The Public Utility Construction and Gas Appliance Workers of the State of New Jersey, Local 274, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, AFL–CIO *and* Public Service Electric and Gas Company (Gas Distribution Department). *Case No. 22–CB–9.*[1] *April 9, 1958*

DECISION AND ORDER

On July 10, 1957, Trial Examiner Lloyd Buchanan issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent has engaged in and was engaging 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, Respondent Union and the General Counsel filed exceptions to the Intermediate Report, and supporting briefs. The Company, the Charging Party herein, filed a brief commenting on the exceptions filed by the Respondent and the General Counsel.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Rodgers, Bean, and Jenkins].

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 this case, and adopts the Trial Examiner's findings and conclusions only to the extent that they are consistent with the findings and conclusions set forth below.[2]

The complaint alleged that Respondent Union violated Section 8 (b) (2) and (1) (A) of the Act by demanding, on June 21, and on November 8 and 13, 1956, that the Company discharge employees William E. Meyer and Kenneth Koob because of their failure to pay dues to, and their lack of membership in, the Union. Respondent Union admits that it requested the discharge of Meyer and Koob as alleged in the complaint, but asserts that its actions were legally justified under the union-security provisions of its bargaining con-

[1] The original number of this case was 2–CB–1862. On September 3, 1957, by order of the General Counsel, the case was transferred to, and continued in, the Twenty-second Region under the case number designated in the caption

[2] The Intermediate Report contains the following statement: "Successive renewals which take effect with the expiration date of previous contracts need not provide additional opportunities to resign for those who are already union members [Citing *Charles A. Krause Milling Co*, 97 NLRB 536, 539.] No more need an additional grace period be provided for 'old' employees who have not become members. [Citing *American Yearbook Company*, 98 NLRB 49, 52.]"

In view of our disposition of this case, we do not deem it necessary to pass upon the accuracy of, or to adopt, this statement.

tracts with the Company. The Trial Examiner concluded that Respondent Union violated the Act by requesting the discharges. We agree with this conclusion.

For the most part, the essential facts of this case were stipulated by the parties. In 1953, the Union and the Company had a contract which contained a union-security provision requiring employees who were union members to maintain their membership in, and to pay dues to, the Union. On March 31, 1953, the Respondent notified the Company that this current contract would expire on June 30, 1953. Following the expiration date, the parties commenced negotiations for a new contract. On November 20, 1953, no agreement having been reached, the Union called a strike, which lasted until December 29, 1953.

On that date, December 29, the parties executed a memorandum agreement. Among other things, the memorandum agreement extended, until June 30, 1954, substantially all the terms of the agreement which had expired on June 30, including the provision relating to maintenance of membership in the Union. By its terms, however, the memorandum agreement also required ratification by the union rank and file.

On the same date as the strike ended and the memorandum agreement was executed, December 29, 1953, Meyer and Koob resigned from the Union.[3] Prior to this date both Meyer and Koob had been union members in good standing. Afterwards, they never rejoined the Union.

The record does not show on what date the union rank and file ratified the December 29 memorandum agreement. However, on February 25, 1954, the parties executed a formal contract based on such ratification, which required employees to maintain their membership in, and pay dues to the Union, and which contained an expiration date of June 30, 1954. This contract was allowed to expire by its terms on June 30, 1954.

On July 16, 1954, the parties executed a new agreement to be effective until June 30, 1955. This contract was extended in 1955 to June 30, 1956, at which time it was allowed to terminate. On July 27, 1956, a new contract was executed with an expiration date of June 30, 1958. The July 1954 and 1956 contracts contained maintenance-of-membership provisions similar to those in the earlier agreements.

On June 21 and November 8 and November 13, 1956, the Union requested the discharge of Meyer and Koob for their failure to pay union dues and their failure to maintain union membership. The Employer

[3] Although there is some conflict as to the date on which the Respondent received notice of the resignations of Meyer and Koob, the Trial Examiner found, and the record shows, that Harmata, the union steward, received Meyer's telegram of resignation, and Koob's letter of resignation, on December 29, 1953 We adopt these findings, and also find, as did the Trial Examiner, that notice to the union steward constituted effective notice to the Union.

did not comply with these requests. On December 4, 1956, the instant action was commenced.

