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SAE Young Westmont-Chicago, LLC and Warehouse, Mail Order, Office, Technical and Professional Employees Union, Local 743, Affiliated with the International Brotherhood of Teamsters, AFL-CIO. Cases 13-CA-38410 and 13-CA-38740

March 9, 2001

DECISION AND ORDER

BY MEMBERS LIEBMAN, HURTGEN, AND WALSH

Upon a charge and a first amended charge in Case 13-CA-38410 filed by the Union on March 3 and June 22, 2000, respectively, and a charge in Case 13-CA-38740 filed by the Union on August 8, 2000, the General Counsel of the National Labor Relations Board issued a First Amended Consolidated Complaint on September 15, 2000, against SAE Young Westmont-Chicago, LLC, the Respondent, alleging that it had violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act. The Respondent filed an answer to the First Amended Consolidated Complaint on September 28, 2000. On October 26, 2000, the General Counsel issued a first amendment to the First Amended Consolidated Complaint.

Thereafter, on October 27, 2000, the Respondent entered into a settlement agreement, which was approved by the Regional Director for Region 13 on November 7, 2000. The settlement agreement contains the following language:

The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, including but not limited to, failure to make timely installment payments of moneys as set forth above, and after 15 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by Respondent, the Regional Director shall reissue the complaints previously filed in the instant cases. Thereafter, the General Counsel may file a motion for summary judgment with the Board on the allegations of the just issued complaint concerning the violations alleged therein. Respondent understands and agrees that the allegations of the aforementioned complaint may be deemed to be true by the Board, that it will not contest the validity of any such allegations, and the Board may enter findings, conclusions of law, and an order on the allegations of the aforementioned complaint. On receipt of said motion for summary judgment the Board shall issue an Order requiring the Charged Party to Show Cause why said Motion of the General Counsel should not be granted. The only issue that may be raised in response to the Board's Order to Show Cause

is whether Respondent defaulted upon the terms of this settlement agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party, on all issues raised by the pleadings. The Board may then issue an Order providing full remedy for the violations found as is customary to remedy such violations, including but not limited to the provisions of this Settlement Agreement. The parties further agree that the Board Order and a U.S. Court of Appeals Judgment may be entered hereon ex parte.

By letter dated December 1, 2000, the Compliance Officer for Region 13 requested that the Respondent comply with the terms of the settlement agreement by posting notices and extending the unconditional offers of reinstatement to the discriminatees as required by the settlement. The letter gave the Respondent 15 days to cure its default, and stated that if the Region did not receive notification of the Respondent's compliance, the settlement agreement could be set aside and the Region could resume further legal action.

By letter dated December 15, 2000, the Compliance Officer again requested the Respondent to comply with the settlement agreement, and asked the Respondent to apprise the Region of its compliance efforts, i.e. posting of notices, extending offers of reinstatement, and payment of the first installment of backpay. The letter stated that if the Respondent failed to take these actions immediately, the Region would reissue the complaint.

By letter dated December 19, 2000, the Compliance Officer once more requested that the Respondent comply with the settlement agreement by reinstating the unit employees' health insurance, remitting the first installment of backpay to the discriminatees that was due on December 7, 2000, and reinstating the discriminatees. The letter added that if the Respondent did not cure its default by December 27, 2000, further litigation would be initiated until the default is cured.

The Respondent has not notified the Region of the Respondent's compliance with the terms of the settlement agreement, and has failed to submit any payment due under the settlement. In these circumstances, and consistent with the terms of the settlement agreement, on January 8, 2001, the Acting General Counsel reissued the complaint in these cases under the title of Second Consolidated Amended Complaint.

On January 16, 2001, the Acting General Counsel filed a Motion for Summary Judgment with the Board. On January 18, 2001, 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

According to the uncontroverted allegations in the Motion for Summary Judgment, the Respondent has failed to comply with the settlement agreement by, among other things, failing to (1) offer reinstatement to the discriminatees; (2) make backpay installment payments; (3) reinstate the health insurance; and (4) post notices. Consequently, pursuant to the provisions of the settlement agreement set forth above, we find that the allegations of the Second Consolidated Amended Complaint are true. Accordingly, we grant the Acting 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 limited liability company, with an office and place of business in Chicago, Illinois, has been engaged in the business of leasing commercial office space. During the calendar year preceding issuance of the Second Consolidated Amended Complaint, the Respondent, in conducting its business operations described above, derived gross revenues in excess of \$500,000, including gross revenues in excess of \$25,000 from tenants that are directly engaged in interstate commerce. 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 material times, the following individuals held the positions set forth opposite their names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Danisha Murph	Office Manager
Anthony Johnson	Vice President
A.C. McCullough	Supervisor

About January 2000, the Respondent, by Danisha Murph, at the Respondent's facility, interrogated employees about their union activities.

