UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

MOTOBIZ, INC. d/b/a DOSHA

And

Cases 36-CA-10860
19-CA-65068

COMMUNICATION WORKERS OF AMERICA,
LOCAL 7901

ORDER CONSOLIDATING CASES, CONSOLIDATED COMPLAINT AND NOTICE OF HEARING

Communication Workers of America, Local 7901, affiliated with Communications Workers of America, Local 7901 (Union), has charged in Cases 36-CA-10860 and 19-CA-65068, that Motobiz, Inc. d/b/a Dosha (Respondent), has violated the Act by engaging in the following unfair labor practices as set forth the National Labor Relations Act (the Act), 29 U.S.C. § 151 *et seq.*

Based thereon, and in order to avoid unnecessary costs or delay, the Acting General Counsel of the National Labor Relations Board (the "Board"), by the undersigned, pursuant to § 102.33 of the Rules and Regulations of the Board, ORDERS that these cases are consolidated.

These cases having been consolidated, the Acting General Counsel, by the undersigned pursuant to § 10(b) of the Act and § 102.15 of the Board's Rules and Regulations, issues this Order Consolidating Cases, Consolidated Complaint and Notice of Hearing and alleges as follows:

1.

(a) The Charge in Case 36-CA-10860 was filed by the Union on May 25, 2011, and was served on Respondent by regular mail about that date.

(b) The Charge in Case 19-CA-65068 was filed by the Union on September 21, 2011, and was served on Respondent by regular mail about that date.

(c) The Amended Charge in Case 19-CA-65068 was filed by the Union on October 5, 2011, and was served on Respondent by regular mail about that date.

(d) The Second Amended Charge in Case 19-CA-65068 was filed by the Union on October 19, 2011, and was served on Respondent by regular mail about that date.

2.

(a) At all material times, Respondent has been a State of Oregon corporation with an office and place of business in Portland, Oregon, has maintained facilities throughout the Portland, Oregon metropolitan area (Respondent's facilities), including, *inter alia*, locations at 3490 SE Hawthorne, Portland, Oregon (Hawthorne facility) and 2281 Northwest Glisan, Portland, Oregon (NW 23rd facility), and has been engaged in providing retail salon and spa services.

(b) Respondent, during the past twelve months, which period is representative of all material times, in conducting its business operations described above in paragraph 2(a), derived gross revenues in excess of $500,000.

(c) Respondent, during the past twelve months, which period is representative of all material times, in conducting its business operations described above in paragraph 2(a), purchased and received at its facilities goods valued in excess of $50,000 directly to and from points outside the State of Oregon.

(d) At all material times, Respondent has been an employer engaged in commerce within the meaning of Sections 2(2), (6) and (7) of the Act.

3.

The Union is, and has been at all material times, a labor organization within the meaning of Section 2(5) of the Act.

4.

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors within the meaning of Section 2(11) of the Act, and/or agents within the meaning of Section 2(13) of the Act, acting on behalf of Respondent:

Ray Motameni	—	Co-Owner
Melissa Motameni	—	Co-Owner
Kimberly Johnson	—	Manager, Business Development & Marketing
Bob Tiernan	—	Labor Consultant
Al Orheim	—	Bargaining Representative
Mary Burke	—	Spa Manager (through early May 2011)
Sharon Parmentor	—	Salon Manager
Katie Thoman	—	Spa Manager
Tricia McMackin	—	Human Resources Manager
Molly Cooley	—	Manager
Jessica Dutton	—	Salon Manager
Jack Randalls	—	Former Manager
Tyler Christianson	—	Retail Manager
Liz Twomey	—	Manager
Dana Comella	—	Salon Manager
Elizabeth Palmer	—	Lead
Kaitlyn (last name unknown)	—	Lead

5.

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

> **Included**: All estheticians, licensed massage therapists, nail technicians, stylists, spa hosts, retail advisors, and laundry employees employed by [Respondent] in the counties of Multnomah, Washington and Clackamas in the State of Oregon.
>
> **Excluded**: All confidential and managerial employees, guards and supervisors as defined by the Act.

(c) On April 7, 2011, the Board certified the Union as the exclusive collective-bargaining representative of the Unit. Since at least 2011 and at all material times, the Union has been the designated exclusive collective bargaining representative of the Unit and recognized as such representative by Respondent.

(d) At all times since at least April 7, 2011, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

6.

