International Association of Heat and Frost Insulators and Asbestos Workers' Local No. 40, AFL–CIO (Robert A. Keasbey Co.) *and* **Raymond Morehouse.** Case 3–CB–1277

July 30, 1970

DECISION AND ORDER

BY MEMBERS FANNING, MCCULLOCH, AND BROWN

On February 3, 1970, Trial Examiner Joseph I. Nachman 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 it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision and a supporting brief. The General Counsel filed limited exceptions to the Trial Examiner's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

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 brief, and the entire record in the case, and hereby adopts the findings,[1] conclusions,[2] and recommendations[3] of the Trial Examiner.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Recommended Order of the Trial Examiner and hereby orders that the Respondent, International Association of Heat and Frost Insulators and Asbestos Workers' Local No. 40, AFL–CIO, Albany, New York, its officers, agents, and representatives, shall take the action set forth in the Trial Examiner's Recommended Order, as modified below.

In paragraph 1(a) of the Order, and the first and third indented paragraphs of the notice, substitute "Armstrong Contracting & Supply Corp " for "C & S Insulating Company."

[1] The Respondent's exceptions, in part, are directed to the credibility findings made by the Trial Examiner It is the Board's established policy not to overrule a Trial Examiner's resolutions as to credibility unless, as is not the case here, a clear preponderance of all the relevant evidence convinces us that they are incorrect *Standard Dry Wall Products, Inc* , 91 NLRB 544, enfd 188 F 2d 362 (C A 3)

[2] In its exceptions, the Respondent contends, *inter alia*, that even if it did request the Employer to dismiss Raymond Morehouse, the request was lawful under the collective-bargaining agreement which required membership in the Respondent as a condition of employment We find no merit in this contention Aside from other considerations, the Respondent does not contend, and there is no evidence, that Morehouse was ever informed of his obligation to join the Union under the contract *Philadelphia Sheraton Corporation*, 136 NLRB 888, 896, enfd 320 F 2d 254 (C A 3)

[3] We find merit in the General Counsel's contention, in its limited exceptions, that the Trial Examiner's references to C & S Insulating Company are erroneous, as the record shows the firm name as Armstrong Contracting & Supply Corp We shall correct the Order and notice accordingly The Trial Examiner, apparently inadvertently, at one point in his recitation of the "current facts" refers to Douglas Morehouse as Donald

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

JOSEPH I. NACHMAN, Trial Examiner: This proceeding tried before me at Albany, New York, with all parties present, on November 25 and 26,[1] involves a complaint[2] pursuant to Section 10(b) of the National Labor Relations Act, as amended (herein the Act), alleging that International Association of Heat and Frost Insulators and Asbestos Workers' Local No. 40, AFL–CIO (herein Respondent or Union), caused or attempted to cause Robert A. Keasbey Co. (herein Keasbey or Company), to discriminate against Raymond Morehouse in regard to the tenure or terms and conditions of his employment, in violation of Section 8(b)(2) and (1)(A) of the Act.[3] By answer, Respondent admitted certain allegations of the complaint, but denied the commission of any unfair labor practice. The critical issue for decision is whether Respondent's admitted request that Keasbey terminate Morehouse was motivated by the fact that the latter was not a member of the Union or was it solely to require Keasbey to comply with its contractual obligation to employ mechanics and helpers only in a specified ratio. For reasons hereafter stated I find that Respondent was motivated by the fact that Morehouse was not a member of the Union, that its conduct violated Section 8(b)(2) and (1)(A) of the Act, and I recommend the usual remedial order.

At the trial the parties were afforded full opportunity to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally on the record, and to submit briefs. Oral argument was waived. Briefs submitted by the General Counsel and Respondent have been duly considered. Upon the entire record in the case, including my observation of the demeanor of the witnesses, I make the following:

[1] This and all dates hereafter mentioned are 1969, unless otherwise indicated

[2] Issued September 29, on a charge filed May 19

[3] No 8(a)(3) charge was filed hence no complaint issued against Keasbey

FINDINGS OF FACT[4]

BACKGROUND

Asbestos Contractors Association of Albany (herein Association), is an organization of four asbestos contractors in the Albany area who employ members of the Union pursuant to a collective-bargaining agreement.[5] The last contract executed August 13, 1965, and effective through April 30, 1970, contains the following provisions:

ARTICLE III

The ratio of Improvers may equal but not exceed a ratio of one (1) improver to Four (4) Mechanics employed in a shop. No Improver shall execute work unless in company with Mechanics.

