

**W.R. Grace & Co., Construction Products Division
and Lawrence J. Schaeffer**

**Highway and Local Motor Freight Drivers, Dockmen
and Helpers, Local Union No. 701, International
Brotherhood of Teamsters, Chauffeurs, Ware-
housemen and Helpers of America and Lawrence
J. Schaeffer. Cases 22-CA-6998 and 22-CB-3236**

June 17, 1977

DECISION AND ORDER

BY MEMBERS JENKINS, MURPHY, AND
WALTHER

On December 29, 1976, Administrative Law Judge Robert M. Schwarzbart issued the attached Decision in this proceeding. Thereafter, Respondents filed exceptions and supporting briefs, and General Counsel filed a brief in reply to the Respondents' exceptions and 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.¹

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 Respondents, W.R. Grace & Co., Construction Products Division, Trenton, New Jersey, its officers, agents, successors, and assigns, and Highway and Local Motor Freight Drivers, Dockmen and Helpers, Local Union No. 701, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, its officers, agents, and representatives, shall take the action set forth in the said recommended Order.

¹ Member Murphy agrees with the holding herein. As set forth in her concurring opinion in *Union Carbide Corporation Chemical and Plastics Operations Division*, 228 NLRB 1152 (1977), she would find presumptively lawful job retention superseniority clauses, including layoff, recall, shift assignment, or retention of the same job or same category of job during incumbency in such position, for union stewards and officers whose functions relate in general to furthering the bargaining relationship.

DECISION

STATEMENT OF THE CASE

ROBERT M. SCHWARZBART, Administrative Law Judge: These cases were heard on November 4, 1976, in Newark, New Jersey, pursuant to charges¹ filed by Lawrence J. Schaeffer² and a consolidated complaint issued on July 7, 1976.

The complaint alleges that W.R. Grace & Co., Construction Products Division, herein the Respondent Employer, and Highway and Local Motor Freight Drivers, Dockmen and Helpers, Local Union No. 701, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein the Respondent Union, have engaged in certain unfair labor practices in violation of Section 8(a)(1) and (3) and Section 8(b)(1)(A) and (2), respectively, of the National Labor Relations Act, as amended, herein the Act. The Respondents have filed answers denying the allegations of unlawful conduct set forth in the consolidated complaint.

Issues

1. Whether the Respondent Employer violated Section 8(a)(3) and (1) of the Act and whether the Respondent Union violated Section 8(b)(1)(A) and (2) of the Act, by maintaining and implementing provisions in their collective-bargaining agreement and the rider thereto, which accord superseniority to the Respondent Union's shop steward with respect to job preferences, including preferential treatment as to work assignments, assignment of equipment, opportunities for certain overtime work, and job bidding.

2. Whether as a result of the implementation of the aforesaid superseniority practices, the Respondent Employer's employees, William Smith and George A. Adams, were unlawfully deprived of earnings from more lucrative work assignments, lost opportunities for overtime work, and, in the case of Adams, the assigned use of a new and superior truck.

At the hearing, the Respondents were represented by counsel and all parties were given full opportunity to appear, to introduce evidence, to examine and cross-examine witnesses, and to file briefs. Upon the entire record, the briefs filed by the General Counsel and the Respondents, and upon my observation of the demeanor of the witnesses, I make the following:

¹ The original charge in Case 22-CB-3236 was filed on May 18, 1976. The first amended charge in that case and the charge in Case 22-CA-6998 were both filed on May 26, 1976.

² Although Lawrence J. Schaeffer, the Charging Party herein, was present at the hearing, he did not enter an appearance or otherwise participate. Those allegations of Schaeffer's charges which were embodied in the consolidated complaint and were the subject of this proceeding related to whether his Union's steward had received certain work benefits by virtue of an unlawfully broad superseniority contract provision and the practices that had evolved therefrom. As Schaeffer's overall job seniority is less than that of the steward, the disputed conduct did not affect Schaeffer's substantive rights and he would not be affected by any remedy found appropriate herein.

