

refusal to bargain violative of the Act only because its allegedly improper refusals of the information requested by the IUE made bargaining impossible and caused a breakdown in the negotiations. Accordingly, I hold that the evidence does not support any of the allegations of unfair labor practices set forth in the General Counsel's complaint and will recommend that the complaint be dismissed in its entirety.

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

#### CONCLUSIONS OF LAW

1. The Respondent, Westinghouse Electric Corporation, is engaged in commerce within the meaning of the Act.

2. International Union of Electrical, Radio and Machine Workers, AFL-CIO, and its Locals Nos. 111, 130, 202, 239, 302, 315, 401, 412, 426, 456, 486, 491, 601, 617, 627, 670, 711, 714, 724, 746, 760, 777, 906, 1502, and 1581, are labor organizations within the meaning of the Act.

3. The International or one of its foregoing locals has been at all material times, and is, the exclusive bargaining representative of the Respondent's employees in each of the 40 appropriate bargaining units described in Appendix A of the complaint.

4. Contrary to the allegations of the complaint, the Respondent has not refused to bargain collectively in good faith with the International or any of its locals as exclusive bargaining representatives of the Respondent's employees in any of the foregoing appropriate bargaining units, and has not committed any unfair labor practices within the meaning of the Act.

[Recommendations omitted from publication.]

**Bricklayers and Masons Union No. 24, Bricklayers, Masons and Plasterers International Union of America, AFL-CIO and Virgil L. Copeland and Booth and Flinn Company, Party to the Contract**

**Local 75, Operative Plasterers' and Cement Masons International Association of the United States and Canada, AFL-CIO and Virgil L. Copeland and Booth and Flinn Company; Associated Building Contractors of Terre Haute, Indiana, Walker Caton, et al., Members and Glenn W. North Construction Co., Inc., Parties to the Contracts**

**Booth and Flinn Company and Virgil L. Copeland and Bricklayers and Masons Union No. 24, Bricklayers, Masons and Plasterers International Union of America, AFL-CIO and Local 75, Operative Plasterers' and Cement Masons International Association of the United States and Canada, AFL-CIO, Parties to the Contracts. Cases Nos. 25-CB-227, 25-CB-228, and 25-CA-969. December 1, 1960**

#### DECISION AND ORDER

On August 14, 1959, Trial Examiner Albert P. Wheatley issued his Intermediate Report in the above-entitled proceedings, finding that the Respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Inter-

mediate Report attached hereto. He also found that Respondent Booth and Flinn and Respondent Local 75 had not engaged in certain other unfair labor practices alleged in the complaint, and recommended dismissal of those allegations. Thereafter the General Counsel and Respondent Bricklayers and Masons Union No. 24 filed exceptions to the Intermediate Report with supporting briefs.

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

The attorney for the General Counsel sought to introduce in evidence an affidavit dated December 6, 1957, by George M. Greenleaf who was the business agent of Respondent Local 75 at times material herein until his death in August 1958. In this connection the field examiner who took the affidavit was called as a witness, and testified as to the manner in which he prepared it and the fact that Greenleaf then read it, signed it, and swore to it. Attorney for Respondents objected to the admission of this affidavit on the ground, among others, that there was no corroboration of the statements contained in it, which objections the Trial Examiner overruled. However, on cross-examination of the field examiner the attorney for the General Counsel objected to the first question put by Respondents' attorney: "When did you first enter into this investigation of the Booth and Flinn Local 75 and Local 24 cases?" The Trial Examiner ruled that this question was proper cross-examination and the attorney for the General Counsel then refused to permit the witness to testify further, stating that the witness' authority to testify had been limited by the General Counsel in permitting him to testify under Section 102.95 of the Board's Rules and Regulations, Series 7, the specific limitation being that he testify only with regard to the circumstances of the taking of the affidavit. Thereupon the Trial Examiner struck all testimony of the field examiner, and the affidavit of decedent Greenleaf was accordingly rejected as evidence.

The present Section 102.118 of our Rules and Regulations, Series 8, provides for testimony by Board employees concerning Board records only with consent of the Board, or of the General Counsel if the employee in question is subject to the latter's supervision and control. It does not, however, purport to limit the scope of examination to which an employee may be subject when such consent to testify has been given. Once a Board employee has taken the stand pursuant to this section, cross-examination is, of course, a necessary part of his examination and may include proper questions for the purpose of impeaching his credibility. We think the question as to when the field examiner started his investigation—which the field examiner in this instance was not permitted to answer—was a proper question on cross-examination. Had the field examiner, perchance, answered that he did not start his investigation until after the date of the Greenleaf

affidavit, his credibility would have been subject to question. Thus we concur in the Trial Examiner's ruling that the direct testimony given by the field examiner in this case was rendered incompetent because of his refusal to testify on cross-examination. See *Wigmore on Evidence*, 3d edition, section 1391; *Richardson on Evidence*, 8th edition, section 501. Inasmuch as the striking of the field examiner's testimony results in said affidavit not being authenticated by the person before whom it was sworn to, we also concur in the Trial Examiner's ruling rejecting it as evidence.

The other rulings are also hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following additions and modifications.

1. The Trial Examiner found that the hiring hall arrangement between Local 24 and Booth and Flinn, pursuant to which Smith as business agent of Local 24 was called upon by Booth and Flinn to supply cement masons and refused to refer Copeland who he knew was seeking work at the project, constituted a violation by Local 24 of Section 8(b)(2) and (1)(a) of the Act. He omitted, however, any factual findings concerning Copeland's efforts to obtain work at the project other than through Smith. In this connection we note that sometime after October 7, 1957, when Sparrow was hired as cement mason foreman, Copeland's son, Virgil, Jr., who worked in the office for Booth and Flinn, as Project Superintendent Wiggins about a job for his father; also that Copeland himself thereafter sought out Sparrow in a restaurant and asked for a job. Both Wiggins and Sparrow answered that additional cement masons were not then needed. In addition, Sparrow admittedly told Copeland that he wouldn't need additional men until spring and when he needed them he would get them through Smith. We note that Copeland again asked for a job early in 1958, apparently in March, when he went to Sparrow at the jobsite and was again told that hiring was done only through Smith. Copeland then asked for the names of the last two cement masons hired, and was given the names of the two Lizenby brothers who, the records show, were hired in March 1958. On these facts plus those set forth in the Intermediate Report concerning Copeland's attempts to get work through Smith, we agree with the Trial Examiner that Local 24 through its business agent, Smith, caused Booth and Flinn not to employ Copeland.<sup>1</sup>

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<sup>1</sup> See *The Marley Company*, 117 NLRB 107; *Nassau and Suffolk Contractors' Association, Inc., et al.*, 123 NLRB 1393; compare *County Electric Co., Inc., et al.*, 116 NLRB 1080, 1086, where the charging party had made no application to the employer.

We note that the charge in the CA proceeding was not filed until December 1958, and accordingly, presumably because of the 6-month limitation of Section 10(b) of the Act, the complaint as to Respondent Booth and Flinn does not allege that it likewise discriminated against Copeland.