Since in or about 2006, Respondent, at its facilities, has maintained the following rules in its "Confidentiality and Non-Solicitation Agreement:"

(a) "the following information is confidential: ...the names and addresses of the Salon's employees, contractors, agents, or consultants; ...all information related to the compensation and other benefits which the Salon provides or proposes to provide to its employees, contractors, agents, or consultants;"

(b) "during [employees'] employment with the Salon and after the termination of [their] employment with the Salon, [employees] shall a) hold all Confidential Information in trust and confidence for the Salon and its Clients; b) not disclose or communicate any Confidential Information to any third party unless authorized by the Salon; and c) not use or copy any such Confidential Information for other than the Salon's business;"

(c) "while [employees are] employed by the Salon, and for a period of eighteen (18) months commencing on the termination of [their] employment with the Salon for any reason whatsoever (or for no reason), neither [employees], nor any person or entity controlled by [an employee], shall, directly or indirectly, persuade or entice, or attempt to persuade or entice, any Client, Client Prospect, employee, agent, contractor, or consultant of the Salon to terminate its business, employment or contractual relationship with the Salon, or refrain from establishing any such relationship with the Salon;" and

(d) "...Employee[s] owe[] a duty of loyalty to the Salon. During [their] employment with the Salon, [employees] shall use [their] best efforts to serve the interests of the Salon, and shall not take any action that would be harmful to the Salon."

7.

Since on or about September 2010, Respondent, at its facilities, has maintained the following rules in its employee handbook:

(a) "Do not abuse your position with the company. While on the job, you are expected to devote your concentrated time and efforts to the company's business interests and avoid any activity that may distract from or conflict with said business interests;"

(b) "...Activities which create the appearance of impropriety with respect to the company or its business or disclosure of business information for inappropriate use or reasons is unacceptable. Outside employment or business-related activities should not interfere with employees' regularly required job duties or lead to a conflict of interest. We request that you review any outside employment or business-related activities with your direct manager to ensure that no conflict of interest exists....;"

(c) "Unnecessary personal and/or negative comments or innuendoes about employees, guests, or other individuals associated with the company is unacceptable. All memos and/or postings must be approved by management before they are distributed or posted.....;"

(d) "Employees may not distribute literature, request contributions, or engage in any other solicitation of fellow employees or guests without the express consent of the company. This includes religious, political, or social literature or information from other organizations...;" and

(e) "All guest and company information [including compensation programs, pay scales and personnel records] is to be kept strictly confidential...".

8.

On or about the dates and by the manner noted below, Respondent engaged in the following conduct:

(a) Between February 22, 2011 and April 15, 2011, by Twomey, Palmer and "Kaitlyn," at Respondent's NW 23rd Street facility, surveilled its employees' union and other protected activities;

(b) On February 28, 2011, by Melissa Motameni and Johnson, at Respondent's Hawthorne facility, solicited employee complaints and grievances, promising its employees increased benefits and improved terms and conditions of employment if they voted against the Union;

(c) On March 8, 2011, by Burke, at Respondent's Hawthorne facility, solicited employee complaints and grievances, promising its employees increased benefits and improved terms and conditions of employment if they voted against the Union;

(d) On March 23, 2011, by McMackin and Johnson, in writing:

(i) threatened employees with stricter and more onerous working conditions if they voted for the Union; and

(ii) promised employees benefits if they voted against the Union;

(e) On March 26, 2011, by Burke, at Respondent's Hawthorne facility, orally promulgated an overly-broad and discriminatory rule prohibiting its employees from wearing temporary pro-Union tattoos;

(f) On March 29, 2011, by York and Randalls, at Respondent's Hawthorne facility, orally promulgated and applied an overly-broad and discriminatory rule prohibiting its employee Union supporters from being at Respondent's facilities outside their working hours;

(g) About April 3, 2011, by Twomey, at Respondent's Hawthorne facility, disparaged the Union by telling its employees that it could not grant time off or requests for schedule changes because of the Union;

(h) On April 3, 2011, by Christianson, at Respondent's Hawthorne facility, orally promulgated and applied an overly-broad and discriminatory rule prohibiting its employees from discussing the Union with customers;

(i) On April 18, 2011, by Tiernan, at the Aveda Institute Portland, told employees that Respondent was going to operate as if the Union were not there, and informed its employees that it would be futile for them to select the Union as their bargaining representative;

(j) On May 15, 2011, by Christianson, at Respondent's Hawthorne facility, orally promulgated and applied an overly-broad and discriminatory rule prohibiting its employees from making negative comments to customers about Respondent;

(k) On August 14, 2011, by Parmentor, at Respondent's Hawthorne facility, "flicked" Union insignia worn by employees and mocked employees wearing Union insignia;

