

Yellow Freight System of Indiana and Alfred Pohl.

Highway Drivers, Dockmen, Spotters, Rampmen, Meat, Packing House and Allied Products Drivers and Helpers, Office Workers and Miscellaneous Employees Local Union No. 710, Affiliated with the International Brotherhood of Teamsters, AFL-CIO (Yellow Freight System of Indiana) and Alfred Pohl. Cases 13-CA-31228 and 13-CB-13874

March 24, 1999

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

On June 7, 1994, Administrative Law Judge Elbert D. Gadsden issued the attached decision. The Respondent Union and the General Counsel filed exceptions and supporting briefs, the General Counsel filed an answering brief, and the Union filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions² as

¹ The Union has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

We correct certain misstatements of fact made by the judge. Contrary to the judge, Union Steward DeCola denied, at least in substance, having made certain statements to Charging Party Pohl. Thus, DeCola denied telling Pohl that if Pohl did not sign the application for union membership, DeCola would fill out his paperwork and state that Pohl refused to join the Union. DeCola also denied telling Pohl that if Pohl did not call him by 9 a.m. the next morning, DeCola would report to the Union that Pohl refused to join. However, DeCola did not deny having told Pohl that if Pohl didn't call him by 9 a.m., then he should see if he could find another job paying \$15 an hour. Further, it was the Employer's supervisor, Gorecki, rather than its terminal manager, Strode, who told Pohl he had to sign a dues-checkoff authorization. None of these errors affect our decision, especially because the judge discredited DeCola concerning other matters, in part on the basis of his demeanor.

In agreeing with the judge that the Union unlawfully failed to give Pohl a reasonable time within which to satisfy his legal obligations under the union-security clause, we do not rely on *Stanford Employees, Local 680 (Leland Stanford Junior University)*, 232 NLRB 326 (1977), which we find inapposite to this case.

² In affirming the judge's conclusion that the Union unlawfully attempted to cause the Employer to discharge or not call for work Charging Party Pohl, we find no merit in the Union's argument that the complaint did not allege an attempt to cause the Employer not to call Pohl for work. For an on-call replacement employee like Pohl, there is no practical difference in this context between discharge and failure to call for work. We also find no merit in the Union's contention that it could not have acted unlawfully in attempting to cause Pohl's discharge because he was attempting to avoid entirely his union-security obligations. The record does not support that contention; indeed, DeCola admitted that Pohl did not object to paying union dues. Finally, we find no merit to the Union's argument that, because the complaint alleged only that it failed to give Pohl a copy of the collective-bargaining

modified below and to adopt the recommended Order as modified and set forth in full below.

1. We agree with the judge that the Union violated its duty of fair representation, in violation of Section 8(b)(1)(A) of the Act, by failing to inform Charging Party Alfred Pohl and other employees represented by the Union under a collective-bargaining agreement containing a union-security clause of their rights under *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963), and of the rights of nonmember objectors under *Communications Workers v. Beck*, 487 U.S. 735 (1988). We affirm the judge's finding, however, pursuant to the analysis in *California Saw & Knife Works*, 320 NLRB 224 (1995), enfd. sub nom. *Machinists v. NLRB*, 133 F.3d 1012 (7th Cir. 1998), cert. denied sub nom. *Strang v. NLRB*, 525 U.S. 813 (1998), and *Paperworkers Local 1033 (Weyerhaeuser Paper Co.)*, 320 NLRB 349 (1995), revd. on other grounds sub nom. *Buzenius v. NLRB*, 124 F.3d 788 (6th Cir. 1997), vacated 525 U.S. 979 (1998).³ Thus, contrary to the judge, we do not find this violation on the basis of any ambiguity in the union-security clause, but on the Union's failure to notify employees of the statutory limits on their obligations under the clause.⁴ We shall modify the relevant portions of the judge's recommended Order and notice to be consistent with the

agreement "about September 23, 1992," the judge improperly found that it failed to give him a copy of the contract at any time thereafter. The judge credited Pohl's testimony that DeCola refused to give him a copy of the contract until he signed an application for union membership, which he did not do until October 27. Moreover, the Union does not assert that it ever actually gave Pohl a copy of the agreement.

³ In *California Saw*, the Board held that a union that represents employees subject to a union-security provision must notify them, when or before it seeks to obligate them to pay dues and fees, that they have the right to be or remain nonmembers and that nonmembers have the right (1) to object to paying for union activities that are not germane to the union's duties as bargaining agent and to obtain a reduction in dues and fees for such activities; (2) to be given sufficient information to enable them to decide intelligently whether to object; and (3) to be informed of any internal union procedures for filing objections. If an employee objects, he must be told of the percentage of the reduction, the basis for the calculation, and the right to challenge those figures. 320 NLRB at 233 and 235 fn. 57. To the extent the judge's discussion is inconsistent with *California Saw* and *Weyerhaeuser*, we disavow it. We also note that, contrary to the judge's suggestion, the Supreme Court in *Beck* did not state the type of notice unions must provide employees concerning their obligations under union-security arrangements.

⁴ We also do not rely on the judge's statement that the failure to notify Pohl "probably led him to reasonably believe that full membership was required."

The complaint alleges that the Union failed to notify employees generally of their *General Motors* rights, but that it only failed to provide notice of *Beck* rights to Pohl. As noted, the judge found that the Union failed to inform other unit employees, as well as Pohl, of their *Beck* and *General Motors* rights. The Union has not excepted to that factual finding. In this regard, we note that DeCola admitted that he had not informed Pohl or other employees of those rights and that he did not think the Union had so informed them. (This testimony was received over union counsel's relevance objection; however, union counsel did not otherwise explain the basis for her objection, and the Union does not argue in its exceptions that the judge's ruling was erroneous.)

analysis in *California Saw, Weyerhaeuser*, and subsequent decisions.

2. The judge found that the Respondent Employer violated Section 8(a)(1) and (2) of the Act by entering into and maintaining a collective-bargaining agreement that contained a union-security clause requiring employees to be “members in good standing” in the Union, without notifying employees of their *Beck* and *General Motors* rights. Both the General Counsel and the Union have excepted to those findings, and we find merit to their exceptions. As both parties point out, the amended complaint did not allege such violations or, indeed, any 8(a)(2) violation. The General Counsel did not argue that either violation should be found. Moreover, as the Board has found, since employers have no duty of fair representation, they have no affirmative responsibility to inform employees of their *Beck* and *General Motors* rights.⁵ In these circumstances, we find that the judge improperly found these violations, and we shall modify the Order and notice accordingly.

The judge also found that, by advising the Charging Party that joining the Union was a requirement for continued employment, the Employer violated both Section 8(a)(1) and (2). As we have noted, the complaint did not allege any 8(a)(2) violation, and the General Counsel did not argue to the judge that one should be found. However, no party has explicitly excepted to the judge’s finding of this 8(a)(2) violation, and it is not clear from the General Counsel’s brief whether he intended to contest this aspect of the judge’s decision. In any event, we find it unnecessary to decide whether the Employer’s statement violated Section 8(a)(2) as well as Section 8(a)(1), because such a finding would not materially affect the Order. Accordingly, we shall delete references to the 8(a)(2) violation from the Order and notice.⁶

3. We shall order the Respondents to notify in writing those employees whom they initially sought to obligate to pay dues or fees under the union-security clause on or after March 30, 1992, of their right to elect nonmember status and to make *Beck* objections with respect to one or more of the accounting periods covered by the complaint. With respect to any such employees who, with reasonable promptness after receiving their notices, elect nonmember status and file *Beck* objections with respect to any of those periods, we shall order that the Union, in the compliance stage of the proceeding, process their objections, nunc pro tunc, as it would otherwise have done, in accordance with the principles of *California Saw*. The Union shall then be required to reimburse these objecting nonmember employees for the reduction in their dues and fees, if any, for nonrepresentational activities that occurred during the accounting period or

periods covered by the complaint in which they have objected.⁷

4. We find it necessary to modify the Order and notices in a number of other respects. First, we agree with the General Counsel that the judge incorrectly found that Terminal Manager Strode threatened Pohl with discharge if he did not become a member of the Union in good standing. We also agree with the General Counsel that the judge improperly ordered the Union to refrain from threatening employees with termination because they fail to become union members in good standing. The record establishes that Strode and Union Steward DeCola threatened Pohl with discharge if he did not *join* the Union, not if he did not become a member in good standing. We correct the judge’s finding concerning Strode’s threat, and we shall modify the Order and notices accordingly.

