

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

#### CONCLUSIONS OF LAW

1. Armstrong, Johns-Manville, Thorpe, and Techalloy are employers engaged in commerce within the meaning of the Act. Respondents are labor organizations within the meaning of Section 2(5) of the Act.
2. Respondent Local 113 has induced and encouraged individuals employed by Armstrong to refuse to handle or work on materials produced by Thorpe and have coerced and restrained Armstrong with an object of forcing or requiring Armstrong to cease doing business with Thorpe, and has thereby violated Section 8(b)(4)(i) and (ii)(B) of the Act.
3. Respondent Local 22 has induced and encouraged individuals employed by Johns-Manville to refuse to handle or work on materials produced by Techalloy with an object of forcing or requiring Johns-Manville to cease doing business with Techalloy, and has thereby violated Section 8(b)(4)(i) and (ii)(B) of the Act.
4. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.
5. Respondent International has not committed unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(B) and Section 2(6) and (7) of the Act.

[Recommended Order omitted from publication.]

**A. Nabakowski Co. and Sheet Metal Workers International Association, Local No. 65, AFL-CIO and James A. Pastor**

**A. Nabakowski Co. and Sheet Metal Workers International Association, Local No. 65, AFL-CIO and Ronald E. Vaughan.** *Cases Nos. 8-CA-3336-1, 8-CB-775-1, 8-CA-3336-2, and 8-CB-775-2. September 8, 1964.*

#### DECISION AND ORDER

On April 15, 1964, Trial Examiner John F. Funke issued his Decision in the above-entitled proceeding, finding that the Respondents, A. Nabakowski Co., and Sheet Metal Workers International Association, Local No. 65, AFL-CIO, 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, Respondent Local No. 65 filed exceptions to the Trial Examiner's Decision and a supporting 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 Fanning, Brown, and Jenkins].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial

Examiner's Decision and the entire record in this case, including the exceptions and brief, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, except as noted below.

### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby adopts, as its Order, the Order recommended by the Trial Examiner and orders that Respondent, A. Nabakowski Co., its officers, agents, successors, and assigns, and Respondent Sheet Metal Workers International Association, Local No. 65, AFL-CIO, its officers, agents, representatives, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order, with the following modifications:

Paragraph B1 (a), is amended to read:

Causing or attempting to cause A. Nabakowski Co., or any other employer, to discriminate against James A. Pastor, Ronald E. Vaughan, or any other employee, for nonmembership in Respondent Union for reasons other than their failure to tender the periodic dues and initiation fees uniformly required as a condition of acquiring and retaining membership in Respondent Union.

The "Note" paragraph immediately below the signature line in Appendix A is deleted.<sup>1</sup>

The first indented paragraph of Appendix B is amended to read:

WE WILL NOT cause or attempt to cause A. Nabakowski Co., or any other employer, to discriminate against James A. Pastor and Ronald E. Vaughan, or any other employees, because they are not members of Sheet Metal Workers International Association, Local No. 65, AFL-CIO, for reasons other than their failure to tender the periodic dues and initiation fees uniformly required as a condition of acquiring and retaining membership in the Union.

<sup>1</sup> This provision shall not be included in the Order as the parties have stipulated that Pastor and Vaughan were rehired after their illegal discharge.

### TRIAL EXAMINER'S DECISION

#### STATEMENT OF THE CASE

Upon charges filed on November 5, 1963, in Case No. 8-CA-3336-1 by James A. Pastor and in Case No. 8-CA-3336-2 by Ronald E. Vaughan against A. Nabakowski Co., herein called Nabakowski or the Employer, in Case No. 8-CB-775-1 by James A. Pastor and in Case No. 8-CB-775-2 by Ronald E. Vaughan against Sheet Metal Workers International Association, Local No. 65, AFL-CIO, herein called Local 65 or the Union, the General Counsel issued complaint alleging that Nabakowski engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act and that Local 65 engaged in unfair labor practices in violation of Section 8(b)(1)(A) and (2) of the Act.

The answers of the Respondents denied the commission of any unfair labor practices.

This proceeding, with the General Counsel, the Employer, and the Union represented, came on to be heard before Trial Examiner John F. Funke on February 12, 1964, at Elyria, Ohio. At the conclusion of the hearing the parties were given leave to file briefs and briefs were received from the parties by March 23, 1964.

