

**Your Host, Inc. and Hotel and Restaurant Employees Union Local 4, AFL-CIO**

**Sher-Del Foods, Inc. and Hotel and Restaurant Employees Union Local 4, AFL-CIO.** Cases 3-CA-17744 and 3-CA-17943

October 6, 1994

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS STEPHENS  
AND BROWNING

On June 20, 1994, Administrative Law Judge Eleanor MacDonald issued the attached decision. The Respondents filed exceptions and a supporting brief. The General Counsel filed a cross-exception<sup>1</sup> and supporting brief, and an answering brief to the Respondents' exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondents, Your Host, Inc., and Sher-Del Foods, Inc., Buffalo, New York, their officers, agents, successors, and assigns, shall take the action set forth in the Order.

<sup>1</sup> The General Counsel has excepted to the judge's failure to find that a fire on Sher-Del's premises on about March 23, 1993, was not the cause of its closing. The oven fire which occurred on that date did not cause the entire Sher-Del facility to close. Rather, the fire caused only the bakery operation to cease production a week prior to the closing of the rest of the facility. We agree with the General Counsel that by the time the fire occurred, the decision to close Sher-Del had already been made, that the fire was not the cause of the closing, and that the fire did not create exigent circumstances that excused the Respondents' failure to provide the Union with notice of closure and an opportunity to bargain over the effects of the closing on unit employees. This conclusion is consistent with, and implicit in, the judge's finding, based on the credited testimony of Richard May, that May decided on March 19 or 20, 1993, that he had no alternative but to close the business and file a Chapter 7 bankruptcy petition.

*Rafael Aybar, Esq.*, for the General Counsel.  
*James R. Mayer, Esq.*, of Kenmore, New York, for the Debtor Corporation Respondents.  
*Mark S. Wallach, Esq. (Penney, Maier, Mandel, Wallach & Crowe)*, of Buffalo, New York, for the Trustee in Bankruptcy.

**DECISION**

STATEMENT OF THE CASE

ELEANOR MACDONALD, Administrative Law Judge. This case was tried in Buffalo, New York, on January 11, 1994. The consolidated complaint alleges that Respondents Your Host, Inc. (Your Host) and Sher-Del Foods, Inc. (Sher-Del), in violation of Section 8(a)(1) and (5) of the Act, closed their places of business and terminated all of the employees without prior notice to and bargaining over effects with the Union, and that Respondent Sher-Del failed to remit contributions to the union funds. The Respondents deny that they engaged in any violations of the Act.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the trustee in bankruptcy in February, 1994, I make the following<sup>1</sup>

FINDINGS OF FACT

I. JURISDICTION

Your Host, Inc., a corporation with its main office in Buffalo, New York, and other facilities throughout the Buffalo area, is engaged in the operation of public restaurants. Your Host annually derives gross revenues in excess of \$500,000 and receives goods valued in excess of \$5000 directly from outside the State of New York. Sher-Del, Inc., a corporation with a place of business in Buffalo, New York, is engaged in the wholesale distribution of food. Sher-Del annually receives goods valued in excess of \$50,000 directly from outside the State of New York. Respondents Your Host and Sher-Del admit, and I find, that they are employers 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

A. *The Facts*

Richard J. May, the president of both Your Host, Inc. and Sher-Del, is an agent and supervisor of both companies. May testified that he has been associated with the Respondents for many years; in 1983, he purchased the business. The Your Host restaurants are a chain of family style restaurants in the Buffalo area; at their peak of success, there were 39 separate establishments. By the time Respondents filed for bankruptcy on April 2, 1993, there were 11 Your Host restaurants remaining in business. All the meatcutting, preparation of gravies, and furnishing of supplies for the Your Host restaurants was performed by Sher-Del which functioned as a commissary and bakery for Your Host. Sher-Del also supplied about 100 other establishments with food and supplies of various kinds.

There is no dispute that both Your Host and Sher-Del recognized the Union as the exclusive collective-bargaining representative of the employees of Your Host and Sher-Del in the following unit:

<sup>1</sup> The General Counsel's unopposed motion to correct the record is granted.