2. The Trial Examiner also found that Local 75 did *not* cause Booth and Flinn to refuse employment to Copeland inasmuch as the alleged written collective-bargaining agreement between the two was not proved and the statement in the rejected Greenleaf affidavit that Local 75 was to supply Local 24 with additional cement masons for the Breed job is not in evidence. However, as the General Counsel contends in its brief, this allegation which the Trial Examiner would dismiss was premised not only upon the existence of a written contract between Local 75 and Booth and Flinn,<sup>2</sup> but upon two requests to Smith by Greenleaf as business agent of Local 75: one contained in Greenleaf's letter to Smith dated June 10, 1957 (quoted in the Intermediate Report), which advised Smith of the details concerning an assessment which Copeland owed to Local 75, and the other made orally during a social evening at Greenleaf's home. As to the alleged oral request, Smith testified only that he remembered the amount of the assessment being discussed on the evening in question but could not recall any other discussion about it. Later during the hearing when Copeland testified concerning the letter and the occasion on which Smith showed it to him and told him that he could not work in Local 24's jurisdiction until he "got right with Local 75"—as credited by the Trial Examiner—Smith was not available for questioning because he had died in the interim. Thus we have in evidence Smith's admission that Greenleaf had discussed the fact of the assessment with him, plus the letter from Greenleaf to Smith and Copeland's credited testimony as to the use Smith made of it. We consider this sufficient evidence to support a finding that Local 75 through its business agent, Greenleaf,<sup>3</sup> with the cooperation of Local 24 through its business agent, Smith, caused Booth and Flinn to refuse employment to Copeland in violation of Section 8(b)(2) and (1)(A) of the Act, and so find. Clearly Local 75 was the proximate cause of Local 24 refusing to send Copeland to the Booth and Flinn job. It was, therefore, guilty of a violation of the Act by enlisting the cooperation of Local 24, to whom Booth and Flinn had delegated hiring authority for cement masons at the Breed project.

3. The Trial Examiner found that unlawful hiring hall arrangements existed between Local 75 and the Associated Building Contract-

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<sup>2</sup> We agree with the Trial Examiner that the evidence does not establish the existence of a written contract between Local 75 and Booth and Flinn, but not because we credit McLeod's repudiation of his pretrial affidavit. The affidavit itself is inconclusive as to whether he signed the contract covering plasterers or the contract covering cement masons. His testimony a week later that instead he "must have" signed a welfare agreement leads us to discredit him entirely on this point.

<sup>3</sup> Greenleaf wrote this letter on the letterhead of Local 75 and signed it "G. M. Greenleaf, B.A." The authenticity of his signature was established by testimony of another officer of Local 75. Smith, in his testimony as the General Counsel's first witness, denied having seen this letter. Copeland, however, testified that Smith dropped it on the floor in showing it to him and that he, Copeland, picked it up and put it in his pocket when Smith left the room momentarily.

tors of Terre Haute, Indiana, based upon written contracts covering cement masons and plasterers executed in 1956 which incorporated constitutional provisions and working rules of the Union providing for closed-shop conditions, as well as the practices of the parties in complying with said contracts. A similar finding was made with respect to the arrangements between Local 75 and Glenn W. North Construction Co., Inc., concerning cement masons. We agree that the said contracts and hiring practices between Local 75 and ABC and between Local 75 and North constitute violations of Section 8(b) (2) and (1) (A) by Local 75.<sup>4</sup> The Trial Examiner further found that Local 75 had not caused Newlin-Johnson Development Co., a member of ABC, or North to refuse employment to Copeland pursuant to said unlawful hiring hall arrangements. With these conclusions we also agree, but as to North our finding is based on the fact that Copeland testified that he never contacted North for work, and, in fact, refused a chance to work for North on an occasion when Van Bibber, who succeeded Greenleaf as business agent of Local 75, told him that work was available there.

#### THE REMEDY

We find merit in the General Counsel's exceptions based upon failure of the Trial Examiner to recommend that Local 24 notify Respondent Booth and Flinn and the Charging Party that it has withdrawn its objection to the latter's hire and continued employment. It is true that in the latter half of 1958 Copeland was twice employed by Booth and Flinn with the knowledge of Local 24. This, however, we consider insufficient reason for failing to have Local 24 formally clarify the apparent change in its earlier attitude.<sup>5</sup>

In addition, as we have found, contrary to the Trial Examiner, that Local 75 through Local 24 caused Booth and Flinn to discriminate against Virgil Copeland, we shall order Local 75, jointly and severally with Local 24, to make whole Copeland for any loss of pay he may have suffered as a result of the discrimination against him.

The Trial Examiner recommended no *Brown-Olds* reimbursement remedy<sup>6</sup> as to the affected employees of members of ABC and of North based upon the illegal hiring arrangements existing between them and Local 75, noting that the contract with ABC had been "cleaned up" as of October 2, 1958, that North was presumably following a similar pattern, and that the attorney for the General Counsel had requested no such remedy.<sup>7</sup> As the record shows that the parties, except Booth

<sup>4</sup> See *Argo Steel Construction Company*, 122 NLRB 1077; *Funeral Directors of Greater St. Louis, Inc., et al.*, 125 NLRB 241.

<sup>5</sup> Similarly, as the courts recognize, a formal decree is a safeguard against repetition despite compliance. See *N.L.R.B. v. Mevia Textile Mills, Inc.*, 339 U.S. 563, 567-568.

<sup>6</sup> *J. S. Brown-E. F. Olds Plumbing & Heating Corporation*, 115 NLRB 594.

<sup>7</sup> In his brief to the Trial Examiner the attorney for the General Counsel made no specific mention of employees of North. As to ABC the replacement contract executed

and Flinn and Local 24, voluntarily entered into new contracts on or about October 2, 1958, within the *Brown-Olds* "moratorium" period announced by the General Counsel extending from March 1 to November 1, 1958, as finally extended, we order no reimbursement with respect to Local 75 concerning its contracts and hiring practices with Associated Building Contractors and North. We note the good faith demonstrated by the said parties in revising their contracts at the time in question, and will not, therefore, pursuant to sound public policy, impose the reimbursement remedy. We do, however, order the remedy, as did the Trial Examiner, concerning the contract relationship and hiring practice between Booth and Flinn and Local 24.<sup>8</sup>

### ORDER

Upon the entire record in the case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that:

A. Respondent Bricklayers and Masons Union No. 24, Bricklayers, Masons and Plasterers International Union of America, AFL-CIO, its officers, representatives, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Performing, maintaining, giving effect to, or enforcing any agreement, understanding, or practice with Booth and Flinn Company, or any other employer within the jurisdictional area of Local 24 over whom the Board would assert jurisdiction, which requires membership in or referral from Respondent Local 24 as a condition of employment, unless such referral system explicitly provides for the minimum safeguards stated in *Mountain Pacific Chapter of the Associated General Contractors, Inc., et al.*, 119 NLRB 883.

(b) Causing or attempting to cause Booth and Flinn Company, or any other employer within its territorial jurisdiction over whom the Board would assert jurisdiction, to discriminate against Virgil L. Copeland or against other employees or applicants for employment in violation of Section 8(a)(3) of the Act.

(c) In any other manner restraining or coercing employees or applicants for employment in the exercise of their rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Jointly and severally with Booth and Flinn Company reimburse all persons now or formerly employed as cement masons at the

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with Local 75 in 1958 is in evidence; as to North the record shows only that he signed the same 1956 contract.

