United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada and Sprinkler Fitters and Apprentices Local Union No. 314 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (American Fire Sprinkler Corporation) *and* Charles F. Enderle. Case 17–CB–3109

June 15, 1989

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS JOHANSEN, CRACRAFT, AND DEVANEY

On May 5, 1986, Administrative Law Judge James L. Rose issued the attached decision. The Respondents filed exceptions and a supporting brief, and the General Counsel filed a brief in answer to the Respondents' exceptions.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions as modified, to modify the remedy,[1] and to adopt the recommended Order as modified.

The judge found that the Respondents violated Section 8(b)(1)(A) of the Act by maintaining, in conjunction with a union-shop agreement with the Employer, a requirement that fines be paid before dues. The judge also found that the Respondents violated Section 8(b)(1)(A) by finding employee-members Charles Riggle and Charles Enderle for allegedly violating a "vehicle return" rule. We agree with the judge for the following reasons.[2]

Section 166(c) of the constitution of Respondent United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (United Association) states: "National and Local assessments, disciplinary assessments, and loans are payable before dues." Article 3 of the collective-bargaining agreement between the Employer and Respondent Sprinkler Fitters and Apprentices Local 314 of the United Association (Local 314) requires the Employer's sprinkler fitters to become members of, and maintain their membership in, Local 314 as a condition of employment.[3] In order to join or retain membership in Local 314, an employee must pay dues to Local 314. The judge concluded, and we agree, that, under established precedent,[4] the Respondents' maintenance of section 166(c) in conjunction with article 3 violates Section 8(b)(1)(A) of the Act, in that it implicitly threatens employees who are fined that they may suffer loss of employment of reasons other than failure to pay dues or initiation fees.[5]

At a special prestrike meeting on June 22, 1984, Local 314 passed a resolution providing that "if L.U. #314 goes on strike July 1, 1984, all Company-owned vehicles driven by L.U. #314 members [must] be returned to the Company Parking Lot midnight June 30, 1984." Local 314 subsequently fined employee-members Charles Riggle and Charles Enderle for keeping their company trucks at their homes during part of the strike, even though at the time they had been performing emergency work with Local 314's approval. The employees' appeals of their fines were denied by the United Association. The judge concluded, and we agree, that by fining Enderle and Riggle the Respondents violated Section 8(b)(1)(A) of the Act.

In adopting the judge's conclusion that, under *Scofield v. NLRB*,[6] Riggle's and Enderle's fines were unlawful, we find it unnecessary to pass on the judge's findings that the vehicle-return rule did not reflect a legitimate union concern and that it was adopted without discussion. Rather, we rely solely on the judge's finding that the rule was not reasonably enforced against Riggle and Enderle, in view of the ambiguity of the application of the rule to employees working on emergency jobs. The rule did not mention emergency work, even though the Employer and Local 314 had an agreement that

[1] Interest shall be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

[2] The judge also found that the Respondents' fining of Riggle and Enderle did not breach the Respondents' duty of fair representation No exceptions were filed to this finding Because we agree with the judge's finding that these fines violated Sec. 8(b)(1)(A) on another basis, it is unnecessary for us to pass on whether the same conduct constituted a breach of the duty of fair representation.

[3] The collective-bargaining agreement was between Local 314 and National Fire Sprinkler Association, Inc, of which the Employer, American Fire Sprinkler Corporation, was a member.

[4] *Elevator Constructors Local 8 (San Francisco Elevator)*, 243 NLRB 53 (1979), motion for rehearing denied 248 NLRB 951 (1980), enfd. 665 F.2d 376 (D.C Cir. 1981), *Laborers Local 1445 (Badger Plants)*, 266 NLRB 386 (1983).

[5] In adopting this conclusion, we do not rely on the judge's finding that the Respondents had an obligation to inform Enderle and Riggle that the fines assessed against them did not have to be paid for them to retain their membership status for purposes of employment

The judge's recommended Order provides that the Respondent shall not maintain sec 166(c) of their constitution so long as *any* collective-bargaining agreement covering their members contains a union-security clause The Respondents contend that this language is overly broad because some United Association locals have collective-bargaining agreements that do not include union-security clauses and, thus, the application of a fines-payable-before-dues requirement to employee-members covered by these agreements is lawful. Because the 8(b)(1)(A) violation found here can occur only when employee-members are subject to a union-security clause, our Order requires the Respondents to cease maintaining, and to rescind, sec. 166(c) insofar as this requirement exists in conjunction with collective-bargaining agreements containing union-security clauses. We view this language as merely a refinement making the terms of the Order more closely reflect the substance of the violative conduct. Cf. *Plumbers Local 460*, 287 NLRB 788 (1987); *Laborers Local 1445*, above, *Elevator Constructors Local 8*, above.