ARTICLE VII

The Employers hereby recognize the Union as the exclusive bargaining agent for Mechanics and Improvers who perform any of the duties as described in Article XI hereof.

ARTICLE XVIII

All Mechanics and Improvers hereunder of the Union in the employ of the Employers shall be members in good standing in the Union during the extent of this contract. All Mechanics and Improvers covered by this agreement herein after employed by the Employers, shall make application to the Union on the earliest date provided by applicable Federal Law after their employment, or the date of their agreement, which ever is later.[6]

An addendum to the contract, providing for the hiring practices to be followed during its term, contains the following provisions:

1. Selection of applicants for referral shall be on a non-discriminatory basis and shall not be based on or in any way affected by Union membership, by-laws, rules, regulations, constitutional provisions, or any other aspects of obligation of Union membership, policies, or requirements. The Employers retain the right to reject any job applicant referred by the Union notwithstanding any of the conditions set forth below. . . .

2. In addition to the work classification of Mechanics and Improver, employees shall be further classified for the purpose of employment preference and job retention as either Group I or Group II employees. Employers shall hire and retain employees in Group I in preference to employees in Group II in the same work classification. However, employers may hire any employee in a classification available for work. Employers shall be the sole judge of the number of the employees necessary to properly man their jobs and will notify the Union of the names and dates of all hirings and lay-offs.

3. In order to assist the employers to comply herewith, the Union shall maintain a list of those employees in Group I and Group II who are out of work. Any person may make application to the Union to be placed upon the list for which he qualifies. Upon request the Union will notify an employer of the names of the employees listed. In the event the Union is unable to locate any employee acceptable to the Employer, in either classification within forty-eight (48) hours after any employer's request, Saturday, Sunday and holidays excepted, the employer shall be free to secure any employee. The Union shall also maintain a list of all job applicants who are available for work and who do not meet the criteria of either Group I or Group II and upon request will notify any employer of the names of the employees so listed.

* * * * *

5. The categories of the employees are as follows:

Group I shall include any employee who has been employed Eight Thousand (8000) hours or more under a collective bargaining agreement between the Union and Asbestos Contractors Association of Albany as either a Mechanic or an Improver, and who has passed a Mechanics examination under the direction of the Joint Trade Board. The examination shall be waived for anyone employed as a Mechanic and otherwise qualified on the effective date of the addendum . . . . Group II shall include any employee who has been employed for a period of five hundred (500) hours during the previous two years under a contract between the Union and Asbestos Contractors Association of Albany or who has Eight Thousand (8000) hours experience at the trade in the Building and Construction industry. The Trade Board will conduct examina-

[4] No issue of jurisdiction is presented The facts set forth in pars 2 and 4 of the complaint, which Respondent admitted by its answer, establish that Keasbey is engaged in commerce, and that the Union is a labor organization, both within the meaning of the Act I find these facts to be as pleaded

[5] The four employer members of the Association are Tri-City Insulating Company, Johns-Mansville Company, C & S Insulating Company, formerly known as Armstrong Company, and Keasbey The last mentioned is the only employer directly involved in this proceeding

[6] The contract also provides for a trade board, to be composed of an equal number of representatives of the Union and the Employers, with authority to investigate and settle disputes arising with respect to the operation of the agreement

tions quarterly. Employees shall be eligible for examination when they satisy the time requirement to be classed as Group I employee.