<sup>8</sup> Member Jenkins, for the reasons stated by him in his separate concurrence and dissent in *Shear's Pharmacy, Inc.*, 128 NLRB 1417, and his dissent in *Southeastern Plate Glass Company*, 129 NLRB 412, does not join in the application of the *Brown-Olds* reimbursement remedy in this case to Booth and Flinn and Local 24.

Breed plant for all initiation fees, dues, nonmembership dues, assessments, dobie and work permit fees, and other moneys which have been illegally exacted from them. The period of liability shall begin 6 months before the date of the filing and service of the charge against Respondent Local 24 and shall extend to all moneys thereafter paid which have not heretofore been refunded.

(b) Notify, in writing, Booth and Flinn Company that Respondent Local 24 has withdrawn its objection to the hiring or continued employment of Virgil L. Copeland.

(c) Notify, in writing, Virgil L. Copeland that Respondent Local 24 has withdrawn its objection to his employment with Booth and Flinn Company, and that henceforth it will not coerce or restrain him by requiring him to obtain work permits or clearance from it or by otherwise interfering with his rights under Section 7 of the Act.

(d) Jointly and severally with Local 75 make whole Virgil L. Copeland for any loss of pay he may have suffered as a result of his not being employed by Booth and Flinn Company at its Breed project between August 29, 1957, and August 18, 1958. The loss of pay shall be computed in accordance with the Board's customary formula. See *N.L.R.B. v. Seven-Up Bottling Company of Miami, Inc.*, 344 U.S. 344, and *F. W. Woolworth Company*, 90 NLRB 289.

(e) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all membership, dues, permit, and other records necessary to compute the moneys illegally exacted from persons employed as cement masons at the Breed plant of Booth and Flinn Company.

(f) Post at its offices and all places where notices to members are customarily posted, copies of the notice attached hereto marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Twenty-fifth Region, shall, after being duly signed by an official representative of Respondent Local 24, be posted by it immediately upon receipt thereof and maintained for a period of 60 consecutive days thereafter, in conspicuous places. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by other material.

(g) Mail to the aforementioned Regional Director for the Twenty-fifth Region signed copies of the notice attached hereto marked "Appendix A" for posting by Booth and Flinn Company.

(h) Notify the aforementioned Regional Director for the Twenty-fifth Region, in writing, within 10 days from the date of this Order, what steps it has taken to comply.

B. Respondent Local 75, Operative Plasterers' and Cement Masons International Association of the United States and Canada, AFL-CIO, its officers, representatives, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Performing, maintaining, giving effect to, or enforcing any agreement, understanding, or practice with Associated Building Contractors of Terre Haute, Indiana, or with Glenn W. North Construction Co., Inc., or any other employer within the jurisdictional area of Local 75 over whom the Board would assert jurisdiction, which requires membership in or referral from Respondent Local 75 as a condition of employment, unless such referral system explicitly provides for the minimum safeguards stated in *Mountain Pacific Chapter of the Associated General Contractors, Inc., et al., supra*.

(b) Causing or attempting to cause members of Associated Building Contractors of Terre Haute, Indiana, or Glenn W. North Construction Co., Inc., or any other employer within its jurisdictional area over whom the Board would assert jurisdiction, to discriminate against employees or applicants for employment in violation of Section 8(a)(3) of the Act.

(c) Causing or attempting to cause Local 24 to discriminate against Virgil L. Copeland or against other employees or applicants for employment in its relationships with employers within its jurisdictional area over whom the Board would assert jurisdiction.

(d) In any other manner restraining or coercing employees or applicants for employment in the exercise of their rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Notify Local 24 in writing that Respondent Local 75 has withdrawn its objection to the referral of Virgil L. Copeland for hiring or continued employment.

(b) Jointly and severally with Local 24 make whole Virgil L. Copeland for any loss of pay he may have suffered as a result of his not being employed by Booth and Flinn Company at its Breed project between August 29, 1957, and August 18, 1958. The loss of pay shall be computed in accordance with the Board's customary formula. See *N.L.R.B. v. Seven-Up Bottling Company of Miami, Inc., supra*, and *F. W. Woolworth Company, supra*.

(c) Post at its offices, and all places where notices to members are customarily posted, copies of the notice attached hereto marked "Appendix B." Copies of said notice, to be furnished by the Regional Director for the Twenty-fifth Region, shall, after being duly signed by an official representative of Respondent Local 75, be posted by it immediately upon receipt thereof and maintained for a period of 60 consecutive days thereafter, in conspicuous places. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by other material.

(d) Mail to the aforementioned Regional Director for the Twenty-fifth Region signed copies of the notice attached hereto marked "Appendix B" for posting, if these employers are willing, by Associated Building Contractors of Terre Haute, Indiana, and such of its members as hire cement masons and plasterers, and by Glenn W. North Construction Co., Inc., likewise for 60 days, in all places where notices are customarily posted.

(e) Notify the aforementioned Regional Director for the Twenty-fifth Region, in writing, within 10 days from the date of this Order, what steps it has taken to comply herewith.

C. Respondent Booth and Flinn Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Performing, maintaining, giving effect to, or enforcing any agreement, understanding, or practice with Bricklayers and Masons Union No. 24, Bricklayers, Masons and Plasterers International Union of America, AFL-CIO, which requires membership in said labor organization as a condition of employment, or which requires referral by said labor organization as a condition of employment, unless said referral system explicitly provides for the minimum safeguards stated in *Mountain Pacific Chapter of the Associated General Contractors, Inc., et al., supra*.

(b) Encouraging membership in Respondent Local 24, or any other labor organization, by discriminating in regard to hire or tenure of employment or any term or condition of employment.

(c) In any manner interfering with, restraining, or coercing employees or applicants for employment, in the exercise of the rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Jointly and severally with Respondent Local 24 reimburse all persons now or formerly employed as cement masons at the Breed plant for all initiation fees, dues, nonmembership dues, assessments, dobie and work permit fees, and other moneys which have been illegally exacted from them. The period of liability shall begin 6 months before the date of the filing and service of the charge against Respondent Company and shall extend to all moneys thereafter paid which have not heretofore been refunded.

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, personnel records and reports, and all other records necessary to compute the moneys illegally exacted from employees.

(c) Post at its Breed project at all locations where notices to employees are customarily displayed, copies of the notice attached hereto

marked "Appendix C." Copies of said notice, to be furnished by the Regional Director for the Twenty-fifth Region, shall, after being duly signed by Respondent Company's representative, be posted by Respondent Company immediately upon receipt thereof, and be maintained by it for a period of 60 consecutive days thereafter in conspicuous places. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(d) Post at the same places and under the same conditions as set forth in (c) above, and as soon as they are forwarded by the Regional Director, copies of the Respondent Local 24's notice herein marked "Appendix A."

(e) Notify the aforementioned Regional Director for the Twenty-fifth Region, in writing, within 10 days from the date of this Order, what steps it has taken to comply herewith.

D. The complaint herein is hereby dismissed insofar as it alleges that Respondent Local 75 and Respondent Booth and Flinn operated under an unlawful hiring hall arrangement and practice and that Respondent Local 75 caused Glenn W. North Construction Co., Inc., and Newlin-Johnson Development Co. to refuse employment to Virgil L. Copeland.

