

Employees may communicate directly with the Board's Regional Office, 24 School Street, Boston, Massachusetts, Telephone No. 523-8100, if they have any question concerning this notice or compliance with its provisions.

Yellow Cab Company and Richard William Fields

Chauffeurs Union Local 265, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Richard William Fields. *Cases Nos. 20-CA-2791 and 20-CB-1105. August 28, 1964*

DECISION AND ORDER

On May 26, 1964, Trial Examiner David Karasick issued his Decision in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent Union filed exceptions to the Trial Examiner's Decision and a supporting brief, the General Counsel filed cross-exceptions and a supporting brief, and the Respondent Union thereafter filed an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with these cases to a three-member panel [Members Leedom, Fanning, and Brown].

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 Trial Examiner's Decision, the exceptions and briefs, and the entire record in these cases, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the Board hereby adopts as its Order, the Order recommended by the Trial Examiner and orders that Respondents, Yellow Cab Company, its officers, agents, successors, and assigns, and Chauffeurs Union Local 265, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, its officers, agents, representatives, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.¹

¹ The address of Regional Office 20 as stated in Appendixes A and B of the Trial Examiner's Decision is amended to read: "13050 Federal Building, 450 Golden Gate Avenue, Box 36047, San Francisco, California, Telephone No. 556-3197."

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

This proceeding, with all parties represented, was heard before Trial Examiner David Karasick in San Francisco, California, on October 23, 1963, upon a consolidated complaint¹ of the General Counsel and the answers of Chauffeurs Union Local 265, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called Respondent Union, and Yellow Cab Company, herein called Respondent Yellow Cab, herein together called Respondents. The issues litigated were whether Respondent Yellow Cab violated Section 8(a)(3) and (1) of the Act, and Respondent Union violated Section 8(b)(2) and (1)(A) of the Act. Following the presentation of evidence by the parties, counsel for Respondent Yellow Cab moved to dismiss the complaint. Ruling on the motion was reserved. For the reasons set forth hereafter, the motion is denied. Following the close of hearing, briefs, which have been fully considered, were filed on behalf of the General Counsel and Respondent Union.

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

FINDINGS OF FACT

I. THE BUSINESS OPERATIONS OF RESPONDENT YELLOW CAB

Respondent Yellow Cab, a Nevada corporation, maintains its principal office in San Francisco, California, and owns and operates taxicabs in and around the cities of San Francisco, Oakland, and Daly City, California, known as the San Francisco division. During the calendar year 1962, Respondent Yellow Cab purchased and received materials valued in excess of \$50,000 directly from places located outside the State of California and during the same period of time made sales and rendered services valued in excess of \$500,000. The Respondent Yellow Cab is now, and at all times material herein has been, an employer engaged in commerce, and operations affecting commerce, within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

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

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The facts*

Richard William Fields was first employed by Respondent Yellow Cab as a taxicab driver on June 8, 1961. At that time, he held a withdrawal card in Retail Delivery Drivers, Driver Salesmen and Helpers Union, Local 278, which was affiliated with the same International labor organization as Respondent Union. Following his employment by Respondent Yellow Cab, Fields transferred his membership from Local 278 to the Respondent Union. Thereafter, he paid dues to the Respondent Union in accordance with the provisions of the union-security clause² in the collective-bargaining agreement to which the Respondents were parties. On October 22, 1962, Fields quit his job.³ He notified Respondent Yellow Cab of the fact that he had quit his employment but he did not notify the Respondent Union. Fields did not apply for a withdrawal card, as the bylaws of the Respondent Union would permit him to do, because at the time he did not believe he would ever go back to taxicab driving. He entered the roofing business but discovered that it was highly seasonal. After acquiring a number of debts, he decided to return to Respondent Yellow Cab as a taxicab driver.

On June 14, 1963, Fields applied for reemployment and was rehired by Respondent Yellow Cab. On June 19, 1963, the Respondent Union, having been advised by Respondent Yellow Cab of Fields' employment on June 14, sent Fields a letter stating that he "must make application for membership within (7) days"; that the "initiation

¹ The consolidated complaint, issued September 3, 1963, is based upon a charge filed in Case No. 20-CB-1105 on July 1, 1963, and a charge filed in Case No. 20-CA-2791 on July 30, 1963. Copies of the consolidated complaint and the charges in each case were duly served upon each of the Respondents in this proceeding.

