

CCY New Worktech, Inc. and its successor and/or alter ego KAM FAI Fashion, Inc., Single Employers, and their successor and/or alter ego, XMG Fashions, Inc. and Qui F. Zhu and Zhen Lui Li. Cases 29–CA–22260 and 29–CA–22469

September 21, 1999

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN
AND BRAME

On July 12, 1999, Administrative Law Judge Raymond P. Green issued the attached decision. Respondent XMG Fashions, Inc. (XMG) filed exceptions, and the General Counsel filed an answering 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 exceptions¹ and brief and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified below.²

XMG did not file an answer to the complaint, and did not appear at the hearing.³ The judge accordingly granted the General Counsel's motion on the record for summary judgment against XMG (as well as against the other Respondents), pursuant to the Board's Rules.⁴ In its exceptions, XMG's president asserts that neither he nor his employees read English, that he did not receive any notices or letters informing him that XMG was the subject of a complaint made by employees of the other Respondents, and that none of his employees recall receiving any mail from the Board.

The record establishes, however, in the form of sworn and subscribed affidavits of service from designated agents of the Board, that, in accordance with the requirements of Section 102.113(a) of the Board's Rules and Regulations, the General Counsel timely served XMG with a copy of the complaint, as well as with a copy of the subsequent erratum to the complaint, by certified mail, return post office receipt requested, on March 26 and June 4, 1999, respectively. Although the record does not contain return post office receipt cards from

¹ XMG's exceptions are in the form of an affidavit from its president, Chen Xiang Mei. The General Counsel has requested that XMG's exceptions be disregarded on the grounds that they do not conform to the requirements of the Board's Rules and Regulations. Although XMG's exceptions do not strictly conform to the requirements of the rules, they are not so deficient as to warrant being disregarded. Accordingly, we deny the General Counsel's request.

XMG has requested oral argument. The request is denied as the record, exceptions, and brief adequately present the issues and the positions of the parties.

² We shall modify the judge's recommended Order in accordance with our decision in *Indian Hills Care Center*, 321 NLRB 144 (1996).

³ Respondents CCY New Worktech, Inc. and KAM FAI Fashion, Inc. also did not file answers to the complaint or appear at the hearing, and they have not filed exceptions to the judge's decision.

⁴ Secs. 102.20, 102.24(a), and 102.25 of the Board's Rules and Regulations.

XMG as proof of service, such method of proof is not exclusive; any sufficient proof may be relied upon to establish service.⁵ Here, the affidavits of service of the Board agents constitute proof of service of both the complaint and the erratum on XMG, notwithstanding the absence of postal return receipt cards.⁶ It is also immaterial that the record does not establish that XMG actually received copies of the complaint and the erratum. Service of the complaint and the erratum by certified mail was authorized here, and service was effective upon mailing; proof (in the form here of the affidavits of service from the Board agents) that the complaint and erratum were mailed to XMG is proof that they were served on XMG.⁷

For all of the above reasons, we find XMG's exceptions to be without merit, and we affirm the judge's granting of the General Counsel's Motion for Summary Judgment against XMG along with the other Respondents.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondents, CCY New Worktech, Inc., Kam Fai Fashion, Inc., and XMG Fashions, Inc., all of Brooklyn, New York, their officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following paragraphs for paragraph 2(a) and reletter the subsequent paragraphs.

“(a) Within 14 days from the date of this Order, offer Zhen X. Liang, Kevin Lam, Jian Q. Huang, De Ru Jiang, Qiu F. Zhu, Zhen H. Li, Xiao X. Chen, and Wu Q. Chen 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.

“(b) Make Zhen X. Liang, Kevin Lam, Jian Q. Huang, De Ru Jiang, Qiu F. Zhu, Zhen H. Li, Xiao X. Chen, and Wu Q. Chen 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.”

2. Substitute the attached notice for that of the administrative law judge.

⁵ *Id.*, Sec. 102.113(e).

