of $2,932 is approximately 12 percent of the minimum direct outflow requirement of $25,000.[4] The Employer's sales figures of $776 and $799 to a public utility and to a motor carrier, respectively, are in each instance approximately 2 percent of the minimum requirement of $50,000 for sales to such enterprises.[5] The sales of $7,451 to F. M. Speekman Company is approximately 15 percent of the minimum requirement of $50,000 in the same indirect outflow category.[6] The total of these percentages is in excess of the 100 percent figure necessary to assert jurisdiction under the combined inflow and outflow standard adopted by the Board.[7] Accordingly, we find not only that the Employer is engaged in commerce within the meaning of the Act, but that this Board should assert jurisdiction herein.[8]

2. The labor organization involved claims to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The parties agree and we find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All production and maintenance employees at the Employer's Fresno, California, plant, including installation employees, but excluding office clerical employees, salesmen, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication in this volume.]

[4] *Stanislaus Implement and Hardware Company, Ltd.*, 91 NLRB 618.
[5] *Hollow Tree Lumber Company*, 91 NLRB 635.
[6] *Ibid.*
[7] *The Rutledge Paper Products, Inc.*, 91 NLRB 625.
[8] *Ibid.* In addition to commerce figures already recited, it should be noted that the Employer, during the same fiscal year as used above, sold goods valued at $7,684 to a division of Anderson and Clayton Co., an interstate enterprise over which this Board has asserted jurisdiction in the past (8 NLRB 1297).

GREEN BAY DROP FORGE CO. *and* WALTER LASECKI

LOCAL #186, OF FARM EQUIPMENT AND UNITED ELECTRICAL RADIO AND MACHINE WORKERS OF AMERICA *and* WALTER LASECKI. *Cases Nos. 13–CA–545 and 13–CB–96. December 27, 1951*

Supplemental Decision and Order

On July 23, 1951, the Board issued a Decision and Order[1] in the above-entitled proceeding, finding that the Respondent Union violated

[1] 95 NLRB 399.

Section 8 (b) (2) and (1) (A) of the Act in causing, and the Respondent Company violated Section 8 (a) (3) and (1) of the Act in effecting, the discharge of employee Lasecki because of his failure to maintain his membership in good standing in the Respondent Union as required by the Respondents' union-shop contract. The Board found that, as the union-shop clause did not allow all employees covered thereby the 30-day statutory grace period for becoming a member of the Union, the agreement was not one authorized by the proviso to Section 8 (a) (3) of the Act and therefore could not serve as a defense to the discrimination practiced against Lasecki.

Thereafter, the Respondents filed motions to reconsider Decision and Order and to stay Decision and Order pending a ruling on the motion to reconsider. In their motions the Respondents request dismissal of the complaint, contending that the clauses in the contract recited below validated the union-shop provision. The General Counsel filed an opposing brief and the Respondent Union filed a reply thereto.

The union-shop provision in effect at the time of Lasecki's discharge required, among other things, that "All regular employees [2] shall, as a condition of employment, be members of the Union in good standing." It is thus clear, and the Respondents do not contend otherwise, that this provision does not conform with the limitation that the proviso to Section 8 (a) (3) places on union security agreements. This is so since the union-shop provision does not accord the full 30-day statutory grace period to employees who were not members at the time the agreement became effective.[3] However, the Respondents seek to avoid the consequences of their omission by relying on the following clauses in their contract:

> EFFECTIVE DATE OF SECURITY PROVISIONS
>
> The Union Security Provisions here established shall be in effect when, and to the extent that, the applicable Federal and State laws have been fully complied with.
>
> CONFLICTS BETWEEN TERMS OF AGREEMENT AND LAWS
>
> Any provision of this agreement which shall be in conflict with any Federal or State law shall be and hereby is modified to conform to any State or Federal law. . .

We do not agree with the Respondents that the quoted clauses validated the union-shop provision. Although these clauses osten-

[2] The contract defines a regular employee as one who has completed a probationary period of 30 consecutive work days

[3] See *Charles A. Krause Milling Co.*, 97 NLRB 536, where the Board recently reinterpreted the union-security provisions of Section 8 (a) (3).

sibly recognize the supremacy of the law, the Respondents nevertheless, in plain disregard of the restriction on union security contained in the proviso to Section 8 (a) (3), here adopted a provision which required employees who were not members on the effective date of the agreement, as a condition of employment to join the Union at a time when they were privileged to refrain from so doing. Significantly, nothing in the quoted clauses indicates in what specific respects the union-shop provision was thereby modified; much less, that these nonmember employees were allowed 30 days within which to join. Indeed, the most that can be said for these clauses is that they were designed, not as a *contemporaneous* modification of the union-shop provision, but rather as a means of preserving the union-shop provision in lawful form in the event it was found in *future* litigation that the provision as written conflicted with Federal or State laws.[4] In these circumstances, we find that the fatal omission of the 30-day grace period from the union-shop provision in effect at the time of Lasecki's discharge was not cured by the above-quoted clauses.

In addition to the foregoing, we find that the first quoted clause cannot in any event support the Respondents' position. It is there expressly provided that the union-shop provision shall become operative only "when . . . applicable Federal . . . laws have been fully complied with." (Emphasis added.) Here, it is clear that the Respondents, by failing to accord employees the 30-day statutory grace period, did not comply with the Act. It therefore follows that the necessary effect of the first quoted clause was to prevent the union-shop clause from ever becoming operative and that consequently there was no union-shop clause in existence at the time of Lasecki's discharge to justify the discrimination.

Having reconsidered our Decision and Order in the light of the Respondents' contention, and for the additional reasons stated above, we shall adhere to our previous determination. We shall accordingly deny the Respondents' motions insofar as they request a dismissal of the complaint and a stay.

Order

IT IS ORDERED that the Respondents' motions be, and they hereby are, denied insofar as they request a dismissal of the complaint and a stay.

CHAIRMAN HERZOG and MEMBER REYNOLDS took no part in the consideration of the above Supplemental Decision and Order.

[4] Cf. *Louis Dix d/b/a Hickey Cab Company*, 88 NLRB 327.