² The contract, for all purposes relevant here, required employees to become union members in good standing not later than 31 days following the beginning of employment.

³ At the time he quit, Fields' dues in the Respondent Union were paid up through the month of September 1962.

fee for membership" in the Respondent Union was \$85; that he would have 31 days in which to pay \$65 of this amount and the balance of \$20 would be due and payable before the expiration of 14 additional days, and that if he failed to comply, he would be removed from his job.

On June 25, Fields went to the office of Respondent Union. He presented to the secretary of William Allen, secretary-treasurer of Respondent Union, the letter he had received together with his union membership card, stating "maybe this will help you check the back records." Allen's secretary took the documents and when she returned a few minutes later told Fields that he would have to pay an initiation fee of \$85. When Fields stated that he was not going to pay such a fee because he had not been working long enough, she referred him to Allen. Fields then spoke to Allen who told him that he would have to pay \$85 in order to continue working. Fields asked if he was not entitled to 30 days and Allen replied he was not because he was under suspension. The two men then became embroiled in an argument, Fields taking the position that he was not going to pay the \$85 because he was entitled to 30 days before doing so. To this, Allen stated, "You are going to have to come up with the \$85 now or you won't continue working." Fields told Allen that he would go to work in spite of what Allen had said and Allen replied he would not and Fields then left. The foregoing recounting is based upon the testimony of Fields.

Allen denied that either he or his secretary⁴ mentioned any period of time for payment of the \$85 fee. Allen's version of this incident was that he told Fields that since he had been delinquent in his dues for a period of over 4 months, he had been suspended and it would be necessary for him to pay an \$85 reinstatement fee. According to Allen, Fields was held out of service "not by virtue of the fact that he did not pay the \$85, but by virtue of the fact he refused to pay it then or at any time in the future," and because he was adamant in his refusal, "he was held out of service immediately."

I credit Fields', rather than Allen's, version of this incident⁵ both because it seems to me more likely that the time of payment was mentioned and because in this, as in other respects, the testimony of Fields inspired confidence as to its reliability while Allen's testimony was at times marked by confusion and contradiction.⁶

Fields asked that his membership card and the letter be returned but Allen refused, saying that since Fields was no longer a member of the Respondent Union,

⁴ Allen's secretary was not called as a witness.

⁵ Whichever version is credited, however, the basic issue in this case remains the same, namely, whether Fields was entitled to a 30-day grace period as required in Section 8(a)(3) of the Act. Actually, the contract here provided for a grace period of 31 days. If Fields was entitled to such a grace period, then his removal from employment for failure to make the payment demanded by Allen before the 31-day period had expired would be unlawful. And this would be true even if, accepting Allen's version, he caused Respondent Yellow Cab to remove Fields from employment because Fields had stated that he would not pay the reinstatement fee even after a period of 31 days had elapsed. In that period of time, firmly announced resolution may have faded into enervated capitulation. If Fields was entitled to the grace period provided for in the Act and established in the contract, he was entitled to the entire period and he could not lawfully have been removed from his job for failure to pay the fee demanded before that period had expired.

⁶ The bylaws of the Respondent Union in effect on June 25, 1963, provide in article V, section 3E, that any member suspended for nonpayment of dues who failed to remain working at the craft for 1 month following his suspension might be reinstated upon payment of the initiation fee of \$85 plus 1 month's dues. Article XVII, section E, provides that dues delinquency of 3 months results in automatic suspension requiring payment of a reinstatement fee (elsewhere) established as \$85. Section F of article XVII provides that a member suspended for dues delinquency shall not be permitted to work until a \$5 fine and all other fines, assessments, and back dues have been paid, and further provides that a member delinquent in dues for more than 4 months shall return as a new member and pay the regular initiation fee. Allen first testified that Fields was more than 4 months in arrears in his dues and therefore returned as a new member pursuant to the provisions of article XVII, section F. Later he testified that he had relied upon not only section F but also section E of article XVII. Finally, when questioned further he testified that he had ordered that Fields be held out of service on the basis of article V, section 3E. Despite Allen's testimony that he acted pursuant to the provisions of article V, section 3E, and article XVII, section F, the evidence is undisputed that neither 1 month's dues nor a \$5 fine were demanded in addition to the \$85 fee.

these documents no longer belonged to him. After Fields had left, Allen instructed his secretary to inform Respondent Yellow Cab that Fields was to be held out of service until he had obtained a clearance from Respondent Union.

