

**AMCAR Division, ACF Industries, Incorporated and Roy Turner.**

**Brotherhood of Railway Carmen of the United States and Canada, Lodge No. 365, AFL-CIO-CLC and Roy Turner and Bobby Robinson.** Cases 14-CA-11744, 14-CB-4144, and 14-CB-4044

September 25, 1979

**DECISION AND ORDER**

BY CHAIRMAN FANNING AND MEMBERS PENELLO  
AND TRUESDALE

On June 14, 1979, Administrative Law Judge Josephine H. Klein issued the attached Decision in this proceeding. Thereafter, both Respondents filed exceptions and supporting briefs.

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 her 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 Respondent AMCAR Division, ACF Industries, Incorporated, St. Louis, Missouri, its officers, agents, successors, and assigns, and Respondent Brotherhood of Railway Carmen of the United States and Canada, Lodge No. 365, AFL-CIO-CLC, St. Louis, Missouri, its officers, agents, and representatives, shall take the action set forth in the said recommended Order.

**DECISION**

JOSEPHINE H. KLEIN, Administrative Law Judge: On May 31, 1978,<sup>1</sup> Bobby Robinson filed a charge alleging that since April 26 the Brotherhood of Railway Carmen of America, Local 365, AFL-CIO (the Union) had violated Section 8(b)(1)(A) and (2) of the Act<sup>2</sup> by requiring Amcar Division, ACF Industries, Incorporated (the Employer or the Company) "to deduct excess monetary assessments [from wages due employees] without the authorization of

<sup>1</sup> Unless otherwise indicated, all dates herein are in 1978.

<sup>2</sup> National Labor Relations Act, as amended, 29 U.S.C., §151, *et seq.*

said employees." On August 17 Roy Turner filed a similar charge against Respondent-Union. Additionally, Turner filed a charge alleging that since May 1 Respondent Employer had violated Section 8(a)(1), (3), and (4) "by deducting \$10 a month from each employee's paycheck for the Union's strike fund without the employee's permission." On December 27 the Regional Director consolidated the three cases and issued a consolidated complaint against both Respondents. The complaint alleges that the Employer violated Section 8(a)(1) and the Union violated Section 8(b)(1)(A) by the deduction of \$10 per month for 4 months from each employee's pay to cover a special assessment imposed by the Union.

Pursuant to due notice, a hearing was held before me in St. Louis, Missouri, on March 5, 1979. The General Counsel and both Respondents were represented by counsel. All parties were provided full opportunity to present written and oral evidence and argument. The parties waived oral argument. Post-trial briefs have been filed on behalf of the General Counsel and the Union.

Upon the entire record, careful observation of the one witness, and consideration of the briefs, I make the following:

**FINDINGS OF FACT**

**I. PRELIMINARY FINDINGS**

A. Respondent-Employer, a Missouri corporation with an office and place of business in St. Louis, Missouri, and other places of business outside Missouri, is engaged in the manufacture, sale, and distribution of railroad cars and related products. During the year 1977, a representative period, Respondent-Employer, in the course and conduct of its business, manufactured, sold, and distributed products valued in excess of \$50,000 which were shipped from its St. Louis place of business directly to points outside Missouri. Respondent-Employer is now, and was at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

B. Respondent-Union is, and was at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

**II. THE ALLEGED UNFAIR LABOR PRACTICES**

**A. The Facts**

The relevant facts are simple and free of any substantial or significant dispute.

Since at least 1951 the Union has represented a unit of the employer's employees. At the time here involved, the number of employee-members was around 1,200-1,300.

James Johnson, the only witness, became full-time business agent and financial secretary of the Union in January 1978, having previously worked for Respondent-Employer as a welder since 1951. He testified that when he took over as business agent he requested an audit of the Union's finances. The audit disclosed that Respondent Union was some \$51,000 delinquent in the payment of its per capita tax to the grand lodge. At that point, in March, Johnson

sent the grand lodge \$15,000 from the local's general funds. O. W. Jacobson, general president of the grand lodge, advised Johnson "that Section 78 of the Subordinate Lodge Constitution would allow [Johnson] to levy an assessment" to defray the remainder of the per capita debt. Thereupon the local's executive committee voted a \$10 per-month-assessment for May through August, for a total of \$40 per member. The members were notified by a form letter, reading in part:

Section 78 of the Constitution reads as follows: On all lines where a Joint Protective Board has been organized, a system protective fund shall be created by monthly assessments not to exceed five dollars per month per member, as shall be levied by the Joint Protective Board, *except in case of emergency*, when a sufficient amount may be levied to defray expenses of the board. [emphasis provided in the notification letter]. Beginning May 1, 1978, your UNION DUES will be \$10.50 plus an assessment of \$10.00 per month until our Per Capita Tax is paid. This should be taken care of by contract time in September.