We also agree with the General Counsel that paragraph 1(c) of the Order against the Union is confusing as it relates to dues checkoff. The judge ordered the Union to cease and desist from requiring dues checkoff as a condition of employment without explaining the limits of employees’ union-security obligations. As the General Counsel notes, dues checkoff is a voluntary matter and may not be required of employees regardless of whether the union-security clause has been explained.⁸ We shall make the appropriate clarifications in the Orders and notices.⁹

The General Counsel further contends that the judge erred in ordering the Union to post notices concerning employees’ *General Motors* and *Beck* rights and to make copies available to the Employer for posting. The General Counsel argues that the Employer has no duty to notify employees of those rights, and therefore that it should not have to post the Union’s notice. We need not address the General Counsel’s argument about the Employer’s obligations, however, because we find it unnecessary to require the Union to notify employees of their *General Motors* and *Beck* rights by means of posted no-

⁷ We shall confine the reimbursement remedy to employees who were initially subjected to union security on or after March 30, 1992, the beginning of the 6-month period preceding the filing and service of the charges. On the other hand, we shall order the Union to give notices to all bargaining unit employees irrespective of when they were initially subjected to union security. This remedial action is designed to ensure that all unit employees will have knowledge of their rights, for future exercise if they wish. The class to which notice is required is broader than the class for which make-whole relief is provided, consistent with the distinction made in Board practice between the obligation of a labor law violator to make whole victims of proven unfair labor practices and the violator’s obligation to notify employees of the rights that were violated. See *Assn. for Retarded Citizens (Opportunities Unlimited of Niagara)*, 327 NLRB No. 88, slip op. at 4 fn. 14 (1999). Interest on reimbursements shall be calculated in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

⁸ See, e.g., *Electrical Workers Local 601 (Westinghouse Electric Corp.)*, 180 NLRB 1062 (1970).

⁹ Par. 1(a) of the judge’s Order against the Employer appears to contain the same infirmity. We shall correct it as well.

⁵ *Rochester Mfg. Co.*, 323 NLRB 260, 262 (1997).

⁶ We adopt the judge’s finding that the Employer’s statement violated Sec. 8(a)(1). See *Rochester Mfg. Co.*, 323 NLRB at 262 fn. 8.

tices. Accordingly, we shall delete this provision of the Order. We shall, however, order the Union to make available to the Employer, for posting if the Employer wishes, copies of the notice we do require the Union to post pursuant to our Order.

Finally, we shall add provisions corresponding to violations found by the judge but omitted from the Order and notice, delete unnecessary and/or redundant provisions from those documents, and modify their provisions to be consistent with *Indian Hills Care Center*, 321 NLRB 144 (1996), and *Excel Container, Inc.*, 325 NLRB 17 (1997).

ORDER

The National Labor Relations Board orders that

A. The Respondent, Yellow Freight System of Indiana, West Chicago, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Advising employees that they must join the Union and authorize dues checkoff as a condition for continued employment, and threatening them with discharge if they do not join the Union.

(b) Complying with the Union's request to discharge or not call employees for work because they failed to join the Union.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

(a) Jointly and severally, with the Respondent Union, make Alfred Pohl whole for any loss of earnings and benefits he sustained as a result of the Respondent's discharging him or failing to call him for work at the Union's request between October 2 and 27, 1992, with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

(b) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge or failure to call for work and within 3 days thereafter notify Pohl in writing that this has been done and that it will not use the action against him in any way.

(c) Preserve and, within 14 days of a 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 analyze the amount of back-pay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its facility at West Chicago, Illinois, copies of the attached notice marked "Appendix A."¹⁰ Copies of the

notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 23, 1992.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

B. The Respondent, Highway Drivers, Dockmen, Spotters, Rampmen, Meat, Packing House and Allied Products Drivers and Helpers, Office Workers and Miscellaneous Employees Local Union No. 710, affiliated with the International Brotherhood of Teamsters, AFL-CIO, its officers, agents, and representatives shall

1. Cease and desist from

(a) Failing to notify unit employees, when it first seeks to obligate them to pay fees and dues under a union-security clause, of their right under *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963), to be and remain nonmembers of the Union and of the rights of nonmembers under *Communications Workers v. Beck*, 487 U.S. 735 (1988), to object to paying for union activities not germane to the Respondent's duties as bargaining agent and to obtain a reduction in dues and fees for such activities.

(b) Advising employees that they must join the Union as a condition of employment or threatening them with termination of their employment if they do not join the Union.

(c) Requiring employees to authorize dues checkoff as a condition of employment.

(d) Failing to allow employees a reasonable time within which to comply with their union-security obligations.

(e) Failing to comply with employees' requests for a copy of the collective-bargaining agreement with the Employer.

(f) Attempting to cause or causing the Employer to discriminate against employees in regard to hire, tenure, or terms or conditions of employment because they fail to join the Union.

¹⁰ If this 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 read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

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

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

(a) Notify all bargaining unit employees in writing of their rights under *NLRB v. General Motors Corp.* to be and remain nonmembers of the Union and of the rights of nonmembers under *Communications Workers v. Beck* to object to paying for union activities not germane to the Union's duties as bargaining agent and to obtain a reduction in dues and fees for such activities. In addition, the notice must include sufficient information to enable the employees to intelligently decide whether to object, as well as a description of any internal union procedures for filing objections.

(b) Notify in writing those employees whom the Respondent initially sought to obligate to pay dues or fees under the union-security clause on or after March 30, 1992, of their right to elect nonmember status and to make *Beck* objections with respect to one or more of the accounting periods covered by the complaint.

(c) With respect to any employees who, with reasonable promptness after receiving the notices prescribed in paragraph 2(b), elect nonmember status and file *Beck* objections, process their objections in the manner set forth in part 3 of this decision.

(d) Reimburse, with interest, any nonmember bargaining unit employees who file *Beck* objections with the Respondent for any dues and fees exacted from them for nonrepresentational activities, in the manner set forth in part 3.

(e) Preserve and, within 14 days of a request, make available to the Board or its agents, for examination and copying, all records necessary to verify the amounts of back dues and fees to be paid to bargaining unit employees covered by paragraph 2(d).

(f) Jointly and severally, with the Respondent Employer, make Alfred Pohl whole for any loss of earnings and benefits he sustained as a result of the Employer's discharging or failing to call him for work at the Union's request between October 2 and 27, 1992, with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

(g) Within 14 days from the date of this Order, remove from its files, and ask the Employer to remove from the Employer's files, any reference to the unlawful discharge or failure to call for work and within 3 days thereafter notify Pohl in writing that this has been done and that it will not use the action against him in any way.

(h) Give Pohl a copy of the collective-bargaining agreement.

(i) Allow unit employees a reasonable period of time to comply with their union-security obligations.

(j) Within 14 days after service by the Region, post at its facility at 4217 South Halstead Street, Chicago, Illi-

nois, and all union meeting places and hiring halls, copies of the attached notice marked "Appendix B."¹¹ Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. The Respondent Union will also make additional signed copies of the notice available for the Respondent Employer to post, if it wishes, with its own notice to ensure that employees are sufficiently apprised of their rights.

(k) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX A

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT advise employees that they must join the Union and authorize dues checkoff as conditions for continued employment, and WE WILL NOT threaten them with discharge if they do not join the Union.

WE WILL NOT comply with the Union's request to discharge or not call employees for work because they failed to join the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

¹¹ If this 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 read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL, jointly and severally with the Respondent Union, make Alfred Pohl whole with interest for any loss of earnings and benefits he sustained as a result of our discharging or failing to call him for work at the Union's request between October 2 and 27, 1992.

WE WILL, within 14 days of the Board's Order, remove from our files any reference to the unlawful discharge or failure to call for work, and WE WILL, within 3 days thereafter, notify Pohl in writing that we have done so and that we will not use the action against him in any way.

YELLOW FREIGHT SYSTEM OF INDIANA
APPENDIX B

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail to notify bargaining unit employees, when we first seek to obligate them to pay dues and fees under a union-security clause, of their rights under *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963), to be and remain nonmembers of the Union and of the rights of nonmembers under *Communications Workers v. Beck*, 487 U.S. 735 (1988), to object to paying for union activities not germane to our duties as bargaining agent and to obtain a reduction in dues and fees for such activities.

WE WILL NOT advise employees that they must join the Union as a condition of employment or threaten them with termination of their employment if they do not join the Union.

WE WILL NOT require employees to authorize dues checkoff as a condition of employment.

WE WILL NOT fail to allow employees a reasonable time within which to comply with their union-security obligations.

WE WILL NOT fail to comply with employees' requests for a copy of the collective-bargaining agreement with the Employer.

WE WILL NOT attempt to cause, or cause the Employer to discriminate against employees in regard to

hire, tenure, or terms or conditions of employment because they fail to join the Union.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL notify all bargaining unit employees in writing of their right under *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963), to be and remain nonmembers of the Union and of the rights of nonmembers under *Communications Workers v. Beck*, 487 U.S. 735 (1988), to object to paying for union activities not germane to our duties as bargaining agent and to obtain a reduction in dues and fees for such activities. In addition, the notice will include sufficient information to enable the employees to intelligently decide whether to object, as well as a description of any internal union procedures for filing objections.

WE WILL notify in writing those employees whom we initially sought to obligate to pay dues or fees under the union-security clause on or after March 30, 1992, of their right to elect nonmember status and to make *Beck* objections with respect to one or more of the accounting periods covered by the complaint.

WE WILL process the *Beck* objections of any employees whom we initially sought to obligate to pay dues or fees under the union-security clause on or after March 30, 1992, who elect nonmember status and file objections with reasonable promptness after receiving notice of their right to so object.

WE WILL reimburse, with interest, any nonmember bargaining unit employees who file *Beck* objections with us for any dues and fees exacted from them for nonrepresentational activities, for each accounting period since March 30, 1992.

