strictest impartiality in the conduct of representation elections. It looks with disfavor upon any attempt to misuse its processes to secure partisan advantage.[3] The Board allows broad latitude in carrying on preelection propaganda.[4] But there are limits to propaganda methods which the Board will permit.[5] The Petitioner exceeded those limits in the present case.

The Board has permitted parties to distribute marked sample ballots in order to show their partisans how to vote at the election.[6] But that permission does not extend to the distribution of falsified ballots under the guise of true copies of official ballots used in elections.

We find that the distribution of the ballot in question prevented a free and untrammeled expression of choice by employees. Accordingly, we shall, contrary to the Regional Director's recommendation, set aside the results of the election held on May 14, 1953, and direct a new election.

[The Board set aside the election held on May 14, 1953.]

[Text of Second Direction of Election omitted from publication.]

Chairman Farmer and Member Styles took no part in the consideration of the above Supplemental Decision, Order, and Second Direction of Election.

[3] See The Am-O-Krome Company, 92 NLRB 893, 894, where the Board said: "No participant in a Board election should be permitted to suggest to voters that this Government Agency, or any of its officials, endorses a particular choice."

[4] United Aircraft Corporation, 103 NLRB 102.

[5] E g., United Aircraft Corporation, supra; Timken-Detroit Axle Company, 98 NLRB 790.

[6] L. Gordon & Sons, Inc., supra; Gray Drug Stores, Inc., supra.

NATIONAL LEAD COMPANY, TITANIUM DIVISION *and* C. C. WILSON

CHEMICAL WORKERS' BASIC UNION, LOCAL NO. 1744, Affiliated with the BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, AFL *and* C. C. WILSON

CHEMICAL WORKERS' BASIC UNION, LOCAL NO. 1744, Affiliated with the BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, AFL *and* S. J. CARTER. Cases Nos. 14-CA-886, 14-CB-174, and 14-CB-176. August 4, 1953

DECISION AND ORDER

On February 13, 1953, Trial Examiner C. W. Whittemore issued his Intermediate Report in the above-entitled proceed-

ing, finding that the Respondents had engaged in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent Union and the General Counsel filed exceptions and supporting briefs. The Respondent Union requested oral argument; this request is hereby denied because the record, including the briefs and exceptions, adequately presents the issues and positions of the parties.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the Intermediate Report only to the extent consistent with this decision.

The Trial Examiner found that, in discharging from employment the two charging parties, the Respondent Company violated Section 8 (a) (1) and 8 (a) (3) and that the Respondent Union, by requesting their discharge, violated Section 8 (b) (1) (A) and 8 (b) (2). We disagree with these findings.

On June 5, 1951, the Respondent Company and the Respondent Union [1] signed their first collective-bargaining agreement, effective from May 4, 1951, to March 13, 1952. This agreement contained a clause requiring union membership, as a condition of employment, on the 31st day following the effective date of the union-security clause or following the beginning of employment, whichever was later. Pursuant to a union-authorization election the union-security clause became operative in September 1951. Three days before the end of the contract term the parties executed a succeeding contract to be effective on March 14, 1952, a date immediately following the expiration of the first agreement. During the whole period when there was a union-security arrangement in effect, the only dues paid by either of the charging parties, employees C. C. Wilson and S. J. Carter, were Carter's dues for the month of November 1951. A dues checkoff system was available to them, but they chose not to use it. On several occasions they indicated that they would pay their dues in cash, but, as the Trial Examiner found, the Union rejected these offers because they would not also pay the fines which were imposed for nonattendance at union meetings. No action, because of the employees' failure to pay their fines together with dues, was taken by the Union.

On July 31, 1952, the Union wrote a letter to these 2, and 9 other delinquent employees, in which it demanded the payment within 10 days of all dues owing under the contracts and threatened to seek their discharge in case of default. The letter added: "So that there may be no misunderstanding, this

[1] The name of the Union at that time was Chemical Workers' Basic Union Local No 1, for it did not affiliate with the Brotherhood of Painters, Decorators and Paperhangers of America, AFL, until October 10, 1952, when it acquired its present name.

letter, and the contents thereof, refer only to your obligation to pay periodic dues of your Local Union and has no reference to fines or assessments." Only these 2 employees failed to pay their dues within the time allowed. They made tenders which were belated and rejected for that reason. On August 14, 1952, the Union requested their discharge. Their employment was terminated by the Respondent Company as a result of the Union's request, on August 18 and September 2, respectively.