All employees employed by Respondent Your Host, Inc. and Respondent Sher-Del; excluding so-called managers, cashiers, and office employees employed in the main office or offices of Respondent Your Host, Inc. and Respondent Sher-Del.

There is no dispute that Your Host was party to a collective-bargaining agreement with the Union with a term from June 11, 1989, to June 11, 1993. However, the answer filed by the trustee in bankruptcy on behalf of Respondents denies that Sher-Del was bound by the collective-bargaining agreement. The contract in question is entitled "Collective Bargaining Agreement between Your Host, Inc., Sher-Del, and Royal Knight and Local 4."<sup>2</sup> The signature page contains the signature of the secretary-treasurer of Local 4 signing on behalf of the Union, and the signature of Richard J. May, president, signing on behalf of Your Host, Inc. There is no space for any signature on behalf of Sher-Del or Royal Knight. May, who is the president of both Your Host and Sher-Del, testified that he executed the contract on behalf of both Your Host and Sher-Del and that he understood that both Your Host and Sher-Del were bound by its terms. May stated that Sher-Del recognized the Union as the exclusive bargaining representative of its employees, and that Sher-Del was required to make monthly contributions to the union health and pension funds during the contract term. The evidence shows that in March 1993, the Union brought a grievance relating to the discharge of a truckdriver by Sher-Del and that the matter was settled in a written document which identifies the driver as an employee of Your Host. The only chief steward appointed for all the employees was another truckdriver who worked in the Sher-Del facility. I find that the identification of May on the signature page of the contract as the president of Your Host without any mention of Sher-Del was an oversight which had no legal consequences. It is beyond dispute that Sher-Del considered itself bound to the collective-bargaining agreement and to its terms. It is clear that Sher-Del honored the contract, including the grievance provisions, and that the employees of the various Your Host facilities and Sher-Del were in a single bargaining unit for which the contract set the terms and conditions of employment. I find that Sher-Del was bound by the 1989-1993 collective-bargaining agreement with the Union. *Bi-County Beverage Distributors*, 291 NLRB 466 (1988); *Cauthorne Trucking*, 256 NLRB 721 (1981); *NLRB v. Operating Engineers Local 825*, 315 F.2d 696, 699 (3d Cir. 1963).

May testified that Respondents had been experiencing financial difficulties for a number of years, although some of the individual restaurants were still profitable. May had trouble paying the bills; he paid bills late and he tried to satisfy those creditors who had the power to shut down the business while making other creditors wait for their payments. The 1992-1993 winter holiday season should have been a profitable time of year for the Respondents, but the weather was very bad and adversely affected patronage at the restaurants. There were eight bad weekends in a row culminating in a terrible snowstorm in March 1993, which not only kept patrons away from the restaurants but also stranded employees in the facilities and entitled the workers to double-time pay.

<sup>2</sup>Royal Knight, a restaurant, closed before the time relevant to the instant proceeding and is not at issue herein.

On March 19 or 20, May spoke to his corporate counsel and to counsel experienced in bankruptcy matters, and May decided that Respondents had no choice but to file for bankruptcy pursuant to Chapter 7. Counsel informed May that once he had decided on a Chapter 7 filing, Respondents were forbidden from paying their creditors; May could only make those payments necessary to keep the doors open until such time as the business was closed. On March 29 and 30, 1993, the Your Host restaurants and Sher-Del were closed.

May testified that both Your Host and Sher-Del owed money to Norstar Bank which held mortgages and a security interest in the equipment. The payroll account for Respondents was in Norstar Bank and the bank had the right to set off the payroll account against Respondents' other indebtedness. May feared that if the bank learned that Respondents intended to declare bankruptcy it would dishonor employee paychecks. In consequence, May paid the employees in cash for the last 2 weeks so that their paychecks would not bounce.

