

All broadcast engineers and technicians, exclusive of all office and clerical employees, announcers, watchmen, guards and all other employees, and supervisory employees within the meaning of the National Labor Relations Act.

WE WILL NOT poll our employees concerning their desires or wishes relative to the above-named or any other labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights to self-organization, to form labor organizations or to join or assist the above-named or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

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

HOWARD W. DAVIS, d/b/a
THE WALMAC COMPANY,
Employer.

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

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

VICTOR METAL PRODUCTS CORPORATION OF DELAWARE
and INTERNATIONAL ASSOCIATION OF MACHINISTS,
LOCAL LODGE 1853, AFL

GENERAL TEAMSTERS LOCAL NO. 137, AFL *and* INTER-
NATIONAL ASSOCIATION OF MACHINISTS, LOCAL LODGE
1853, AFL. Cases Nos. 20-CA-809 and 20-CB-270. October
30, 1953

DECISION AND ORDER

On July 14, 1953, Trial Examiner William E. Spencer issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent Employer had not engaged in unfair labor practices and recommending that the complaint be dismissed as to this Respondent. The Trial Examiner also found that the Respondent Union had engaged in and was engaging in certain unfair labor practices and recommended that it 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 filed exceptions to the Intermediate Report and a brief in support thereof.

The Board has reviewed the rulings made by the Trial Examiner 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, the brief, and the entire record in the case, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations, with the following additions.¹

THE REMEDY

Employee Bidema was unlawfully discharged at the Respondent Union's request on January 23, 1953. She was reinstated to her position on May 4, 1953. The Trial Examiner recommended that the Union compensate her for the loss in pay she suffered from January 23 to May 4. The Union has excepted to this recommendation, contending that, as its collective-bargaining contract expired on March 15, 1953, and as it was supplanted as bargaining representative by the Machinists 2 days later, its back-pay liability should terminate as of March 15, 1953.

After she was discharged, Bidema made repeated attempts before March 15 to secure reinstatement. Her efforts were blocked by the Union. On March 17, the Machinists won a Board-conducted election to determine the bargaining representative of the Employer's employees, and was certified as such representative on March 25, 1953. Later that month, Bidema and a representative of the Machinists again requested her reinstatement. The Employer replied that, as it had been charged with having committed unfair labor practices in discharging Bidema, it was concerned lest her reinstatement be taken as an admission of guilt. After the Employer's attorney was assured by the Board's Regional Director that the reinstatement would not have the effect feared, Bidema was returned to her job. At no time did the Union inform the Employer that it was withdrawing its objections to the reinstatement of Bidema.

The purpose of the Board's remedial orders is not punitive, but to restore the situation "as nearly as possible, to that which would have obtained but for the illegal discrimination."² As a result of the Respondent Union's unlawful conduct, Bidema suffered a loss of wages from January 23, 1953, to May 4, 1953. The Trial Examiner's recommended order merely requires the Union to make her whole for this loss--in other

¹ The Respondent Union has excepted to the finding of the Trial Examiner that it unlawfully caused the Respondent Employer to discharge employee Bidema, upon the ground that the Trial Examiner erroneously attributed to Union President Howell, as a matter of law, Business Agent Davis' belief or knowledge of Bidema's activities on behalf of a rival union. However, the Trial Examiner inferred as a fact, with which finding we agree, that Davis had discussed Bidema's activities with Howell before the latter decided to ask for Bidema's discharge. Thus, the Trial Examiner specifically discredited Howell's denial of such knowledge and concluded that it was "highly improbable that in the discussion which occurred between Howell and Davis with respect to Bidema's discharge, no mention was made of these matters [Bidema's activities]." We perceive no reason for upsetting the Trial Examiner's credibility finding (Standard Dry Wall Products, Inc., 91 NLRB 544, enfd, 188 F 2d 362 (C A 3)), or the inference which he drew from the testimony.

² Phelps Dodge Corp. v. N L R B., 313 U S. 177, 194; F. W. Woolworth Co., 90 NLRB 289, 291.

words, to restore Bidema to the situation which would have obtained but for the illegal discrimination practiced against her.

