

sions, paid holidays, and hospitalization benefits. Also the rest periods, storeroom facilities, and clothes changing time for both groups are substantially the same. The spotters and washers may transfer to the main plant by virtue of seniority and are considered for promotions to the higher paying jobs in the plant. Both the spotters and washers and the production and maintenance employees are paid an hourly rate. However, the spotters and washers receive 5½ cents more per hour than the production and maintenance employees, a rate within the range paid to unskilled labor. According to the plant superintendent, the truck drivers receive a rate paid only to skilled employees.

In view of the foregoing, we find that the employees sought to be represented by the Petitioner do not constitute a skilled craft group or a unit which on any other basis may be severed from the broader unit of which they are presently a part.¹ Accordingly we shall dismiss the petition herein.

Order

IT IS HEREBY ORDERED that the petition filed herein by Local Union No. 700 affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, be, and it hereby is, dismissed.

¹ *Armour and Company*, 84 NLRB 813. Cf. *Stafford Operating Company*, 96 NLRB 1217, where employees similar to those sought by the Petitioner were not sufficiently skilled to be included in a unit of truck drivers. With respect to the parking of cars upon the plant premises by the employees sought by the Petitioner, see *Continental Diamond Fibre Company*, 92 NLRB 1784, where yard drivers were denied severance because their interests were closely allied with those of employees in the existing production and maintenance unit.

NORTH AMERICAN REFRACTORIES COMPANY *and* ARTHUR NEEPER
UNITED BRICK AND CLAY WORKERS OF AMERICA, AFL, AND UNITED
BRICK AND CLAY WORKERS OF AMERICA, LOCAL NO. 448, AFL *and*
ARTHUR NEEPER. *Cases Nos. 6-CA-405 and 6-CB-130. September 18, 1952*

Decision and Order

On October 23, 1951, Trial Examiner Albert P. Wheatley issued his Intermediate Report in the above-entitled proceedings, finding that the Respondents 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. Thereafter, the Respondent Employer filed exceptions and a supporting brief, the Re-
100 NLRB No. 182.

spondent Unions filed exceptions, supplemental exceptions, and supporting briefs, and the General Counsel filed exceptions.¹

The Respondent Employer's brief contains a copy of its contract with the Respondent Unions, dated March 5, 1948, which was not introduced in evidence at the time of the hearing. Accordingly, the Board on July 28, 1952, issued a notice to show cause why the contract should not be made part of the record as requested by the Respondents. As the General Counsel's reply gives insufficient cause to the contrary, the contract is hereby incorporated in the record herein.

The Board has reviewed the rulings made by the Trial Examiner 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 Trial Examiner's findings, conclusions, and recommendations, but only to the extent consistent with our findings, conclusions, and decision herein.

1. The Trial Examiner found that the Respondents' union-security clause exceeded the form of union security permitted under the Act because it contained a retroactive requirement of union membership. His Intermediate Report, however, was prepared and issued before the Board's decision in the *Krause Milling*² and other relevant cases. In the *Krause Milling* case the Board held that the 30-day grace period need not be accorded old employees who are members of the union on the effective date of the contract. Subsequent cases³ have found immaterial a difference between the effective and execution dates of the contract where there is in existence during this interim period a valid union-security clause requiring all employees to be union members. In the instant cases the contract, dated August 13, 1948, was made retroactive to April 1, 1948. However, the record reveals that this contract was preceded by two contracts which contained valid union-security clauses that were in effect prior to April 1, 1948, and until August 13, 1948.

Accordingly, we find, contrary to the Trial Examiner, that the union-security clause involved here is valid under the proviso to Section 8 (a) (3) of the Act and that Arthur Neeper may properly have been discharged pursuant to its terms.⁴

¹ As the Respondents wished to discuss *Charles A. Krause Milling Co.*, 97 NLRB 536, issued subsequent to the Intermediate Report and referred to *infra*, the parties were permitted to file belated exceptions.

² *Charles A. Krause Milling Co.*, *supra*.