May testified that he made the decision to close the facilities. He did not inform the Union prior to closing and he did not offer to bargain prior to closing over the effects which shutting down Your Host and Sher-Del would have on bargaining unit employees. May testified that he did not want Norstar Bank to find out that he intended to declare bankruptcy before he actually closed the facilities because he feared that his account would be frozen.<sup>3</sup> May also testified that in a cash business, once a prospective closing is announced, then the cash disappears and the inventory disappears. May stated that he did not want to accuse any employees of stealing and he could not think of any employee in the recent past who had taken food or cash from Respondents, but he said there was a danger that employees would give away free meals if they knew their restaurant was about to close.

Paul Taylor, the business representative for Local 4, testified that on March 29, 1993, a unit member telephoned him and said her restaurant was being closed. Taylor tried to call May, but he could not reach him. That evening, at a previously scheduled employee meeting, several employees told Taylor that their facilities had closed that day. The employees wanted to know about the layoff, about their seniority rights, and they expressed concern about their vacation entitlements. On March 30, Taylor again tried to reach May by telephone and left urgent messages for him. When May finally returned Taylor's call, Taylor asked him, "are you or are you not closing all these stores?" May replied that Taylor should talk to his lawyers. Taylor repeated the question two more times, but May only replied "talk to my lawyers," and then he hung up. Taylor did not know who May's lawyers were and May did not tell him whom to call.<sup>4</sup> Taylor did not ask for the name of May's lawyers. Later that day, Taylor heard on the radio that all of Respondents' facilities were being closed. After the closings were effected and the Union filed unfair labor practice charges, Respondents' trustee in bankruptcy, Mark L. Wallach, Esq., telephoned Taylor

<sup>3</sup>Norstar had not previously taken any adverse action against Respondent's line of credit.

<sup>4</sup>Taylor had a firm recollection of this conversation. I do not rely on May's testimony that he thinks he gave his lawyer's number to Taylor during this telephone call.

and they met to bargain on June 22, 1993. The Union's proposals consisted of a demand for severance pay according to years of service, a demand for payment of unused vacation pay due to employees prior to the closing, and recognition in accordance with the contract. No agreement was reached.

Wallach testified that any transfers of funds made by Respondents after March 19 and within 90 days before the bankruptcy filing on April 2, 1993, would be subject to careful scrutiny. As the trustee, if there were no good basis for the commitments or transfers of funds, he would have brought an action to set them aside pursuant to 11 U.S.C. §§ 547 and 548. When a corporation whose assets are less than its liabilities becomes insolvent, its managers have no right to commit further assets to a newly created liability unless consideration is given to the corporation in return. Wallach stated that if Respondents had agreed to any severance payment with the Union which was not already required by the collective-bargaining agreement, he would have moved to set aside the severance agreement on the ground that there was no consideration for the payment.<sup>5</sup>

There is no dispute that, without the Union's consent, Sher-Del did not make monthly contributions to the pension fund and the health and welfare fund for the period beginning in December 1992 through March 1993.<sup>6</sup>

#### B. Discussion and Conclusions

The facts clearly demonstrate that Respondents closed their facilities without notice to the Union and without giving the Union an opportunity to bargain over the effects of the closings on the unit employees. May testified that he decided to file for bankruptcy and close the business on March 19 or 20, 1993. The closings of the various facilities took place on March 29 and 30. Respondents did not inform the Union that the business was closing at any time between March 19 and March 30. This is a clear violation of Respondents' duty to bargain pursuant to Section 8(a)(5) of the Act. An employer's bargaining with a union over the effects of its decision to close a business "must be conducted in a meaningful manner and at a meaningful time." *First National Maintenance Corp. v. NLRB*, 452 U.S. 666, 682 (1981). The Board has held that, "An element of 'meaningful' bargaining is 'timely notice to the union' of the decision. . . . By concealing its decision from [the union] until after it began to vacate [its closed] facility, the company failed to provide timely notice, thus denying the union an opportunity to bargain at a time when the union retained at least a measure of bargaining power." *Metropolitan Teletronics*, 279 NLRB 957, 959 (1987), enf. 819 F.2d 1130 (1987). Here, as in the cited case, Respondents concealed the decision to close until the facilities were shut down and the workers were no longer employed, thereby denying the Union an opportunity to bargain when it might have retained a measure of bargaining power. There is no doubt that the meeting held by the trustee in bankruptcy with the Union on June 22, 1993, long after the facilities had closed and the bankruptcy filing had taken place, was insufficient to satisfy Respondents' bargaining ob-

