Yankee Department Stores, Inc., a Subsidiary of Hartfield-Zodys, Inc., d/b/a Zodys, Elkhart, Indiana *and* Retail Clerks Union Local 37, a/w Retail Clerks International Association, AFL–CIO Case 25–CA–5582

June 10, 1974

DECISION AND ORDER

BY MEMBERS FANNING, KENNEDY, AND PENELLO

On February 11, 1974, Administrative Law Judge Benjamin B. Lipton issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and Retail and Department Store Employees, Amalgamated Clothing Workers of America, AFL–CIO,[1] filed exceptions and a supporting brief. The General Counsel filed a brief in support of the Administrative Law Judge's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Yankee Department Stores, Inc., a Subsidiary of Hartfield-Zodys, Inc., d/b/a Zodys, Elkhart, Indiana, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

[1] Party in Interest herein.

DECISION

STATEMENT OF THE CASE

BENJAMIN B. LIPTON, Administrative Law Judge: This proceeding[1] was tried before me on September 24 and 25, 1973,[2] in Elkhart, Indiana, upon a complaint by the General Counsel[3] alleging that the Respondent engaged in certain violations of Section 8(a)(2) and (1) of the Act. Briefs filed by the General Counsel, Respondent, and ACW have been duly considered.

[1] Respondent's name appears as amended at the hearing.
[2] All dates are in 1973 unless otherwise noted.
[3] The charge was filed and served by registered mail on May 23, and the complaint herein issued on July 30.

Upon the entire record, and from my observation of the demeanor of the witnesses, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent is engaged in the retail sale and distribution of general merchandise in various States in the United States. Executive offices are maintained in New York City. This proceeding particularly involves a retail store and facility in Elkhart, Indiana. Within the year preceding issuance of the complaint, at its Elkhart store Respondent sold and distributed products valued in excess of $500,000, and received goods directly in interstate commerce valued in excess of $50,000. Respondent admits, and I find, that it is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

Retail Clerks Union Local 37, a/w Retail Clerks International Association, AFL–CIO, is herein called the RCIA. Retail and Department Store Employees, Amalgamated Clothing Workers of America, AFL–CIO, is herein called the ACW. The RCIA and the ACW are each labor organizations within the meaning of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Principal Questions*

1. Whether Respondent violated Section 8(a)(2) by recognizing and contracting with the ACW while a real question concerning representation existed by virtue of Respondent's awareness of a conflicting representative interest by the RCIA and the pendency of an election petition by the RCIA—thereby breaching its neutrality obligation under the *Midwest Piping* doctrine.[4]
2. Whether Dale Palmer, a department manager, who solicited employees to sign authorization cards for the ACW prior to its recognition by Respondent, is a supervisor under the Act.
3. Whether Respondent violated Section 8(a)(2) by recognizing and contracting with the ACW as a minority union, i.e., when the ACW did not represent an uncoerced majority of the employees in an appropriate unit.

Respondent and the ACW contend that recognition of the ACW was validly accorded pursuant to a signature check of authorization cards conducted by an impartial third party, with notice to the RCIA, which established the ACW's majority status. They further contend that the RCIA's pending petition before the Board did not raise a real question concerning representation because it was not supported by a 30-percent showing of interest.

B. *Background and Relevant Evidence*

The material facts are virtually undisputed. The events herein concern Respondent's opening of a new retail store in Elkhart, Indiana. At the time, collective-bargaining

[4] *Midwest Piping and Supply Co., Inc.*, 63 NLRB 1060.

relations existed between Respondent and the ACW embracing various stores in other States. A contract in effect covering all stores in Michigan describes a unit of "all regular selling and non-selling employees now employed or hereafter to be employed in and around the employer's present and future stores located in the State of Michigan," excluding at each store a manager, assistant manager, department heads, leased department managers (provided that at least one bargaining unit employee is on the floor), guards, and supervisors as defined in the Act. The contract also contains union-shop and checkoff provisions. In preparing for the opening and establishing of the new store, about 20 employees were temporarily transferred to Elkhart from other stores of Respondent. There is no issue as to these employees; they were not included in the Elkhart unit or involved in the counting of authorization cards. A few persons were transferred permanently, including three department managers. By agreement of the parties, the employees of two lessee-licensees in the Elkhart store are included in the unit: Karl's Shoes operates a shoe department and Fabrics National operates a "domestic" department. Respondent commenced hiring employees in mid-April, and opened the Elkhart store for business on May 2. During this period, agents of both the ACW and the RCIA were engaged in a campaign soliciting authorization cards, particularly in front of the store entrance, within the awareness of Respondent.

