

WE WILL, jointly and severally with the above-named employer, reimburse its employees for dues, fees, and other assessments exacted from them on and after March 12, 1962.

LOCAL 1325, RETAIL CLERKS
INTERNATIONAL ASSOCIATION,
AFL-CIO,

Labor Organization.

Dated----- By-----
(Representative) (Title)

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

Employees may communicate directly with the Board's Regional Office, 24 School Street, Boston, Massachusetts, 02108, Telephone No. Lafayette 3-8100, if they have any question concerning this notice or compliance with its provisions.

**Dan T. Edwards and Son d/b/a Western Auto Associate Store
and Local 646, International Hod Carriers, Building and Com-
mon Laborers Union of America, AFL-CIO. Case No. 14-CA-
2815. July 22, 1963**

DECISION AND ORDER

On February 20, 1963, Trial Examiner Eugene E. Dixon issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in the unfair labor practices alleged in the complaint and recommending that it cease and desist therefrom and take certain affirmative action as set forth in the attached Intermediate Report. Thereafter, the Respondent and the Charging Party filed exceptions to the Intermediate Report and supporting briefs.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report and the entire record in the case, including the exceptions and briefs, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

The Board adopts as its Order the Recommended Order of the Trial Examiner.

INTERMEDIATE REPORT

STATEMENT OF THE CASE

This proceeding, brought under Section 10(b) of the National Labor Relations Act, as amended (61 Stat. 136), herein called the Act was heard before Trial Examiner Eugene E. Dixon at St. Louis, Missouri, on January 23, 1963, pursuant to due notice with all parties being represented by counsel. The complaint, issued by a representative of the General Counsel for the National Labor Relations Board (herein called the General Counsel and the Board) on November 9, 1962, and based upon charges filed and served on June 25 and 26, 1962, by Local 646, International Hod Carriers, Building and Common Laborers Union of America, AFL-

CIO, alleged that Respondent had engaged in unfair labor practices in violation of Section 8(a)(1) and (2) of the Act by rendering unlawful financial assistance and support to Local 50, Congress of Independent Unions (herein called Local 50) by paying moneys of its own directly to Local 50 as union dues for and on behalf of its employee members of said Local 50.

In its duly filed answer Respondent denied the commission of any unfair labor practices.

On the basis of the entire record herein I make the following:

FINDINGS OF FACT

I. THE BUSINESS INVOLVED

Dan T. Edwards and Son, d/b/a Western Auto Associate Store is engaged in the business of retailing hardware and sundry items from its store and principal place of business located in Jerseyville, Illinois. Respondent is a member of Retail Merchants Association (herein called the Association) which is a trade association that admits to membership firms engaged in retail sales and services in and about the city of Jerseyville, Illinois, and which exists in part for the purpose of representing its members in collective bargaining with labor organizations and which participates through designated representatives in the negotiation, execution, and administration of collective-bargaining agreements on behalf of its members with labor organizations including Local 50.

During the 12 months preceding the issuance of the complaint, which period is representative of all times material herein, members of the Association in the operation of their businesses sold to customers goods and services valued in excess of \$500,000. During the same representative period members of the Association, in the operation of their businesses at Jerseyville, Illinois, received supplies and materials from outside the State of Illinois valued in excess of \$50,000.

It is admitted and I find that Respondent as a member of the Association is, and has been at all times material herein, engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATIONS

Local 646, International Hod Carriers, Building and Common Laborers of America, AFL-CIO, and Local 50, Congress of Independent Unions are labor organizations within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

As indicated in section I, above, Retail Merchants Association is a trade association existing in part to represent its members in collective bargaining with labor organizations. Respondent herein has been a member of the Association from its inception. Since July of 1961, Respondent's president, Dan T. Edwards, has also been president of the Association. In 1960 the Association entered into a collective-bargaining arrangement with the Congress of Independent Unions, Local 50. The first contract between them was entered into on November 1, 1960, effective to October 31, 1961. The next and current contract was to be effective from November 1, 1961, to October 31, 1963. Both contracts provided for a union shop and dues checkoff.

During the period covered by these contracts Respondent had four employees in addition to members of the Edwards family. These four were comprised of three clerks or salesmen who were compensated on a commission basis and an office girl who was paid \$40 a week on the basis of 40 hours at \$1 an hour. Upon the signing of this contract, according to Edwards' testimony, he and the employees "were kidding about the fact" that they would not get a raise under it.¹ Accordingly, Edwards told them that he would pay their dues "particularly since they weren't getting any wage increase." Thereafter Respondent began paying \$2.50 per month

¹The 1960 contract provided for "a general increase of 5 cents per hour or, the equivalent thereof, for all employees, meaning all employees of the Association, except service station employees." The 1961 contract provided that "Starting November 1, 1961, no employee will receive any less than 5 cents an hour increase over his or her present rate." The General Counsel points out that the contracts called for considerably more than the \$2.50 a month dues paid on behalf of the employees and that therefore it cannot be said that the dues were paid in lieu of a wage increase.

to Local 50 on behalf of each of the four employees charging the payments on its books as a business expense and listing the expenditures as payment of dues.