After leaving Allen, Fields went to the personnel office of Respondent Yellow Cab and there spoke to John Henry Brooke, personnel manager. Fields gave the following recounting of his conversation with Brooke. Fields told Brooke that he had spoken to Allen about rejoining the Union, that Allen had said that Fields would have to pay an initiation fee of \$85 immediately and that Fields had taken the position that he was entitled to 30 days within which to make such payment. Brooke told Fields to go to work and Brooke would straighten the matter out with Allen. Instead of going to work, Fields waited while Brooke called Respondent Union. He did this, Fields testified, because he wanted Brooke to be definite about the position which Fields was put in, that Fields did not want Brooke to get into any trouble by telling him to go to work, and Fields himself did not want to get in any more trouble. Brooke called Allen and after speaking to him told Fields that there was nothing he could do for him, that he would have to come up with the \$85 before he could go to work. Fields told Brooke that he did not have the money. Brooke said that he should go out and borrow it and when Fields asked from whom, Brooke replied that he did not know, that Fields would have to figure that out for himself. Fields did not work that day or thereafter for Respondent Yellow Cab.

Brooke denied that he was told either by Fields or Allen what Allen had demanded of Fields, the amount of money involved, or the time within which Allen demanded that it be paid. According to Brooke, Fields told him only that he had spoken to Allen and that he had to reinstate himself in the Respondent Union; and Allen had told him only that Fields was to be held out of service because he was a suspended member. I do not credit Brooke and I find that the conversation in question occurred as Fields testified. I do so because it seems to me more reasonable that Fields, angry at what he considered Allen's unjust demand and insistent upon what he regarded as his legal right to work despite that demand, would have informed Brooke what it was that Allen had sought and why Fields had maintained that he need not comply before 30 days had elapsed, rather than cryptically stating only that he had to reinstate himself in Respondent Union. Moreover, I found Brooke to be a disturbingly facile witness who hastened to volunteer testimony which he apparently believed would prove helpful to the Respondents and who, on one occasion, contradicted his own testimony.⁷ Fields, on the other hand, impressed me as a forthright witness who was making an honest effort to recount his recollection of the events about which he was questioned.⁸

Contentions and Concluding Findings

Respondent Union contends that Fields did not return to work for Respondent Yellow Cab on June 14, 1963, as a new employee because, by reason of his prior employment, he was entitled to an immediate resumption of health and welfare and pension rights.⁹ The evidence shows, however, that at the time he quit on October 22, 1962, Fields did not intend to return to work again for Respondent Yellow Cab and that at the time he relinquished his employment he lost both his seniority standing and his right to vacation pay. The fact that, because of his

⁷ Whichever version of the conversation is accepted, it is clear that Brooke was informed that the demand for holding Fields out of service concerned the question of his union membership.

⁸ In this regard, I find myself unable to agree with counsel for the Respondent Union who, in his brief, attacks Fields' credibility. I have carefully read and re-read Fields' testimony for the purpose of evaluating it in light of the assertions advanced by the Respondent Union. The end result of this effort has been to reinforce my opinion that Fields was a reliable witness both in specific detail and as a whole.

⁹ The contract provides that new employees are eligible for health and welfare benefits after 6 months' employment "in the local taxicab industry." As to pensions, the agreement provides that "any person hired who is new to the local taxicab industry who has not been heretofore covered by the Western Conference Teamsters Pension Plan for a period of two (2) years immediately preceding the above date of hiring shall not be eligible for Company pension contributions on his behalf until such person shall be employed for one (1) year." Thus, eligibility for these benefits is based upon employment in "the local taxicab industry" and not upon employment by Respondent Yellow Cab alone.

prior employment, he did not again have to take a safety course or be made familiar with the employer's rules and regulations would not alter his status as a new employee. The evidence is clear, and I find, that Fields voluntarily quit his employment on October 22, 1962, that his severance of employment on that date was both voluntary and in good faith, and that his status on returning to work on June 14, 1963, was that of a new employee.