³ *Sylvania Electric Casting Company*, 100 NLRB 357; *Josten Engraving Company*, d/b/a *American Yearbook Company*, 98 NLRB 49.

⁴ In view of this conclusion, it is unnecessary to pass upon certain contentions concerning the scope of the Order and Remedy which the Respondent Unions wished to have considered if the Board finds that the union-security clause is illegal.

2. In view of his finding that Neeper was discharged pursuant to an invalid union-security clause, the Trial Examiner did not rule upon the General Counsel's alternative contention that Neeper's discharge, regardless of the validity of the union-security clause, was discriminatory within the meaning of Section 8 (a) (3) and Section 8 (b) (2) of the Act.⁵

The facts with regard to Neeper's discharge are substantially as follows. Neeper had been a member of and held various offices in Respondent Local 448 for many years. However, in the spring of 1948 he became an active organizer on behalf of another labor organization, Allied Stone and Clay Workers, CIO. The efforts of this union to organize Respondent Employer's employees apparently failed. In June 1948, Neeper was relieved of his position as financial secretary of the Respondent Local. Shortly thereafter he objected to the new check-off authorization card adopted by the Local because it permitted union assessments. When the August 13, 1948, contract went into effect, Neeper began paying his dues in cash. His payments, however, were not made regularly and on a number of occasions he fell into arrears. He was in arrears for the months of August, September, and October, 1948. He was again in arrears for the months of June and July 1949, and for the months of November and December 1949. On each of these occasions he was notified by the Employer, at the instance of the Respondent Local, that he was in arrears and was given 15 days to pay up. Neeper paid. The last period of his arrears was for the months of April, May, and June, 1950. On this occasion the Union's letter to the Employer stated that Neeper was 3 months in arrears and in accordance with the Local's constitution and bylaws was no longer a member of the Local as of July 1, 1950. Unlike the previous letters, it did not refer directly to the union-security clause, which contained a provision that nonunion members be discharged within 15 days "unless the Union withdraws such notice and request."⁶ However, in a follow-up letter, the Employer was requested to discharge Neeper because of his failure to pay dues for a period of 3 months. The letter further stated that the Local waived its "*exclusive right* to withdraw this Notice during the fifteen days succeeding the receipt hereof as Provided in

⁵ In the event of a Board holding that the clause is valid, the General Counsel requests that the Board remand the instant cases to the Trial Examiner for the purpose of having him pass on the General Counsel's alternative contention. As the record contains sufficient evidence on this issue and there are no serious credibility problems, we hereby deny the request to remand.

⁶ Earl Peterman, a fellow employee and union member, testified that when he advised Neeper to pay his dues, Neeper replied, "I have 15 days to pay up my dues after I get notice from the Company." The financial secretary, Guy Stuller, testified, however, that in response to his query as to why Neeper didn't pay his dues, Neeper said, "I will pay when I get ready."

. . . [the] Agreement, to the end that you may discharge the said Arthur Neeper forthwith without any complaint or grievance on our part."

Upon receipt of the letter of July 28, 1950, Ashley Bloom, division manager, consulted the Employer's Cleveland office, and on August 2, 1950, discharged Neeper for nonpayment of dues.⁷

Within the next 15 days Neeper on two occasions tendered full payment of his back dues to the Respondent Local. He also tendered \$3 as a fine for being 3 months in arrears, stating that he considered himself thereby reinstated in the Local in accordance with its constitution and bylaws.⁸ On each occasion Neeper's tender was rejected by the Local and he was refused reinstatement.

The General Counsel contends that Neeper's discharge was requested by the Respondent Local not because he was in arrears in the payment of his dues but because of his union activities during the spring of 1948 on behalf of another labor organization. In support of this contention, the General Counsel points to the general practice of the Respondent Employer and Respondent Local of giving employees 15 days to pay up their back dues. Neeper was automatically suspended from the Local and denied the 15-day grace period because he was in arrears for 3 months in 1950. The General Counsel points out that the Respondent Local failed to suspend another employee who was in arrears for the same period. It does not appear from the record, however, that the latter employee had a history of chronic delinquency in the payment of dues such as Neeper's.