Respondent continued such payments until the charges were filed herein. When the Board's field examiner had informed Respondent that its conduct "was fouled up," Respondent ceased paying the dues. In lieu thereof Respondent gave the employees a wage increase of \$2.50 per month. Edwards explained that in the beginning he "could have simply raised [the employees'] pay or given them the money and let them pay [the dues] themselves but they enjoyed having the book-keeper just pay it, they didn't have to fool with it. It was an easy system for both sides."

Conclusions

Pointing to the fact that both contracts provided for dues checkoff "upon receipt of a signed authorization of the employee involved," and to the further fact that no such authorizations were obtained by Respondent, the General Counsel contends, chiefly on the authority of *Dixie Bedding Manufacturing Company*,² 121 NLRB 189, that Respondent has violated Section 8(a)(2) of the Act.

I agree and so find. See *ABC Machine and Welding Service*, 122 NLRB 944 where the Board³ found an 8(a)(2) violation that the Trial Examiner had refused to find where the agreement to pay the dues had resulted from the bargaining process, the payment was a substitute for a wage increase and had occurred after the Union had obtained a majority and had been recognized.

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 described in section II, 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 thereof.

V. THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, it will be recommended that it take certain affirmative action designed to effectuate the policies of the Act

The General Counsel while asking for an appropriate remedy, apparently would not have Respondent cease recognizing the Union here.⁴ This position the General Counsel takes (and rightly so I believe) because the charge herein was filed against the Association and its constituent members and as the General Counsel points out, "the Association was lawfully certified in 1960, and other than the single instance of Edwards' violative conduct, conduct attributable to Edwards as an individual employer and not attributable to the Association, there has been no substantial evidence of any other illegal conduct by the Association." Accordingly I shall not recommend the usual cease recognizing order here. Although I shall not recommend the usual 8(a)(2) order, I will recommend the customary posting of a notice which among other things will indicate that Respondent will not resume the illegal payment of employees' dues to Local 50 or to any other union. In this connection I reject Respondent's contention in its brief that this matter is *de minimis*.

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. Local 646, International Hod Carriers, Building and Common Laborers Union of America, AFL-CIO, and Local 50, Congress of Independent Unions are labor organizations within the meaning of Section 2(5) of the Act.

2. By interfering with, restraining, and coercing employees in the exercise of rights guaranteed in Section 7 of the Act, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

²In essence *Dixie Bedding* stands for the proposition that payment of dues by an employer without authorization from the employees constitutes assistance within the meaning of Section 8(a)(1).

³Citing *Dixie Bedding Manufacturing Company*, *supra*, among other cases.

⁴*Louis and Helen Goren, d/b/a City Window Cleaning Company*, 114 NLRB 906; *Lykes Bros. Inc., of Georgia*, 128 NLRB 606, 611.

3. By assisting and contributing support to Local 50, Congress of Independent Unions, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(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.

RECOMMENDED ORDER

Upon the foregoing findings of fact and conclusions of law and upon the entire record herein, it is recommended that:

Dan T. Edwards and Son, d/b/a Western Auto Associate Store, Jerseyville, Illinois, its officers, agents, successors, and assigns, shall:

(1) Post at its store in Jerseyville, Illinois, copies of the notice attached hereto marked "Appendix."⁵ Copies of such notice, to be furnished by the Regional Director for the Fourteenth Region, shall, after being duly signed by an authorized representative of the Respondent, be posted by the Respondent immediately upon the receipt thereof and be maintained by it 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 to insure that said notices are not altered, defaced, or covered by any other material.

(2) Notify the Regional Director for the Fourteenth Region, in writing, within 20 days from the date of the receipt of this Intermediate Report, what steps it has taken to comply with the terms of the Recommended Order.⁶

It is further recommended that, unless within 20 days from the date of the receipt of this Intermediate Report the Respondent notifies the Regional Director in writing that it will comply with the terms of the Recommended Order contained in this report, the Board may issue an order requiring the Respondent to take the action aforesaid.

⁵ In the event that this Recommended Order be adopted by the Board, the words "A Decision and Order" shall be substituted for the words "The Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order be enforced by a decree of a United States Court of Appeals, the words "A Decree of the United States Court of Appeals, Enforcing an Order" shall be substituted for the words "A Decision and Order."

⁶ In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify said Regional Director, in writing, within 10 days from the date of this Order what steps the Respondent has taken to comply herewith."

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order of a Trial Examiner 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 contribute support or assistance to Local 50, Congress of Independent Unions, by resuming the illegal payment of our employees' dues to it or to any other labor organization

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in the National Labor Relations Act as amended.

DAN T. EDWARDS AND SON, D/B/A
WESTERN AUTO ASSOCIATE STORE,
Employer.

Dated _____ By _____
(Representative) (Title)

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

Employees may communicate directly with the Board's Regional Office, 4459 Federal Building, 1520 Market Street, St. Louis, Missouri, 63103, Telephone No. Main 1-8100, Extension 2142, if they have any question concerning this notice or compliance with its provisions.