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AM Property Holding Corp., Maiden 80/90 NY LLC and Media Technology Centers, LLC, a single employer, a joint employer with Planned Building Services, Inc. *and* Local 32BJ, Service Employees International Union

United Workers of America (Party in Interest) and AM Property Holding Corp., Maiden 80/90 NY LLC, and Media Technology Centers, LLC, a single employer, a joint employer with Servco Industries, Inc. *and* Local 32BJ, Service Employees International Union. Cases 2–CA–33146–1, 2–CA–33308–1, 2–CA–33558–1, 2–CA–33864–1, and 2–CA–34018–1

March 27, 2008

ORDER GRANTING MOTION FOR RECONSIDERATION[1]

BY CHAIRMAN SCHAUMBER AND MEMBER LIEBMAN

On August 30, 2007, the National Labor Relations Board issued a Decision and Order in this proceeding.[2] Three of the questions raised in that case are before us again today:

(1) Whether Respondent Planned Building Services, Inc. (PBS) violated Section 8(a)(5) and (1) of the Act by failing and refusing to recognize Charging Party Local 32BJ, Service Employees International Union (Local 32BJ) as the bargaining representative of PBS maintenance employees servicing a building owned by Respondent AM Property Holding Corp. (AM) at 80-90 Maiden Lane in New York City;

(2) Whether PBS violated Section 8(a)(2) and (1) by recognizing the United Workers of America (UWA) as those employees' representative at a time when the UWA did not have majority support; and

(3) Whether to impose on PBS certain special remedies proposed by 32BJ.

For the reasons discussed below, we grant reconsideration only with respect to the recognition of the UWA by PBS, which we now find unlawful.

Background

In the underlying case, the General Counsel alleged and litigated two alternative theories for finding that PBS unlawfully recognized the UWA: (1) the recognition occurred at a time that PBS had an obligation, as a joint successor employer with AM, to recognize and bargain with Local 32BJ; and (2) the UWA did not have the support of an uncoerced majority of PBS employees at the time of recognition. The judge found that the recognition was unlawful based on the joint-successorship theory. Relying on this first theory, the judge specifically stated that it was unnecessary to reach the alternative theory, i.e., whether the UWA had uncoerced majority support at the time of the recognition.

The General Counsel did not except to the judge's failure to reach the alternative theory. PBS, in its exceptions brief to the Board, argued that it was neither a joint employer nor a joint successor with AM, and thus it had no bargaining obligation with Local 32BJ at the time it recognized the UWA; in addition, it recognized the UWA based on a majority of valid authorization cards. In his answering brief, the General Counsel asserted both that the judge correctly found that recognizing the UWA was unlawful and that the UWA did not represent an uncoerced majority at the time of recognition because PBS had unlawfully assisted the Union in obtaining authorization cards.

The Board reversed the judge's finding that PBS had a successorship obligation to bargain with Local 32BJ at the time it recognized the UWA. The Board found that PBS and AM were not joint employers or joint successors, and that the issue of whether PBS, as a single employer, was a successor with a bargaining obligation had not been litigated. Relying on *American Red Cross Missouri-Illinois Blood Services Region*, 347 NLRB No. 33 (2006), and *Teddi of California*, 338 NLRB 1032 (2003), the Board further found that it was precluded from considering whether the UWA had uncoerced majority support at the time of the recognition because the General Counsel failed to raise a timely exception to the judge's failure to rule on that issue, as required by Section 102.46(b) of the Board's Rules and Regulations.[3] Accordingly, the Board dismissed the allegation. The Board also rejected Local 32BJ's request for special remedies.

[1] Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

[2] 350 NLRB No. 80.

[3] Member Liebman disagreed that the Board was precluded from considering whether there was majority support for the UWA at the time of recognition. In her view, a violation flowed logically from the Board's determination that PBS unlawfully provided aid to the UWA by soliciting authorization cards and by directing employees to meet with UWA representatives.