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

#### FINDINGS AND CONCLUSIONS

##### I. THE BUSINESS OF NABAKOWSKI

Nabakowski is an Ohio corporation with a plant at Amherst, Ohio, where it is engaged in the manufacture, fabrication, and sale of sheet metal components used in the construction industry for installation in public, industrial, and hospital buildings. In the conduct of its business Nabakowski annually performs services in a value exceeding \$50,000 which are performed in States other than the State of Ohio.

Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

##### II. LABOR ORGANIZATION INVOLVED

Local 65 is a labor organization within the meaning of Section 2(5) of the Act.

##### III. THE UNFAIR LABOR PRACTICES

###### A. *The facts*

At the hearing it was stipulated that James A. Pastor was hired by Nabakowski on August 13, 1963,<sup>1</sup> as a welder's helper, that he was discharged on November 4, and that he was subsequently reemployed by Nabakowski; that Ronald E. Vaughan was hired by Nabakowski as a laborer on July 16, was discharged on November 4, and was subsequently reemployed by Nabakowski. It was further stipulated that neither was denied union membership because of his failure to tender dues or initiation fees in Local 65.<sup>2</sup> Apart from the stipulation the pertinent facts in the case are not seriously in dispute.

Vice President James F. Nabakowski testified that the Company operated two shops, one of which was engaged in the manufacture of products and one of which was a general construction shop. According to Nabakowski, the work in the manufacturing shop was more routine and mechanical than in construction and employees for manufacturing were hired "where we can find them" while employees in construction were hired by referral from the Union. In the construction shop a newly hired employee who was not a journeyman would receive an apprentice card from the Union and would undergo a 4-year apprenticeship program before receiving a journeyman's card, while in manufacturing a newly hired employee received his journeyman's card at the end of his 31 days.

On or about September 23 Nabakowski received a letter from the Union requiring certain employees in manufacturing to take a qualifying examination for membership in Sheet Metal Local 65, fabrication division.<sup>3</sup> Following receipt of this letter

<sup>1</sup> Unless otherwise noted all dates refer to 1963.

<sup>2</sup> The contract between the Local 65 and Nabakowski covered only the manufacturing department, in which Pastor and Vaughan were employed. That contract contained the following clauses:

\* \* \* \* \*

(2) The Employer agrees that none but journeymen sheet metal workers shall be employed on any work obtained for fabrication and for erection by this Department.

(3) The Employer agrees to require membership in the Union, as a condition of continued employment, of all Employees performing work specified in paragraph # 2, of this Agreement, within 31 days following the beginning of such employment, providing the Employer has reasonable ground for believing that membership is available to such employees on the same terms and conditions generally applicable to other members and that membership is not denied or terminated for reasons other than the failure of the employee to tender the periodic dues and initiation fee uniformly required as a condition of acquiring or retaining membership.

<sup>3</sup> General Counsel's Exhibit No. 2. The letter was addressed to the Company and to six employees, Vincent Yronich, Victor Johnson, Joseph Borbash, Robert Wheeler, Ron E. Vaughan, and James McCann.

James Nabakowski and S. J. Fresch, executive vice president and general manager of Nabakowski, met with Melbourne F. Wargo, business representative of Local 65, to protest the testing requirement. The grounds for protest was their opinion that it would unduly restrict Nabakowski in the hiring of new employees in the manufacturing division.<sup>4</sup> Despite their protest and refusal to agree Local 65 applied the test and both Pastor and Vaughan failed to pass it.

Under date of October 14, Local 65 directed a letter to Nabakowski (General Counsel's Exhibit No. 3) reading:

A. Nabakowski Co.,  
129 Milan Avenue,  
Amherst, Ohio.

Dear Sirs: After testing Ron E. Vaughan in both written and practical sheet metal, we find that he has rated a grade of 23.

The examining board of Local #65 Lorain County Branch rates him as not qualified as a journeyman sheet metal worker.

Therefore, membership in Local #65 is not available to him under these circumstances.

The Union asks that your company follow Section (#3) of the Manufacturing Agreement.

Yours very truly,  
Melbourne F. Wargo,  
Business Rep.

Under date of October 7, Local 65 directed a letter to Nabakowski (General Counsel's Exhibit No. 4) reading:

A. Nabakowski Co.,  
Attention: Mr. Fresch  
Amherst, Ohio.

Dear Sir: According to the records submitted to us by your Company, Ross Wheeler, Robert Wheeler and James Pastor have been employed by your Company for 31 days or longer. According to the agreement between your Company and Local #65, these men are to be required to be members of Local #65 as a condition on continued employment.