We are not persuaded on the record before us that the Respondent Local's purpose in requesting Neeper's immediate discharge in July 1950 was to punish him for his activity on behalf of another labor organization in 1948. The evidence, in our opinion, is to the contrary. For the record shows, as indicated above, that during this 2-year interim period Neeper had three times been in arrears in the payment of his dues and three times had been granted 15 additional days to pay up. On the occasion of his fourth extended default it appears that the Respondent Local adopted a sterner

⁷ Ashley Bloom testified that he did not give Neeper the customary 15-day notice because the Union specifically waived its right to have a 15-day period in which to withdraw its notice to the Employer.

⁸ Article VIII, section 2 (d) reads as follows: "Any member of the Union who is one month in arrears with his dues shall be considered in bad standing and subject to a fine of fifty cents (50¢) A member two months in arrears with his dues, shall be fined one dollar and fifty cents (\$1.50) and if at the end of three months he is still in arrears, he shall be suspended but may be reinstated by paying the equivalent in cash of all back dues and assessments up to date and a fine of three (\$3.00) dollars, except where a member is over one year in arrears with his dues, he may be reinstated upon the payment of such sum as the Local Union to which he belongs may designate, but if the Local Union is affiliated with a District Council, the reinstatement fee shall in no case be less than that provided for by the District Council. Three Dollars and Fifty Cents (\$3.50) of such reinstatement fee shall be paid to the International Union."

attitude and requested the strict application of its union-security clause to secure Neeper's immediate discharge. We cannot find that its conduct in so dealing with the chronically delinquent Neeper was unreasonable or discriminatory. Nor does the fact that the Respondents had previously permitted delinquent members, including Neeper, 15 additional days to pay dues by a liberal application of their union-security clause mean that they were thereafter required to extend the same leniency to all delinquent members as a fixed obligation of law.⁹

Accordingly, we find that neither the Respondent Employer nor the Respondent Unions violated, respectively, Section 8 (a) (3) or Section 8 (b) (2) of the Act in effecting the discharge of Neeper pursuant to their union-security agreement. We shall therefore dismiss the complaint in its entirety.

Order

Upon 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 the complaint against the Respondent, North American Refractories Company, Curwensville and Lumber City, Pennsylvania, and the Respondents, United Brick and Clay Workers of America, AFL, and United Brick and Clay Workers of America, Local 448, AFL, be, and it hereby is, dismissed.

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

⁹ *Standard Brands, Incorporated*, 97 NLRB 737

Intermediate Report and Recommended Order

STATEMENT OF THE CASE

Upon a complaint duly issued, a hearing was conducted in the above-entitled matter before the undersigned Trial Examiner in Clearfield, Pennsylvania, on September 6 and 7, 1951, at which the General Counsel of the National Labor Relations Board, Arthur Neeper, Respondent North American Refractories Company, herein called Respondent Company, Respondent United Brick and Clay Workers of America, AFL, herein called Respondent International, and Respondent United Brick and Clay Workers of America, Local No. 448, AFL, herein called Respondent Local, were represented by counsel and participated.

The principal issues in these matters are whether Respondent Company and Respondent Unions maintained and enforced the terms of an agreement providing for a greater degree of union security than permitted by Section 8 (a) (3) of the National Labor Relations Act, as amended, herein called the Act, whether Arthur Neeper was discriminatorily discharged by Respondent Company in violation of Section 8 (a) (1) and (3) of the Act, and whether Re-

spondent Unions in violation of Section 8 (b) (1) (A) and Section 8 (b) (2) of the Act caused Respondent Company to discriminate against said Arthur Neeper.¹

There is no dispute concerning the following matters and the evidence reveals and the undersigned finds (1) that Respondent Company is engaged in commerce within the meaning of the Act,² (2) that Respondent Unions are labor organizations within the meaning of Section 2 (5) of the Act, and (3) that Respondent Company did, on or about August 2, 1950, discharge Arthur Neeper, pursuant to a request and demand of Respondent Local, and did thereafter fail or refuse to reinstate said Arthur Neeper.³

From the entire record and from his observation of witnesses, the undersigned makes the following findings of fact, conclusions of law, and recommendations.