FINDINGS OF FACT

I. JURISDICTION

The Respondent Employer, a subsidiary of W.R. Grace & Co., a Connecticut corporation, at its relevant office and plant located in Trenton, New Jersey, herein called the Trenton plant, is engaged in the manufacture, sale, and distribution of insulation products. During the calendar year 1975, said operations being representative of its operations at all times material herein, the Respondent Employer manufactured, sold, and distributed goods valued in excess of \$50,000, of which goods valued in excess of \$50,000 were shipped from its Trenton plant in interstate commerce directly to States of the United States other than the State of New Jersey. Upon the foregoing conceded facts, I find that the Respondent Employer is in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Respondent Union is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*³

The Respondent Employer, a producer of insulation products, maintains a delivery operation at its Trenton, New Jersey, plant. From there its products are delivered by truck to various construction jobsites.

For approximately 20 years, the Respondent Union has had collective-bargaining agreements with the Respondent Employer pursuant to which the Respondent Union has represented a unit presently consisting of the Employer's nine truckdrivers. The most recent collective-bargaining contract between the Respondents, a memorandum of agreement which expired March 31, 1976, provided that the Respondents agreed "to be bound by the provisions of the New Jersey-New York Area General Trucking Supplement and the National Master Freight Agreement, and all Riders and Supplements thereto . . . for the period from July 1, 1973, through March 31, 1976," with certain stated exceptions not relevant herein. Although the agreements expired on March 31, prior to the start of the hearing, it is not disputed that the Respondents, thereafter, continued to recognize and implement certain provisions of those agreements, including those relating to the superseniority to be afforded to union stewards. In this regard, the National Master Freight Agreement which, as noted, was incorporated by reference into the Respondents' memorandum of agreement, provided, in relevant part, as follows:

ARTICLE 42 — Stewards:

Stewards shall be granted super-seniority for all purposes including layoff, rehire, bidding, and job preference. One steward on the morning dispatch, in

compliance with regular starting times, shall be the last man to leave the terminal.

ARTICLE 44 — SENIORITY:

Section 1. Seniority shall prevail in that the Employer recognizes the general principle that senior employees shall have preference to choose their shifts and to work at the job for which the pay is highest, provided such employee is qualified for such work. Seniority does not give an employee the right to choose a specific unit, run, trip or load.

* * * * *

Section 7. Seniority shall prevail in selection of starting time so that the oldest man in seniority shall have the earliest starting time if he so elects (provided he is qualified). . . .

The agreement also required that all employees become and remain members of the Respondent Union on and after the 31st day following commencement of employment.

The language of article 42 of the National Master Freight Agreement affording the Respondent Union's shop steward superseniority for all purposes, including layoff, rehiring, bidding, and job preference, is repeated in a Local 701 rider to the Master Freight Agreement, also incorporated by reference into the Respondents' collective-bargaining agreement. The rider also contained the following provision:

E. Seniority Bid. Seniority shall prevail in that the Employer recognizes the general principle that senior employees shall have preference to select the regular established starting times (shifts) and to work at the job for which the pay is the highest provided such employee is qualified for such work. . . .

The General Counsel contends that, as the work preferences based upon superseniority afforded to Raymond Mason, the Respondent Union's driver-steward, at the Respondent Employer's Trenton plant, at the times material herein, were not limited to layoff and recall, they exceeded in scope what is legally permissible under *Dairylea Cooperative, Inc.*⁴ Accordingly, the General Counsel argues that the superseniority afforded Mason was unlawful both with respect to the language of the agreements quoted above and as to the practices of the Respondents in implementing them. The Respondents, in turn, deny the commission of any unfair labor practice and argue that this matter is distinguishable from *Dairylea, supra*.

The parties stipulated that, of the nine drivers on the seniority list, only William Smith and George A. Adams are senior to Mason, the steward. Smith and Adams began their employment with the Respondent Employer on July 14, 1952, and June 28, 1966, respectively, while Mason did not begin to work for the Respondent Employer until October 17, 1967. Therefore, Smith and Adams, alone,

³ The facts herein are generally undisputed.

⁴ 219 NLRB 656, *enfd. sub nom. N.L.R.B. v. Teamsters, Local 338*, 531 F.2d 1162, (C.A. 2, 1976).

were in a position to be adversely affected by any preferential treatment afforded to Mason as steward under the disputed superseniority practices.

