

Abraham Scharf, Rosa Scharf, Michael Edelstein, and Florence Edelstein d/b/a Imperial Court Hotel and Local 144, Hotel, Hospital, Nursing Home and Allied Services Union, SEIU, AFL-CIO. Case 2-CA-27327

September 3, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND FOX

Upon a charge filed by the Union on April 7, 1994, and a first amended charge filed by the Union on November 8, 1994, the General Counsel of the National Labor Relations Board issued a complaint dated February 13, 1996,¹ against Abraham Scharf, Rosa Scharf, Michael Edelstein, and Florence Edelstein d/b/a Imperial Court Hotel, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge, amended charge, and complaint, the Respondent has failed to file an adequate answer.

On June 17, the General Counsel filed a Motion to Strike Answer as Deficient and Motion for Summary Judgment and Issuance of Decision and Order and a petition in support of the motions, with exhibits attached. On June 20, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motions should not be granted. The Respondent filed no response. The allegations in the motions are therefore undisputed.

Ruling on Motion to Strike Answer As Deficient
And Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from the service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all of the allegations in the Complaint shall be deemed to be admitted to be true and shall be so found by the Board." Section 102.20 also states that an answer should specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case it shall so state. Section 102.21 of the Board's Rules requires the respondent to file a copy of its answer on the other parties.

The Respondent did not initially file an answer to the complaint as required by Section 102.20 of the Board's Rules. According to the undisputed allegations in, and the attachments to, the General Counsel's petition in support of the motions, the Board's Regional Office notified the Respondent, by letter dated March

13, that unless it complied with the Board's Rules regarding the filing of an answer by close of business on March 27, a Motion for Summary Judgment would be filed. On March 26, after obtaining new legal counsel, the Respondent requested an extension of time to file an answer. An extension to April 26 was granted by the Region. By letter dated April 17, the Respondent's new attorney, Bennett Pine, withdrew as counsel.

On April 26, the Region received a letter dated April 24 from the Respondent, signed by Abraham Scharf, a partner. Scharf stated that "this letter is being sent as a formal answer to the complaint." The letter gives reasons why Hazel Simmons and Rajkumarie Maniram, two employees originally named in the charge as 8(a)(3) discriminatees, had been laid off.² The letter then indicates that the Respondent employs a manager, bookkeeper/telephone operator, an employee who checks on supplies, and an employee who performs painting and cleaning.³ The Respondent did not serve a copy of this letter on the Charging Party.

By letter dated May 16, the Region notified the Respondent that its answer was deficient because the April 24 letter failed to specifically admit, deny, or explain each of the facts alleged in the complaint. The Region further advised that if an answer satisfying the requirements of Section 102.20 was not filed by the Respondent by May 30, a Motion for Summary Judgment would be filed. As previously stated, the General Counsel filed a Motion for Summary Judgment on June 17. The Respondent did not respond to either the May 16 letter or the June 17 motion.

The General Counsel asserts that the Respondent's April 24 letter does not constitute an answer to the complaint because it fails to comport with Section 102.20 and Section 102.21 of the Board's Rules. He contends that the April 24 letter admits that there are employees performing unit work, but fails to address

²The charge originally alleged that the discharge of Simmons and Maniram violated Sec. 8(a)(3) and (1) of the Act. However, on January 6, 1995, the Region approved the withdrawal of the 8(a)(3) portion of the charge. The 8(a)(5) portion of the charge was conditionally withdrawn based on a private settlement reached between the Respondent and the Charging Party. On September 28, 1995, based on the Respondent's failure to comply with that private settlement, the Region reinstated the charge and issued a complaint on the 8(a)(5) allegations.

³The letter states, in pertinent part:

With regard to our other employees, we employ a manager of the hotel, Mr. Sherman, and a bookkeeper who is also the switchboard operator, who has been working at the hotel for over twenty years and even prior to our owning the property. In addition, Mr. Harry Zielonka, who used to be the manager of the hotel and is now retired, comes in two or three days a week for approximately 3 hours per day, mostly to keep himself busy and to check if any supplies have to be ordered.

Lastly, we employ another individual full time who does painting, and twice a week for 2 hours per day cleans the floors as well.