Also in about January 2000, the Respondent, by Anthony Johnson, at the Respondent's facility:

(i) Promised benefits to employees if they chose not to be represented by the Union;

(ii) Threatened employees with stricter enforcement of work rules if the employees chose to be represented by the Union;

(iii) Interrogated employees concerning their union activities and sympathies and the union activities of other employees; and

(iv) Threatened employees with possible job loss if they chose to be represented by a union.

Since about February 7, 2000, the Respondent has instituted a policy of mandatory overtime for its maintenance employees and more strictly enforced work rules for its maintenance employees by reissuing prior work rules for those employees. On about February 8, 2000, the Respondent issued a new progressive discipline policy for its maintenance employees, and on about February 14, 2000, the Respondent changed the maintenance employees' hours of work and eliminated their paid lunch period.

Further, on about March 2, 2000, the Respondent laid off and/or selected for layoff its employees Billy Calderon, William Calderon, James Durkins, and Theodore Simental.

The Respondent engaged in all of the conduct set forth above because its employees chose to be represented by the Union and engaged in concerted activities, and to discourage employees from engaging in those activities.

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 regular full-time and regular part-time maintenance employees employed by the Employer at its facility currently located at 3333 West Arthington, Chicago; excluding all managers, directors and all office clerical employees and guards, professional employees and supervisors, as defined in the Act.

On February 1, 2000, a representation election was conducted among the employees in the above-described unit, and on February 29, 2000, the Union was certified as the exclusive collective-bargaining representative of the unit.

At all times since February 1, 2000, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

On about June 2, 2000, the Respondent cancelled the health insurance of the maintenance employees.

The subjects set forth above, i.e., overtime, work rules, a progressive discipline policy, hours of work, paid lunch period, layoffs, and health insurance, all relate to wages, hours, and other terms and conditions of employment of the unit employees and are mandatory subjects for the purposes of collective bargaining.

The Respondent engaged in the conduct described above without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct and its effects.

On about May 8 and June 28, 2000, the Union requested by letter that the Respondent bargain collectively with the Union as the exclusive collective-bargaining representative of the unit. Since about May 8, 2000, the Respondent has failed and refused to recognize and bar-

gain with the Union as the exclusive collective-bargaining representative of the unit.

CONCLUSIONS OF LAW

By interrogating employees about their union activities and sympathies and the union activities of other employees; threatening employees with stricter enforcement of work rules and possible job loss if they chose to be represented by the Union; and promising benefits to employees if they chose not to be represented by the Union, the Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) of the Act.

In addition, by instituting a policy of mandatory overtime for its maintenance employees; more strictly enforcing work rules for its maintenance employees by reissuing prior work rules for them; issuing a new progressive discipline policy for its maintenance employees; changing the maintenance employees' hours of work and eliminating their paid lunch period; and laying off and/or selecting for layoff employees Billy Calderon, William Calderon, James Durkins, and Theodore Simental, the Respondent has discriminated against employees in regard to their hire or tenure or terms and conditions of employment, thereby discouraging membership in a labor organization, and has consequently engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) of the Act.

Further, by failing and refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit employees; cancelling the health insurance of the maintenance employees; and taking the other unilateral actions set forth above, without giving prior notice to the Union and an opportunity to bargain about this conduct and its effects, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

The Respondent's unfair labor practices affect commerce within the meaning of 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. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1), we shall order the Respondent to offer Billy Calderon, William Calderon, James Durkins, and Theodore Simental, 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, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against

them, with interest. Backpay 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). The Respondent shall also be required to expunge from its files any and all references to the unlawful layoffs and/or selection for layoff, and to notify the discriminatees in writing that this has been done.

In addition, we shall order the Respondent to rescind, with respect to maintenance employees, its (1) policy of mandatory overtime; (2) reissued prior work rules; and (3) new progressive discipline policy. We also shall order the Respondent to restore to the maintenance employees the hours of work and the paid lunch period for maintenance employees that existed prior to about February 14, 2000, and to make the unit employees whole for any loss of earnings attributable to its unlawful conduct. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, supra.

Further, we shall order the Respondent to restore the health insurance for its maintenance employees that was cancelled on about June 2, 2000, and to make the unit employees whole by reimbursing them for any expenses ensuing from the Respondent's unlawful conduct, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891, fn. 2 (1980), enf. 661 F.2d 940 (9th Cir. 1981), with interest as prescribed in *New Horizons for the Retarded*, supra.

Finally, we shall order the Respondent to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit employees.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enf. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enf. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, SAE Young Westmont-Chicago, LLC, Chicago, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees concerning their union activities and sympathies, and the union activities of other employees.

(b) Promising benefits to employees if they chose not to be represented by the Union.

(c) Threatening employees with stricter enforcement of work rules and with possible job loss if the employees chose to be represented by the Union.