The Joint Protective Board is established pursuant to section 71 of the constitution, which reads, in part:

On any line or system of railway or other company where three or more lodges are located, there shall be a Joint Protective Board formed as soon as possible, following the triennial election of local protective boards, to consist of the chairman of the various local protective boards on the line or system of railroad or other company.

Following the sentence quoted in the Union's letter, section 78 proceeds:

. . . Said [system protective] fund shall be collected by the Financial Secretary of each lodge on the system and turned over to the Treasurer, who shall forward the same quarterly to the Secretary-Treasurer of the Joint Protective Board, with a copy of the Quarterly Report as submitted by the Local Lodge's Financial Secretary, to the Secretary-Treasurer of the Grand Lodge, who will thereupon receipt for same to the Treasurer of each lodge. Any member two months in arrears for Joint Protective Board assessments shall be suspended, and any Treasurer failing to make remittance of same of the Secretary-Treasurer of Joint Protective Board at the end of each quarter shall be suspended . . . .

And section 79 begins: "The System Protective Fund shall be used for defraying the expenses of the Joint Protective Board, salaries of delegates, salary of the General Chairman, and other Joint Protective Board officers."

In adopting the assessment involved in this case, the Union did not invoke or rely on section 40 of the constitution, which provides that locals may "increase or decrease initiation fees, readmittance fees, and/or monthly dues at a regular meeting of the lodge after a fifteen (15) day written advance notice" to members and a "secret ballot of the good standing members voting at such meeting."

The Union notified the Company of the assessment, and the Company thereafter deducted \$10 from each employee's wages in the months of May through August and trans-

mitted such funds to the Union along with the established dues of \$10.50 per member per month. The Union in turn used the assessment funds to pay off its delinquency to the grand lodge.<sup>3</sup> The collective-bargaining agreement then in effect contained a standard union-security clause and a checkoff provision reading, in pertinent part:

(a) At the time an employee is accepted for employment by the Company, a suggestion will be made to each new employee that he voluntarily execute an authorization for the check-off of Union dues in the form agreed upon. . . . The Company, for each employee who has heretofore or who hereafter executes an authorization for the payment of dues, fees and assessment to the Union, shall deduct each month the monthly dues for the current month, including initiation fee in the case of new members, assessments, if any, and arrears, if any . . . . If dues are increased or decreased in accordance with the By-Laws of the Union during the life of this Agreement, the Union shall certify the changed amount of such dues. The Company will remit promptly the amount of monthly dues, assessments, initiation fees, if any, so collected [to the Union].

(b) The check-off of dues, fees and assessments as provided in (a) above shall be effective for, but limited to, those employees within the bargaining unit from whom the Company has received and as to whom there is unrevoked a written assignment authorizing such deduction. . . .

Prior agreements have contained the same or substantially similar provisions.

All the employees in the bargaining unit had executed checkoff authorization cards which were outstanding at the time of the per capita assessment. The authorization cards, which had been in use, unchanged, at least since 1951, read:

#### ASSIGNMENT OF WAGES FOR MEMBERSHIP DUES

I, Employed by A.C.F. INDUSTRIES, Incorporated in accordance with Title III, Section 302, (C)(4) of the Labor Management Relations Act of 1947, hereby voluntarily authorize and direct my employer to pay from my wages due, or to become due, to A.C.F. LODGE No. 365, B.R.C. of A (Local Union) such initiation fee and monthly dues lawfully levied by said Union, in accordance with its constitution and by-laws; such amounts deducted are hereby assigned and shall be forwarded to the Local Union not later than the twenty-fifth (25) day of the month in which deducted.

The complaint alleges that Respondents violated Section 8(a)(1) and (b)(1)(A) of the Act by checking off the four \$10 assessments per employee without having any authorization therefor from the employees.<sup>4</sup>

<sup>3</sup> It appears that the amount realized by the assessment may not have been sufficient to cover the total per capita tax delinquency and was supplemented by some funds from the Union's general treasury.

