidee Products*, 194 NLRB 1234, 1236 (1972), affd. in part *Electronic Workers IUE (Tiidee Products) v. NLRB*, 502 F.2d 349 (D.C. Cir. 1974), cert. denied 412 U.S. 991 (1975); *Texas Super Foods*, 303 NLRB 209 (1991). See also discussions in *Heck's, Inc.*, 215 NLRB 765 (1974); *Wellman Industries*, 248 NLRB 325 (1980). Based on the record, I do not find that the Union has established that it is entitled to reimbursement of costs for organization and negotiation expenses. Finally, the Union is not entitled to be reimbursed for loss of dues.

[Recommended Order omitted from publication.]

⁷The General Counsel did not request reimbursement for its costs.