

Company, Inc., 114 NLRB 1034; and *Broderick Wood Products Company*, 118 NLRB 38. In these cases the Board found it appropriate and necessary to order reimbursement of union dues and initiation fees collected pursuant to an unlawful union-security clause. It is also true that in all of those cases the employer enforced a checkoff provision. On occasion, the Board has refused to order reimbursement of union dues collected by an employer on behalf of an illegally assisted union. Cf. *Bowman Transportation, Inc.*, 112 NLRB 387, 388, enfd. as modified 237 F. 2d 585 (C. A., D. C.), cert. granted as to another point, 353 U. S. 999. However, in this case, despite the absence of a checkoff arrangement, collection of dues and other union obligations were facilitated by the illegal union-security provisions in the contract. Consequently, here, as in *Brown-Olds* and related cases cited, *supra*, the parties to the illegal agreement should be held equally responsible for expunging the effect of their unfair labor practices. I, therefore, find that it will effectuate the policies of the Act to order the Respondent Union and the Respondent Employer, jointly and severally, to refund to employees on the Mound City project all moneys, dues, fees, and assessments collected pursuant to the unlawful agreement of July 16, 1957.

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

CONCLUSIONS OF LAW

1. The Respondent Employer is engaged in commerce within the meaning of the Act.
2. The Respondent Union is a labor organization within the meaning of Section 2 (5) of the Act, and Stanley Medley is an agent of said Union.
3. By discriminating with respect to the hire and tenure of employees, thereby encouraging membership in the Respondent Union, the Respondent Employer has engaged in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.
4. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed by Section 7 of the Act, Respondent Employer has engaged in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.
5. By executing, maintaining, and enforcing a contract containing unlawful union-security provisions, the Respondent Employer has violated Section 8 (a) (3) of the Act and the Respondent Union and Respondent Medley by causing the Employer to discriminate with respect to the hire and tenure of employees in violation of Section 8 (a) (3), have engaged 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 by Section 7 of the Act, the Respondent Union and Respondent Medley have engaged in unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Act.
7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

[Recommendations omitted from publication.]

Gibbs Corporation and Industrial Union of Marine and Shipbuilding Workers of America, AFL-CIO and Independent Workers' Union of Florida, Party to the Contract

Independent Workers' Union of Florida and Industrial Union of Marine and Shipbuilding Workers of America, AFL-CIO and Gibbs Corporation, Party to the Contract. Cases Nos. 12-CA-40 and 12-CB-14. May 22, 1958

DECISION AND ORDER

Upon charges duly filed on February 11, 1957, and June 3, 1957, by Industrial Union of Marine and Shipbuilding Workers of America, 120 NLRB No. 149.

AFL-CIO, herein called the Marine Workers, the General Counsel for the National Labor Relations Board, herein called the General Counsel, by the Regional Director for the Twelfth Region, issued separate complaints dated July 3, 1957, against Gibbs Corporation, herein called the Respondent Company, and Independent Workers' Union of Florida, herein called the Respondent Union, alleging that the Respondent Company had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1), (2), and (3) and Section 2 (6) and (7) of the Act, and that the Respondent Union had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (b) (1) (A) and (2) and Section 2 (6) and (7) of the Act. On the same day the Regional Director issued an order consolidating the cases and noticing them for hearing. Copies of the complaints, charges, and notice of hearing were duly served upon the Respondents and the Charging Union.

With respect to the unfair labor practices, the complaints alleged in substance that the Respondent Company and the Respondent Union are parties to a collective-bargaining agreement containing a provision which delegates to the Respondent Union ultimate control over the seniority ranking of the employees of the Respondent Company. The complaint against the Respondent Union further alleges that the Union restrained and coerced employees by distributing, during the Marine Workers' organizational drive, a circular stating that the names of employees who signed authorization cards for the Marine Workers would be revealed to the Respondent Company. On or about July 9 and 11, respectively, the Respondents filed answers denying that the facts alleged in the complaints constitute violations of the Act.

Thereafter, on July 15 and 16, 1957, the parties signed stipulations whereby they agreed that the Board may find as true and correct the facts contained in a "Stipulation of Facts" attached to the stipulations; that the parties waived a hearing, the issuance of an Intermediate Report, and a proposed Decision and Order of the Board; and that the Board may make findings of fact and conclusions of law, and may issue its Decision and Order based thereon, as if the same facts had been adduced in open hearing before a duly authorized Trial Examiner of the Board. The stipulations further provided that the parties may file briefs with the Board on or before August 19, 1957, and that the entire record of the proceedings shall consist of the stipulations, the order consolidating cases and notice of hearing, and copies of the complaints, charges, answers, and the "Stipulations of Facts" attached to the stipulations.