<sup>4</sup> The charges alleged violation of Sec. 8(a)(3) and (b)(2) as well. However, these allegations were withdrawn and the complaint cites only Sec. 8(a)(1) and (b)(1)(A). (One charge also alleged violation of Sec. 8(a)(4). That apparently was an error. It also was withdrawn.)

The General Counsel maintains that the checkoff cards does not cover the assessment here involved, which the Union's brief refers to as "a one-time assessment under Section 78 of the "Union's constitution. The Union, on the other hand, maintains that the assessment is included in "dues, fees and assessment" covered by the checkoff provision in the collective-bargaining agreement and by the "monthly dues lawfully levied" in the implementing check-off authorization cards.

In support of its argument, the Union presented undisputed evidence of three prior assessments levied by the Union since 1951. In 1951 there was a \$3 assessment to assist a local that was on strike. In 1975 there was a \$20 per member assessment for a "negotiations benefit fund." And commencing in October 1975 there was an assessment of \$1 per month per member for 12 months. There is no evidence as to the authority under which such assessments were levied. Nor does the record show whether they were imposed by membership vote, executive committee decision, or in some other manner. However, it appears that they were collected by means of checkoff, under authorizations in the same terms as the present ones, and no protests or complaints were registered by union members in the form of grievances or otherwise.

#### B. Discussion and Conclusion

The General Counsel does not contend that the assessment here involved was unlawful or improper. Thus, although it is difficult to construe section 78 of the Union's constitution as authorizing the assessment, no finding or conclusion is here made as the validity of the assessment. However, it is significant that the assessment was purportedly adopted pursuant to section 78 of the Union's constitution rather than section 40 which governs increases in union dues. It would appear that if, as the Union maintains, the assessment was part of "periodic dues," it should have been adopted by vote of the membership under section 40 of the constitution.

Section 8(a)(3) of the Act, authorizing union-shop agreements, provides that the employment of an employee covered by such an agreement may be terminated for "the failure of the employee to tender the *periodic dues* and the initiation fees uniformly required as a condition of acquiring or retaining membership" in the union. [Emphasis supplied] Section 302 of the Act generally prohibits payments by employers to unions, but excepts, *inter alia*, "money deducted from the wages of employees in payment of membership dues in a labor organization: *Provided*, that the employer has received from each employee, on whose account such deductions are made, a written assignment."

The Board, with court approval, has held that the phrase "periodic dues" within the terms of Section 8(a)(3) of the Act does not include special assessments. The difference between "periodic dues" and "assessments" has been clearly set forth by the Court of Appeals for the Third Circuit in *N.L.R.B. v. Food Fair Stores, Inc.*, 307 F.2d 3, 8 (1962). In affirming a Board decision that an employer violated the Act by threatening to discharge employees who did not pay a \$15 strike assessment, the court said:

It is clear that the term "periodic dues" in the usual and ordinary sense means the regular payments imposed for the benefits to be derived from membership to be made at fixed intervals for the maintenance of the organization. An assessment, on the other hand, is a charge levied on each member in the nature of a tax or some other burden for a special purpose, and having the character of being susceptible of anticipation as a regularly recurring obligation as in the case of "periodic dues." [307 F.2d at 11.]

It is clear that the assessment in the present case was imposed for the specific purpose of remedying the Union's outstanding debt to the grand lodge for per capita taxes not paid during a past period. As the employees were specifically advised, there was no anticipation that the assessment would continue or recur after the existing debt had been paid. Indeed, the Union's brief refers to this assessment as "a one-time assessment."

In an apparent attempt to bring the assessment within the terms of the checkoff authorization, the notification Johnson sent to members said: "[Y]our UNION DUES will be \$10.50[<sup>5</sup>] plus an assessment of \$10.00 per month until our Per Capita Tax is paid." However, this linguistic ploy could not hide the fact, clearly indicated in the Union's notification, that the assessment was not an increase in dues voted on by the membership in conformity with section 40 of the constitution.<sup>6</sup> Although the designation of a payment as either "dues" or "assessment," may have some bearing on its true nature, the name applied is not conclusive. Cf. *Welsbach Electric Corporation*, 236 NLRB 503 (1978); *United Contractors Association, Inc.*, 201 NLRB 337 (1973).

