

SuCrest Corporation and Burton Hall.**Sugar Workers Council of North America, I.L.A., AFL-CIO and Burton Hall.****Sugar Workers Council of North America, I.L.A., AFL-CIO and Burton Hall and Pepsi-Cola Company, Party in Interest. Cases 29-CA-217, 29-CB-69, and 29-CB-78.**

June 19, 1967

DECISION AND ORDERBY CHAIRMAN McCULLOCH AND MEMBERS BROWN
AND ZAGORIA

On July 14, 1966, Trial Examiner Ramey Donovan issued his Decision in the above-entitled proceeding, finding that Respondents SuCrest Corporation and Sugar Workers Council of North America, I.L.A., AFL-CIO, had engaged in certain unfair labor practices, and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, Respondents and the General Counsel filed exceptions to the Decision and supporting briefs, and the Charging Party filed a brief.

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

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and briefs, and the entire record in the case,¹ and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner to the extent consistent herewith:

As more fully appears in the Trial Examiner's Decision, Respondent Council, in letters dated April 13 and 14, 1965, demanded that SuCrest and Pepsi-Cola discharge certain named employees² for failing to pay dues claimed by Respondent Council. Thereafter, the named employees paid the dues demanded to the Respondent Council. The payment by the SuCrest employees followed SuCrest's April 16 posting of a notice warning that those employees delinquent in their Council dues would be "subject to layoff" if they did not pay the dues. Respondent SuCrest posted its notice as a result of

Respondent Council's urging that it take action in the matter. Plainly, the Council attempted to, and did, cause discrimination against employees for nonpayment of union dues in violation of Section 8(b)(2) of the Act, unless its conduct was sanctioned by a union-security agreement lawful under the proviso to Section 8(a)(3) of the Act. Absent the existence of such an agreement, SuCrest's discrimination against its employees was also not protected and it must be held in violation of Section 8(a)(3), as the Examiner finds.³

The proviso to Section 8(a)(3) specifies that union-security agreements are available only to a "labor organization [which] is the representative of the employees as provided in section 9(a)" We agree with the Examiner that, on the facts presented here, Respondent Council had not, at times relevant herein, achieved the status of bargaining representative for either group of the employees involved; and that its participation in the negotiation and signing of the contracts asserted as a defense herein appears to have been only as a "servicing or coordinating body." The Council therefore was not party, as a Section 9(a) representative, to any union-security contract with SuCrest or Pepsi-Cola which would have entitled it to take the action complained about in this case. And we reach this conclusion notwithstanding the purported affiliation of Local 1476 with the Council; for, assuming *arguendo*, that the affiliation was properly accomplished,⁴ it does not follow, nor has it been shown, that such affiliation invested the Council with such status as would have permitted it under the Act to enforce its dues collection as herein. Accordingly, we conclude that Respondent Council violated Section 8(b)(2) and (1)(A) of the Act, and that Respondent SuCrest violated Section 8(a)(3) and (1) of the Act.⁵

In remedying these violations,⁶ we shall order the reimbursement of Council dues paid as a result of Respondents' unlawful conduct. Thus, we shall direct Respondent Council to reimburse those 46 SuCrest employees named in the April 13, 1965, letter and the 31 Pepsi-Cola employees named in the April 14, 1965, letter for the Council dues they paid from April to September 1, 1965,⁷ under the threat to their employment posed by the April letters. We shall also order that Respondent SuCrest, because of its unlawful discriminatory action in forcing the payment of Council dues, be jointly and severally liable for the dues reimbursement to the SuCrest employees. However, in the attendant circumstances, including the fact that Respondent SuCrest acted

¹ Respondents' requests for oral argument are hereby denied, since, in our opinion, the record, exceptions, and briefs adequately set forth the issues and positions of the parties.

² Forty-six employees were listed in the April 13 letter to SuCrest, and thirty-one were named in the April 14 letter to Pepsi-Cola.

³ Pepsi-Cola is not a respondent in this case.

⁴ The validity of the asserted affiliation under the I.L.A. constitution is a question relating to internal union government,

properly addressed to another forum.

⁵ In view of our holding, we deem it unnecessary to pass on other grounds advanced by the Examiner to support his finding of violations.

⁶ As already indicated, we find that Respondent Council's violations date from April 13 and 14, 1965, and Respondent SuCrest's violation dates from April 16, 1965.

⁷ No Council dues were demanded of SuCrest and Pepsi-Cola employees after September 1, 1965.

at the insistence of Respondent Council in pressuring the employees to pay Council dues, we deem it appropriate to make the Respondent Union primarily responsible for the reimbursement of dues to SuCrest employees, with the Respondent SuCrest only secondarily liable.⁸ The dues are to be repaid with interest in accord with *Isis Plumbing & Heating Co.*, 138 NLRB 716.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Recommended Order of the Trial Examiner and hereby orders that Respondent Sugar Workers Council of North America, I.L.A., AFL-CIO, its officers, agents, and representatives, and Respondent SuCrest Corporation, Brooklyn, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order, as herein modified:

1. Delete paragraphs 2(a) and 2(b) of the Order against Respondent Council and substitute the following:

"(a) In conjunction with Respondent SuCrest, with Respondent Council primarily liable, reimburse the 46 SuCrest employees for the Council dues they were unlawfully compelled to pay between April and September 1, 1965."

