

APPENDIX A

George Bandy	Sylvia L Harless	Milton F McBride
George E Barrett	James A Hicks	Nancy Parker
William L Belcher	Allan C Hildreth	J A Payne
Bernard Billings	Mary J Hill	Kermit Penland
Harold W Blankenship	Emory W Howard	Vincle Perkins
Clarence Leon Bryant	James Howard	R J Ritter
Clyde F Bryant	Howard G Hubbard	Taylor E Roberts
Herbert Chapman	Elbert M Hudgins	Monroe Semans
Mildred Cole	Harless Jennings	Flora Short
Albert Crist	Carrie M Keffer	Fannie M Stallard
Floyd L Dale	Earl Roger Lacy	S P Thompson
Maggie F Farmer	Ada Lester	Kenneth Watkins
Bob Garbush	Lucille Lewis	Vivian A Watkins
Garnet D Goodman	Josephine Loretta Lockhart	William C Williams
Denver Graybeal	Harry L Miller	Chester Workman
Lucy A Hale	James E Mitchem	Dean O Wright
David A Hall	Lora J Munsey	

Funeral Directors of Greater St. Louis, Inc, St. Louis Funeral Directors Association and Alvin C. Trapf

Miscellaneous Drivers and Helpers Local 610, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Alvin C. Trapf. Cases Nos 14-CA-2064 and 14-CB-729 November 20, 1959

DECISION AND ORDER

On June 16, 1959, Trial Examiner Charles W Whittemore issued his Intermediate Report in this case, finding that the Respondent Union and the Respondent Funeral Directors of Greater St Louis, Inc, had each of them engaged in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth more fully in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent Union and the General Counsel filed exceptions to the Intermediate Report together with supporting briefs.

The Board¹ 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 the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following additions and modifications:

1 The Trial Examiner found, and we agree, that, by maintaining and enforcing the discriminatory hiring and employment conditions established by the contract between them, the Respondent Union

¹ Pursuant to provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Leedom and Members Bean and Jenkins]

violated Section 8(b)(2) and 8(b)(1)(A) of the Act, and the Respondent Funeral Directors of Greater St. Louis, Inc.,² violated Section 8(a)(3) and (1) of the Act.³ The General Counsel contends, however, that additional findings of violations by the Respondent Union should be made herein based on the latter's maintenance and enforcement of the identical contract with St. Louis Funeral Directors Association. We find merit in this contention.

The complaint, as originally framed, placed in issue the terms of the contracts—both incorporated in the same document—by and between the Respondent Union, on the one hand, and St. Louis Funeral Directors Association and Funeral Directors of Greater St. Louis, Inc., respectively, on the other. All parties were originally named as Respondents and the issues thereby raised were fully litigated. However, after adjournment of the hearing, *sine die*, the General Counsel obtained from the St. Louis Funeral Directors Association an informal settlement agreement and moved, accordingly, for the withdrawal from the complaint of all allegations against such Association. As the grant of the motion by the Trial Examiner did not and does not affect the portions of the complaint against the Respondent Union relating to its contract with the St. Louis Funeral Directors Association, we shall proceed to determine the issues thus raised.

The record shows that St. Louis Funeral Directors Association is an employer association authorized to bargain on behalf of its employer members who are engaged in providing funeral services and livery rentals in the St. Louis, Missouri, area. Commerce facts relating to the extent of the business activities of two of the member firms of the St. Louis Funeral Directors Association—Bucholz Mortuary, Inc., and Alfred H. Hoppe, Inc.—establish that, in the aggregate, these firms did a gross business of over \$500,000 in 1958, and purchased, during this period, from out-of-State manufacturers, or suppliers, caskets valued at more than \$50,000. Accordingly, the Board finds that St. Louis Funeral Directors Association is an employer within the meaning of Section 2(2) of the Act, that it is engaged in commerce within the meaning of the Act, and that it will effectuate the policies of the Act for the Board to assert jurisdiction.⁴

² The facts set forth by the Trial Examiner with respect to the bargaining authority granted Greater St. Louis Association by its employer members establish that such Association is an employer within the meaning of Section 2(2) of the Act. The Board so finds. The status of such Association and the showing as to the extent of the activities of at least one of its employer members thus suffice to support the Board's jurisdiction and to warrant the assertion of its jurisdiction under the principles set forth in *Siemens Mailing Service*, 122 NLRB 81. See also *W. W. Chambers Co., Inc.*, 124 NLRB 984, and cases there cited.