ligation under the Act. Nor is May's testimony that in a cash business the employees must always be kept in the dark about a closing convincing on this point. May was unable to recall any incident of theft by employees. Further, his conjecture that employees would begin giving out free meals is unsupported by any facts and is contrary to logic. First, Respondents had supervisors and cashiers on their premises. Second, if Respondents had bargained with the Union over the effects of the closing and the employees had therefore had a stake in the viability of the business, they would have had an incentive to collect every penny owing to Respondents in the days before the closing rather than giving the money away as predicted by May. I am not persuaded by May's fear that Norstar Bank would freeze its accounts if it learned of the potential closing. There is no support in the record for drawing the conclusion that the bank would learn of the impending bankruptcy if Respondents bargained over effects of closure with the Union. May could certainly have impressed on the Union the need for discretion in the circumstances. Further, May testified that the Norstar Bank had never threatened to freeze Respondents' bank accounts. I find that Respondents were not operating under the exigent circumstances described in cases where the Board has held that it was not a violation to fail to bargain over effects before closing the business. See *National Terminal Baking Co.*, 190 NLRB 465 (1971) (two trucks stolen in 1 week and no money left with which to continue the business); *M & M Transportation Co.*, 239 NLRB 73, 75 (1978) (company closed when it lacked funds to continue operation and lacked money to pay employees); *Raskin Packing Co.*, 246 NLRB 78 (1979) (company closed immediately when it lost the performance bond required by statute and bank ended company's line of credit).

The trustee in bankruptcy here urges that in addition to the emergencies heretofore recognized by the Board, the immediate filing of a Chapter 7 bankruptcy petition should obviate an employer's duty to give notice and bargain prior to closure concerning the effects on employees of closing the business because any such bargaining would be futile.<sup>7</sup> The trustee argues that there was no money to give the employees and that the Bankruptcy Code would have prevented a monetary settlement in any case. As to the argument relating to the impossibility of finding any money to fund the results of the effects bargaining, I note that it is not the purpose of the Act to insure that employees receive any set amount as a financial settlement from the effects bargaining, nor does the Act require that the parties agree to any monetary compensation as the result of good-faith effects bargaining. The Act requires only that such bargaining take place.<sup>8</sup> If there is in-

<sup>7</sup> Here the filing was not quite "immediate." May decided to file under Chapter 7 on March 19 or 20 and he did not close the facilities until March 29 and 30, 1993.

<sup>8</sup> The trustee's reliance on former Chairman Dotson's dissent in *Metropolitan Teletronics Corp.*, supra at 962, apparently seeks to equate "meaningful" bargaining with the ability to obtain a sum of money. The use of the term "meaningful," however, relates to the ability of the Union to retain some bargaining power. The exceptions carved out by the Board excused the employers from giving notice and bargaining before closing down only because the circumstances were such that the employers had no time in which to negotiate be-

*Continued*

<sup>5</sup> The collective-bargaining agreement does not provide for any severance payments to employees.

<sup>6</sup> These funds are identified in the collective-bargaining agreement as the "Local 66 Insurance Fund" and the "Local 66 Pension Fund."

deed no source to fund a financial settlement, then the parties will presumably discuss that lack and act accordingly. However, in this case when the employer made the decision to close, there were still sufficient funds to continue in business. The restaurants and the commissary were open and serving customers, and they stayed open for at least 10 days after the decision to file under Chapter 7 was made. It is not impossible that Respondents and the Union could have agreed to some severance provision, however small. That the Union still had some bargaining power is established by May's evident eagerness to keep his employees working and collecting money at the facilities.<sup>9</sup>