"(b) Reimburse the 31 Pepsi-Cola employees for the Council dues they were unlawfully compelled to pay between April and September 1, 1965."

2. Delete paragraph 2(a) of the Recommended Order against Respondent SuCrest and substitute the following:

"(a) In conjunction with Respondent Council, with the Respondent Council primarily liable, reimburse the 46 SuCrest employees for the Council dues they were unlawfully compelled to pay between April and September 1, 1965."

3. Delete paragraphs 3 and 4 of the "Appendix," and substitute the following:

WE WILL, in conjunction with SuCrest Corporation, with ourselves primarily liable, reimburse to members of Local 1476 employed at SuCrest Corporation all Sugar Workers Council dues unlawfully exacted for the period between April and September 1, 1965.

WE WILL repay to members of Local 1476 employed at Pepsi-Cola Company all Sugar Workers Council dues unlawfully exacted between April and September 1, 1965.

4. Delete paragraph 3 of "Appendix A," and substitute the following:

WE WILL, in conjunction with Sugar Workers Council, with said Council primarily liable, reimburse to members of Local 1476 employed at SuCrest Corporation all Sugar Workers Council dues they were unlawfully coerced into

paying for the period between April and September 1, 1965.

⁸ See *Zoe Chemical Co., Inc.*, 160 NLRB 1001, *N.L.R.B. v. Local 138, Operating Engineers (Nassau and Suffolk Contractors' Assn.)*, 293 F.2d 187, 199 (C.A. 2).

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

RAMEY DONOVAN, Trial Examiner: Burton Hall, an individual,¹ filed a charge against SuCrest Corporation, Respondent Company herein, on April 16, 1965²; and, on the same date, Hall filed a charge against Sugar Workers Council of North America, I.L.A., AFL-CIO, Respondent Union herein,³ involving conduct of Respondent Union with respect to Respondent Company and the latter's employees. On May 18, 1965, Hall filed a charge against Respondent Union involving conduct of Respondent Union with respect to the Pepsi-Cola Company, herein Pepsi, and the latter's employees.⁴

The General Counsel of the Board, through the Regional Director of the Board's Region 29, issued a complaint against Respondent Union on August 13, 1965, in Case 29-CB-78. The allegation of the complaint, as amended on August 30, 1965, is that, pursuant to a contract between Pepsi and Local 1476, I.L.A., AFL-CIO, containing a union-shop provision, Respondent Union and Local 1476, as agent of Respondent, have and are requiring employees covered by the contract to pay moneys to Respondent Union as a condition of employment although Respondent Union is not the representative of said employees as provided in Section 9(a) of the Act. Such conduct is alleged to be in violation of Section 8(b)(1)(A) and (2) of the Act.

After consolidating Cases 29-CA-217 and 29-CB-69, the General Counsel issued a complaint on August 20, 1965, against Respondent Company and Respondent Union. The allegation therein is that, pursuant to a contract between Respondent Company and Local 1476 and Local 976-4, I.L.A., AFL-CIO, containing a union-shop provision, Respondent Union and Respondent Company have required employees covered by the contract to pay moneys to Respondent Union as a condition of employment although Respondent Union is not the representative of said employees as provided in Section 9(a) of the Act. Such conduct is alleged to be in violation of Section 8(a)(1) and (3) and (b)(1)(A) and (2) of the Act.

Respondent Union and Respondent Company in their answers to the complaints have denied the commission of the alleged unfair labor practices.

The three cases aforementioned were thereafter consolidated for the purposes of a hearing and a hearing was held before this Trial Examiner on the two complaints aforementioned in Brooklyn, New York, on March 14 and 15, 1966.⁵

¹ Mr. Hall is an attorney and entered an appearance at the hearing as Burton H. Hall, Esq., appearing *pro se*.

² Case 29-CA-217.

³ Case 29-CB-69.

⁴ Case 29-CB-78.

⁵ After convening the hearing, it appeared that a stipulation of facts by the parties was in a progressive and advanced stage of discussion. The hearing was adjourned on March 14 to facilitate

FINDINGS AND CONCLUSIONS

I. JURISDICTIONAL FACTS

SuCrest Corporation, Respondent, at all times material, maintains its principal office and place of business in New York City, New York, Borough of Manhattan, and a place of business in New York City, New York, Borough of Brooklyn, and places of business in various other States of the United States, where it engages in the processing, sale, and distribution of sugar, molasses, and related products.

During the past year, a representative period, Respondent SuCrest, in the course of its business operations, manufactured, sold, and distributed, at its Brooklyn plant, products valued in excess of \$50,000, of which, products valued in excess of \$50,000 were shipped from said plant in interstate commerce directly to States of the United States other than the State of New York.

Respondent SuCrest is engaged in commerce within the meaning of the Act.

Pepsi-Cola Company is a New York corporation with its principal office and place of business in New York City, New York, Borough of Manhattan, and a plant in New York City, New York, Borough of Queens, and other places of business in various States of the United States, where it, at all material times, engages in the manufacture, sale, and distribution of carbonated beverages and related products.

During the past year, a representative period, Pepsi, in the course of its business operations, manufactured, sold, and distributed, at its Queens plant, products valued in excess of \$50,000, of which, products valued in excess of \$50,000 were shipped from said plant in interstate commerce directly to States of the United States other than the State of New York.