³ *International Hod Carriers' Bldg. and Common Laborers' Assn. of America, Local No. 83, AFL-CIO, et al. (Consolidated Construction Company, Inc.)*, 124 NLRB 1131, and cases cited by the Trial Examiner at footnote 3 of the Intermediate Report in the instant case.

⁴ See cases cited *supra*, footnote 2.

As has been noted, the terms of the contract between the Respondent Union and the St. Louis Funeral Directors Association are similar in all material respects to those in the contract between the Respondent Union and Funeral Directors of Greater St. Louis, Inc. The Board finds, accordingly, with respect to the former contract and for the same reasons, that the Respondent Union violated Section 8(b)(2) and 8(b)(1)(A) of the Act.

2. The remedy. The recommended order of the Trial Examiner is predicated solely on the contract between the Respondent Union and the Respondent Funeral Directors of Greater St. Louis, Inc. While the Board adopts all such provisions of the recommended order, with the modifications noted hereafter, it will add thereto appropriate provisions designed to remedy, also, the effect of the unfair labor practices predicated on the contract between the Respondent Union and the St. Louis Funeral Directors Association.⁵

The reimbursement liability here imposed shall be limited to all moneys paid by past and present employees of members of Funeral Directors of Greater St. Louis, Inc.,⁶ and of St. Louis Funeral Di-

⁵ The Respondent Union's allegation of a cessation of the unfair labor practices found, subsequent to the initiation of this case, is a matter to be taken up at the compliance stage of the proceedings. It neither affects the Board's power to issue the remedial order it here deems appropriate, nor suffices as a basis for withholding the issuance of such order. *The Hod Carriers' case, supra*, footnote 3; *Gay Engineering Corp.*, 124 NLRB 451; *Morrison-Knudsen Company, Inc., et al., d/b/a Robinson Bay Lock Constructors, A Joint Venture*, 123 NLRB 12; *Argo Steel Construction Company*, 122 NLRB 1077.

⁶ In the portion of the Intermediate Report headed "The Remedy," the Trial Examiner inadvertently stated that the Respondent would be jointly liable for reimbursement of all dues, fees, assessments, permit fees, and/or any other moneys exacted from the employees "under the Respondent Union's jurisdiction as a condition of obtaining or retaining employment." In the recommended order, however, the Trial Examiner properly limited the order of reimbursement to employees of the Respondent Greater St. Louis Association. He failed, however, to make clear that the "employees" covered by the reimbursement order are *past* as well as *present* employees during the period involved in the order. See *Nassau and Suffolk Contractors' Association, Inc., et al.*, 123 NLRB 1393; *Local Union No. 450, International Union of Operating Engineers, AFL-CIO, et al. (Teltepsen Construction Company)*, 122 NLRB 564.

We note, that in objecting to the imposition of this remedy, the Respondent Union suggests, *inter alia*, that many of the employees here involved acquired membership prior to the execution of the unlawful contracts, that they or others would have become or would have remained members of the Union without regard to such contracts, and that there is hence no proof that membership was required of all the employees covered by the reimbursement order as a price of employment. Whether or not this is so is a matter of speculation. The vice of these contractual arrangements is that they deprive employees of the elements of free choice to which they are entitled with respect to both the acquisition and retention of union membership, without limitation, and likewise, in retaining jobs, subject only, in the latter case, to the narrow authorizations afforded employers and unions under the *proviso* to Section 8(a)(3), to impose certain limited forms of union membership obligations. Where, as here, free choice has been foreclosed it is impossible to determine subsequent to the actions responsible for the foreclosure whether, but for the coercive elements in these contracts, employees involved would nonetheless have acquired or retained membership in the Union. It is precisely because the impossibility of such determination is the direct result of such unlawful contracts that the Board applies the reimbursement remedy to those responsible for the situation, "whether or not proof of actual exaction of payments is established." *Nassau and Suffolk Contractors' case, supra*.