On April 25, the RCIA sent a letter to Respondent stating in substance that it was currently engaged in organizing the selling and nonselling employees in Elkhart, that it already represented a substantial number, but less than a majority, and that it would file charges with the Board if Respondent recognized the ACW or any other party as the employees' representative. On April 26, the ACW wired Respondent claiming majority representation and requesting that an arrangement be made for a card check by an independent third party and for bargaining negotiations thereafter. On April 30, Respondent's vice president, Harold B. Weiner, in New York wrote to the ACW and the RCIA. The ACW was advised that Respondent could not recognize either union unless such union could prove "by independent acceptable lawful designation cards" that it represented an uncoerced majority of the employees. The RCIA was advised that the ACW had presented a majority claim; that Respondent was prepared to examine the question whether either union represented a majority "by any appropriate legal method available"; and that, if the RCIA desired to have an independent third party examine "the lawful designation cards" of the RCIA or the ACW, Respondent "should be pleased to have its suggestions." Respondent's letter was received by the RCIA on May 3. About 1 p.m. that day, an RCIA agent was dispatched to the Board's Regional Office in Indianapolis with an election petition and 29 signed authorization cards. The RCIA kept no duplicates of these cards. The petition and cards were duly filed (Case 25–RC–5360) and stamped in at the Board's Office at 4:05 p.m.

About April 27, Reverend Carl H. Richardson was telephoned by an agent of the ACW and, in the conversation, agreed to conduct a card check at the Holiday Inn in Elkhart at 3 p.m. on May 3. Richardson was not then advised of the procedures and had no experience or knowledge in such matters. On May 2, Michael R. Stoler, corporate personnel director of Respondent, left New York for Elkhart with the understanding that a card check would be conducted at a time to be designated on May 3. On May 3, about 11:30 a.m., Stoler met at the Holiday Inn with Max Unger, national representative of the ACW. Stoler brought with him various payroll and other data to identify the personnel at the Elkhart store. Unger called off the names on ACW authorization cards and Stoler indicated whether such an individual was an employee. I agree with General Counsel that this procedure was a "dry run" of the card check which was arranged to be held at 3 p.m. that day. At 2:30 p.m., as he testified, Stoler decided to postpone the card check until the next day at 10 a.m., and sent a wire to the RCIA to such effect. Reverend Richardson was informed of the postponement after he appeared at the Inn.

Harold Hewitt, executive officer of RCIA's Local 37, upon returning to his office after 1 p.m. on May 3, was given a telephone message left by ACW Representative Ungar that a card check would be conducted at the Holiday Inn at 3 p.m. that day. About 4 p.m., Hewitt and another RCIA agent came to the Inn. They were advised of the postponement, and made no response. In their conversation with Stoler and Ungar, there was no indication that the RCIA had any intention of participating in the card check. On return to his office, Hewitt received Stoler's telegram, which stated, *inter alia:*

> . . . to afford you an equal opportunity we are requesting that the cross card check be postponed until tomorrow, May 4, 1973 at 10:00 a.m. at the Holiday Inn. . . .We request that you attend. If you fail to attend we expect Father Richardson will proceed in your absence to cross card check.

At 5:30 p.m., after receiving confirmation that the RCIA petition had been filed, Hewitt wired Respondent in New York stating that the only appropriate resolution of the representation issue was through a Board election and that the RCIA had filed a petition this day. On May 4, shortly before 10 a.m., Hewitt telephoned Stoler at the Inn and reiterated the substance of the RCIA's wire to Respondent in New York. He specifically indicated that, as a petition had been filed, the RCIA opposed the card check and would not appear.

On May 4, about 10:15 a.m., without the presence of the RCIA, Richardson was given instructions by Stoler, and the card check was conducted. Signatures on ACW authorization cards were compared against forms in the employees' personnel files. On a document previously prepared by the ACW captioned "Certification," Richardson inserted the results, indicating that the ACW had submitted 53 valid cards of 65 employees in the bargaining

unit, and the 12 additional cards from the ACW were not used in the card check.[5] Immediately thereafter, Respondent signed an agreement, previously prepared, in which it recognized the ACW as exclusive representative in an Elkhart unit of all full-time and regular part-time selling and nonselling employees.