The Trial Examiner correctly points out that, as the Board has long held, the amended Act does not countenance discharge of any employee because of failure to pay fines.[2] He then apparently applies this rule in reaching his conclusion that the Respondent Union "forfeited" its legal right to demand dues for the period from September 1951 to July 31, 1952, during the time it had attached to the dues requirement the "illegal condition" of simultaneous payment of fines. We can see no justification for such an extension of the rule regarding discharges for failure to pay fines. The Union's demand, without more, that the employees pay fines was clearly not illegal in this situation. Under Section 8 (a) (3) and 8 (b) (2), the Union's financial arrangement with its members comes within the purview of the Act only when discrimination against the employee is involved "in regard to hire or tenure of employment or any term or condition of employment." A union's imposition of a fines requirement together with the payment of dues is not proscribed conduct under the Act so long as the union does not request the employer to discriminate against the employee for failing to tender his fines, and so long as the employer does not so discriminate. In this case the earlier insistence upon fines did not result in any change in these employees' employment status, nor was there a request to make such a change. On the contrary, the discharges were brought about only after the demand for dues was separated from the demand for fines and after the employees were given a fresh and ample opportunity to clear themselves with the Union by tendering their dues alone. We find no violation of the Act in this conduct of the Respondents.

The Trial Examiner also found that, on July 31, 1952, "when the illegal demand for fines was first withdrawn," these employees were in the same position as new, nonmember employees and therefore entitled to a 30-day grace period. For reasons expressed in the above paragraph, we see no reason to regard these employees differently from any other dues delinquents. We do not find a violation, therefore, in the fact that no grace period was given these employees.[3]

[2] Westinghouse Electric Corporation, 96 NLRB 522; Pen and Pencil Workers Union, 91 NLRB 883.

[3] North American Refractories Company, 100 NLRB 1151

Finally, the General Counsel contends that the Union improperly demanded, about August 1, 1952, dues owing from the term of the first contract, on the ground that the language of the current agreement required union membership in good standing only "during the life of this Agreement." A determination of the liability of these employees for the dues which accrued between September 1951, and March 13, 1952, requires an inspection of the contractual relationship between the Respondents. The union-security arrangement in the second contract was, essentially, a mere renewal of the provision in the first one. Moreover, there was no time lapse between the terms of the two successive agreements. With regard to union security, therefore, there was unmarred continuity from September 1951, to the time of their discharge. To this extent at least, the second contract was, in effect, a continuation of the previous contract, rather than a completely new bargaining agreement. To find that these employees are relieved from the payment of dues owing at the conclusion of the first in a series of uninterrupted contract terms would, we believe, place undue emphasis upon the form of the contractual arrangement. The Board in a number of cases, particularly with reference to union-security clauses,[4] has looked to the substance rather than the technical form of the contractual relationship between unions and employers.

Under the circumstances and for the reasons set forth above, we find that the Respondent Company, National Lead, Titanium Division, did not violate Section 8 (a) (1) and 8 (a) (3) of the Act, and that the Respondent Union, Chemical Workers' Basic Union, Local No. 1744, affiliated with the Brotherhood of Painters, Decorators and Paperhangers of America, AFL, did not violate Section 8 (b) (1) (A) and 8 (b) (2) Accordingly, we will dismiss the complaint.

[The Board dismissed the complaint.]

Chairman Farmer and Member Styles took no part in the consideration of the above Decision and Order.

[4] See, for example, North American Refractories Company, supra; Sylvania Electric Products, Inc , 100 NLRB 357.

Intermediate Report

STATEMENT OF THE CASE

Charges having been duly filed and served, complaints, an order of consolidation, and notice of hearing having been issued and served by the General Counsel of the National Labor Relations Board, and answers having been filed by the above-named Respondents, a hearing involving allegations of unfair labor practices in violation of Section 8 (a) (1) and (3) and Section 8 (b) (1) (A) and (2) of the National Labor Relations Act, as amended, 61 Stat 136, herein called the Act, was held in St Louis, Missouri, on January 21, 1953, before the undersigned Trial Examiner

In substance, the complaints allege and the answers deny that· (1) On August 14 and September 2, 1952, respectively, the Union caused the Company to discharge employees C. C. Wilson and S. J. Carter for nonmembership in the Union when membership had been denied them for reasons other than failure to tender periodic dues, and (2) by such discharges the Respondents coerced and restrained employees in the exercise of rights guaranteed by Section 7 of the Act.