The trustee's major argument under the Bankruptcy Code is that any agreement between Respondents and the Union for severance pay would have been avoided and set aside because Respondents "received less than a reasonably equivalent value in exchange for such . . . obligation." 11 U.S.C. § 548(a)(2)(A). In other words, the trustee argues, there would have been no fair consideration given by the Union and the employees in return for severance pay. First, I note that the Union, in the effects bargaining that took place with the trustee on June 22, requested not only severance pay but also payment of earned vacation pay. This vacation pay was earned and accrued over the term of the contract before the business closed down and therefore the lack of consideration is not an issue with respect to vacation pay. Further, it is contemplated that effects bargaining takes place at a meaningful time when the union still has some bargaining power. As set forth above, the union has some bargaining power before the business closes because the employer still wants and needs the services of the employees. Therefore, the union is able to give fair consideration for whatever settlement, including a monetary settlement, it reaches with the employer. The fact that the collective-bargaining agreement made no provision for severance pay is not controlling: the Respondents' duty to bargain was a continuing one and the duty to bargain over effects, including the duty to discuss with the Union a demand for severance pay, was enforceable by the Board. If effects bargaining had taken place when mandated, it is not impossible that Respondents would have found that it was fair to agree to severance pay in return for years of service by the employees, including the task of orderly shutting down the facilities. It is useless to speculate at greater length concerning what the parties might have agreed to in bargaining. Suffice it to say that a legally enforceable duty to bargain over the effects of closing the business might have produced an agreement and it is not a foregone conclusion that that agreement would have been set aside under the Bankruptcy Code. See 11 U.S.C. § 507(a)(3).<sup>10</sup>

The trustee's brief concedes that Sher-Del has no defense to its failure to make the required contributions to the health and pension funds. I find that Sher-Del failed to remit contributions to the insurance fund and the pension fund beginning on December 30, 1992, and that this unilateral change

fore closing, not because there was no money to distribute to the employees through effects bargaining.

<sup>9</sup>If May had given notice to the Union, perhaps some employees would have left for other jobs or would have taken time off to look for other jobs in the time between March 19 and 29.

<sup>10</sup>I do not find that 11 U.S.C. § 108(b), cited by the trustee, is applicable to the duty to bargain. That provision deals with filing pleadings, demands, notices, and "similar acts."

constituted a violation of Section 8(a)(5) and (1) of the Act. *Merryweather Optical Co.*, 240 NLRB 1213, 1215 (1979).

#### CONCLUSIONS OF LAW

1. The following employees of Respondent Your Host, Inc. and Respondent Sher-Del Foods, Inc. constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All employees employed by Respondent Your Host, Inc. and Respondent Sher-Del; excluding so-called managers, cashiers, and office employees employed in the main office or offices of Respondent Your Host, Inc. and Respondent Sher-Del.

2. At all times material, Hotel and Restaurant Employees Union Local 4, AFL-CIO, has been the exclusive representative of all employees within the appropriate unit described above for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

3. By failing to give prior notice and an opportunity to bargain to the Union over the effects of closing their facilities and terminating all of the employees, Respondents violated Section 8 (a) (5) and (1) of the Act.

4. By unilaterally failing to remit contributions to the Local 66 Insurance Fund and the Local 66 Pension Fund from December 30, 1992, Respondent Sher-Del violated Section 8(a)(5) and (1) of the Act.

#### THE REMEDY

Having found that Respondents have engaged in certain unfair labor practices, I find that they must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

As a result of Respondents' unlawful failure to bargain about the effects of closing their facilities, the employees have been denied an opportunity to bargain through their collective-bargaining representative at a time when Respondents were still in need of their services, and a measure of balanced bargaining power existed. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practice committed.

Accordingly, I shall recommend that, in order to effectuate the purposes of the Act, Respondents bargain with the Union concerning the effects on their employees of closing their facilities, and shall order a limited backpay requirement designed both to make whole the employees for losses suffered as a result of the violation and to recreate in some practicable manner a situation in which the parties' bargaining is not entirely devoid of economic consequences for Respondents.<sup>11</sup> The bargaining engaged in by the Union and the