The evidence set forth above raises a question as to the effective date of the contract which expired on June 30, 1954—that is, whether its effective date was December 29, 1953, or February 25, 1954. As a result of this doubt, it is not clear whether Meyer and Koob, who tendered their resignations on December 29, 1953, resigned from the Union before or during the life of that contract. But the answer to this question is not material to the issue of whether the Respondent violated the Act by seeking Meyer's and Koob's discharges. For three facts are patently clear: First, Meyer and Koob effectively resigned from the Union on December 29, 1953, and did not thereafter rejoin. Second, from June 30, 1954, until July 16, 1954, there was no bargaining contract in being covering the Company's employees. And third, between June 30, 1956 and July 27, 1956, there was likewise no bargaining contract in being covering the Company's employees.

These three facts are controlling in this case. For whatever rights the Union may have had with respect to the delinquency of Meyer and Koob during the term of the contract which ended in June 1954, such rights could not, in view of the lapse of the contract, thereafter be asserted. Thus as Meyer and Koob had effectively resigned from the union in 1953, and as they were not union members when the July 1954 or the July 1956 contracts became effective, the maintenance-of-membership provisions in those contracts had no legal application to them. It follows therefore that the Respondent's demands for the discharge of Meyer and Koob cannot be justified under the terms of the contracts which were in existence when the demands were made.[4]

Despite the obvious lapses in the contracts, the Respondent contends that by virtue of a New Jersey statute,[5] an unmarred continuity existed between its various contracts with the Company. We find no merit in this contention, for, except as provided therein, the enforcement of the Labor Management Relations Act may not be affected by the vagaries of State enactments.[6]

---

[4] *New Jersey Bell Telephone Company*, 106 NLRB 1322.

[5] NJSA Title 34, Chap. 13 (B), Sec. 34: 13b–4, provides that:

> All labor agreements . . . Shall be reduced to writing and continue for a period of not less than one year from the date of the expiration of the previous agreement. . . . *Such agreement shall be presumed to continue in force and effect from year to year after the date fixed for its original termination unless either or both parties thereto inform the other, in writing, of the specific changes desired to be made therein and shall also file a copy of such demands with the State Board of Mediation, at least sixty days before the termination date, or sixty days before the end of any yearly renewal period.* [Emphasis supplied.]

[6] *Hill et al.* v. *Florida ex rel Watson, Attorney General*, 325 U. S. 538; *Amalgamated Association of Street, Electric Railway Motor Coach Employees of America, et al.* v. *Wisconsin Employment Relations Board*, 340 U. S. 383; *Henry V. Rabouin, d/b/a Conway's Express* v. *N. L. R. B.*, 195 F. 2d 906, 910 (C. A. 2); *N. L. R. B.* v. *Hearst Publications, Inc*, 322 U. S. 111, 123; *Cyclone Sales, Inc.*, 115 NLRB 431; *Michigan Bakeries, Inc.*, 100 NLRB 658, 660, footnote 3.

Accordingly, we find that the demands by the Respondent Union for the discharge of Meyer and Koob violated Section 8 (b) (2) and (1) (A) of the Act.[7]

ORDER

Upon the entire record in this case and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondent Union, the Public Utility Construction and Gas Appliance Workers of the State of New Jersey, Local 274, of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, AFL–CIO, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Requesting Public Service Electric and Gas Company, or any other employer, to discharge, or otherwise discriminate against, any employee, when such discharge or discrimination would be in violation of Section 8 (a) (3) of the Act.

(b) In any other manner restraining or coercing 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.

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

(a) Notify William E. Meyer, Kenneth J. Koob, and Public Service Electric and Gas Company, in writing, that it withdraws its objections to the employment of Meyer and Koob by the Company.

(b) Post at its office in Jersey City, New Jersey, and all other places where notices to its members are customarily posted, copies of the notice attached hereto marked "Appendix."[8] Copies of said notice to be furnished by the Regional Director for the Twenty-second Region, shall, after being duly signed by its representative, be posted by the Respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to its members are customarily posted. Reasonable steps shall be taken by the Respondent Union to insure that said notices are not altered, defaced, or covered by any other material.

---

[7] The General Counsel contends that the demands for the discharge of Meyer and Koob were unlawful apart from the fact that these employees voluntarily resigned from the Union. In support of this contention the General Counsel relies upon a provision in the union constitution (section 178), which provides for expulsion of employees delinquent in their dues for more than 1 year. In view of our disposition of this case, we do not pass upon the merits of this contention.

[8] In the event that this Order is enforced by a decree of the 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."

(c) Mail to the Regional Director for the Twenty-second Region signed copies of the notice attached hereto marked "Appendix" for posting if the Company is willing, by the Company for sixty (60) consecutive days in places where notices to employees are customarily posted.