By an order issued on August 9, 1957, the Board approved the aforesaid stipulations, made them a part of the record herein and transferred the proceedings to, and continued it before, the Board. Sub-

sequently, the General Counsel, the Respondent Company, and the Respondent Union filed briefs.

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

Upon the basis of the aforesaid stipulations and the entire record in the case, including the briefs filed by the parties, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT COMPANY

The Respondent Company, a Florida corporation with its principal place of business located in Jacksonville, Florida, is engaged in the business of building and repairing ships. In the 12-month period ending December 31, 1956, the Respondent Company provided goods or services directly related to national defense and valued at more than \$1,000,000 to the United States Navy.

The Respondent Company concedes, and we find, that it is engaged in commerce within the meaning of the Act.

II. LABOR ORGANIZATION INVOLVED

The Respondent Union is a labor organization within the meaning of Section 2 (5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *Sequence of Events*

On March 29, 1954, the Respondent Company and the Respondent Union entered into a collective-bargaining contract to be effective until March 29, 1957. On January 9, 1957, prior to the expiration date of this agreement the parties executed a new collective-bargaining agreement effective until March 29, 1960. Both contracts contained the following provision:

QUESTION OF SENIORITY

Any complaint regarding seniority status shall be referred to the Seniority Board which shall consist of two (2) members appointed by the Union and one (1) member appointed by the Company. Decisions of the Board shall be by majority vote.

Neither contract contains any other provision for the disposition of seniority complaints or for appeal from decisions of the Seniority Board.

On or about November 10, 1956, the Charging Party, the Marine Workers, commenced an organizational campaign among the em-

employees of the Respondent Company. During the course of this campaign, the Marine Workers distributed literature urging employees to sign showing-of-interest cards for the Marine Workers so as to enable the latter to file a representation petition with the Board. In response to that literature, the Respondent Union, under the signature of its President Roy W. Gatz, distributed on January 22, 1957, a leaflet which reads in pertinent part as follows:

TO ALL PRODUCTION AND MAINTENANCE
EMPLOYEES—GIBBS CORPORATION

The last CIO propaganda sheet handed to you said that when that union has "the required number in accordance with the policy of our union, we Will file a petition"—another example of the lies this union is trying to fool you into believing. It is the policy of the National Labor Relations Board which is stopping the CIO. The Board requires 30% of the employees to be signed up and the CIO admits it can't get that many! This "union policy" stuff is pure bunk!

Three years ago this same CIO bunch of hoodlums tried to fool the NLRB and filed a petition stating that it had the required 30%. The Board threw the CIO petition out as soon as it was investigated—without even a hearing—because the CIO couldn't back up its claim!

The way in which the CIO claims are checked requires that the CIO furnish a list of the names of the employees of Gibbs Corporation who have signed CIO cards. Upon submission of this list, the names of the card signers become a matter of record. This list is then checked by the Company and the Board. [Emphasis supplied.]

In answer to this leaflet, the Marine Workers, 2 days later, distributed its own leaflet stating, *inter alia*:

In the third paragraph of his letter, Gatz stoops to a new low. He attempts to throw fear into the Gibbs workers by printing something that he knows is far from the truth. In other words, Roy Gatz is a *Liar!* He stated "that upon submission of a list of names by our Union, the list is checked by the *Company* and the National Labor Relations Board." Following is the procedure required by the Board: "When we have a sufficient number of cards to support a Petition for an election, we submit the cards to the National Labor Relations Board. The Board then subpoenas the Gibbs Corporation pay roll list to determine the validity of the signatures, and then return the cards to our union."

THE COMPANY NEVER SEES THE CARDS. THE ONLY PERSONS TO SEE THE CARDS ARE ONE REPRE-

SENTATIVE OF OUR NATIONAL UNION, AND THE BOARD AGENT. THE COMPANY HAS NO WAY OF FINDING OUT WHO SIGNS A CARD.

On February 7 and 8, 1957, Marine Workers distributed another leaflet which contained the following statement:

The Independent Workers Union of Florida, through its President, Roy Gatz, announced in one of its misleading and untrue leaflets that the Company checks the list of cards submitted by the CIO. This announcement also constitutes Unfair Labor Practices within the meaning of the Act. Following is a Board ruling in the case of the Mascot Slowe Company of Chattanooga, Tennessee, in which the Company attempted to obtain the names of employees submitted by the Union in that case. Following is the Board Ruling,