Keasbey has been a member of Association for a number of years and during that period has employed asbestos workers pursuant to and in accordance with the contract then in effect. In practice, when personnel was required, Keasbey asked the Union to supply a specified number of mechanics or improvers,[7] and the Union supplied the requested men if it was able to do so. For some time, however, the Union's membership has been insufficient to meet the demands upon it for workers. To assist it in meeting such demand, the Union has called other locals to supply men to work in Respondent's jurisdiction, which it calls "travellers," and has also referred to the employers some nonunion employees, who sometimes referred to in the record as "permit men." Among the "permit men" employed by Keasbey were Morehouse the Charging Party, and his son Douglas, both of whom had worked continuously for Keasbey since July 1963, except for illness or voluntary time off. Both had been referred to Keasbey by Union Business Agent Rossworm, and worked for the Company with Rossworm's full knowledge and consent. Neither of the Morehouses paid any fees or other charges to the Union, nor were they ever asked to do so. Although Raymond Morehouse made no particular effort to acquire membership in the Union, the Union has rules requiring that applicants for membership not be over a specified age, and that they have a high school diploma or an equivalency certificate. The evidence shows that Raymond Morehouse is 53 years old and has neither a high school diploma nor an equivalency certificate.

At the end of December 1968, Keasbey had in its employ 24 men, all referred to it by the Union; 16 of these were members of Respondent, one was a traveller, and the remaining 7 were nonunion or so-called permit men. Of the 17 union members so employed, 12 were classified by the Union as mechanics, and 5 as improvers. All the nonunion or permit employees were also classified by the Union as improvers.[8]

Current Facts

Late in December 1968, Union Agent Rossworm telephoned Keasbey Manager Rieth telling the latter that Union men were out of work while Keasbey had nonunion men on the payroll, and asked that Reith act accordingly. Although, as Rieth testified, he needed the men, he directed that five of the seven permit men then employed by Keasbey be terminated on January 3,[9] the two permit men then retained being Raymond Morehouse and his son Donald. Why the Morehouses were then retained is not articulated in the record.

Late in January Douglas Morehouse, then working in Burlington, Vermont, telephoned Keasbey's Field Superintendent Ed Willey (not to be confused with his brother permit man Richard Willey), telling Willey that he and his father desired to take a month off for a Florida vacation.[10] Willey approved the request, saying that taking the time off was a good idea because the Union was claiming that some of its members were out of work and that Morehouse might not be able to work all winter.[11] Willey told Mrehouse to call him when he returned and was ready to work. On or about January 29, Superintendent Damm approached Raymond Morehouse on the job, and asked the latter if he would be willing to start his vacation "a little ahead of time," explaining that the Union was putting "a little pinch" on Keasbey because union men were out of work. Morehouse agreed, and he and his son began their vacation the following day, January 30. Rossworm admits that having learned that the Morehouses had not been therefore released by Keasbey, he called on Rieth on or about January 31 to discuss the matter, and that Rieth told him not to be concerned because the Morehouses were on an extended vacation. Rossworm admittedly responded that as far as he was concerned the Morehouses were laid off, and that he marked his records accordingly.

Upon the return of the Morehouses from vacation about mid to late February, Douglas Morehouse telephoned Keasbey's Field Superintendent Willey and told the latter that he and his father were back and ready to work. Willey sent young Morehouse to a job in the Burlington, Vermont, area, saying that he would try to keep him there, but didn't know how long he could do so because the Union was pushing him. Young Morehouse asked about work for his father and Willey stated that his father should stay home for a couple of weeks, and that he (Willey) would get in touch with him. Young Morehouse went to Vermont where he worked until the week ending about

[7] The term "improver" is synonomous with helper

[8] According to Union Business Agent Rossworm, all nonunion employees are improvers A union member must work 4 years as an improver (which would give him 8,000 hours of work required by the union laws), take an on-the-job test under the supervision of a union mechanic, and otherwise comply with the Union's bylaws, to qualify as a mechanic Full dues are paid by member mechanics, while member improvers pay only half dues and have no vote in the affairs of the Union

[9] The five so terminated on January 3 were Charles Frye, Ronald Holt, Charles Warren, Jr , Philip Winney, and Richard Willey

[10] The evidence shows Ed Willey and Ed Damm, also a field superintendent for Keasbey, are salaried, do not work with the tools of the trade nor belong to the Union, assign work to the mechanics and improvers employed by Keasbey and reprimand them for improper performance of duty, grant time off, and have the authority to fire I find them to be supervisors within the meaning of Sec 2(11) of the Act

