

**Allied Chemical Corporation, Wilputte Coke Oven Division and Emmett Rogers  
Local 269, Laborers International Union of North America and Emmett Rogers.** Cases 13-CA-8223 and 13-CB-2384

May 14, 1969

### DECISION AND ORDER

BY MEMBERS FANNING, BROWN, AND ZAGORIA

On February 5, 1969, Trial Examiner Gordon J. Myatt issued his Decision in the above-entitled proceeding, finding that the Respondents had not engaged in the unfair labor practices alleged in the complaint and recommending dismissal of the complaint in its entirety, as set forth in the attached Trial Examiner's Decision. Thereafter, the General Counsel filed exceptions to the Trial Examiner's Decision together with a supporting brief, and Respondent Union filed an answering brief.

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 briefs, and the entire record in this case, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations, as modified herein.

We agree with the Trial Examiner's finding that the General Counsel has failed to establish by a preponderance of the evidence that the Respondent Union prevented Emmett Rogers from securing employment with Respondent Employer because of his intraunion activities or that the Respondent Union caused or attempted to cause the Respondent Employer to refuse to hire Rogers for the same reason. We also agree that the evidence is insufficient to establish that Respondent Employer failed to hire Rogers because of his intraunion activities.

We do not adopt the Trial Examiner's statement that, but for what he considered to be a discrepancy in Rogers' testimony, he would not hesitate to find that Rogers was not hired at the project because of his dispute with union officials. This apparent conflict involved Rogers' testimony herein that at certain times he was present at Respondent Employer's gate, available for hire, and his testimony in another Board proceeding<sup>1</sup> as to the times he was at a union hall some distance away. We do not regard this apparent conflict<sup>2</sup> as being of such crucial importance. The General Counsel does not contend that Rogers was discriminated against at the gate<sup>3</sup> or at the union hall. Rather, he contends

that Stoyhoff's failure to notify Rogers when positions were available, as Stoyhoff promised to do, was discriminatory. However, there is no evidence that Stoyhoff was under any obligation to notify Rogers or that he treated Rogers any differently than any other union member. To the contrary, the evidence indicates that at least one other of Respondent Union's members, Aaron White, and perhaps several more, were treated in exactly the same manner. Accordingly, we shall dismiss these allegations of the complaint.

### ORDER

Pursuant to the provisions of Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby adopts as its Order the Recommended Order of the Trial Examiner, and orders that the complaint herein be, and it hereby is, dismissed in its entirety.

<sup>1</sup>*Furnco Construction Company*, 174 NLRB No. 19.

<sup>2</sup>After the conflict between his earlier testimony and his testimony herein was brought to his attention, Rogers testified that he was not sure of the times as he did not have a watch.

<sup>3</sup>As indicated by the Trial Examiner, Rogers does not contend that he was ever at the gate when Stoyhoff was hiring from that source.

### TRIAL EXAMINER'S DECISION

#### STATEMENT OF THE CASE

GORDON J. MYATT, Trial Examiner: Upon a charge filed on January 18, 1968, in Case 13-CA-8223 against Allied Chemical Corporation, Wilputte Coke Oven Division (hereinafter referred to as Respondent Employer), and a charge filed the same day in Case 13-CB-2384 against Local 269, Laborers International Union of North America (hereinafter referred to as Respondent Union) by the Charging Party, Emmett Rogers, and upon first amended charges filed in both cases on April 1, 1968, a consolidated complaint and notice of hearing issued on April 30, 1968. The consolidated complaint alleged that the Respondent Employer violated Section 8(a)(1)(2) and (3) and the Respondent Union violated Section 8(b)(1)(A) and 8(b)(2) of the Act. Answers were filed by both Respondents admitting certain allegations of the complaint, denying others, and specifically denying the commission of any unfair labor practices. Trial of the consolidated cases was held before me in Chicago, Illinois, on June 15 and 16, 1968.<sup>1</sup> All counsel and representatives were afforded full opportunity to be heard and to introduce relevant evidence. Briefs were submitted by all parties and they have been fully considered by me in arriving at my decision in this matter.