Employer Pepsi is engaged in commerce within the meaning of the Act.

The International Longshoremen's Association, AFL-CIO, herein I.L.A.; Sugar Refinery Workers Local 1476, I.L.A., herein Local 1476; Local 976-4, I.L.A., herein Local 976-4; Sugar Workers Council of North America, I.L.A., AFL-CIO, herein the Council or Respondent Council, are labor organizations within the meaning of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

Background and Facts

For many years, Local 1476 and Local 976-4 have represented units of production and maintenance employees and warehouse employees, respectively.⁶

SuCrest has had a series of contracts with the aforesaid unions. Typical of past contracts is an agreement executed, on February 4, 1963, for the term, October 1, 1962, to September 30, 1963. The introductory paragraph of the agreement states that it is between SuCrest and the I.L.A. "and the latter's local unions," Local 1476 and Local 976-4 "(the three latter parties hereinafter called the 'union')." Except as stated, the provisions of prior agreements are extended and continued in the February 1963 contract. The signatures to the latter are the I.L.A.;

Local 1476; Local 976-4; and SuCrest.

On March 16, 1964, SuCrest entered into a contract with the unions for a term from October 1, 1963, to September 30, 1965. On its caption the printed contract is described as "Agreement between SuCrest Corporation and I.L.A." In the introductory paragraph the agreement is described as between SuCrest, party of the first part, and I.L.A., representing its affiliated Locals, Local 1476, Sugar Workers Council of North America; and Local 976-4 "(the three latter parties hereinafter called the Union), as party of the second part." The recognition clause states that the Company "recognizes the union" as the sole bargaining agency of its employees. The union-security clause requires membership in "the union" as a condition of employment. With respect to checkoff of dues, the contract provides, *inter alia*, that "Each of said Local Unions agrees to indemnify and save harmless the Company of and from all liability with respect to deductions made from the wages of its members pursuant to the provisions of this [checkoff] Article." Article II(e)(4) of the contract provides: "It is distinctly understood that the Warehouse Department is a separate bargaining unit represented by Local 976-4 and that the Production and Maintenance Departments constitute a separate bargaining unit represented by Local 1476." The signatories to the contract were the I.L.A.; Local 1476; Respondent Council; the Company; and Local 976-4.

Pepsi has also had a past history of union contracts. On January 16, 1963, a contract was entered into between Pepsi and "Local 1476, Sugar Refinery Workers of the International Longshoremen's Association, hereinafter referred to as the 'Union' . . ." The term of the contract was January 16, 1963, to September 30, 1965. The union-security clause requires membership "in the Union." The signatories of the contract were Pepsi and Local 1476, by the latter's business agent and committeemen.

With respect to both the most recent SuCrest and Pepsi contracts, aforesaid, representatives of Respondent Council participated in the contract negotiations, together with counsel of the Council, and the latter was paid by the Council.⁷ Before execution of the contracts, they were ratified by the membership of Local 1476.

The Council

In 1957, the I.L.A. adopted a resolution authorizing the issuance of a charter for Respondent Council. In 1961, a number of local unions in the sugar industry, that were affiliated with the I.L.A., organized and became affiliated with the Respondent Council and adopted a constitution.

In July 1963, the I.L.A. held an international convention, and, although Local 1476 was entitled to have its delegation attend the convention and participate therein, Local 1476 did not send any delegates to said convention.

At the aforesaid convention, the delegates thereto resolved, *inter alia*, to amend article V, section 1 of the I.L.A. constitution by adding the following:

The Convention or the Executive Council by two-thirds vote shall be empowered to establish Councils to coordinate the activities of Local unions in the same craft or branch of the industry with such powers

the accomplishment of a complete stipulation. On March 15, an executed stipulation of facts was submitted into the record and oral argument was made on the record. Briefs and memoranda were subsequently filed with the Trial Examiner on April 4, 1966.

⁶ Counsel for Respondent Council stated at the hearing that the local unions had been certified for at least 20 years.

⁷ Counsel for the Council was apparently also counsel for Local 1476.

and functions as the Convention or Executive Council shall prescribe.

In August 1963, the I.L.A. executive council met and approved a proposal that: (1) the existing Respondent Council be incorporated into the I.L.A. structure pursuant to the powers vested in the executive council; (2) Respondent Council possess the powers and rules under which it had been operating; (3) all local unions representing employees in the sugar industry be required to affiliate with the Council.

Following the foregoing, the I.L.A. secretary advised Local 1476 of the aforesaid action of the executive board, and advised that Local 1476 should become affiliated with Respondent Council. The International Union and the Council have adhered to this position.

At no time did the executive board or membership of Local 1476 vote to affiliate with Respondent Council, and, at, at least, two membership meetings of Local 1476, the latter voted not to affiliate with Respondent Council. Respondent SuCrest had no knowledge or notice of these last mentioned facts.

Thereafter, Respondent Council, pursuant to its constitution, convened a special convention on August 31, 1964, upon notice to all local unions affiliated with it. All said local unions were affiliated with the I.L.A. At said convention, the constitution of Respondent Council was amended by unanimous vote of the delegates. A resolution was adopted requiring all members of each local union affiliated with Respondent Council, while employed by an employer under contract with an affiliated local union, to pay Respondent Council dues in the sum of \$2 per month. Local 1476 had failed and refused to send delegates to the aforementioned special convention of the Council.