At the hearing all parties were represented by counsel, were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence pertinent to the issues, to argue orally upon the record, and to file briefs and proposed findings of fact and conclusions of law A brief has been received from General Counsel.

Upon the entire record in the case, and from his observation of the witnesses, the Trial Examiner makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT COMPANY

National Lead Company is a New Jersey corporation with plants, offices, and warehouses located throughout the United States This proceeding involves only the Company's Titanium Division located in St Louis, Missouri, where it is engaged in the manufacture of titanium pigments. During the last calendar year the Company used at this plant raw materials valued at more than $500,000, of which more than 40 percent was shipped to it from points outside the State of Missouri During the same period about 90 percent of its finished products, valued at more than $1,000,000, was shipped to points outside the State of Missouri.

All parties conceded at the hearing that the Respondent Company is engaged in commerce within the meaning of the Act It is so found

II. THE LABOR ORGANIZATION INVOLVED

Chemical Workers' Basic Union, Local No 1744, affiliated with the Brotherhood of Painters, Decorators and Paperhangers of America, A.F.L., is a labor organization admitting to membership employees of the Respondent Company

III. THE UNFAIR LABOR PRACTICES

A. The facts

Employees C. C. Wilson and S. J. Carter were discharged on August 14 and September 2, 1952, respectively, because each failed to pay to the Union, within 10 days after July 31, 1952, his accumulated back dues. Whether or not the discharges were violative of the Act is the major issue presented.

At the time its union-shop provisions were invoked by the Union, a written agreement existed between the Respondents, the legality of which is not challenged by General Counsel. In short, it appears that in July 1952, the parties were operating under a 2-year contract executed on March 10, 1952, which contained the following "union-security" clause:

> The Company agrees that every employee, who is included in the unit of employees covered by this Agreement, shall, as a condition of employment, be or become a member of the Union on the thirty-first (31st) day following the effective date of this union-shop clause or following the date of his employment, whichever, is later, and shall maintain such membership in good standing during the life of this Agreement.[1]

This agreement succeeded a similar contract executed in 1951, which contained a similar union-security clause, effective September 1, 1951, which followed a Board election and certification

[1] This clause also contains a proviso paraphrasing language of Section 8 (a) (3) of the Act to the effect that there is to be no discrimination for nonmembership if denied or terminated for any reason other than failure to tender periodic dues and initiation fees uniformly required.

On July 31, 1952, the Union sent to several employees, including Wilson and Carter, letters containing the following text, in part:

> As you know, and as you have been previously advised, the records of said Local Union reveal that you are delinquent in the payment of the periodic dues of said Local Union, and that, pursuant to the foregoing By-Law provisions, you are now in bad standing The purpose of this letter is to advise you, anything heretofore to the contrary notwithstanding, that unless, within ten (10) days from the date of this letter, you pay the periodic dues which have accrued against you and remain unpaid and to which the Union is entitled pursuant to its collective bargaining agreements with your Employer, and pursuant to the provisions of the Labor-Management Relations Act, 1947, a demand will be made immediately thereafter upon your Employer to discharge you for your delinquency in and failure to pay the aforementioned periodic dues So that there may be no misunderstanding, this letter, and the contents thereof, refer only to your obligation to pay periodic dues of your Local Union and has no reference to fines or assessments. Similarly, this letter refers only to those Local Union dues which became due and payable in the month of September, 1951, and thereafter, inasmuch as the union-shop clause in the first contract between your Employer and this Union did not become effective until the last part of August, 1951. Accordingly, in conformity with the law, this Union will not seek your discharge for failure to pay your union dues prior to the effective date of said union-shop clause With reference to such prior dues, if any, owed by you, remedies other than your discharge from employment will be invoked to collect same, if necessary.