It is true that the Union's collective-bargaining contract with the Employer ended on March 15, 1953. But this did not alter the fact that the Union had unlawfully caused the Employer to discharge Bidema and that the loss of wages suffered by her from March 15 to May 4 resulted from that unlawful act. The Employer's delay in reinstating her reflected the not unreasonable reaction of a party involved in litigation. It must be considered as the proximate result of the Union's unlawful conduct. Moreover, the Union took no affirmative steps to secure Bidema's reinstatement and thus help reduce the amount of the loss being suffered by Bidema.³ As between the victim of the unlawful conduct and the wrongdoer, we believe that the loss suffered by the former should equitably be borne by the latter. We believe that such a remedy is also necessary to effectuate the policies of the Act. Accordingly, we shall direct that the Respondent Union make Bidema whole for the entire loss of earnings suffered by her from January 23, 1953, to May 4, 1953, in the manner set out in the "Remedy" section of the Intermediate Report.

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondent Union, General Teamsters Local No. 137, AFL, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Causing or attempting to cause Victor Metal Products Corporation of Delaware, Chico, California, its officers, agents, successors, and assigns to discriminate against any employee in violation of Section 8 (a) (3) of the Act.

(b) In any other manner restraining or coercing employees of the aforesaid employer, its successors, or assigns in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

³Compare Pen and Pencil Workers Union, Local 19593 (Parker Pen Company), 91 NLRB 883; Pinkerton's National Detective Agency, Inc., 90 NLRB 205, in which the Board provided that a union's back-pay liability for causing an employer to discriminate against an employee should terminate 5 days after the union should have notified the employer that it had no objections to the reinstatement of such employee.

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

(a) Make whole Geraldine Bidema for any loss of pay suffered because of its unlawful action in requiring her discharge, in the manner set forth in the section of the Intermediate Report entitled "The Remedy."

(b) Post at its business office and meeting places, in Chico, California, copies of the notice attached hereto and marked "Appendix A."⁴ Copies of said notice, to be furnished by the Regional Director for the Twentieth Region, shall, after being duly signed by an official representative of the Respondent Union, be posted by it immediately after receipt thereof and maintained by it for a period of at least sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent Union to insure that such notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for the Twentieth Region in writing within ten (10) days from the date of this Order of the steps taken to comply therewith.

IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed, insofar as it alleges that the Respondent Employer violated Section 8 (a) (3) and 8 (a) (1) of the Act.

Member Murdock, dissenting in part:

I agree with my colleagues in the disposition of the substantive portions of this case. I do not agree, however, with their refusal to terminate the Union's liability for back pay for Bidema when the contract expired and it ceased to be the bargaining representative in March 1953. It is clear that after that time Bidema's failure to get reinstatement to her job until several weeks later on May 4, 1953, was not because of any objection on the part of the Union. It is no less clear that even an express withdrawal by the Union of its earlier objections to Bidema's employment would not have been of any avail. The Employer's refusal to reinstate Bidema in March when she and the new bargaining representative requested it was predicated on a fear that to do so might be construed as an admission of guilt of the unfair labor practice with which it was charged. Under these circumstances I would not hold the Union liable for back pay during this period.

⁴In the event that this Order is enforced by decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, enforcing an Order."

Intermediate Report and Recommended Order

STATEMENT OF THE CASE

Upon complaint and notice of hearing duly issued and served on the parties (Victor Metal Products Corporation of Delaware,¹ International Association of Machinists, Local Lodge 1853, AFL,² and General Teamsters Local No 137, AFL³) by the General Counsel of the National Labor Relations Board,⁴ a hearing before the undersigned Trial Examiner was held at Chico, California, on June 11 and 12, 1953. All parties were represented at the hearing where they were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence bearing on the issues, to argue orally upon the record, and to file briefs and/or proposed findings of fact and conclusions of law. There was oral argument at the close of evidence and briefs have been filed by the General Counsel and the Union.