Upon the entire record in these proceedings, including my evaluation of the testimony of the witnesses based on my observation of their demeanor and on the relevant evidence, I make the following:

<sup>1</sup>Because of bona fide efforts on the part of all parties involved herein to arrive at an amicable settlement in these cases subsequent to the trial, the maximum time within which to file briefs was given and subsequent extensions of time were granted. Unfortunately, the parties were not able to settle their differences.

## FINDINGS OF FACT

## I. JURISDICTIONAL FINDINGS

The Respondent is a New York Corporation which maintains its principal office in the city of New York. The Respondent's Wilputte Coke Oven Division engages in the engineering and construction of coke ovens for firms located in the various States of the United States. Beginning in February 1967, and continuing beyond the time of this trial, the Respondent Employer has been engaged in the repair of existing ovens and the construction of a new bank of coke ovens for the Wisconsin Steel Company at the latter's facility in Chicago, Illinois. During the past calendar year the value of the services rendered by the Respondent Employer to the Wisconsin Steel Company has been in excess of \$50,000, and during a similar period the Respondent Employer purchased goods and materials valued in excess of \$50,000, from suppliers located outside the State of Illinois, and caused said goods and materials to be shipped to the Wisconsin Steel jobsite in Chicago, Illinois.

On the basis of the foregoing, I find that the Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

## II. THE LABOR ORGANIZATION INVOLVED

Local 269, Laborer's International Union of North America is a labor organization within the meaning of Section 2(5) of the Act.

## III. THE ALLEGED UNFAIR LABOR PRACTICES

## A. Background Facts

## 1. Rogers' dispute with the Respondent Union

Emmett Rogers has been a member of the Respondent Local Union for approximately 12 years and is experienced in working with firebrick. Over the years, Rogers has been at odds with the leadership of the Union and has filed several court actions against the Respondent Union alleging violations of Title I of the Labor Management Reporting and Disclosure Act, 1959.<sup>2</sup> Although Rogers never ran for office in the Union, he was appointed to be an Election Judge during the last election of union officers in June 1967.<sup>3</sup> It was as a result of his duties in this capacity that Rogers became involved in another dispute with the officials of the Union.

On June 26, Rogers went to the union headquarters accompanied by Curtis Bush, an unsuccessful candidate for the office of President of the Union, and demanded to see the per capita tax list and the ledgers showing the financial standing of the union members.<sup>4</sup>

<sup>2</sup>This section of the Reporting and Disclosure Act is popularly known as the "Bill of Rights" for union members. Rogers filed separate suits against the Respondent Union in 1961 and 1963. In each instance the case was dismissed by the Court. At the time of the instant trial, he had another action against the Union pending in the United States District Court.

<sup>3</sup>Unless otherwise specified, all dates cited subsequently herein refer to 1967.

<sup>4</sup>The per capita tax list was supplied by the International Union and indicated those members who were eligible to vote in the election. Rogers contended that names had been inserted on the list after it had been received by the Respondent Union, thereby allowing ineligible persons to vote in the election.

After Rogers had inspected the Ledgers and the per capita tax list, he put them under his arm and announced to Vukodinovich, secretary-treasurer of the Respondent Union, that he was taking the books to the Department of Labor. Rogers and Vukodinovich struggled for possession of the books and the police were subsequently called to the union office. Although formal charges were not filed with the police, Vukodinovich brought charges against Rogers with the Respondent Union. After proper notification the Executive Committee constituted itself as a Trial Board and held a hearing on the charges on November 9. Rogers participated in the hearing and was represented by an attorney. The Trial Board rendered a decision on November 30. Rogers was found to have violated the section of the Respondent Union's Constitution relating to the obligation of members. The Trial Board barred Rogers from holding any union office or position or serving in any capacity or participating in any union meeting for a period of 1 year and fined him the sum of \$100. This action was ratified and adopted by the membership at a meeting on December 11. Rogers did not appeal the decision and paid the amount of the fine. After the decision Rogers continued to meet his financial obligations with the Union, and it was stipulated that he was current in the payment of his dues.