Copies of these letters were sent to the Company

Upon receipt of his letter Carter, then on sick leave, promptly wrote to the Union and pointed out that a union steward had previously refused to accept his dues without the accompanying payment of fines, (imposed by the Union for failure to attend meetings) and asked for an extension of time because he was sick. Although Morris Parker, head of the Union, received Carter's plea he made no reply

Wilson did not receive his letter at the time. Its registered delivery was signed for by a niece, temporarily at his home, on August 1, the day he left for a vacation trip The niece neglected to inform either Wilson or his wife of its receipt and the document was not finally located for about a year On August 12, when he returned from his vacation, Wilson was told by his brother that he was, in effect, in trouble with the Union The following day, August 13, he went to the plant and offered Parker his back dues Parker refused to accept them, saying he was too late Wilson, however, went to the post office, obtained and sent on to the Union a money order Many days later it was returned to him. On August 14 the Respondent received from the Union a written demand that both Wilson and Carter be discharged at once because they were "delinquent in the payment of the periodic dues." Also on August 14 Wilson went to the plant, where a statement from him was obtained by George Hoesch, then personnel director Although this statement, in evidence, shows clearly that Hoesch was informed of Wilson's claim that his previous tender of periodic dues had been rejected because he would not at the same time pay fines, the personnel director fired him on Monday, August 18, the day he was due to return from his vacation.

Also on August 18, although still on sick leave, Carter managed to obtain $30, which he sent by money order to the Union It was neither acknowledged nor returned until after he was discharged by Hoesch, on September 2, the day he returned from sick leave As in the case of Wilson, Hoesch fired Carter after getting from him a signed statement containing a similar claim that his previous tender of dues had been rejected because unaccompanied by fines

An unfair labor practice charge, relating to the two dismissals, was served upon the Company on November 4, and on November 12 both employees were offered reinstatement. It was agreed by the parties at the hearing that remedial back pay, if any, should cover the period from the discharges to November 12, 1952.

As to the subsidiary, but important, issue of union dues, credible evidence establishes and the Trial Examiner finds that at all times from December 1951, until its above-quoted letter of July 31, 1952, the Union, by its office girl, Parker, or its steward, Foster Washington, had refused to accept from either Wilson or Carter any periodic dues unless they paid, at the same time, accumulated fines for failing to attend meetings.

In late May 1952 the Union placed in the timecard racks of Wilson, Carter, and other employees cards showing the amounts of both fines and dues each owed to the Union, and at the same time posted a notice in the plant to all members stating, in effect, that all who did not pay "these obligations" within the week "shall continue to be in bad standing and will not be permitted to vote "

On July 31, 1952, for the first time since the execution of the new contract, the Union informed Wilson and Carter that it no longer demanded payment of both fines and dues

B. Conclusions

General Counsel, in his brief, ably argues three claims: (1) that by insisting upon both fines and dues until July 31, 1952, the Union lost any contractual right to seek the discharges for failure to pay any dues before that date. (2) that in any event the Union could not demand the discharges for failure to pay dues accrued before March 1952--under the expired contract; and (3) that having declared the employees to be no longer in "good standing," the Union, by the 10-day notice of July 31, illegally deprived them of the statutory 30-day period in which to become in good standing

The Trial Examiner considers it unnecessary here to appraise the merit of the argument as to point (2)

There is merit to General Counsel's position as to points (1) and (3). As the Board has long held, the amended Act does not countenance discharge of any employee because of failure to pay fines.[2] Until July 31 the Union had tainted its legal right to demand period dues with the illegal condition of simultaneous payment of fines and by maintaining that stand the Union forfeited any contractual or legal right to demand summary discharge.

Since May 1952, both employees had been, by the Union's own announcement, in bad standing and deprived of the right to vote. On July 31, therefore, when the illegal demand for fines was first withdrawn, they were in the same position as new, nonmember employees, and both by the contract and the Act could not lawfully be discharged until the expiration of the 30-day period, and then only in the event they declined to tender the current month's dues. Whatever may be a labor organization's right under its bylaws to impose fines, or in any other forum to collect them, the Act places specific restrictions upon both the employer and the union as to union requirements which may be permissible conditions of employment.

in summary, the Trial Examiner concludes and finds that the Respondent Company discriminated, and the Respondent Union caused it so to discriminate, against employees Wilson and Carter because their membership in the Union had been terminated on grounds other than their failure to tender the periodic dues and the initiation fees uniformly required by the Union as a condition of acquiring or retaining membership therein, and that by such conduct the Respondents interfered with, restrained, and coerced employees in the exercise of rights guaranteed by 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 Company described in section I, above, have a close, intimate and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce

V. THE REMEDY

Having found that the Respondents have engaged in unfair labor practices, the Trial Examiner will recommend that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Wilson and Carter have been offered reinstatement. The Union has notified the Company in writing that it has no objection to reinstatement with full rights and privileges. There remains the matter of back pay. It will be recommended that the Respondents jointly and severally make the said employees whole for any loss of pay by reason of the discrimination against them by payment to each of them of a sum of money equal to that which he would normally have earned as wages from the respective dates of discrimination to November 12,

[2] Pen and Pencil Workers Union, 91 NLRB 883.