⁶ See *Best Western City View Motor Inn*, 327 NLRB 468 (1999), citing, *inter alia*, *Electrical Workers IBEW Local 11 (Anco Electrical)*, 273 NLRB 183, 191 (1984) (postal return receipt card not required to prove service).

⁷ *Best Western City View Motor Inn*, supra at 469

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, reduce your hours of work, or otherwise discriminate against any of you because you engage in concerted activity for the purpose of collective bargaining or for other mutual aid or protection.

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, within 14 days from the date of the Board's Order, offer Zhen X. Liang, Kevin Lam, Jian Q. Huang, De Ru Jiang, Qiu F. Zhu, Zhen H. Li, Xiao X. Chen, and Wu Q. Chen 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.

WE WILL make Zhen X. Liang, Kevin Lam, Jian Q. Huang, De Ru Jiang, Qiu F. Zhu, Zhen H. Li, Xiao X. Chen, and Wu Q. Chen whole for any loss of earnings and other benefits resulting from their discharge or reduction in hours of work, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges of Zhen X. Liang, Kevin Lam, Jian Q. Huang, De Ru Jiang, Qiu F. Zhu, Zhen H. Li, Xiao X. Chen, and Wu Q. Chen, and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that the discharges will not be used against them in any way.

CCY NEW WORKTECH, INC., KAM FAI
FASHION, INC., AND XMG FASHIONS, INC.

Emily DeSa, Esq., for the General Counsel.
Wing Lam, Esq., for the Charging Parties.

DECISION

STATEMENT OF THE CASE

RAYMOND P. GREEN, Administrative Law Judge. This case was heard in Brooklyn, New York, on June 22, 1999. The charge in Case 29-CA-22260 was filed by Qui F. Zhu on August 31, 1998, and served on Respondents Hua Great Procetech, Inc. (Hua), CCY New Worktech, Inc. (CCY), and XMG Fashions Inc. (XMG), on or about September 1, 1998. The charge in Case 29-CA-22469 was filed by Zhen Lui Li on December 16, 1998, and served on the aforesaid Respondents and on Kam Fai Fashions Inc. (Kam Fai), on or about December 18, 1998.

On March 25, 1999, the Regional Director for Region 29, issued an order consolidating cases, consolidated complaint and notice of hearing against the four-above named Respondents which was served on them by certified and regular mail.

On March 31, 1999, the Regional Director issued and served on the Respondents an errata to the notice of hearing, indicating that the correct hearing date should June 22, 1999, and not June 8, 1999.

On April 13, 1999, Respondent Hua Great Procetech Inc., filed on its own behalf only, an answer to the consolidated complaint.

The Respondents, CCY, Kam Fail, and XMG, have never filed an answer to the consolidated complaint.

On June 21, 1999, the Regional Director for Region 29 issued an order amending the consolidated complaint and approving withdrawal of charges. Pursuant to this order, the Regional Director approved an out-of-Board settlement between the Charging Parties and Hua Great Procetech Inc.; the Charging Parties requesting that those portions of their charges relating to Hua be withdrawn. Accordingly, the Regional Director's order amended the consolidated complaint by "deleting to Respondent Hua therein as a named Respondent."

At the hearing, which opened before me on June 22, 1999, the Respondents CCY, Kam Fai, and XMG did not appear before me either personally or by way of counsel or representative. As such, and because they each failed to file an answer to the consolidated complaint, I granted the General Counsel's Motion for Summary Judgment in accordance with Section 102.24 of the Board's Rules and Regulations.

Having granted the Motion for Summary Judgment, I make the following

FINDINGS AND CONCLUSIONS

1. Hua, a New York corporation, with its principal office and place of business located at 641 EF 62d Street, Brooklyn, New York, has been engaged in manufacturing garments.

2. Hua, CCY, and Kam Fai have, at all material times, been affiliated business enterprises with common officers, owners, directors, management and supervision; have formulated and administered a common labor policy affecting employees of said operations, have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other and have held themselves out to the public as a single-integrated enterprise.