rectors Association to the Respondent Union for the period beginning 6 months prior to the filing of the initial charges and ending when the unlawful discriminatory conditions of employment are abandoned. The liability for reimbursement to employees of employer members shall be a joint and several obligation under the Board order directed to the Respondent Union and the Respondent Funeral Directors of Greater St. Louis, Inc., as recommended by the Trial Examiner. In the case of the employees of employer members of St. Louis Funeral Directors Association, the order is directed solely to the Respondent Union. However, the Union shall not be deemed liable to reimburse such employees for moneys previously refunded to them under the provisions of the informal settlement agreement by and between St. Louis Funeral Directors Association and the Regional Director for the Fourteenth Region.

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:

1. The Respondent Union, Miscellaneous Drivers and Helpers Local 610, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, its officers, representatives, agents, successors, and assigns, shall:

(a) Cease and desist from:

(1) Maintaining in its collective-bargaining agreements with the Funeral Directors of Greater St. Louis, Inc., or with St. Louis Funeral Directors Association, or with any other employer within its territorial jurisdiction over whom the Board would assert jurisdiction, any provision that requires membership in, or clearance from, the Respondent Union as a condition of employment, or which requires that preference in employment be given to members of the Respondent Union, except as authorized in Section 8(a)(3) of the Act.

(2) Maintaining and enforcing any agreement, understanding, or practice with Funeral Directors of Greater St. Louis, Inc., and St. Louis Funeral Directors Association, their members, or any other employer within its territorial jurisdiction over whom the Board would assert jurisdiction, whereby membership in, clearance from, or approval of the Respondent Union is required as a condition of employment, or which requires that preference in employment be given to members of the Respondent Union, except as authorized in Section 8(a)(3) of the Act.

(3) Operating any exclusive hiring hall arrangement except under the standards specified in the *Mountain Pacific* case (119 NLRB 883).

(4) Causing or attempting to cause any employer over whom the Board would assert jurisdiction to discriminate against employees or applicants for employment in violation of Section 8(a) (3) of the Act.

(5) In any other manner restraining or coercing employees or applicants for employment in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a) (3) of the Act.

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

(1) Reimburse all employees of St. Louis Funeral Directors Association for all moneys illegally exacted from them in the manner and to the extent set forth in the Intermediate Report as modified by the paragraph of this Decision and Order entitled "The Remedy."

(2) Jointly and severally with the Respondent Funeral Directors of Greater St. Louis, Inc., reimburse all employees of said Respondent Association for moneys illegally exacted from them in the manner and to the extent set forth in the Intermediate Report as modified by the paragraph of this Decision and Order entitled "The Remedy."

(3) Preserve and make available to the Board and its agents upon request, for examination and copying, all membership, dues, permit, and other records necessary to compute the moneys illegally exacted from said employees.

(4) Post at its offices, in conspicuous places, including all places where notices to members are customarily posted, copies of the notice attached hereto marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Fourteenth Region, shall, after being duly signed by the Respondent Union's representative, be posted immediately upon receipt thereof and be maintained by the Respondent Union for 60 consecutive days thereafter. Reasonable steps shall be taken by the Respondent Union to insure that said notices are not altered, defaced, or covered by any other material.

(5) Post at the same places and under the same conditions as set forth in paragraph (4), above, and as soon as they are forwarded by the Regional Director, copies of the Respondent Funeral Directors of Greater St. Louis, Inc., notice herein marked "Appendix B."

(6) Mail to the Regional Director for the Fourteenth Region signed copies of "Appendix A" for posting by the members of the Respondent Funeral Directors of Greater St. Louis, Inc., and by the members of the St. Louis Funeral Directors Association, if they be willing, as provided herein. Copies of said notice, to be furnished by the said Regional Director, shall, after being signed by the Respondent Union's

representative, be forthwith returned to the Regional Director for such posting.

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

2. The Respondent Funeral Directors of Greater St. Louis, Inc., its officers, agents, successors, and assigns, shall:

(a) Cease and desist from:

(1) Maintaining and enforcing any agreement, understanding, or practice whereby membership in, clearance from, or approval of the Respondent Union is required as a condition of employment, or which requires that preference in employment be given to members of the Respondent Union, except as authorized in Section 8(a)(3) of the Act.

