

Duro Pleating, Inc. and Erotida Bonachea. Case 22-CA-19581

May 25, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS COHEN
AND TRUESDALE

Upon a charge filed by Erotida Bonachea, an individual, on November 17, 1993, the General Counsel of the National Labor Relations Board issued a complaint on February 28, 1994, against Duro Pleating, Inc., the Respondent, alleging that it violated Section 8(a)(1) of the National Labor Relations Act by discharging three employees. On May 16, 1994, the Respondent filed an answer to the complaint.

Thereafter, on November 15, 1994, the Regional Director approved an informal settlement agreement between the Respondent and the Charging Party in disposition of the complaint. On January 26, 1995, however, the Regional Director issued an order revoking the informal settlement agreement and a new complaint realleging essentially the same allegations contained in the original complaint,¹ on the ground that the Respondent had failed to comply with the settlement agreement.

Although properly served copies of the January 26, 1995 complaint, the Respondent failed to file an answer thereto. Accordingly, on March 13, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On March 15, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On March 30, 1995, the Respondent filed an Order to Show Cause as to why the Petitioner's Motion for Summary Judgment should not be granted. On April 3, 1995, the General Counsel filed a response to the Respondent's Order to Show Cause.

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

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the January 26, 1995 complaint affirmatively notes that unless an an-

¹The only significant difference between the new and original complaints is that the new complaint alleges the unlawful discharge of only two of the three employees. By separate order dated November 15, 1994, the Regional Director approved withdrawal of that portion of the charge, and dismissed that portion of the complaint, pertaining to the third employee.

swer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated February 22, 1995, notified the Respondent that unless an answer were received by March 1, 1995, a Motion for Summary Judgment would be filed. Nevertheless, as indicated above, the Respondent failed to file an answer to the January 26, 1995 complaint.

Although the Respondent did file an answer to the original complaint, that answer was withdrawn by the explicit terms of the settlement agreement,² and was not thereafter revived by the Regional Director's order vacating and setting aside the settlement. Thus, as the Respondent's answer to the original complaint does not remain extant, it does not preclude summary judgment.³

In its Order to Show Cause the Respondent asserts that its failure to file an answer was a result of the Respondent's attorney not being "familiar with the format of the documents which were received on January 26, 1995." According to the Respondent, the complaint was contained in an order and "stated nothing concerning a time of answer." The Respondent filed an answer with its Order to Show Cause.

Contrary to the Respondent, we find that the Respondent's failure to file a timely answer has not been supported by a showing of good cause. The Respondent admittedly received from the Regional Director a document dated January 26, 1995, with the caption, "Order Revoking Informal Settlement Agreement, Complaint and Notice of Hearing," and this document clearly states, *inter alia*, that the Respondent must file an answer within 14 days of service pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations. Further, by letter dated February 22, 1995, the Regional attorney informed the Respondent that no answer had been received, that the time for filing an answer was extended until March 1, 1995, and that if an answer was not received by that date, a Motion for Default Judgment would be filed.

In light of the Respondent's having received clear notice of its obligation to file a timely answer, the Respondent's attorney's claim of unfamiliarity with the Board's documents does not constitute good cause for the Respondent's late filing of its answer.⁴ We there-

²Form NLRB-4775, the settlement agreement form used here, expressly provides that approval of the settlement agreement "shall constitute withdrawal of any Complaint(s) and Notice of Hearing heretofore issued in this case, as well as any answer(s) filed in response." (Emphasis added.)

³See, e.g., *Orange Data, Inc.*, 274 NLRB 1018 (1985); *Ofalco Properties*, 281 NLRB 84 (1986); and *Signage Systems*, 312 NLRB 1115 (1993).

⁴See *Bricklayers Local 31*, 309 NLRB 970 (1992), and cases cited in fn. 5.

fore decline to accept the answer that the Respondent filed with its Order to Show Cause.

Accordingly, in the absence of good cause being shown for the failure to file a timely answer to the January 26, 1995 complaint, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times the Respondent, a corporation, with an office and place of business in North Bergen, New Jersey, has been engaged in the pleating of garments for other business entities. During the 12 months preceding issuance of the complaint, the Respondent, in conducting its business operations, provided services valued in excess of \$50,000 for other companies in the garment industry within the State of New Jersey that are directly engaged in interstate commerce. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

On an unknown date in early November 1993, the Respondent's employees Erotida Bonachea, Sonia Cepeda, and others concertedly complained to the Respondent regarding the wages, hours, and working conditions of the Respondent's employees, by requesting that the method of employee compensation be changed.

About November 9, 1993, the Respondent discharged Erotida Bonachea and Sonia Cepeda because they had engaged in the foregoing conduct and to discourage employees from engaging in these and other concerted activities.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent unlawfully discharged Erotida Bonachea and Sonia Cepeda on November 9, 1993, we shall order the Respondent to offer these employees 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 and privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to expunge from its files any and all references to the unlawful discharges, and to notify the discriminatees in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, Duro Pleating, Inc., North Bergen, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against employees because they engaged in protected concerted activities or to discourage employees from engaging in such activities.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer immediate and full reinstatement to Erotida Bonachea and Sonia Cepeda to their former jobs or, if those jobs no longer exist, to substantially equivalent positions without prejudice to their seniority or any rights and privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, with interest, in the manner set forth in the remedy section of the decision.

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

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in North Bergen, New Jersey, copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Re-

⁵If 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."

gional Director for Region 22, 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.

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

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

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 our employees because they engage in protected concerted activities or to discourage employees from engaging in such activities.

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 immediate and full reinstatement to Erotida Bonachea and Sonia Cepeda to their former jobs or, if those jobs no longer exist, to substantially equivalent positions without prejudice to their seniority or any other rights and privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of our discrimination against them, with interest.

WE WILL remove from our files any references to the unlawful discharge of the employees and WE WILL notify them in writing that this has been done and that the action will not be used against them in any way.

DURO PLEATING, INC.