The complaint alleged in substance that the Union violated Section 8 (b) (1) (A) and 8 (b) (2) of the National Labor Relations Act, 61 Stat 136, herein called the Act, by causing the Employer discriminatorily to discharge Geraldine Bidema, its employee, and that the Employer violated Section 8 (a) (1) and (3) of the Act by its discriminatory discharge of the said Bidema. In their duly filed answers the Respondents, respectively, denied the commission of the alleged unfair labor practices.

Upon the entire record in the case and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

The Employer is a Delaware corporation with plants located in various States including a plant at Chico, California, its sole operation involved in this proceeding. At its Chico plant, the Employer is engaged in the production of aluminum metal tubes. During the calendar year 1952 the Employer purchased and received at its Chico plant materials from outside the State of California exceeding \$300,000 in value, and produced and handled goods at its Chico plant exceeding \$300,000 in value, for shipment to purchasers outside the State of California. The Board's jurisdiction is conceded.

II. THE LABOR ORGANIZATIONS INVOLVED

The Teamsters and the Machinists, respectively, are labor organizations within the meaning of the Act, affiliated with the American Federation of Labor.

III. THE UNFAIR LABOR PRACTICES

Preliminary Statement

During the period material to the issues herein there was in existence a bargaining agreement between the Employer and the Union which included a union-shop clause. This clause provided that only "members in good standing in the Union shall be retained in employment"; defined members in good standing as "employee members in the Union who tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership", and required discharge upon written notice from the Union "of failure on the part of any individual to complete membership in the Union or of failure to continue payment of dues to the Union. . ." The General Counsel concedes the validity of the contract, but contends that the phrasing of the union-security clause is ambiguous.

By letter dated January 22, 1953, the Union requested the Employer to discharge Geraldine Bidema. The letter stated, *inter alia*, "Geraldine Bidema has consistently been in arrears in payment of her dues. She is not a member in good standing of our local union as of this date." Pursuant to this request the Employer discharged Bidema on January 23. In causing this dis-

¹Called herein the Employer or the Respondent Company

²Called herein the Machinists.

³Called herein the Union or the Teamsters

⁴Called herein the Board.

charge the Union is alleged to have violated Section 8 (b) (1) (A) and (2) of the Act, and in effectuating the discharge the Employer is alleged to have violated Section 8 (a) (1) and (3) of the Act.

With Respect to the Employer

Bidema was the fourth employee to be discharged under the union-shop clause of the Union's contract with the Employer. In each instance the Employer acted promptly upon receipt of the Union's written request. The form of the Union's notice was substantially the same in all cases except that the language in Bidema's notice, quoted above, did not appear in prior notices.⁵ I see nothing in this additional language which could reasonably be construed as putting the Employer on notice that Bidema's discharge was sought for reasons other than her failure to pay her union dues. We are asked to find, however, that the Employer had reasonable grounds for believing that her discharge was sought for other reasons. We are asked to infer this from the timing of the request and statements made by Bidema and others at the time of, and following, her discharge.

As to the timing. On January 13, 1953, a representation petition was filed by the Machinists with respect to the unit of employees then represented by the Union, and on January 14 the Employer was advised of the Machinists' claims of representation and the filing of the petition. On January 17, the Employer was served with notice of hearing on the Machinists' petition, the said hearing to occur on January 23. Because of these communications the Employer was aware at the time it discharged Bidema that the Machinists were attempting to oust the Union as bargaining representative. The discharge actually occurred on the day the representation hearing was held. There is, however, no evidence that the Employer was opposed to the Machinists or preferred the Union over the Machinists, or vice versa. Bidema's activities on behalf of the Machinists, by her own admissions, consisted of a single conversation with three other employees during a noon recess at the plant and attendance at a single meeting of the Machinists. There is no evidence that the Employer had knowledge of these activities and no evidence from which such an inference might reasonably be drawn. I do not find in the sole fact that the discharge request came on the eve of the representation hearing grounds for inferring that the Employer thereby had reason to believe that the request was based on reasons other than her failure to maintain membership in good standing in the Union. The Union was not deprived of the fruits of its contract by the fact that a hearing on a representation petition filed by a rival union was about to be held.

