

fication, and if he doesn't do that we are going to take economic action."

The hearing officer denied the Petitioners' request to withdraw. We agree with this ruling in view of the Petitioners' continuing claim to representation and their threats to take economic action to achieve recognition. Accordingly, we find that a question affecting commerce exists concerning the representation of the employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The parties stipulated and we find that all production and maintenance employees, including warehousemen, shipping and receiving employees, and truckdrivers, but excluding office employees, technical employees, traffic manager, watchmen, guards, professional employees, and supervisors as defined in the Act,⁴ constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

[Text of Direction of Election omitted from publication.]

MEMBER MURDOCK, dissenting :

I do not believe an election should be directed in this case. On the one hand, the Employer moves the Board to dismiss the petition, and on the other, the Petitioners seek to withdraw the petition. No party desires an election. Request to withdraw the petition was made before the close of the hearing. Under the *Sears, Roebuck* formula,⁵ I would permit withdrawal of the petition without prejudice.

⁴ The parties stipulated and we find that Angelina Corrales and Juhan Rico are supervisors within the meaning of the Act

⁵ *Sears, Roebuck & Company*, 107 NLRB 716

MINNEAPOLIS STAR AND TRIBUNE COMPANY and WILLARD W. CARPENTER

MISCELLANEOUS DRIVERS AND HELPERS UNION LOCAL NO. 638, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL (MINNEAPOLIS STAR AND TRIBUNE COMPANY) and WILLARD W. CARPENTER. *Cases Nos. 18-CA-579 and 18-CB-55. August 6, 1954*

Decision and Order

On March 25, 1954, Trial Examiner C. W. Whittemore issued his Intermediate Report in the above-entitled consolidated proceedings, finding that the Respondents, Minneapolis Star and Tribune Company, herein called the Respondent Company, and Miscellaneous Drivers Union Local No. 638, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL (Minneapolis Star and Tribune Company), herein called the Respondent Company, are engaged in interstate commerce. 109 NLRB No. 109.

ers and Helpers Union Local No. 638, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, herein called the Respondent Union, had engaged in and were engaging 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. The Trial Examiner also found that the Respondent Union had not engaged in certain other alleged unfair labor practices, and recommended dismissal of those allegations of the complaint. Thereafter, the Respondent Company and the General Counsel filed exceptions to the Intermediate Report and supporting briefs.

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 these cases, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the following additions and modifications:

1. We find, in agreement with the Trial Examiner, that the Respondent Union caused the Respondent Company to discriminate against Carpenter by depriving him of his right to work from December 27, 1953, to January 13, 1954, and that the Respondent Union and the Respondent Company thereby violated Section 8 (b) (2) and 8 (b) (1) (A) and Section 8 (a) (3) and 8 (a) (1) of the Act, respectively. The Respondent Company alone excepts to this finding, contending in substance that it took no such discriminatory action against Carpenter. We do not agree.

The record clearly shows that in compliance with the Union's demand, the Respondent Company refused to allow Carpenter to work during the above period. Both McCambridge, traffic manager of the Respondent Company, and Carpenter's foreman specifically informed Carpenter that he could not return to work.¹ Indeed, on December 27, Max, assistant superintendent of the Respondent Company, deliberately forestalled Carpenter's return by replacing him with another employee who was assigned Carpenter's run until further notice. Accordingly, we find no merit in the Respondent Company's position.

2. We further find, in accordance with the issues as alleged in the complaint and as litigated at the hearing, that the Respondent Union caused the Respondent Company to discriminate against Carpenter by dropping him to the bottom of the regular seniority list, and that the Respondent Union and the Respondent Company thereby violated

¹ The Trial Examiner failed to set forth fully McCambridge's conversation with Carpenter on December 28, 1953. At that time, McCambridge stated that Carpenter could not return to work until at least January 5 when the Respondent Union's grievance board was to consider Carpenter's case

Section 8 (b) (2) and 8 (b) (1) (A) and Section 8 (a) (3), 8 (a) (2), and 8 (a) (1) of the Act, respectively.²

3. We find, in agreement with the Trial Examiner, that the imposition of a \$500 fine on Carpenter by the Respondent Union for his failure to engage in certain of its activities is not violative of Section 8 (b) (1) (A) of the Act. It is well established that the proviso to Section 8 (b) (1) (A) precludes any such interference with the internal affairs of a labor organization.³

4. We are in agreement with the remedial action recommended by the Trial Examiner. That remedy, however, is not sufficiently comprehensive. In addition to ordering the Respondents, jointly and severally, to make employee Carpenter whole for any loss of pay he may have suffered by reason of the discrimination against him, we shall order the Respondent Union to notify both the Respondent Company and Carpenter that it has no objection to Carpenter's reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges. The liability of the Respondent Union for back pay shall terminate 5 days after it so notifies the Respondent Company and Carpenter. *Pinkerton's National Detective Agency, Inc.*, 90 NLRB 205.