1952, less his net earnings during said period and less such other sums as would normally have been deducted from his wages for deposit with State and Federal agencies on account of social security and other similar benefits. The amount of back pay due shall be computed in accordance with Board policy set out in F. W. Woolworth Company, 90 NLRB 289.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the Trial Examiner makes the following:

CONCLUSIONS OF LAW

1 Chemical Workers' Basic Union, Local No. 1744, Affiliated with the Brotherhood of Painters, Decorators and Paperhangers of America, A.F.L., is a labor organization within the meaning of Section 2 (5) of the Act

2. By discriminating in regard to the hire and tenure of employment of C. C. Wilson and S. J. Carter for nonmembership in the above-named Union when it had reasonable grounds for believing that such membership had been terminated for reasons other than failure to tender periodic dues and initation fees, the Respondent Company has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

3. By interfering with, restraining, and coercing the aforesaid employees in the exercise of the rights guaranteed in Section 7 of the Act, the Respondent Company has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

4 By causing the Respondent Company to discriminate against the aforesaid employees in violation of Section 8 (a) (3) of the Act, the Respondent Union has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b) (2) of the Act.

5. By restraining and coercing said employees the Respondent Union has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Act.

6 The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

[Recommendations omitted from publication]

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to the recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify you that:

WE WILL NOT encourage membership in Chemical Workers' Basic Union, Local No 1744, affiliated with the Brotherhood of Painters, Decorators and Paperhangers of America, A.F.L., or in any other labor organization of our employees, by discharging any of our employees or by discriminating against them in any other manner in regard to their hire or tenure of employment, or any term or condition of employment, except to the extent permitted by Section 8 (a) (3) of the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized by Section 8 (a) (3) of the Act.

WE WILL make whole C. C. Wilson and S. J. Carter for any loss of pay suffered as a result of the discrimination against them.

All our employees are free to become, remain, or to refrain from becoming or remaining, members of the above-named Union or any other labor organization, except to the extent that this right may be affected by an agreement authorized by Section 8 (a) (3) of the Act.

NATIONAL LEAD COMPANY,
TITANIUM DIVISION,
Employer.

Dated ..... By ..... (Representative) ..... (Title)

This notice must remain posted for 60 consecutive days from the date hereof, and must not be altered, defaced, or covered by any other material

APPENDIX B

NOTICE

TO ALL MEMBERS OF CHEMICAL WORKERS' BASIC UNION, LOCAL NO. 1744 AFFILIATED WITH THE BROTHERHOOD OF PAINTERS, DECORATORS, AND PAPERHANGERS OF AMERICA, A.F.L., AND TO ALL EMPLOYEES OF NATIONAL LEAD COMPANY, TITANIUM DIVISION

Pursuant to the recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify you that:

WE WILL NOT cause or attempt to cause National Lead Company, Titanium Division, its officers, agents, successors, or assigns, to discharge or otherwise discriminate against its employees in regard to their hire or tenure of employment, or any term or condition of employment, to encourage membership in our labor organization in violation of Section 8 (a) (3) of the Act.

WE WILL NOT in any like or related manner restrain or coerce employees of National Lead Company, Titantium Division, its successors or assigns, in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized by Section 8 (a) (3) of the Act.

WE WILL make C. C. Wilson and S. J. Carter whole for any loss of pay they may have suffered because of the discrimination against them.

CHEMICAL WORKERS' BASIC UNION, LOCAL 1744, Affiliated with the BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, A.F.L., Labor Organization.

Dated ..... By .....
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date hereof, and must not be altered, defaced, or covered by any other material.

DAZEY CORPORATION *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT NO. 9, AFL. Case No. 14-CA-884. August 4, 1953

DECISION AND ORDER

On April 23, 1953, Trial Examiner Albert P. Wheatley issued his Intermediate Report in the above-entitled proceeding, finding that although the Respondent had violated Section 8 (a) (1) of the Act, the record as a whole does not warrant the issuance of a remedial order. He also found that the Respondent had not engaged in other unfair labor practices, as alleged in the complaint, and recommended that the complaint be dismissed in its entirety, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the General