¹ All dates are in 1996 unless otherwise indicated.

the substance of the complaint and raises no substantial or material issues of fact warranting a hearing before an administrative law judge. The General Counsel moves that, if deemed an answer, the Respondent's letter be stricken as deficient. Thus, the General Counsel contends that, in accordance with the provisions of Section 102.20 of the Board's Rules, all allegations in the complaint should be deemed to be admitted to be true and should be so found by the Board, and that the Respondent should be found to have violated Section 8(a)(5) and (1), as alleged by the complaint.

We agree that the Respondent's April 24 pro se letter does not constitute a proper answer under the Board's Rules. The letter does not specifically admit, deny, or explain each of the allegations in the complaint, nor does it state that the Respondent is without knowledge of any of the factual allegations.⁴ The letter does not address any of the facts alleged in the complaint and, in particular, the Respondent's alleged refusal to discuss grievances with the Union and adhere to the collective-bargaining agreement with the Union. Rather, the letter discusses matters not alleged by the complaint—two employee layoffs and jobs held by certain individuals. Thus, the instant case differs from those situations in which the Board has found that the respondent's pro se letter, which did not respond to each and every allegation of the complaint, was an adequate answer because it effectively denied the substance of the complaint.⁵ Thus, we grant the motion to strike the Respondent's answer.

Accordingly, in the absence of good cause being shown for the Respondent's failure to file a proper answer, we find the complaint allegations to be true and consequently grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a partnership, has been owned jointly by Abraham Scharf,⁶ Rosa Scharf, Michael Edelstein, and Florence Edelstein, partners, doing business as Imperial Court Hotel. The Respondent, with an office and place of business located in New York, New York, has been engaged in the operation of a hotel. In the course and conduct of its business operations, the Respondent annually derives gross revenues in excess of \$500,000 and purchases and receives at its facility goods valued in excess of \$5000 directly from

⁴See, e.g., *Richardson Security Co.*, 297 NLRB 738 (1990); *McElroy Electric Co.*, 297 NLRB 765 (1990); *Apple Jack Mining Corp.*, 294 NLRB 293 (1989).

⁵See *Harborview Electric*, 315 NLRB 301 (1994); *Carpentry Contractors*, 314 NLRB 824 (1994).

⁶Abraham Scharf, a partner, and Parveen Sharma, the manager, are agents and supervisors of the Respondent within the meaning of Sec. 2(11) of the Act.

points outside the State of New York. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all times material to this proceeding, Metropolitan Hotels and Motels, Inc. (the Association), has been an organization composed of various employers engaged in the operation of hotels, one purpose of which is to represent its employer-members in negotiating and administering collective-bargaining agreements with the Union. At all material times, the Respondent has authorized the Association to represent it in negotiating and administering collective-bargaining agreements with the Union.

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

All full-time and regular part-time employees employed by members of the Association and of the employers who have authorized the Association to bargain on their behalf, including the Respondent, but excluding managers, assistant managers, housekeepers, room clerks, and executives.

At all material times, the Union has been the designated exclusive collective-bargaining representative of the unit described above for the purpose of collective bargaining with respect to rates of pay, wages, and hours of employment and other terms and conditions of employment. The Union has been recognized as such representative by the Respondent and that recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from June 1, 1990, to May 31, 1995.⁷ At all material times, the Union, by virtue of Section 9(a)(a) of the Act, has been, and is, the exclusive representative of the unit for purposes of collective bargaining with respect to wages, rates of pay, hours of employment, and other terms and conditions of employment.

Commencing about November 1993, the Respondent has failed and refused to bargain with the Union as the exclusive collective-bargaining representative of the unit employees by refusing to meet with the Union to discuss contractual grievances. On or about June 14, 1994, the Union requested that the Respondent adhere to the 1990-1995 collective-bargaining agreement. Since June 14, 1994, the Respondent has refused to adhere to that contract. Therefore, we find that the Respondent has failed and refused to bargain collectively

⁷About August 9, 1990, the Association and the Union reached complete agreement on the 1990-1995 collective-bargaining contract, and about the same date the Association and the Union executed the agreement.

and in good faith with the Union, its unit employees' exclusive representative, in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

1. By refusing to meet with the Union, its unit employees' exclusive representative, to discuss contractual grievances, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

2. By refusing to adhere to the 1990-1995 collective-bargaining agreement, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (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.