An action was brought under Section 102, Title I of the Labor-Management Reporting and Disclosure Act of 1959, herein LMRDA, by employee King and others, individually and on behalf of all other members of Local 1476, against Randazzo, as president, or Borrazas, as secretary-treasurer, of Respondent Council, in the United States District Court (*King v. Randazzo*, 234 F.Supp. 388).⁸

The district court had before it, initially, the facts described hereinabove respecting Respondent Council and Local 1476 from 1957 to November 1963. The court, in an opinion, dated July 17, 1964, found "that the action of the Executive Council in establishing the Sugar Council and compelling affiliation of Local 1476 was invalid insofar as it required members of Local 1476 to pay dues to the Sugar Council." The defendants were enjoined from collecting or attempting to collect the dues assessed against the members of Local 1476 by the Sugar Council.

Thereafter, on motion to modify its injunctive order aforescribed, the court issued a further decision and order under date of October 13, 1964. At this time the court had before it the more recent events involving Respondent Council and Local 1476, including the special convention in August 1964, described hereinabove. The court decided that the Council was a labor organization

and had a right to increase dues by a majority vote of delegates voting at a convention. The court found that the Council had acted in accordance with statutory requirements for the increase of dues and the court removed its injunctive prohibition. The court stated that its conclusion "does not constitute a finding by this Court that the Sugar Council has authority from either the ILA or its executive council to impose such an increase in dues upon the members of the various locals; nor is it a finding that such authority is necessary "This Court's jurisdiction is . . . limited to the determination as to whether such processes as are set forth in the provisions of the LMRDA, were complied with by the Sugar Council in imposing the increase in dues."⁹

Action by Respondent Council

On April 13, 1965, on a letterhead of Local 1476, I.L.A., Borrazas wrote to SuCrest. SuCrest knew that Borrazas was an elected official, business agent, of Local 1476. The record is not clear whether SuCrest also knew that Borrazas was an official secretary-treasurer of Respondent Council. The letter stated:

We enclose a list submitted by the Sugar Workers Council, representing these employees who are in arrears in the payment of their dues to the Sugar Workers Council.¹⁰ [Forty-six names are listed.]

Inasmuch as these members have failed to meet their financial obligation, we request that they be discharged in accordance with the Union Shop Provision of the contract.

Upon receipt of the foregoing letter, counsel for SuCrest spoke on the telephone with counsel who represented Respondent Council as well as Local 1476. SuCrest's counsel said that the Company, purely on the basis of the notice, would not discharge all the employees listed in the notice of April 13, 1965. Counsel for Respondent Council and Local 1476 replied that the Company had the minimum duty of explaining to the listed employees the possibility of discharge under the contract. SuCrest then spoke to the employees and the latter indicated that they would pay up the aforementioned dues in arrears. On April 16, 1965, SuCrest posted at its plant the following notice:

We have received a notice from the union to the effect that 46 of our employees are delinquent in their dues and, therefore, subject to discharge under the provisions of the union contract. We have reached an agreement with the Union whereby we will designate 5 men each day who will be subject to layoff unless they live up to their contract and pay up their delinquent dues. These dues, payable to the Sugar Workers Council, amount to a total of \$10 for the period from December through April and must be

regular convention, or at a special convention , or (ii) by majority vote of the members voting in a membership referendum , or (iii) by majority vote of the members of the executive board pursuant to express authority contained in the constitution and bylaws of such labor organization "

⁹ Affd 346 F 2d 307 (C A 2)

¹⁰ The dues to Local 1476 were not in arrears. As appears, the issue was the dues to Respondent Council

⁸ Sec 101(a)(3), LMRDA, provides "Except in the case of a federation of national or international labor organizations, the rates of dues and initiation fees payable by members of any labor organization in effect on the date of enactment of this Act shall not be increased . . . except—(A) in the case of a local labor organization, (i) by majority vote by secret ballot of the members , or (B) in the case of a labor organization, other than a local labor organization or a federation of national or international labor organizations, (i) by majority vote of the delegates voting at a

paid in full on the date shown. In order that you may be aware of your responsibilities, we are listing below the names of the delinquent members and the day for which they have been designated to fulfill this obligations. [Forty-six names on various dates from April 19 to 30.]

Thereafter, all employees listed in the letter of April 13, 1965, paid their dues to Respondent Council as requested in the letter.

On April 14, 1965, on the letterhead of Local 1476, I.L.A., Borrazas, "Business Manager, Local 1476" wrote to Pepsi as follows:

We enclose a list submitted by Sugar Workers Council, representing those employees who are in arrears in the payment of their dues to this organization. [Thirty-one names.]

Inasmuch as these members have failed to meet their financial obligation we request that they be discharged in accordance with the Union Shop Provision of the contract.

Pepsi knew that Borrazas was an elected official of Local 1476. Again, as in the case of SuCrest, it is not clear whether Pepsi knew that Borrazas was an official of Respondent Council. In any event, thereafter, all employees listed in the letter to Pepsi paid their dues to Respondent Council as requested in the letter.

In July 1965, the I.L.A. executive council established a trusteeship over Local 1476 and appointed an I.L.A. vice president, Scotto, as trustee.