On October 11, 2007, Local 32BJ filed a Motion for Reconsideration, contending that the Board should have determined that PBS individually was a successor with a bargaining obligation and should have imposed the special remedies on PBS. On October 12, 2007, the General Counsel filed a separate Motion for Reconsideration, arguing that the Board failed to apply controlling principles of law in dismissing the unlawful-recognition allegation.

Section 102.48 of the Board's Rules and Regulations permits a party in "extraordinary circumstances" to move for reconsideration of a Board decision. As discussed below, we find that the General Counsel has shown extraordinary circumstances here that warrant reconsideration of the Board's decision as to unlawful recognition, and we thus grant his motion. However, because Local 32BJ has raised no extraordinary circumstance, we deny its motion.

I. THE GENERAL COUNSEL'S MOTION

A.

The General Counsel argues that the Board erred in holding that in order to preserve his alternative recognition theory for review, he was required to except to the judge's failure to reach the issue. In support of this argument, the General Counsel relies on *Pay Less Drug Stores Northwest, Inc.,*[4] in which the Board held that the absence of exceptions to the judge's failure to decide an alternative legal theory, which had been litigated during the hearing, did not preclude the Board from considering the theory and finding a violation based on that theory. The General Counsel contends that *Pay Less Drug Stores* is controlling, that the cases relied on by the Board in dismissing the unlawful recognition allegation are inapposite, and that the Board committed material error by failing to properly apply its precedent. We find merit in these contentions.

In *Pay Less Drug Stores,* the General Counsel alleged that the respondent employer had unlawfully excluded union pickets from its property. The violation was litigated on two theories: an accommodation theory under *Jean Country*[5] and a discrimination theory. The judge found a violation based on the accommodation theory (later invalidated by the Supreme Court), and thus he did not address the alternative theory of discrimination. Although the General Counsel and charging party did not except to the judge's failure to decide the discrimination issue, the Board held that the parties were not required to file exceptions to preserve that issue for review. Rather, in circumstances where a judge finds it unnecessary to rule on an alternative theory litigated by the General Counsel, the failure of a party to except to the "nonruling" does not constitute a waiver of a party's right to pursue the underlying issue under the Board's Rules.[6] Because the circumstances in *Pay Less Drug Stores* are substantially similar to those presented here, we find that case to be controlling.

In contrast, the cases originally relied on by the Board in dismissing the alternative recognition theory are distinguishable, as neither involved circumstances comparable to those presented here.

In *American Red Cross*, the judge sustained a multipart objection to an election on one ground: that the employer had discriminated against union observers by treating its own observers more favorably, including with respect to compensation. The judge observed that the "gravamen of the [Union's] objection is that Union observers were treated disparately when compared to the treatment received by the Employer's observers." 347 NLRB No. 33, slip op. at 21.

The union filed no exceptions to any aspect of the judge's decision, including his characterization of the "gravamen" of the union's objection as disparate treatment. Rather, in its answering brief to the employer's exceptions, the union argued (as the Board saw it) "that the [r]espondent tainted the election by grossly overcompensating its election observers," regardless of any disparate treatment. Id. at 8. The union asserted that it interpreted the judge's decision as sustaining the gross-overcompensation theory, but that it was cross-excepting in any case. Id. The Board, however, held that the union's new theory—which it described as an "additional argument"—was not properly before it. Id. The Board observed that rather than endorsing the union's theory, the judge "did not address the compensation issue at all." Id. In any case, a cross-exception raised in an answering brief was untimely. Id.

American Red Cross is clearly distinguishable from *Pay Less Drug Stores*. The gross-overcompensation theory was *not* presented to the judge as an independent, alternative basis for setting aside the election. Rather, as the judge recognized, the gravamen of the union's objec-

[4] 312 NLRB 972, 973 (1993), enf. denied on other grounds, mem. 57 F.3d 1077 (9th Cir. 1995). The General Counsel also relies on *Bayley-Seton Hospital*, 323 NLRB 717 fn. 4 (1997), and *Food Lion*, 304 NLRB 602 fn. 2 (1991), which are consistent with *Pay Less Drug Stores.*

[5] 291 NLRB 11 (1988), overruled in *Lechmere, Inc. v. NLRB,* 502 U.S. 527 (1992).