The above mentioned men were to report at Elyria High School, October 2, 1963, to take an examination to qualify them for membership into Local #65. As they did not do so, the Union has no recourse but to interpret this as a refusal to join the Union.

Therefore, I am bringing this to your attention as a violation of Sections 1 and 2 of the Working Agreement.

Yours very truly,  
Melbourne F. Wargo,  
Business Rep.  
Local #65.

Under date of October 29, Nabakowski replied to the above letters (General Counsel's Exhibit No. 5) as follows:

Sheet Metal Workers International Assoc.  
38891 Center Ridge Road  
North Ridgeville, Ohio

Attn: Mr. Melbourne F. Wargo, Sr.  
Business Agent

RE: Qualified Journeymen for  
Manufacturing Division

Dear Mr. Wargo: With reference to our current collective bargaining agreements with your union involving employees working for our company, our attention has been recently called to the fact that we are not employing journeymen sheet metal workers in our Manufacturing Division in conformity with the requirements of paragraphs (2) and (3) any other advice, we assume that your objections are directed at those employees who we've hired on or after 7/1/63. And that you are not now demand that some twenty other employees who have been working in our Manufacturing Division for many years either acquire journeyman status or be fired.

<sup>4</sup>There was further objection, according to Fresch, on the ground that if a test were to be applied it should be devised by Nabakowski since it knew what skills were required for different job classifications.

With respect to those recently hired employees, our company is prepared and willing to comply with our agreement with your union provided you can furnish journeymen sheet metal workers who have the skills required to satisfactorily perform the manufacture, fabrication and assembly duties involved in the work of this Division at the hourly rates of pay established by the agreement to which you refer.

Therefore, will you please refer 6 to 7 qualified journeymen who meet this requirement to our company as soon as possible. Pending referral of these journeymen, we will continue to employ those persons concerning whom your objection has been raised on a temporary basis.

Very truly yours,  
A. NABAKOWSKI CO.

S. J. Fresch,  
Pre. V.P. & Gen. Mgr.

James Nabakowski testified that Local 65 did not refer the six or seven journeymen requested for the manufacturing division.

Under date of November 4, Local 65 replied (General Counsel's Exhibit No. 6) with a letter reading:

A. Nabakowski Co.,  
129 Milan Avenue,  
Amherst, Ohio, 44001.

Attn: S. J. Fresch, Ex. V. P. & Gen. Mgr.

Dear Mr. Fresch: In answer to your letter of October 29, 1963 and with reference to our meeting in your office, I believe you mentioned the condition of Local #65 supplying men for your Fabrication Dept. At that time, I believe I informed you that according to our working agreement, we are under no obligation to supply your Fabrication Dept. with men, and have no intentions of doing so in the future.

I am again asking you to carry out the terms of the agreement as set forth. Listed below are some of the violations requiring your immediate attention:

1. Sanitary conditions at the Turnpike.
2. Drinking water at the Turnpike.
3. Lighting and heating at the Turnpike.
4. Proper equipment to hoist and handle heavy materials.
5. Proper pay raises when due.
6. Differential in wages due on the work performed on the Mall job.
7. Improvement of shop safety—ground electrical equipment—hand power tools not working properly.
8. Stop subletting work to non union shops.
9. Stop the so-called management supervision from using tools and performing other work.
10. Stop supervision from harassing workers about time, etc.
11. Advising and assisting new workers is the responsibility of supervision, not other workers.
12. Stop unauthorized people from handling sheetmetal material and other duties of sheetmetal workers.
13. Full applications of Sections 2 and 3 of the agreement.

Your prompt attention in these matters may create a better feeling and spirit of cooperation between our organizations.

Yours truly,  
/s/ M. F. Wargo, Sr. Bus. Rep.

The day the letter was received (according to James Nabakowski it was slipped under the door of the plant on Monday, November 4), James Nabakowski and Fresch met with the grievance committee of the manufacturing division, which consisted of Matt Brletic and John Dzonko. At this meeting the grievances outlined in the letter were discussed and Brletic and Dzonko threatened a strike if nonunion employees were continued in employment.<sup>5</sup> James Nabakowski and Fresch decided they needed Wargo and he was called, arriving at the plant about 4 p.m. Again there was a discussion of the grievance letter including grievance No. 13, which re-

<sup>5</sup> According to Fresch, and I credit him for he was more specific in his testimony than Nabakowski, Pastor and Vaughan were named as the nonunion employees in this discussion.

quired application of sections 2 and 3 of the contract to nonunion employees. Wargo denied that there was any specific mention of Pastor and Vaughan at this meeting or that he knew until later that Pastor and Vaughan were discharged that day.