As to the statements by Bidema and others made to the Employer at the time of her discharge. Bidema testified that when she was handed her termination notice by Robert L. Griffen, the Employer's acting manager, she told him that she did not understand the Union's discharge request because she was not that far behind in her dues; that she could get her union book and show him that she "wasn't that far behind"; to which he replied, "Well, we will have to take the Teamsters' word for it." Charles H. Jones, then her fiance, now her husband, who had been discharged at the Union's request in November 1952, testified that he saw Bidema the afternoon of her discharge, and after looking at her dues book called Griffen by telephone, suggested that he should "check into" the matter of the Union's discharge demand, and told Griffen that he had Bidema's dues book and that it showed her "not far enough behind to be suspended." Griffen replied that the Employer was bound by its contract with the Union and could do nothing further in the matter of Bidema's discharge. Griffen testified concerning his conversation with Bidema that she said merely, "I had no idea I was that far in arrears." On or about February 3, a representative of the Machinists, accompanied by Bidema and Jones, saw Griffen and requested Bidema's reinstatement. He produced Bidema's dues book and showed Griffen that she had paid 1 month's dues on January 26. Griffen then called the Union's office and was informed by the Union's business agent, William S. Davis, that Bidema had paid 1 month on her back dues but "was still not a member in good standing and could not be reinstated."

I credit Griffen's version of the conversation he had with Bidema on the occasion of the latter's discharge, but crediting in full the General Counsel's witnesses, I still would be

⁵ The form used in prior notices was:

This is to notify you that, under Article One, Section Four, Paragraph Two of the Agreement between your company and Gen. Teamsters Local #137 - I am officially requesting you to remove _____ from the employment

unable to find that their statements to Griffen were of such character as to give rise in the Employer's mind of a reasonable belief that the Union had requested her discharge for reasons other than her failure to pay dues uniformly required to maintain good-standing membership. That she was delinquent in her dues was not denied by anyone. That she was still delinquent after paying a month's dues on January 26 was not denied. Jones told Griffen that she was not sufficiently in arrears to have her membership in the Union "suspended." This was something quite different from asserting that she had maintained her membership "in good standing." The Board has consistently held that the word "membership" as used in the union-shop provisos to Section 8 (a) (3) and as normally employed by parties in union-shop contracts means good-standing membership Ferro Stamping and Manufacturing Co., 93 NLRB 1459, Firestone Tire and Rubber Co., 93 NLRB 981.⁶ And in none of the conversations with the Employer relating to her discharge was it suggested that her discharge had been required because of her activities on behalf of the Machinists or for any reason other than her failure to pay her dues. Under such circumstances the Employer was under no duty to launch an investigation into the internal affairs of the Union to determine whether in requiring Bidema's discharge the Union was following uniform and lawful practices. Bidema's dues-delinquency having been affirmed by herself and everyone else who communicated with the Employer with respect to her discharge, and no other reasons having been suggested as a cause of the discharge request, it is clear that the Employer in effectuating her discharge acted in entire good faith, under the terms of its contract with the Union, and in the reasonable belief that the Union had requested her discharge for the sole reason that she had failed to maintain good-standing membership.

With Respect to the Union

Bidema joined the Union in May 1950. There were monthly dues payable on or before the first of each calendar month. Section 2 of Article XV of the Union's bylaws provided

Any member going more than ninety (90) days in arrears in dues shall stand suspended from the Union. Such member may only be returned to good standing upon the payment of a reinstatement fee or as the Executive Board may direct. (Emphasis supplied.)