WE WILL, jointly and severally with the Respondent Employer, make Alfred Pohl whole with interest for any loss of earnings and benefits he sustained as a result of the Employer's discharging or failing to call him for work at our request between October 2 and 27, 1992.

WE WILL, within 14 days from the date of the Board's Order, remove from our files, and ask the Employer to remove from the Employer's files, any reference to the unlawful discharge or failure to call for work and WE WILL, within 3 days thereafter, notify Pohl in writing that this has been done and that we will not use the action against him in any way.

WE WILL give Pohl a copy of the collective-bargaining agreement.

WE WILL allow unit employees a reasonable period of time to comply with their union-security obligations.

HIGHWAY DRIVERS, DOCKMEN,
SPOTTERS, RAMPMEN, MEAT, PACKING
HOUSE AND ALLIED PRODUCTS
DRIVERS AND HELPERS, OFFICE
WORKERS AND MISCELLANEOUS

EMPLOYEES LOCAL UNION NO. 710,
AFFILIATED WITH THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, AFL-
CIO

Paul Hitterman, Esq. for the General Counsel.

David B. Mandelbaum, Esq., of Overland Park, Kansas, for Respondent Employer.

Marvin Gittler, Esq., and Susan Brannigan, Esq. (Asher, Gittler, Greenfield, Cohen & D'Alba, Ltd.), of Chicago, Illinois, for Respondent Union.

DECISION

STATEMENT OF THE CASE

ELBERT D. GADSDEN, Administrative Law Judge. A charge was filed in Case 13-CA-31228 on September 25, 1992, and amended November 24, 1992, against Yellow Freight System of Indiana (Respondent Employer), and a charge was filed in Case 13-CB-13874 on September 25, 1992, and amended November 24, 1992, against Highway Drivers, Dockmen, Spotters, Rampmen, Meat, Packing House and Allied Products Drivers and Helpers, Office Workers and Miscellaneous Employees Local Union No. 710, affiliated with the International Brotherhood of Teamsters, AFL-CIO (Yellow Freight System of Indiana) (Respondent Union), by Alfred Pohl (Pohl or the Charging Party).

A complaint was issued on behalf of the General Counsel by the Regional Director of Region 13 on November 30, 1992, and an amended consolidated complaint issued on July 1, 1993, against the Respondent Employer and Respondent Union.

The amended consolidated complaint alleged that on or about September 23, 1992, Respondent Employer (Yellow Freight) threatened employees with loss of employment because they refused to become members of the Union, thereby rendering unlawful assistance and support to the Union, and encouraging employees to become members of the Union, in violation of Section 8(a)(1) and (2), respectively, of the Act; that on or about the same date, Respondent Employer threatened employees with loss of employment because they refused to become members of the Union, in violation of Section 8(a)(1) of the Act, that Respondent Union requested Respondent Employer to discharge an employee because he was not a member of the Union, thereby attempting to cause and causing an employer to discriminate against its employees, in violation of Section 8(a)(3) of the Act; that pursuant to Respondent Union's request, Respondent Employer discharged the employee, thereby discriminating against employees and encouraging them to become members of the Union, in violation of Section 8(a)(1) and (3) of the Act; that by the above-described conduct, Respondent Employer has encouraged its employees to join the Union; and that on or about September 23, 1992, Respondent Union (DeCola) threatened Respondent Employer's employees it would seek their discharge because they refused to become members of the Union, thereby restraining and coercing them in the exercise of rights guaranteed them by Section 7 of the Act, in violation of Section 8(b)(1)(A).

The amended consolidated complaint further alleged that at all times Respondent Union has failed to provide information to Respondent Employer's employees about membership fees; that on or about September 23, 1992, Respondent Union failed to provide Respondent Employer's employee with a copy of the collective-bargaining agreement; that Respondent Union failed

to allow Respondent's employee a reasonable period of time in which to join the Union; and that by engaging in the above-described conduct, Respondent Union has failed to fairly represent employees; that its conduct was unreasonable, unfair, arbitrary, irrelevant, and invidious, in breach of its fiduciary duty to employees it represents, in violation of Section 8(b)(1)(A); and that by reporting an employee's reluctance or failure to join the Union to Employer, the Union thereby attempted to cause or did cause Respondent Employer to discriminate against its employee, in violation of Section 8(a)(3) and Section 8(b)(2) of the Act.

Respondent Employer filed answers to the consolidated complaint and the amended consolidated complaint on December 9, 1991, and July 16, 1993, respectively, denying that it has violated the Act as set forth in the amended consolidated complaint.

Respondent Union filed an answer to the consolidated complaint on December 11, 1992, and an amended answer to the amended consolidated complaint on July 23, 1993, denying that it has violated the Act as set forth in the amended consolidated complaint, and it affirmatively asserted that the amended consolidated complaint failed to state a claim upon which relief may be granted, and requested that it be dismissed.

The hearing in the above matter was held before me on July 19, 1993, in Chicago, Illinois. Briefs have been received from counsel for the General Counsel, counsel for the Respondent Employer (Yellow Freight), and counsel for Respondent Union (Highway Drivers), respectively, which have been carefully considered along with the entire record.

On the entire record in this case, including my observation of the demeanor of the witnesses and my consideration of the briefs, I make the following

FINDINGS OF FACT

I. JURISDICTION

At all times material, Respondent Employer, a corporation with an office and place of business in West Chicago, Illinois (the facility), has been engaged in the interstate transportation of freight.

During the past calendar year ending December 31, 1992, Respondent employer, in the course and conduct of its business operations, performed services valued in excess of \$50,000 in points outside the State of Illinois.

The amended consolidated complaint alleges, Respondent Employer's answer admits, and I find that Respondent Employer is now, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, Respondent Union's answer admits, and I find that the Union (Highway Drivers) is now and has been at all times material a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background Facts*

Respondent Union is the exclusive collective-bargaining representative of the following appropriate bargaining unit employees of Respondent Employer (Yellow Freight):

Spotters (Hostlers), Fuelmen, Working Foremen, Dock, Tractor Drivers, Checkers, Stackers, Truckers, Wheelers and Office and Miscellaneous Truck Terminal Employees.

At all material times the following individuals held the positions set forth opposite their respective names and have been supervisors of the Employer within the meaning of Section 2(11) of the Act, and agents of the Employer within the meaning of Section 2(13) of the Act.

Dennis Strode	Terminal Manager
Mike Gorecki	Supervisor

At all material times the following individuals held the positions set forth opposite their respective names and have been agents of the Union within the meaning of Section 2(13) of the Act.

Chuck DeCola	Steward
Pat Flynn	Business Representative

1. Correction of the transcript

Respondent Union's motion to correct the transcript as specified there, was not opposed by Respondent Employer or counsel for the General Counsel, and the corrections appearing correct, the motion is granted.

The transcript is further corrected on my motion, to delete all references to me as Hearing Officer Gadsden and substitute therefor, Administrative Law Judge Gadsden or Judge Gadsden.

2. Agents of the Union

Although the Union denies Steward DeCola and Business Agent Flynn are agents of the Union, it nevertheless admits that DeCola is a union steward and Flynn a business representative of the Union.

The Board has held that a steward, like Union Steward DeCola, who exercises authorities and performs such duties as those described below, is an agent of the Union. *Carpenters Local 608 (Various Employers)*, 304 NLRB 660, 663 (1991); also (a secretary at a hiring hall who placed names on referral lists is an agent with authority to receive and furnish information on the hiring hall). *Hotel & Restaurant Employees Local 50 (Dick's Restaurant)*, 287 NLRB 1180, 1181, 1185 (1988); and a secretary who received dues payments, stamped union dues books, issued receipts and work slips was an agent of the Union. *General Teamsters Local 959 (Frontier Transportation)*, 248 NLRB 743, 745-746 (1980).

The essentially uncontroverted evidence of record shows that the collective-bargaining agreement between Employer and the Union described the duties of DeCola as a steward with authority to investigate current grievances, collect employees' dues, transmit communications from the Union which are authorized, authority to leave his work terminal and visit the West Chicago terminal to process grievances, to talk to employees about joining the Union and signing applications to do so, as well as telling them about union dues and fees obligations. DeCola also served on the Union's negotiating committee in negotiating the current collective-bargaining agreement between the parties, and he has access to monthly reports from the Employer on new or extra employees' work records, to enable him to determine who and how many of such employees worked in compliance with the Union's security clause of the contract.

I therefore find that by appointing DeCola union steward and allowing him to visit the Employer's West Chicago terminal

during his work hours to talk to employees about the Union and distribute and collect applications for membership and solicit dues checkoffs, Respondent Union not only authorized such authority, but it also clothed DeCola with apparent authority to make statements to employees concerning rights and obligations of members under the union-security clause of the contract, as DeCola in fact did. *Plasterers Local 90 (Southern Illinois Builders)*, 236 NLRB 329, 331 (1978).

I therefore conclude and find on the foregoing credited evidence that DeCola is an agent of Respondent Union within the meaning of the Act, and that his statements to Pohl about joining the Union are imputed to Respondent Union. *Carpenters Local 296 (Acrom Construction)*, 305 NLRB 822 fn. 1 (1991); *Carpenters Local 608*, supra at 663; *Hotel & Restaurant Employees*, supra at 1185.