Both James Nabakowski and Fresch testified that Fresch, while Wargo was present, telephoned the payroll clerk and told her to make out the paychecks for Pastor and Vaughan so that Pastor could be paid before he started his shift and Vaughan could be paid before he quit at 4:30 p.m. However, Pastor testified that he started his shift at 2:30 p.m. and was paid off at 3 p.m., which is clearly inconsistent with the testimony of James Nabakowski and Fresch and impliedly corroborates Wargo's testimony that he was not present when the payroll clerk received her instructions and that, when grievance No. 13 was reached for discussion (Wargo testified that it was the last item discussed at the meeting which continued until 6 p.m.) Fresch simply told him that it had been taken care of. In any event, both Pastor and Vaughan were discharged on November 4.

### B. Conclusions

I do not see that it is necessary to decide the credibility issue and the discrepancies between the parties as to what took place at the afternoon meeting on November 4. It is undisputed on this record that the International recommended to its locals that tests be given applicants for membership before they were accepted as members. Such a test was given some of the employees of Nabakowski and after Pastor and Vaughan failed these tests Local 65 requested, in the letters of October 7 and 14, compliance with the terms of paragraphs Nos. 2 and 3 of the contract.<sup>6</sup> To say that the request for the application of these paragraphs was not a request for discharge is merely an issue of semantics for paragraph No. 3 could not be applied without discharging employees who had not acquired membership in the Union within 31 days of employment. The only question before me is clearly stated in the Union's brief as:

May a union apply an objective non-discriminatory test to determine aptitude and skills as a qualification for membership failing which the union may request the termination of the employee under a labor shop agreement without violation of Section 8(b)(1)(A) and (2) of the Act?

Freely conceding the right of such union to impose a nondiscriminatory rule as it may see fit to prescribe,<sup>7</sup> the second half of the question is confronted by the language of Section 8(a)(3), which reads:

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8(a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective-bargaining unit covered by such agreement when made, and (ii) unless following an election held as provided in section 9(e) within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: *Provided further*, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership. [Emphasis supplied.]

<sup>6</sup> I find that the reference to paragraphs Nos. 1 and 2 of the contract in the letter of October 7 was clearly an inadvertent error and that reference was intended to be made, as it was throughout the testimony, to paragraphs Nos. 2 and 3.

<sup>7</sup> *Local 283, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-AFL-CIO (Wisconsin Motor Corporation)*, 145 NLRB 1097.

As the U.S. Supreme Court has stated Section 8(a)(3) represented the congressional response to the competing demands of employee freedom of choice and union security.<sup>8</sup> In enacting the section it outlawed as discriminatory all union-security clauses which did not meet the terms of the exemption and then added the further enjoiner upon the employer contained in proviso (B) above. Under that proviso the employer may not effectuate the terms of a contract lawful under Section 8(a)(3) by the discharge of any employee if he had reasonable cause to believe that membership was denied for any reason other than the failure to tender dues and initiation fee. It has been stipulated that neither Pastor or Vaughan was denied membership by reason of their failure to make such tender and that stipulation is the kiss of death. The Respondent Employer asserts that he did not discriminate against either Pastor or Vaughan to encourage or discourage their union membership but the statute says otherwise. It was precisely for the purpose of outlawing union control over conditions of employment that the Congress enacted Section 8(a)(3) with its narrow exception. If there was any doubt, that doubt was dispelled by the U.S. Supreme Court in the *Radio Officers* case,<sup>9</sup> where, pages 40 and 41, it stated:

The policy of the Act is to insulate employees' jobs from their organizational rights. Thus §§ 8(a)(3) and 8(b)(2) were designed to allow employees to freely exercise their right to join unions, be good, bad, or indifferent members, or abstain from joining any union without imperiling their livelihood. The only limitation Congress has chosen to impose on this right is specified in the proviso to § 8(a)(3) which authorizes employers to enter into certain union security contracts, but prohibits discharge under such contracts if membership "was not available to the employee on the same terms and conditions generally applicable to other members" of [sic] "membership was denied or terminated for reasons other than the failure of the employee to tender periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership." Lengthy legislative debate preceded the 1947 amendment to the Act which thus limited permissible employer discrimination. This legislative history clearly indicates that Congress intended to prevent utilization of union security agreements for any purpose other than to compel payment of union dues and fees. Thus Congress recognized the validity of unions' concern about "free riders," i.e., employees who receive the benefits of union representation but are unwilling to contribute their share of financial support to such union, and gave unions the power to contract to meet that problem while withholding from unions the power to cause the discharge of employees for any other reason. Thus an employer can discharge an employee for non-membership in a union if the employer has entered a union security contract valid under the Act with such union, and if the other requirements of the proviso are met. No other discrimination aimed at encouraging employees to join, retain membership, or stay in good standing in a union is condoned. [Footnotes omitted.]