Having thus determined Field's status, the basic issue in this case is whether the grace period provided for in Section 8(a)(3) of the Act, having once been made available to an employee in perfecting his membership in a labor organization pursuant to the terms of a union-security agreement, may again be invoked by such employee who has quit his job and thereafter is rehired or reemployed.¹⁰

The position taken by the Respondents in essence is predicated on the theory that Fields' obligation to maintain his union membership in good standing, as a condition of employment, continued after he quit his job on October 22, 1962. A similar situation presented itself in *Idarado Mining Company*, 77 NLRB 392, where the Board considered the lawfulness of the termination of employment of one Miller under the terms of a maintenance-of-membership contract between the employer and the Mine Production Workers. Miller had joined the Mine Production Workers and was a member in good standing on October 6, 1944. On November 20, 1944, he voluntarily quit his employment. On November 17, 1945, Miller applied for work and was hired by the employer though at a different job than the one he had formerly held. Thereafter, the union demanded that Miller place himself in good standing as a condition of employment and when he failed to do so the employer discharged him at the union's request. In holding that the discharge was unlawful, the Board stated:

When Miller severed his employment relationship with the respondent, his obligation to remain a member in good standing of the Mine Production Workers ended at the same time. The obligation was not merely suspended, ready to be imposed at *any time* in the future that Miller might be again employed by the respondent. On his reemployment by the respondent, in a new position and as a new employee, approximately a year after he had voluntarily resigned from the respondent's employ, Miller's status was like that of any other new employee; he was required to remain a member in good standing of the Mine Production Workers only if he voluntarily rejoined that organization after his reemployment.

The status of Fields in this case is the same as was that of the employee in the *Idarado* case. In both instances, the obligation to remain a union member in good standing, as a condition of employment, "was not merely suspended" but ended when the employee quit his job.¹¹

In this case, as was true in the *Idarado* case, the right of the employee to return and continue to work for his employer is to be determined as though he had never worked for such an employer on a previous occasion. The governing contract in each instance is the measure of the employee's responsibility. In the *Idarado* case, the maintenance-of-membership contract in effect permitted the employee to determine whether or not he wished to rejoin the union. In the present case, the union-shop contract required Fields to become a member in good standing in the Respondent Union "not later than the thirty-first (31st) day following the beginning of employment."¹² In terms of his union membership, apart from the question of his right to secure and hold a job, Fields' obligation to remain in good standing, absent his securing a withdrawal card, may or may not have continued from the time he quit his employment until the time he returned to work for Respondent Yellow Cab. But his obligation to place himself in good standing with Respondent Union in order to continue working for Respondent Yellow Cab could not be imposed upon him until the 31-day period provided for in the contract then existing had expired. Therefore, the demand by Respondent Union that Fields, as a suspended member, pay an initiation or reinstatement fee of \$85 before 31 days had expired following his employment by Respondent Yellow Cab on June 14, 1963, as a condition of

¹⁰ The contract in effect when Fields was first employed by Respondent Yellow Cab in 1961 remained in effect until an undisclosed date at the end of June 1963 by agreement of the contracting parties, even though by its terms it expired on June 1, 1963. Thus the same contract, the same employer, the same job, and the same union were involved during the period Fields was first employed and at the time of his rehire or reemployment.

¹¹ The fact that Fields was rehired or reemployed in the same job classification rather than in a different work classification, as was true of the employee in the *Idarado* case, does not alter the fact that he returned to Respondent Yellow Cab as a new employee.

¹² This period has been increased to 45 days in the present contract.

employment, was illegal¹³ and its action in causing Respondent Yellow Cab to hold Fields out of service on June 25, 1963, violated Section 8(b)(2) of the Act and constituted restraint and coercion within the meaning of Section 8(b)(1)(A) of the Act. In addition, the conduct of Respondent Yellow Cab, in acceding to the Respondent Union's demand and holding Fields out of service, after Personnel Manager Brooke had been informed that the demand was based upon the membership status of Fields in Respondent Union, constituted an act of discrimination in violation of Section 8(a)(3) of the Act and interference, restraint, and coercion in violation of Section 8(a)(1) of the Act.