Likewise, Business Representative Flynn is assigned to the Company (Yellow Freight) where he negotiates contracts on behalf of the Union, receives monthly reports from Employer of new and extra employees' work records, and instructs stewards on their duties. Although Flynn denied his duties included reminding the Employer when new employees are obligated to join the Union, on further examination he admitted he called Employer (Yellow Freight) and told them Pohl had become obligated to join the Union.

Based on evidence of all of Flynn's duties and his contradictory admission that such was not his duty, I discredit Flynn's denial that it was a part of his duties to inform the Company when new employees became obligated to join the Union, and I find that Flynn was performing his authorized duty when he called and informed Employer that Pohl had become obligated to join the Union under the union-security clause.

Consequently, I further conclude and find that by assigning Flynn to represent employees at the Company, by using him as a medium of communication between the Union and Pohl (employee) concerning the latter's obligation to join the Union, by allowing Flynn to negotiate contracts on behalf of the Union with Employer, and if it is found below that Flynn actually requested the Company not to employ Pohl because he would not join the Union, I also find that Flynn acted within the scope of his actual and apparent authority, and that he is in fact an agent of the Union within the meaning of the Act *Plasterers Local 90*, supra at 331.

B. Efforts of the Respondents to Persuade Pohl to Join the Union

The collective-bargaining agreement between Employer (Yellow Freight) and the Union contains the following classifications or types of employees:

1. Regular full-time employees
2. Replacement casual employees—persons called in to work in place of regular full-time employees who are absent for one reason or another.
3. Supplemental casual employees—persons who work over and above the regular bid complement of workers on a given shift.

The most recent collective-bargaining agreement between the Employer and the Union is effective by its terms from April 1, 1991, through March 31, 1994, and as pertinent herein, contains the following union-security clause:

All present employees who are members of the Local Union on the effective date of this subsection or on the date of exe-

cution of this Agreement, which ever is the later, *shall remain members of the Local union in good standing as a condition of employment.* All Present employees who are not members of the Local Union and *all employees who are hired hereafter shall become and remain members in good standing of the Local Union as a condition of employment on and after the 31st day following the beginning of their employment* or on and after the 31st day following the effective date of this subsection or the date of this Agreement, which ever is the later. [Emphasis added.]

1. The General Counsel's argument

The General Counsel argues that the union-security clause in the instant case is very much like the union-security clause in *Electronic Workers IUE Local 444 (Paramax Systems)*, 311 NLRB 1031 (1993), cited by him, which provides in part as pertinent as follows:

[t]hat new employees in the bargaining unit shall *become and remain members in good standing* of the Local Union as a condition of employment on or after the 31st day following the beginning of their employment.

The General Counsel further argues that Respondents here, violated the Act as alleged, because they maintained the above clause in their collective-bargaining agreement without additionally informing the employees of their *General Motors* rights. *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963).

Hence, ultimate questions presented for determination here are whether Respondent Union and Respondent Employer interfered with, restrained, and coerced replacement-casual employee Pohl, in several respects, in the exercise of his protected Section 7 rights, in violation of Section 8(b)(1)(A) and Section 8(a)(1) of the Act, respectively; and whether Respondent Union caused or attempted to cause Respondent Employer to discriminate against Pohl, in violation of Section 8(a)(3) and Section 8(b)(2) of the Act.

A determination of these issues is dependent upon a determination of several subordinate factual issues concerning conversations Charging Party Pohl held with union representatives and with members of management, respectively, as well as an analysis of the controlling law as follows.

Section 7 of the Act gives employees the right to join labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for purposes of collective-bargaining or other mutual aid or protection, and they "shall also have the right to refrain from any or all such activities."

Section 8(a)(1) makes it an unfair labor practice for an employer "to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights, and Section 8(a)(2) forbids an employer . . . to contribute financial or other support to any labor organization."

Section 8(a)(3) forbids an employer to discriminate in regard to hire or tenure of employment or on any term or condition of employment, or to encourage or discourage membership in any labor organization. . . . Except that Section 8(a)(3) also provides that:

[N]othing 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 em-

ployment membership therein on or after the 30th 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;

Finally, Section 8(a)(3) further provides that:

[N]o employer shall justify any discrimination against any employee for membership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same grounds 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 retaining membership;

Section 8(b)(1)(A) of the Act, makes it an unfair labor practice for a labor organization or its agents "to restrain or coerce . . . employees in the exercise of" their Section 7 rights, provided, however, that "this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein." . . . And, Section 8(b)(2) forbids a labor organization or its agents "to cause or attempt to cause an employer to discriminate against an employee in violation of" Section 8(a)(3),

. . . or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.

Thus, the General Counsel maintains that Respondent Union herei coerced and restrained Alfred Pohl in the exercise of his Section 7 rights, in violation of Section 8(b)(1)(A) of the Act, (1) by threatening to discharge him if he did not join the Union; (2) by refusing to provide Pohl with a copy of its collective-bargaining agreement with the Company; (3) by refusing to allow Pohl a reasonable amount of time to comply with his union-security obligations; (4) that both Respondents failed to inform employees of their rights and obligations under the union-security clause of their contract; (5) that the Union caused or attempted to cause the discharge of employees because they failed to join the Union; and (6) that Employer complied with the Union's request by discharging employees, in violation of the Act.

In support of his argument, the General Counsel cites *NLRB v. General Motors Corp.* supra, where the issues before the court were whether an employer commits an unfair labor practice when it refuses to bargain with a certified union over the union's proposal for adoption of an agency shop, and, whether the agency shop is an unfair labor practice under Section 8(a)(3) of the Act, or is exempted from the prohibitions of that section by the proviso to it. In explaining the pertinent language of that section, the Court stated at 740-741:

These additions were intended to accomplish twin purposes. On the one hand, the most serious abuses of compulsory unionism were eliminated by abolishing the closed shop. On the other hand, Congress recognized that in the absence of a union-security provision "many employees sharing the benefits of what unions are able to accomplish by collective-

bargaining will refuse to pay their share of the cost.” . . . Consequently, under the new law “employers will still be permitted to enter into agreements requiring all the employees in a given bargaining unit to become members 30 days after being hired,” but “expulsion from a union cannot be a ground for compulsory discharge if the worker is not delinquent in paying his initiation fees or dues.”

In further explanation, the Court stated at 742 that:

Under the second proviso to § 8(a)(3), the burdens of membership under which employment may be conditioned are expressly limited to the payment of initiation fees and monthly dues. It is permissible to condition employment upon membership, *but membership, insofar as it has significance to employment rights, may in turn be conditioned only upon payment of fees and dues.* “Membership” as a condition of employment is whittled down to its financial core. [Emphasis added.]

Additionally, as the Court stated in *Pattern Makers League v. NLRB*, 473 U.S. 95, 106 fn. 16 (1985):

[T]he only aspect of union membership that can be required pursuant to a union shop agreement is the payment of dues. See *Radio Officers v. NLRB*, 347 U.S. 17, 41 (1954) (union security agreements cannot be used for “any purpose other than to compel payment of union dues and fees”). “Membership” as a condition of employment is whittled down to its financial core.” *NLRB v. General Motors Corp.*, 373 U.S. 734, 742 (1963).

Also, in *Pattern Makers* at 106:

Full union membership thus no longer can be a requirement of employment. . . . We think it noteworthy that § 8(a)(3) protects the employment rights of the dissatisfied member, as well as the worker who never assumed full union membership.

Having to delineate the precise limits Section 8(a)(3) places on the negotiation and enforcement of union-security agreements, the Court decided in *NLRB v. General Motors Corp.*, supra, that employers and unions may enter into union-security agreements requiring union membership as a condition of continued employment so long as the membership requirement did not exceed the financial core—payment of initiation fees and dues, but whether the financial core includes the obligation to support activities beyond those germane to collective-bargaining, contract administration and grievance adjustment, the Court thought not.

Thus, in reviewing the “historical origin” of Section 8(a)(3) and previous related decisions, the Court noted that in its earlier decision *Machinists v. Street*, 367 U.S. 740 (1961), it held that Section 2, Eleventh, of the Railway Labor Act (RLA) does not permit a union, over objections of nonmembers to expend compelled agency fees on political causes. It stated that the latter holding was far more than instructive there, and it believed that the same was controlling for Section 8(a)(3) and Section 2, Eleventh, of RLA; that in all material respects, the two sections were identical; and that the Court thought Congress intended the same language to have the same meaning in both statutes.

As the Supreme Court held in *NLRB v. General Motors Corp.*, supra, that while union-security clauses in a contract requiring employees to become union members as a condition of employment are valid, the “membership” that may be re-

quired has been whittled down to its financial core. In *Ellis v. Railroad Clerks*, 466 U.S. 435, 448 (1984), the Court defined “whittled down to its financial core,” as meaning authorizing the exaction of only those fees necessary to perform the duties of an “exclusive representative of employees in dealing with the employer on labor-management issues.” Consistent with the above holding is the often cited and quoted language in *NLRB v. Hotel Employees Local 568*, 320 F.2d 254, 258 (3d Cir. 1963), that:

The comprehensive authority vested in the union, as the exclusive agent of the employees, leads inevitably to employee dependence on the labor organization. There necessarily arises out of this dependence a fiduciary duty that the union deal fairly with employees. . . . At the minimum, this duty requires that the union inform the employee of his obligations in order that the employee may take whatever action is necessary to protect his job tenure. [Citations omitted.]