<sup>11</sup>*Transmarine Navigation Corp.*, 170 NLRB 389 (1968). The trustee misreads *Transmarine* by suggesting that the remedy there established constitutes a penalty for failure to timely bargain with the Union. The Board stated in that case that the purpose of the limited backpay requirement was "designed both to make whole the employees for losses suffered as a result of the violation and to recreate in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent." The make-whole purpose is clearly compen-

trustee in June, 1993, does not satisfy the conditions under this remedy section because there was no attempt to restore some measure of economic strength to the Union. Thus, Respondents shall pay the employees backpay at the rate of their normal wages when last in Respondents' employ from 5 days after the date of the Board's Order until the occurrence of the earliest of the following conditions: (1) the date Respondents bargain to agreement with the Union on those subjects pertaining to the effects of the closing of Respondents' facilities on their employees; (2) a bona fide impasse in bargaining; (3) the failure of the Union to request bargaining within 5 days of the Board's Order, or to commence negotiations within 5 days of Respondents' notice of their desire to bargain with the Union; or (4) the subsequent failure of the Union to bargain in good faith; but in no event shall the sum to any of these employees exceed the amount he or she would have earned as wages from the date the facility in which the employee worked was closed to the time he or she secured equivalent employment elsewhere, or the date on which Respondents shall have offered to bargain, whichever occurs sooner; provided, however, that in no event shall this sum be less than these employees would have earned for a 2-week period at the normal rate of their normal wages when last in Respondents' employ.

Backpay shall be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Respondent Sher-Del Foods, Inc. must make whole its employees by transmitting to the Local 66 Insurance Fund and the Local 66 Pension Fund the contributions required by the collective-bargaining agreement which Respondent Sher-Del Foods, Inc. unlawfully withheld, and Respondent Sher-Del Foods, Inc. must make whole its employees by reimbursing them for any losses ensuing from its unlawful failure to make the contributions, with interest computed in the manner prescribed by *New Horizons for the Retarded*, supra. See *Merryweather Optical Co.*, 240 NLRB 1213 (1979); *Kraft Plumbing & Heating*, 252 NLRB 891 (1980).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>12</sup>

#### ORDER

The Respondents, Your Host, Inc. and Sher-Del Foods, Inc., their officers, agents, successors, and assigns, shall

##### I. Cease and desist from

(a) Failing to give prior notice and an opportunity to bargain to the Union over the effects of closing their facilities and terminating their employees.

(b) Failing to make contributions to the employees' insurance and pension funds (Respondent Sher-Del Foods, Inc. only).

Further, the imposition of economic consequences on the company is not punitive but is designed to give the union a measure of the bargaining power it lost when the business was closed.

<sup>12</sup>If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(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 concerning the effects on the employees of closing their facilities and terminating the employees and make whole the employees in the manner set forth in the remedy section of this decision.

(b) Make whole its employees for its unlawful failure to make contributions to the insurance and pension funds and transmit the contributions to the insurance and pension funds in the manner set forth in the remedy section of this decision (Respondent Sher-Del Foods, Inc. only).

(c) Preserve and, on 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 backpay due under the terms of this Order.

(d) Mail copies of the attached notice marked "Appendix,"<sup>13</sup> to their employees. The copies shall be on forms provided by the Regional Director for Region 3 and shall be signed by the Respondents' authorized representative.

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

<sup>13</sup>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 MAILED 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 mail and abide by this notice.

WE WILL NOT fail to give prior notice and an opportunity to bargain to Hotel and Restaurant Employees Union Local 4, AFL-CIO over the effects of closing our facilities and terminating our employees.

WE WILL NOT fail to make contributions to our employees' insurance and pension funds (Sher-Del Foods, Inc., only).

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 Local 4 concerning the effects on our employees in the following appropriate unit of closing our facilities and terminating our employees and WE WILL make whole our employees for the failure to bargain in the manner set forth in the remedy section of the decision.

All employees employed by Respondent Your Host, Inc. and Respondent Sher-Del; excluding so-called managers, cashiers, and office employees employed in

the main office or offices of Respondent Your Host, Inc. and Respondent Sher-Del.

WE WILL make whole our employees for our failure to make contributions to the insurance and pension funds (Sher-Del Foods, Inc., only).

YOUR HOST, INC. AND SHER-DEL FOODS, INC.