IV. THE EFFECT OF THE LABOR PRACTICES UPON COMMERCE

The activities of the Respondents set forth in section III, above, occurring in connection with the operations of Respondent Yellow Cab 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 certain unfair labor practices, I shall recommend that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act:

On August 5, 1963, Respondent Yellow Cab received a telegram from Respondent Union, stating that the latter had no objection to the employment of Fields by Respondent Yellow Cab "pending the outcome of NLRB Case No. 20-CB-1105." On the same day, Brooke called Fields and told him that he was free to come to work. Fields agreed to return to work but after talking the matter over with his wife felt, as Fields expressed it, "that there would be too much animosity between me and the Company and the Union if I did go back to work because of this deal." Fields therefore did not return to work after his job had been offered to him by Brooke on August 5. The evidence thus shows, and the General Coun-

¹³ Respondent Union in its brief contends that "a union can lawfully provide that a member who fails to comply with the membership withdrawal procedure at the time he ceases active employment is not entitled to another 30-day grace period when and if he returns to work but instead may be ordered to put himself in good standing at once." I do not regard as apposite the case of *N.L.R.B. v International Association of Machinists, Lodge No 113, Guided Missile Lodge 1254 (Convar, a Division of General Dynamics Corp)*, 241 F 2d 695 (C.A. 9), cited by Respondent Union as support for its position. In the *Machinists* case, the contract, which contained a maintenance-of-membership clause, provided that an employee who was separated from the bargaining unit covered by the agreement, at a time when he was a member of the union, would be required to resume paying union dues immediately upon being reemployed within the unit. In the instant case, no such contractual provision exists nor does the record show the existence of any requirement that, as a condition of employment, an employee, upon quitting his job in the bargaining unit, be required to secure a withdrawal from Respondent Union. Moreover, as noted in the Board decision in the *Machinists* case (*Convar; A Division of General Dynamics Corporation*, 111 NLRB 1055, 1057), the provision in question was not applied by the union there involved to situations where an employee had quit. Nor can I agree with the contention advanced by Respondent Union that Fields was lawfully held out of service on June 25, 1963, because he was delinquent in the payment of his dues for the 9-month period from October 1962 to June 1963. Fields had no statutory or contractual obligation to pay union dues prior to the time he was hired as a new employee and the Respondent Union was not justified in causing employment to be withheld from him either because he was arrears in the payment of such dues or because he refused to pay a reinstatement or other fee based in part upon his failure to pay such dues. *Spector Freight System, Inc*, 123 NLRB 43. Likewise, I am unable to agree with the view of Respondent Union that failure to limit employees to a single 30-day grace period would result in "chaos in the application of every union security clause in collective bargaining agreements" because this "would allow an employee to quit active employment on the day before his dues must be paid and then be rehired on the day after with the windfall of a second statutory grace period." Suffice it to say that such are not the facts in this case. There is no showing that Fields' quitting was other than in good faith or that it was designed to avoid the requirements of the statute or the bargaining agreement. When such a case does arise, one can foresee that neither the contracting parties nor the Board will find themselves powerless to adequately deal with it.

sel concedes, that Respondent Yellow Cab made an unconditional offer of reinstatement to Fields on August 5, 1963. The General Counsel contends, however, that Respondent Union's withdrawal of its objection to the reinstatement of Fields was not unconditional, that Respondent Union should therefore be required to notify Respondent Yellow Cab that it is unconditionally withdrawing all objection to the reinstatement of Fields, and that upon receiving such notification Respondent Yellow Cab should then be required to make an unconditional offer of reinstatement to Fields. The General Counsel further contends that backpay from June 25 to August 5, 1963, be the joint and several responsibility of both Respondents but that backpay after August 5, 1963, be the sole responsibility of Respondent Union, with liability for such backpay to be imposed upon Respondent Yellow Cab only in the event Respondent Union unconditionally withdraws its objection to the reinstatement of Fields and Respondent Yellow Cab thereafter fails to offer such unconditional reinstatement to him.