(2) Operating an exclusive hiring hall arrangement, except under the standards specified in the *Mountain Pacific* case, *supra*.

(3) In any other manner interfering with, restraining, or coercing employees or applicants for employment in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act.

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

(1) Jointly and severally with the Respondent Union reimburse all employees of Funeral Directors of Greater St. Louis, Inc., for moneys illegally exacted from them in the manner set forth in the Intermediate Report as modified by the paragraph of this Decision and Order entitled "The Remedy."

(2) Post at its offices and mail to each of its members copies of the notice attached hereto marked "Appendix B." Copies of said notice, to be furnished by the Regional Director for the Fourteenth Region, shall, after being duly signed by a representative of the Respondent, be posted by it and by its members immediately upon receipt thereof, and be maintained for a period of 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 Association and its members to insure that said notices are not altered, defaced, or covered by any other material.

(3) Post at the same places and under the same conditions as set forth in paragraph (2), above, and as soon as they are forwarded by the Regional Director, copies of the Respondent Union's notice herein marked "Appendix A."

(4) Mail to the said Regional Director copies of the notice attached hereto marked "Appendix B" for posting by the Respondent Union.

Copies of said notice, to be furnished by the said Regional Director, shall, after being duly signed by representative of the Respondent Association, be forthwith returned to the Regional Director for such posting.

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

APPENDIX A

NOTICE TO ALL MEMBERS OF MISCELLANEOUS DRIVERS AND HELPERS LOCAL 610, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUF- FEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

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

WE WILL NOT maintain and enforce any agreement, understanding, or practice with Funeral Directors of Greater St. Louis, Inc., St. Louis Funeral Directors Association, or their respective members, or with any other employer within our territorial jurisdiction, over whom the National Labor Relations Board would assert jurisdiction, whereby membership in, clearance from, or approval of our Union is required as a condition of employment, or which requires that preference in employment be given to members of our Union, except as authorized in Section 8(a) (3) of the Act.

WE WILL NOT operate any exclusive hiring hall except under the standards specified in the *Mountain Pacific* case (119 NLRB 883).

WE WILL NOT cause or attempt to cause members of the Funeral Directors of Greater St. Louis, Inc., or of St. Louis Funeral Directors Association, or any other employer over whom the National Labor Relations Board would assert jurisdiction, to discriminate against employees or applicants for employment in violation of Section 8(a) (3) of the Act.

WE WILL NOT in any other manner restrain or coerce employees or applicants for employment in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a) (3) of the Act.

WE WILL reimburse all past and present employees of members of Funeral Directors of Greater St. Louis, Inc., and of St. Louis Funeral Directors Association, for the initiation fees, dues, permit fees, assessments, and other moneys they were unlawfully required to pay our Union as the result of the illegal hiring provi-

sions in our contracts or understanding with the aforementioned employers.

MISCELLANEOUS DRIVERS AND HELPERS LOCAL 610,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND HELPERS
OF AMERICA,

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.

APPENDIX B

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 you that:

WE WILL NOT maintain, and enforce any agreement, understanding, or practice whereby membership in, clearance from, or approval of Miscellaneous Drivers and Helpers Local 610, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is required as a condition of employment, or which requires that preference in employment be given to members of that Union, except as authorized in Section 8 (a) (3) of the Act.

WE WILL NOT operate any exclusive hiring hall except under the standards specified in the *Mountain Pacific* case (119 NLRB 883).

WE WILL NOT in any other manner interfere with, restrain, or coerce employees or applicants for employment in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

WE WILL reimburse all our employees for the initiation fees, dues, permit fees, assessments, and other moneys illegally exacted from them as the result of the illegal closed-shop hiring arrangement with said labor organization.

FUNERAL DIRECTORS OF GREATER ST. LOUIS, INC.,
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.

INTERMEDIATE REPORT

STATEMENT OF THE CASE

Charges having been filed and served; an order consolidating cases, a complaint and notice of hearing thereon having been duly issued and served by the General Counsel of the National Labor Relations Board, and answers having been filed by the above-named Respondents, a hearing involving allegations of unfair labor practices in violation of Section 8(a)(1) and (3) and 8(b)(1)(A) and (2) of the National Labor Relations Act, as amended, 61 Stat. 136, was held in St. Louis, Missouri, on May 20, 1959, before the duly designated Trial Examiner.