The three specific job preferences which the General Counsel contends unlawfully have been afforded to Mason by virtue of his superseniority are as follows: first, Mason was assigned to deliver the first truckload to leave the plant each morning; second, he received the first opportunity to perform overtime work on Saturdays and holidays;⁵ and third, he was assigned to regularly operate a newly acquired truck. In connection with the last benefit, Robert F. Devine, the Respondent Employer's Trenton plant manager, testified that on December 9, 1975, he assigned two new White tandem-axle trucks to Mason and Smith, retiring the leased trucks they had been operating.⁶ By virtue of this assignment, Adams, whose job seniority was greater than Mason's, did not receive a new truck but continued to drive the older single-axle vehicle he previously had been operating.⁷ Devine testified that he had assigned the two new trucks to Mason and Smith because it has been management's policy to assign new equipment according to seniority and, as the most senior men, particularly Mason, generally take the longest runs, Devine wanted the best equipment to be used on those runs. Devine denied that any official of the Respondent Union had told him to assign the new trucks to the most senior men or that there had been any specific contractual obligation to do so.

Assignment to the first delivery load each morning has been particularly beneficial to Mason since it carries the largest compensation. Devine explained that, as most of the Respondent Employer's customers take delivery at various construction sites by 8 a.m., the initial load would be delivered to the jobsite farthest from the Respondent Employer's plant. As drivers are paid by the hour, the route with the longest driving time would provide the greatest remuneration.

The first load usually is scheduled to leave the Respondent Employer's plant at 4 a.m. More recently, however, the Respondent Employer has been dispatching an average of two loads a week to Beltsville, Maryland, at 12:01 a.m. for delivery at 4 a.m. These runs also are assigned to Mason. The other drivers on the seniority list, from the second man down, generally leave on their routes between 5 to 6 a.m. and return to Trenton between noontime and 4 p.m. Most of the drivers, including the steward, are back in the Trenton barn between 2 to 4 p.m.

George Frey, a business agent and trustee of the Respondent Union who has been administering the collective-bargaining agreements with the Respondent Employer since 1973, initially testified that the reason his union had arranged with the Respondent Employer to allow the shop steward to take out the first load each day

was to enable the steward to return early so that he might be available when the other drivers came back in order to answer their questions and to process any grievances. However, on cross-examination, Frey conceded that there is no standing practice or procedure whereby the steward remained at the barn after his daily run was concluded to receive any grievances. Rather, the steward normally would go home unless he previously had been contacted by a member of the unit or by Frey himself.⁸ Plant Manager Devine, however, testified, as noted, that as most of the drivers, including the steward, return to the barn at approximately the same time, Mason could have taken a load other than the first of the day without materially changing the time of his return.

With regard to the remaining preference to Mason, the first opportunity to work overtime on Saturdays and holidays, the record reveals that, during the calendar year 1976, at least one driver has worked overtime on 15 Saturdays or holidays. Although Mason did not always perform such overtime work, he was always given the first opportunity to do so.

Except for the preferences available to the steward as described above, all drivers within the unit worked in the same classification and performed the same tasks.

B. Analysis

In *Dairyalea Cooperative, supra*, a majority of the Board held that a contractual provision making stewards the most senior employee "in the craft in which he is employed" violated the act when applied to terms and conditions of employment other than layoff or recall. In so concluding, the Board reasoned that the preference referred to by such a contractual provision was based solely upon the steward's status as an official of the Union and was contrary to the policy of the Act designed to separate job rights and benefits from union activities. In *Dairyalea*, the Board ruled that, although effective administration of bargaining agreements at the plant level might require the continued presence of the steward on the job, and, therefore, would justify according preference to stewards based upon their union office for purposes of layoff and recall, such purposes did not warrant affording stewards preference as to additional terms and conditions of employment, absent a showing of facts sufficient to establish that any additional preference promoted the effective administration of the particular bargaining agreement and relationship at issue. Accordingly, absent such a showing, such preferences, extending beyond layoff and recall, are inherently discriminatory and presumptively unlawful.

In reaching the foregoing conclusions in the *Dairyalea* case, *supra*, the Board noted the inherent tendency of superseniority clauses to discriminate against employees

⁵ The first opportunity to perform overtime work on occasions other than Saturdays and holidays was not a benefit afforded the steward.