MEMBER KIMBALL took no part in the consideration of the above Decision and Order.

#### APPENDIX A

NOTICE TO ALL MEMBERS OF BRICKLAYERS AND MASONS UNION No. 24,  
BRICKLAYERS, MASONS AND PLASTERERS INTERNATIONAL UNION OF  
AMERICA, AFL-CIO

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the Labor-Management Relations Act, we hereby notify you:

WE WILL NOT cause or attempt to cause Booth and Flinn Company, or any other employer in our jurisdictional area over whom the Board will assert jurisdiction, to discriminate against Virgil L. Copeland or against other employees or applicants for employment in violation of Section 8(a)(3) of the Act.

WE WILL NOT enter into, perform, maintain, or otherwise give effect to any agreement or arrangement with the above-named employer, or any other employer over whom the National Labor Relations Board may assert jurisdiction, which requires that the employer hire its employees through us exclusively unless that agreement or arrangement explicitly provides that: (1) Selection of applicants for referral to jobs shall be on a nondiscriminatory

basis and shall not be based on, or in any way affected by, union membership, bylaws, rules, regulations, constitutional provisions, or any other aspect or obligation of union membership, policies, or requirements; (2) the employer retains the right to reject any job applicant whom we may refer; and (3) all parties to the agreement or arrangement post in places where notices to employees and job applicants are customarily posted all provisions relating to the functioning of the hiring arrangement, including these provisions.

WE WILL NOT in any other manner restrain or coerce employees or applicants for employment in the exercise of the rights guaranteed in Section 7 of the Act.

WE WILL reimburse all persons now or formerly employed as cement masons at the Breed plant for all initiation fees, dues, non-membership dues, assessments, dobie and work permit fees, and other moneys they were unlawfully required to pay our union as a result of the illegal hiring provisions in the contract with the aforementioned company.

WE WILL make whole Virgil L. Copeland for any loss of pay he may have suffered as a result of his not being employed by Booth and Flinn Company at its Breed project between August 29, 1957, and August 18, 1958, and we will notify said Company and Virgil L. Copeland, in writing, that we have withdrawn our objection to his employment by Booth and Flinn Company.

BRICKLAYERS AND MASONS UNION NO. 24,  
BRICKLAYERS, MASONS AND PLASTERERS  
INTERNATIONAL UNION OF AMERICA,  
AFL-CIO,

*Labor Organization.*

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

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

## APPENDIX B

NOTICE TO ALL MEMBERS OF LOCAL 75, OPERATIVE PLASTERERS' AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, AFL-CIO

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the Labor-Management Relations Act, we hereby notify you:

WE WILL NOT cause or attempt to cause members of Associated Building Contractors of Terre Haute, Indiana, or Glenn W. North

Construction Co., Inc., or any other employer in our jurisdictional area over whom the Board will assert jurisdiction, to discriminate against employees or applicants for employment in violation of Section 8(a)(3) of the Act.

WE WILL NOT enter into, perform, maintain, or otherwise give effect to any agreement or arrangement with the above-named employers. or any other employer over whom the National Labor Relations Board may assert jurisdiction, which requires that the employer hire its employees through us exclusively unless that agreement or arrangement explicitly provides that: (1) Selection of applicants for referral to jobs shall be on a nondiscriminatory basis and shall not be based on, or in any way affected by, union membership, bylaws, rules, regulations, constitutional provisions, or any other aspect or obligation of union membership, policies, or requirements; (2) the employer retains the right to reject any job applicant whom we may refer; and (3) all parties to the agreement or arrangement post in places where notices to employees and job applicants are customarily posted all provisions relating to the functioning of the hiring arrangement, including these provisions.

WE WILL NOT cause or attempt to cause Bricklayers and Masons Union No. 24, Bricklayers, Masons and Plasterers International Union of America, AFL-CIO, to refuse referral of Virgil L. Copeland, or any other person, for hiring or continued employment, and we will notify it and Virgil L. Copeland, in writing, to that effect.

WE WILL make whole Virgil L. Copeland for any loss of pay he may have suffered as a result of his not being employed by Booth and Flinn Company at its Breed project between August 29, 1957, and August 18, 1958.

WE WILL NOT in any other manner restrain or coerce employees or applicants for employment in the exercise of the rights guaranteed in Section 7 of the Act.

LOCAL 75, OPERATIVE PLASTERERS' AND  
CEMENT MASONS INTERNATIONAL AS-  
SOCIATION OF THE UNITED STATES AND  
CANADA, AFL-CIO,

*Labor Organization.*

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

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

## APPENDIX C

## NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the Labor-Management Relations Act, we hereby notify our employees that:

WE WILL NOT encourage membership in Bricklayers and Masons Union No. 24, Bricklayers, Masons and Plasterers International Union of America, AFL-CIO, or in any other labor organization of our employees, by discriminating in regard to hire or tenure of employment or any term or condition of employment.

WE WILL NOT enter into, perform, maintain, or otherwise give effect to any agreement or arrangement with the above-named union, or any other labor organization, which requires that the employer hire its employees through it exclusively unless that agreement or arrangement explicitly provides that: (1) Selection of applicants for referral to jobs shall be on a nondiscriminatory basis and shall not be based on, or in any way affected by, union membership, bylaws, rules, regulations, constitutional provisions, or any other aspect or obligation of union membership, policies, or requirements; (2) the employer retains the right to reject any job applicant whom the union may refer; and (3) all parties to the agreement or arrangement post in places where notices to employees and job applicants are customarily posted, all provisions relating to the functioning of the hiring arrangement, including these provisions.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed in Section 7 of the Act.

WE WILL reimburse all persons now or formerly employed as cement masons at the Breed plant, for all initiation fees, dues, nonmembership dues, assessments, dobie and work permit fees, and other moneys they were unlawfully required to pay to Bricklayers and Masons Union No. 24, Bricklayers, Masons and Plasterers International Union of America, AFL-CIO, as a result of the illegal agreement, understanding, or practice with the aforementioned labor organization.

BOOTH AND FLINN COMPANY,  
*Employer.*

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

## INTERMEDIATE REPORT AND RECOMMENDATIONS

## I. ISSUES

The primary issues herein are whether (1) Bricklayers and Masons Union No. 24, Bricklayers, Masons and Plasterers International Union of America, AFL-CIO, herein called Local 24, and Booth and Flinn Company, sometimes referred to herein as B & F, operated under an unlawful hiring hall arrangement and practice; (2) Local 75, Operative Plasterers' and Cement Masons International Association of the United States and Canada, AFL-CIO, herein called Local 75, and B & F, through Local 24, operated under an unlawful hiring hall arrangement and practice; (3) Associated Building Contractors of Terre Haute, Indiana, herein called ABC, and Local 75 operated under an unlawful hiring hall arrangement and practice; (4) Glenn W. North Construction Co., Inc., and Local 75 operated under an unlawful hiring hall arrangement and practice; (5) Local 24 caused B & F to refuse employment to Virgil L. Copeland; (6) Local 75 caused B & F to refuse employment to Virgil L. Copeland; (7) Local 75 caused Glenn W. North Construction Co., Inc., to refuse employment to Virgil L. Copeland; and (8) whether Local 75 caused Newlin-Johnson Development Co. to refuse employment to Virgil L. Copeland.