Thus, a union’s threat of loss of employment or other retaliatory consequences because an employee refuses to join the union may tend to impinge upon employees’ Section 7 rights, in violation of Section 8(b)(1)(A) of the Act. *Seaprufe, Inc.*, 82 NLRB 829 (1949), *enfd.* 186 F.2d 671 (10th Cir. 1951). And in *Mode O’Day Co.*, 280 NLRB 253, 255 (1986), modified 290 NLRB 1234 (1990), the Court stated:

The inclusion of a check-off authorization among the forms furnished employees during the hiring process may justify a finding that the employees were led to believe that the execution of such authorization was a condition of employment.

2. Pohl’s conversations with Union Steward DeCola

Charging Party Alfred Pohl commenced working for Yellow Freight’s West Chicago terminal August 7, 1992, as a replacement employee filling in for regular employees who are absent due to illness, holidays or vacation. He receives work assignments by telephone call a day before, or hours before the beginning of the work shift. He may accept or decline the offered work assignment. As a replacement employee, he is paid \$2.40 per hour less than the normal wage rate, plus contributions to a pension on a daily basis, paid by the Company. However, he receives no health and welfare benefits.

Union Steward Chuck DeCola employed 24 years as a spotter, works at another Chicago facility of Yellow Freight, but as steward, visits the West Chicago facility and talks to new employees about joining the Union.

At 1:30 a.m. on September 23, 1992, Union Steward DeCola visited the West Chicago facility, approached Charging Party Alfred Pohl in the breakroom, and introduced himself to Pohl. Yellow Freight’s inbound supervisor, Michael Gorecki, acknowledged he knew DeCola was present to talk to Pohl about joining the Union.

Pohl testified DeCola told him to stay on the clock and talk to him. He said he looked at Supervisor Gorecki, who after a brief delay in responding, told him to stay on the clock and talk with DeCola. According to Pohl, DeCola told him about his history and function in the Union, and that he was there to explain the benefits of the Union, that he was covered by the collective-bargaining agreement which provided for contributions to his pension fund, full health benefits once he became a full-time employee, and he could not be unjustly dismissed when he became a member of the Union.

Pohl further testified DeCola showed him the union-security clause, article 23 of the collective-bargaining agreement, and told him he had to join the Union after his 31st day on the job, and that he had to join the Union by signing the membership application that he had with him, and pay the initiation fee of \$50 and dues which were two times his hourly rate of pay per month (approximately \$28 per month).

Although Union Steward Chuck DeCola testified he went over the union contract with Pohl and read the contract to him in its entirety during their first conversation on September 23, 1992, Pohl denied DeCola went over or read the entire contract to him. On the contrary he testified DeCola showed him a few sentences in the contract, including the union-security clause, article 23. When he asked DeCola for a copy of the contract to study, DeCola did not give him his copy of the contract nor did he furnish Pohl with a copy of the contract at any time subsequent thereto. Although Pohl testified DeCola told him he could not give him a copy of the contract until he signed the application for membership in the Union, DeCola denied he conditioned giving Pohl a copy of the contract upon Pohl signing the application.

Notwithstanding the conflict in testimonial versions of Pohl and DeCola, I was nevertheless persuaded, not only by the demeanor of both witnesses, but also by the illogical and impractical assertion of DeCola, that he read and discussed the entire contract with Pohl during their conversation on September 23. First, it would be a boring and burdensome task to read or to listen to the reading of the entire contract in one conversation. Secondly, since DeCola failed to give Pohl a copy of the contract at the time he requested one, or at any time subsequent thereto, it is believable that DeCola was not anxious or particularly interested in giving Pohl a copy of the contract for study, and therefore conditioned giving Pohl a copy upon the latter signing the application for membership in the Union, as Pohl testified DeCola said. For these reasons, I credit Pohl's account of the conversation and discredit DeCola's denial.

When Pohl asked DeCola for a copy of the contract a second time during the same work shift so that he could study it, Pohl said DeCola said "If you don't sign, this is your last working day here." DeCola admits Pohl again asked him for a copy of the contract but denied he made the response Pohl attributed to him. DeCola does not deny he told Pohl if he did not sign the application he would turn in his paperwork to the Union at 9 a.m. and inform the Union that Pohl refused to join the Union; and that the Union would contact Terminal Manager Dennis Strode and tell him the Company could not use him under the terms of the contract. DeCola also does not deny that Pohl asked him could he contact him by phone before 9 a.m.; and that DeCola gave Pohl his telephone number and told him, "If you decide to call me back before 9 a.m., maybe we can work something out, otherwise, I'll have my papers turned into the Union." However, DeCola denied he added, "And if you don't call me by 9:00, then see if you can find another job that pays \$15 an hour," as Pohl testified DeCola said.

Again, I was persuaded by the demeanor as well as the partially admitted pattern of DeCola's efforts to persuade Pohl to sign the application for union membership, that Pohl was telling the whole truth and DeCola was being selective in his testimony, except when it was not to his advantage or in his best interest. I was further persuaded by the fact that DeCola never did furnish Pohl with a copy of the contract. Consequently, I credit Pohl's account that DeCola told him, if he did not sign

the application for membership that day (September 23), that would be his (Pohl) last day working for Yellow Freight; that if Pohl did not call him by 9 a.m., DeCola would turn in his paperwork to the Union and it would inform the Employer he refused to join the Union and the Company could not use Pohl; and that if Pohl did not call him by 9 a.m. Pohl should see if he could find another job that paid \$15 an hour.

After Pohl did not turn in his application for union membership on September 23, he did not receive a call to work until he told the Company and the Union he would join the Union. Pohl then signed another membership application in late October and turned it into Yellow Freight and the Union.

Pohl has worked for Yellow Freight since October 27, 1992, but no one has told him what "membership in good standing" means or what "*nonrepresentational activities*" means. Nor has anyone from the Union told him he could object to paying for nonrepresentational activities. Pohl denied he asked Strode whether joining the Union was a good deal. Although DeCola had told him on September 23, that night was going to be his last night working there, it was not. He worked several nights thereafter. DeCola testified he read the provisions of the collective-bargaining agreement to Pohl and told him he was obligated to join the Union on the 31st day of his employment. *He acknowledged Pohl wanted to know what involvement with the Union would mean under the contract, of which he did not have a copy.* Pohl said he read the union application and authorization card (Exh. 5) and scratched out what he had written, except the Company's name, but said he did not read the second application (Exh. 6), although he signed it.

Pohl manifested reluctance to join the Union and he requested DeCola to give him a copy of the collective-bargaining agreement for him to study. DeCola told him he did not have an extra copy and he did not give Pohl a copy of the agreement. When Pohl requested a copy of the agreement from DeCola a second time during the conversation, DeCola told him he would give him a copy of the agreement when he (Pohl) signed the application for membership. More significantly, the record does not show that DeCola ever gave Pohl a copy of the contract.

3. Pohl's conversations with management

DeCola acknowledged he did not inform Pohl he could satisfy his union obligations by paying dues and fees for nonrepresentational purposes; or that the Union would tell him the percentage of funds spent on nonrepresentational activities and only charge him for representational activities, or that upon his objection, the Union would give him data on the breakdown of its expenditures. At the end of his conversations with DeCola, Pohl called Supervisor Gorecki and asked him if he had heard his conversation with DeCola. Gorecki said "just bits", "that he (Pohl) had to sign the dues-checkoff list." Pohl testified he asked Supervisor Gorecki if he had to join the Union—did he know anything about the Union. Gorecki told him he should talk with Employer's terminal manager, Dennis Strode.

Pohl said he called Manager Strode and told him he had a question but before he could ask his question Strode said, "Its unfortunate that it has to be like this but the Union wants you to join. . . . You have been working here over 30 days, you have to join the Union." Strode also told him he should talk to DeCola about it, "*because right now, the Company is in no position to hire him. . . . I can't make up your mind for you and I can't make you join the Union. But if you want to continue working*

here, you'll have to join the Union." Strode admitted he told Pohl he had a choice, not to work for the Company and he would not have to join the Union.¹

Although Pohl engaged in conversations with the Employer's supervisor, Gorecki, and its manager, Strode, as to whether Pohl had to join the Union, the evidence is unequivocally clear that neither Union Steward DeCola, Union Secretary Flynn, Employer Supervisor Gorecki, Manager Strode, nor any other members of the Union or management ever told Pohl anymore about his union obligations, other than DeCola having told him to pay \$50 initiation fees and monthly dues of approximately \$28 per month. Hence, a subordinate question presented for determination is whether DeCola's explanation to Pohl about initiation fees and dues was sufficient in law to satisfy the Union's duty to deal fairly with employees it represents.