## 2. The Respondent Employer's Project at the Wisconsin Steel Company Site

The Respondent Employer began working at the Wisconsin Steel Company facility in January 1967. The work not only involved the repair of existing coke ovens, but also included dismantling, excavating, and constructing a new battery of ovens. By its very nature the work required the use of a wide range of crafts, depending of course on the stage of construction. The top management official for the Respondent Employer at the construction site was the superintendent of construction. Under the superintendent, in order of authority, were the assistant superintendent, the field engineer, and the craft supervisors. All of these individuals were on the Respondent Employer's home office payroll and received their pay on a monthly basis. In addition, they shared in all of the companywide benefits given by the Respondent Employer. Under the craft supervisors were the foremen of the various crafts. These employees were hourly paid under the terms of the area contracts of the local craft union, which included payment of prevailing health and welfare benefits.<sup>5</sup>

The agreement governing the relationship between the Respondents here was negotiated by the Builders Association of Chicago and the Construction and General Laborers District Counsel of Chicago, and Vicinity. Among other things, this agreement provided:

Section VI, Paragraph 4(q) Foreman: There shall be a laborer appointed as a Labor Foreman when ten (10) or more laborers are employed on any one job or project; there shall be a sub-foreman after the first twenty (20) laborers, and for each multiple of ten (10) laborers employed thereafter . . . . When a Labor Foreman is needed to supervise laborers, such Labor Foreman shall receive fifty (50¢) cents or more, premium wages above top labor scale, as mutually agreed between said Labor Foreman and his employer.

<sup>5</sup>The Respondent Employer does not negotiate labor agreements directly with the local unions, but abides by the local area agreements in effect at the time that it commences construction on a given site.

The above and foregoing shall not be so construed as to restrict the employer's right to pay higher premium wages or to appoint a greater percentage of foremen and/or sub-foremen.

*B. The Circumstances Surrounding the Alleged Refusal to Refer or Employ Rogers*

As noted above, the Respondent's project for Wisconsin Steel started in January 1967. On February 22, Peter Stoyhoff was hired as a laborer on the project. He was laid off after 2 weeks and rehired on March 15. On June 8, Stoyhoff was promoted to the position of labor foreman. As such, Stoyhoff was responsible for hiring and discharging all of the laborers working on the project. In practice, Stoyhoff received instructions from the craft supervisor or the other management officials concerning the number of men needed on the job, and he then hired additional laborers or decreased his work force as the situation warranted.<sup>6</sup> In addition to hiring and discharging laborers, Stoyhoff supervised the performance of the various phases of the work of the laborers with the assistance of subforeman appointed under the terms of the contract. Stoyhoff also handled grievances of the laborers. The majority of these grievances dealt with disputes over the amount of pay received. The problems were taken by the men to Stoyhoff, who in turn straightened out the matters with the timekeeper.

During the peak periods of activity Stoyhoff hired as many as 70 laborers and had 5 subforeman under his supervision. Stoyhoff testified that he hired men from three sources. He stated that approximately one-third of his force was hired through the union hall. This was accomplished by simply calling the Respondent Union and asking for the number of men needed.<sup>7</sup> Another third of the laborers were hired directly at the 112th Street gate leading to the Wisconsin Steel property.<sup>8</sup> The balance of the men were either personal friends or were recommended by laborers and subforemen working on the job.

Stoyhoff was on the slate of candidates for union office, and he was elected vice president on June 24. There is no affirmative evidence in the record that the officials of the Respondent Employer were aware that Stoyhoff was seeking union office or that he had been elected.<sup>9</sup>

On October 9, after a regular union meeting, Rogers and a fellow union member, Aaron White, approached Stoyhoff and inquired about jobs with the Respondent Employer at the Wisconsin Steel project. Stoyhoff told

<sup>6</sup>The number of laborers employed at any given time varied with the type of work, the stage of construction, and the number of bricklayers used on the project. The average ratio of laborers to bricklayers was normally .8 to 1, but in some instances (depending upon the work involved) increased to 1 to 1. A decrease or increase in the number of bricklayers employed resulted in a corresponding decrease or increase in the laborer work force.