Thereafter, Scotto, as trustee, recommended to the I.L.A. executive council that it modify its action of August 1963, described hereinabove, by providing that affiliation by locals with Respondent Council be only after the affirmative vote of the Local's membership, and that, until such affirmative vote, the local be deemed not affiliated with the Respondent Council or be required to affiliate.

In August 1965, the I.L.A. executive council adopted the aforementioned recommendation of Trustee Scotto and amended its action of August 1963 effective September 1, 1965.

Since September 1, 1965, Local 1476 is not affiliated with Respondent Council and the members of the Local have not made and have not been required to pay dues to Respondent Council. When, or if, Local 1476 was affiliated with the Council will be considered at a later point.

¹¹ *Coronado Coal Company v. United Mine Workers of America*, 268 U.S. 295, 299. *United Mine Workers v. Coronado Coal Co.*, 259 U.S. 344, 393, *Di Giorgio Fruit Corp. v. NLRB*, 191 F.2d 642 (C.A.D.C.)

¹² We have previously cited portions of the LMRDA with respect to the distinction made therein regarding the requirements for increasing dues, a distinction being made between a labor organization "other than a local labor organization or a federation of national or international labor organizations." In its definition of a labor organization the above act also makes it clear that, in addition to the more common types of labor organizations, the term also includes "any conference, general committee, joint or system board, or joint council" (Sec. 3(i))

¹³ The Council has its own constitution and officers

¹⁴ Section 8(a)(3) and its proviso. Cf. *NLRB v. Wooster Division of Borg-Warner Corp.*, 356 U.S. 342, 350, where the employer's insistence upon a recognition clause, which excluded a certified International union and substituted in its stead an

CONCLUSIONS

(1) It is well established that a local union, such as Local 1476 in the instant case, is a distinct legal entity apart from the International union with which it is affiliated.¹¹ By the same token we believe that the Respondent Council was a separate and distinct legal entity from either Local 1476 or the I.L.A., the International union.¹²

In addition to the basic legal distinction between a local union; a coordinating body such as Respondent Council;¹³ and an International union, which, in a broad sense, is not only a parent body but also a coordinating body, there is also a distinctive status that resides in a particular labor organization under Section 9(a) of the Labor Management Relations Act, 1947. The specific certified or recognized labor organization that has been designated or selected by the employees in the appropriate bargaining unit is the exclusive representative of said employees. The right of the parties to a contract to include a union-security clause in their agreement is dependent upon, and directly related to, the fact that the labor organization, in which membership is required as a condition of employment, is "the representative of the employees as provided in section 9(a)" ¹⁴

Although the voluntary addition of a party to a contract is permissible, we find nothing in the instant record that persuades us that Local 1476 was not at all times the representative of the unit employees as provided in Section 9(a) of the Act, and that the membership and dues requirements of the union-security clause could and should have related only to that organization.¹⁵ The participation of the Council in the negotiations and its signing of the contract, in addition to the Locals and the International, indicates no more than participation in contract negotiation by the Council as a servicing or coordinating body that also signed the contract. A labor organization does not become the representative of employees under Section 9(a) of the Act by contractual osmosis.¹⁶

Our view that the labor organization, that is the bargaining representative of the employees under Section 9(a) of the Act, is the labor organization whose dues employees are required to pay as a condition of employment under Section 8(a)(3) of the Act, is borne out by a number of considerations. Union-security clauses are a specific exception to the Act's proscription of discrimination against employees for joining or not joining

uncertified local union affiliated with the International, was held to be a refusal to bargain in violation of Section 8(a)(5) of the Act. The Board has also found that an employer's insistence that the local union's parent international become signatory to the contract was a violation of Section 8(a)(5) of the Act, where the local union alone had been certified as the employees' exclusive bargaining representative. *Kut Manufacturing Company, Inc.*, 150 NLRB 662, 672.

¹⁵ As we have seen, the applicable contract expressly stated, *inter alia*, that the production and maintenance departments "Constitute a separate bargaining unit represented by Local 1476." The union-security clause, however, required membership in the ambiguous phrase embraced by the term, "the Union."

¹⁶ Cf. *Univac Division, Sperry Rand Corporation*, 158 NLRB 997, where the Board held "that during the years of collective bargaining between the parties [in centralized negotiations] the Minneapolis servicemen have not been merged into one overall unit, nor has their participation in the centralized negotiations constituted a waiver or loss of their separate identity, as originally certified in 1950."

a labor organization. Such an exception to the general intentment of Section 8(a)(3) and (1) of the Act requires strict construction. Consequently, when the proviso or exception to Section 8(a)(3) requires that the labor organization be the representative under Section 9(a) of the Act, it refers to a specific statutory representative. By the same token, it is that same labor organization that is contemplated under the provisions that permit such a labor organization, in a union-shop contract, to require the payment of its membership dues as a condition of employment. To permit the exaction of membership dues in some other labor organization either in place of, or in addition to, the membership dues in the Section 9(a) representative, is, in our opinion, not contemplated or permissible under the terms of the Act.