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

APPENDIX

NOTICE TO MEMBERS AND ALL EMPLOYEES

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

WE WILL NOT request Public Service Electric and Gas Company, or any other employer, to discharge any employee except as permitted by an agreement authorized by Section 8 (a) (3) of the Act.

WE WILL NOT in any other manner attempt to cause Public Service Electric and Gas Company, or any other employer, to discriminate against any employee in violation of Section 8 (a) (3) of the Act.

WE WILL NOT in any manner restrain or coerce employees in the exercise of the right to self-organization, to form labor organizations, to join or assist any labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or 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 by Section 8 (a) (3) of the Act.

THE PUBLIC UTILITY CONSTRUCTION AND GAS APPLIANCE WORKERS OF THE STATE OF NEW JERSEY, LOCAL 274, OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY, AFL–CIO,

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.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

The complaint herein alleges that the Union has violated Section 8 (b) (2) and (1) (A) of the National Labor Relations Act, as amended, 61 Stat. 136, by requesting and demanding since about June 21, 1956, and particularly on or about that date and November 8 and 13, 1956, that the Company discharge William E. Meyer and Kenneth J. Koob because of their failure to pay dues to, and their lack of membership in, the Union. Admitting the requests and demands, the answer, as amended, alleges that prior to June 1953 the Company and the Union entered into a collective-bargaining agreement which contained a maintenance-of-membership clause; that Koob and Meyer were employees of the Company and members of the Union, and subject to said maintenance-of-membership clause; that since June 30, 1952, there has always existed between the Company and the Union an agreement which provided for maintenance of membership; that Koob and Meyer have continuously been subject to said provision, and that the Union's demands for their discharge by the Company were predicated on their refusal to tender dues to the Union in accordance with the provisions of the Act.

A hearing was held before me at New York, New York, on June 3, 1957. General Counsel, counsel for the Company, and counsel for the Union were heard in oral argument at the close of the hearing. Pursuant to leave granted to all parties, a brief was thereafter filed by the Company. On July 2, 1957, I received from the General Counsel a letter and stipulation for correction of record, the stipulation signed by counsel for the General Counsel, the Union, and the Company. The letter and stipulation have been marked Trial Examiner's Exhibits Nos. 1A and B respectively. The record is hereby corrected as proposed in said stipulation.

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

FINDINGS OF FACT (WITH REASONS THEREFOR)

I. THE COMPANY'S BUSINESS AND THE LABOR ORGANIZATION INVOLVED

It was admitted and I find that the Company, a New Jersey corporation, whose address is 80 Park Place, Newark, New Jersey, had gross revenue, during the year preceding issuance of the complaint, of more than $300,000,000, derived in part from furnishing utility services to various enterprises whose operations affect commerce, including General Motors Corp., Crucible Steel Co. of America, Colorado Fuel and Iron Corp., and Westinghouse Electric Co.; and that the Company is engaged in commerce within the meaning of the Act.

It was admitted and I find that the Union is a labor organization within the meaning of the Act.

II. THE UNFAIR LABOR PRACTICES

It was stipulated that prior to June 30, 1953, the Company and the Union entered into a collective-bargaining agreement which provided for a standard maintenance-of-membership clause (tender of dues). This agreement expired on June 30, 1953. Koob and Meyer were employees of the Company, and on that date were members of the Union. Meyer did not pay dues after October 1953; Koob after those for November 1953. There is no stipulation that Koob and Meyer resigned from the Union on or about December 24, 1953, as claimed in the original charge. But, as we shall see, they did submit resignations sometime between that date and the end of that year. On December 29, 1953, a stipulation was entered into between committees representing the Company and the Union in which, in relation to union-security and other terms, it was agreed as follows:

> (a) All other terms and conditions of the agreement between the parties which expired July 1, 1953 shall be effective to June 30, 1954.
>
> (b) The Committee representing the Union is agreed that the terms of settlement will immediately be submitted for acceptance by the rank and file with their recommendations.

A formal contract, based on ratification of the December 29 stipulation by the rank and file was entered into between the parties on February 25, 1954. This contract provided for the standard maintenance of membership union-security clause for employees then on the payroll, and was to run to June 30, 1954.

On July 16, 1954, the parties, i e., the Company and the Union, entered into a new contract, which stated, with respect to union security:

> . . . the aforesaid agreement(s) of . . . and February 25, 1954 are extended to June 30, 1955.