Sequence of Events

After certification that a majority of the employees eligible to vote had authorized United Brick and Clay Workers of America, AFL, to make an agreement requiring membership in the United Brick and Clay Workers of America, AFL, as a condition of employment,⁴ Respondents executed a collective bargaining agreement. This contract states it is

by and between North American Refractories Company, a corporation, hereinafter called the "Employer," and the United Brick and Clay Workers of America, affiliated with the American Federation of Labor, on behalf of Local Union No. 448, hereinafter referred to as the "Union," employees of the employer at its Curwensville and Lumber City Plant and in Pike and Union Townships, Clearfield County, Pennsylvania.⁵

This contract was "made and entered into" on August 13, 1948, and the parties stipulated, and the evidence reveals, that it was "in force and effect on August 2, 1950."

This contract provides *inter alia*:

All employees who on April 1, 1948 are members of the Union in good standing in accordance with the Constitution and By-laws of the Union, and all employees who thereafter become members, shall, as a condition of employment, remain members of the Union in good standing for the duration of this agreement. In the event an employee whose membership in the Union is herein required to be maintained has ceased to be a member of the Union in good standing in accordance with the Constitution and

¹ The complaint alleges violations of Section 8 (a) (1), (2), and (3) of the Act by Respondent Company and violations of Section 8 (b) (1) (A) and 8 (b) (2) of the Act by Respondent Unions.

² Respondent Company engages in the production and sale of brick and allied products and maintains and operates plants and/or places of business in the States of Pennsylvania, Kentucky, Ohio, and Missouri, and in Ontario, Canada. Purchases for use at its Curwensville, Pennsylvania, plant, the plant involved herein, during the period from September 6, 1950, to September 6, 1951, approximated \$175,000 and approximately 42 percent thereof was shipped to said plant from points outside of Pennsylvania. During the same period brick and clay products valued at approximately \$1,565,000 were produced and sold at said plant and approximately 74 percent of these products was shipped to points outside of Pennsylvania.

³ Respondents' answers assert the discharge was pursuant to the terms of the then existing labor agreement.

⁴ Case No. 6-UA-235 Certificate dated June 3, 1948.

⁵ This contract was signed by representatives of Respondent Local, representatives of Respondent Company, and by Fred B. Hughes, international representative of Respondent International.

By-laws of the Union, the Employer will, upon receipt of written notice of such fact and request, discipline or discharge such employee within fifteen (15) days thereof, unless the Union withdraws such notice and request.

Arthur Neeper, an employee of Respondent Company for 28 years, was discharged August 2, 1950. He became a member of Local 448 (Respondent Local) in 1936. Prior to June 1948 he was financial secretary of the Local (during 1946, 1947, and until June 1948), a member of the Local's policy committee (immediately prior to April 1, 1948) and a member of the Local's plant committee and negotiating committee.

Commencing with April 1950 and thereafter, Neeper failed to pay his monthly dues to the Union.

A regular meeting of Respondent Local was scheduled for July 14, 1950. However, such meeting was not held because a quorum was not present. Nevertheless, the executive board of Respondent Local and Fred B. Hughes, international representative for Respondent International, did hold a meeting. As a result of this meeting a letter was sent to Respondent Company which stated: ⁶

United Brick and Clay
Workers of America

Organized May 18th, 1894

Reorganized January 1st, 1915

July 14, 1950

North American Ref. Co.

c/o Ashley Bloom,

Dist. Supt.

Dear Sir:

This is to inform you and the North American Ref. Co. that according to the Constitution and By-Laws of Local 448 and the United Brick and Clay Workers of America, A. F. L., Article VIII, heading "Dues and Initiation Fees" Section (d) pertaining to the payment of dues to the Local Organization

Arthur Neeper who was a member of Local 448 and has failed to pay any dues to said Local since March 1950. This member is three months in arrears as of July 1st, 1950.