## II. BUSINESSES INVOLVED

Booth and Flinn Company, a corporation, is a general contractor in the building and construction industry throughout the United States. At the times material herein, B & F was engaged in the construction of a powerplant (known as the Breed plant or project) near Fairbanks, Indiana, for the Indiana-Michigan Electric Company.

Associated Building Contractors of Terre Haute, Indiana, is an association of employers doing business in the vicinity of Terre Haute, Indiana, which exists and functions, *inter alia*, for the purpose of representing its members in collective bargaining with Local 75 and other labor organizations.

Glenn W. North Construction Co., Inc., an Indiana corporation having its principal office and place of business in Terre Haute, Indiana, is a general contractor in the building and construction industry and during the calendar year 1957 performed services of a value in excess of \$500,000 within the State of Indiana for Commercial Solvents Corporation—a New York concern which during the calendar year 1957 shipped goods of a value in excess of \$50,000 directly across State lines.

Based upon the pleadings and the evidence presented in this matter it appears, and the Trial Examiner finds, that the employers involved herein are engaged in commerce or in operations affecting commerce within the meaning of Section 2(6) and (7) of the National Labor Relations Act, as amended (herein called the Act).

Locals 24 and 75 are labor organizations within the meaning of Section 2(5) of the Act.

## III. THE UNFAIR LABOR PRACTICES

## The Hiring Halls

## A. With Booth and Flinn

At the times material herein, B & F was engaged in the construction of a powerplant (known as the Breed plant) near Fairbanks, Indiana, and this case concerns events connected with this project. Construction of this plant began in July 1957.

In July 1957, but prior to the commencement of construction operations, Cornell M. (Bud) Wiggins (general superintendent of the Breed project) and Duncan R. McLeod (general superintendent of construction for B & F) met in Terre Haute, Indiana, with representatives of various craft unions, including the business agent for Local 75. There is a dispute herein as to whether on this occasion B & F Representative McLeod signed the then existing agreement between Local 75 and the ABC. The evidence with respect to this matter is far from clear and the only positive evidence that B & F Representative McLeod signed a collective-bargaining agreement with Local 75 is contained in a prehearing affidavit given by McLeod. At the hearing before the Trial Examiner, McLeod repudiated the statements in his affidavit that he had signed such an agreement. Viewing McLeod's testimony in isolation (without regard to other evidence in this matter), the Trial Examiner would be inclined to reject his oral testimony and accept his prehearing affidavit. However, it may not be viewed in this light. In the light of the entire record and the reasonable inferences therefrom, it appears more probable that an instrument other than a collective-bargaining agreement (a health and welfare agreement—which is not under attack herein) was signed and the Trial Examiner believes and finds that the preponder-

ance of the evidence does not establish that a collective-bargaining agreement was executed by B & F and Local 75. The allegations of the complaint against B & F to the effect that B & F and Local 75 "maintained and enforced closed shop preferential hiring conditions . . ." are premised upon the General Counsel's contention that B & F signed a collective-bargaining agreement with Local 75. Having found that the evidence adduced does not support this premise, the Trial Examiner recommends that these allegations of the complaint be dismissed.

In August 1957, but prior to the commencement of construction operations, Fred Smith, secretary of Local 24 and its business agent, called upon Project Superintendent Wiggins and advised him that the Breed project was within the territorial jurisdiction of Local 24 and requested, and obtained, an agreement concerning rates of pay and other conditions of employment. Further, Wiggins orally agreed to follow Local 24's rules and regulations and to notify Smith when he needed cement masons.

The collective-bargaining agreement between B & F and Local 24 by its terms is effective April 1, 1957 to April 1, 1959. It was signed by B & F on August 10, 1957.<sup>1</sup> In general this agreement defines the various types of work, such as brickmasonry, stonemasonry, cementmasonry, etc., and establishes wage rates. In only one instance—with respect to artificial masonry, a type of work not involved herein—does it provide that the work shall be done by union members. Also, the agreement does not provide, as contended by the General Counsel, that foremen shall be members of the Union. It does provide, however, that foremen shall be "bona fide" stonemasons, stonemasons, etc. There is no contention herein that the parties interpreted "bona fide" to mean that foremen shall be members of the Union and acted accordingly. On October 31, 1958, Union Business Agent Smith and Project Superintendent Wiggins agreed, in the light of the then current decisions of this Board, to void any and all provisions in conflict with the decision of this Board and a notation to this effect—"any part of this agreement that is in conflict with the ruling of the National Labor Relations Board is void after 10-31-58"—was added to the contract on November 1, 1958. However, it is now well established that a general savings clause does not make valid an otherwise unlawful understanding or arrangement. See *Honolulu Star-Bulletin*, 123 NLRB 395 and *Argo Steel Construction Company*, 122 NLRB 1077.

The bylaws of Local 24, which Project Superintendent Wiggins agreed to follow, provide, *inter alia*:

Article XIII, Stewards Report and Duty; Section 1. There shall be a steward on each job of work, elected by the bricklayers, whose duty shall be to see that bricklayers working on the job have their cards and collect any assessment or fines that the financial secretary may order . . . . He [the steward] shall see that the Constitution and By-Laws are lived up to in full . . . .

Article XIII, Section 2. Any member not abiding by the decision of the Steward shall at the next regular meeting be fined as the union may direct.

Article XIII, Section 6. The first journeyman on the job shall be the steward until one is appointed by the union or a deputy.

Article XVI, Discipline, Section 2. The members of this union shall refuse to work with any member suspended for nonpayment of dues or fines, until such arrears are paid.

Article XVI, Section 5. Any member encouraging laborers to lay bricks shall be fined not exceeding . . . .

Article XVI, Section 6. The members of this union will not be allowed to work with any outsiders, either as foreman or journeymen without they first get the application to become members, from the Secretary.

Article XVII, Section 2. Each job must have a steward at all times, and all bricklayers and apprentices must have a paid up working or dues book of the B.M. & P.I.U., Apprentice working card or permit for inspection.

The bylaws also require certain safety precautions and subject foremen to fines by the union for violations thereof.