[6] 394 U.S 423 (1969).

emergency work would be performed during the strike. Even Local 314's vice president admitted he did not know whether, under the rule, an employee would be allowed to keep his truck if working on an emergency project lasting more than 1 day. Thus, we agree with the judge that the rule was unreasonably enforced against Riggle and Enderle.

The Respondents contend that the fining of Riggle and Enderle for violating the vehicle-return rule was strictly a matter of internal union concern. We disagree. While he was appealing his fine to the United Association, Riggle attempted to pay his dues on a quarterly basis, as he had previously done. Local 314, however, would not accept a 3-month payment. Rather, it allowed him to pay only 1 month at a time. Similarly, during the period that Enderle was appealing his fine, he found Local 314 hesitant to accept any dues from him. Once he pointed out, however, that while an appeal was pending the practice was to allow the appellant to pay 1 month's dues at a time, he was permitted to pay just 1 month's dues. Additionally, the letters that Riggle and Enderle received from the United Association denying their appeals specifically stated that their fines were payable before dues, in accordance with section 166(c) of the constitution.

It is thus clear that the Respondents' enforcement of the vehicle-return rule against Riggle and Enderle was not solely an internal union matter. In permitting them to pay dues only a month at a time while the fines were being appealed, Local 314 effectively was preventing them from prepaying their dues for a longer period so that if their appeals were denied the "fines payable before dues" rule could be brought to bear at the earliest possible time to compel payment of the fines. Additionally, when the United Association denied their appeals, it explicitly invoked the "fines payable before dues" requirement. Because as noted above, Riggle and Enderle were required to pay dues to Local 314 in order to keep their jobs, the manner in which the Respondents enforced the vehicle-return rule against them implicitly threatened them with job loss. Thus, the enforcement of this rule against Riggle and Enderle was not solely an internal union matter but, rather, affected their employment status.[7]

Accordingly, we adopt the judge's recommended Order as modified to conform to the violations found above.

[7] In light of our finding that the Respondents' enforcement of the vehicle- return rule against Riggle and Enderle affected their employment status, it is unnecessary for us to pass on whether, absent such a finding, the enforcement of the rule against them would have been unlawful.

ORDER

The National Labor Relations Board orders that the Respondents, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada and Sprinkler Fitters and Apprentices Local Union No. 314 of the United Association of Journeymen and Apprentices of Plumbing and Pipe Fitting Industry of the United States and Canada, Kansas City, Missouri, their officers, agents, and representatives, shall

1. Cease and desist from

(a) Unreasonably enforcing union rules against members.

(b) Maintaining, in conjunction with a collective-bargaining agreement containing a union-security clause, section 166(c) of the United Association constitution, which provides, without qualification, that "National and Local assessments, disciplinary assessments and loans are payable before dues."

(c) 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 purpose of the Act.

(a) Rescind the $500 fine against Charles Enderle and the $150 fine against Charles Riggle and reimburse them, respectively, for these amounts with interest as provided in the remedy section of the judge's decision, as modified herein.

(b) Remove from their files any references to the charges and disciplinary action against Enderle and Riggle and notify them in writing that this has been done and that the unlawful disciplinary proceedings will not be used against them in any way.

(c) Rescind from their constitutions, bylaws, or other governing documents section 166(c), quoted above, insofar as it exists in conjunction with union-security clauses in collective-bargaining agreements or is applied in conjunction with such clauses.

(d) Post at Local 314 offices and meeting halls copies of the attached notice marked "Appendix."[8] Copies of the notice, on forms provided by the Regional Director for Region 17, 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 members are customarily posted.

[8] 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."

Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Sign and return to the Regional Director sufficient copies of the notice for posting by American Fire Sprinkler Corporation, if willing, at all places where notices to employees are customarily posted.

(f) Notify the Regional Director in writing with 20 days from the date of this Order what steps the Respondents have taken to comply.

APPENDIX

NOTICE TO 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.

WE WILL NOT unreasonably enforce our rules against our members.