[11] At the hearing Respondent objected to this and other testimony by the Morehouses as to statements made to them by management officials of Keasbey as to what the latter had been told by officials of the Union, as hearsay and not binding on Respondent, and renews the objection in its brief General Counsel conceded that the objections were well taken, and that this testimony was not offered to bind Respondent, but for the limited purpose of explaining the conduct of the parties The testimony was received for that limited purpose, and I have not considered it in deciding whether Respondent has engaged in an unfair labor practice

March 9, at which time he received a message to communicate with Willey. Upon doing so, young Morehouse was told by Willey that he could no longer work for Keasbey because the Union would not allow permit men on the job, and that he should tell his father the same thing, adding that both of them should apply for unemployment compensation. Willey's statement to Douglas Morehouse was apparently prompted by the fact, as Keasbey Manager Rieth testified, that while young Morehouse was working in Vermont, Rossworm called pointing out that class I mechanics were out of work and asked Rieth to remove young Morehouse from the payroll. Immediately following his conversation with Willey, young Morehouse telephoned Business Agent Rossworm and told the latter that he and his father were out of work and wanted their names placed on the Union's referral register. Rossworm's only reply was "yeah." Except for the period between the latter part of February and March 9, when young Morehouse worked in Vermont, neither he nor his father has been referred to any job by the Union, nor has either been employed by any member of Association In his affidavit given the Board on September 3, Rossworm denied that either of the Morehouses communicated with him after they went on vacation, but in his testimony admitted that young Morehouse telephoned him requesting that he and his father be placed on the register for employment, and that he said he would, and further admits that although he has, since that conversation, referred approximately six improvers to jobs of members of Association, he has not referred either of the Morehouses. Rossworm gave no explanation for this fact.

Following the layoff of the permit men in January, the employer members of Association began complaining to the International Union concerning their inability to obtain enough asbestos workers to staff their jobs.[12] This complaint by the employers resulted in a meeting of the Joint Trade Board provided for in the contract, held on April 9, which was attended by International Vice President Novak, admitted in the pleadings to be an agent of Respondent, the manager of each of the four employer members of Association, as well as Statile and Rossworm, recording secretary and business agent, respectively of Respondent. The minutes of this meeting, prepared by Statile and edited by Rossworm, show that the status of permit men was a major topic of discussion; at one point Novak stating, "I wouldn't care if you went to the N.L.R.B. but when there are union men walking I will never have permit men working." The minutes also show that at one point Keasbey Manager Rieth asked about "D. Morehouse who was working in his shop," and that "Union officials spoke unfavorably of him and felt he would not be a benefit to the Local. [Novak] agrees to [g]o along with the Union feeling on this individual." Finally Novak, who apparently had been instructed by International to dictate the course Local 40 should follow, directed that the Local take into membership six former permit men[13] as of May 1, "waiving the high shcool requirements of the Local." After some further discussion in which the Union argued for its high school or equivalency requirement, Novak modified this to require that R. Holt, W. Reed, Jr., and C. Warren "take the high school equivalency test within 90 days as requirement to coming into the Local and books to be held by the Business Agent until this is done." In addition Novak directed that five improver members of the Local, after taking the required test within a specified period, be elevated to the membership classification of mechanic. After making these decisions Novak stated, "That should now settle the problem of manpower and that as of now there would be no more permit men used." Shortly after this meeting Rossworm referred to Keasbey three men dismissed by Rieth on January 3 (Warren, Holt, and Frye), in response to Rieth's request the preceding week for three men. In making this request Rieth did not specify any individual by name.