Bidema paid her first dues on May 20, 1950, and with the exception of February 1951, she at no time paid her dues on or before the first of the month for which they were due. She was sent suspension notices on the following dates: August 18, 1951; January 18, 1952, February 18, 1952; March 18, 1952, September 18, 1952; October 18, 1952, November 18, 1952; December 18, 1952, January 18, 1953; February 18, 1953. These notices bore the following text

The official records show you are three months in arrears in dues. According to Article 10, Section 6 (C) of the Constitution you shall be suspended unless you adjust yourself in good standing by ____ (Emphasis supplied)

In each instance the date inserted was the tenth of the fourth month in which dues payments were in arrears. Article 10, Section 6 (C) provided:

All members paying dues to local unions must pay them on or before the first day of the current month, in advance. Any member who shall be three months in arrears in the payment of dues, fines, assessments, or other charges, at the end of the third month, shall automatically stand suspended and shall not be entitled to any rights or privileges as a member of the local union or International Union. Local unions may provide suspension or expulsion, or lesser periods of arrearages

On each occasion that Bidema received a suspension notice she paid 1 month's dues on or before the effective date of the notice, thus avoiding actual suspension from membership. While the Union's constitution and bylaws provide for automatic suspension when dues pay-

⁶The union-shop clause herein in defining membership in good standing adopts language from the proviso . . . "if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership . . ." Section 8 (a) (3) (Emphasis supplied.)

ments are 3 months in arrears, the suspension notice itself clearly provided a period of grace in which the member in arrears could escape suspension, and admittedly this was the uniform practice of the Union. The suspension notice, however, like the Union's constitution and bylaws, treats the delinquent dues-payer as having already lost the status of good-standing membership, because it states that suspension will follow unless the delinquent member adjusts himself in good standing by the given date. I am therefore unable to agree with the General Counsel's argument in his brief that until the member is actually suspended he maintains his membership in good standing.

On December 15, 1952, Bidema paid dues for the month of October. These were the last dues she paid prior to her discharge. She was therefore more than 3 months in arrears at the time the Union requested her discharge. Her next dues payment was made on January 26, following her discharge, and was for but a single month. This payment stopped her suspension but, as I have construed the Union's constitution and bylaws, did not restore her to good-standing status. She was not, therefore, in good standing at the time of the Union's request and the discharge which followed it.

It has been observed that the definition of good-standing membership appearing in the union-security clause under which her discharge was effectuated, adopts language from the provisos to Section 8 (a) (3) of the Act. It is obvious therefrom that the parties intended that the union-shop clause should conform to the statute. As the Board has construed the language of the provisos, outright expulsion or suspension from membership does not have to precede the discharge demand to make it lawful, if in fact the person whose discharge is sought has lost good-standing membership through failure to pay uniformly required dues. Suspension of good-standing membership is "termination" of "membership" within the meaning of the provisos and, I think, within the meaning of the union-security clause herein. Electric Auto-Lite Company, 92 NLRB 1073, 1078, footnote 11. As stated by the Board, the purpose of the union-shop provisos was to eliminate "free riders." Charles A. Krause Milling Co., 97 NLRB 536, 542. If the parties, in the opening clause of the union-security provision, which states that only "members in good standing in the Union shall be retained in employment," had not intended that "good standing" should qualify total suspension from membership, such language would have been superfluous and meaningless. The definition of good-standing membership which follows is, I think, merely precautionary language which would avoid running afoul of the statute, and as this language from the provisos has been construed by the Board, it neither adds to nor subtracts from the remainder of the union-security provision which clearly expresses the intent of the parties.

In agreement with counsel for the Respondent Union I have thus far found that at the time of the discharge demand and the discharge which followed it, Bidema had lost her good-standing membership status, and since the same dues were required of her as were required of all other members, she had lost it through failure to pay uniformly prescribed dues. Under a literal reading of Section 8 (b) (2) of the Act⁷, it might be argued that this firmly establishes that there was no violation by the Respondent Union, inasmuch as Bidema, through her failure to pay uniformly prescribed dues, terminated her own good-standing membership and thereby rendered herself vulnerable to discharge under an admittedly valid union-shop contract, but it is the General Counsel's further position that the Union did not request her discharge because of her loss of good-standing membership but because of the Union's belief that she was active on behalf of the Machinists. To substantiate this latter position the General Counsel relies on the timing of the discharge request, evidence purporting to show that in similar cases of dues-delinquencies the Union did not require the delinquent member's discharge; and evidence of the Union's knowledge and belief that Bidema was instrumental in bringing the Machinists into the plant. These contentions will be discussed in inverse order.