According to the Constitution and By-Laws he is no longer a member of Local 448 as of July 1st, 1950. It is impossible for the Financial Secretary to receive dues from the employee unless the Local takes further action in regard to reinstatement or otherwise.

President Local 448
Clair Tubbs

Rec. Secretary Local 448
Roy Spencer

On or about July 21, 1950, a committee from Respondent Local and Fred B. Hughes, international representative, met with representatives of Respondent Company and discussed matters not material herein. After discussing the matter not material in these proceedings, Hughes asked Mr. Warnick, a representative of Respondent Company, what Respondent Company intended to do about the letter of July 14 (set forth above) and Warnick answered "nothing." Hughes

⁶ Hughes testified he neither approved nor disapproved this letter. His denial that he approved the letter is not credited. The record as a whole, including the testimony of Tubbs, president of Respondent Local, indicates Hughes did approve this letter although he may not have made a formal announcement of such approval.

asked "why" and Warnick said that the letter did not state what the Local intended to have done with Neeper, whether to have him disciplined or discharged—did not specify any action. Hughes then remarked "that he [Hughes] would see that he [Warnick] got a letter that did specify."⁷

At a regular meeting of Respondent Local held on July 28, 1950, which was attended by Hughes and by Nathan Duff,⁸ counsel for Respondent International and Respondent Local, Arthur Neeper's dues arrearage was discussed and it was concluded that a letter should be sent to Respondent Company requesting the discharge of Neeper. The letter sent to Respondent Company stated:

Curwensville, Penna.
July 28, 1950

North American Refractories Company
1012 National City Bank Building
Cleveland 14, Ohio

Gentlemen:

In accordance with the provisions of the Collective Bargaining Agreement dated August 13, 1948, existing between you and the subscribing Union we hereby serve you with formal notice that Arthur Neeper, one of your employees at the Curwensville, Pennsylvania, plant, ceased, as of July 1, 1950, to be and remain a member of the subscribing Union in good standing in accordance with the provisions of our Constitution and By-Laws.

We give you further notice that the said Arthur Neeper voluntarily terminated his membership in said Union by reason of the fact that he deliberately failed and refused to pay or to tender the periodic dues uniformly required for membership in said Union.

His failure and refusal to pay such dues for a period of three months prior to July 1, 1950, caused his automatic suspension as of said date.

In accordance with Article II, Section 3 of the Collective Bargaining Agreement above mentioned we hereby request you to discharge the said Arthur Neeper from employment in said plant "for cause"; the cause being his failure and refusal to continue as a member of said Union in good standing.

We hereby waive our *exclusive right* to withdraw this Notice during the fifteen days succeeding the receipt hereof as provided in Article II, Section 3 of said Agreement, to the end that you may discharge the said Arthur Neeper forthwith without any complaint or grievance on our part.

The members of the subscribing Union, at a regular meeting held on July 28, 1950, by a motion duly adopted, approved the verbatim context of this Notice and directed the subscribing Secretary to dispatch forthwith this original to the main office of the Company at Cleveland and a signed copy of such notice to your plant at Curwensville, Pennsylvania.

Very truly yours,

UNITED BRICK & CLAY WORKERS OF AMERICA
Local Union No. 448

By /s/ Guy Stuller, *Financial Secretary*.

Approved:

/s/ Clair Tubbs, President, Local Union 448

⁷ Above quotation taken from testimony of Ashley Bloom. Hughes denied telling Warnick "there would be another letter written" and testified, "I told him there would possibly be." It does not appear necessary to resolve this conflict.

⁸ The minutes of the meeting reveal that "Att Duff addressed the union body during the meeting"

Upon receipt of the afore-mentioned letter of July 23, 1950, Ashley Bloom, division manager of the Crescent Division of North American Refractories, contacted Respondent Company's Cleveland office and thereafter, on August 2, 1950, discharged Neeper for "being in arrears with dues."

Conclusions

The principal issue for decision herein is: Does the contract of August 13, 1948 (the union-security clause quoted above) exceed the permissible limits of Section 8 (a) (3) of the Act?