Rossworm admits that he talked with Rieth the latter part of December 1968, and again on January 31, and that on both occasions the subject of reduction in personnel by Keasbey was discussed. According to Rossworm, on these occasions he merely informed Rieth that the latter had to dismiss some improvers in order to come within the ratio of not more than one improver to four mechanics, as provided in article III of the contract, herein above set forth, and that at no time did he suggest, request, or direct what individuals Keasbey should lay off to come into compliance with the ration requirement of the contract. Indeed, according to Rossworm, he had no idea what individuals Keasbey would lay off. I do not credit Rossworm's testimony in that regard, but credit the contrary testimony of Rieth that Rossworm's complaint was that nonunion men were working while union men were not. Based on the entire record, I find and conclude that this request by Rossworm was meant by him and understood by Rieth to be a request that the permit men be dismissed for the reason that they were not members of the Union, and that the alleged out-of-ratio employment was nothing more than afterthought seized upon by Rossworm to obscure the

[12] Specifically, Keasbey Manager Rieth credibly testified that between January and early April he frequently needed more men than the Union could supply

[13] Initially this decision affected six permit men (W Reed, Jr , R Holt, J Danlorich, C Frye, C Warren, and J Stuto), Holt, Frye, and Warren being three of the five permit men dismissed by Keasbey on January 3 Later in the meeting an employer representative asked if the conclusions reached meant that H Guynup, who had been working for him, "has to be let go?" Novak asked the Union representative if there was "any reason why [Guynup] should not be taken into the Local " One union representative stated that "he has only heard good of the man " Novak then directed that Guynup "should come into the Local then with the others as a 2nd year improver " Thus seven were taken into the Local at this point as improvers

true reason for his request. My conclusion in this regard is based on the following considerations:

1. To begin with, Rossworm did not impress me as a credible witness. Not only did he deny in his sworn affidavit to the Board that neither of the Morehouses spoke to him about work, and as a witness admit that the contrary testimony of Douglas Morehouse in that regard was correct, but he at first testified before me that because he had many conversations with employers he could not recall what was said in his discussion with Rieth, but then proceeded to specify that his demand was simply that Keasbey comply with the contractual ratio. Moreover, in the aforementioned affidavit Rossworm stated that the Morehouses and remaining permit men were terminated by Keasbey for lack of work, with no mention being made of any alleged improper ratio. Even in the answer to the complaint herein the same defense is made, and yet when Rossworm testified, he admitted that he made demand upon Rieth for a reduction in force and for the first time advanced the claim that this was necessary to bring about the contractual ratio. In assessing Rossworm's credibility, I have also taken into account, as I deem it appropriate to do, that in his September 3 affidavit given the Board, he refused to discuss or comment upon the April 9 meeting the minutes of which plainly disclose Respondent's purpose to prevent nonunion employees from working, assigning as a reason for such refusal that the matter "concerns something after the fact and would be irrelevant to this [proceeding]."

2. Rossworm admitted that when he ascertained late in January that the Morehouses had not been released, he "spoke with [Rieth] relative to it," and when Rieth commented that the Morehouses were on vacation, he stated, "Well, as far as I am concerned, they're laid off," and marked his records accordingly. It is to be noted that even Rossworm does not contend that in this conversation he raised the out-of-ratio issue Moreover, it is difficult to understand why, if Rossworm was interested only in ratio of helpers to mechanics, and with knowledge of the fact that the Morehouses would not be working, he would insist that they be laid off, as he admittedly did.

3. Even on January 31, after all the permit men, including the Morehouses whom Rossworm insisted were terminated, were no longer on the payroll, the employment at Keasbey was still not within the ratio called for by the contract. On that date Keasbey employed 12 mechanics and 5 improvers.[14] That Rossworm was aware of this fact is plain from his own testimony that for a number of years he made all referrals to employers and maintained records which disclose the place of employment of each person so referred.

4. Employment at Keasbey was also out of ratio at the time of the Joint Trade Board meeting on April 9, at which the Union took into membership a number of former permit men, and became even more out of ratio when immediately following that meeting Rossworm referred three such men (Charles Frye, Ronald Holt, and Charles Warren, Jr.), to Keasbey for work as improvers.[15] I deem it highly significant that neither prior to, during, nor subsequent to the April 9 meeting did Rossworm make any demand on Keasbey that the latter bring its employment within the ratio specified in the contract.