In order to remedy effectively the unfair labor practice set forth in paragraph numbered 2, above, we believe it is necessary for the Respondent Company to place Carpenter on the seniority list in accordance with the date of his employment and to offer Carpenter his former or substantially equivalent position which he would now be enjoying if it were not for the discrimination against him.

Order

Upon the basis of the entire record in these cases, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that:

I. The Respondent, Minneapolis Star and Tribune Company, Minneapolis, Minnesota, its officers, agents, successors, and assigns, shall:

A. Cease and desist from:

1. Performing or giving effect to the clause in its current contract with the Respondent Union which delegates to the Respondent Union authority to settle controversies relating to seniority.

2. Entering into or renewing any agreement with any labor organization which contains provisions delegating to such labor organization authority to determine the seniority of employees or to settle controversies relating to seniority, and enforcing such provision.

² The Trial Examiner inadvertently failed to make this finding

³ See, e g, *International Typographical Union et al (American Newspaper Publishers Assn)*, 86 NLRB 951, 955-7

3. Encouraging membership in the Respondent Union, or in any other labor organization of its employees, by refusing to allow its employees to work by reason of a request of the Respondent Union, by failing and refusing to assign work to its employees to which they would have been entitled and assigned had their seniority been determined as of the date of their employment by the Respondent Company rather than as of seniority standing arbitrarily determined by the Respondent Union, 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.

4. In any other manner interfering with, restraining, or coercing its 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 in Section 8 (a) (3) of the Act.

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

1. Upon request make available to the Board or its agents, for examination and copying, all payroll records, social-security payment records, and all other records necessary to analyze the amount of back pay due in accordance with this Order.

2. Place employee Willard W. Carpenter properly on the seniority list in accordance with the date of his employment and offer Carpenter his former or substantially equivalent position which he would now be enjoying if it were not for the discrimination against him.

3. Post at its plant in Minneapolis, Minnesota, copies of the notice attached as Appendix A.⁴ Copies of the notice, to be furnished by the Regional Director for the Eighteenth Region, shall be posted by the Respondent Company immediately upon their receipt, after being duly signed by an official representative of the Company. When posted, they shall remain posted for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to drivers are customarily posted. Reasonable steps shall be taken by the Respondent Company to insure that these notices are not altered, defaced, or covered by any other material.

4. Notify the Regional Director for the Eighteenth Region, in writing, within ten (10) days from the date of this Order, what steps it has taken to comply herewith.

II. The Respondent, Miscellaneous Drivers and Helpers Union Local No. 638, International Brotherhood of Teamsters, Chauffeurs,

⁴ In the event that this Order is enforced by a 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."

Warehousemen and Helpers of America, AFL, its officers, representatives, agents, successors, and assigns, shall:

A. Cease and desist from:

1. Performing or giving effect to the clause in its current contract with the Respondent Company which delegates to the Respondent Union authority to settle controversies relating to seniority.

2. Entering into or renewing any agreement with any employer which contains provisions delegating to it authority to determine the seniority of employees or to settle controversies relating to seniority, and enforcing such provisions.

3. Causing or attempting to cause the Respondent Company, its officers, agents, successors, or assigns, to discriminate against employees in violation of Section 8 (a) (3) of the Act.

4. In any other manner restraining or coercing employees of the Respondent Company 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.

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

1. Notify Respondent Company in writing that it withdraws its objections to the full reinstatement of Willard W. Carpenter and requests it to offer him his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges.

2. Notify Willard W. Carpenter in writing that it has advised Respondent Company that it withdraws its objections to his full reinstatement and requests it to offer him his former or substantially equivalent position.

3. Post at its business offices and meeting halls in Minneapolis, Minnesota, copies of the notice attached as Appendix B.⁵ Copies of the notice, to be furnished by the Regional Director for the Eighteenth Region, shall be posted by the Respondent Union immediately upon their receipt, after being duly signed by an official representative of the Union. When posted, they shall be maintained by it for a period of sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Union to insure that these notices are not altered, defaced, or covered by any other material.