To support its contention that the assessment is part of "dues" within the terms of the checkoff authorization, Respondent relies on an opinion of the Department of Justice that the phrase "membership dues" in Section 302(c)(4) of the Act includes "assessments." (22 LRRM 46, 47). See *Wm. Wolf Bakery, Inc.*, 122 NLRB 630 (1958). In *Food Fair, supra*, 307 F.2d at 12, the court specifically dealt with such argument as follows:

In acquiescing in the interpretation by the Department of Justice of Section 302 for the purpose of its administration of the statute in its penal aspects the Board did not bind itself to a similar construction in the administration of Section 8(a)(3) and 8(b)(2). Two different policies are brought into play, the operative effects of which create no conflict . . . .

Respondent Union argues that there was no evidence of any "coercion." Again we look to the Third Circuit's opinion in *Food Fair, supra*, 307 F.2d at 8:

True it is that there is no evidence that the Union requested the Company to discharge any employee for

<sup>5</sup> Of the regular dues of \$10.50 per month, \$4.50 is in payment of per capita tax to the grand lodge.

<sup>6</sup> It may be noted that approval of the assessment by a majority vote of the members would not necessarily include authorization of payment by checkoff. *Welsbach Electric Corporation*, 236 NLRB 503, 515 (1978).

<sup>7</sup> The Union's brief says, *inter alia*: "There is no evidence that any member (employee) was threatened concerning the assessment. There is no evidence that any member (employee) was discharged, because of the assessment." [emphasis in the original].

nonpayment of the assessment. Indeed there was no reason for such a request because the Company acquiesced to the checkoff . . . .

In the present case there was no occasion or opportunity for the employees to be "threatened" or otherwise "coerced," since both Respondents, purporting to act under the outstanding checkoff authorizations, simply effected payment of the assessment by the employees, without seeking their approval or specific authorization. The payments, therefore, were entirely involuntary on the part of the employees. There is no question that appropriating part of the employees' wages without their authorization or prior voluntary consent violated the Act. Cf. *American Geriatric Enterprises, Inc., et al.*, 235 NLRB 1532 (1978); *Guadalupe Carrot Packers d/b/a Romar Carrot Company*, 228 NLRB 369 (1977); *Welsbach Electric Corporation, supra*, 236 NLRB 503, 516 (1978).

The Union's reliance on *Luggage Workers Union Local 60, International Leather Goods, Plastic and Novelty Workers Union, AFL-CIO (Rexbilt Leather Goods, Inc.)*, 148 NLRB 396 (1964), stems from its failure to observe the precise nature of the present complaint. In that case it was held that, as a matter of fact, the General Counsel had failed to support the allegation in the complaint that the union had violated Section 8(b)(2), and, derivatively, 8(b)(1)(A), by coercing payment of a vacation assessment by means of a checkoff. The gravamen of the complaint in that case was that the union had coerced employees to pay delinquent dues and service charges for the union's effort in obtaining and delivering vacation checks. The trial examiner found that the General Counsel had failed to prove the allegation that the union had coerced employees into paying by conditioning their receipt of vacation checks upon such payments. Although it appears that some such payments had been effectuated by means of checkoff, the invalidity or impropriety of the checkoff as such was not alleged or litigated. Although the trial examiner, in a dictum, suggested that the service charge might fall within "the union membership dues and initiation fees" covered by the checkoff authorizations, his *decision* was based squarely on the absence of any showing that payment had been coerced.<sup>8</sup> after finding no coercion, he said (148 NLRB at 403):

In any case the complaint alleged a violation because of coercion, because the assessment was exacted as a condition of receiving the vacation checks, and that case, which was the litigated case, fell for want of proof of coercion; the complaint did not allege the checkoff was a violation in the absence of coercion, and that question is not before me or the Board. Under these circumstances, in the absence, as here, of coercion, there was no violation of Section 8(b)(2) or 8(b)(1)(A) of the Act, although the employees may have rights at

<sup>8</sup> He said (148 NLRB at 403): "The General Counsel alleged and contended that the service charge was an assessment and that the Union's causing [the employer] to check off this assessment was unlawful because all assessment was exacted from employees as a condition of their receiving the vacation checks . . . . [T]he record contained no credible evidence that the assessment was in fact exacted from employees as a condition of their receiving the vacation checks."

law against the Company and the Union for the authorized [*sic*] taking of employee money.