(l) On August 16, 2011, by Parmentor, at Respondent's Hawthorne facility;

(i) created an impression among its employees that their Union activities were under surveillance by the Respondent;

(ii) orally promulgated an overly-broad and discriminatory rule prohibiting its employees from discussing the Union; and

(iii) advised its employees to tell pro-Union employees that they do not want to talk about the Union;

(m) On August 20, 2011, by Parmentor, at Respondent's Hawthorne facility:

(i) orally promulgated an overly-broad and discriminatory rule restricting employee conversations about wages, hours or working conditions; and

(ii) implicitly threatened employees with unspecified reprisals for discussing their working conditions with other employees;

(n) On August 22, 2011, by Thoman, at Respondent's Hawthorne facility, orally promulgated an overly-broad and discriminatory rule prohibiting employees from disclosing their wages to other employees.

9.

(a) About March 1, 2011, at its Hawthorne facility, Respondent granted its employee Meagan Swearingen a wage increase in an attempt to coerce her into voting against the Union.

(b) About March 10, 2011, at its Hawthorne facility, Respondent granted its employee Kelanie York a wage increase in an attempt to coerce her into voting against the Union.

(c) On March 25, 2011, at its Hawthorne facility, Respondent suspended its employee Kelanie York.

(d) On September 12, 2011, at its Hawthorne facility, Respondent suspended its employee Mary Christ.

(e) On September 14, 2011, at its Hawthorne facility, Respondent discharged its employee Mary Christ.

(f) Respondent engaged in the conduct described above in paragraph 9(a), 9(b), 9(d) and 9(e) because the Unit employees assisted and/or supported the Union and to discourage these and/or other employees from engaging in these or other union and/or protected, concerted activities.

(g) Respondent engaged in the conduct described above in paragraph 9(c) because the Unit employee assisted and/or supported the Union and/or engaged in protected, concerted activities, and to discourage its employees from engaging in these and/or other union and/or protected, concerted activities, and because Kelanie York violated the rule set forth above in paragraph 8(e).

10.

(a) On March 21, 2011, Respondent, by Ray Motameni, at Respondent's Hawthorne facility, bypassed the Union and dealt directly with its employees in the Unit by telling employees he wanted their ideas about their terms and conditions of employment.

(b) On April 11, 2011, Respondent, by Ray Motameni, at Respondent's Hawthorne facility, bypassed the Union and dealt directly with its employees in the Unit

by asking employees for their concerns and suggestions about their terms and conditions of employment.

(c) About April 14, 2011, Respondent, by Burke, at Respondent's Hawthorne facility, unilaterally promulgated and enforced a policy prohibiting employees from working at more than one of Respondent's facilities in the same day.

(d) On April 18, 2011, Respondent, by Tiernan, at the Aveda Institute Portland, unilaterally froze employee wages and other terms and conditions of employment.

(e) About April 23, 2011, Respondent, by Burke and Parmentor, unilaterally changed Respondent's rules regarding its employees' ability to receive spa services during their shifts.

(f) On April 25, 2011, Respondent, by Ray Motameni and Johnson, at Respondent's Hawthorne facility, bypassed the Union and dealt directly with its employees in the Unit by asking for employees input on their terms and conditions of employment.

(h) About April 25, 2011, Respondent installed surveillance cameras at its Hawthorne facility, including in its employee break room.

(i) The subject(s) set forth above in paragraphs 10(c) through 10(h) relate to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

(j) Respondent engaged in the conduct described above in paragraph(s) 10(c) through (h) without prior notice to the Union and without affording

the Union an opportunity to bargain with Respondent with respect to this conduct and/or the effects of this conduct.

11.

By the conduct described above in paragraphs 6, 7, 8 and 9(c), Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

12.

By the conduct described above in paragraph 9, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Sections 8(a)(3) and (1) of the Act.

13.

By the conduct described above in paragraph 10, Respondent has been failing and refusing to bargaing collectively with the exclusive bargaining representative of its Unit employees in violation of Sections 8(a)(5) and (1) of the Act.

14.

The unfair labor practices of Respondent described above affect commerce within the meaning of Sections 2(6) and (7) of the Act.