On June 21, 1955, the parties entered into an agreement which provided, with respect to union security:

> . . . the aforesaid agreement of July 16, 1954 is hereby extended to and including June 30, 1956.

On November 28, 1955, the Union wrote to the Company in reference to Koob and Meyer, stating:

> We therefore request that you comply with your obligation under the contract and suspend these employees from active employment until such time as they tender to the Union such dues payments that would place them in good standing.

The Company then made an investigation of the situation, and as a result thereof, did not suspend the men as demanded by the Union. On June 21, 1956, the Company received a letter from the attorney for the Union, concerning Koob and Meyer, which stated:

> You are, therefore, requested to discharge such employees under the terms and provisions of Article II of your current labor agreement.

On July 27, 1956, the parties entered into a contract which, with respect to union security, provided:

> . . . the said agreement of June 21, 1955 shall continue in full force and effect to and including June 30, 1958.

On November 8, 1956, the Union filed a grievance with the Company demanding the discharge of Koob and Meyer. This grievance was "denied" at the initial steps. The Union thereafter asked for a top step grievance meeting on the matter of the requested discharges.

Several established propositions of law may be noted before we consider the facts in connection with the alleged resignations from the Union by Meyer and Koob. Even during the term of a contract which contains a union-security clause, employees may resign provided that they tender dues.[1] Further, what was at the hearing referred to as the maintenance-of-membership clause in the various contracts provided only for payment of dues, and not for continued membership, by "(a)ll employees within the bargaining unit who are members of the Union" and (with initiation fees) by "(a)ll employees hired in bargaining unit jobs after the date of" the agreements. (Following the pattern set in the various agreements and the amended answer and at the hearing, we shall continue to refer to this as the maintenance-of-membership provision.) Thus, as far as Meyer and Koob are concerned, the question is whether they were members during the term of a contract and, if so, whether they failed to pay dues during such term.

Successive renewals which take effect with the expiration date of previous contracts need not provide additional opportunities to resign for those who are already union members.[2] No more need an additional grace period be provided for "old" employees who have not become members.[3]

Whatever might be implied from the Union's affirmative defense as set forth in its amended answer, there was here no single continuous contract from June 30, 1952, until the Union's demands in 1956. These were a series of contracts, and any demand by the Union must, under the Act, be found to have been warranted under or authorized by a contract in existence at the time of such demand. This is not to say that the act of the employee, i. e., the failure or refusal to pay his dues must first occur during the term of the contract in the course of which the demand is made where the contracts are successive and continuous; for in such a case, if the employee was not earlier authorized to withdraw, he would be required, if words mean anything, to maintain his membership through the succeeding contracts or to pay his dues: he would be in default, in the absence of special circumstances, with respect to each payment due.

Having seen that the requirement for employees who have been members extends through continuous contracts, we now come to the issues concerning lapses between the contracts, the alleged resignations, and whether such resignations were submitted during a period of lapse. Neither Meyer nor Koob in their testimony pinpointed the dates when they submitted their resignations. But certain facts can be gleaned from the record. The former resigned in a telegram to Harmata, the

---

[1] *Marlin Rockwell Corporation*, 114 NLRB 553, 560; *Union Starch & Refining Company*, 87 NLRB 779, 784–786.

[2] *Charles A. Krause Milling Co.*, 97 NLRB 536, 539.

[3] *American Yearbook Company*, 98 NLRB 49, 52.

union steward, which was sent out on the evening of December 28, 1953, and presumably received on the morning of December 29. Meyer's confirming letter, dated December 28, was received by Harmata on December 31. Koob's letter of resignation was dated December 24 and was mailed to Harmata on or about December 26. The return receipt, signed by Harmata bears no delivery date, but was canceled at the latter's post office on December 29. Harmata testified without contradiction that he turned these letters over to Clancy, the president of the division of the Union which includes the Company's employees. He also testified quite uncertainly that he gave them to Clancy on the date when he received them or a day or so later, and before the strike ended.