Accordingly, Hua, CCY, and Kam Fai constitute a single-employer within the meaning of the Act.

3. CCY and Kam Fai, are New York corporations located at 752 64th Street, Brooklyn, New York, and have been engaged in manufacturing garments.

4. During the 12-month period ending May 2, 1998, when it ceased operations at the CCY/Kam Fai facility, CCY in the course of its business operations purchased and received at said facility goods and supplies valued in excess of \$50,000 from firms located inside the State of New York, which firms, in turn, purchased said goods valued in excess of \$50,000 directly from firms located outside the State of New York.

5. Based on a projection of its operations since June 8, 1998, at which time Kam Fai commenced its operations at the CCY/Kam Fai facility Kam Fai, in the course of its business operations will annually purchase and receive at said facility goods and supplies valued in excess of \$50,000 from firms located inside the State of New York, which firms, in turn, purchased said goods valued in excess of \$50,000 directly from firms located outside the State of New York.

6. XMG, is a New York corporation, with its principal office and place of business located at 530 63rd Street, Brooklyn, New York (the XMG facility), and has been engaged in manufacturing garments.

7. Based on a projection of its operations since early June 1998, at which time XMG commenced its operations at the XMG facility, XMG, in the course of its business operations will annually purchase and receive at said facility goods and supplies valued in excess of \$50,000 from firms located inside the State of New York, which firms, in turn, purchased said goods valued in excess of \$50,000 directly from firms located outside the State of New York.

8. On or about May 2, 1988, CCY purportedly closed and ceased its operations. However, since on or about June 8, 1998, CCY has continued the same garment business doing business under the name of Kam Fai Fashion Inc., at the CCY/Kam Fai facility.

9. At all material times, CCY and Kam Fai have been affiliated business enterprises with common owners, officers, directors, operators, management and supervision; have shared common premises; have formulated and administered a common labor policy affecting employees at the CCY/Kam Fai facility; and have shared the same equipment, customers and employees. Accordingly, CCY and Kam Fai have constituted a single employer within the meaning of the Act. Additionally, and/or alternatively, since June 8, 1998, CCY established Kam Fai as a subordinate instrument to, and a disguised continuation of CCY and since said date, Kam Fai has been an alter ego of Respondent CCY. Further and/or alternatively, Kam Fai has continued the operation of CCY in unchanged form and has employed, as a majority of its employees, individuals who were previously employees of CCY. According, Kam Fai has continued the employing entity and is a successor to CCY.

10. On or about May 19, 1998, Hua ceased its operations at 641, EF 62d Street, Brooklyn, New York, but since early June 1998 continued the same business at the same location under the name, XMG. At all material times, Hua and XMG have been affiliated business enterprises with common owners, officers, directors, operators, management and supervision; have formulated and administered a common labor policy affecting employees; and have shared common equipment, customers and employees. Further and/or alternatively, in early June 1998,

Hua established XMG as a subordinate instrument to, and a disguised continuation of Hua and since then XMG has been an alter ego of Hua. Further and/or alternatively XMG has continued the employing entity and is a successor to Hua.

11. By virtue of the relationship between Hua and CCY/Kam Fai and the relationship between Hua and XMG, Respondents CCY, Kam Fai, and XMG have been affiliated businesses, having common owners, directors, operators and have constituted a single employer within the meaning of the Act.

12. At all material times, Respondents CCY, Kam Fai, and XMG have been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

13. During February and March 1998, employees Zhen X. Liang, Kevin Lam, Jian Q. Huang, and De Ru Jiang, engaged in protected concerted activities for the purposes of collective bargaining and other mutual aid and protection with other employees by, inter alia, concertedly complaining about the wages, hours and working conditions of Respondents' employees and by requesting that Respondents reduce employees' hours of work and allow employees to have 1 day off per week and increase wages.