Having already found that the Local 65 caused Nabakowski to discharge Pastor and Vaughan in violation of Section 8(a)(3) of the Act. I find Local 65 in violation of Section 8(b)(1)(A) and (2) of the Act.

#### IV. THE REMEDY

Having found that the Respondent Employer violated the Act by the discharge of Pastor and Vaughan and that the Respondent Union violated the Act by causing their discharge, I find that they should jointly and severally make whole the said employees for wages lost between the date of their discharge and their reemployment as provided in *F. W. Woolworth Company*, 90 NLRB 289, and *Isis Plumbing & Heating Co.*, 138 NLRB 716. The Respondent Union will be further ordered to cease and desist from causing or attempting to cause Nabakowski or any other employer to discriminate against any employee because he has failed to pass any qualifying journeyman test established and applied by the Respondent Union. In view of the fact that the International directed its locals to establish and apply such tests it may reasonably be anticipated that the conduct found unlawful here may be repeated as to other employers. The other usual cease-and-desist and affirmative provisions of Board Orders will be recommended.

<sup>8</sup> *Local Lodge No 1424, International Association of Machinists, AFL-CIO, et al. (Bryan Manufacturing Co.) v. N.L.R.B.*, 362 U.S. 411, 418, footnote 7.

<sup>9</sup> *The Radio Officer's Union of the Commercial Telegraphers Union, A.F.L. v. N.L.R.B.*, 347 U.S. 17.

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

#### CONCLUSIONS OF LAW

1. Respondent Nabakowski is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Respondent Local 65 is a labor organization within the meaning of Section 2(5) of the Act.
3. By discriminating against James A. Pastor and Ronald E. Vaughan in regard to their hire and tenure of employment to encourage or discourage membership in a labor organization, Respondent Nabakowski has engaged in unfair labor practices in violation of Section 8(a)(3) and (1) of the Act.
4. By causing and attempting to cause Nabakowski to discriminate against James A. Pastor and Ronald E. Vaughan in violation of Section 8(a)(3) of the Act, Respondent Local 65 has engaged in unfair labor practices in violation of Section 8(b)(2) and (1)(A) of the Act.
5. The aforesaid unfair labor practices are unfair labor practices 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 in this case, the Trial Examiner hereby recommends that Respondent:

- A. A. Nabakowski Co., its officers, agents, successors, and assigns, shall:
1. Cease and desist from:
    - (a) Discriminating against James A. Pastor and Ronald E. Vaughan in regard to their hire and tenure of employment to encourage or discourage membership in Local 65 or any other labor organization.
    - (b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed by Section 7 of the Act.
  2. Take the following affirmative action which is necessary to effectuate the policies of the Act:
    - (a) Jointly and severally with Local 65 make James A. Pastor and Ronald E. Vaughan whole for any loss of pay they may have suffered by reason of the discrimination practiced against them.
    - (b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to compute the amount of backpay due.
    - (c) Post at its places of business at Amherst, Ohio, copies of the attached notice marked "Appendix A."<sup>10</sup> Copies of said notice, to be furnished by the Regional Director for Region 8, shall, after being duly signed by the Respondent A. Nabakowski Co., be posted 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 to insure that said notices are not altered, defaced, or covered by any other material.
    - (d) Post at the same places and under the same conditions as set forth in (c) above, as soon as forwarded by the Regional Director, copies of the attached notice marked "Appendix B."
    - (e) Mail to the Regional Director for Region 8 signed copies of the attached notice marked "Appendix A" for posting by Local 65 at its business offices where notices to members are customarily posted. Copies of said notice, to be furnished by the Regional Director, shall, after being duly signed by Respondent, be returned to the Regional Director for such posting.
    - (f) Notify the Regional Director for Region 8, in writing, within 20 days from the receipt of this Decision, what steps have been taken to comply herewith.<sup>11</sup>

<sup>10</sup> If this Recommended Order is 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. If the Board's Order is enforced by a decree of a United States Court of Appeals, the notice will be further amended by the substitution of the words "a Decree of the United States Court of Appeals, Enforcing an Order" for the words "a Decision and Order."