Bidema signed an authorization card for the Machinists on December 15, 1952, and, as previously said, her activities for the Machinists consisted of attendance at one meeting and a single conversation which she had with three fellow-employees during a lunch recess at the plant. There is no question, however, that the Union suspected Jones, her fiance, who had been discharged at the Union's request in November 1952, of soliciting the Machinists to organize the plant, and Bidema's engagement to Jones was made public by a posting on a bulletin board in the plant about a week prior to her discharge. From her engagement to Jones the Union

⁷ The pertinent provisions of Section 8 (b)(2): "... to cause ... an employer to discriminate against an employee ... to whom membership has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership"

may have inferred that she was equally active with him in espousing the Machinists' cause, but whatever its source the Union's belief that Bidema was active for the Machinists is clearly established in the following excerpts from the examination by Union's counsel of the Union's business agent, Davis:

Q. When did you become aware of the fact that Miss Bidema had been active on behalf of the Machinists?

A. The early part of January I heard talk out at the plant.

Q. And Miss Bidema was singled out, that is, her name was mentioned?

A. Yes, it was singled out.

Q. Were there any other names mentioned?

A. Yes.

Q. Can you recall what names?

A. Charley Jones was very much brought into it

Q. Anybody besides Charley Jones and Miss Bidema?

A. I don't recall any other names

We also have Dorothy Mack's undisputed and credited testimony that Davis told her he thought Jones "and his girl friend" had something to do with the Machinists seeking to organize the plant, and the mutually corroborative testimony of Robert Neiter and Dora C. Smith that at a meeting of the Union on March 17, 1953, in response to a question from the floor, Davis said that a couple of "disgruntled soreheads," a girl and her boy friend, were responsible for the Machinists' organizational drive and that both of them had been fired. Mack was unable to state whether her conversation with Davis occurred before or after Bidema's discharge, and both Neiter and Smith were uncertain as to some details of the March 17 meeting. Davis and Herbert W. Howell, the Union's president who presided over the March 17 meeting, testified concerning this meeting and neither recalled a statement having been made of the character ascribed to Davis by Neiter and Smith, but I find that such a statement was made. In view of the foregoing I am convinced that the Union believed Bidema to be active on behalf of the Machinists. If, in requiring her discharge, it was motivated by that belief, it is of little significance that Bidema's actual activities on behalf of the rival union were inconsequential.

With respect to the Union's normal practices in cases of members who have lost good-standing status because of dues delinquencies, it appears that in all cases prior to Bidema's actual suspension from membership preceded the discharge request. Jones' discharge was requested in November 1952, after his formal suspension from the Union on September 10, 1952, and upon his failure to pay any dues from the date of his initiation into the Union on May 9, 1952, until his discharge, except for the month of May. Marvin Schuette, hired on August 29, 1952, paid no dues and was discharged at the Union's request on October 16, 1952. Charles Fugett, hired on June 21, 1951, paid his first dues October 16, 1951, was formally suspended pursuant to suspension notice on April 10, 1952, and was discharged, on the Union's request, April 15, 1952. From the foregoing it is seen that of the three employees other than Bidema discharged under the union-security clause, Schuette never actually completed his membership in the Union and both Jones and Fugett were formally suspended from membership before their discharge was required. It is immaterial that the Union under its union-shop contract might lawfully have required the discharge of a delinquent member immediately upon that member's loss of good standing, if in fact its uniform practice was to wait until after actual suspension had occurred.