Section 8 (a) (3) of the Act makes it unlawful for an employer to discriminate against his employees "to encourage or discourage membership in any labor organization." A proviso to that section, however, permits an employer to make an agreement with a labor organization "to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later." Any union-security clause not sanctioned by that proviso, or more limited in scope, cannot serve as a defense to a discrimination resulting from resort to such a clause. (See *Green Bay Drop Forge Co.*, 95 NLRB 399, and *Kingston Cake Company, Inc.*, 91 NLRB 447, enforcement denied on other grounds 28 LRRM 2571 (C. A. 3).) Any union-security agreement not in strict compliance with the explicit requirements of the proviso imposes upon the employer a contractual obligation during the life of the agreement to adopt and adhere to discriminatory conditions of employment forbidden by the Act. (See *N. L. R. B. v. National Maritime Union*, 175 F. 2d 686 (C. A. 2), cert. den. 338 U. S. 954; *United Mine Workers v. N. L. R. B.*, 184 F. 2d 392 (C. A. D. C.), cert. den. 340 U. S. 934; *Aeroil Products Company, Inc.*, 86 NLRB 639.)

The first sentence of the union-security provision quoted above provides:

All employees who on April 1, 1948 are members of the Union in good standing . . . and all employees who thereafter become members, shall, as a condition of employment, remain members of the Union in good standing for the duration of this agreement.

The statute, however, only permits an agreement "to require as a condition of employment membership [in the Union] on or after the thirtieth day following the beginning of such employment or the effective date of such Agreement, whichever is the later. . . ." (Emphasis supplied.) The union-security provision under consideration requires "all employees who on April 1, 1948 [before the effective date of the agreement] are members of the union . . . , and all employees who thereafter become members [including those who become members, between April 1, 1948, and September 13, 1948], shall, as a condition of employment, remain members of the union. . . ." This requirement of retroactive union membership and the failure to permit these employees to refrain from union membership during the period of at least 30 days following the effective date of the agreement clearly exceed the limited form of union-security agreement permitted by the Act. (See *International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, Local 291 (Vernon J. Leubke) Wisconsin Axle Division, The Timken-Detroit Axle Company*, 92 NLRB 968, and cases cited therein; *Rock-Ola Manufacturing Corporation*, 93 NLRB 1196; *Shepherd Manufacturing Company, Inc.*, 90 NLRB 2196; *Worthington Pump and Machinery Corporation*, 93 NLRB 527; *National Foundry & Furnace Company*, 88 NLRB 1083.)

The undersigned finds and concludes:

(1) That by maintaining and continuing in effect the aforementioned union-security provision Respondent Company has interfered with, restrained, and

coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8 (a) (1) thereof.

(2) That by maintaining and continuing in effect said agreement Respondent Company lent support and assistance to Respondent Local in violation of Section 8 (a) (1) and (2) of the Act.⁹

(3) That by discharging Arthur Neeper pursuant to the said agreement Respondent Company discriminated in regard to the hire or tenure of employment of Arthur Neeper in violation of Section 8 (a) (3) of the Act.¹⁰

(4) That as a party to the maintenance and continuance of said agreement and by causing the discharge of Arthur Neeper, Respondent Unions¹¹ violated Section 8 (b) (2) and 8 (b) (1) (A) of the Act.¹²

In summary, the undersigned concludes and finds that by the conduct herein outlined, Respondent Company committed unfair labor practices within the meaning of Section 8 (a) (1), (2), and (3) of the Act and Respondent Unions committed unfair labor practices within the meaning of Section 8 (b) (1) (A) and 8 (b) (2) of the Act and that these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.¹³

The Remedy

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

It has been found that Respondents entered into, maintained, and continued an illegal agreement requiring membership in Respondent Local as a condition of employment with Respondent Company. Accordingly, it will be recommended that Respondent Company withdraw recognition from Respondent Unions and that Respondents and each of them cease giving effect to any agreement which requires membership in Respondent Unions or either of them as a condition of employment, unless such agreement is authorized as provided by the Act and is in accordance with the terms of the Act. Nothing contained herein shall, however, be deemed to require Respondent Company to vary or abandon those wage, hour, seniority, or other substantive features of its relations with its employees, established in the performance of the contract of August 13, 1948, or to prejudice the assertion by employees of any rights they may have under the said contract.