⁶ It is undisputed that in the absence of special circumstances each of the Respondent Employer's drivers would regularly operate the respective trucks individually assigned to them.

⁷ Except for the two new tandem-axle tractors, all of the Respondent Employer's trucks are of the single-axle type. As the tandem-axle trucks afford greater traction and work capacity, they may more readily be used for deliveries to the difficult jobsites and can transport larger loads for greater distances. These attributes, and the fact that they are newer and more modern, make their operation more desirable.

⁸ Under the existing practice, employees seeking to notify the steward of any grievances or of any other matter would leave a note near Mason's timecard. He, in turn, would leave a copy of a blank grievance form for the employee to complete with the grievant's timecard. When the grievance form has been completed and signed by the individual employee, the steward would discuss the matter with him before proceeding further. If deemed warranted, the steward would contact Business Agent Frey and arrange for a meeting with Devine. All such meetings have taken place during nonworking hours.

for union-related reasons. Accordingly, in that situation, an employee could be denied by the employer job benefits to which he otherwise would be fully entitled solely on the ground that he was not the union steward, while another employee could receive benefits he otherwise would not obtain solely because he is the steward. Consequently, the only way a unit employee could gain preference to job benefits was to be a good, enthusiastic unionist and thereby through such actions recommend himself to the union hierarchy for appointment to the office of steward. Such a state of affairs, which would have the natural effect of unduly encouraging membership in the Union, would restrain and coerce employees with respect to the exercise of rights protected by the Act. Accordingly, the Board found that superseniority clauses which are not on their face limited to layoff and recall are presumptively unlawful and that the burden of rebutting this presumption by establishing justification rests on the party asserting legality.

Article 42 of the National Master Freight Agreement and the language of the Local 701 rider, quoted above, provide that stewards shall be granted superseniority for all purposes including layoff, rehire, bidding, and job preference. The Respondents, as noted, concede that such superseniority has been implemented in affording the shop steward job preferences with regard to assignment to the most lucrative first daily delivery load, the first opportunity to work overtime on Saturdays and holidays, and in the assignment of the newest and best trucks.

The Respondents contend that the instant case is distinguishable from *Dairylea* in that here, unlike *Dairylea*, where the stewards were appointed, Mason had been elected to his position by members of the bargaining unit.⁹ On the other hand, the record reveals that Mason's immediate predecessor as steward had been appointed. Accordingly, although Mason was an elected steward, there do not appear to have been bylaws in effect which would have mandated that mode of designation. Noting too, that the previous steward to serve the unit had been appointed to office, the evidence does not show that Mason's elected status was more than coincidental.

Although the majority in *Dairylea* did discuss the fact that, in that case, employees could gain superseniority only by being appointed to the position of steward by their union's hierarchy, at no point did the Board restrict its analysis to situations where officials were appointed to office, or preclude its application to situations where union officers were elected to their positions. Whether union officials are elected or appointed, in either case, the objective would be to select officers who would effectively advocate the position of the Union as the employees' representative. I, therefore, do not find the distinction between elected and appointed stewards particularly meaningful. Moreover, to be eligible to hold union office, or even to vote in an election for those who would hold office, employees must be members of the Respondent

⁹ At the hearing, the parties stipulated that copies of the Respondent Union's bylaws with respect to the designation of shop stewards should be included in the record and could be submitted for that purpose after the end of the hearing. However, in a posthearing letter to the parties, subsequently incorporated in the record, counsel for the Respondent Union advised that the Respondent Union's bylaws, in effect during the times material herein,

Union. Most significantly, the underlined policy of the Act in this area is to separate union activities from terms and conditions of employment. Thus, it is the given situation which is proscribed, not the means by which that situation is created. For these reasons, I find that the fact that the Respondent Union's steward was elected rather than appointed does not preclude application of the *Dairylea* principle to the clause granting stewards superseniority for job benefits which are not on their face limited to layoff or recall.