On September 23, Respondent and the ACW entered into a collective-bargaining agreement, effective September 6, which referred to the employees at the Elkhart store and specifically provided for wage increases, insurance, pension, union shop, and checkoff. Except as altered or amended in the September 23 agreement, all the provisions of the existing contract between these parties covering stores in Michigan, *supra,* were adopted by reference, with a copy of such contract attached. As earlier noted, the Michigan contract described a multistore unit which excluded department managers.

In the election petition filed by the RCIA on May 3, the requested unit included department managers and excluded leased department managers and all other supervisors as defined in the Act. On July 9, the RCIA filed an amended petition which altered the unit only insofar as to exclude the "non-leased department managers." The sole question as to the department managers concerns their supervisory status, and whether or not, specified in the petition, they would statutorily be excluded if they were in fact supervisors under the Act. Thus, the change in the petition was not material and would not affect the question of representation raised in the original petition.

In response to the Regional Director's requests relating to the filing of the May 3 petition, Respondent furnished a list on June 13 "for checking of Petitioner's interest" which contains 66 names, including the 6 employees of Karl's Shoes, and excluding all but 1 of the department managers.[6] On June 21, it furnished an IBM payroll register of hourly personnel for the week ending May 5; and on July 23 it submitted a handwritten list of all personnel for successive weekly payroll periods from May 5 through June 30. The June 13 and July 23 lists show 72 employees as of May 5, omitting Karl's Shoes and without regard to 9 named department managers in dispute. Reserving the latter question and adding the 6 employees of Karl's Shoes, it is established that the unit complement on May 4, the date of the card check, numbered 78 employees.[7] Of the cards held by the ACW from among these employees, the RCIA had duplicate cards signed by 20 of the same employees.

Respondent proposed the stipulation that the nine named individuals[8] were the managers of specified leased and nonleased departments as of May 2. The stipulation was admitted that the two managers of the leased departments, Karl's Shoes and Fabrics National, are excluded from the unit.[9] Respondent at first offered to stipulate that all the department managers be excluded for the purposes of the card count and for purposes of finding the appropriate unit, with the exception of Dale Palmer. This proposed stipulation was then withdrawn by Respondent, and it refused to take a position on the department managers. As to Palmer, Respondent would maintain a separate position that he is not a supervisor. The final stipulation of the parties is that the supervisory authority of all the department managers, as named in the record, is the same as that of Palmer on the basis of the evidence litigated as to Palmer. Palmer testified he solicited cards from about 30 employees beginning April 19, which he gave to the ACW before May 3.

C. *Conclusions*

1. Dale Palmer

Personnel Director Stoler testified that it was standard company procedure to exclude department managers from any bargaining unit of Respondent's stores in the country. In the card check on May 4, Respondent and the ACW omitted from the unit all department managers, including Palmer. The contract they executed for Elkhart on September 23, adopting the agreement for the Michigan stores, excluded department managers. In these contracts, supervisory status would provide the only plausible and legitimate basis for excluding the department managers.

Palmer was the manager of the sporting goods department in a Michigan store before he was transferred to Elkhart on April 16, also as manager in sporting goods. At the Elkhart store, Palmer himself performs physical functions, and he has had one employee assigned to work in the department under his direction. Among others, Pamela Moran was employed on a regular part-time basis in sporting goods for a period of 8 weeks from April 24, and carried out her duties pursuant to Palmer's instructions.

Department managers and security guards are eligible for special employment benefits not available to the employees generally. All new employees receive from Respondent and must sign a printed statement of store procedures. Violation of any of these procedures is cause for immediate dismissal. In the statement of procedures, they are instructed to "check with the department manager or store manager on other store procedures to familiarize themselves with the workings of the Company, and to notify their department manager any time they leave their assigned area." On a regular biweekly basis, department managers have meetings with the store manager and assistant manager to discuss operations in their respective departments and in the entire store. Palmer attends such meetings.

[5] The actual unit as of May 4 consisted of 78 employees, without regard to nine department managers in dispute, *infra* On a list of 67 names which Respondent furnished Richardson for the card check, three department managers were included and two employees were noted as terminated. Cards were not examined for the department managers, but it appears that the three names on the list were included as among the 65 employees stated for the size of the unit. Not counted in the card check, because their payroll signatures were not available, were six employees from Karl's Shoes, for whom the ACW had submitted six cards.