[6] As the Board observed in *Pay Less*, Sec. 102.46(b)(2) of the Board's Rules states that "[a]ny exception to a *ruling, finding, conclusion, or recommendation* which is not specifically urged shall be deemed to have been waived." (Emphasis added.) The Board held that the General Counsel's failure to except to the judge's *nonruling* in that case did not fall within the rule.

tion was disparate treatment, based on a combination of facts and circumstances. Not until it filed its answering brief with the Board—that is, belatedly—did the union single out the gross overcompensation of the employer's observers as objectionable per se. The *American Red Cross* Board, then, correctly viewed this as a new theory. It was not, as in *Pay Less* and in this case, an alternative theory which had been presented to the judge and preserved for review based on the judge's failure to rule on it.

Teddi of California is also distinguishable, as it involved a party's failure to initially except to the judge's *finding of a violation*. Rather than filing a proper exception to the finding, the respondent challenged the finding in its answering brief. Because the Board's Rules and Regulations do not permit a party to assert cross-exceptions in an answering brief,[7] the Board found that the respondent had failed to preserve the issue for review.

In light of our review of Board precedent, we reverse our earlier decision and find that it was not necessary for the General Counsel to except to the judge's failure to reach the alternative unlawful-recognition theory to preserve the issue for review. Accordingly, we now consider that issue.

B.

The Board found that PBS violated Section 8(a)(2) and (1) by soliciting authorization cards for the UWA, which the UWA subsequently used to obtain recognition from PBS. The Board also found that PBS provided unlawful assistance to the UWA by directing employees to meet with UWA representatives. *AM Property*, 350 NLRB No. 80, slip op. at 13 (2007). Accordingly, the UWA did not have the support of an uncoerced majority of PBS employees at the time recognition was granted. See *Dairyland USA Corp.*, 347 NLRB No. 30 (2006). We therefore find that, by extending recognition to the UWA, PBS violated Section 8(a)(2) and (1) of the Act.

II. LOCAL 32BJ'S MOTION

Local 32BJ contends that the Board erred in finding that the General Counsel had not litigated the question of whether PBS individually was a successor to the previous cleaning contractor, that the record was sufficient to make such a finding, and that PBS therefore had an obligation as a successor to recognize and bargain with Local 32BJ. In pressing this argument, Local 32BJ raises no issues that the Board did not previously consider and reject. Accordingly, Local 32BJ has not shown extraordinary circumstances warranting reconsideration of the Board's decision on this issue.[8]

Local 32BJ also contends that the Board erred in refusing to grant the special remedies it had sought in the underlying case, arguing that the broad order issued by the Board is insufficient to deter PBS from committing future violations of the Act. Although we have found an additional violation, we adhere to the Board's original determination that the broad, corporatewide Order will fully remedy the violations found, and accordingly that special remedies are not warranted. Consequently, we deny Local 32BJ's motion in this regard as well.[9]

Further Amended Remedy

Having found that PBS unlawfully recognized the UWA, we shall order it to cease and desist from recognizing the UWA as the representative of its employees at 80-90 Maiden Lane, and to withdraw recognition from that union, unless and until it is certified by the Board as their representative under Section 9(c). We shall also order PBS to cease and desist from maintaining and giving effect to its May 1, 2000–April 30, 2003 collective-bargaining agreement with the UWA at 80-90 Maiden Lane, or any renewal, extension, or modification thereof, unless and until the UWA is certified by the Board. Finally, we shall order PBS, jointly and severally with the UWA, to reimburse with interest all present and former PBS employees at 80-90 Maiden Lane for all dues, initiation fees, and other moneys paid by or withheld from them pursuant to the terms of the union-security and dues-checkoff provisions of the collective-bargaining agreement. However, reimbursement will not extend to any employees who may have joined the UWA before May 1, 2000. See *Dairyland USA Corp.*, supra, 347 NLRB No. 30, slip op. at 5.[10]

[7] See Sec. 102.46(d)(2) of the Board's Rules: "The answering brief to the exceptions shall be limited to the questions raised in the exceptions and in the brief in support thereof."

