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**1500 Met Drug, Inc., et al.<sup>1</sup> and 1199, National Health And Human Services Employees Union.** Case 2–CA–29358

September 30, 1998

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

Upon a charge filed by the Union on April 30, 1996, the General Counsel of the National Labor Relations Board issued a complaint on January 15, 1998, against 1500 Met Drug and 52 other named Respondents, alleging that they have violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, 12 of the Respondents failed to file an answer. These Respondents are: (1) 81-20 Drug Corp. d/b/a Disco Roosevelt Drugs; (2) America Pharmacy; (3) Chatham Chemists; (4) Cir-Court Pharmacy (JBM Pharmacy); (5) Drug Loft; (6) Feinberg's Drug; (7) G&W Drugs; (8) Kalish Pharmacy; (9) Satellite Pharmacy; (10) Stanley Drugs; (11) T&G Pharmacy d/b/a Leroy Pharmacy; and (12) Tower Chemists. (Herein 12 Respondents.)

On September 8, 1998, the Acting General Counsel filed a Motion for Summary Judgment with the Board regarding the 12 Respondents that had failed to file an answer. On September 10, 1998, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The 12 Respondents filed no response. The allegations in the motion are therefore undisputed.

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

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated April 2, 1998, notified each of the 12 Respondents that unless an answer were received by April 13, 1998, a Motion for Summary Judgment would be

filed.<sup>2</sup> To date, none of the 12 Respondents have filed an answer.

In the absence of good cause being shown for the failure to file a timely answer, we grant the Acting General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Empire State Pharmaceutical Society, herein called the Association, has been an organization composed of various employers engaged in the retail sale of pharmaceutical goods and related items, one purpose of which is to represent its employer-members in negotiating and administering collective-bargaining agreements with the Union. Annually, the employer-members of the Association, in conducting their business operations, collectively derive gross revenues in excess of \$500,000. Annually, in the course and conduct of their businesses, the Respondents collectively purchase and receive at their New York State facilities, products, goods, and materials valued in excess of \$5000 directly from points outside the State of New York. We find that the employer-members of the Association, including the Respondents, 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

At all material times, the following employees of the 12 Respondents constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees employed by each employer-member of the Association, excluding all guards and supervisors as defined in the Act.

Based on Section 9(a) of the Act, the Union has been the designated exclusive collective-bargaining representative of the unit employees for more than 30 years, and has been recognized as such representative by the 12 Respondents. That recognition has been embodied in successive collective-bargaining agreements, including the most recent agreement which was effective from October 9, 1988, to October 5, 1991.

At all material times, the 12 Respondents have been employer-members of the Association, and the Association has been authorized by them to bargain collectively

<sup>1</sup> This caption reflects the manner in which this proceeding has been styled, although our Order here runs only to the 12 named Respondents as described below.

<sup>2</sup> The letters were sent to each of the 12 Respondents by certified mail. The Acting General Counsel's motion for summary judgment states that no return receipt was received by the Post Office for the letter sent to Feinberg's Drug, nor was this letter returned to the Regional Office, and that the letter to Satellite Pharmacy was returned to the Regional Office as unclaimed. These two Respondents' failure or refusal to claim certified mail cannot defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986).

on their behalf with the Union concerning wages, hours, and other terms and conditions of employment of the unit employees.

On or about February 8, 1996, the Association and the Union reached complete agreement on a new collective-bargaining agreement covering the unit employees, and on or about March 22, 1996, the Association and the Union executed the agreement.

On or about April 18, 1996, the Union, by letter, requested that the Association have all of its employer-members that had not yet executed the collective-bargaining agreement reached on February 8, 1996, do so. The 12 named Respondents have refused to execute the agreement.

#### CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondents have been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of their employees, and have thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the 12 Respondents have failed and refused to execute the collective-bargaining agreement reached by the Association and the Union on February 8, 1996, and executed by the Association and the Union on March 22, 1996, we shall order the 12 Respondents to execute that agreement, give retroactive effect to that agreement, and make their employees whole for any losses attributable to their failure to execute the agreement. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

#### ORDER

The National Labor Relations Board orders that the Respondents, 81-20 Drug Corp. d/b/a Disco Roosevelt Drugs, Jackson Heights, New York; America Pharmacy, New York, New York; Chatham Chemists, New York, New York; Cir-Court Pharmacy (JBM Pharmacy), Bronx, New York; Drug Loft, New York, New York; Feinberg's Drug, Bronx, New York; G&W Drugs, Bronx, New York; Kalish Pharmacy, Ozone Park, New York; Satellite Pharmacy, Brooklyn, New York; Stanley Drugs, Bronx, New York; T&G Pharmacy d/b/a Leroy Pharmacy, Bronx, New York; and Tower Chemists, New York, New York, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with 1199, National Health and Human Services Employees Union, as the exclusive representative of the employees in the bargaining unit set forth below by failing and refusing to execute the collective-bargaining agreement reached between the Empire State Pharmaceutical Society (the Association) and the Union on or about February 8, 1996, and executed by those parties on or about March 22, 1996.

All employees employed by each employer-member of the Association, excluding all guards and supervisors as defined in the Act.

(b) 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) Execute and implement the collective-bargaining agreement between the Union and the Association reached on or about February 8, 1996, and executed by those parties on or about March 22, 1996, give retroactive effect to that agreement, and make their employees whole for any losses they have suffered as a result of the Respondents' failure to execute the agreement, with interest, in the manner set forth in the remedy section of this decision.

(b) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Within 14 days after service by the Region, post at their facilities located at various places in New York, New York, and its environs copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the various Respondents' authorized representatives, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, any of the Respondents have gone out of business or closed the facilities involved in these proceedings, that Respon-

<sup>3</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."

dent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by that Respondent at any time since April 18, 1996.

(d) Within 21 days after service by the Region, each Respondent shall separately file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that each Respondent has taken to comply.

Dated, Washington, D.C. September 30, 1998

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Sarah M. Fox, Member

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Wilma B. Liebman, Member

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Peter J. Hurtgen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX I  
NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain in good faith with 1199, National Health and Human Services Employees Union, as the exclusive representative of the employees in the bargaining unit set forth below by failing and refusing to execute the collective-bargaining agreement reached between the Empire State Pharmaceutical Society (the Association) and the Union on or about February 8, 1996, and executed by those parties on or about March 22, 1996.

All employees employed by us, excluding all guards and supervisors as defined in the Act.

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 execute and implement the collective-bargaining agreement between the Union and the Association reached on or about February 8, 1996, and executed by those parties on or about March 22, 1996, give retroactive effect to that agreement, and make our employees whole for any losses they have suffered as a result of our failure to execute the agreement, with interest.

81-20 DRUG CORP. D/B/A DISCO  
ROOSEVELT DRUGS

APPENDIX II  
NOTICE TO EMPLOYEES  
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AMERICA PHARMACY

APPENDIX III  
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CHATHAM CHEMISTS

#### APPENDIX IV

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CIR-COURT PHARMACY (JBM PHARMACY)

#### APPENDIX V

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DRUG LOFT

#### APPENDIX VI

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employees whole for any losses they have suffered as a result of our failure to execute the agreement, with interest.

FEINBERG'S DRUG

APPENDIX VII

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G & W DRUGS

APPENDIX VIII

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KALISH PHARMACY

APPENDIX IX

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SATELLITE PHARMACY

APPENDIX X

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STANLEY DRUGS

#### APPENDIX XI

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T & G PHARMACY D/B/A LEROY PHARMACY

#### APPENDIX XII

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TOWER CHEMISTS