In the instant case, the employees paid the membership dues of Local 1476, the Section 9(a) representative. Respondents then required that these Local 1476 employees pay separate and additional dues to another labor organization, the Council, as a condition of employment. The Council was not the Section 9(a) representative of the employees. The employees remained solely members of Local 1476 and at no time were members of the Council. At most, the local union, Local 1476, had purportedly become affiliated with the Council, with the employees remaining members of Local 1476, which, in turn, was asserted to be affiliated with the Council, which was affiliated with the I.L.A., and the latter was affiliated with the AFL-CIO. The logic of Respondents' position would seem to lead to the untenable proposition that membership dues described in the Act to be a condition of employment would be dues payable not only to the Section 9(a) representative, Local 1476, but separate dues that might be imposed by each of the three other bodies, the Council, the I.L.A., and the AFL-CIO. But not one of the latter is the Section 9(a) representative and whatever dues or other requirements they might impose would not be enforceable under the sanction of the union-shop clause, which is the specific prerogative of the Section 9(a) representative.¹⁷ Section 8(b)(1)(A) is not to the contrary.

The district court, *supra*, in an adjudication expressly limited to the LMRDA, held that although the \$2 per month required by the Council from members of Local 1476, was specifically designated by the enacting body, the Council, as a "per capita tax" and not dues, the \$2 was, in fact, dues within the contemplation of the LMRDA. The court also decided, under the same statute, that the \$2 represented an increase in dues as such term was used in the statute. We have no reason to express our view on such matters within the court's jurisdiction under the LMRDA and we defer to the decision thereon.

Considering the \$2 as dues under both the LMRDA and the LMRA, we deem it appropriate to express our view of the nature of such dues under the LMRA.¹⁸ We believe

that the \$2 represented an increase in the dues of members of Local 1476 only in the sense that the total amount of money that they were required to pay, in dues of all kinds, had been increased. Instead of paying \$8 dues to the Local,¹⁹ the employees were now required to pay \$8 to the Local and \$2 to the Council, or a total in dues of \$10, which, in that sense, was an increase in dues. It is comparable to a citizen who pays Federal income tax. The State, in which he resides, then imposes a State income tax. In the broad sense, the man's income taxes have been increased. But it is quite evident that his Federal income tax has not been increased. By the same token, in the instant case, the dues of employee members to Local 1476 remained the same, \$8, but a new dues requirement, to another labor organization, the Council, in the amount of \$2 was imposed.²⁰ This was not an increase in dues owed to Local 1476, the Section 9(a) representative. It is not the dues, which, in our view, were encompassed in Section 8(a)(3) and 8(b)(2) of the Act and which could be exacted under threat of loss of employment pursuant to a union-shop contract.

(2) On the terms of the March 1964 contract, we regard the status of the Council and the obligation of the unit employees thereto, as unclear. As previously described, the caption of the contract states that it is a contract between the Company and the I.L.A., the International union. This description is repeated in an introductory paragraph where the parties are, again, the Company and the I.L.A. It is stated, at this point, the I.L.A. is representing its affiliated locals, Local 1476 and Local 976-4, both being expressly named as such affiliated locals. The Council, of course, was not a local union and neither claimed to be such nor was it named as such. However, after the words about the local unions that the I.L.A. was representing, the name of the Council followed the name of Local 1476.²¹ Respondent SuCrest argues that it is significant that a semicolon was used after the Council's name "whereas commas are used elsewhere to set apart the names of other parties. . . . Respondent SuCrest suggests that such punctuation was intentionally used to indicate and be consistent with the special affiliation of Respondent Union [the Council] and Local 1476. . . ."

In naming the two affiliated locals that the I.L.A. was representing, a comma followed "Local 1476," and then appeared the Council's name. We are inclined to view the comma as indicating that what immediately followed was descriptive. In other words, if the International union writes its full title as "I.L.A., AFL-CIO," the "AFL-CIO" is descriptive and does not mean that the AFL-CIO federation is a coparty with the I.L.A. By the same token, the semicolon separating "Local 1476, Sugar Workers Council of North America" from Local 976-4 would tend to confirm that in the contract negotiations the I.L.A. was representing the two locals as parties and that the Council

¹⁷ As our previous citations demonstrate, an international union, or a council, or a federation can be, in a particular case, the Section 9(a) representative. But in the instant case such is not the fact.

¹⁸ If the \$2 were not dues, it would, presumably, be a per capita tax, which was the description used by the Council when it imposed the obligation. Such a tax, of course, would not be enforceable under penalty of loss of job pursuant to the union-shop contract.

¹⁹ Eight dollars is an arbitrary figure. We do not know the amount. It may have been \$5 or \$10.

²⁰ As we have seen, in April 1965, the Local 1476 members were not delinquent in dues to the Local. They were delinquent in dues to the Council. These latter dues were enforced as a separate dues obligation payable to the Council and were so described.

²¹ "and I L A , representings its affiliated Locals, Local 1476, Sugar Workers Council of North America, and Local 976-4"

was not a party. The contract refers to "the three latter parties hereinafter called the union." Since the contract, as we have seen, is described as between the Company and the I.L.A. and, considering the punctuation described above, it is arguable that the three parties described as "the union" are the I.L.A. and its two locals whom it was representing.²² Respondent SuCrest, in its brief, p. 9, states that the term "the Union" "was used expressly for the purpose of including, as a party, Respondent Union [the Council] as well as Local 1476 and Local 976-4."

The checkoff provision makes no reference to the Council but expressly provides that the two local unions will indemnify the Company from liability with respect to deductions made from wages pursuant to the checkoff provision. The contract also states that the two units are separate bargaining units, one represented by Local 976-4, and the other "represented by Local 1476." The Council is not referred to as representing the employees in either of the two-named units.