<sup>11</sup> If this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for Region 8, in writing, within 10 days from the date of this Order, what steps Respondent has taken to comply herewith"

B. Sheet Metal Workers International Association, Local No. 65, AFL-CIO, its officers, representatives, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Causing or attempting to cause A. Nabakowski Co., or any other employer, to discriminate against James A. Pastor, Ronald E. Vaughan, or any other employee, in violation of Section 8(a)(3) of the Act because such employee has not passed a journeyman qualifying test established or applied by Local 65 or for any other reason.

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

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Jointly and severally with A. Nabakowski Co., make James A. Pastor and Ronald E. Vaughan whole for any loss of pay they may have suffered by reason of the discrimination practiced against them.

(b) Post at its business office, copies of the attached notice marked "Appendix B."<sup>12</sup> Copies of this notice, to be furnished by the Regional Director for Region 8, shall, after being duly signed by a representative of Local 65, be posted immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to its members are customarily posted. Reasonable steps shall be taken by Local 65 to insure that said 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 (b) above, as soon as they are forwarded by the Regional Director, copies of the attached notice marked "Appendix A."

(d) Mail to the Regional Director for Region 8 signed copies of the attached notice marked "Appendix B," for posting by A. Nabakowski in all places where notices to employees are customarily posted. Copies of said notice, to be furnished by the Regional Director, shall, after being signed by representatives of Local 65, be returned forthwith to the Regional Director for such posting.

(e) Notify the Regional Director for Region 8, in writing, within 20 days from the date of receipt of this Decision, what steps have been taken to comply herewith.<sup>13</sup>

<sup>12</sup> See footnote 10, *supra*.

<sup>13</sup> See footnote 11, *supra*.

## APPENDIX A

### 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 you that:

WE WILL NOT encourage or discourage membership in Sheet Metal Workers International Association, Local No. 65, AFL-CIO, or in any other labor organization, by discharging employees or in any other manner discriminating against any employee in regard to tenure of employment.

WE WILL together with Sheet Metal Workers International Association, Local No. 65, AFL-CIO, jointly and severally make James A. Pastor and Ronald E. Vaughan whole for any loss of earnings they may have suffered as a result of the discrimination against them.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of their rights to self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from engaging in any or all such activities, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as authorized in Section 8(a)(3) of the Act.

All our employees are free to become, remain, or to refrain from becoming or remaining, members of the above-named Union or any other labor organization, except to the extent that this right may be affected by an agreement in conformity with Section 8(a)(3) of the Act as amended.

A. NABAKOWSKI Co.,  
Employer.

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

NOTE.—We will notify the above-named employee, if presently serving in the Armed Forces of the United States, of his rights to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces.

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, 720 Bulkley Building, 1501 Euclid Avenue, Cleveland, Ohio, Telephone No. Main 1-4465, if they have any questions concerning this notice or compliance with its provisions.

#### APPENDIX B

##### NOTICE TO ALL MEMBERS OF LOCAL 65 AND TO ALL EMPLOYEES OF A. NABAKOWSKI CO.

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 you that:

WE WILL NOT cause or attempt to cause A. Nabakowski Co., or any other employer, to discriminate against James A. Pastor and Ronald E. Vaughan or any other employee in violation of Section 8(a)(3) of the Act because such employee has not passed a journeyman qualifying test established by Sheet Metal Workers International Association, Local No. 65, AFL-CIO, or for any other reason.

WE WILL, together with A. Nabakowski Co., jointly and severally make James A. Pastor and Ronald E. Vaughan whole for any loss of earnings they may have suffered as a result of our unlawful request that they be discharged.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of rights guaranteed by 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 by Section 8(a)(3) of the Act.

SHEET METAL WORKERS INTERNATIONAL  
ASSOCIATION, LOCAL NO. 65, 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 Director, 720 Bulkley Building, 1501 Euclid Avenue, Cleveland, Ohio, Telephone No. Main 1-4465, if they have any questions concerning this notice or compliance with its provisions.

**C. H. Cross d/b/a Cross Poultry Company and 525, Amalgamated Meat Cutters & Butcher Workmen of North America AFL-CIO.** *Cases Nos. 11-CA-2274 and 11-CA-2306. September 8, 1964*

#### DECISION AND ORDER

On June 19, 1964, Trial Examiner Leo F. Lightner issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that he cease and desist therefrom and take certain affirmative action, as set forth in the attached Decision. There-