We shall order the Respondent to abide by all terms and conditions of employment set forth in the 1990-1995 collective-bargaining agreement with the Union. We shall also order the Respondent to make whole unit employees for any loss of wages or other benefits they may have suffered as a result of the Respondent's unlawful conduct as prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), and with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). In addition, we shall order the Respondent to make whole its unit employees by making all delinquent contributions to the fringe benefits funds, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). Further, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.⁸

Finally, if any employee has executed dues-checkoff authorizations for the Union and the Respondent has failed to honor the authorization as required by the agreement, we shall order the Respondent to make the Union whole for its failure to do so, with interest as prescribed in *New Horizons for the Retarded*, supra.

⁸To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

ORDER

The National Labor Relations Board orders that the Respondent, Abraham Scharf, Rosa Scharf, Michael Edelstein, and Florence Edelstein d/b/a Imperial Court Hotel, New York, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to meet with Local 144, Hotel, Hospital, Nursing Home and Allied Services Union, SEIU, AFL-CIO, its unit employees' exclusive representative, to discuss contractual grievances.

(b) Refusing to adhere to the 1990-1995 collective-bargaining agreement with the Union.

(c) 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) Bargain collectively and in good faith with the Union concerning the employees in the following appropriate unit:

All full-time and regular part-time employees employed by members of the Association and of the employers who have authorized the Association to bargain on their behalf, including the Respondent, but excluding managers, assistant managers, housekeepers, room clerks, and executives.

(b) On request by the Union, discuss those grievances which the Respondent previously refused to process in accord with the procedures set forth in the 1990-1995 contract.

(c) Abide by the terms and conditions of employment set forth in the 1990-1995 collective-bargaining agreement until impasse or agreement is reached with the Union.

(d) Make whole unit employees for any losses they may have suffered by reason of the Respondent's refusal to adhere to the provisions of the 1990-1995 collective-bargaining agreement with the Union since June 14, 1994, with interest calculated in accordance with the remedy portion of this Decision.

(e) Remit the delinquent fringe benefit fund contributions, including any additional amounts due the funds, and reimburse unit employees for any expenses ensuing from the Respondent's failure to make the required payments, in the manner set forth in the remedy section of the decision.

(f) Make the Union whole for any failure to deduct and remit union dues as required by the agreement, in the manner set forth in the remedy section of the decision.

(g) Preserve and, within 14 days of a 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.

(h) Within 14 days after service by the Region, post at the Respondent's facility copies of the attached notice marked "Appendix."⁹ Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 7, 1994.

(i) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

⁹If 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.

WE WILL NOT refuse to meet with Local 144, Hotel, Hospital, Nursing Home and Allied Services Union,

SEIU, AFL-CIO, our unit employees' exclusive representative, to discuss contractual grievances.

WE WILL NOT refuse to adhere to the 1990-1995 collective-bargaining agreement 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 bargain collectively and in good faith with the Union concerning the employees in the following appropriate unit:

All full-time and regular part-time employees employed by members of the Association and of the employers who have authorized the Association to bargain on their behalf, including us, but excluding managers, assistant managers, housekeepers, room clerks, and executives.

WE WILL, on request by the Union, discuss those grievances which we previously refused to process in accord with the procedures set forth in the 1990-1995 contract.

WE WILL abide by the terms and conditions of employment set forth in the 1990-1995 collective-bargaining agreement until impasse or agreement is reached with the Union.

WE WILL make whole unit employees for any losses they may have suffered by reason of our refusal to adhere to the provisions of the 1990-1995 collective-bargaining agreement with the Union since June 14, 1994, with interest.

WE WILL remit the delinquent fringe benefit fund contributions, including any additional amounts due the funds, and reimburse unit employees for any expenses ensuing from our failure to make the required payments, with interest.

WE WILL make the Union whole for any failure to deduct and remit union dues as required by the agreement, with interest.

ABRAHAM SCHARF, ROSA SCHARF, MICHAEL EDELSTEIN, AND FLORENCE EDELSTEIN D/B/A IMPERIAL COURT HOTEL