The present complaint carefully avoids the snag on which the General Counsel founded in *Luggage Workers*. Although the present complaint uses the statutory words "restrain," "coerce," and "interfere," the only "coercion" alleged is the checkoff itself.<sup>9</sup>

Since *Luggage Workers*, the Board has made it clear that coercion is not a *sine qua non* for holding a checkoff to be violative of the Act. See, e.g., *International Union of Electrical, Radio and Machine Workers, Local 601, AFL-CIO, (Westinghouse Electric Corporation)*, 180 NLRB 1062 (1970). In that case, the trial examiner held that a union violated Section 8(b)(1)(A) by refusing to accept union dues which were tendered by some employees who had not executed checkoff authorization cards. In affirming, the Board said:

In reaching this conclusion . . . we do not find it necessary to rely on any surrounding, threatening circumstances. The significant factor in this situation is that the only way in which an employee was permitted to comply with his obligation to remain a union member in good standing under a lawful union-security clause was to execute a dues checkoff authorization card. Such an obligation deprives the employee of his right to select or reject the checkoff system as the method by which to pay his periodic dues to the Union. The Board has repeatedly held that dues checkoff authorizations must be made "voluntarily," and that an employee has "a right under Section 7 of the Act to refuse to sign checkoff authorization cards." Any conduct, express or implied, which coerces an employee in his attempt to exercise this right clearly violates Section 8(b)(1)(A).<sup>10</sup>

If the employees cannot be compelled to use a checkoff method of paying union dues to meet their obligation under a valid union-security provision, *a fortiori* they cannot be compelled to submit to deductions by their employer for the payment of union assessments, the nonpayment of which cannot affect their jobs. In the present case the employee-members were given no choice as to whether or how they would pay the assessment. Thus, they were deprived of a right protected by Section 7 of the Act.

As the Union observes, the employee-members could "legally" authorize the Company to checkoff assessments levied by the Union; i.e., Respondents would not be in violation of Section 302 of the Act if they honored voluntary checkoff authorizations covering assessments as well as periodic dues and initiation fees. But the question in this case

<sup>9</sup> To the extent that the trial examiner apparently believed that coercion was the decisive factor in the Board's decision in *Food Fair*, 131 NLRB 765 (1961), he ignored the Third Circuit's opinion enforcing the Board's order in *Food Fair, supra*, 307 F.2d 3. The court's opinion in *Food Fair* also belies the dictum in *Luggage Workers* (148 NLRB at 403) to the effect that "periodic dues" as used in Sec. 8(a)(3) is coextensive with "membership dues" under Sec. 302(c)(4) of the Act.

<sup>10</sup> Citing, in footnotes, *International Harvester Company*, 95 NLRB 730, 733 (1951); *Metal Workers' Alliance, Incorporated (TRW Metals Division, TRW, Inc.)*, 172 NLRB 815, 817 (1968); *International Union of District 50 (Ruberoid Company)*, 173 NLRB 87 (1968); *American Screw Company*, 122 NLRB 485, 489 (1958).

is not whether a checkoff card authorizing deduction of assessments would be legal; the only question here presented is whether the checkoff authorizations executed by the employee members do in fact authorize payment of union assessments by deduction from wages. The answer to that question is in the negative.

The collective-bargaining agreement provides for deduction of "assessments, if any" from the wages of "each employee who . . . executes an authorization for the payment of dues, fees and assessment." However, the checkoff authorization card calls for the deduction *only* of "initiation fee and monthly dues lawfully levied by [the] Union." It is most significant that the checkoff cards do not use the language of the contract. The difference of the two documents clearly indicates that the card was not intended to embrace the full scope of checkoff authorizations permitted under the contract. This conclusion is bolstered in the present case by the fact that the assessment was not "lawfully levied" as "dues," changes in "dues" being constitutionally possible only by membership vote after 15-day notice under section 40.