It further appears that the Union had no uniform practice of requiring discharge in all cases of suspended members or where its members had lost good-standing status because of dues delinquency. Vernon L. Smith received suspension notices in April, June, and July, 1951, was formally suspended in August 1951, but no discharge request was made, and in November he was reinstated to union membership. Elsie Schwartzkopf was suspended for dues delinquency in October 1952, reinstated in November, paid dues for December 1952, but paid no dues thereafter and was again suspended, pursuant to notice, April 10, 1953. The Union at no time requested her discharge. Hilary A. Dorff was 3 months or more in arrears in dues payments for the months of July, August, September, October, November, and December, 1952; on December 30 he paid his October dues, on February 6, 1953, his dues for November, and on February 28, 1953, his dues for December, he was suspended pursuant to formal notice on April 10, 1953, but at no time was his discharge requested.

Davis testified that the Union made allowances in "hardship" cases and took into consideration such matters as the steady employment of the delinquent member, and the member's

personal problems of health and finance. I have no doubt such matters would normally enter into the Union's considerations but I am not convinced that the Union's decision to invoke the union-shop clause with respect to Bidema was made in the context of such considerations. In the three prior cases of discharge under the union-security clause, Davis, business agent of the union local, made the decision, but in Bidema's case it was Howell, the Union's president, who made the decision. He testified that on a visit to the Chico office of the union local, he was informed by the office girl that Bidema was to be married and thinking that this probably meant that she would be quitting her employment, he looked at her file preliminary to sending her word to get a withdrawal card, and upon finding that she was 3 months in arrears immediately instructed Davis to write a letter requesting her discharge. The letter was forthwith written. Obviously, no investigation was made to determine the particular facts in her case which might, or might not, as the case may be, explain her dues delinquency. Bidema had steady employment but there is no showing that it was any steadier than Dorff's, or that the latter was more of a "hardship" case, and, as has been seen, it was the Union's normal practice not to invoke the union-security clause until after actual suspension had followed the service of a suspension notice, and not to invoke it then except in cases of extreme delinquencies.

It is true, as the Board said in North American Refractories Company, 100 NLRB 1151, that a prior liberal application of a union-security clause does not mean that a union is required to continue thereafter to "extend the same leniency to all delinquent members as a fixed obligation of law"; nor was the Union estopped from resort to its union-shop contract by the fact that a hearing was about to be held on the Machinists' petition for representation; but, if I have read the decisions correctly, a union may not lawfully invoke its union-security clause for reasons other than a failure to pay uniformly prescribed dues; in other words, a labor organization may no more use dues delinquency as a pretext for requiring the discharge of a member, even though that member has rendered himself vulnerable to discharge by failure to pay uniformly prescribed dues, than an employer may lawfully discharge an employee on pretext of inefficiency, even though such inefficiency exists, where the moving cause of the discharge is not inefficiency but the employee's union activities. While the Union was not bound, "as a fixed obligation of law," to continue to extend the same leniency to delinquent members as it had in the past, its variance from a previously established practice of greater leniency and, more important, its contemporaneous application, in the case of Dorff, of leniency as great as any it had practiced in the past, while denying the same leniency to Bidema, is persuasive evidence of discriminatory motive. Similarly, while it had the same right of recourse to its union-security contract after the advent of the Machinists as before, the fact that it exercised this right with respect to Bidema on the eve of the hearing upon the Machinists' petition, whereas it had for a substantial period prior thereto waived such action, is evidence of discriminatory intent on a par with evidence which the Board has found persuasive in numerous discharge cases involving employers, where the employer has tolerated certain lapses in discipline or workmanship in an employee for a period of substantial duration and then suddenly discharges the employee, purportedly for these same lapses, upon learning of the latter's union affiliation. I do not understand that the Board in the North American Refractories Company case, cited supra, intended to apply a different standard in weighing evidence of discriminatory intent in cases involving labor organizations than it has uniformly applied in the past in cases where only employers were involved. These factors, in conjunction with what I find to be a clear showing that the Union believed that Bidema in concert with her fiance Jones was instrumental in initiating the Machinists' organizational drive, convince me that except for this belief the Union would not have sought her discharge unless and until she had failed to heed the suspension notice, pending at the time of her discharge, by restoring herself to good-standing membership on or before February 10. As has been seen she did in fact avoid actual suspension by payment of 1 month's dues on January 26. I find that in causing her discharge the Union violated Section 8 (b) (1) (A) and (2) of the Act.⁸