14. On or about March 3, 1998, Respondents, in retaliation for their protected concerted activity, discharged and have failed to reinstate or offer to reinstate Zhen X. Liang, Kevin Lam, Jian Q. Huang, and De Ru Jiang.

15. Commencing in or around February 1998, Qiu F. Zhu, engaged in protected concerted activities for the purposes of collective bargaining and other mutual aid and protection with other employees by, inter alia, supporting certain employees' claims alleging that Respondents violated New York State labor laws involving the number of hours that Respondents' employees worked and by refusing to comply with Respondents' request that she sign documents refuting such claims.

16. On or about May 19, 1998, Respondents laid off their employee Qiu F. Zhu and refused to recall or employ her because of her protected concerted activity previously described.

17. Commencing in or around May 1998, employees Zhen H. Li, Wu Q. Chen, and Xiao X. Chen engaged in protected concerted activities for the purposes of collective bargaining and other mutual aid and protection with other employees by, inter alia, agreeing to being listed as plaintiffs in a complaint filed in a court for the Eastern District, said complaint seeing to recoup lost wages for overtime worked by Respondents' employees.

18. On or about June 19, 1998, Respondents in retaliation for their protected concerted activities reduced the hours of work for Zhen H. Li, Wu Q. Chen, and Xiao X. Chen.

19. On or about June 26, 1998, Respondents, in retaliation for his protected concerted activity, discharged Zhen H. Li and has since that date refused to reinstate or offer to reinstate said employee to his former position of employment.

20. On or about June 27, 1998, Respondents, in retaliation for her protected concerted activities, discharged Xiao X. Chen and has since that date refused to reinstate or offer to reinstate said employee to her former position of employment.

21. On or about July 5, 1998, Respondents, in retaliation for her protected concerted activities, discharged Wu Q. Chen and has since that date refused to reinstate or offer to reinstate said employee to her former position of employment.

22. By the aforesaid acts and conduct described above in paragraphs 14, 16, 18, 19, 20, and 21, the Respondents CCY, Kam Fai, and XMG, have engaged in unfair labor practices

within the meaning of Section 8(a)(1) of the Act and have interfered with the rights guaranteed to employees in Section 7 of the Act.

23. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, I find that they must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. The Respondents having discriminatorily reduced the hours of work and discriminatorily discharged or laid off certain employees, it must offer them reinstatement to their former hours and jobs and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from the date of their discharges or layoffs, to the date of their reinstatements, 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).

Also, as most of the employees speak Chinese, the notices should be in English and Chinese.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹

ORDER

The Respondents, CCY New Worktech, Inc., Kam Fai Fashions, Inc., and XMG Fashions Inc., Brooklyn, New York, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging employees because of their concerted activity protected by Section 7 of the Act.

(b) Reducing the hours of work of employees because of their concerted activity protected by Section 7 of the Act.

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

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

(a) Within 14 days from the date of this Order, offer Zhen X. Liang, Kevin Lam, Jian Q. Huang, De Ru Jiang, Qiu F. Zhu, Zhen H. Li, Xiao X. Chen, and Wu Q. Chen, full reinstatement to their former jobs or, if those jobs no longer exist, to substan-

tially 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.

(b) Within 14 days from the date of this Order, remove from their files any reference to the unlawful discharges of Zhen X. Liang, Kevin Lam, Jian Q. Huang, De Ru Jiang, Qiu F. Zhu, Zhen H. Li, Xiao X. Chen, and Wu Q. Chen and within 3 days thereafter notify them in writing that this has been done and that the discharges will not be used against them in any way.

(c) 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.

(d) Within 14 days after service by the Region, post at their facilities in Brooklyn, New York, copies of the attached notice marked "Appendix."² Copies of the notice, in English and Chinese, on forms provided by the Regional Director for Region 29, after being signed by the Respondents' authorized representatives, 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 the event that during the pendency of these proceedings, the Respondents have gone out of business or closed the facility involved in these proceedings, the Respondents shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since March 3, 1998.

(e) 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.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

¹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.