Citing *Morton Salt Company*, 119 NLRB 1402 (1958), and *Miller Brewing Company*, 193 NLRB 528 (1971), Respondent argues that the Board should not undertake "to resolve disputes over the meaning or administration" of the collective-bargaining agreement, "particularly where it is evident, as in the instant case, that the Respondent acted reasonably and in good faith." For present purposes, it will be assumed that Respondents did act "reasonably and in good faith."<sup>11</sup> In *Miller Brewing* the Board said that it "has held that it will not effectuate the policies of the Act for the Board to impose upon the parties its interpretation of the meaning of ambiguous contract checkoff provisions as implemented by employees' authorization cards where, as here, a respondent acted reasonably and in good faith." But in the present case there is no ambiguity in the checkoff cards, they provide simply and clearly for the checkoff "initiation fees" and "monthly dues"; they do not include "assessments," as the contract expressly does. Since the present checkoff card is the only form ever made available to the employees, it should reasonably be read literally as covering only such payments as employees are required to make as a condition to their continued employment under the union-security clause. The Board cannot be rendered impotent to vindicate employees' individual statutory rights by agreements between unions and employers as to the obligations which individual employees have assumed.

Presumably the Union would have the Board hold that any dispute as to the meaning of the checkoff cards should be resolved through grievance and arbitration. However, such procedure would be improper, since neither the Company nor the Union is in any position to fairly represent the employees. *Lodge No. 1129, International Association of Machinists and Aerospace Workers, AFL-CIO (Sunbeam Appliance Company, Division of Sunbeam Corporation)* 219

<sup>11</sup> The assumption is rendered somewhat questionable by the Union's failure to follow the constitutionally provided method for increasing dues and its purported reliance on a provision which on its face appears to be irrelevant.

NLRB 1019 (1975), *affd. sub nom. Horwath v. N.L.R.B.*, 92 LRRM 3361 (7th Cir. 1976).

Finally, relying on the three past assessments which have been checked off without employee protest, the Union apparently argues that the employees' right has been waived and they are now estopped to object to the checkoff of the 1978 per capita assessment. Such contention must be rejected. The employees' silent acquiescence in prior unlawful conduct by Respondents does not amount to a permanent waiver of statutorily protected rights. It may be that the employee-members favored the past specific assessments and thus voluntarily elected not to protest. All three earlier assessments were considerably smaller than the present one of \$40. It also is probable that in the past the employees felt "coerced," i.e., impotent to resist the combined action of the Union and the Employer, both of which inherently had considerable economic power over the employee-members. Cf. *N.L.R.B. v. Local 294, International Brotherhood of Teamsters Chauffeurs, Warehousemen and Helpers of America (Grand Union Co.)*, 279 F.2d 83, 88 (2d Cir. 1960). Further, it is likely there has been considerable turnover of personnel. The right here protected is an individual right of each employee. Funds may be lawfully deducted from wages only upon the authorization of individuals. In this regard employees cannot be bound by action of their union or by a majority of the employee-members. Thus, past inaction cannot destroy the present statutory rights of employee-members.

In any event, even if the right to be free of unauthorized checkoffs could be waived, such waiver would have to be established clear, unequivocal, and unmistakable evidence. Cf. *Gary-Hobart Water Corporation*, 210 NLRB 742 (1974), *enfd.*, 511 F.2d 284 (7th Cir. 1975); *Tidewater Associated Oil Co.*, 85 NLRB 1096, 1098 (1949). No such evidence has been adduced in the present case.

Accordingly, since the checkoff authorization cards do not embrace union assessments, as distinguished from periodic dues, Respondents violated Section 8(a)(1) and (b)(1)(A) of the Act when the Company deducted the amount of the assessment from each employee's wages and transmitted the amounts so deducted to the Union.<sup>12</sup>

#### CONCLUSIONS OF LAW

1. Respondent, Amcar Division, ACF Industries, Incorporated, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent, Brotherhood of Railway Carmen of the United States and Canada, Lodge 365, AFL-CIO-CLC (Amcar Division, ACF Industries, Incorporated), is a labor organization within the meaning of Section 2(5) of the Act.

3. By deducting for Respondent-Union as assessment of \$10 in May, June, July, and August 1978 (for a total of \$40) from the wages of individual employees, without their prior authorization, Respondent Company violated Section 8(a)(1) of the Act.

<sup>12</sup> It may be that Respondents also violated Sec. 8(a)(2) and (3) and 8(b)(2) by the conduct here involved. However, the complaint, unlike the charges, alleged only violations of Sec. 8(a)(1) and (b)(1)(A). Accordingly, only such violations are here found. Cf. *American Geriatric Enterprises, etc.* 235 NLRB 1532, fn. 3 (1978).

4. By accepting from Respondent-Company assessments deducted from employees' wages without their prior authorization, Respondent violated Section 8(b)(1)(A) of the Act.