In *Dairylea*, the Board agreed that the overall policy of the Act justified preferential treatment with respect to layoffs and recalls, so that the presence of officials of labor organizations to administer the contract could be assured to the maximum possible degree, although in so doing there was a literal violation of the Act. Beyond layoffs and recalls, the Board saw no need to compromise the statutory proscription in the interest of promoting the overall purposes and policies of the Act. Thus, the question is not one of the number of benefits conferred upon the steward nor is it one of the degree of importance of those benefits. If they involve matters other than recall or layoff, they are presumptively unlawful and the burden falls upon the party or practices that advocate their unlawfulness to provide evidence sufficient to establish justification.

Having found that the *Dairylea* presumption is applicable to the job preference based upon superseniority accorded the Respondent Union's steward in this matter, the Respondents must bear the burden of establishing justification for such preferences to preclude a finding that they have violated the Act.

However, the Respondents have offered no specific justification for the advantage relating to the first opportunity to work overtime on Saturdays and holidays and the only logical connection between the assignment of the new truck to Mason, as steward, rather than to Adams, who was senior, related to Mason's other job benefit in making the first and most lucrative daily delivery. As noted, Plant Manager Devine, in allocating the new trucks, had wanted the driver with the longest run to have the best equipment.

Likewise, no merit is found to the Respondent Union's contention that the earlier starting time in some way makes the steward, under the circumstances herein, more available to administer the contract. In this connection, it is noted that Mason, under the existing schedule, could return to the barn at approximately the same time if he had a later daily delivery run; that, in any event, Mason does not wait at the barn for other drivers after his return to learn of any new problems; and on the days when he is assigned to make the very early deliveries to Beltsville, Maryland, his working hours are even further removed from those of the other unit members. Moreover, an additional question is raised as to whether, under the terms of the contract which established the broad job preferences for the Respondent Union's steward, it was necessarily intended that the steward have the first daily delivery load.

did not contain any specific language enforcing the method of selecting a shop steward. However, a resolution had been adopted to elect stewards and such a provision would be incorporated in the Respondent Union's new bylaws which were in the process of being amended and approved by the International union.

Article 42 of the National Master Freight Agreement, as quoted above, provides, in part, that one steward on the morning dispatch shall be the last man to leave the terminal. It originally may have been thought that the steward could best fill his role in administering the contract by being available to the drivers at the start rather than at the end of the day.

Therefore, I find that, in the circumstances in this case, these portions of the current collective-bargaining agreement, including the rider thereto, which accord superseniority to the Respondent Union's steward for all purposes, including rehire (as opposed to recall), bidding, and job preferences, such as delivery of the first load, overtime work on Saturdays and holidays, and preferential assignment of new equipment, are presumptively unlawful. It further is concluded that the Respondents have not demonstrated sufficient justification to rebut this presumption by their failure to establish that such benefits have the effect of furthering the effective administration of the collective-bargaining agreements and the bargaining relationship. Accordingly, it is found that, by maintaining and enforcing these superseniority clauses, the Respondent Union has violated Section 8(b)(1)(A) and (2) of the Act and the Respondent Employer has violated Section 8(a)(1) and (3) of the Act. Moreover, by according Steward Mason superseniority with respect to the assignment of the new tandem-axle truck,¹⁰ the assignment of the first daily delivery loads, and giving Mason the first opportunity to perform overtime work on Saturdays and holidays, the Respondent Employer has discriminated against employees Smith and Adams in violation of Section 8(a)(3) and (1) of the Act, and, further, that the Respondent Union thereby violated Section 8(b)(1)(A) and (2) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondents set forth in section III, above, occurring in connection with the operations of the Respondent Employer described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

V. THE REMEDY

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

¹⁰ Although Devine testified that he had assigned the new truck to Mason rather than to Adams on his own initiative and had not been specifically requested to do so by the Respondent Union, it, nevertheless, is concluded that the Respondent Union is jointly responsible with the Respondent Employer for this discriminatory act as it was a natural and foreseeable consequence of the superseniority arrangement found unlawful herein.