[6] J. Flansburgh.

[7] These substantial differences from the list provided for the May 4 card check and the list furnished the Regional Director on June 13 are not explained by Respondent

[8] Palmer, Preston, Jost, Flansburgh, M. White, Tenhave, Sieradzki, Cogler, and McElroy.

[9] The ACW did not join in this stipulation, and it would not take a position at the hearing as to the inclusion or exclusion of the department managers. In its brief, however, it argues that these individuals should be included as nonsupervisors.

The parties stipulated in effect that all Elkhart department managers have the same supervisory authority, and no reason appears to distinguish Palmer. While the July 23 personnel list prepared by Respondent shows a store manager and two assistant managers employed through June 30, the testimony indicates only one assistant manager was employed at the time of the hearing. In any case, there would be only 2 or 3 supervisors over 87 unit employees if the 9 department managers were to be included, or a highly disproportionate supervisor-employee ratio.[10] For all the foregoing reasons, I find that department managers, and Palmer specifically, responsibly direct employees and are supervisors within the meaning of the Act.

From the time Palmer was transferred to the Elkhart store, on April 16, he wore a name tag while on duty with the designation of department manager, and he was otherwise known by employees to be such. He admittedly solicited 30 signed authorization cards for the ACW prior to May 4. I find these cards, not specifically identified, to have been coerced.[11]

2. *Midwest Piping*

When it granted exclusive recognition to the ACW on May 4, following the card check conducted without the presence of the RCIA, Respondent was well aware of the substantial representative interest and claim of the RCIA.[12] The advance preparations for the card check were apparently undertaken entirely by the ACW, even preceding Respondent's letters responding to the formal claims it received from both unions. Respondent's first notice to the RCIA of any definite or scheduled card check was given less than 1 day in advance of the actual event on May 4, with a caveat that it would proceed in any case without the RCIA. The RCIA was not obliged to participate and, in my opinion, it properly sought to protect its interests by filing an election petition on May 3. Faced with such conflicting representative claims, as already described, Respondent was under a duty to observe a strict neutrality by not according recognition or any assistance to either of the competing unions, particularly while a representation petition was pending before the Board. The statutory aim is to assure the unfettered choice of the employees themselves. Applicable to the present circumstances, it has long been the rule that an employer may not go so far as to bargain collectively with any union until the question concerning representation has been settled by the Board.[13] There is no merit in the contentions that an exception to the rule exists by reason of a claimed failure of the RCIA to support its petition with an adequate showing of interest, or that the petition and interest of the RCIA consisted merely of a bare and ineffectual claim. It is well established that such a showing is entirely an administrative matter for the Board's determination, not subject to direct or collateral attack.[14] Accordingly, I conclude that, by recognizing and contracting with the ACW during the existence of a real question concerning representation raised by the substantial interest claim and the petition filed by the RCIA, Respondent violated Section 8(a)(2) of the Act, as alleged.[15]

3. Minority union recognition

As shown, the appropriate unit comprised 78 employees as of May 4. The ACW had, at best, authorization cards signed by 61 employees. Of these employees, 20 also signed cards for the RCIA within the same relatively short space of time. Such dual authorization cards do not reliably reflect the employees' choice of bargaining agent and cannot properly be counted to support the claim of majority status of the ACW.[16] Thirty ACW cards were solicited by Palmer, a supervisor, and are therefore invalid.[17] On such a numerical basis alone, it is clear that the ACW was a minority union when recognized by Respondent on May 4. Since Palmer engaged in these solicitations on such an intensive and substantial scale, it is further found that all the ACW cards preceding May 4 are tainted and rendered nugatory as employee designations of the ACW.

The same evidence reflecting the ACW's minority status obtained when Respondent executed a contract with the ACW on September 23. Respondent's reliance on the May 4 card check cannot serve as a defense resting on alleged good faith, since it acted at its peril.[18] Therefore it is concluded that, by recognizing and contracting with the ACW, which did not represent an uncoerced majority of

[10] See, e.g., *McKinnon Services,* 174 NLRB 1141; *Swan Super Cleaners,* 152 NLRB 103.