We will not maintain, in conjunction with a union-security clause, section 166(c) of the United Association's constitution, which provides: "National and Local assessments, disciplinary assessments and loans are payable before dues."

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 rescind and refund with interest the $150 fine against Charles Riggle and the $500 fine against Charles Enderle imposed for allegedly violating the June 22, 1984 rule concerning return of company-owned vehicles.

WE WILL notify Charles Riggle and Charles Enderle that we have removed from our files any reference to the charges and disciplinary action against them for alleged violation of the vehicle-return rule and that we will not use these charges or disciplinary action against them in any way.

WE WILL rescind from our constitutions, bylaws, or other governing documents section 166(c) of the United Association constitution, insofar as it exists in conjunction with union-security clauses in collective-bargaining agreements or is applied in conjunction with such clauses.

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA AND SPRINKLER FITTERS AND APPRENTICES LOCAL UNION NO. 314 OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA

Julie K. Hughes, Esq., for the General Counsel.
John P. Hurley, Esq. (Jolley, Walsh, Hager & Gordon), of Kansas City, Missouri, for Respondent Local 314.
Brian A. Powers, Esq., and *Charles W. Gilligan, Esq. (O'Donoghue & O'Donoghue)*, of Washington, D.C., for Respondent United Association.

DECISION

STATEMENT OF THE CASE

JAMES L. ROSE, Administrative Law Judge. This matter was tried before me on 22 January 1986, at Kansas City, Kansas, on the General Counsel's complaint[1] alleging that the Respondents approved fines imposed on the Charging Party and another individual for violating a union rule without having given them fair notice that their conduct was violative of the rule. It is alleged that the Respondents thereby failed to represent them in violation of Section 8(b)(1)(A) of the National Labor Relations Act, 29 U.S.C. § 151 et seq. It is also alleged that the Respondents maintained in their constitution a clause providing that fines would be payable before dues which, in connection with a union-shop clause in the applicable collective-bargaining agreement, coerced and restrained employees in the exercise of their Section 7 rights in violation of Section 8(b)(1)(A) of the Act.

Both Respondents deny the substantive allegations of the complaint or that in any manner they committed any violation of the Act.

On the record as a whole, including my observation of the witnesses, briefs, and arguments of counsel, I issue the following

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. JURISDICTION

It is admitted, and I find, that Sprinkler Fitters and Apprentices Local Union No. 314 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (Local 314) is a labor organization within the

[1] The charge was filed on 19 August 1985, and amended on 25 September 1985. The complaint issued on 25 October 1985

meaning of Section 2(5) of the Act. It is also admitted, and I find, that United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (the United Association) is a labor organization within the meaning of Section 2(5) of the Act, and that Local 314 is a subordinate entity. Although Local 314 is in many respects autonomous, the United Association maintains certain administrative control over it, and has the authority to review certain of its decisions—including the discipline of members.

In connection with its representation of employees, Local 314 has had a series of collective-bargaining agreements with National Fire Sprinkler Association, Inc. (the Sprinkler Association), one of whose members, the American Fire Sprinkler Corporation (the Employer), is a Missouri corporation with an office and principal place of business in Lenexa, Kansas, and a fabrication facility in Kansas City, Missouri.

The Employer has been engaged in the fabrication, sale, installation, and service of fire sprinkler in the Greater Kansas City area. Annually the Employer sells and ships directly from its Kansas City, Missouri facility products goods, and materials valued in excess of $50,000 directly to points outside the State of Missouri. It is admitted, and I find, that the Employer is a corporation engaged in interstate commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Essential Facts*

In the summer of 1984[2] officials of Local 314 began negotiations with the Sprinkler Assocation for a collective-bargaining agreement to replace the one due to expire at midnight 30 June.

On 22 June, a special meeting of the Union's membership was called to discuss proposals submitted by the Sprinkler Association. At that meeting it was determined to reject those proposals and, if necessary, to commence striking against its members beginning 1 July. Also at the meeting, according to the minutes, the following resolution was proposed and passed:

> Motion made that if L.U. #314 goes on strike July 1, 1984, all Company-owned vehicles driven by L.U. #314 members be returned to the Company Parking Lot midnight June 30, 1984.

Such a resolution had never before been adopted by the membership of Local 314. Nor was there any specific discussion prior to adoption of the resolution on 22 June, at least none which any witness could remember. According to the testimony of Joseph Miller, the business manager of Local 314 at the time, while there was "very little talk" about the resolution, its purpose was to monitor whether members were surreptitiously working during the strike.