4. Mail signed copies of said notice to the Regional Director of the Eighteenth Region, for posting, the Respondent Company willing, at the office and places of business of the Respondent Company, in the places where notices to drivers are customarily posted. Copies of the notice to be furnished by the Regional Director for the Eighteenth

⁵ See footnote 4, *supra*

Region shall be returned forthwith to the Regional Director after they have been signed by an official representative of the Union, for such posting.

5. Notify the Regional Director for the Eighteenth Region, in writing, within ten (10) days from the date of this Order what steps it has taken to comply herewith.

III. The Respondents, Minneapolis Star and Tribune Company, its officers, agents, successors, and assigns, and Miscellaneous Drivers and Helpers Union Local No. 638, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, its officers, agents, successors, and assigns, shall jointly and severally, and in the manner set forth in paragraph numbered 4 of this Decision and the section of the Intermediate Report entitled "The Remedy," make whole Willard W. Carpenter for any loss of pay he may have suffered because of the discrimination against him.

IT IS FURTHER ORDERED that the complaint insofar as it alleges a violation of Section 8 (b) (1) (A) of the Act in the imposition of a \$500 fine on employee Carpenter by the Respondent Union be, and it hereby is, dismissed.

MEMBER MURDOCK, dissenting in part:

I concur, with one exception, in the decision that the Act has been violated by the Respondents as found in the Intermediate Report and in the Decision of my colleagues. I cannot, however, agree that the seniority clause of the contract involved in this proceeding is *per se* a violation.

The contractual provision which is found by the majority to be unlawful is as follows:

12. Seniority: Seniority rights shall prevail in all matters relating to employment, promotion, transfer and reduction of force.

(a) The Union shall keep an up-to-date list of the employees arranged in the order of their seniority posted in a conspicuous place on the job. Any controversy over the seniority standing of an employee on this list shall be referred to the Union for settlement.

In *Pacific Intermountain Express Company*, 107 NLRB 837, in which I did not participate, a majority of the Board found a similar contractual provision to be in itself a violation of the Act "because it tends to encourage membership in the Union." This conclusion overruled a contrary finding in *Firestone Tire and Rubber Company*, 93 NLRB 984, that such a seniority provision did not in itself violate the Act.

The decision in *Pacific Intermountain Express Company* in this respect seems to rest on the line of reasoning that (1) the determina-

tion of seniority depends generally upon standards peculiarly within the knowledge of the employer and not that of the union, (2) therefore, the presumption is that the union will exercise this control of seniority in a discriminatory manner and (3) accordingly, the Board presumed that "such delegation is intended to, and will in fact be used by the union to encourage membership in the union." Thus, reasons the *Pacific Intermountain* opinion, the very granting of such power is presumed to be discriminatory.

This pattern of rationale seems to me to be reasoning by presumption. The Union certainly has a legitimate interest in the composition of a seniority list and the methods by which seniority is determined. Participation in this process, indeed, involves no discrimination, and if the parties wish to leave the settling of controversies over seniority to the Union it seems to me that they should be permitted to do so, subject of course to the intervention of this Board when it is charged that there has been discrimination. Under Section 8 (a) (3) the violation consists not simply in the encouragement or the discouragement of union membership but in "*discrimination* in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage. . . ." The Board has many times held that employers may express opposition to the unionization of their employees. Such discouragement is protected by Section 8 (c). As for "encouragement," the execution of a contract itself certainly is the highest type of encouragement that can be given to unionization. I repeat that it is "discrimination" which is prohibited by Section 8 (a) (3).

Such discrimination is not to be found in agreement upon a seniority clause such as the one under discussion here, for the contract does not provide for the discriminatory or otherwise unlawful enforcement of this provision. In this case the violation occurred (and in this I am in agreement with my colleagues) in the unlawful administration of the contract. The fact that the Union unlawfully administered the contract does not, of course, render the execution of the seniority clause in this contract, and certainly not those in contracts involving other unions and other employers who are not parties to this proceeding, violative of any prohibition of the Act. In this case it is the Union's *conduct* in unlawfully exercising the concession it has secured by collective bargaining which runs counter to the provisions of the Act, and not the delegation of authority in this respect.

The contract is the goal in collective bargaining, and it is my opinion that the Board should exercise restraint in unsettling or undoing that which is achieved under the processes of collective bargaining. Certainly, I would be very hesitant to intrude the processes of government into contract interpretation and *presume* that a contractual provision (lawful on its face) will be used in an unlawful manner,

and from there conclude that such a clause is *per se* violative of the Act.