Having found that Respondent Company unlawfully discriminated against Arthur Neeper and that Respondent Unions caused said discrimination, it will be

⁹ See *Strauss Stores Corporation*, 94 NLRB 440; *Julius Resnick, Inc.*, 86 NLRB 38; *Salant & Salant, Inc.*, 87 NLRB 215

¹⁰ See *Green Bay Drop Forge Co.*, 95 NLRB 399.

¹¹ As noted above, after certification of Respondent International as the organization authorized to make a lawful union-security agreement the contract herein involved was executed by representatives of Respondent Company, representatives of Respondent Local, and by International Representative Fred B. Hughes, and the contract states it is by and between Respondent Company and Respondent International on behalf of Respondent Local. Furthermore, as noted above, Respondent International, through Fred B. Hughes and Nathan Duff, participated in efforts by Respondent Local to enforce the terms of the afore-mentioned agreement. Under these circumstances the undersigned concludes that Respondent International as well as Respondent Local violated Section 8 (b) (2), and 8 (b) (1) (A) of the Act.

¹² See *Printz Leather Company*, 94 NLRB 1312; *Childs Company*, 93 NLRB 281; *New York State Employers Association, Inc.*, 93 NLRB 127; *Acme Mattress Company, Inc.*, 91 NLRB 1010.

¹³ In view of the findings and conclusions stated above the undersigned finds it unnecessary to discuss or rule upon the General Counsel's alternative theory that, assuming the August 13, 1948, agreement valid, nevertheless Neeper's discharge was violative of the Act.

recommended that Respondent Company offer Arthur Neeper immediate and full reinstatement to his former or substantially equivalent position,¹⁴ without prejudice to his seniority or other rights and privileges and that Respondent Unions notify Respondent Company in writing, and furnish a copy of the notice to Neeper, that they have no objection to the employment of Neeper by Respondent Company. It will be further recommended that Respondents, jointly and severally, make Arthur Neeper whole for any loss of pay he may have suffered by reason of the discrimination against him. The loss of pay shall be computed from the date of the discrimination to the date of a proper offer of reinstatement. In computing the loss of pay, the customary formula of the National Labor Relations Board shall be followed. See *F. W. Woolworth Company*, 90 NLRB 289. However, Respondent Unions, and each of them, may terminate their liability for further accrual of back pay by giving Respondent Company the notice of withdrawal of objection to Neeper's reinstatement as provided above. Respondent Unions, or either of them as the case may be, shall not be liable for any back pay accruing 5 days after such notice.

In order to insure expeditious compliance with this recommended order it will be further recommended that Respondent Company, upon reasonable request, make available to the Board and its agents all records pertinent to an analysis of the amount due as back pay and pertinent to the reinstatement recommendations herein made.

In order to make effective the interdependent guarantees of the statute and thus effectuate the policies of the Act, it will be recommended that Respondents cease and desist from engaging in the unfair labor practices found and from in any other manner infringing upon the rights of employees guaranteed by the Act and that Respondents post the notices attached hereto.

[Recommendations omitted from publication in this volume.]

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 our employees that:

WE WILL NOT encourage membership in UNITED BRICK AND CLAY WORKERS OF AMERICA, AFL, and UNITED BRICK AND CLAY WORKERS OF AMERICA, LOCAL No. 448, AFL, 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 and tenure of employment or any term or condition of employment, except to the extent permitted by Section 8 (a) (3) of the National Labor Relations Act.