[8] We find it significant that the General Counsel has not joined in Local 32BJ's motion and does not argue that PBS should be found to be an individual successor. We are therefore convinced that the General Counsel did not, and does not, intend to litigate the case on this basis. The General Counsel frames the theory of the case, and the Charging Party may not enlarge upon or change the General Counsel's theory. See, e.g., *Tradesmen International*, 351 NLRB No. 37, slip op. at 1 fn. 2 (2007), citing *Kimtruss Corp.*, 305 NLRB 710, 711 (1991).

[9] Dissenting in the underlying case, Member Liebman voted to grant the extraordinary remedies against PBS that were requested by Local 32BJ. In her view, the additional violation found here would further support granting those remedies. However, for institutional reasons, she concurs with Chairman Schaumber in denying the motion.

[10] The complaint does not allege that either the union-security provision or the dues-checkoff provision of the complaint was unlawful. Accordingly, we do not find that those provisions violated the Act. Nevertheless, we find it appropriate to order reimbursement of dues and fees exacted under those provisions, in order to afford complete relief for the unlawful extension and acceptance of recognition and maintenance of the agreement.

ORDER

The General Counsel's Motion for Reconsideration is granted. Accordingly, the Board's Decision and Order is modified as set forth below.

B. Respondent Planned Building Services, Inc., Fairfield, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to hire employees or consider them for hire because of their support for Local 32BJ.

(b) Threatening its employees with discharge for supporting Local 32BJ.

(c) Indicating to its employees that support for Local 32BJ would be futile.

(d) Directing its employees to meet with representatives of the United Workers of America (UWA).

(e) Having company officials present at or near the place where union officials are meeting with its employees.

(f) Directing, ordering, or instructing its employees to sign authorization cards or dues-authorization forms for the UWA.

(g) Deducting dues for the UWA from the salaries of its employees who have not authorized such deductions.

(h) Deducting dues for the UWA after the union disclaims interest in representing its employees.

(i) Threatening employees with an investigation regarding their immigration status in retaliation for giving testimony at a National Labor Relations Board proceeding.

(j) Making employment offers contingent upon an applicant's acceptance of terms and conditions established under an unlawful collective-bargaining agreement with the UWA.

(k) Recognizing the UWA as the bargaining representative of its employees at 80-90 Maiden Lane, New York, New York, unless and until the UWA is certified by the National Labor Relations Board as the exclusive collective-bargaining representative of those employees pursuant to Section 9(c) of the Act.

(l) Maintaining and giving effect to its May 1, 2000–April 30, 2003 collective-bargaining agreement with the UWA at 80-90 Maiden Lane, or to any renewal, extension or modification thereof, unless and until the UWA is certified by the National Labor Relations Board; provided, however, that nothing in this Order shall authorize or require the withdrawal or elimination of any wage increase, or other improved terms or conditions of employment that may have been established pursuant to any such agreement.

(m) In any other manner interfering with, restraining, or coercing employees in the exercise of 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 to the following employees instatement to their former positions, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges they would have enjoyed had they been hired, if necessary terminating the services of employees hired in their stead:

Ramon Cedono	Elizabeth Zavala
Maria Hernandez	Trinidad Machado
Maria Marin	Virginia Matos
Mark Menzies	Marie Michel
Shah Uddin	Nehat Borova

(b) Make whole, in the manner set forth in the amended remedy, the employees listed above, and Zoila Gonzalez and Renier Sabajo, for any loss of earnings and other benefits suffered as a result of the discrimination against them.