(d) Failing and refusing to recognize and bargain with Warehouse, Mail Order, Office, Technical and Professional Employees Union, Local 743, affiliated with the International Brotherhood of Teamsters, AFL-CIO as the exclusive representative of the employees in the following appropriate unit:

All regular full-time and regular part-time maintenance employees employed by the Employer at its facility currently located at 3333 West Arthington, Chicago; excluding all managers, directors and all office clerical employees and guards, professional employees and supervisors, as defined in the Act.

(e) Cancelling the health insurance of the maintenance employees without giving the Union prior notice and an opportunity to bargain.

(f) Failing and refusing to bargain with the Union as the exclusive representative of the unit employees and discriminating against employees because they chose to be represented by the Union and engaged in concerted activities, and to discourage employees from engaging in those activities, by laying off employees and/or selecting them for layoff; instituting a policy of mandatory overtime for its maintenance employees; more strictly enforcing work rules for the maintenance employees by reissuing prior work rules for them; issuing a new progressive disciplinary policy for its maintenance employees; changing its maintenance employees' hours of work and eliminating their paid lunch period.

(g) 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) Within 14 days from the date of this Order, offer Billy Calderon, William Calderon, James Durkins, and Theodore Simental 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 Billy Calderon, William Calderon, James Durkins, and Theodore Simental whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, with interest, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any references to the unlawful layoff and/or selection for layoff of Billy Calderon, William Calderon, James Durkins, and Theodore Simental, and, within 3 days thereafter, notify each of them in writing that this has been done and that the layoffs and/or selection for layoff will not be used against them in any way.

(d) Recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the above unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(e) Rescind its policy of mandatory overtime, reissued prior work rules, and new progressive discipline policy applicable to its maintenance employees.

(f) Restore the maintenance employees' hours of work and paid lunch period as they existed prior to its changes regarding these matters made in February 2000, and make the unit employees whole for any loss of earnings ensuing from these changes, with interest, as set forth in the remedy section of this decision.

(g) Restore the health insurance of the maintenance employees that was cancelled in June 2000, and make the unit employees whole for any loss of benefits or expenses resulting from this cancellation, with interest, as set forth in the remedy section of this decision.

(h) 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 back-pay due under the terms of this Order.

(i) Within 14 days after service by the Region, post at its facility in Chicago, Illinois, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent 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 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 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 January 2000.

(j) 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.

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."

Dated, Washington, D.C. March 9, 2001

Wilma B. Liebman, Member

Peter J. Hurtgen, Member

Dennis P. Walsh, Member

(SEAL) 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 interrogate employees concerning their union activities and sympathies and the union activities of other employees.

WE WILL NOT promise benefits to employees if they chose not to be represented by the Union.

WE WILL NOT threaten employees with stricter enforcement of work rules and with possible job loss if the employees chose to be represented by the Union.

WE WILL NOT fail and refuse to recognize and bargain with Warehouse, Mail Order, Office, Technical and Professional Employees Union, Local 743, affiliated with the International Brotherhood of Teamsters, AFL-CIO as the exclusive representative of the employees in the following appropriate unit:

All regular full-time and regular part-time maintenance employees employed by us at our facility currently located at 3333 West Arthington, Chicago; excluding all managers, directors and all office clerical employees and guards, professional employees and supervisors, as defined in the Act.

WE WILL NOT cancel the health insurance of the maintenance employees without giving the Union prior notice and an opportunity to bargain.

WE WILL NOT fail and refuse to bargain with the Union as the exclusive representative of the unit employees and WE WILL NOT discriminate against employees because

they chose to be represented by the Union and engaged in concerted activities, and to discourage employees from engaging in those activities, by laying off employees and/or selecting them for layoff; instituting a policy of mandatory overtime for our maintenance employees; more strictly enforcing work rules for the maintenance employees by reissuing prior work rules for them; issuing a new progressive disciplinary policy for our maintenance employees; changing our maintenance employees' hours of work and eliminating their paid lunch period.

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 Billy Calderon, William Calderon, James Durkins, and Theodore Simental 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 Billy Calderon, William Calderon, James Durkins, and Theodore Simental whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any references to the unlawful layoff and/or selection for layoff of Billy Calderon, William Calderon, James Durkins, and Theodore Simental, and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that the layoffs and/or selection for layoff will not be used against them in any way.

WE WILL recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the above unit and put in writing and sign any agreement reached on terms and conditions of employment.

WE WILL rescind our policy of mandatory overtime, re-issued prior work rules, and new progressive discipline policy applicable to our maintenance employees.

WE WILL restore the maintenance employees' hours of work, and paid lunch period as they existed prior to our changes regarding these matters made in February 2000, and make the unit employees whole for any loss of earnings ensuing from these changes, with interest.

WE WILL restore the health insurance of the maintenance employees that was cancelled in June 2000, and make the unit employees whole for any loss of benefits or expenses resulting from this cancellation, with interest.

SAE YOUNG WESTMONT-CHICAGO, LLC