I cannot agree with the contentions thus advanced by the General Counsel. Fields decided not to return to work solely because of his belief that feelings of animosity would exist between himself and the Respondents. Nothing that was done or said in connection with Respondent Yellow Cab's offer of reinstatement engendered this belief and there is no showing that at the time the offer was made or at the time it was refused, Fields had any knowledge of the contents of Respondent Union's telegram to Respondent Yellow Cab. As far as Fields was concerned, Respondent Yellow Cab offered to reinstate him without qualification. Having declined such offer, I do not believe he is now entitled to have it repeated.¹⁴

Accordingly, it will be recommended that the Respondents jointly and severally make Fields whole for any loss of pay suffered by reason of the discrimination against him by payment of a sum equal to that which he would normally have earned as wages from the date of the discrimination on June 25 to August 5, 1963, when he received an unconditional offer of reinstatement which he refused. Backpay shall be computed on a quarterly basis in accordance with the manner adopted in *F. W. Woolworth Company*, 90 NLRB 289, with the addition of interest at the rate of 6 percent per annum to be computed in the manner described in *Isis Plumbing & Heating Co.*, 138 NLRB 716.

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

CONCLUSIONS OF LAW

1. Respondent Union is, and at all times material to this proceeding has been, a labor organization within the meaning of Section 2(5) of the Act.
2. Respondent Yellow Cab is, and at all times material to this proceeding has been, an employer within the meaning of Section 2(2) of the Act.
3. By discriminating in regard to the hire and tenure of employment of Richard William Fields, Respondent Yellow Cab has engaged in unfair labor practices within the meaning of Section 8(a)(3) of the Act.
4. By interfering with, restraining, and coercing employees in the exercise of rights guaranteed to them in Section 7 of the Act, Respondent Yellow Cab has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
5. By attempting to cause, and by causing, Respondent Yellow Cab to discriminate in regard to the hire and tenure of employment of Richard William Fields in violation of Section 8(a)(3), Respondent Union has engaged in unfair labor practices within the meaning of Section 8(b)(2) of the Act.
6. By restraining and coercing persons employed by Respondent Yellow Cab in the exercise of rights guaranteed them in Section 7 of the Act, Respondent Union has 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.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in this case, I recommend that Respondent:

- A. Yellow Cab Company, San Francisco, California, its officers, agents, successors, and assigns, shall:

¹⁴ In view of the foregoing finding, I regard it as unnecessary to determine whether, as the General Counsel contends, Respondent Union's withdrawal of its objection to the reinstatement of Fields by Respondent Yellow Cab contained an unlawful condition by making it contingent upon the outcome of the present case against Respondent Union.

1. Cease and desist from:

(a) Encouraging membership in Chauffeurs Union Local 265, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or in any other labor organization, by discriminatorily holding its employees out of service or by discriminating in any other manner in regard to their hire or tenure of employment or any term or condition of employment, except to the extent permitted by Section 8(a)(3) of the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them 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 I find will effectuate the policies of the Act:

(a) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Recommended Order.

(b) Post at its San Francisco division copies of the attached notice¹⁵ marked "Appendix A."¹⁶ Copies of said notice, to be furnished by the Regional Director for Region 20, shall, after having been duly signed by an authorized representative of Yellow Cab Company, be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Yellow Cab Company to insure that such notices are not altered, defaced, or covered by any other material.

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

(d) Notify the Regional Director for Region 20, in writing, within 20 days from the date of receipt of this Recommended Order, what steps have been taken in compliance.¹⁷

B. Chauffeurs Union Local 265, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, its officers, agents, representatives, successors, and assigns, shall:

1. Cease and desist from:

(a) Causing or attempting to cause Yellow Cab Company, its officers, agents, successors, or assigns, to discriminate against Richard William Fields, or any other employee, in violation of Section 8(a)(3) of the Act.

(b) In any like or related manner restraining or coercing employees of Yellow Cab Company in the exercise of the rights guaranteed them 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 I find will effectuate the policies of the Act:

(a) Post at its offices and meeting halls in San Francisco, California, copies of the attached notice¹⁸ marked "Appendix B."¹⁹ Copies of said notice, to be furnished by the Regional Director for Region 20, shall, after being duly signed by an authorized representative of the Respondent Union, be posted immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous

¹⁵ Since notices are customarily framed in the language of the statute and because of their technical nature are often difficult for employees to understand, I am recommending that the notice in this case embody the simplified form which appears in the appendix.