Accordingly, I would reverse the Trial Examiner in this respect, overrule *Pacific Intermountain Express*, and reaffirm the principle announced in *Firestone Tire and Rubber*.

Appendix A

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT perform or give effect to the clause in the contract of December 29, 1953, which clause delegates to Miscellaneous Drivers and Helpers Union Local No. 638, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, authority to settle controversies relating to seniority.

WE WILL NOT enter into or renew any agreement with any labor organization which contains provisions delegating to such labor organization authority to determine the seniority of employees or to settle controversies relating to seniority and we will not enforce such provisions.

WE WILL NOT encourage membership in the above-named labor organization or in any other labor organization of our employees, by failing and refusing to assign work to our employees to which they would have been entitled and assigned had their seniority been determined as of the date of their employment rather than as determined by any labor organization, by refusing to allow our employees to work, 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 other 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 right 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 Willard W. Carpenter whole for any loss of pay he may have suffered by reason of the discrimination against him, and will place him properly on the seniority list in accord-

ance with the date of his employment and will offer him his former or substantially equivalent position which he would now be enjoying if it were not for the discrimination against him.

MINNEAPOLIS STAR AND TRIBUNE COMPANY,

Employer.

Dated_____ By_____

(Representative)

(Title)

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

Appendix B

NOTICE TO ALL MEMBERS OF MISCELLANEOUS DRIVERS AND HELPERS
UNION LOCAL NO. 638 INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT perform or give effect to the clause in the contract of December 29, 1953, with the Minneapolis Star and Tribune Company, which clause delegates to this Union authority to settle controversies relating to seniority.

WE WILL NOT enter into or renew any agreements with any employer which contain provisions delegating to this Union authority to determine the seniority of employees or to settle controversies relating to seniority, and we will not enforce such provisions.

WE WILL NOT cause or attempt to cause the above-named Company, its officers, agents, successors or assigns to discharge, to lay off, to reduce the seniority of, or otherwise to discriminate against its employees within the meaning of Section 8 (a) (3) of the Act.

WE WILL NOT in any other manner restrain or coerce employees of the above-named Company, 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 in Section 8 (a) (3) of the Act.

WE WILL make whole Willard W. Carpenter for any loss of pay suffered because of the discrimination against him.

WE WILL notify the Minneapolis Star and Tribune Company in writing, and furnish a copy to Willard W. Carpenter, that we

have withdrawn our objections to the full reinstatement of Carpenter and that we request his reinstatement.

MISCELLANEOUS DRIVERS AND HELPERS UNION
LOCAL NO. 638, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA, AFL,

Labor Organization.

Dated _____ By _____
(Representative) (Title)

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

Intermediate Report

STATEMENT OF THE CASE

Charges having been duly filed and served, a complaint, amended complaint, an order consolidating the above-entitled cases, and a notice of hearing thereon 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), (2), 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 Minneapolis, Minnesota, on March 8, 1954, before the undersigned Trial Examiner.

As to the unfair labor practices, in substance the complaints allege and the answers deny that: (1) The Respondents entered into a contract in December 1953, which illegally accorded to the Union control of a seniority list, (2) the Respondent Company on December 27, 1953, discriminatorily discharged employee Willard W. Carpenter, upon demand of the Union and for reasons other than his failure to pay dues; (3) the Respondent Union caused the Respondent Company to discharge Carpenter in violation of Section 8 (a) (3) of the Act; (4) the Respondent Union fined Carpenter \$500 and placed him at the bottom of the seniority list because he failed to participate in strike activities; and (5) the Respondents by such conduct coerced and restrained employees in the exercise of rights guaranteed in Section 7 of the Act.

At the hearing all parties were represented, 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. Counsel argued, on the record. No briefs have been received.

At the conclusion of the hearing ruling was reserved upon a motion to dismiss. Disposition of said motion is made by the following findings, conclusions and recommendations.

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

The Minneapolis Star and Tribune Company is a Delaware corporation, having its principal office and place of business in Minneapolis, Minnesota, where it is engaged in the business of newspaper publishing. It annually causes newsprint, mats, and inks valued at more than \$750,000 to be purchased and transported in interstate commerce from and through foreign countries and States of the United States other than Minnesota to its place of business in Minneapolis.¹

It publishes the Minneapolis Morning Tribune, with circulation of more than 200,000; the Minneapolis Star, an afternoon paper having a circulation of more than 290,000; and the Minneapolis Sunday Tribune, having a circulation of more than

¹ The complaints inadvertently, the Trial Examiner believes, failed to allege "annually." In view of the Respondent's concession of jurisdiction, however, the Trial Examiner makes the finding upon the basis of custom in such pleadings and the inherent probabilities.