I find that Meyer's telegram of resignation and Koob's letter were received by Harmata on December 29; Meyer's letter on December 31. As the Union's representative, Harmata attended to grievances, checked conditions of employment, saw to it that terms of collective-bargaining agreements were lived up to, and distributed membership-application cards to new employees. Also, in accordance with a posted union notice, he collected dues from members who could not or did not attend union meetings. DeNike, the union business agent testified that Harmata had no authority to accept resignations, but neither is there in the Union's constitution any provision, reasonable or otherwise, for resignation of members. Certainly we shall not conclude that employees therefore could not resign. The question here revolves, not around formal acceptance of resignations by the steward, but only about delivery to and receipt by him and his transmission of resignations to the division president. Harmata appears to have been the only union representative with whom the employees had direct contact. That Meyer and Koob regarded him as the Union's representative may be seen in the fact that Meyer sent his telegram of resignation to Harmata only, confirming it by letters to both Harmata and the Union, and the further fact that Koob sent his letter of resignation to Harmata, and a carbon copy to the Union. I find that notice to him was notice to the Union.[4]

Whether the resignations were submitted on December 24 or December 29, or even December 31 (we have seen that they were received on December 29), there is no evidence of ratification of the stipulation of December 29 between the Company and the Union on or before December 31. Koob testified that the strike ended "almost the last day of the year, December 29, 30 or 31." He later heard that there was a meeting to vote on the agreement. DeNike referred to the stipulation of December 29, but did not say when it was ratified. In this connection we have no more than the agreed statement, noted *supra*, that the contract of February 25, 1954, was based on ratification of the December 29 stipulation. The ratification presumably occurred sometime between December 29 and February 25. There is thus no warrant for holding that the resignations were barred by an agreement which was in effect when they were submitted. It was abundantly made clear that after June 30, 1953, there was no contract between the Company and the Union. This was stipulated at the hearing; the stipulation of December 29, to be ratified thereafter, so indicates; and although DeNike testified that he "felt" that the earlier agreement continued in effect, he had on March 31, 1953, given a 90-day notice of expiration. There is no evidence of any extension prior to the stipulation dated December 29. The burden of showing that the former contract continued in effect or that a new one came into existence, was effective, and as of what date, is of course on the party which seeks a finding to that effect. Payment of dues by other employees is an incident of a contract; it does not itself prove that a contract was in existence, and certainly not in the face of the other evidence to the contrary.

In *New Jersey Bell Telephone*,[5] the employee was delinquent, as the Board noted, during the term of a contract between the employer and the union, and such delinquency would at that time have permitted action against the employee. In the instant case, the employees were not delinquent during the life of the contract, which had expired on June 30, 1953. If, having failed to act when the employee

[4] Cf. *District Lodge 67, International Association of Machinists, AFL (Addressograph-Multigraph Corporation)*, 110 NLRB 727, 736; *International Brotherhood of Teamsters, Local 182 (The Lane Construction Corporation)*, 111 NLRB 952, 953, 957–958. The General Counsel has not stressed the copies of the resignations which were allegedly sent to the Union by registered mail, the Union denying knowledge of the individual whose name is signed to the return receipts. In this connection, it may be of interest to note that in the *New Jersey Bell Telephone Company* case, *infra*, the resignation was sent on March 26 and received on March 27; the Board referred to the resignation as of March 26, thus relying on the date when it was sent. But in that case there was no issue concerning actual receipt of the resignation.

[5] *New Jersey Bell Telephone Company*, 106 NLRB 1322.

was delinquent, the union in *New Jersey Bell Telephone* could not enforce the expired contract, *a fortiori* the Union here could not lawfully act against Meyer or Koob when they were not delinquent and after the first noted contract had expired on June 30, 1953. As for the second contract which is before us, that of February 25, 1954, we can inquire, in the language of the cited case, "whether or not [Meyer and Koob were] union member[s] on [the date not here shown] when the maintenance of membership in that contract first took effect." We can then adopt the Board's further statement: "If [they were] not, [they were] never thereafter, by the terms of the contract, required to join, and consequently [were] protected against discrimination both at the hands of the Union and of the Company."

While, under the provisions in the Union's constitution and bylaws for payment of dues, suspension, and expulsion, action for nonpayment would not be taken before February 25, 1954, or the effective date of the December 29 stipulation, had Meyer and Koob continued as members, such action would depend on their being members when the stipulation was ratified. In short, action could not be taken against them for nonpayment of dues unless it were shown that they were still members when the agreement was ratified and went into effect. This can be further readily seen if we bear in mind, as we shall soon see, that any claim for dues could not be retroactive, i. e., for a period prior to the effective date of the stipulation of December 29. But if dues could not be demanded for the period prior to the date of ratification of the stipulation, it would have to appear that on the latter date Meyer and Koob were members of the Union if they were to be liable for dues thereafter. As we have seen, that date has not been shown; and there is no evidence of their membership on such date.

