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**Young World Stores and Teamsters Local Union
837 a/w International Brotherhood of Teamsters, AFL-CIO. Case 4-CA-24697**

July 22, 1996

DECISION AND ORDER

**BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND FOX**

Upon a charge filed by the Union on March 1, 1996, the General Counsel of the National Labor Relations Board issued a complaint on April 11, 1996, against Young World Stores, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On June 13, 1996, the General Counsel filed a Motion for Summary Judgment with the Board. On June 14, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

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 complaint affirmatively notes that unless an answer 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 May 16, 1996, notified the Respondent that unless an answer were received by May 30, 1996, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, 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 Bayonne, New

Jersey, has been engaged in the retail sale of children's clothing and related products at various facilities, including a store at the Franklin Mills Mall, Philadelphia, Pennsylvania. During the year preceding issuance of the complaint, the Respondent derived gross revenues in excess of \$500,000 and purchased and received at the Franklin Mills Store products, goods, and materials in excess of \$5000 directly from points outside the Commonwealth of Pennsylvania. 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

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

All employees, both selling and non-selling, all sales people, truck men, drivers, assistant drivers, warehouse employees, office and clerical employees, cashiers and stock room persons now employed by Respondent, excluding guards and supervisors as defined in the Act.

At all material times since at least January 1, 1995, the Union has been the designated exclusive bargaining representative of the unit and has been recognized as the representative by the Respondent. This recognition has been embodied in a collective-bargaining agreement effective by its terms from January 1, 1995, through December 31, 1997. At all material times, based on Section 9(a) of the Act, the Union has been the exclusive bargaining representative of the unit.

About February 2, 1996, the Respondent ceased operations at the Franklin Mills Store and laid off its employees in the unit. These subjects relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purpose of collective bargaining. The Respondent engaged in the foregoing conduct without giving prior notice to the Union and without affording the Union an opportunity to bargain about the effects of the closure.

About February 5, 1996, the Union, by letter, requested that Respondent furnish it with the following information for the unit: names and home addresses; respective hourly rates; vacations, holidays, sick days, and overtime payments due and owing to each bargaining unit employee (itemized according to the respective employee); all union dues owed to the local union to date of closing (checks and checkoffs to be delivered at a meeting); and all health and welfare premiums due and owing to Local 837 health and welfare fund to date of store closing (checks and contribution reports to be delivered at a meeting). The foregoing information is necessary for, and relevant to, the Union's

performance of its duties as the exclusive collective-bargaining representative of the unit. Since about February 5, 1996, the Respondent has failed and refused to furnish the Union with the foregoing information.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused to bargain collectively with the exclusive collective-bargaining representative of its employees in violation of Sections 8(a)(1) and (5) and 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.

To remedy the Respondent's unlawful failure to bargain in good faith with the Union about the effects on unit employees of its decision to cease operations at its Franklin Mills Store, we shall order the Respondent to bargain with the Union concerning the effects of closing its facility on its employees. To ensure meaningful bargaining occurs and to effectuate the policies of the Act, we shall accompany our order with a limited backpay requirement designed both to make whole the employees for losses suffered as a result of the violations and to re-create in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so by ordering the Respondent pay backpay to the terminated employees in a manner similar to that required in *Transmarine Corp.*, 170 NLRB 389 (1968).

Thus, the Respondent shall pay its laid-off employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until occurrence of the earliest of the following conditions: (1) The date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the closing of its facility on its employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 days of the date of this Decision and Order, or to commence negotiations within 5 days of the Respondent's notice of its desire to bargain with the Union; (4) the Union's subsequent failure to bargain in good faith; but in no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date on which the Respondent terminated its operations, to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner; provided, however, that in no event shall this sum be less than the employees would have earned for a 2-week period at the

rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings which the terminated employees would normally have received during the applicable period, less any net interim earnings, and shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In addition, to remedy the Respondent's failure to provide necessary and relevant information requested by the Union, we shall order Respondent to furnish the Union the information requested.

Finally, in view of the fact that the Respondent's facility is currently closed, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of its former employees in order to inform them of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that the Respondent, Young World Stores, Philadelphia, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to bargain with Teamsters Local Union 837 a/w International Brotherhood of Teamsters, AFL-CIO regarding the effects on unit employees of its decision to cease operations. The bargaining unit consists of:

All employees, both selling and non-selling, all sales people, truck men, drivers, assistant drivers, warehouse employees, office and clerical employees, cashiers and stock room persons now employed by Respondent, excluding guards and supervisors as defined in the Act.

(b) Failing to provide information requested by the Union which is necessary for, and relevant to, the performance of its function as the exclusive bargaining representative of the unit employees.

(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) On request, bargain with the Union over the effects on unit employees of its decision to cease operations at its Franklin Mills Store, reducing to writing any agreement reached as a result of such bargaining.

(b) Pay limited backpay to the unit employees in the manner set forth in the remedy section of this decision.

(c) Furnish the Union the information that it requested on February 5, 1996.

(d) 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 pay-

ment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, duplicate and mail, at its own expense, signed and dated copies of the attached notice,¹ to the Union and to the last known addresses of all unit employees employed as of March 1, 1996.

(f) 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.

Dated, Washington, D.C. July 22, 1996

William B. Gould IV, Chairman

Margaret A. Browning, Member

Sarah M. Fox, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

¹ 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."

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 fail to bargain with Teamsters Local Union 837 a/w International Brotherhood of Teamsters, AFL-CIO regarding the effects on unit employees of our decision to cease operations. The bargaining unit consists of:

All employees, both selling and non-selling, all sales people, truck men, drivers, assistant drivers, warehouse employees, office and clerical employees, cashiers and stock room person now employed by us, excluding guards and supervisors as defined in the Act.

WE WILL NOT fail to furnish information to the Union which is necessary for, and relevant to, the performance of its function as the exclusive bargaining representative of the unit employees.

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, on request, bargain with the Union over the effects of our decision to cease operations at our Franklin Mills Store, and put in writing any agreement reached as a result of such bargaining.

WE WILL pay limited backpay to the unit employees in the manner set forth in a decision of the National Labor Relations Board.

WE WILL furnish the Union the information it requested on February 5, 1996.

YOUNG WORLD STORES