(c) Withdraw and withhold all recognition from the UWA as the collective-bargaining representative of PBS employees at 80-90 Maiden Lane, unless and until the UWA is certified by the National Labor Relations Board as the exclusive collective-bargaining representative of those employees.

(d) Jointly and severally with the UWA, reimburse all present and former PBS employees at 80-90 Maiden Lane for all dues, initiation fees, and other moneys paid by or withheld from them pursuant to the union-security and dues-checkoff provisions of the May 1, 2000–April 30, 2003 collective-bargaining agreement or any renewal, extension, or modification thereof, plus interest as provided in *New Horizons for the Retarded,* 283 NLRB 1173 (1987). However, reimbursement does not extend to any employees who may have joined the UWA before May 1, 2000.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records, if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this order.

The UWA is not a party to this proceeding. However, in our decision in a related case, issued today, we are finding that the UWA violated Sec. 8(b)(1)(A) by accepting recognition from PBS and ordering the UWA, jointly and severally with PBS, to reimburse the PBS employees as stated in the text above. 352 NLRB No. 45 (2008).

(f) Within 14 days after service by the Region, post at its office that was responsible for overseeing the contract at the facility involved in these proceedings copies of the attached notice marked "Appendix B."[11] Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by Respondent PBS's authorized representative, shall be posted by Respondent PBS 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 Respondent PBS to ensure that the notices are not altered, defaced, or covered by any other material. Because it is undisputed that Respondent PBS no longer performs services at the facility involved in these proceedings, Respondent PBS shall duplicate and mail, at its own expense, a copy of the notice to all current and former employees employed by Respondent PBS at that facility at any time since April 25, 2000.

(g) Within 14 days after service by the Region, post at all facilities it currently services and all of its offices that oversee those facilities copies of the attached notice marked "Appendix C."[12] Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by Respondent PBS's authorized representative, shall be posted by Respondent PBS 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 Respondent PBS to ensure that the notices are not altered, defaced, or covered by any other material.

(h) 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 Respondent PBS has taken to comply.

IT IS FURTHER ORDERED that the Motion for Reconsideration filed by Local 32BJ, Service Employees International Union is denied.

Dated, Washington, D.C. March 27, 2008

_____

Peter C. Schaumber, Chairman

_____

Wilma B. Liebman, Member

[11] 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."

[12] See fn. 11.

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX B

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 Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to hire employees or consider them for hire because of their support for Local 32BJ, Service Employees International Union (Local 32BJ).

WE WILL NOT threaten our employees with discharge if they support Local 32BJ.

WE WILL NOT indicate to our employees that support for Local 32BJ would be futile.

WE WILL NOT direct our employees to meet with representatives of the United Workers of America (UWA).

WE WILL NOT have company officials present at or near the place where union officials are meeting with our employees.

WE WILL NOT direct, order, or instruct our employees to sign authorization cards or dues authorization forms for the UWA.

WE WILL NOT deduct dues for the UWA from the salaries of our employees who have not authorized such deductions.

WE WILL NOT deduct dues for the UWA after the union disclaims interest in representing our employees.

WE WILL NOT threaten our employees with an investigation regarding their immigration status in retaliation for giving testimony at a National Labor Relations Board proceeding.

WE WILL NOT make employment offers contingent upon an applicant's acceptance of terms and conditions established under an unlawful collective-bargaining agreement with the UWA.

WE WILL NOT recognize the UWA as the bargaining representative of PBS employees at 80-90 Maiden Lane unless and until the UWA is certified by the National Labor Relations Board as the exclusive collective-bargaining representative of those employees.