¹¹ While the record reveals that bidding is not actually practiced by the Respondent Employer's drivers, the collective-bargaining agreement, on its face, provides a bidding preference to the steward as an incident of superseniority. Accordingly, under the remedy found herein any such

As it has been concluded that the above-described superseniority clauses set forth in the collective-bargaining agreement and its rider are unlawful, the Respondent Union shall be ordered to cease and desist from maintaining and enforcing such clauses in its bargaining agreements with the Respondent Employer to the extent that stewards shall be granted superseniority for purposes other than layoff and recall. Accordingly, the Respondent Union shall be ordered to cease and desist from maintaining and enforcing those aspects of the disputed contract provisions which afford stewards superseniority for all purposes, including rehire (as opposed to recall), bidding,¹¹ and other job preferences. It shall also be ordered that the Respondent Employer cease and desist from maintaining and enforcing such clauses in its bargaining agreements with Respondent Union.

As it also has been found that the unlawful superseniority clauses were so applied as to deny William Smith or, in the event of his unavailability, George Adams assignment to the first daily delivery routes and first opportunity to perform overtime work on Saturdays and holidays, which, they, respectively, would have had but for the illegal deprivation of their appropriate seniority, it shall be recommended that the Respondents jointly and severally make Smith and Adams whole for any loss of earnings they, respectively, may have sustained as a result of the discrimination against them. Backpay shall be computed in the manner established by the Board in *F. W. Woolworth Company*,¹² with interest as provided in *Isis Plumbing & Heating Co.*¹³ Also, in order to remedy fully the effects of the Respondents' unlawful conduct, it shall be recommended that the Respondent Employer assign Smith or, in the alternative, Adams, if either should so wish, to the initial daily delivery routes to which they would be entitled in their order of respective seniority. It shall also be directed that the Respondent Union, in writing, notify the Respondent Employer and Smith and Adams that it has no objection to assigning Smith and Adams such initial daily delivery loads and first opportunity to perform overtime work on Saturdays and holidays, in the order of their respective seniority. Additionally, the Respondent Employer shall be ordered forthwith to assign the new tandem-axle truck presently being driven by Mason to Adams, should Adams desire to operate that truck. The Respondent Employer's backpay obligation with respect to the assignment of the initial daily delivery load shall run from the effective day of the discrimination against Smith and Adams, respectively, November 26, 1975, to the time it makes such offer of the initial daily delivery load. The Respondent Employer's backpay obligation with regard to overtime work shall run from the foregoing effective date to the date it makes the initial offer of overtime work on

provision in the collective-bargaining agreement should no longer be maintained or enforced.

¹² 90 NLRB 289 (1950). As the charges against the respective Respondents were not filed on the same day, the periods under Sec. 10(b) of the Act limiting their backpay liabilities to events occurring not longer than 6 months prior to filing of the charges with the Board do not exactly cover the same periods. While there is the noted joint and several backpay liability to the extent that the backpay periods overlap, the Respondent Union's backpay liability period commenced on November 18, 1975, while that of the Respondent Employer began on November 26, 1975.

¹³ 138 NLRB 716 (1962).

Saturdays and holidays to Smith or Adams, in their respective orders of seniority. The Respondent Union's backpay obligation shall run from November 18, 1975, to the date of its written notification to the Respondent Employer that if it has no objection to such assignments of the first delivery load and Saturday and holiday overtime work to Smith and Adams, in their respective order of seniority, and to the assignment to Adams of the tandem-axle truck operated by Mason.

Finally, it shall be ordered that the Respondent Employer cease and desist from in any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed by Section 7 of the Act, and that the Respondent Union likewise cease and desist from restraining or coercing employees it represents from exercising those same rights.¹⁴

CONCLUSIONS OF LAW

1. W.R. Grace & Co., Construction Products Division, is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Highway and Local Motor Freight Drivers, Dockmen and Helpers, Local Union No. 701, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. By maintaining and enforcing seniority clauses in their collective-bargaining agreement, including the rider thereto, according union stewards superseniority for terms and conditions of employment not limited to layoff and recall, the Respondent Employer and the Respondent Union have engaged in, and are engaging in, unfair labor practices within the meaning of Section 8(a)(1) and (3) and Section 8(b)(1)(A) and (2) of the Act, respectively.

4. By discriminating against William Smith and George A. Adams, respectively, in assigning superseniority to the Respondent Union's steward with respect to assignment of the first daily delivery load and the first opportunity to perform overtime work on Saturdays and holidays, and by discriminating against Adams as to the assignment of new motor vehicles, the Respondents engaged in further violations of the foregoing sections 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 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:

¹⁴ Although this matter has required consideration of the legality of a provision of the National Master Freight Agreement and New Jersey-New York Area General Trucking Supplemental Agreement which parties other than those named as Respondents in this proceeding have executed or otherwise subscribed, it is not the intent of the General Counsel or of this Decision that the remedy recommended should affect parties not specifically named herein.