4. Relevant law

In this regard, the Board has clearly stated that the phrase "members in good standing" in a union-security clause can mean full membership and all attendant obligations, e.g., assessments, as well as limited membership requiring only the payment of initiation fees and dues, and that the phrase "members in good standing" alone, is ambiguous, although lawful. *Electronic Workers IUE (Paramax Systems)*, supra at 1037; *Electrical Workers IBEW Local 2088 (Lockheed Space Operations)*, 302 NLRB 322, 329 fn. 27 (1991). However, the Board continued, "because of this ambiguity, the Union by virtue of its exclusive representative status is obligated to inform employees of their actual obligations."

Also, as the Board held in *Miranda Fuel Co.*, 140 NLRB 181, (1962), and the Court followed in *NLRB v. Teamsters Local 282 (Transit Mix Concrete)*, 740 F.2d 141 (5th Cir. 1966), that the duty of fair representation by the exclusive bargaining representative is clear and fiduciary in nature as described below in *Miranda*:

The privilege of acting as an exclusive bargaining representative derives from Section 9 of the Act, and a union which would occupy this statutory status must assume "the responsibility to act as a genuine representative of all the employees in the bargaining unit.

....

[S]ection 7 . . . gives employees the right to be free from unfair or irrelevant or invidious treatment by their exclusive bargaining agent in matters affecting their employment. "This right of employees is a statutory limitation on statutory bargaining representatives, and we conclude that Section 8(b)(1)(A) of the Act accordingly prohibits labor organizations, when acting in a statutory representative capacity, from taking action against any employee upon considerations or classifications which are irrelevant, invidious, or unfair." [Id. at 185.]

¹ I credit Pohl's account of his September 23 conversations with Supervisor Gorecki and Manager Strode, because, they are not only essentially uncontroverted but partially corroborated by Gorecki and Strode, respectively. Also, because Pohl's version of the conversations is consistent with all the credited evidence and the subsequent conduct of both Respondents, infra, and because I was persuaded by the demeanor of the three witnesses (Pohl, Gorecki, and Strode) that Pohl and Gorecki were telling the whole truth, and Strode was telling only a part of the truth, therefore, I credit Pohl and Gorecki's account and discredit Strode's denials.

The above-described union duty extends to all unit employees, to contract negotiations, contract administration, union operation of hiring hall, and specifically, where an exclusive representative breaches its duty when it affirmatively misleads unit employees about their obligations under the contract. *Armco, Inc. v. NLRB*, 832 F.2d 357, 364 (6th Cir. 1987).

The Board has held that a union's fiduciary duties extend to the enforcement of union-security clauses; and that when a union requires new employees "to perfect membership under a union-security agreement, it has the duty to notify the employees . . . as to what their membership obligations are." *NLRB v. Hotel & Restaurant Employees Local 568*, 320 F.2d 254 (3d Cir. 1963).

Additionally, because the comprehensive authority of the bargaining representative inevitably leads to employee dependence on the labor organization, the courts and the Board require exclusive bargaining representatives to notify employees they represent of matters affecting their employment. *Teamsters Local 896 (Anheuser-Busch)*, 280 NLRB 565, 575 (1986); and as the court stated in *Electrical Workers IUE Local 801 v. NLRB*, 307 F.2d 679, 683 (D.C. Cir. 1962):

[T]he union which can require [the employee's] membership or command his discharge is therefore charged with an obligation of fair dealing which includes the duty to inform the employee of his rights and obligations so that the employee may take all necessary steps to protect his job.

The rationale for requiring the union to provide this information is that it, as the exclusive representative, must ensure that unit employees do not fail to meet their obligations through "ignorance or inadvertence, but will do so only as a result of conscience choice." *Conductron Corp.*, 183 NLRB 419, 426 (1970).

Also where a union fails to inform employees of contract interpretations or terms affecting their terms and conditions of employment, the exclusive bargaining representative has breached its duty of fair representation to employees. *Teamsters Local 896 (Anheuser-Busch)*, supra at 575.

In the instant case the evidence demonstrates that both Respondent Union and Respondent Employer failed to fully inform employee Pohl how the ambiguous phrase "members in good standing", can be interpreted as possibly meaning payment of only initiation fees and dues for representational purposes, as well as payment of initiation fees, dues, and assessments for nonrepresentational purposes. By failing to clearly inform Pohl that he had the option of limited membership, by paying only the initiation fees and dues if he did not desire full membership, including nonrepresentational activities, Respondent Union breached its fiduciary duty of fair representation to employee Pohl. Moreover, since Pohl could be discharged by Respondent Employer for failing to comply with the ambiguous union clause "members in good standing", Respondent Union failed to fully explain the ambiguous phrase affecting Pohl's job security. *Paramax Systems*, supra.

Even though the Union informed Pohl that his initiation fee was \$50 and dues approximately \$28 a month, Pohl had no way of knowing that satisfying that obligation was limited without being informed of what constitutes full membership. Pohl might have, and probably did believe, paying the initiation fee and the dues constituted full membership. This confusion could have been avoided if Respondents had explained the difference between limited and full membership to Pohl, and

informed him of his option to take advantage of either. If a union were not obligated to make this distinction clear to employees, many employees would believe they were required, and were in fact acquiring full membership when they had no intention or desire to have full membership. The evidence does not show that Pohl at any time expressed objections to paying union fees and dues, or to join the Union. At most, he was reluctant to join the Union without explaining any reasons for his overt reservations.

Although both DeCola of the Union as well as Strode of the Employer, informed Pohl he could lose his job if he did not sign the application (join the Union) and authorize dues check-off, their failure to explain the meaning of the ambiguous language “members in good standing” chilled Pohl’s exercise of his Section 7 rights, and probably led him to reasonably believe that full membership was required. *Teamsters Local 896 (Anheuser-Busch)*, supra. By failing to properly inform Pohl of his *General Motors* rights, I find that Respondent Union breached its fiduciary duty of fair dealing with Pohl, by not so informing him, in violation of Section 8(b)(1)(a) of the Act. *Paramax*, supra.

In fact Union Secretary Flynn acknowledged he has never instructed his steward (DeCola) to inform unit employees that if they object to joining the Union, the Union could only charge them for limited representational membership. The record is replete with uncontroverted credited evidence that Pohl was reluctant to join the Union, and his reluctance made all the more plain, the need and reason for Respondent to explain the difference between limited and full membership. Consequently, even though Pohl made no verbal objection he nevertheless rejected membership and his rejection could have been against full membership, especially since he requested a copy of the contract for study.

The Board has specifically held that a union breaches its fiduciary duty of fair representation by failing to provide unit employees with requested contracts or fringe benefits. *Law Enforcement & Security Officers Local 40B (South Jersey Detective Agency)*, 260 NLRB 419 (1982). Since the evidence in the instant case indisputably shows that on two occasions Pohl requested Steward DeCola to give him a copy of the collective-bargaining agreement to study and DeCola failed to give him a copy on either occasion, or at any time subsequent thereto, Respondent Union breached its fiduciary duty of representation to employees in violation of Section 8(b)(1)(A) of the Act. *Vanguard Tours* 300 NLRB 250, 265 (1990); *Law Enforcement & Security Officers Local 40B*, supra at 420.

I therefore find upon the foregoing evidence and cited legal authority, that by failing to provide Pohl with a copy of the contract while insisting he sign the application that day (September 23), Union Representative DeCola also failed to allow Pohl a reasonable time within which to satisfy his union-security obligations, and thereby, coerced and restrained Pohl in the exercise of his Section 7 rights, in violation of Section 8(b)(1)(A) of the Act. *Carpenters Local 296 (Acrom Construction)*, 305 NLRB at 827; *Electrical Workers IBEW Local 3 (General Electric)*, 299 NLRB 995 (1990); *United Stanford Employees, Local 680 (Leland Stanford Junior University)*, 232 NLRB 326 (1977).

5. Findings

I therefore conclude and find upon the foregoing credited evidence and above-cited legal authority, that:

(1) (DeCola) by telling employee Pohl he would give him a copy of the collective-bargaining agreement when Pohl signed the application for membership in the union and dues checkoff, and thereafter refusing Pohl’s request for a copy of the collective-bargaining agreement to study, Respondent Union refused to provide Pohl with a copy of its collective-bargaining agreement with the Company. *Vanguard Tours, Inc.*, supra; *Law Enforcement & Security Officers*, supra.

(2) DeCola, by telling Pohl if he did not sign the application for membership in the Union, “this is your last day working here,” the Union threatened Pohl with discharge if he did not join the Union. *Paperworkers Local 710 (Stone Container)*, 308 NLRB 95, 98–99 (1992); *Yellow Freight System*, 307 NLRB 1024, 1028–1029 (1992).

(3) DeCola, by telling Pohl if he did not sign the application for membership in the Union and dues checkoff, he would turn in his paperwork to the Union at 9 a.m. and inform the Union that he refused to join the Union and the Union would inform the Company that it could not employ him under the terms of the union-security clause of the contract, the Union again threatened Pohl with discharge if he did not join the Union. *Paperworkers Local 710 (Stone Container)*, supra; *Yellow Freight System*, supra.

(4) DeCola, by telling Pohl if he did not call him by 9 a.m. (September 23) Pohl should see if can find another job that pays \$15 an hour, the Union again threatened Pohl with discharge if he did not join the Union by 9 a.m. *Paperworkers Local 710 (Stone Container)*, supra; *Yellow Freight System*, supra.