[11] Moreover, in view of the described background of contract exclusions of department managers at other stores, Palmer's wearing of the name tag, and the written store procedures, I would hold that these newly hired employees solicited by Palmer had reasonable grounds to believe that he was a part of management even assuming that, technically, he was not then a supervisor under the Act's definition.

[12] It was not necessary that such interest be manifested by an express demand for recognition. Indeed, as sufficient to create a real question concerning representation, a showing of substantiality is not a requisite element to the union's claim in the context of rival organizing campaigns, as here. *American Bread Company,* 170 NLRB 85, 88. Much less can an employer justifiably ignore the existence of such a claim of interest simply because the union is not prepared or is not then in a majority position formally to request recognition. *The Drackett Company,* 207 NLRB No. 80

[13] *Shea Chemical Corporation,* 121 NLRB 1027; *Telautograph Corporation,* 199 NLRB 892.

[14] E.g., *Traub's Market, Inc.,* 205 NLRB No. 124; *Inter-Island Resorts, Ltd., d/b/a Kona Surf Hotel,* 201 NLRB 139. General Counsel represented that the Regional Director has in fact determined that the RCIA's petition is properly supported by a showing of interest. The election is blocked by this proceeding.

[15] *Midwest Piping and Supply Co, Inc.,* 63 NLRB 1060, and *Shea Chemical Corporation ibid* And see, e.g., *Oil Transport Co.* v. *N.L.R.B.,* 440 F.2d 664, 665 (C.A. 5, 1971); *N.L.R.B.* v. *Tower Iron Works, Inc.,* 366 F.2d 189, 191 (C.A. 1, 1966); *Teramana Brothers Coal Mining Company,* 173 NLRB 581, 582.

[16] E.g., *Inter-Island Resorts, Ltd., d/b/a Kona Surf Hotel,* 201 NLRB 139; *Intalco Aluminum Corporation,* 169 NLRB 1034, enfd. in pertinent part 417 F.2d 36 (C A. 9 1969); *Allied Supermarkets Inc,* 169 NLRB 927, and cases cited in fn. 3 therein; *Playskool Inc.,* 195 NLRB 560, enforcement denied 477 F.2d 66 (C.A. 7, 1973). Distinguishing the basis for the court's denial of enforcement in the latter case, it is clear in the present case that General Counsel amply carried any burden necessary to prove the existence of dual authorization cards.

[17] E.g., *Sweatermasters Co, Inc.,* 176 NLRB 301, 308; *Pittsburgh Metal Lithographing Co, Inc., et al.,* 158 NLRB 1126, 1133.

[18] E.g., *Intalco Aluminum Corporation,* 169 NLRB 1034.

the unit employees, Respondent violated Section 8(a)(2) of the Act, as alleged.[19]

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It has been found that, in violation of Section 8(a)(2) and (1), Respondent recognized the ACW on May 4, notwithstanding that such union lacked majority status, and that on September 23 it entered into a collective-bargaining agreement with the ACW, all during the pendency of a real question concerning representation. In order to dissipate the effects of Respondent's unfair labor practices, I shall recommend that Respondent withdraw and withhold all recognition from the ACW and to cease giving effect to the aforementioned collective-bargaining agreement, or to any renewal, modification, or extension thereof, until such time as the ACW shall have been certified by the Board as the exclusive representative of the employees in question. However, nothing herein shall requre Respondent to vary or abandon any wage, hour, seniority, or other substantive features of its relations with its employees which have been established in the performance of its agreement with the ACW or to prejudice the assertion by employees of any rights they may have thereunder. As the aforementioned agreement, based on Respondent's unlawful recognition of the ACW is invalid, the union-security provisions adopted and contained in such agreement are likewise invalid. I shall therefore recommend that Respondent reimburse all present and former employees for all initiation fees, dues, or other monies paid or checked off pursuant to the invalid union-shop agreement executed on September 23, 1973,[20] or any renewal, modification, or extension thereof, or pursuant to any checkoff authorizations executed before the date of compliance of this recommended Order.