Accordingly, although we do not regard the terms of a contract as dispositive of the basic statutory rights and obligations of employees, we view the instant contract, in any event, as ambiguous with respect to the status of the Council and with respect to the obligations of the employees who are members of Local 1476.²³

(3) The General Counsel has stated in his brief that he "does not deal with the problem of whether Local 1476 was affiliated with Respondent [Council] because he feels that it makes no difference whether such affiliation, took place or not." This position apparently stems from the General Counsel's contention that although a union, pursuant to Section 8(b)(1)(A), may make its own rules regarding acquisition or retention of membership, it may not enforce such rules by job discrimination affecting employees. Cases are cited on this point.²⁴

The difficulty with the foregoing position is that the cited cases and similar cases relate to fines and do not involve union dues in the context of a contract containing a union-security clause. Where the internal union rule relates to dues, in the context of a union-shop contract, the Act does permit job discrimination against employees for nonpayment of such dues.²⁵

Without expressly advertent to the abovementioned distinction, although undoubtedly aware of the legal proposition, the General Counsel then states that "no version of the union's constitution, or Respondent's By-Laws or Local 1476's By-Laws can destroy the right of an employee not to pay dues to a labor organization which is not his collective bargaining representative." This we view as a somewhat different point than the proposition about internal union rules and what such rules may or may not do with respect to membership in the Union and job tenure of employees.²⁶ We wish to prescind at this juncture from the question of the Council's status under Section 8(a)(3) and Section 9(a). We have discussed this matter earlier in our decision. We also wish to prescind, at this point, from another facet that we have previously discussed, namely, the ambiguity of the contract.

Since we now confine ourselves to the question of dues that members of Local 1476 were said to be obligated to pay to the Council, we find the matter of considering the question of Local 1476's alleged or asserted affiliation with the Council to be an essential, indeed, an inescapable task. The reason for this is that the basis of Respondent Council's Section 8(b)(1)(A) defense rests on the affiliation of Local 1476 with the Council. In effect, Respondent's proposition is that the Local was affiliated with the Council; the Council, pursuant to duly adopted internal action, enacted that members of affiliated locals pay to the Council dues in the amount of \$2 per month. We have, therefore, in Respondent's view an internal membership rule with respect to dues that requires certain dues from members of Local 1476 to be paid to the Council as a condition of employment under the terms of Local 1476's (and I.L.A.'s and others') contract with SuCrest.

We do not read the decision of the Federal district court in the *King* case, *supra*, as a decision on the merits of the affiliation question involving Local 1476 and the Council. The court expressly stated that the affiliation issue "would involve a question of the internal organization of the union and would not under the circumstances be subject to the jurisdiction of this Court." For the purposes of its initial decision the court assumed that Local 1476 was affiliated with the Council, albeit describing the affiliation as a "unilateral affiliation" (*supra* at 391) "compelled by the Sugar Council" (*supra* at 392). Despite the aforesaid assumption, the court initially concluded "that the action of the Executive Council in establishing the Sugar Council and compelling affiliation of Local 1476 was invalid insofar as it required members of Local 1476 to pay dues to the Sugar Council."

In its second decision, or decision upon motion to modify, the court focused its attention upon an amendment made by the Council to its constitution in August 1964. The amendment provided: "Each member of each local union affiliated with this organization [the Council] shall pay \$2 per month to this organization as per capita tax. . . ." There is little doubt that the Council assertedly considered that Local 1476 was affiliated with the Council but this does not establish the fact of affiliation. The court confined itself to a very limited area, assuming, but not deciding, the fact of affiliation. The court decided: (1) that the \$2 levy was not a per capita tax but dues under Section 101(a)(3) of the LMRDA; (2) that the levy constituted a dues increase under the LMRDA; and (3) that the Council was a labor organization under the LMRDA and had, under the statute, "a right to increase dues by a majority vote of the delegates voting at a regular convention. The Sugar Council having followed this procedure, the increase in dues has been in accordance with the statutory requirements and, therefore, this Court must remove its injunctive prohibition."

In sum, the court decided simply that the Council was a labor organization that, under the LMRDA, could increase its dues by a majority vote at a regular convention and that the Council had done so. To make abundantly clear that it was not passing upon the question as to whom the

²² In the immediately preceding contract, the term, "the Union," was used and it was limited to three parties, the I L A , Local 1476, and Local 976-4

²³ Cf. *Don Juan Co., Inc.*, 79 NLRB 154, 156, where it was stated "that union-security provisions relied upon in justification for discharges must be expressed in clear and unmistakable language "

²⁴ *Bay Counties Carpenters (Associated Home Builders of Greater East Bay, Inc.)*, 145 NLRB 1775, Local 283, U A W (*Wisconsin Motor Corp.*), 145 NLRB 1097

²⁵ Section 8(a)(3) and 8(b)(2)

²⁶ See our discussion under (1), above

Council's increase in dues applied, as a matter of legal obligation, the court stated:

This conclusion [cited in the preceding paragraph, by the Examiner], however, *does not constitute a finding by this Court that the Sugar Council has authority from either the I.L.A. or its executive council to impose such an increase in dues upon the members of the various locals*; nor is it a finding that such authority is necessary. [Emphasis supplied.]