Consideration of the contractual provisions together with the bylaws reveals that a greater degree of union security than is permitted by the Act is provided—certainly the provisions of the bylaws by inference, if not by their express terms, limit employment to union members. For example, employees must have paidup dues or permit cards and must refuse to work with persons not having such cards and are not

<sup>1</sup> The transcript shows this date as August 10, 1958 (transcript page 75). However it is clear from the entire record herein that this is an error and the correct date is as noted above. The transcript is hereby corrected accordingly.

allowed to work with outsiders—which means with persons who are neither applicants for membership in, nor paid-up members of, the union. Further, under the bylaws, foremen (who are supervisors under the terms of the statute involved) are required to be members of, or applicants for membership in, the union and, consequently, subject to union discipline. Clearly under the *Honolulu Star-Bulletin* case, *supra*, such a situation is unlawful. In addition, the understanding between B & F and Local 24 that Local 24 would be notified when, and as, cementmasons were needed, in the light of the undisputed evidence herein that B & F did in fact notify Local 24 and obtain cementmasons through that organization when, and as, needed,<sup>2</sup> and the fact that B & F's custom and practice is to employ union members and obtain them through union organizations<sup>3</sup> and in the light of the foregoing contract and bylaw provisions, establishes an unlawful hiring hall arrangement and practice.<sup>4</sup>

## B. Local 75 hiring hall with employers other than Booth and Flinn

### 1. With ABC

In April 1956, Associated Building Contractors of Terre Haute, Indiana (ABC), and Local 75 signed two collective-bargaining agreements—one relating to cement masons and the other to plasterers—effective from April 1, 1956, to April 1, 1959, which constitutes the basis for the allegations herein concerning unlawful hiring halls. However, in accordance with General Counsel Fenton's publications suggesting that employers and unions in the construction industry voluntarily correct their unlawful hiring arrangements,<sup>5</sup> ABC and Local 75 undertook to correct any illegal hiring arrangements that may have existed and the agreements noted above were superseded by new agreements between ABC and Local 75 executed on October 2, 1958, and effective until April 1, 1959. Counsel for the General Counsel concedes that the superseding contracts "cleaned up" the earlier agreements and the *Brown-Olds* reimbursement remedy is not sought with respect to the hiring halls under consideration. Nevertheless, an order requiring Local 75 not to give effect to any illegal hiring hall arrangement with ABC is sought. ABC and Local 75 contend that no illegal hiring hall existed and that, in any event, the superseding contracts "cleaned up" the situation and that the allegations of the complaint with respect to these hiring halls should be dismissed. Assuming *arguendo*, that the superseding contracts "cleaned up" the situation, the allegations of the complaint should not be dismissed. Clearly the General Counsel's releases noted above had no such connotation and the Supreme Court has held that unfair labor practice proceedings are not mooted by either the termination of the particular incident giving rise to the violation or by the discontinuance of the total course of unfair conduct. *N.L.R.B. v. Mexia Textile Mills, Inc.*, 339 U.S. 563, 567-568; *N.L.R.B. v. Pool Manufacturing Co.*, 339 U.S. 577.

The ABC-Local 75 agreement relating to cementmasons effective from April 1, 1956, states, *inter alia*:

#### Section 1

This Agreement shall be known as a Union Shop Agreement and nothing shall be construed herein to violate any law or deprive any one of their legal rights as a citizen of the State of Indiana or of the United States.

<sup>2</sup> Some cementmasons were obtained by B & F from sources other than Local 24. However, such fact does not nullify an otherwise unlawful arrangement. See *Honolulu Star-Bulletin, supra*.

<sup>3</sup> The findings concerning B & F's custom and practice are based upon the testimony of Karl Warner, vice president of B & F, and the testimony of Project Superintendent Wiggins.

<sup>4</sup> The safeguards which the Board deems necessary to rebut the inference that the hiring hall unlawfully encourages membership in the union (see *Mountain Pacific Chapter of the Associated General Contractors, Inc., et al.*, 119 NLRB 883, *Los Angeles-Seattle Motors Express, Incorporated*, 121 NLRB 1629; and *Joint Council of Teamsters No. 37, et al. (J. A. Jones Construction Company et al.)*, 122 NLRB 514) are not provided for herein. In addition, at the times material herein there was a "Right to Work Law" effective in Indiana—where the events involved occurred.

<sup>5</sup> In February 1958, the General Counsel notified employers and unions in the construction industry that if they voluntarily corrected their unlawful hiring arrangements by June 1, 1958, he would recommend that the Board dispense with the *Brown-Olds* remedy in "cases currently pending or brought before the Board with respect to such illegal hiring arrangements." In April 1958, the General Counsel extended this moratorium to September 1, 1958. In August 1958, the General Counsel further extended the moratorium to November 1, 1958.

## Section 2

Party of the first part [ABC members] agrees to employ members of party of the second part [cementmason members of Local 75] on all work coming under their jurisdiction. Employer must inform the Business Agent [of Local 75] of location and estimated duration of job.

## Section 3

All decisions handed down by the N.L.R.B. Joint Board of Jurisdictional Awards, Referees and International Agreements shall be strictly complied with.

## Section 5

When one man is employed on a job he shall be rated as a foreman and receive foreman's rate. When two or more men are working it shall be optional with the Contractor as to whom shall be foreman. Cement Mason Foreman shall have full authority to hire, layoff and discharge all Cement Masons working under him. He shall be in good standing with O.P. and C.M.I.A., A F. of L.

This section shall not be construed to, in any way, limit the authority of the employer.

## Section 6

There shall be a Steward on each crew. He shall be appointed by the Business Agent, and act as his representative on the job. He shall not be terminated as long as there are two Cement Masons working. He cannot be discharged for performing his duties to the Union.

## Section 9

No cement mason shall be subjected to a physical examination, except . . .

The employers right to determine the qualifications of his employees shall not be limited by this Section 9.

## Section 14

Any employer who shall sublet any work on any project which requires the employment of cement masons or mason, shall sublet the same in accordance with the terms of this agreement.

The employer shall immediately notify the Local Union Business Agent of the subletting of any work of the Cement Masons, giving the location of the work and name and address of the Sub-Contractor.

## Section 18

The International Constitution and the Local Revised Cement Masons Working Rules shall be considered a part of this agreement.

The ABC-Local 75 agreement relating to plasterers effective from April 1, 1956, provides, *inter alia*, that "the International Constitution and Local Working Rules shall be considered a part of this Agreement. . ."

The International constitution, effective until May 1957,<sup>6</sup> contains the following significant provisions:

Sections 36 through 47 require dues books, traveling cards and work permits.<sup>7</sup>

Sec. 72. Any member of the O.P. and C.M.I.A. who while acting in the capacity of a foreman shall transgress the rules and laws of the Local Union in whose jurisdiction he is working, or who, by his conduct renders himself obnoxious and detrimental to the general welfare of the O.P. and C.M.I.A., is liable to be debarred from acting in the capacity of foreman if found guilty after a fair and impartial trial by the Local Union. Such debarment shall apply only to the jurisdiction of the Local Union inflicting the penalty or to the jurisdiction of the District Council of which the Local Union may be affiliated.<sup>8</sup>

<sup>6</sup> The constitution of the International was revised at a convention held May 13-17, 1957, after the present contract was signed. It was further revised on April 24, 1958, and January 6, 1959. Whether the 1959 revisions "cleaned up" what might be considered illegal provisions is not before the Trial Examiner and not determined herein.

<sup>7</sup> Similar provisions are contained in the constitution as revised in 1958 and 1959.

<sup>8</sup> This section was not revised at the convention held in May 1957. It was revised on April 24, 1958, by changing the possible penalty from debarment to open reprimand, fine, suspension from union membership or office or position of trust, or "such punitive measures as may be appropriate and legal."

Section 80 . . . on all work being done in the jurisdiction of a Local Union by an employer from another jurisdiction fifty percent of the men employed must be local men. Six months' membership in the Local Union shall constitute a local man.