⁸In reaching these conclusions I have considered and rejected Howell's testimony that at the time he directed Bidema's discharge he had received no reports that Bidema was active for the Machinists or was to be married to Jones. He admitted that he had heard in December that Jones had told employees that he was going to bring the Machinists into the plant, and he also admitted that it was on information given him at the Chico office that Bidema was to be married, that he sought out her record. Under all the circumstances disclosed herein, I believe it to be highly improbable that in the discussion which occurred between Howell and Davis with respect to Bidema's discharge, no mention was made of these matters.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent Union set forth in section III, above, occurring in connection with the operations of the Employer, 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

It has been found that the Respondent Union unlawfully caused the discharge of Geraldine Bidema on January 23, 1953. Following the termination of the Union's contract with the Employer and its loss of representative status, Bidema was reinstated by the Employer to the same or equivalent position held at the time of her discharge, without loss of seniority or any other rights and privileges. Therefore the only remedial action required with respect to her is compensation for earnings lost as a result of the Union's action in causing her discharge. Accordingly, it will be recommended that the Union make Bidema whole for any loss of pay she may have suffered by reason of the Union's unlawful act in causing her discharge, by payment to her of a sum of money equal to that which she normally would have earned from January 23, 1953, the date of the discharge, to the date of her reinstatement by the Respondent Employer, less her net earnings, if any, during such period. Crossett Lumber Co., 8 NLRB 440, 497-98. The back pay shall be computed in the manner established by the Board 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, I make the following:

CONCLUSIONS OF LAW

1. Victor Metal Products Corporation of Delaware is an employer engaged in commerce within the meaning of Section 2 (2), (6), and (7) of the Act.
2. General Teamsters Local No. 137, AFL, the Respondent Union herein, is a labor organization within the meaning of Section 2 (5) of the Act.
3. By causing Victor Metal Products Corporation of Delaware to discriminate against Geraldine Bidema 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.
4. By restraining and coercing employees of Victor Metal Products Corporation of Delaware in the exercise of their rights under Section 7 of the Act, 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.
5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.
6. Victor Metal Products Corporation of Delaware has not engaged in any of the unfair labor practices alleged in the complaint.

[Recommendations omitted from publication]

APPENDIX A

NOTICE

TO ALL MEMBERS OF GENERAL TEAMSTERS
LOCAL NO. 137, AFL

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 Victor Metal Products Corporation of Delaware, or any other employer, to discriminate against any employee in violation of Section 8 (a) (3) of the Act

WE WILL NOT in any other manner restrain or coerce any employee in the exercise of his rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to re-

frain from any or all of such activities, 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 Geraldine Bidema whole for any loss of earnings sustained by reason of the discrimination against her.

GENERAL TEAMSTERS LOCAL No. 137, AFL,
Labor Organization.

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

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

UNITED ELECTRICAL, RADIO & MACHINE WORKERS OF AMERICA, LOCAL 914 *and* UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA, INTERNATIONAL UNION, CIO. Case No. 13-CB-206. October 30, 1953

DECISION AND ORDER

On August 5, 1953, Trial Examiner Henry S. Sahm issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter the Respondent filed exceptions to the Intermediate Report and a supporting brief.

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 brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.¹

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, United Electrical, Radio & Machine Workers of America, Local 914, its officers, representatives, agents, successors, and assigns, shall:

¹In so concluding, we find it unnecessary to adopt the statements by the Trial Examiner that, in effect, a union is responsible for all activities by pickets in furtherance of a strike as the record shows other grounds for holding the Union liable for the misconduct of the pickets and strikers on which we rely. With the exception of Wolff and Gourley, the persons who participated in conduct violative of the Act were agents of the Union. Wolff and Gourley, however, engaged in proscribed conduct only in the presence of Baker, union vice president, who not only failed to repudiate or prevent such action, but, in fact, participated in the incident--albeit short of actually striking Beizen.