<sup>7</sup>Under the terms of the collective-bargaining agreement the Union did not maintain an exclusive hiring hall through which laborers were supplied.

<sup>8</sup>There were several gates leading onto the Wisconsin Steel facility. From the testimony given it appears that a number of laborers would "shape up" at the 112th Street gate each morning to determine whether jobs were available. When additional men were required, Stoyhoff, would on occasion, hire them directly at the gate.

<sup>9</sup>The General Counsel elicited from Stoyhoff that he had been congratulated on his victory by some of the laborers at the jobsite. There is no probative evidence, however, indicating that the Employer's officials were present when this occurred. In fact, Norman, the superintendent of construction, testified that he did not know that Stoyhoff held a position with the Union until after the Respondent Employer received a copy of the charge filed on January 18, 1968.

him that there were no openings at that time, but that additional bricklayers would be hired in approximately a week and more laborers would be required on the job. Rogers and White wrote their names and telephone numbers on a slip of paper and gave it to Stoyhoff, who agreed that he would contact them when openings were available.<sup>10</sup> After Stoyhoff left the union meeting he went home and promptly discarded the list of names. Stoyhoff claimed that he did this because he felt that if he hired one of the men and not the others, those not hired would "bug" him about the job.

The following morning, Stoyhoff hired three extra laborers. One of the men had formerly worked for another subcontractor on the project and had been told by the Respondent Employer to report to work that day to replace a laborer who was quitting. The other two men were hired in response to Stoyhoff's call to the union hall requesting two men. Stoyhoff testified that he was not informed that the Respondent Employer was going to hire additional bricklayers until he reported to work that morning. Consequently he did not know at the time of the union meeting that additional laborers would be needed.

Rogers testified that he went to the 112th Street gate of the jobsite on October 10, at approximately 7 a.m. and remained there until noon. He stated that he was accompanied by union member Bush, and that Stoyhoff did not appear at the gate at all while they were there. Rogers further testified that he showed up daily at the 112th Street gate throughout the entire month of October and continued to follow this routine until November 8, when he was sent out on a job by another local union. Rogers stated that he never saw Stoyhoff while he was at the gate and that he generally arrived there between 8 and 8:30 a.m. and did not leave until 9:30 or 9:45 a.m. On cross-examination, however, it was brought out that in a prior case against another local of the same International Union,<sup>11</sup> Rogers testified that he appeared at the hall of that particular Union, located in Hammond, Indiana, every morning during the month of October and remained until at least 8:30 a.m. seeking work. Rogers also testified that during the time that he was attempting to get a job with the Respondent Employer he never went to the Respondent Union's hiring hall in order to be available for referral in the event Stoyhoff made a request for men. He stated, however, that he did speak with the business manager, Bukovich, at a nearby bar and grill on at least three occasions about being referred to a job, and was told that the only thing he would get [from Bukovich] was a portion of a lower part of his anatomy.

On January 17, 1968, Rogers, again accompanied by Bush, went to the jobsite. Rogers had previously called and made arrangements to be met at the gate by Hatfield, the assistant superintendent of construction. Hatfield did

<sup>10</sup>There was considerable dispute at the trial over whether White and Rogers wrote their names on separate slips of paper or on a single sheet, and whether other union members were present and likewise gave him their names. In my judgment, this is wholly immaterial as all of the witnesses, including Stoyhoff, testified that White and Rogers wrote down their names and telephone numbers and gave them to Stoyhoff. Whether other union members were present (as testified by Stoyhoff) or whether the names were placed on more than one slip of paper (as testified by White and Rogers) only serves to prove that individual recollections of events long since past may honestly differ. The insignificant differences in the testimony concerning this particular event in no way reflect upon the veracity or the credibility of the witnesses involved.