On all jobs performed by employers from areas other than the jurisdiction of the Local Union where the job is being done that require the services of only one man, the man employed need not be a member of the Local Union if in possession of a Traveling Card at the time of job start, or is a member in good standing of an adjoining Local Union. On all jobs requiring the employment of an odd number of men in excess of one, the odd man shall be a member of the Local Union in whose jurisdiction the work is being performed.<sup>9</sup>

Section 102. No agreement can or will be entered into by any Local union of this Association which in any way restricts or abrogates the right of this Association to control or discipline its members. Or which conflict in any way with the principles of the Constitution and By-Laws of this Association . . .<sup>10</sup>

Sections 126 through 131 require that plastering work be done by members of the Union.<sup>11</sup>

Section 132 requires (although not as clearly as it might) that cement masons' work be performed by members of the Union.<sup>12</sup>

Section 151. No member of any Local Union shall be allowed to work for any employer or builder who is employing non-union men in another city where a subordinate Local Union exists, nor shall they be allowed to work for any firm or corporation after the General Executive Board has decided said firm or corporation unfair.<sup>13</sup>

Section 157. All foremen over Plasterers or Cement Masons must be recognized members of the trade they supervise, and members of the O.P. and C.M.I.A.<sup>14</sup>

The Local Revised Cement Masons Working Rules referred to in section 18 of the collective-bargaining agreement which were effective at the time of the agreement and until July 22, 1958, when they were declared null and void, contains the following significant provisions:

Article XXI. Section 1. Cement Masons must present a referral card showing he is paid up on work dues and monthly dues to employer before being hired.

Article XXI. Section 4. There shall be a Cement Mason Steward on each crew. He shall be appointed by the Business Agent and act as his representative on the job.<sup>15</sup> It shall be the duty of all parties covered in the agreement to immediately report to the steward any violations of the agreement, International Constitution or Local By-laws.

## 2. With Glenn W. North Construction Co. Inc.

Glenn W. North, a contractor not a member of the ABC who operated under the names of Glenn W. North Construction Company and Glenn W. North Construction Co. Inc., in April 1956, became a party to the collective-bargaining agreement effective April 1, 1956, to April 1, 1959, and relating to cementmasons (mentioned above) and, like contractor members of the ABC, endeavored to comply with the terms thereof.

In addition to the written instruments noted above, the record reveals that the parties affected by the agreements endeavored to comply with the terms thereof and that in fact, unlawful conditions of employment—closed-shop conditions—prevailed at the times material herein.

<sup>9</sup> This section was eliminated by the May 1957 revisions. It was inserted in a revised form by the April 24, 1958, revisions.

<sup>10</sup> These provisions were not affected by the 1957, 1958, or 1959 revisions.

<sup>11</sup> Similar provisions are contained in the constitution as revised at the convention held in May 1957, and the revisions made in 1958 and 1959 did not affect these provisions.

<sup>12</sup> This requirement was not changed by subsequent revisions.

<sup>13</sup> These provisions were not revised by the 1957 convention. Substantial revisions were made on April 24, 1958. Members are not now barred from working with nonunion men or from working with "unfair" employers.

<sup>14</sup> Not changed by the 1957 revisions. Revised by the April 24, 1958, revisions. Not now clear whether foremen are or are not required to be members of the Union.

<sup>15</sup> Under the bylaws of Local 75 the business agent is charged with the duty "to see that the rules of the Union are not violated. . . ."

The ABC and Local 75 seem to contend that section 1, section 3, and the last parts of sections 5 and 9 of the contract constitute a savings clause that makes the agreement valid if it is otherwise invalid. Such contention is hereby rejected. See *Honolulu Star-Bulletin, supra*, and *Argo Steel Construction Company, supra*. Indeed, the facts in the instant matter closely parallel the facts in the cases just cited.

The Trial Examiner believes and finds that the aforesaid contract provisions and the hiring practices pursuant thereto constitute violations of Section 8(b)(2) and (1)(A) by Local 75 and that an order proscribing such conduct is appropriate herein. Since the General Counsel made clear (at the hearing and in his brief) that the *Brown-Olds* reimbursement remedy is not sought with respect to the conduct under consideration, no such remedy is recommended. But see *Argo Steel Construction Company, supra*, footnote 17.

#### Unions Causing Booth and Flinn To Refuse Employment to Virgil Copeland

The General Counsel contends that Copeland would have been employed by B & F as a cementmason on various dates between August 29, 1957 (when the first journeyman cementmason worked at the Breed project), and August 18, 1958 (when Copeland first worked at the project), but for the conduct of Locals 24 and 75 in causing B & F to refuse employment to Copeland. The complaint herein does not allege that B & F violated the Act by refusing employment to Copeland, but does allege that Locals 24 and 75 violated the Act by causing B & F to refuse such employment.

Prior to the events involved herein (in 1956) Local 75 levied a fine or assessment against Copeland (a cementmason) in the sum of \$69.30. He appealed the matter to the International Union. While the matter was pending on appeal he was informed that he did not have to pay the fine or assessment unless he wanted to work in the territorial jurisdiction of Local 75. He did not pay the fine or assessment.

In February 1957, Copeland requested, and received from, Local 24's business agent (Fred Smith) a permit to work on a school in the territorial jurisdiction of Local 24. In the course of the conversation, Smith remarked that the new powerplant (the Breed project) would be getting under way soon and that he (Smith) anticipated that when that happened, there would be a lot of work for cement-masons. Similar comments were made by Smith to Copeland during the months of April and May 1957.

Around the first of June 1957, Copeland again conferred with Business Agent Smith about work at the Breed project when it got under way. On this occasion, Smith told Copeland that he (Copeland) would not get work in Local 24's jurisdiction until he "got right" with Local 75 by paying the \$69.30 fine or assessment. When Copeland showed Smith a letter from the International union stating that he did not have to pay Local 75 unless he desired work in the territorial jurisdiction of Local 75, Smith answered, "I don't know what to tell you." Later that month, Copeland asked Smith to hold the \$69.30 until the International union made a final determination of the matter and Smith refused to act as a "collecting agency" for Local 75.

In July 1957, Copeland again called upon Business Agent Smith about work at the Breed project when it got under way. On this occasion Smith showed Copeland a letter from the business agent of Local 75 (to Smith) reading as follows:

Virgil Copeland owes Local #75, for 126 hours he worked on the Clay City bridge on Road 59, at 55¢ per hour, total \$69.30.

He refused to bring his traveling card in Local #75, demanded foreman's wages when my Cement Mason, Roy Perius, worked on the job with him.

He causes trouble on every job he has been on in this jurisdiction, and as far as I am concerned he can keep the \$69.30, and stay out of this jurisdiction.

Enclosed is our International Constitution and Local By-Laws.

Hope you and Rosa are feeling O.K.

and told Copeland that he could not work in Local 24's jurisdiction until he "got right with Local 75."

Copeland made no further efforts to get work at the Breed project through Business Agent Smith. However, in September 1957, he applied to Smith for a permit to work on the courthouse in Sullivan, Indiana (in Local 24's jurisdiction), but it developed that no such work was available and no permit was issued. Also, in May 1958, Copeland sought, through Smith, work on Highway U.S. 41 and Smith told him he (Smith) did not know whether cementmasons were needed on this job but that he (Copeland) might be able to get work there and suggested that he (Copeland) contact the contractor (R. H. King), which Copeland did.