General Counsel, the Respondent Union, and the Respondent Greater St. Louis Association were represented by counsel¹ and participated in the hearing. Counsel were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence pertinent to the issues, to argue orally, and to file briefs. Briefs were waived. General Counsel argued.

At the opening of the hearing General Counsel moved for continuance as to the complaint's allegations against one of the employer Respondents, the St. Louis Funeral Directors Association, stating that an informal settlement as to such allegations was then in process. The motion was granted, and at the conclusion of the taking of other evidence the hearing was adjourned *sine die*. On June 1, 1959, there was received from General Counsel a motion to withdraw from the complaint all allegations referring to said St. Louis Association. An accompanying memorandum indicates that service of said motion was made upon all other parties. No objection to said motion having been received, it is hereby granted, and the hearing declared closed. Said motion and memorandum are hereby made a part of the record in this case.

Ruling was reserved at the conclusion of the hearing upon a motion by the Respondent Union to dismiss the complaint. Said motion is disposed of by the following findings, conclusions, and recommendations.

Upon the entire record in the case, and from his observation of the witnesses, the Trial Examiner makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER ASSOCIATION INVOLVED

The Respondent Greater St. Louis Association is an association of firms engaged in the business of providing funeral services and livery rental services in the St. Louis, Missouri, area, and exists in part for the purpose of representing its members, numbering about 24 and including Matt Hermann & Son, Inc., in collective bargaining with labor organizations through designated representatives in the negotiation, execution, and administration of collective-bargaining agreements on behalf of its members with various labor organizations, including the Respondent Union.

At the hearing the parties stipulated that 1 of the 24 members of this association, Matt Hermann & Son, Inc., had a gross volume of business during 1958 totalling \$605,200, and that during the same period this firm purchased caskets valued at \$58,464.61 from sources outside the State of Missouri.

The Respondent Greater St. Louis Association is engaged in commerce within the meaning of the Act.

II. THE RESPONDENT LABOR ORGANIZATION

Miscellaneous Drivers and Helpers Local 610, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization with the meaning of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The facts*

On or about June 30, 1956, the Respondent Greater St. Louis Association and the Respondent Union entered into a 3-year contract which contains, among other provisions, the following:

¹ Although Attorney Karst filed an answer on behalf of both employer associations, at the opening of the hearing he withdrew as counsel for the Respondent St. Louis Funeral Directors Association.

Section III—Union Security

The employer, party of the second part, agrees to hire only members of Local 610, carrying the regular paid-up card of the organization. In the event any person fails to maintain his union membership in good standing, as required herein, upon written notice to the employer by the union to such effect, the employer shall be obligated to discharge such person and shall forthwith discharge such delinquent person. In the event any law, or governmental regulation makes the foregoing illegal, then the parties hereto agree to negotiate a new Union Security Clause consistent with said law or governmental regulation. In the event the parties hereto are unable to agree within ten (10) days on said new Union Security Clause, the union shall have the right to strike in support of its demands in respect to said clause.

When employers are required to hire regular funeral equipment they shall hire only from bona fide signatories to this agreement or independent drivers of St. Louis or St. Louis County and all chauffeurs of this equipment must be paid-up members of Local 610 Funeral Car Drivers.

In the event the union is unable to furnish the employer within ten (10) days of the employer's request therefor a new or additional employee(s) who is qualified to do the work required, a non-member of the Union may be hired with the understanding, however, that he shall become a member of the Union at the conclusion of two (2) weeks' work with the employer. In the event of a dispute as to whether a proposed new or additional employee furnished by the Union pursuant to the employer's request therefor is qualified to do the work required, such dispute shall be subject to the grievance procedure in this agreement set forth.

Upon filling a vacancy, the employer will notify the Union of such vacancy and the name of the person employed to fill such vacancy.

* * * * *

Section XVII Miscellaneous Provisions

(11) Under the by-laws and constitution of Local 610 all fines and assessments imposed upon chauffeurs must be paid by said chauffeur before he can return to work.