Certain of the Employer's employees (as well, presumably, as employees of other employers) are styled "service fitters" who, among other things, are on call to do emergency work and are allowed to keep a company truck. Typically a service worker will drive directly from his home to the jobsite to which he is assigned without first going to the Employer's Lenexa office or Kansas City fabrication facility. A service fitter will go to those places only rarely and then only as needed. Service fitters are entitled to use their assigned trucks for personal business, at least on a limited basis.

In past strikes Local 314 had allowed its members to do emergency service work on an ad hoc basis. Members of Sprinkler Association were informed that such would be the policy in 1984. And, specifically, the Union gave permission for work to be finished on one of the Employer's projects, to which Charles Enderle and Charles Riggle was assigned.

Thus on 1 July, Enderle and Riggle continued to work on a project of the Employer; and, rather than returning their respective vehicles to the Employer's facility each night, they continued to drive them home.

Shortly after the strike began, officers of Local 314 noticed that Enderle and Riggle had Employer trucks parked in their respective driveways, a fact which was communicated to the Employer—but not to Enderle or Riggle. Robert Caputo, construction manager of the Employer, "contacted Mr. Enderle and Mr. Riggle and they complied (by turning their vehicles in)."

Charges under the United Association constitution were brought against Enderle and Riggle by John McCormick, the vice president of Local 314 respectively on 2 August and 6 September 1984. The nature of the offense against each was, "Kept company truck at his residence in violation of directive MSC of local Membership that all company trucks be returned to Company lot."

Trial dates were set. In the case of Riggle, the executive board met and fined him $500 for this rule violation prior to his trial date. When he pointed this out, the fine was canceled, the trial date reset, and when he showed up, he was found guilty. However, since Riggle admitted he had kept the truck, but thought it was permissible since he had permission to work, his fine was set at $150.

Enderle was fined $500 because, according to Miller, he did not admit his guilt. (The supposed distinction between Enderle's denial of guilt and Riggle's admission is not clear from this record.)

Both Enderle and Riggle appealed their fines to the United Association. The appeals were denied, and by letter of 2 July 1985 from the United Association's general secretary-treasurer to Riggle:

> This will officially notify you that the General Executive Board has denied your appeal and has approved the action taken by Local Union 314, Kansas City, Missouri, in placing a $150.00 fine against you. In accordance with Section 166(c) of the United Association Constitution, the $150.00 fine is payable before dues.

Similarly, on 2 July 1985, the United Association's general secretary-treasurer, wrote Enderle:

[2] All dates are in 1984 unless otherwise indicated.

> This will officially notify you that the General Executive Board has denied your appeal and has approved the action taken by Local Union 314, Kansas City, Missouri, in placing a $500.00 fine against you. In accordance with Section 166(c) of the United Association Constitution, the $500.00 fine is payable before dues.

On 2 August 1985 Riggle paid his $150 fine and on 18 September Enderle paid his $500 fine.

The current collective-bargaining agreement provides for union membership of all employees in the bargaining unit and requires, on request, the Employer to discharge those who do not maintain their membership in accordance with this clause.[3]

B. *Analysis and Concluding Findings*

The General Counsel contends that by fining Enderle and Riggle, under the facts of this case, Local 314 violated its duty of fair representation to its members, and the United Association is jointly liable inasmuch as it approved the fines. In addition, the General Counsel contends that by maintaining the fines-before-dues clause in the constitution in connection with the union-shop clause of the collective-bargaining agreement, Local 314 and the United Association implicitly threatened members with loss of employment for reasons other than the periodic payment of dues and initiation fees uniformly required. They thereby violated Section 8(b)(1)(A) of the Act.

1. The vehicle return rule

Both Respondents cite *Scofield v. NLRB*, 394 U.S. 423 (1969) (which affirmed the general right of unions to discipline members with *internal* sanctions so long as their jobs were not affected, *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175 (1967)), in contending that a union may discipline members where the rule enforced does not infringe on any Congressional policy, reflects a legitimate interest of the union, is reasonably enforced against union members and the member is free to escape the rule by resigning union membership. Both contend that the four tests of *Scofield* were followed by Local 314 in this case. Therefore the fines against Riggle and Enderle were not proscribed by the Act.