(5) DeCola, by demanding that Pohl sign up for membership in the Union and dues checkoff during the work shift or the next morning September 23, the Union refused to allow Pohl a reasonable amount of time to comply with his union-security obligations. *Operating Engineers Local 150 (Willbros Energy)*, 307 NLRB 272, 275–276 (1992); *Carpenters Local 296 (Acrom Constr.)*, 305 NLRB at 827.

(6) DeCola, by not informing Pohl of his obligations under a union-security clause that such a clause requiring “membership in good standing,” only requires the payment of uniform dues and fees, Respondent Union breached its duty to fairly represent employees. *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963); and by failing to explain to Pohl the meaning of the ambiguous phrase “members in good standing” the difference between limited and full membership, the Union breached its fiduciary duty to deal fairly with Pohl. *Paramax Systems*, supra.

(7) Strode, by threatening to discharge Pohl if he did not become a “member in good standing” of the Union, without explaining the meaning of the phrase “members in good standing” in the contract between the Company and the Union, Respondent Employer coerced and restrained its employees in the exercise of their Section 7 rights, in violation of Section 8(a)(1) of the Act. *Yellow Freight Systems*, supra; *Montgomery Elevator Co.*, 278 NLRB 871 (1986).

(8) By maintaining and enforcing the unexplained union-security clause in its contract with the Union, Respondent Employer rendered assistance and support to the Union, in violation of Section 8(a)(1) and (2) of the Act.

(9) That all of the above conduct (threatening ultimatums) to which the Union or the Employer subjected Pohl, constituted coercive and restraining conduct upon the exercise of employees’ Section 7 rights, in violation of either Section 8(b)(1)(A) or 8(a)(1) of the Act, respectively.

C. Did the Union Request the Discharge of Pohl Because He Failed to Join the Union and Did Employer Comply with the Union's Request

The Board has held that a union violates Section 8(b)(2) of the Act when it causes or attempts to cause the discharge of an employee because the employee is not a member of the Union. *Electrical Workers IBEW Local 3 (General Electric)*, supra.

Although a union may attempt to cause the discharge of an employee who fails to satisfy his union-security obligations, if the union has not carried out its fiduciary duties of properly informing employees of their union-security obligations prior to requesting their dismissal, the Union violates Section 8(b)(2) of the Act. *Carpenters Local 296 (Acrom Construction)*, supra at 829–830; *Operating Engineers Local 542C (Ransome Lift)*, 303 NLRB 1101, 1103–1106 (1991); *Electrical Workers IBEW Local 3 (General Electric)*, supra at 1002.

Correspondingly, if an employer complies with a union's request to discharge an employee when it has reason to believe that the request is unlawful, the employer discriminates against the employee, in violation of Section 8(a)(3) of the Act. *Yellow Freight Systems*, supra at 1029; *Montgomery Elevator Co.*, supra at 876.

Almost immediately after talking to Strode on September 23, Pohl called DeCola and told him he had decided to join the Union and DeCola asked him what made him change his mind. He said he told DeCola he had spoken to Strode and the latter told him he had to join the Union if he (Pohl) wanted to continue working there. DeCola told him he left membership applications for him and the other casual employees with Strode. DeCola also told Pohl to be sure to sign them before he punched in for work that day, and he hoped things worked out for him—he hoped Pohl made the right decision. Thereupon, Pohl called Strode and asked for the applications and Strode told him to come into the terminal at 5:30 and the applications would be by the timecards. When Pohl reported to work he completed the applications, signed them September 23, and left them on the dock supervisor's desk in the office of dispatcher Larry Poole.

Pohl thereafter went into the breakroom and talked with fellow dockmen before the work shift started. They were joking about him (Pohl) joining the Union and when he left he went into the office of the supervisor of the dock dispatcher, retrieved his applications and put them in his vehicle where he left them. Thus, Pohl did not join the Union September 23, 1992, and Yellow Freight did not call him for work between October 2 and 26, 1992.

Manager Strode admitted that after Pohl did not join the Union on and shortly after September 23, 1992, the Company did not call him for work between October 2 and 26, 1992. According to the calendar, September 23, 1992, the date on which Pohl first submitted an application for membership and retrieved it, was a Wednesday, and Pohl acknowledged he worked after September 23. The workweek of September 23 ended on Friday, September 25, and the next workweek started on September 28 and ended October 2, 1992. Consequently, Pohl's last day of work must have been Thursday, October 1, 1992, since he was not called to work Friday, October 2, or thereafter, until October 27, 1992, when he signed and submitted the application for union membership and dues checkoff.

Manager Strode testified he did not put the procedure for termination of Pohl in process and he did not decide not to call Pohl for work. However, he admitted as a result of conversa-

tions Pohl had with Union Representatives DeCola and Flynn, regarding Pohl not being a member of the Union, *the Company was asked not to use him, but he (Strode) does not recall whether he elected not to use Pohl for work.* Manager Strode's testimony in this regard is partially confirmed by Union Agent Flynn, who testified the Union receives a monthly report from the Company of which and how many replacement and supplemental employees the Company used; and that on about September 23, 1992, Flynn called Strode and told him DeCola had informed him there was a violation of the contract involving Pohl. Strode told Flynn yes, he had a similar conversation with DeCola. Although Flynn later tried to deny he had informed Strode that Pohl had failed to join the Union and was in violation of the union-security clause, I was persuaded by his demeanor as well as the overwhelming evidence discussed below, that he was not telling the truth. Flynn's denial in this regard is discredited.

Although Union Steward DeCola denied he ever told Supervisor Gorecki not to fire or work Pohl, and Manager Strode said he could not recall whether he elected not to use Pohl for work, as the union had requested, the blatant fact is that Pohl was not called for work between October 2 and 26, 1992. Neither Respondent (the Company nor the Union) offered any evidence or explanation why Pohl was not called for work for so many days in October, which fact is at variance with his previous work frequency record in August and early September.

Presumably, the Respondents are implying that the Company's failure to call Pohl for work for 19 or 20 days in October, was due to a coincidence of a lack of work. However, under the circumstances here, a coincidence of the unexplained interruption in work of Pohl for such a period of time, defies common experience and logic. Moreover, it is particularly noted that Manager Strode did not deny that the Company complied with the Union's request to use (work) Pohl. He merely said he could not recall electing not to call Pohl for work. However, I am not persuaded by Strode's claimed lack of recall. The fact that Manager Strode, Supervisor Gorecki, and Union Steward DeCola all tried to persuade Pohl to join the Union, and when Pohl failed to join, the Union reported his failure to join the Union to the Company—apprising the Company Pohl had become obligated to join the Union—informing the Company that Pohl's failure and refusal to join the Union was in violation of the union-security clause in the contract—suggesting or actually requesting the Company not to use him (call him for work)—and the obvious fact that as soon as Pohl notified the Union and the Company he would join the Union, and he in fact signed and submitted the application and dues checkoff October 27, the Company immediately called Pohl for work on the same day, October 27, 1992. I therefore discredit the implied coincidence why Pohl was not called for work for 19 or 20 days.

Based on the foregoing credited evidence, I conclude and find that by not calling Pohl for work between October 2 and 26, 1992, Respondent Employer complied with the Union's request not to call Pohl for work; that Respondent Employer had not only reason to believe, but actual knowledge that the reason the Union requested Employer not to call Pohl for work was because Pohl had failed to join the Union September 23 and before October 2, 1992, and the Union and the Company considered his failure to be in violation of the union-security clause of the contract; and that by not calling Pohl for work during that period of time, Respondent Employer complied

with the Union's request not to use (work) Pohl; and that by not calling and working him, it discriminated against its employees, in violation of Section 8(a)(3) of the Act. *Yellow Freight Systems*, supra; *Montgomery Elevator Co.*, supra.

Since Respondent Union, as herein before found, failed to discharge its fiduciary duties of informing unit employees (Pohl) of their union-security obligations under the ambiguous phrase (members in good standing) of the union-security clause of the contract, and thereafter requested Respondent Employer not to call Pohl for work because he was in violation of the union-security clause of the contract by not joining the Union on September 23; that Respondent Employer complied with the Union's request not to use (call Pohl for work) between October 2 and 27, 1992; that by attempting to cause and actually causing Respondent Employer not to use (call Pohl for work) between October 2 and 27, 1992, Respondent Union caused Respondent Employer to discharge or not call Pohl for work between October 2 and 26, 1992 because Pohl failed to join the Union, thereby restraining and coercing Pohl's exercise of his Section 7 rights, in violation of Section 8(b)(2) of the Act. *Electrical Workers IBEW Local 3 (General Electric)*, supra. *Carpenters Local 296 (Acrom Construction)*, supra; *Operating Engineers Local 542 (Ransome Lift)*, supra.

Paragraph ix(b) of the consolidated complaint alleges that the Respondent Union failed to inform Pohl of his right to object to nonrepresentational activities and to provide information to Pohl stating the percentage of funds spent by the Union in the last accounting year for nonrepresentational activities.