The totality of the foregoing factors lead me to the conclusion that Rossworm's demands upon Keasbey were not made for the purpose of causing Keasbey to comply with the contractual ratio of improvers to mechanics, but rather had the intent and purpose of causing Keasbey to terminate the permit men, and particularly Raymond Morehouse, solely because they were not members of Respondent. Having reached this conclusion it follows that by Respondent's demands upon Keasbey for dismissal of Raymond Morehouse it caused or attempted to cause Keasbey to discriminate against him because of his lack of membership in Respondent, which membership failed to exist for reasons other than his failure to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining such membership, and also restrained and coerced Raymond Morehouse and other employees in the exercise of rights guaranteed by Section 7 of the Act, and thereby violated Section 8(b)(2) and (1)(A) of the Act. *United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 633, AFL–CIO (Plumbing Contractors of Owensboro, Kentucky)*, 178 NLRB 398.

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

CONCLUSIONS OF LAW

1. Keasbey and the other members of Association are employers engaged in commerce within the meaning of Section 2(2) and (6) and (7) of the Act.

[14] The mechanics were Console, Dedovich, DiMura, Fallon, Donald Frye, Sr., Melvin Holt, Jr., Melvin Holt, Sr., LaMonte, Oliver, Statile, Charles Warren, Sr., and Dunn The improvers were Donald Frye, Jr., Thomas Holt, Spinelli, Kehoe, and Markel All were members of Local 40 except Dedovich who was a traveller from a Canadian local Rossworm testified that Oliver had quit January 7, and that Dedovich quit on January 24, but this is not borne out by Keasbey's records which I find to be correct However, if it be assumed that Oliver and Dedovich had quit, as Rossworm claimed, then the lack of ratio was even greater, 10 mechanics and 5 improvers

[15] On April 9, Keasbey had in its employ 20 asbestos workers referred to it by the Union, 15 mechanics and 5 improvers Of course, with the referral of Charles Frye, Ronald Holt, and Charles Warren, Jr., on April 9, the ratio became 15 mechanics and 8 improvers Even if there were added the 5 mechanics hired by Keasbey between April 10 and 30 (Baleszen, Ceplon, Cereneck, Labonte, and Morin), the ratio would be 20 mechanics and 8 improvers

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

3. By its demand upon Keasbey that the latter terminate Raymond Morehouse because of his lack of membership in Local 40, Respondent caused or attempted to cause Keasbey to discriminate against Raymond Morehouse in regard to his hire or tenure of employment, because of his lack of membership in Local 40, which membership failed to exist for reasons other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership in Local 40, thereby to encourage membership in Local 40, and restrained and coerced Raymond Morehouse in the exercise of rights guaranteed by Section 7 of the Act, and thereby engaged in and is engaging in unfair labor practices proscribed by Section 8(b)(2) and (1)(A) 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.

THE REMEDY

Having found that Respondent engaged in and is engaging in conduct violative of Section 8(b)(2) and (1)(A) of the Act, it will be recommended that it be ordered to cease and desist therefrom, and that it take certain affirmative action designed and found necessary to effectuate the policies of the Act.

Having found that Respondent unlawfully caused Keasbey, a member of Association, to terminate the employment of Raymond Morehouse, it will be recommended that Respondent be required to advise Keasbey and the other three employer members of Association in writing, with a copy to Raymond Morehouse, that it has no objection to the employment of Raymond Morehouse by any member of Association as an asbestos worker in the classification of improver, and that any such objections heretofore voiced are now withdrawn. It will be recommended further that Respondent make whole Raymond Morehouse for any loss of pay he suffered by reason of the discrimination against him, by paying to him a sum of money equal to the wages he normally would have earned from the time he offered to return to duty following his vacation trip, to a date which is 5 days after Respondent advises all members of Association that it has no objection to their employment of Raymond Morehouse,[16] less his net earnings during that period, with interest thereon at the rate of 6 percent per annum, all in accordance with the Board's formula set forth in *F. W. Woolworth Company*, 90 NLRB 289, and *Isis Plumbing & Heating Co.*, 138 NLRB 716.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact, conclusions of law, and the entire record in the case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, it is recommended that the National Labor Relations Board order that International Association of Heat and Frost Insulators and Asbestos Workers' Local No. 40, AFL-CIO, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Causing or attempting to cause Robert A. Keasbey Co., Tri-City Insulating Company, C & S Insulating Company, Johns-Mansville Sales Corp., members of Asbestos Contractors Association of Albany, to discriminate against Raymond Morehouse, or any other employee, for nonmembership in said labor organization if such lack of membership is for reasons other than his failure to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining such membership.