#### THE REMEDY

Since it has been found that Respondent-Union and Respondent-Employer have committed unfair labor practices, it will be recommended that they be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Since Respondents, by joint action, withheld wages due to employees, without authorization of the employees, it will be recommended that Respondents be held jointly and severally liable for reimbursing the employees for such sums. Although the General Counsel has submitted a brief in support of a request for interest at the rate of 9 percent per annum, it will be recommended that the reimbursements shall carry interest computed in accordance with *Florida Steel Corporation*, 231 NLRB 651 (1977).<sup>13</sup> *Hansen Cakes, Inc.*, 242 NLRB 472, fn. 1.

Nothing in the present Decision and Order should be construed as preventing the employees from voluntarily paying to the Union the amount of the assessment or as preventing the Union from seeking to establish, in another forum, that the assessment was properly imposed and legally due from the persons who were employed by the Company in May through August 1978. However, nonpayment of such assessment may not be deemed grounds for discharge of any employee under the union-security clause in the applicable collective-bargaining agreement.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

#### ORDER<sup>14</sup>

A. Respondent Employer, Amcar Division, ACF Industries, Incorporated, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Continuing to deduct union assessments from any employee's wages in the absence of an authorization executed by the employee specifically authorizing deduction for such purpose;

(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 which is necessary to effectuate the policies of the Act:

(a) Jointly and severally with Respondent-Union, reimburse all employees for all sums improperly deducted from their wages in payment of an assessment levied by Brother-

hood of Railway Carmen of the United States and Canada, Lodge No. 365, AFL-CIO-CLC, in May through August 1978, together with interest, in accordance with the section of this Decision entitled "The Remedy."

(b) Post at its plant in St. Louis, Missouri, copies of the attached notice marked "Appendix."<sup>15</sup> Copies of said notice, on forms provided by the Regional Director for Region 14, after being duly signed by a representative of Respondent-Union and a representative of Respondent-Employer, shall be posted by Respondent-Employer immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 14, in writing, within 20 days from the date of this Order, what steps Respondent-Employer has taken to comply herewith.

B. Respondent-Union, Brotherhood of Railway Carmen of the United States and Canada, Lodge 365, AFL-CIO-CLC, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Causing or attempting to cause Respondent Employer, Amcar Division, ACF Industries, Incorporated, to deduct union assessments from wages of employees unless such deductions are specifically authorized, in writing, by the employees;

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action, which is necessary to effectuate the policies of the Act:

(a) Jointly and severally with the aforesaid Respondent-Employer, reimburse all employees for all sums deducted from their wages in payment of a union assessment in May through August 1978, plus interest, in accordance with the section of this Decision entitled "The Remedy."

(b) Post at its meeting hall copies of the attached notice marked "Appendix."<sup>16</sup> Copies of said notice, on forms provided by the Regional Director for Region 14, after being duly signed by an officer or representative of Respondent Union and a representative of Respondent Employer, shall be posted by Respondent-Union immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including each of the Union's bulletin boards, and all places where notices to members are customarily posted. Reasonable steps shall be taken by the Union to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 14, in writing, within 20 days from the date of this Decision what steps Respondent-Union has taken to comply herewith.

<sup>13</sup> See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

<sup>14</sup> In the event no exceptions are filed as provided in 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.

<sup>15</sup> In the event that 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."

<sup>16</sup> See fn. 15, *supra*.

## APPENDIX

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

WE, Brotherhood of Railway Carmen of the United States and Canada, AFL-CIO-CLC, WILL NOT cause or attempt to cause AMCAR Division, ACF Industries, Incorporated, to withhold any sums from the wages of any employee to pay any assessment levied by us unless such withholding has previously been authorized, in writing, by the employees; and WE WILL NOT accept or retain any such funds tendered to us by said Employer unless the withholding thereof has been specifically authorized in writing by the employee on whose behalf the tender is made.

WE, AMCAR Division, ACF Industries, Incorporated, WILL NOT deduct any amounts from any employee's wages and forward them to the Union in payment of any union assessment unless such withholding and transmittal have been specifically authorized by the employee.

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

WE WILL, jointly and severally with each other, reimburse all employees and members for sums improperly withheld from their wages and applied to payment of a union assessment in May through August 1978, with interest.

AMCAR DIVISION, ACF INDUSTRIES, INCORPORATED