In support of these allegations counsel for the General Counsel argues and cites *Communications Workers of America v. Beck*, 487 U.S. 735 (1988), where the Court for the first time was confronted with having to delineate the precise limits 8(a)(3) places on the negotiation and enforcement of union-security agreements. Having decided in *NLRB v. General Motors*, supra, that employers and unions may enter into union-security agreements requiring union membership as a condition of continued employment, so long as the membership requirement does not exceed the financial core—payment of initiation fees and dues, but whether the financial core includes the obligation to support activities beyond those germane to collective bargaining, contract administration, and grievance adjustment. The Court went on to say that while a union may not force objecting nonmembers to pay for nonrepresentational activities, unions are obligated to inform nonmembers and new employees of the percentage of funds spent for nonrepresentational activities; that nonmembers and new employees may object to paying for such activities; and that on their objection, they will only be charged for representational activities and provided with a breakdown of how expenditures by the union were made. *Communications Workers v. Beck*, supra. Failure of the union to so inform nonmembers and new employees, as Respondent Union here did, also constituted, and I find here, also violated Section 8(b)(1)(A) of the Act.

1. Respondent Union's motion

During the hearing, and in her posthearing brief to the counsel for Respondent Union requested the administrative law judge to take administrative notice of the Board's rulemaking proceedings currently in progress, and defer issuing findings of fact and conclusions of law on issues arising out of the decision in *Beck*, supra, until the Board's rulemaking proceedings are concluded.

2. Ruling

I have considered the above motion and decided, that in view of the indefinite time when and how the rulemaking proceedings will conclude, and the Board's more recent decision in *Paramax*, supra, which more precisely addresses the issues in the instant case, it would serve neither prophetic justice nor prudent considerations of the expense of the delay to defer issuing findings and conclusions in this matter. For these reasons, Respondent's motion to defer is denied. Even if it is ultimately determined by rulemaking that Respondents did not violate the Act pursuant to *Beck*, supra, Respondents are nevertheless in violation of the Act under the other cited legal authority.

3. Counsel for Respondent Union argues

Although the Board stated in *Paramax*, supra, that it was not addressing any of the "issues and obligations arising under *Beck*," it is noted that the Board did not state that it was not addressing any of the issues which arose under *General Motors*, on which the General Counsel also relies. Moreover, the Board's statement with respect to *Beck* is understood because the Court's decision in *Beck* was based primarily on a construction of the Railway Labor Act, Section 2, Eleventh, Section 8(a)(3) of the Act and Court decisions in *Machinists v. Street*, 367 U.S. 740 (1961), and *Ellis v. Railway Clerks*, 466 U.S. 435 (1984). On the contrary, the Board's decision in *Paramax*, is based primarily on the fiduciary duty of the bargaining representative to fairly represent employees in the bargaining unit, and other current Court and Board decisions. Neither the Board nor the Courts have modified or reversed the rulings in *General Motors* or *Paramax*.

Counsel for Respondent Union also contends that the General Counsel misread the following decisions. However, I am not persuaded that *Airline Pilots v. O'Neill*, 499 U.S. 65 (1991); *Teachers v. Hudson*, 475 U.S. 292 (1986), and other cases cited by counsel for the Union, have applicability or affects the decisions on the issues in *General Motors*, *Beck*, or *Paramax*, here.

Respondent Union notes that since Pohl admitted he read and voluntarily signed the union and dues-authorization checkoff card on September 23, as follows:

Although I am aware that I am not required to sign any dues check-off assignment, or any membership application card, or other union form, nevertheless, I desire voluntarily to sign this form and hereby apply for membership in Local 710.

However, while Respondent Union's statement is partially correct, it does not continue to add that Pohl thereafter retrieved the signed card application and scratched out his signature, the date, and most everything else, clearly demonstrating he changed his mind and voided the application card. More significantly however, the evidence does not establish that prior to Pohl completing the application card (G.C. Exh. 5), that either Respondent Union or Respondent Employer herein ever explained to Pohl his *General Motors*, *Beck*, or *Paramax* union-security obligations. Consequently, even if application card had not been voided by Pohl, it would not be of any evidentiary significance in disposing of the issues in the instant case.

Although Pohl signed the application for membership and dues checkoff on October 27, 1992, the record evidence does not establish that dues were actually withheld by Respondent Employer and/or turned over to Respondent Union.

In concluding, I am further of the opinion that even if Respondent Union is not in violation of the Act under *Beck*, supra,

it is clearly in violation of the Act as shown under *General Motors*, supra, as well as *Paramax* supra, and other decisions discussed herein.

Thus, I find and conclude upon the foregoing credited evidence and cited legal authority, that by entering into and maintaining a collective-bargaining agreement requiring unit employees to become and remain "members in good standing" in the Union, and by failing to advise Pohl and other nonmember unit employees concerning their limited and full membership rights, as explained in *General Motors*, supra, *Beck*, supra, and *Paramax*, supra, Respondent Union and Respondent Employer violated the Act in several respects as herein found.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The activities of Respondent Employer and Respondent Union set forth in section III, above, occurring in close connection with its operations as described in section I, above, have a close, intimate, and substantial effect on trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

THE REMEDY

Having found that Respondent Employer has engaged in unfair labor practices within the meaning of Section 8(a)(1)(2) and (3) of the Act, and that Respondent Union has engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) and Section 8(b)(2) of the Act, I shall order that the Respondents cease and desist from engaging in such unlawful conduct, and that they take certain affirmative action to effectuate the policies of the Act.

Because of the character of the unfair labor practices here found, the recommended Order will provide that Respondents cease and desist from engaging in any like or related manner interfering with, restraining, and coercing employees in the exercise of their rights guaranteed by Section 7 of the Act. *NLRB v. Entwistle Mfg. Co.*, 120 F.2d 532, 536 (4th Cir. 1941).

RESPONDENT EMPLOYER

CONCLUSIONS OF LAW

1. Yellow Freight System of America, the Respondent Employer, is and has been at all times material, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. By entering into and maintaining a collective-bargaining agreement, requiring its unit employees to become "members in good standing" in the Union; by advising unit employees that membership in the Union is a requirement for continued employment; by advising its union employees they must complete and sign union-checkoff authorization forms, and make payment of initiation fees and dues that are required for continued employment; and that by threatening employees with discharge because they failed to join the Union, all, without explaining to them the difference between limited and full union membership in accordance with *General Motors*, supra, *Beck*, supra, and *Paramax*, supra, Respondent Employer has interfered with, coerced, and restrained its employees in the exercise of their Section 7 rights, in violation of Section 8(a)(1) of the Act; and that by complying with the Union's request to discharge Pohl because he failed to join the Union, Respondent Employer has discriminated in regard to the hire, tenure, or terms and conditions of employment of its employees, thereby discouraging

membership in a labor organization, in violation of Section 8(a)(1) and (3) of the Act; that by advising its employees that membership in the Union is a requirement for continued employment, Respondent Employer has rendered unlawful assistance and support to the Union in violation of Section 8(a)(1) and (2) of the Act; that by threatening employees with discharge because they failed to join the Union, Respondent Employer has coerced and restrained employees in the exercise of their Section 7 rights in violation of Section 8(a)(1) of the Act; and that by complying with Respondent Union's request to discharge or not work employee Pohl, Respondent Employer has discriminated in regards to hire, tenure, or terms and conditions of employment of its employees in violation of Section 8(a)(3) of the Act.

RESPONDENT UNION

CONCLUSIONS OF LAW

1. Highway Drivers, Dockmen, Spotters, Rampmen, Meat Packing House, and Allied Products Drivers and Helpers, Office Workers and Miscellaneous Employees Local Union No. 710, affiliated with the International Brotherhood of Teamsters, AFL-CIO, the Respondent Union, is, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

2. The above-named Respondent Union is and has been the exclusive collective-bargaining representative of Respondent Employer's employees in the following appropriate unit:

Spotters (Hostlers), Fuelmen, Working Foremen, Dock, Tractor Drivers, Checkers, Stackers, Truckers, Wheelers and Office and Miscellaneous Truck Terminal Employees.

3. By entering into and maintaining a union-security clause in its collective-bargaining agreement with Respondent Employer, requiring unit employees to become and remain "members in good standing" in the Union, by advising unit employees that membership in the Union is required for continued employment, but failing to advise Pohl and other nonmember unit employees of their union-security obligations as explained in *General Motors*, supra, *Beck*, supra, and *Paramax*, supra; by threatening employees (Pohl) with termination of employment because of their failure to become members of the Union in good standing; by requiring dues checkoff and the payment of initiation fees and dues without providing Pohl (employees) with notice concerning his limited and full membership rights explained in *General Motors*, supra, *Beck*, supra, and *Paramax*, supra; by failing to explain to employees the difference between limited and full membership and their union-security obligations in accordance with law, Respondent Union has failed to fairly represent Employer's unit employee Pohl; by refusing and failing to comply with Pohl's repeated request for a copy of the collective-bargaining agreement with Employer; and by not allowing Pohl a reasonable period of time within which to comply with his union-security obligations, Respondent Union has restrained and coerced unit employees in the exercise of their Section 7 rights in violation of Section 8(b)(1)(A) of the Act.

4. By requesting Respondent Employer to discharge or not call employees to work, thereby, causing Respondent Employer to discriminate against its employees in regard to hire, tenure, terms, or conditions of employment of Employer's employees, Respondent Union violated Section 8(b)(2) of the Act.

[Recommended Order omitted from publication.]