In performance of the above-described contract the following practices, in material substance, have been followed and up to the time of the hearing were being followed:²

(1) Periodically the Union has supplied each of the members of the Greater St. Louis Association with a list of drivers available for call by them. All on this list are union members.

(2) From time to time it is necessary for the employer members to hire, for a single occasion, one or more extra drivers. Whenever such an occasion arises, the employer first communicates with drivers listed by the Union and then, in the event none on the list is available, communicates directly with the Union for such "extras."

(3) Also from time to time employer members add to their staff of "regular" drivers, that is, drivers who are to be attached permanently to their payrolls. They obtain such "regular" drivers also from the list supplied by the Union.

(4) If extra drivers are not available either from the union list or otherwise provided by the Union, the employer members are permitted by the Union to use, for extra driving service, one of their own assistant funeral directors.

There is evidence in the record to the effect that the Union and the Greater St. Louis Association are negotiating a new agreement which does not contain objectionable union-security clauses described above. There is also testimony by counsel for the Association that prior to the hearing he informed its members that "the closed shop phases of this contract would not be enforced." Since it appears, however, that no new contract had been executed at the time of the hearing, the Trial Examiner perceives no purpose in detailing here the nature of negotiations in progress. Until effective only speculation is possible and, in any event, since it is clear that the *practice* has continued the essential issues remain as set out in the complaint.

B. Conclusions

As stated succinctly by General Counsel in his oral argument: ". . . members of the Association are required (under the above-described contract) to hire only

² The findings as to practice are based upon the Union's concession at the hearing that all Association members followed the hiring practices described in the testimony of Robert E. Kriegshauser, of Kriegshauser Mortuaries.

members of the Respondent Union carrying a regular paid-up card of the organization which constitutes a closed shop arrangement and inherently discriminates against non-union applicants who seek employment." The illegal requirement, the evidence establishes, has been maintained and enforced in practice, during the 6-month periods prior to the service of the respective charges against the Respondent Association and the Respondent Union.

The Trial Examiner therefore concludes and finds that the preponderance of evidence sustains the allegations of the complaint to the effect that the Respondent Association has discriminated and is discriminating in regard to the hire and conditions of employment, thereby encouraging membership in the Respondent Union, by maintaining and enforcing, within the 6-month period prior to the filing of charges against it, illegal union-security provisions in the contract herein described, and that by such maintenance and enforcement this Respondent has interfered with, restrained, and coerced employees in the exercise of rights guaranteed by the Act.

The Trial Examiner likewise concludes and finds that the Respondent Union, by similarly maintaining and enforcing such provisions, has caused the Respondent Association to discriminate against employees and prospective employees in the manner above-described, and thereby has restrained and coerced employees in the exercise of rights guaranteed by Section 7 of the Act.³

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with the operations of the Respondent Association described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the Respondents have engaged in the unfair labor practices described above, the Trial Examiner will recommend that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

In conformance with Board policy recently enunciated in *Nassau and Suffolk Contractors' Association, Inc., et al.*,⁴ the Trial Examiner will recommend that, in order to expunge the coercive effect of illegal exactions, the Respondent Union and the Respondent Association jointly reimburse employees under the Respondent Union's jurisdiction for any dues, fees, assessments, permit fees, or other moneys that were unlawfully exacted from them as a condition of obtaining or retaining employment. The liability for reimbursement shall include the period beginning 6 months prior to the filing and service of the original charges against the Respondent Union and the Respondent Association, respectively, and shall extend to all such moneys thereafter collected until the abandonment by the Respondent Union and the Respondent Association of the unlawful hiring practices.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, the Trial Examiner makes the following:

CONCLUSIONS OF LAW

1. Miscellaneous Drivers and Helpers Local 610, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

2. By maintaining and enforcing unlawful union-security provisions in its collective-bargaining agreement with the Respondent Union, the Respondent Association has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.

3. By maintaining and enforcing unlawful union-security provisions in its collective-bargaining agreement with the Respondent Association, 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.

4. 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.]

³ See *Imperial Wire Company, Inc.*, 118 NLRB 775, 777; *Mountain Pacific Chapter of the Associated General Contractors, Inc., et al.*, 119 NLRB 883; and *Jandel Furs, etc.*, 100 NLRB 1390, 1391.

⁴ 123 NLRB 1393.