First, I conclude that, as applied here, the vehicle rule does not reflect a legitimate union concern. In fact the Respondent's witnesses were not very clear on its purpose. According to Miller, the rule was to "monitor where our members were working or if any of them were working outside the emergency rule, the permission for emergency work. So we could monitor and keep track of the trucks, basically." However, Miller did not satisfactorily explain how the vehicle rule could possibly aid in this. John McCormick, the Union's vice president (and signer of the charges), thought the rule would have an economic impact and therefore help the strike by extending emergency service calls by one-half hour. Since none of the witnesses could remember whatever limited discussion there may have been before adopting the rule, even these statements of policy concern are based on speculation rather than proof.

In any event, whatever may be the general efficacy of the Respondents' argument in favor of the rule, on the first day of the strike, Local 314 gave the Employer permission for Enderle and Riggle to continue to work during the strike. Thus, the trucks would have been gone during working hours. To return them could not have furthered the aims seen by either Miller or McCormick. Strict adherence would have been a detriment to Enderle and Riggle, but of no apparent benefit to Local 314. It is totally unexplained on this record or in argument how compliance with the rule by Enderle and Riggle could have benefited any legitmate policy concern of the Union.

Scofield, I conclude, places the burden of proving the existence of a legitmate policy basis on the union which undertakes to discipline its members. Local 314 did not carry its burden.

In addition, the fines of Enderle and Riggle on this record are patently unreasonable. The resolution was adopted without discussion. There had never before been such a resolution or requirement that service fitters who had the use of company trucks had to return them at the time of a strike. Here local 314 had given the Employer permission to continue to work on the project to which Enderle and Riggle had been assigned. Therefore, it is clearly reasonable that Enderle and Riggle would believe that so long as they had permission to work, they could keep their trucks. Even McCormick did not know whether a service fitter would be allowed to keep his truck if working on an emergency project lasting more than 1 day—as was the case here. While both Respondents contend that the burden was on Enderle and Riggle to clarify this matter, I conclude that the burden for any ambiguity should properly be placed on Local 314, whose rule it was.

Finally, neither Enderle nor Riggle was contacted at any time by any representative of Local 314 about this matter, until McCormick filed charges. Neither was ever told that keeping the truck under the circumstances here was in violation of the 22 June resolution. Indeed, they were informed of their alleged violation of this rule by the Employer and, immediately upon notification, they in fact returned the vehicles to the Company's premises. If Local 314 was simply interested in seeking compliance with the alleged policy considerations of the rule, surely Miller or someone would have told Enderle and Riggle. Instead formal charges were brought and substantial fines levied. On these facts, the equities are so overwhelmingly in favor of Enderle and Riggle as to establish that the fines were invidious and arbitrary. The rule was *not* reasonably enforced and therefore did not meet one of the *Scofield* criteria.

As applied to the facts of this case, fining Enderle and Riggle for failure of strict compliance with the vehicle

[3] It is noted that Kansas is a "Right-to-Work" state, while Missouri is not However, there is no question concerning the general applicability of the union security clause in this matter, particularly inasmuch as most of the work done by both Enderle and Riggle takes place in Missouri. Neither Respondent contended that the union-security clause is inapplicable to Enderle, Riggle, or the Employer's employees in general

return rule was violative of Section 8(b)(1)(A) of the Act.

2. The fines-before-dues clause

As quoted in its letters denying their respective appeals, in material part the constitution of the United Association Section 166(c) reads: "National and Local assessments, disciplinary assessments, and loans are payable before dues." Such a provision, along with the requirement of union membership for continued employment, violates Section 8(b)(1)(A) of the Act. *Elevator Constructors Local 8 (San Francisco Elevator Co.)*, 243 NLRB 53 (1979).

In *Laborers 1445 (Badger Plants)*, 266 NLRB 386 (1983), the Board explained:

> [A] union-security clause which utilizes the continued threat of job loss to exert pressure on an employee to maintain union membership status, coupled with a provision requiring payment of fines before acceptance of dues, constitutes an unlawful threat to an employee's employment relationship. The threat arises because employees knowing that their acceptance of dues is conditioned upon payment of fines can reasonably assume that they must make all of the payments in order to avoid the risk that the union will seek their discharge. Such a risk, the Board concluded, is not required by the Act nor is a union permitted to threaten action indirectly which it cannot threaten directly. In this connection, the Board found that the combination of the fines-payable bylaw with the union-security clause was an unlawful threat even in the absence of an overt threat to cause the discharge of the employee.