<sup>11</sup>That case involved *Local 41, Laborers International Union of North America and the Furnco Construction Corporation* (Cases 13-CA-822, 827, and 13-CB-2383 and 2419).

not appear at the appointed time, and Rogers and Bush went through a gate regularly used by the Steel Company's employees. They went to the construction superintendent's office and spoke with Hatfield and Norman. According to Rogers, he inquired about the Respondent Employer's policy on hiring laborers. Rogers testified that Hatfield informed him that the Union furnished the employer with a labor foreman, and this individual hired all laborers through the union hall. Rogers stated that he and Bush were informed that the Respondent Employer hired laborers 4 or 5 days previously, but there were no openings at the present time. Both Rogers and Bush testified that Norman assured them that the Respondent was an equal opportunity employer. Bush testified that during this conversation he informed Norman and Hatfield that Stoyhoff was labor foreman on the job and also vice president of the Union. Bush told them that he and Rogers had been trying to get a job through Stoyhoff and the Union but were never hired. He stated that the Union instructed them to go to the gate, but that no one ever showed up there to hire them. Norman, testifying about the same conversation, denied that there was any mention by either Rogers or Bush of Stoyhoff's position with the Respondent Union. The following day, charges were filed by Rogers against both the Employer and the Union.

#### Concluding Findings

Two major issues are presented by these cases. First, whether the Union, acting through Stoyhoff, prevented Rogers from being employed at the Wisconsin Steel jobsite because of his active opposition to the officials administering the affairs of the Union. Secondly, whether the Respondent Employer unlawfully interfered in the affairs of the Union by having as its labor foreman an individual who was at the same time the vice president of the union representing its laborer employees. Involved in this second issue is also the question of whether the Respondent Employer, acting through its labor foreman, refused to hire Rogers in order to discourage union members from opposing the leadership of the Union.

There is no doubt on this record that Rogers had been engaged in a number of serious disputes with the union officials over a period of years. The several law suits, one of which is still pending, and his conduct during the election of June 24, resulting in charges and discipline by the executive committee, all attest to this fact. Of primary consideration, however, is whether the animosity engendered by these disputes caused the Union officials to retaliate by preventing Rogers from securing employment with the Respondent Company.

It is undisputed that Rogers and at least one other union member gave their names and telephone numbers to Stoyhoff on October 9 and that the latter discarded this list later that same evening. Stoyhoff's explanation for his action — that he would be "bugged" by those individuals not selected for employment — hardly carries with it a ring of truth. The very nature of the position which Stoyhoff held with Respondent Employer required him to constantly make choices; especially from among the men hired directly at the gate, and to a lesser extent from among his friends whom he employed on occasion. The record also discloses that the following day (October 10) Stoyhoff hired three men; one of whom had a prior commitment from Stoyhoff for a job as a replacement and two others from the union hall. In view of his actions concerning the list given to him the night before,

Stoyhoff's explanation that he was unaware that two additional laborers would be required on the job the following day must be viewed with suspicion, and his conduct in this regard would appear to support the contention that he, as an official of the Union, was interested in keeping Rogers off the job. Further support of this contention would appear to be contained in Bukovich's obscene remarks in rejecting Rogers' request for help in getting a job. Thus, at first blush, the evidence would seem to indicate that the General Counsel has established that Rogers was not hired at the Wisconsin Steel project of the Respondent Employer because of his disputes with the officials of the Respondent Union, and if this were all that was contained in the record, I would not hesitate to so find.

There is, however, one crucial factor which I find cannot be ignored. Rogers testified that he and Bush appeared at the 112th Street gate of the project (where Stoyhoff hired men directly at the jobsite) on October 10 at 7 a.m. and remained there until noon. According to Rogers, they were not hired nor did they see Stoyhoff. Rogers also testified that he went to this gate every day at 8 a.m. during the month of October and followed this practice until November 8, when he secured employment elsewhere through another local of the same International Union. The clear import of this testimony is that Rogers was present at the gate during the times that Stoyhoff hired men there between the hours of 8 and 8:30 a.m.