WE WILL NOT maintain and give effect to our May 1, 2000–April 30, 2003 collective-bargaining agreement with the UWA at 80-90 Maiden Lane, or to any renewal, extension or modification thereof, unless and until the UWA is certified by the National Labor Relations Board; provided, however, that nothing in the Board's Order shall authorize or require the withdrawal or elimination of any wage increase, or other improved terms or conditions of employment that may have been established pursuant to any such agreements.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, within 14 days from the date of the Board's Order, offer to the following employees instatement to their former positions or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges they would have enjoyed had they been hired, discharging if necessary any employees hired in their place:

Ramon Cedono	Elizabeth Zavala
Maria Hernandez	Trinidad Machado
Maria Marin	Virginia Matos
Mark Menzies	Marie Michel
Shah Uddin	Nehat Borova

WE WILL make whole the employees listed above, and Zoila Gonzalez and Renier Sabajo, for any loss of earnings and other benefits suffered as a result of the discrimination against them, less any net interim earnings, plus interest.

WE WILL withdraw and withhold all recognition from the UWA as the collective-bargaining representative of PBS employees at 80-90 Maiden Lane, unless and until the UWA is certified by the National Labor Relations Board as the exclusive collective-bargaining representative of those employees.

WE WILL, jointly and severally with the UWA, reimburse with interest all present and former PBS employees at 80-90 Maiden Lane for all dues, initiation fees, and other moneys paid by or withheld from them pursuant to the union-security and dues-checkoff provisions of the collective-bargaining agreement. However, reimbursement does not extend to any employees who may have joined the UWA before May 1, 2000.

PLANNED BUILDING SERVICES, INC.

APPENDIX C

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 Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to hire employees or consider them for hire because of their support for Local 32BJ, Service Employees International Union (Local 32BJ).

WE WILL NOT threaten our employees with discharge if they support Local 32BJ.

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WE WILL NOT direct our employees to meet with representatives of the United Workers of America (UWA).

WE WILL NOT have company officials present at or near the place where union officials are meeting with our employees.

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WE WILL NOT deduct dues for the UWA from the salaries of our employees who have not authorized such deductions.

WE WILL NOT deduct dues for the UWA after the union disclaims interest in representing our employees.

WE WILL NOT threaten our employees with an investigation regarding their immigration status in retaliation for giving testimony at a National Labor Relations Board proceeding.

WE WILL NOT make offers of employment contingent upon an applicant's acceptance of terms and conditions established under an unlawful collective-bargaining agreement with the UWA.

WE WILL NOT recognize the UWA as the bargaining representative of PBS employees at 80-90 Maiden Lane unless and until the UWA is certified by the National Labor Relations Board as the exclusive collective-bargaining representative of those employees.

WE WILL NOT maintain and give effect to our May 1, 2000–April 30, 2003 collective-bargaining agreement with the UWA at 80-90 Maiden Lane, or to any renewal, extension or modification thereof, unless and until the UWA is certified by the National Labor Relations Board; provided, however, that nothing in the Board's Order shall authorize or require the withdrawal or elimination of any wage increase, or other improved terms or conditions of employment that may have been established pursuant to any such agreements.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, within 14 days from the date of the Board's Order, offer to instate those employees whom we have unlawfully refused to hire to their former positions or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges they would have enjoyed had they been hired, discharging if necessary any employees hired in their place.

WE WILL make whole the employees we have unlawfully refused to hire for any loss of earnings and other benefits suffered as a result of the discrimination against them, less any net interim earnings, plus interest.

WE WILL withdraw and withhold all recognition from the UWA as the collective-bargaining representative of PBS employees at 80-90 Maiden Lane, unless and until the UWA is certified as by the National Labor Relations Board as the exclusive collective-bargaining representative of those employees.

WE WILL, jointly and severally with the UWA, reimburse with interest all present and former PBS employees at 80-90 Maiden Lane for all dues, initiation fees, and other moneys paid by or withheld from them pursuant to the union-security and dues-checkoff provisions of the collective-bargaining agreement. However, reimbursement does not extend to any employees who may have joined the UWA before May 1, 2000.

PLANNED BUILDING SERVICES, INC.