WHEREFORE, as part of the remedy for the unfair labor practices alleged above in paragraphs 9(c) through 9(e), the Acting General Counsel seeks an order requiring reimbursement of amounts equal to the difference in taxes owed upon receipt

of a lump-sum payment and taxes that would have been owed had there been no violation of the Act, and

WHEREFORE, as part of the remedy for the unfair labor practices alleged above in paragraphs 9(c) through 9(e), the Acting General Counsel further seeks an order requiring Respondent to submit the appropriate documentation to the Social Security Administration so that when backpay is paid, it will be allocated to the appropriate periods.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to §§ 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to this Complaint. The answer must be **received by this office on or before February 17, 2012, or postmarked on or before Feberuary 16, 2012.** Unless filed electronically in a pdf format, Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at ***www.nlrb.gov***, click on ***File Case Documents,*** enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the

transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. *See* § 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the document need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the answer on each of the other parties must be accomplished in conformance with the requirements of § 102.114 of the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed or if an answer is filed untimely, the Board may find, pursuant to Motion for Default Judgment, that the allegations in this Complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on the 20th day of March, 2011, at 9:00 a.m., in Room 1910, 601 SW Second Avenue, Portland, Oregon, and on consecutive days thereafter until concluded, a hearing will be conducted before an Administrative Law Judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are

described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

DATED at Seattle, Washington, this 3rd day of February, 2012.

James R. Kobe, Acting Regional Director
National Labor Relations Board, Region 19
2948 Jackson Federal Building
915 Second Avenue
Seattle, Washington 98174-1078

FORM NLRB-4668
(4-05)

(C CASES)

SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD BEFORE THE NATIONAL LABOR RELATIONS BOARD IN UNFAIR LABOR PRACTICE PROCEEDINGS PURSUANT TO SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT

The hearing will be conducted by an administrative law judge of the National Labor Relations Board who will preside at the hearing as an independent, impartial finder of the facts and applicable law whose decision in due time will be served on the parties. The offices of the administrative law judges are located in Washington, DC; San Francisco, California; New York, N.Y.; and Atlanta, Georgia.

At the date, hour, and place for which the hearing is set, the administrative law judge, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to ensure that the issues are sharp and clearcut; or the administrative law judge may independently conduct such a conference. The administrative law judge will preside at such conference, but may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record, for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the administrative law judge conducting the prehearing conference will be the one who will conduct the hearing; and it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference. No prejudice will result to any party unwilling to participate in or make stipulations or concessions during any prehearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues. All parties appearing before this hearing who have or whose witnesses have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.603, should notify the Regional Director as soon as possible and request the necessary assistance.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the administrative law judge for approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the administrative law judge specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the administrative law judge and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The administrative law judge will allow an automatic exception to all adverse rulings and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies of exhibits should be supplied to the administrative law judge and other parties at the time the exhibits are offered in evidence. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the administrative law judge before the close of hearing. In the event such copy is not submitted, and the filing has not been waived by the administrative law judge, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. In the absence of a request, the administrative law judge may ask for oral argument if, at the close of the hearing, it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

(OVER)

In the discretion of the administrative law judge, any party may, on request made before the close of the hearing, file a brief or proposed findings and conclusions, or both, with the administrative law judge who will fix the time for such filing. Any such filing submitted shall be double-spaced on 8½ by 11 inch paper.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations, with respect to the procedure to be followed before the proceeding is transferred to the Board:

No request for an extension of time within which to submit briefs or proposed findings to the administrative law judge will be considered unless received by the Chief Administrative Law Judge in Washington, DC (or, in cases under the branch offices in San Francisco, California; New York, New York; and Atlanta, Georgia, the Associate Chief Administrative Law Judge) at. least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously on all other parties, and proof of such service furnished to the Chief Administrative Law Judge or the Associate Chief Administrative Law Judge, as the case may be. A quicker response is assured if the moving party secures the positions of the other parties and includes such in the request. All briefs or proposed findings filed with the administrative law judge must be submitted in triplicate, and may be printed or otherwise legibly duplicated with service on the other parties.

In due course the administrative law judge will prepare and file with the Board a decision in this proceeding, and will cause a copy thereof to be served on each of the parties. Upon filing of this decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, on all parties. At that point, the administrative law judge's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the administrative law judge's decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be served on the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations. If adjustment appears possible, the administrative law judge may suggest discussions between the parties or, on request, will afford reasonable opportunity during the hearing for such discussions.

Form NLRB-4338
(6-90)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

Cases 36-CA-10860 & 19-CA-65068

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end. An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing.

However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

(1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).

(2) Grounds must be set forth in ***detail;***

(3) Alternative dates for any rescheduled hearing must be given;

(4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; ***and***

(5) Copies must be simultaneously served on all other parties (*listed below)*, and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

CERTIFIED MAIL:

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