The record however shows otherwise. In another unfair labor practice case against Local 41 of the same International Union, the trial of which was held on July 1, Rogers testified under oath that he was at the hiring hall of that local (in Hammond, Indiana) every day during the month of October until 8 or 8:30 a.m. As it was physically impossible for Rogers to be at 112th Street and Torrence Avenue in Chicago, Illinois, and at the union hall in Hammond, Indiana, at the same time, it is apparent that Rogers was tailoring his testimony concerning his availability to fit the circumstances of the particular case being tried before this Agency. In my judgement, it is critical to the General Counsel's case that the evidence establish that Rogers was available at the gate or the union hall when Stoyhoff was hiring from these sources. On the basis of Rogers' conflicting testimony in this and the prior case, I am unable to make such a finding.<sup>12</sup> Nor am I able to find that the Respondent Union refused to refer Rogers for employment with the Respondent Company. By his own testimony, Rogers did not go to the union hall to apply for work on the Wisconsin Steel project. I am not unmindful of his encounters with Bukovich on three unspecified dates in October and November outside the union hall, but, in my judgement, this does not establish that Stoyhoff was hiring on these occasions or that Rogers would not have been referred from the hall had a request for men been made.

Thus on the basis of the record as a whole I find that the General Counsel has failed to establish by a preponderance of the evidence that the Respondent Union, acting through its vice president, Stoyhoff, prevented Rogers from securing employment with the Respondent

<sup>12</sup>The record also contains another example of serious conflict between Rogers' stated availability for work and independent evidence to the contrary. Rogers testified that he was available for work on January 17, 1968, when he and Bush spoke with Norman and Hatfield at the jobsite. A claim submitted by him through the Union's Health and Welfare Department, however, discloses that he was injured in November and unable to work as of November 28, and had not resumed work as late as February 26, 1968.

Company because of his intraunion activities or that the Respondent Union caused or attempted to cause the Respondent Employer to refuse to hire Rogers for the same reasons. Accordingly, I find that the Respondent Union has not violated Section 8(b)(1)(A) and 8(b)(2) with regard to Rogers, and I shall recommend that these allegations be dismissed.

Although separate violations are alleged against the Employer and the Union, the dual role of Stoyhoff, as labor foreman and as vice president of the Respondent Union, provides the common thread linking all of the allegations. In their briefs, both Respondents concede that Stoyhoff was a supervisory employee of the Respondent Employer with authority to hire and fire and to responsibly direct laborer employees, and that he fully discharged his duties as a vice president of the Respondent Union; including sitting on the executive committee, voting in elections, and participating in the management of the Union's affairs as required by the constitution and bylaws. Having found that the evidence is insufficient to establish that the Respondent Union, through its agent, Stoyhoff, prevented Rogers from obtaining employment at the Wisconsin Steel project or that it caused the Respondent Employer to refuse to hire Rogers, it follows that the evidence is likewise insufficient to establish that the Respondent Employer, acting through its supervisor, Stoyhoff, failed to hire Rogers because of his intraunion activities. I find, therefore, that the Respondent Employer did not violate Section 8(a)(3) of the Act with regard to Rogers, and I shall recommend that this allegation be dismissed.

There remains for consideration the question of whether Respondent Employer unlawfully interfered with the administration of the Union because its labor foreman actively participated in union affairs and was a union official. Both the Board and the courts agree that this is a matter which must be approached on a case-by-case basis and that a *per se* rule is unrealistic, especially in the building trades industry. As the court stated in *Local 636, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO v. N.L.R.B.* (*Detroit Association of Plumbing Contractors*), 287 F.2d 354 (C.A.D.C.):

. . . In an industry such as construction, there is an extreme upward and downward flexibility in job positions. A man hired one week for one job as a foreman may very possibly be hired the next week on the next job as a journeyman. In view of this flexibility, not every supervisory employee is to be barred from active participation in a journeyman's union . . . . This problem is approached by the Board on a case by case basis.