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

2. Take the following affirmative action designed and found necessary to effectuate the policies of said Act:

(a) Make Raymond Morehouse whole for any loss of pay he suffered by reason of the discrimination against him, in the manner set forth in the section hereof entitled "The Remedy."

(b) Notify each of the aforementioned members of Asbestos Contractors Association of Albany, in writing, that it has no objection to the employment of Raymond Morehouse, and that any objections theretofore advanced are now withdrawn, and promptly furnish a copy of such written notifications to Raymond Morehouse.

(c) Post at its business office and meeting halls in Albany, New York, copies of the attached notice marked "Appendix."[17] Copies of said notice, on forms provided by the Regional Director for Region 3, after being duly signed by an authorized representative, shall 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 its members are customarily posted. Reasonable steps shall be taken by it to insure that said notices are

[16] This limitation is in accord with normal Board practice See *The Gabriel Division of The Maremont Corporation*, 153 NLRB 631, 633

[17] In the event no exceptions are filed as provided by Section 102 46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, recommendations, and Recommended Order herein shall, as provided in Section 102 48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and order, and all objections thereto shall be deemed waived for all purposes In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall be changed to read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board "

not altered, defaced, or covered by any other material.

(d) Sign and furnish to said Regional Director, on forms to be supplied him, sufficient copies of the aforesaid notice, for posting by the employer members of Asbestos Contractors Association of Albany, they being so willing, at all places where notices to their respective employees are customarily posted. Said copies, after being signed by an authorized representative, shall be forthwith returned to said Regional Director for disposition by him.

(e) Notify said Regional Director, in writing, within 20 days from the receipt of this Decision, what steps have been taken to comply herewith.[18]

[18] 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 it has taken to comply herewith."

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

After a full trial in which both sides had the opportunity to present their evidence, the National Labor Relations Board has found that we, International Association of Heat and Frost Insulators and Asbestos Workers' Local No. 40, AFL–CIO, violated the National Labor Relations Act, and ordered us to post this notice. We therefore notify you that:

WE WILL NOT cause or attempt to cause Robert A Keasbey Company, Tri-City Insulating Company, C & S Insulating Company, Johns-Mansville Sales Corp., as members of Asbestos Contractors Association of Albany, or any other employer, to discriminate against Raymond Morehouse because he is not a member of International Association of Heat and Frost Insulators and Asbestos Workers' Local No. 40, AFL–CIO, for reasons other than his failure to tender the periodic dues and initiation fees uniformly required as a condition of acquiring and maintaining membership in our Union.

WE WILL NOT, by any like or related acts, restrain or coerce employees in regard to their rights under Section 7 of the Act to refrain from engaging in union or other concerted activities for mutual aid or protection, except to the extent such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8(a)(3) and (f) of the Act.

WE WILL notify Robert A. Keasbey Company, Tri-City Insulating Company, C & S Insulating Company, Johns-Mansville Sales Corp., as members of Insulating Contractors Association of Albany, in writing, with a copy to Raymond Morehouse, that we have no objection to the employment of Raymond Morehouse, and that all such objections heretofore voiced are now withdrawn.

WE WILL make whole Raymond Morehouse for any loss of earnings, including interest, he may have suffered by reason of the discrimination against him as found by the National Labor Relations Board.

INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS AND ASBESTOS WORKERS' LOCAL NO. 40, AFL–CIO (Labor Organization)

Dated By

(Representative) (Title)

This is an official notice and must not be defaced by anyone.

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.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Fourth Floor, The 120 Building, 120 Delaware Avenue, Buffalo, New York 14202, Telephone 716–842–3100.