ORDER¹⁵

A. The Respondent Employer, W.R. Grace & Co., Construction Products Division, Trenton, New Jersey, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Maintaining and enforcing collective-bargaining provisions with the Respondent Union, Highway and Local Motor Freight Drivers, Dockmen and Helpers, Local Union No. 701, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, according union stewards superseniority with respect to terms and conditions of employment other than layoff or recall.

(b) Discriminating against George A. Adams, in the assignment of new trucks, and discriminating against William Smith and George A. Adams, consecutively, in the order of their seniority, in assigning the first daily delivery routes, the first opportunity for overtime work on Saturdays and holidays, or any other term and condition of employment other than layoff or recall, by according top seniority to the union steward in the assignment of such terms and conditions of employment where the union steward, in fact, does not have top seniority in terms of length of employment.

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

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Jointly and severally with the Respondent Union make William Smith and George A. Adams, consecutively, in the order of their seniority, whole for any loss of earnings they may have suffered as a result of the discrimination against them, such earnings to be determined in the manner set forth in the section of this Decision entitled "The Remedy," and offer William Smith and George A. Adams, consecutively, in the order of their respective seniority, the first daily delivery routes and the first opportunity for Saturday and holiday overtime work they now would have but for the unlawful assignment of superseniority to union stewards.

(b) Offer to George A. Adams the recently acquired tandem-axle truck he now would be assigned to operate but for the unlawful assignment of superseniority to the union steward.

(c) Preserve and, upon request, make available to the Board or its agent, 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 with respect to the work assignments and overtime premium pay due under the terms of this Order.

¹⁵ 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.

(d) Post at its establishment in Trenton, New Jersey, copies of the attached notices marked "Appendix A" and "Appendix B."¹⁶ Copies of said notices, on forms provided by the Regional Director for Region 22, after being duly signed by representatives of the Respondent Employer and Respondent Union, shall be posted by the 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 are customarily posted. Reasonable steps shall be taken by the Respondent Employer to insure that the said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 22, in writing, within 20 days from the date of this Order, what steps the Respondent Employer has taken to comply herewith.

B. The Respondent Union, Highway and Local Motor Freight Drivers, Dockmen and Helpers, Local Union No. 701, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Maintaining, enforcing, or otherwise giving effect to those clauses in its collective-bargaining agreements with the Respondent Employer, W.R. Grace & Co., Construction Products Division, according union stewards super-seniority with respect to terms and conditions of employment other than layoff and recall.

(b) Causing or attempting to cause the Respondent Employer to discriminate against employees in violation of Section 8(a)(3) of the Act.

(c) In any like or related manner restraining or coercing the employees of the Respondent Employer in the exercise of their rights protected by Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Jointly and severally with the Respondent Employer make William Smith and George A. Adams, consecutively, in the order of their seniority, whole for any loss of earnings they may have suffered by reason of the discrimination against them, such lost earnings to be determined in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Notify the Respondent Employer, William Smith, and George A. Adams, in writing, that it has no objection to the assignment of Smith and Adams, consecutively, in the order of their seniority, to the daily delivery route and the first opportunity for overtime work on Saturdays and holidays they now would have but for the unlawful assignment of top seniority to the union steward.

(c) Notify the Respondent Employer and George A. Adams that it has no objections to the assignment to George A. Adams of the recently acquired tandem-axle truck he now would be assigned to operate but for the unlawful assignment of top seniority to the union steward.

(d) Post at its office and meeting halls used by or frequented by its members and employees it represents at the Respondent Employer's Trenton, New Jersey, facility copies of the attached notices marked "Appendix A" and "Appendix B."¹⁷ Copies of said notices, on forms provided

by the Regional Director for Region 22, shall be posted by the Respondent Union after being duly signed by representatives of the Respondent Employer and the Respondent Union, respectively, immediately upon receipt thereof, and be maintained by the Respondent Union for 60 consecutive days thereafter, in conspicuous places, including all places where notices to the above-described members and employees are customarily posted. Reasonable steps shall be taken by the Respondent Union to insure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 22, in writing, within 20 days from the date of this Order, what steps the Respondent Union has taken to comply herewith.