The landmark case in this area is the Board's decision in the *Nassau and Suffolk* case.<sup>13</sup> There the Board was confronted with a situation in which master mechanics (supervisory employees) were included in the bargaining unit under the terms of the contract and actively participated in union affairs. Recognizing the upward and downward movement in the construction industry, the Board held that an employee was not required to relinquish his basic union membership or refrain from actively participating in union affairs, when occupying a supervisory position, unless it could be affirmatively shown that the employer instigated or ratified this conduct, or led the employees to reasonably believe that the supervisor was acting for and on behalf of management.<sup>14</sup> The Board also held in that case that unlawful interference in the affairs of a union occurs when

supervisory employees, who are members of a journeyman's union, engage in collective-bargaining negotiations with their employers. The reasoning for this is clear, for it would result in divided loyalties and would be contrary to the clear legislative policy to free the collective-bargaining process from all taint of employer influence. *International Association of Machinists, v. N.L.R.B.*, 311 U.S. 72, 80.

Applying these principles to the instant cases, I find and conclude that the Respondent Employer did not interfere with the administration of the Union's affairs because Stoyhoff occupied the dual positions of labor foreman and vice president of the Union. Stoyhoff's selection as labor foreman was in no way related to his position with the Union. Indeed, he was appointed labor foreman by the Respondent's superintendent of construction several weeks before he was elected to union office. There is no evidence whatsoever to indicate that the Respondent had any knowledge that Stoyhoff was seeking union office. That Stoyhoff was active in the affairs of the Union and fully discharged his duties as required by the Union's constitution and bylaws is conceded by all parties. He attended union meetings and voted, he also sat on the executive committee, and in the case of Rogers, participated when that committee sat as a trial board. Stoyhoff received premium wages as labor foreman a fact which the General Counsel makes much of in his brief. This was provided for, however, by the collective-bargaining agreement. Under the terms of that document the labor foreman was to receive at least 50 cents an hour more than the journeyman rate. Furthermore, the contract which governed the parties was not negotiated by the Respondent Union itself, but by a District Council composed of several local unions. The Respondent was represented on the District Council by two officials elected for that purpose — Vukodinovich (secretary-treasurer) and Bukovich (business manager). While it is not clear how the Respondent Union's contract proposals were formulated or whether they were even considered by the District Council, it is clear that the Respondent Union's officers, other than the delegates, did not engage in direct negotiations with employers. The record does indicate that as labor foreman, Stoyhoff handled grievances of laborers on the jobsite. These grievances related almost exclusively to wages and he took the matter up with the timekeeper in each instance. The General Counsel argues that this is sufficient evidence that Stoyhoff engaged in negotiations with the employer to establish interference. I do not agree. This activity was infrequent (embracing approximately a half dozen situations) and involved nothing more than reconciling the wages paid to the complaining employee with the records kept by the timekeeper. In the total scheme of collective negotiations such activity on the part of Stoyhoff was minuscule at best. I find, therefore that Stoyhoff's activities did not require him to engage in collective-bargaining negotiations with the Employer.

Further applying the principles of *Nassau and Suffolk*, I find that the Respondent Employer did not ratify or instigate Stoyhoff's intraunion activities, nor did the Employer in any manner lead the employees to reasonably believe that he was acting for and on behalf of management while engaged in his union activities. Accordingly, I find, in the circumstances of these cases, that the Respondent Employer did not violate Section

<sup>13</sup>*Nassau and Suffolk Contractors Association*, 118 NLRB 174.

<sup>14</sup>*Id.* at p. 183.

8(a)(2) of the Act by employing as its labor foreman an individual who was also the vice president of the Respondent Union. *Nassau and Suffolk, supra; Detroit Association of Plumbing Contractors*, 126 NLRB 1381, enfd. in part 287 F.2d 354 (C.A.D.C.); *Banner Yarn Dyeing Corporation*, 139 NLRB 1018, 1027.

#### CONCLUSIONS OF LAW

1. The Respondent Employer, Allied Chemical Corporation, Wilputte Coke Oven Division, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Respondent Union, Local 269, Laborers International Union of North America, is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent Employer did not violate Section 8(a)(1), (2), or (3) of the Act.

4. The Respondent Union did not violate Section 8(b)(1)(A) and 8(b)(2) of the Act.

#### RECOMMENDED ORDER

Upon the foregoing findings of fact, conclusions of law and the entire record in these cases, I recommend that the consolidated complaint herein be dismissed in its entirety.