620,000. It utilizes the news services of the Associated Press, the United Press, and the International News Service.

The Respondent concedes the Board's jurisdiction in the case.

II. THE LABOR ORGANIZATION INVOLVED

Miscellaneous Drivers and Helpers Union, Local No. 638, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, is a labor organization admitting to membership employees of the Respondent Company.

III. THE UNFAIR LABOR PRACTICES

A. *The facts*

This case involves no real dispute of facts. In summary, the facts from which the legal controversy arises are as follows:

Between December 19 and 25, 1953, the Respondent Local 638 conducted a strike of the Respondent Company's route drivers, apparently in an effort to gain contractual benefits. The strike was settled with the execution of a new contract, certain provisions of which (to be specified below) are claimed by General Counsel to violate the Act.

Willard W. Carpenter, a driver-member of the Local, did not attend union meetings or perform picket duty during the strike. Upon resumption of deliveries, on December 27, Steward Ray Johnson of the Local informed Assistant Superintendent Peter Max of the Company that he must replace Carpenter, who would not be permitted to work until he had appeared before the Union's grievance board. Carpenter, in turn, was likewise informed by his foreman upon reporting for duty the same night. The foreman further told him to see Tony Schullo, head of the Local. The next day Schullo instructed Carpenter to appear before the Local's board on January 5, 1954, because he had not reported for picket duty. The driver reported his interview with Schullo to Traffic Manager McCambridge of the Company. McCambridge expressed his regret, assured the employee his job would be waiting for him, but did not put him to work.

On January 5, upon appearing before the Local's board, Carpenter was informed by the union officials that he no longer had a job with the Star and was instructed to look elsewhere for work. Again Carpenter reported this action to McCambridge, who again told him he would keep his job open but did not put him to work. Also, on January 6, Carpenter formally notified McCambridge, by letter, that his January dues in the Local had been paid. (The contract required union membership.) On January 7, the Local's executive board requested Carpenter, by letter, to report to Schullo on January 11.

On meeting with Schullo as requested, Carpenter was told that the punishment had been too severe, and that it would be amended to the imposition of a fine of \$500 and suspension from work until January 28, when he would be permitted to return at the bottom of the seniority list (a drop from position 69 to 91). Carpenter reported again to McCambridge, and declared that unless he was put to work he would file charges with the Board. He filed charges against both the Company and the Local on January 12. On January 13, he was permitted to return to work, at his regular job.

On January 20 bidding for drivers' routes was reopened—an annual occurrence. Upon the insistence of the Union's steward present, Carpenter was not permitted by management to bid in his usual position of 69th, but was required to bid only after all other regular drivers had bid. As a result of being reduced on the seniority list Carpenter had to take a job which, because of the day and night differential in hourly pay, has reduced his income somewhat from that which he could reasonably have expected had he been in a position to bid on his previous year's run. Moreover, the seniority reduction places him in a precarious position as to continued employment expectancy—since the last man on the seniority list must be the first to be laid off in a reduction in force.

B. *The issues and conclusions*

General Counsel cites the following provision of the current contract (which runs until December 31, 1955) as violative of the Act:

12. Seniority: Seniority rights shall prevail in all matters relating to employment, promotion, transfer and reduction of force.

(a) The Union shall keep an up-to-date list of the employees arranged in the order of their seniority posted in a conspicuous place on the job.

Any controversy over the seniority standing of an employee on this list shall be referred to the Union for settlement.

It appears unnecessary here to quote, at length, the Board's determination of a similar issue in *Pacific Intermountain Express Company, et al.*, (107 NLRB 837). This decision, the Trial Examiner considers, is controlling in the present case. Here, as in the cited case, in at least the instance of Carpenter the Union determined the seniority standing of an employee pursuant to the provision of the contract.

In short, the Trial Examiner concludes and finds that by entering into the agreement, above set forth (Section 12 of the contract), the Respondent Union caused and attempted to cause the Respondent Company to discriminate against its employees in violation of Section 8 (a) (3) of the Act, and thereby engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b) (1) (A) and (2) of the Act. The Respondent Company, by entering into the same agreement, discriminated in regard to the hire and tenure of employment and the terms and conditions of employment of its employees, contributed support to the Respondent Union, and thereby interfered with, restrained, and coerced employees in the exercise of rights guaranteed in Section 7 of the Act and violated Section 8 (a) (1), (2), and (3) of the Act.