¹⁶ In the event that the Board's 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."

¹⁷ In the event that the Board's 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 A

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

After a hearing in which we were represented and presented evidence, it has been found that we have violated the National Labor Relations Act in certain respects. To correct and remedy these violations, we have been directed to take certain actions and to post this notice.

WE WILL NOT maintain and enforce any agreement with Highway and Local Motor Freight Drivers, Dockmen and Helpers, Local Union No. 701, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, giving union stewards top seniority no matter what their length of employment with respect to terms and conditions of employment, except for layoff and recall.

WE WILL NOT discriminate against George A. Adams in the assignment of new trucks and other equipment, and WE WILL NOT discriminate against William Smith and George A. Adams, consecutively, in the order of their seniority, by assigning the first daily delivery route, first opportunity for overtime work on Saturdays and holidays, or any other terms and conditions of employment other than layoff and recall, to a union steward on the basis of seniority when such union steward, in fact, does not have seniority in terms of length of employment.

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

WE WILL jointly and severally with the above-named Union pay, with interest, William Smith and George A. Adams, consecutively, in the order of their seniority,

any earnings lost as a result of awarding the first daily delivery route and first opportunity for overtime work on Saturdays and holidays to the union steward rather than to Smith or Adams when Smith and Adams, respectively, have top seniority in terms of length of service.

WE WILL offer William Smith and George A. Adams, consecutively, in the order of their seniority, the first daily route and the first opportunity for overtime work on Saturdays and holidays they now would have but for the unlawful assignment of top seniority to the union steward.

WE WILL offer George A. Adams the assignment to operate the recently acquired tandem-axle truck he now would be assigned to operate but for the unlawful assignment of top seniority to the union steward.

W.R. GRACE & CO.,
CONSTRUCTION PRODUCTS
DIVISION

APPENDIX B

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

After a hearing in which we were represented and presented evidence, it has been found that we have violated the National Labor Relations Act in certain respects. To correct and remedy these violations, we have been directed to take certain actions and to post this notice.

WE WILL NOT maintain and enforce any agreement with W.R. Grace & Co., Construction Productions Division, or any other employer, giving our stewards or other representatives top seniority no matter what their length of employment, with respect to terms and conditions of employment, except for layoff and recall.

WE WILL NOT cause or seek to cause W.R. Grace & Co., Construction Products Division, to discriminate against George A. Adams in the assignment of new trucks or other equipment, and WE WILL NOT cause or seek to cause the above-named Employer to discriminate against William Smith and George A. Adams,

consecutively, in the order of their seniority, by assigning the first daily delivery route, first opportunity for overtime work on Saturdays and holidays, or any other terms and conditions of employment other than layoff and recall, to a union steward on the basis of seniority when such steward, in fact, does not have top seniority in terms of length of employment.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of their rights protected by Section 7 of the Act.

WE WILL jointly and severally with W.R. Grace & Co., Construction Products Division, pay, with interest, William Smith and George A. Adams, consecutively, in the order of their seniority, any earnings lost as a result of awarding the first daily delivery routes and the first opportunity for overtime work on Saturdays and holidays to the union steward rather than to Smith or Adams when they, respectively, have top seniority in terms of length of service.

WE WILL notify W.R. Grace & Co., Construction Products Division, William Smith, and George A. Adams that we have no objection to the assignment of Smith and Adams, consecutively, in the order of their seniority, of the first daily delivery route and first opportunity for overtime work on Saturdays and holidays they now would have but for the unlawful assignment of top seniority of the union steward.

WE WILL notify W.R. Grace & Co., Construction Products Division, and George A. Adams that we have no objections to the assignment to George A. Adams of the recently acquired tandem-axle truck he now would be assigned to operate but for the unlawful assignment of top seniority to the union steward.

HIGHWAY AND LOCAL
MOTOR FREIGHT DRIVERS,
DOCKMEN AND HELPERS,
LOCAL UNION NO. 701,
INTERNATIONAL
BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND
HELPERS OF AMERICA