¹⁶ In the event that this Recommended Order is adopted by the Board, the words "a Decision and Order" shall be substituted for the words "as recommended by a Trial Examiner of" in the notice. In the further event that the Board's Order is 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 of" shall be substituted for the words "a Decision and Order."

¹⁷ In the event this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify the said Regional Director, in writing, within 10 days from the date of this Order, what steps have been taken in compliance."

¹⁸ See footnote 15, *supra*.

¹⁹ See footnote 16, *supra*.

places, including all places where notices to members are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(b) Furnish to the Regional Director for Region 20 signed copies of the attached notice marked "Appendix B" for posting by Respondent Yellow Cab Company.

(c) Notify the Regional Director for Region 20, in writing, within 20 days from the date of this Recommended Order, what steps have been taken in compliance.²⁰

C Respondents, Yellow Cab Company and Chauffeurs Union Local 265, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, shall jointly and severally, in the manner set forth in the section of this Decision entitled "The Remedy," make whole Richard William Fields for any loss of pay suffered because of the discrimination against him.

It is finally recommended that, unless on or before 20 days from the date of receipt of this Decision the Respondents notify the Regional Director, in writing, that they will comply with the foregoing Recommended Order, the National Labor Relations Board issue an order requiring the noncomplying Respondent or Respondents to take action aforesaid.

²⁰ See footnote 17, *supra*.

APPENDIX A

NOTICE TO ALL EMPLOYEES

As recommended by 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 encourage membership in Chauffeurs Union Local 265, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or in any other labor organization of our employees, by holding out of service Richard William Fields, or any other employee, because he has failed to pay union initiation fees or dues before the period of time within which an employee, after he has been hired, is required to pay such fees or dues, as provided for in our contract with the Union.

WE WILL NOT interfere with the exercise by Richard William Fields, or any other employee, of the rights guaranteed employees in the National Labor Relations Act.

WE WILL give Richard William Fields whatever backpay he has lost.

YELLOW CAB COMPANY,
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, 830 Market Street, Room 703, San Francisco, California, Telephone No. 556-6721, if they have any question concerning this notice or compliance with its provisions.

APPENDIX B

NOTICE TO ALL MEMBERS OF CHAUFFEURS UNION LOCAL NO 265, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA AND TO ALL EMPLOYEES OF YELLOW CAB COMPANY

As recommended by 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 you that

WE WILL NOT attempt to cause Yellow Cab Company, or any other employer, to discriminate against Richard William Fields, or any other employee, by requiring payment of initiation fees or dues before the period of time within which an employee, after he has been hired, is required to pay such fees or dues, as provided for in our contract with Yellow Cab Company.

WE WILL NOT restrain or coerce Richard William Fields, or any other employee of Yellow Cab Company, in exercising the rights guaranteed employees in the National Labor Relations Act.

WE WILL give Richard William Fields whatever backpay he has lost.

CHAUFFEURS UNION LOCAL 265 INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA,
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, 830 Market Street, Room 703, San Francisco, California, Telephone No. 556-6721, if they have any question concerning this notice or compliance with its provisions.

Oil, Chemical and Atomic Workers International Union, AFL-CIO and its Local 8-718 and United Nuclear Corporation, Fuels Division. Case No. 1-CB-877. August 28, 1964

DECISION AND ORDER

On May 15, 1964, Trial Examiner A. Norman Somers issued his Decision in the above-entitled proceeding, finding that Respondents had engaged in and were engaging in certain unfair labor practices violative of Section 8(b) (1) (A) and 8(b) (2) of the Act and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the attached Decision. Thereafter the General Counsel, Respondents, and Charging Party filed exceptions to the Trial Examiner's Decision and supporting briefs. In addition, Respondents filed a reply brief to the exceptions of the Charging Party.

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 [Members Leedom, Fanning, and Jenkins].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and briefs, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with certain additions.¹

The record discloses that on Tuesday, February 12, 1963,² the Company and Respondents executed a collective-bargaining agreement

¹ Both the Charging Party and the General Counsel except to the Trial Examiner's failure to find that Respondents' filing of a grievance with respect to its dispute with the Company was violative of the Act. Under the circumstances of this case, we find it unnecessary to pass upon this issue.

² All dates refer to 1963 unless otherwise indicated.