As to the specific discrimination in the employment of Carpenter, from December 27, 1953, to January 13, 1954—depriving him of his right to work during that period, the Trial Examiner concludes and finds that such discrimination, in violation of Section 8 (a) (3) of the Act on the part of the Employer, was caused by the Union, for reasons other than his failure to pay his dues or initiation fees, and therefore was in violation of Section 8 (b) (1) (A) and (2) of the Act. A similar conclusion follows, so far as the Union is concerned, by the latter's effort, although abortive, to cause the Employer to continue the suspension of Carpenter until January 28, 1954.

As to the specific allegation of the complaint to the effect that the Union violated Section 8 (b) (1) (A) by imposing a \$500 fine upon Carpenter because of his failure to take part in the picketing, the Trial Examiner finds no precedent in Board decisions.

In substance it is General Counsel's position that Section 8 (b) (1) (A) prohibits a labor organization from coercing an employee in the exercising of his right, under Section 7 of the Act, to refrain from picketing. There can be little question, of course, but that the imposition of a \$500 fine is a noticeable form of coercion. That it is violative of the Act, however, is another point. General Counsel appears to reason that any union action of a coercive nature, except that expressly authorized in the union-shop provision, is prohibited. Congress, however, seems to have been of another mind, for it wrote into Section 8 (b) (1) (A) this specific provision:

Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein;

In this case the Local had a rule governing the trial and fining of members who were guilty of "gross disobedience."

Congressional recognition of a labor organization's right to make its own rules presumes, of course, its right to invoke them—except where the implementing of such rules is expressly prohibited, as in the case of affecting an employee's employment rights. Indeed, the late Senator Taft said, before the passage of the amendments to the Act in 1947:²

The pending measure does not propose any limitation with respect to the internal affairs of unions. They still will be able to fire any members they wish to fire, and they still will be able to try any of their members. All that they will not be able to do, after the enactment of this bill, is this: If they fire a member for some reason other than nonpayment of dues they cannot make his employer discharge him from his job and throw him out of work. That is the only result of the provision under discussion.

The Trial Examiner concludes and finds that there is no merit to this specific contention of General Counsel, and it will be recommended that this allegation of the complaint against the Union be dismissed.

² Congressional Record, April 29, 1947, p. 4318.

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 Respondent Company and the Respondent Union have engaged in certain unfair labor practices, the Trial Examiner will recommend that they cease and desist therefrom and take affirmative action necessary to effectuate the policies of the Act.

It has been found that the Respondent Company discriminated against employee Carpenter in violation of Section 8 (a) (3) and 8 (a) (1) of the Act, and that the Respondent Union caused the Company to do so in violation of Section 8 (b) (2) and 8 (b) (1) (A) of the Act. It will therefore be recommended that the Respondents, jointly and severally, make whole this employee for any loss of pay suffered as a result of the discrimination against him, not only during the period when he was not permitted to work, but also since January 20, 1954, since it appears that because of the discriminatory reduction of his seniority he was deprived of an opportunity to bid upon, and reasonably expect to be awarded, the driver's route he had been assigned to the previous year. Net earnings, if any, during the short period when he was deprived of any work by the Respondent Company, should of course be deducted.

It has also been found that the Respondents' current contract contains a seniority provision violative of Section 8 (a) (1), (2), and (3) and Section 8 (b) (1) (A) and (2) of the Act and that the Respondents discriminatorily have enforced said provision. Accordingly it will be recommended that the Respondents cease and desist from giving effect to the unlawful seniority provision of their collective-bargaining agreement and refrain from executing agreements in the future containing such unlawful seniority provisions. It will not be recommended that the Respondents cease giving effect to the entire contract, nor that the Respondent Company withdraw and withhold recognition from the Respondent Union.

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. The Respondent Union 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 and other terms and conditions of employment of Willard W. Carpenter, 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 contributing support to the Respondent Union, the Respondent Company has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (2) of the Act.

4. By interfering with, restraining, and coercing employees in the exercise of rights guaranteed by 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.

5. By causing and attempting to cause the Respondent Company to discriminate against employees within the meaning 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.

6. By restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, the Respondent Union has engaged in unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Act.

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

[Recommendations omitted from publication.]