This case is thus to be distinguished from *Utility Co-Workers' Association (Public Service Electric and Gas Company)*,[6] where the Board, citing *Krause Milling, supra,* held that, in the absence of evidence that employees ceased to be union members before a new contract went into effect, it would not presume that any old employees who had been required to maintain union membership had been denied a necessary grace period. In the instant case, Meyer and Koob had withdrawn from membership during a hiatus.

We arrive at the same finding if we traverse a different path and note that there was a clear break or lapse between the expiration on June 30, 1954, of the contract of February 25, 1954, and the entry into the next contract, on July 16, 1954. Meyer and Koob clearly were no longer members of the Union in July 1954, and the union-security provisions of the contract of July 16 could not be made retroactive or otherwise applicable to them in its requirement for payment of dues.[7] Thus, regardless of the sufficiency of the resignations to defeat a demand by the Union prior to July 1, 1954, the resignations were in fact submitted; and if these employees could earlier have been compelled to pay their dues, they could not be so compelled after June 30, 1954. Their resignations stood, and no action could be taken against them after July 16 under the renewal contracts. (Reference could also be made to the lapse between the contract which expired on June 30, 1956, and the next one, which was entered into on July 27, 1956, as noted *supra.*)

Whether we consider the hiatus after June 30, 1953, or that after June 30, 1954, the Union's demands of June 21 and November 8 and 13, 1956, as admitted, for the discharge of Meyer and Koob constituted unlawful interference and unlawful attempts to cause such discharges. There being no membership and no obligation on the part of Meyer and Koob to pay dues on November 28, 1955, the Union did not have the right on that date to demand the discharges in connection with section 178 of its constitution and bylaws, which provides for expulsion of members who are in arrears for dues for a year or more, as were Meyer and Koob at that time; nor did it have the right subsequently to renew such demand. (It may be noted that there was no contract lapse between the fall of 1954, when Meyer and Koob had not paid dues for 1 year, and the November 28, 1955, demand.)

Counsel for the Union has pointed out that, under the New Jersey law, contracts such as these are presumed to continue from year to year unless certain notice is given and filed. But failure by a union to give notice to a State authority or to an employer cannot limit the right of employees under the Act to resign from the union. A contrary holding would bar resignations even where the union and employer did not themselves extend the agreement if only the union involved failed to give the notice required by the State statute. I do not consider chapter 34:13 B–18 and 24 of that statute, cited by the Company in its brief since, although refer-

[6] 108 NLRB 849, 850.

[7] *New Jersey Bell Telephone Company, supra,* at p. 1324; *Monsanto Chemical Company,* 97 NLRB 517, 519.

ence to the law was made at the hearing, that section was not cited by counsel, and opposing counsel was not given an opportunity to consider or be heard on it although I directed, and it was clear, that any portion relied on should be pointed out at that time.

III. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Union set forth in section II, above, occurring in connection with the operations of the 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.

IV. THE REMEDY

Having found that the Union has engaged in and is engaging in certain unfair labor practices affecting commerce, I shall recommend that it cease and desist therefrom and take certain affirmative action to effectuate the policies of the Act.

It has been found that the Union has violated Section 8 (b) (2) and (1) (A) of the Act by requesting and demanding that the Company discharge Meyer and Koob because they had not paid dues to, and were not members of, the Union. I shall therefore recommend that the Union cease and desist from making such requests and demands.

Upon the basis of the above findings of fact, and upon the entire record in the case, I make the following:

CONCLUSIONS OF LAW

1. The Public Utility Construction and Gas Appliance Workers of the State of New Jersey, Local 274, of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, AFL–CIO, is a labor organization within the meaning of Section 2 (5) of the Act.
2. By attempting to cause Public Service Electric and Gas Company (Gas Distribution Department) to discriminate in regard to hire and tenure of employment in violation of Section 8 (a) (3) of the Act, the Union has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b) (2) of the Act.
3. By restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, the Union has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Act.
4. The aforesaid labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

[Recommendations omitted from publication.]

George C. Rothwell, Inc. *and* Chauffeurs, Warehousemen & Helpers Union, Local 876, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. *Case No. 5–RC–2270. April 9, 1958*

DECISION AND DIRECTION

On August 26, 1957, pursuant to a stipulation for certification upon consent election, an election by secret ballot was conducted under the direction of the Regional Director for the Fifth Region among the employees in the agreed appropriate unit. Following the election, the Regional Director served on the parties a tally of ballots which showed that of approximately 27 eligible voters, 11 cast ballots for the Petitioner, 8 cast ballots against the Petitioner, and 8 ballots were challenged.