The employer contends that Section 9 (c) (1) of the Act amended by the Labor Management Relations Act of 1947 permits inquiry by the Employer at the hearing into the extent of the Petitioners representation among employees in the unit it seeks. *WE FIND THIS CONTENTION TO BE WITHOUT MERIT, AND THEREFORE AFFIRM THE HEARING OFFICERS RULING REFUSING TO ALLOW THE EMPLOYER TO ELICIT THE INFORMATION AT THE HEARING, FOR WE CAN PERCEIVE NOTHING IN THE CITED PROVISIONS OF THE ACT WHICH PERMITS SUCH INQUIRY BY THE EMPLOYER.*

B. Contentions of the Parties

The General Counsel contends that the seniority provision gives the Respondent Union ultimate control of the seniority ranking of employees by virtue of its power to appoint a majority of the members of the Seniority Board, thereby encouraging membership in the Respondent Union. He further contends that the misleading statement about examination of authorization cards by the Respondent Company contained in the leaflet distributed by the Respondent Union discouraged employees from joining the Marine Workers by instilling in them the fear that their names would be revealed to both Respondents. The Respondents defend by asserting that the Marine Workers is not a party to the contract and has no standing to attack any of its provisions, that the seniority clause is not unlawful *per se*, and that the clause has never been enforced. In answer to the allegation based upon the leaflet which it distributed, the Respondent Union separately asserts that the language used was not untrue and that if it was susceptible of misunderstanding there is no evidence that any employee was in fact misled by it.

Conclusions

1. In the *Pacific Intermountain Express* case,¹ the Board held that a contract provision which gives to the bargaining agent the authority to settle controversies relating to seniority is unlawful. The Board said (at p. 845) :

We can therefore see no basis for presuming that when an employer delegates to a union the authority to determine the seniority of its employees, or even to settle controversies with respect to seniority, such control will be exercised by the union in a nondiscriminatory manner. Rather, it is to be presumed, we believe, that such delegation is intended to, and in fact will, be used by the union to encourage membership in the union. Accordingly, the inclusion of a bare provision . . . that delegates complete control over seniority to a union is violative of the Act because it tends to encourage membership in the union.

This decision has won court approval and has been followed in subsequent cases.²

In the present case, the settlement of controversies relating to seniority is nominally entrusted not to the Respondent Union but to a joint board composed of representatives of both the Company and the Union. However, since the Union is guaranteed a majority of the board's members, it is obvious that the Union in fact will determine seniority disputes. It is immaterial that the Respondents have had no occasion to enforce the provision for the settlement of seniority disputes. The mere existence of such a clause, apart from its enforcement, is unlawful.³ Accordingly, we find that by maintaining the 1954 contract, and by entering into and maintaining the 1957 agreement, the Respondent Company violated Section 8 (a) (1), (2), and (3), and the Respondent Union Section 8 (b) (1) (A) and (2) of the Act.⁴

2. The leaflet distributed on January 22 by the Respondent Union apparently misstated the procedure followed by the Board in checking

¹ 107 NLRB 837, enforced as modified *sub nom. N. L. R. B. v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, et al.*, 225 F. 2d 343 (C. A. 8).

² *North East Texas Motor Lines, Inc., et al.*, 109 NLRB 1147, *enfd. sub nom. N. L. R. B. v. Dallas General Drivers, Warehousemen and Helpers, Local Union 745*, 228 F. 2d 702 (C. A. 5); *Chief Freight Lines Company*, 111 NLRB 22, *enfd. sub nom. N. L. R. B. v. Oklahoma City General Drivers, Warehousemen and Helpers, Local Union 886*, 235 F. 2d 105 (C. A. 10); *Minneapolis Star and Tribune Company*, 109 NLRB 727, 737-738; *Kenosha Auto Transport Corporation*, 113 NLRB 643, 645.

³ *Chief Freight Lines Company*, 111 NLRB 22, 34.

⁴ We find no merit in the argument of the Respondents that, as the Marine Workers is not a party to the contract, it has no standing to file a charge alleging that the contract contains unlawful provisions. This is a public proceeding and not a private dispute between parties concerning contract terms. Any person may file a charge that other persons are engaging in unfair labor practices affecting commerce. Board's Rules and Regulations, Series 6, as amended, Sec. 102.9.

authorization cards submitted by a labor organization in support of a representation petition. Names submitted do not become a matter of public record and are not made available to the employer for checking. However, whatever the effect of this statement, it was, we believe, dispelled by the prompt circulation of a counterstatement by the Marine Workers outlining the correct procedure and assuring the employees that the Respondent Company would never see the authorization cards which they had signed. Under the circumstances, we find that the January 22 leaflet did not tend to restrain or coerce employees in violation of Section 8 (b) (1) (A) of the Act. We shall therefore dismiss this allegation of the complaint.

THE REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, we shall order that they cease and desist therefrom and take certain affirmative action necessary to effectuate the policies of the Act.