The United Association contends that Section 166(c) is designed simply "to affect a fined member's intraunion status until the fine is paid." Thus, it is argued, the only purpose of this rule is to prohibit such individuals as Enderle and Riggle from holding union office or being delegates to the International convention and the like. There was no threat, direct or implied, that their jobs were in jeopardy if they failed to pay the fines. I reject this argument.

At no time during the proceedings before Local 314 or the United Association were Enderle and Riggle ever informed that they did not have to pay the fines in order to continue to be employees. To the contrary, the clear implication of the letters from the United Association was they could continue to pay dues prior to its ruling on the appeals, but after the appeals had been denied, the fines would have to be paid before dues. In fact, the minutes of the Local 314 executive board concerning these fines reads: "Both are assessed $500. Each must be paid prior to any new issuance of stamps (showing dues paid)."

In effect the United Association argues that since the Federal labor laws prohibit it from doing what is implied in its letter, these individuals could not have been threatened—that the employee members should be charged with the sophistication in labor law of the Union's staff attorneys. I reject this contention. In *Badger Plants*, supra, the Board quoted with approval from the order enforcing *San Francisco Elevator* by the Circuit Court for the District of Columbia Circuit:

> We find it similarly reasonable for the Board to determine that a union security clause conjoined with a fines payable bylaw may induce unsophisticated employees to fear that will lose their jobs if they do not pay their fines. [665 F.2d 376, 382 (1981).]

I conclude that both Respondents had an obligation to inform Enderle and Riggle that any fines assessed against them did not have to be paid in order for them to retain their membership status for purposes of employment, even though losing that status for purpose of intraunion affairs. I therefore conclude that Section 166(c) as written, in connection with a union-shop clause in a collective-bargaining agreement and the facts of this particular case, implies a threat to employees who are fined that they may suffer loss of employment for reasons other than their failure to pay dues and initiation fees uniformly required. By maintaining Section 166(c) in its constitution, the United Association has violated Section 8(b)(1)(A) of the Act, and, jointly with Local 314, it violated Section 8(b)(1)(A) of the Act in approving the fines levied against Enderle and Riggle.

The United Association contends that it has no responsibility for the fines. However, under the International constitution, it clearly has the authority and duty to review such fines and did so in this case. (Review of Riggle's was summarily denied because it did not meet the jurisdictional threshold of $500.) Local 314 is clearly subordinate to the United Association, notwithstanding that Local 314 has a certain degree of autonomy with regard to election of officers, ownership of property, and the like. For purposes of fining members and withholding membership status, the United Association is clearly jointly responsible with the Local Union, and I so find in this case.

3. The duty of fair representation

Finally, the General Counsel alleges that fining Enderle and Riggle was a breach of the Respondents' duty of fair representation.

Though somewhat academic (since I conclude that levying the fines was in violation of the Act), the issue as to this theory of unlawfulness is whether the Respondents' actions were related to any representation of Enderle or Riggle vis-a-vis any employer. See *San Francisco Elevator Co.*, supra. I conclude they were not. The facts giving rise to this case did not involve a dispute between an employee and an employer. The Employer did not care whether Enderle and Riggle kept the trucks or not. Either way their employment was not affected (though not keeping the trucks was a personal detriment). The dispute was strictly intraunion. Therefore the fining of Enderle and Riggle was not a breach of the duty of fair representation.

Such cases as *Carpenters 720 (UMC of Louisiana)*, 276 NLRB 59 (1985), appear inapposite. There the member was fined for violating a hiring hall rule (maintaining his name on an out-of-work list while working for a nonsig-

natory employer). Such relates directly to the union's representation of employees vis-a-vis employers.

III. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The unfair labor practices found above, occurring in connection with the Respondents' representation of employees of employers engaged in interstate commerce, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof within the meaning of Section 2(6) and (7) of the Act.

IV. THE REMEDY

Having concluded that the Respondents violated the National Labor Relations Act in certain respects, I shall order them to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act, including rescinding the fines and remitting the amounts paid by Enderle and Riggle with interest as provided for in *Florida Steel Corp.*, 231 NLRB 651 (1977). See generally *Isis Plumbing Co.*, 138 NLRB 176 (1962).

[Recommended Order omitted from publication.]