The General Counsel contends that Smith's statements to Copeland that he would have to get right with Local 75 to get work in the jurisdiction of Local 24, in the context noted above, meant that Copeland would have to get right with Local 75 to get work at the Breed project and it would have been futile for Copeland to seek work at this project, through Smith, after such remarks. The Trial Examiner concurs and so finds. The General Counsel further contends that in view of the above, the hiring hall arrangement between Local 24 and B & F (mentioned earlier in this report), the fact that Smith was called upon by B & F to supply cementmasons at a time when Smith knew that Copeland was seeking work there, and the fact that Smith supplied B & F with cementmasons other than Copeland, that Local 24 caused B & F not to employ Copeland. The Trial Examiner concurs and so finds. See *Schenley Distillers, Inc.*, 122 NLRB 613.

The contentions that Local 75 caused B & F to refuse employment to Copeland are premised upon the theory that there was a collective-bargaining agreement between B & F and Local 75 and upon statements made in an affidavit (by George Greenleaf, business agent for Local 75)<sup>16</sup> which the Trial Examiner rejected as evidence. As noted above, the evidence adduced does not establish a collective-bargaining agreement between B & F and Local 75. The Trial Examiner has reconsidered his ruling rejecting the affidavit and adheres to the ruling made. Accordingly, the Trial Examiner recommends dismissal of the allegations of the complaint to the effect that Local 75 caused B & F to refuse employment to Copeland.

#### Local 75's Causing Employers Other Than B & F To Refuse Employment to Copeland

The complaint herein alleges that Local 75 caused Glenn W. North Construction Co., Inc., and Newlin-Johnson Development Co. to refuse employment to Copeland.

As noted above, unlawful hiring hall arrangements existed between the ABC (of which Newlin-Johnson Development Co. was a member) and Local 75 and between North and Local 75.

The Trial Examiner does not understand the General Counsel's position concerning Local 75's causing North to refuse employment to Copeland. Apparently he contends that Copeland was promised employment by North if he could get clearance from Local 75 and that Local 75 refused to give such clearance. While the record as a whole suggests that possibly these events occurred, the evidence adduced is far from clear and, in any event, is insufficient to establish anything more than a suspicion in this regard. Accordingly, it is recommended that these allegations of the complaint be dismissed.

According to Copeland, in September or October 1958, he was told by Newlin-Johnson's supervisor that there would be work for cementmasons within the next few days and he (Copeland) would be given such work provided he obtained clearance from Local 75. Copeland testified further that he called upon Local 75's business agent (Edward G. Van Bibber) and sought such clearance and Van Bibber told him he would have to move his union membership from Local 114 at Vincennes, Indiana, to Local 75 if he wanted any more work in the jurisdiction of Local 75. The General Counsel's contentions concerning Local 75's causing Newlin-Johnson Development Co. to refuse employment to Copeland are premised upon these remarks by Van Bibber. Van Bibber denied Copeland's version of this conversation and testified he said, "Virgil, if you are going to work in this jurisdiction, why don't you put your traveling book in like the rest of the people does and be like the rest of them?" Prior to this conversation between Copeland and Van Bibber, Local 75 had mailed a letter (dated July 16, 1958) to contractors employing cementmasons advising them that Local 75 had no objection to the employment of Copeland and Copeland had been working within Local 75's territorial jurisdiction with the knowledge and consent of Local 75. Viewed in this light, the Trial Examiner believes Van Bibber's testimony more reliable than that given by Copeland and credits his (Van Bibber's) version thereof. In view of the foregoing, the Trial Examiner recommends that the allegations of the complaint to the effect that Local 75 caused Newlin-Johnson Development Co. to refuse employment to Copeland be dismissed.

#### Ultimate Findings and Conclusions

In summary, the Trial Examiner finds and concludes that: (1) By the aforementioned contract provisions and hiring practices between Local 24 and B & F, Local 24

<sup>16</sup> Stating *inter alia*, that there was an agreement between Locals 24 and 75 that when Local 24 needed cementmasons to fill jobs at B & F they would be supplied by Local 75.

violated Section 8(b)(2) and (1)(A) of the Act and B & F violated Section 8(a)(3) and (1) of the Act; (2) by causing B & F to refuse employment to Virgil L. Copeland, Local 24 violated Section 8(b)(2) and (1)(A) of the Act; (3) by the aforementioned contract provisions and hiring practices between ABC and Local 75 and between Glenn W. North Construction Co., Inc., and Local 75, Local 75 violated Section 8(b)(2) and (1)(A) of the Act; (4) these unfair labor practices occurring in connection with the operations of the businesses involved herein, have a close, intimate, and substantial relation to 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; (5) the evidence adduced is insufficient to establish that Local 75 and B & F operated under an unlawful hiring hall arrangement and practice affecting employees of B & F; (6) the evidence adduced is insufficient to establish that Local 75 caused B & F to refuse employment to Virgil L. Copeland; (7) the evidence adduced is insufficient to establish that Local 75 caused Glenn W. North Construction Co., Inc., to refuse employment to Virgil L. Copeland; and (8) the evidence adduced is insufficient to establish that Local 75 caused Newlin-Johnson Development Co. to refuse employment to Virgil L. Copeland.

#### THE REMEDY

Having found that Respondents have engaged in unfair labor practices in violation of the Act, the Trial Examiner recommends that Respondents, to effectuate the policies of the Act, cease and desist therefrom and take the affirmative action hereinafter specified.

In view of the unfair labor practices found, the Trial Examiner recommends the application of the *Brown-Olds*<sup>17</sup> remedy to expunge the effect of the illegal conditions of employment imposed upon employees of B & F. No such remedy is recommended with respect to the arrangements and practices involving employees of members of ABC in view of the "clean up," noted above, and the position taken by the General Counsel, noted earlier in this report. No such remedy is requested, or recommended, with respect to arrangements and practices involving employees of Glenn W. North Construction Co., Inc. Also, the parties were not put on notice that such a remedy might be sought with respect to North's employees. In addition, it is presumed that North, as in the past, follows the arrangements existing between Local 75 and ABC and is now following the "cleaned-up" arrangements.

The General Counsel seeks an order requiring Local 24 to notify B & F and Copeland that Local 24 has withdrawn its objections to the hiring and continued employment of Copeland by B & F. The evidence herein does not reveal that Local 24 notified B & F that it objected to the hiring and continued employment of Copeland. Furthermore, Copeland was employed by B & F on August 18, 1958, with the full knowledge and consent of Local 24, and thereafter worked for B & F without complaint from Local 24 until he was discharged, apparently for cause. Under these circumstances the General Counsel's request now under consideration is hereby rejected.

[Recommendations omitted from publication.]

<sup>17</sup> *United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry, et al. (J. S. Brown-E. F. Olds Plumbing and Heating Corporation)*, 115 NLRB 594, 597-602.

**DIFCO Laboratories, Inc. and International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, (UAW) AFL-CIO,<sup>1</sup> Petitioner.** *Case No. 7-RC-4557.*  
*December 1, 1960*

#### DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before John F. Foley, hearing

<sup>1</sup> The name of the Petitioner appears as amended at the hearing.