CONCLUSIONS OF LAW

1. Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The ACW and the RCIA are labor organizations within the meaning of Section 2(5) of the Act.
3. By recognizing the ACW, and by executing a collective-bargaining agreement with it containing union-security provisions, when such union did not represent the majority of the employees in the appropriate unit, and when a real question concerning representation of its employees existed, Respondent has rendered and is rendering unlawful assistance and support to the ACW within the meaning of Section 8(a)(2) of the Act.
4. By the foregoing, Respondent has interfered with, coerced, and restrained employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the above findings of fact, conclusions of law, and the entire record in the case, and pursuant to Section 10(c) of the Act, I hereby recommend the following:

ORDER[21]

Respondent, Yankee Department Stores, Inc. a Subsidiary of Hartfield-Zodys, Inc., d/b/a Zodys, Elkhart, Indiana, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Assisting or contributing support to Retail and Department Store Employees, Amalgamated Clothing Workers of America, AFL–CIO, or any other labor organization, by recognizing such labor organization as the exclusive representative of any of its employees for the purpose of collective bargaining at a time when there exists a real question concerning representation, or if such labor organization does not represent the majority of employees in an appropriate unit, or in any other manner.

(b) Giving effect to, performing, or in any manner enforcing the collective-bargaining agreement executed with the aforesaid labor organization on September 23, 1973, or to any modification, extension, renewal, or supplement thereto, or any superseding agreement, or to checkoff authorization cards executed pursuant to such agreement, unless and until the said labor organization has been certified by the Board as the exclusive bargaining representative of such employees; provided, however, nothing herein shall require Respondent to vary or abandon any wage, hour, seniority, or other substantive features of its relation with its employees which have been established in the performance of such agreement or to prejudice the assertion of employees of any rights they may have thereunder.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Withdraw and withhold any recognition from Retail and Department Store Employees, Amalgamated Clothing Workers of America, AFL–CIO, as the representative of its employees for the purpose of collective bargaining unless and until said labor organization has been duly certified by the Board as the exclusive representative of its employees.

(b) Reimburse all present and former employees for the dues and fees unlawfully exacted pursuant to the invalid security agreement with the aforesaid labor organization, as set forth in "The Remedy" section of the Administrative Law Judge's Decision.

(c) Preserve and, upon request, make available to the

[19] *International Ladies' Garment Workers' Union, AFL–CIO [Bernhard-Altmann Texas Corp.]* v *N.L.R.B.*, 366 U.S. 731, 736

[20] Interest at 6 percent per annum shall be added, in the manner set forth in *Seafarers International Union of North America, AFL–CIO*, 138 NLRB 1142.

[21] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

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 amounts of reimbursement due under the terms of this Order.

(d) Post at its store and facility in Elkhart, Indiana, copies of the attached notice marked "Appendix."[22] Copies of said notice on forms provided by the Regional Director for Region 25, shall, after being duly signed by Respondent, be posted immediately upon receipt thereof, in conspicuous places, including places where notices to employees are customarily posted, and be maintained by it for a period of 60 consecutive days. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 25, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[22] In the event that the Board's Order is enforced by a Judgement 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 Judgement 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

WE WILL NOT assist or contribute support to Retail and Department Store Employees, Amalgamated Clothing Workers of America, AFL–CIO, or any other labor organization, by recognizing, or contracting with, such labor organization as the exclusive representative of our employees for the purpose of collective bargaining, at a time when there exists a real question concerning representation, or when such labor organization does not represent a majority or our employees in an appropriate bargaining unit, or in any other manner.

WE WILL NOT give effect to our September 23, 1973, agreement with Retail and Department Store Employees, Amalgamated Clothing Workers of America, AFL–CIO, or to any renewal, modification, or extension thereof, unless and until said labor organization has been duly certified by the Board as the exclusive representative of our employees; but nothing herein shall be construed to require that we vary or abandon any existing term or condition of employment.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7 of the Act.

WE WILL withdraw and withhold all recognition from Retail and Department Store Employees, Amalgamated Clothing Workers of America, AFL–CIO, as the collective-bargaining representative of our employees, unless and until said labor organization has been certified as such by the Board.

WE WILL reimburse all present and former employees, with interest, for any initiation fees, dues, or other monies paid or checked off pursuant to the unlawful agreement executed on September 23, 1973, with Retail and Department Store Employees, Amalgamated Clothing Workers of America, AFL–CIO, or to any renewal, modification, or extension thereof.

YANKEE DEPARTMENT STORE, INC., A SUBSIDIARY OF HARTFIELD-ZODYS, INC. D/B/A ZODYS, ELKHART, INDIANA
(Employer)

Dated By
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, ISTA Center, Sixth Floor, 150 West Market Street, Indianapolis, Indiana 46204, Telephone 317–633–8921.