As the Respondents have entered into and maintained collective-bargaining agreements containing seniority provisions violative of Section 8 (a) (1), (2), and (3), and 8 (b) (1) (A) and (2) of the Act, we shall order them to cease giving effect to these unlawful provisions and refrain in the future from concluding agreements containing such unlawful seniority provisions. We shall, however, not order the Respondents to cease giving effect to other provisions of the 1957 collective-bargaining agreement and we shall not order the Respondent Company to withhold recognition from the Respondent Union as the representative of these employees.⁵

CONCLUSIONS OF LAW

1. The Respondent Union is a labor organization within the meaning of Section 2 (5) of the Act.

2. By entering into and maintaining agreements containing provisions delegating to the Respondent Union authority to settle controversies relating to seniority, the Respondent Company has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1), (2), and (3) of the Act, and the Respondent Union has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b) (1) (A) and (2) of the Act.

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

⁵ See *Pacific Intermountain Express Company*, 107 NLRB 827, 850, footnote 29.

4. The Respondent Union has not engaged in unfair labor practices within the meaning of the Act by its January 22, 1957, distribution of a leaflet to employees.

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:

1. The Respondent Company, Gibbs Corporation, Jacksonville, Florida, its officers, agents, successors, and assigns, shall:

a. Cease and desist from:

(1) Performing or giving effect to the provision in its collective-bargaining agreement with the Respondent Union which delegates to that union authority to settle controversies relating to seniority.

(2) Entering into, maintaining, 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 provisions.

(3) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed in Section 7 of the Act.

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

(1) Post at its place of business in Jacksonville, Florida, copies of the notice attached hereto marked "Appendix A."⁶ Copies of the notice, to be furnished by the Regional Director for the Twelfth Region, shall, after being duly signed by an official representative of the Respondent Company, be posted by it immediately upon receipt thereof, and remain posted for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees 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.

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

2. The Respondent Union, Independent Workers' Union of Florida, its officers, representatives, agents, successors, and assigns, shall:

a. Cease and desist from:

(1) Performing or giving effect to the provision in its collective-bargaining agreement with the Respondent Company which delegates to the Respondent Union authority to settle controversies relating to seniority.

⁶ 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."

(2) Entering into, maintaining, or renewing any agreement with any employer which contains provisions delegating to the Respondent Union the authority to determine the seniority of employees or to settle controversies relating to seniority, or enforcing such provisions.

(3) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act.

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

(1) Post at its business offices and meeting halls in Jacksonville, Florida, copies of the notice attached hereto marked "Appendix B."⁷ Copies of the notice, to be furnished by the Regional Director for the Twelfth Region, shall, after being duly signed by an official representative of the Respondent Union, be posted by it immediately upon receipt thereof and remain posted for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent Union to insure that these notices are not altered, defaced, or covered by any other material.

(2) Mail signed copies of the notice attached to this Order as "Appendix B" to the Regional Director for the Twelfth Region, for posting, at the Respondent Company's shipyard, the Company willing, for sixty (60) consecutive days, in places where notices to employees are customarily posted. Copies of the notice to be furnished by the Regional Director for the Twelfth Region, shall be returned forthwith to the Regional Director after they have been signed by an official representative of the Respondent Union for such posting.

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

IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed, insofar as it alleges that the Respondent Union violated Section 8 (b) (1) (A) by distributing its January 22, 1957, leaflet.

⁷ See footnote 6, *supra*

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 provision in our collective-bargaining agreement with Independent Workers Union of Florida which delegates to that union authority to settle controversies relating to seniority.

WE WILL NOT enter into, maintain, 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 such seniority.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of rights guaranteed in Section 7 of the Act.

GIBBS CORPORATION,
Employer.

Dated_____ By_____

(Representative) (Title)

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

APPENDIX B

NOTICE TO ALL EMPLOYEES AND TO ALL OUR MEMBERS

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 members that:

WE WILL NOT perform or give effect to the provision in our collective-bargaining agreement with Gibbs Corporation, Jacksonville, Florida, which delegates to us authority to settle controversies relating to seniority.

WE WILL NOT enter into, maintain, or renew any agreement with any employer which contains provisions delegating to us the authority to determine the seniority of employees or to settle controversies relating to seniority.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed in Section 7 of the Act.

INDEPENDENT WORKERS UNION OF FLORIDA,
Union.

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.

W. B. Uhlhorn, General Contractor and Will J. Ney, Jr.

Local 14, United Brotherhood of Carpenters and Joiners of America, AFL-CIO and Will J. Ney, Jr. Cases Nos. 39-CA-635 and 39-CB-166. May 22, 1958

DECISION AND ORDER

On July 18, 1957, Trial Examiner Reeves R. Hilton issued his Intermediate Report in this proceeding finding that the Respondents
120 NLRB No. 148.