

No Retrial for 2 Symbol Ex-Officials

NEW YORK—A federal appeals court said that two former Symbol Technologies Inc. executives can't be retried on criminal charges related to an alleged accounting fraud at the company.

In its opinion, a three-judge panel of the Second Circuit Court of Appeals found that retrying Michael DeGennaro, Symbol's former senior vice president of finance, and Frank Borghese, the Holtsville, N.Y., company's former senior vice president and general manager of worldwide sales and services, would violate their constitutional protections against double jeopardy.

Messrs. DeGennaro and Borghese were among a group of former Symbol executives charged criminally in 2004 in connection with an alleged

scheme to improperly inflate the company's revenue and earnings in order to create the false appearance it had met or exceeded its financial projections. At least seven former executives have pleaded guilty in the matter.

A mistrial was declared in the case against Messrs. DeGennaro, Borghese and Kenneth Jaeggi, Symbol's former vice president of finance and chief financial officer, in February 2006 after the jurors said in a note to the judge that they were "at a dead lock" during deliberations following a six-week trial.

"We are thrilled that the Second Circuit's decision bars a retrial," said Michael S. Sommer, Mr. DeGennaro's lawyer.

Mr. Jaeggi is expected to be retried on conspiracy, fraud and other charges. No date has been

set for his retrial.

"We're very grateful," said Bradley Simon, Mr. Borghese's lawyer.

Tomo Razmilovic, Symbol's onetime chief executive, is a fugitive and is believed to be in Sweden, prosecutors said.

"We're going to review the Second Circuit's decision and decide how we're going to proceed," said Robert Nardoza, a spokesman for the U.S. attorney's office in Brooklyn, which brought the case.

The company agreed in 2004 to pay \$139 million, including a \$37 million Securities and Exchange Commission penalty, and cooperate with the government.

Symbol, a maker of bar-code scanners and hand-held devices, was acquired by **Motorola** Inc. for \$3.9 billion earlier this year.