WE WILL NOT give effect to our contract of August 13, 1948, with UNITED BRICK AND CLAY WORKERS OF AMERICA, AFL, and/or with UNITED BRICK AND CLAY WORKERS OF AMERICA, LOCAL No. 448, AFL, or to any modification, extension, supplement, or renewal thereof, or to any other agreement entered into with said labor organizations or either of them, relating to grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions

¹⁴ In accordance with the Board's consistent interpretation of the term, the expression "former or substantially equivalent position" is interpreted to mean "former position wherever possible and if such position is no longer in existence, then to a substantially equivalent position" See *The Chase National Bank of the City of New York, San Juan, Puerto Rico, Branch*, 65 NLRB 827.

of employment unless and until said labor organizations or either of them, as the case may be, shall have been certified by the National Labor Relations Board.

WE WILL NOT give effect to any agreement with UNITED BRICK AND CLAY WORKERS OF AMERICA, AFL, with UNITED BRICK AND CLAY WORKERS OF AMERICA, LOCAL No. 448, AFL, or with any other labor organization of our employees, which requires our employees to join or maintain membership in such labor organization as a condition of employment, unless such agreement has been authorized, and only to the extent permitted, under the National Labor Relations 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 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 withdraw and withhold all recognition from UNITED BRICK AND CLAY WORKERS OF AMERICA, AFL, and from UNITED BRICK AND CLAY WORKERS OF AMERICA, LOCAL No. 448, AFL, as the representative of any of our employees for the purpose of dealing with us concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, unless and until such labor organization shall have been certified by the National Labor Relations Board.

WE WILL offer Arthur Neepor immediate and full reinstatement to his former or a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed and we will make him whole for any loss of pay suffered as a result of the discrimination against him.

All our employees are free to become, remain, or to refrain from becoming or remaining, members of the above-named unions 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.

NORTH AMERICAN REFRACTORIES COMPANY,
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 UNITED BRICK AND CLAY WORKERS OF AMERICA, LOCAL No. 448, AFL, AND TO ALL EMPLOYEES OF NORTH AMERICAN REFRACTORIES COMPANY, CURWENSVILLE, PENNSYLVANIA, PLANT

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 NORTH AMERICAN REFRACTORIES COMPANY, 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 participate in the enforcement of any agreement or arrangement with NORTH AMERICAN REFRACTORIES COMPANY, its officers, agents,

successors, or assigns, which requires the employees of the said company to join or maintain membership in our union, or any successor labor organization, as a condition of employment, unless such agreement has been authorized, and only to the extent permitted, under the National Labor Relations Act.

WE WILL NOT in any other manner restrain or coerce employees of NORTH AMERICAN REFRACTORIES 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 by Section 8 (a) (3) of the Act.

WE WILL notify NORTH AMERICAN REFRACTORIES COMPANY that we have withdrawn our objections to the employment of Arthur Neeper and that we have no objections to the employment of said individual by said company.

WE WILL make whole Arthur Neeper for any loss of pay suffered because of the discrimination against him.

UNITED BRICK AND CLAY WORKERS OF AMERICA, AFL,
 AND
 UNITED BRICK AND CLAY WORKERS OF AMERICA,
 LOCAL NO. 448, AFL,
Labor Organizations.

Dated----- By-----
 (Representative) (International) (Title)
 Dated----- By-----
 (Representative) (Local) (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.

ARMSTRONG CORK COMPANY *and* INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS AND HELPERS OF AMERICA, A. F. OF L., PETITIONER

ARMSTRONG CORK COMPANY *and* LOCAL 676, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, A. F. OF L., PETITIONER. *Cases Nos. 4-RC-1552 to 1558 and 4-RC-1562. September 18, 1952*

Decision, Order, and Direction of Elections

Upon separate petitions duly filed under Section 9 (c) of the National Labor Relations Act, a consolidated hearing was held before Harold X. Summers, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.¹

¹ At the hearing, the Intervenor, United Rubber, Cork, Linoleum and Plastic Workers of America, C. I. O., and its Local Union No. 242, moved to dismiss the petitions of International Brotherhood of Boilermakers, Iron Shipbuilders and Helpers of America, A. F. of L., herein called the Boilermakers, upon the ground that the units which the latter seeks to represent are inappropriate. For the reasons given *infra*, the motion is granted as to the petitions filed in cases numbered 4-RC-1555 and 4-RC-1558, and denied as to the others.