This brings us back to the matter of the affiliation of Local 1476 with the Council since the purported affiliation is the basis of the internal rule (Section 8(b)(1)(A)), whereby membership in Local 1476 is alleged to require payment of dues to the Council.²⁷

At no time did the executive board or membership of Local 1476 vote to affiliate with the Council, and, at least, two membership meetings of Local 1476, the latter voted not to affiliate with the Council. We must therefore look to some other basis for the claim that Local 1476 became affiliated with the Council.²⁸

Although the Council adopted a constitution in 1961 which required payments to the Council by members of local unions affiliated with the Council, this had no application to members of locals that were not affiliated, such as Local 1476. To meet this obvious problem, the executive council of the I.L.A., in August 1963, approved a proposal that *inter alia*, provided that all local unions representing employees in the sugar industry be required to affiliate with the Council. The secretary of the I.L.A. then advised Local 1476 of the aforesaid action of the executive council and further advised Local 1476 that it *should, or was required to*, affiliate with the Council as of October 1, 1963.

We believe that a requirement to affiliate, which was the extent of the I.L.A.'s action, is not the accomplishment of the requirement and it does not constitute affiliation. A requirement that all locals display an American flag in their offices is not the accomplishment itself. Action may be taken to enforce the requirement or rule, such as a fine, expulsion, imposition of trusteeship, and so forth, but until the requirement or rule is either voluntarily complied with or otherwise enforced or accomplished, it remains no more than a requirement. This situation would be the same if the union rule or requirement was that members should not cross picket lines or any other requirement or rule. The requirement that Local 1476 affiliate with the Council did not bring about the required affiliation.²⁹

Equally evident is the fact that the subsequent action, in

August 1964, of the Council, in adopting a resolution, that all members of local unions *affiliated* with the Council should pay the Council \$2 per month, did not bring about the affiliation of Local 1476 with the Council.

There is no evidence in this record that Local 1476 ever became affiliated with the Council, albeit the Council and the I.L.A. undertook to regard the Local as an affiliate of the Council.³⁰

Nor is there a basis for contending that any action of Local 1476 or its members brought about, or was equivalent to, affiliation with the Council. We have already noted that at no time did the executive board or membership of Local 1476 vote to affiliate with the Council and that on at least two occasions the membership voted against such affiliation. Equally unavailing is a possible contention that the payment of dues to the Council by members of Local 1476 in some way brought about or indicated affiliation with the Council. In the instant case, we have seen that, in April 1965, payment of dues to the Council was exacted under the duress of threatened or demanded loss of jobs for asserted failure to pay dues under the union-shop contract. The district court, in its July 1964 decision, also noted that past dues to the Council by members of Local 1476 were exacted under the same duress as was subsequently used.³¹

The participation of the Council in the March 1964, contract negotiations, in the ambiguous capacity previously described, whether as a coparty or otherwise, in no way effectuated the affiliation of Local 1476 with the Council. Nor is the fact that counsel for the Council, who was also apparently counsel for Local 1476, participated in the negotiations and was paid by the Council, helpful to any contention that Local 1476 had somehow affiliated with the Council. Under the circumstances, the ratification of the contract by Local 1476 does not equate with affiliation. Whether the membership of the Local, prior to ratification, had the advice of counsel who was counsel for the Local and for the Council, or whether they had other counsel, or no counsel, we do not know. It would appear likely that, realistically, the ratification focused on the substantive benefits of the contract, such as wages, hours, and working conditions. Legally, ratification would relate to the entire contract but in view of the ambiguous nature of the contract, the contract provisions, dealing with such matters as the contract being between SuCrest and I.L.A.; or between SuCrest and I.L.A., representing its two locals, Local 1476 and 976-4; or whether a nonlocal labor organization, the Council, was in some way

²⁷ Or, using the court's words in describing the area that it did not pass upon, the "authority [of the Council] to impose such an increase in dues upon the members of the various locals."

²⁸ We shall rely upon facts in the instant record and the same or related facts that appear in the court's decision in the King case, *supra*.

²⁹ Without delving into the constitutional powers of the I.L.A., it may be assumed that the I.L.A. could pass a resolution that all locals in the sugar industry are hereby affiliated with the Council. However, this is not the action that was taken. A requirement that citizens pay income tax comes to fruition either by voluntary compliance or by enforcing the requirement. The requirement is, again, not compliance.

³⁰ Apparently, the Council asserts that Local 1476 is affiliated with the Council but this is not even bootstrap evidence. The district court noted in a footnote to its original decision that the Council, in its brief, stated that Local 1476 became affiliated with the Council on or about October 1, 1963, pursuant to the requirement of the I.L.A. executive council in August 1963,

described above. In the absence of any evidence before us or described by the court, we assume that the above-mentioned reference in Council brief can only mean that, since the I.L.A. executive council required Local 1476 to affiliate with the Council by October 1, 1963, the affiliation occurred, *ipso facto*, on October 1, despite the fact that the Local neither voluntarily nor otherwise complied with the requirement by October 1 or thereafter. We have previously indicated our view of such an argument. In the same footnote, the court also noted that Vice President Scotto of the I.L.A. (who was, a year after the court's decision, appointed trustee of Local 1476, in July 1965) stated in an affidavit that Local 1476 became affiliated with the Council as of January 1, 1964. Again, there is no more evidence to support the assertion of affiliation in January 1, 1964, than there is to support the assertion of affiliation in October 1, 1963.

³¹ "From the record, the Sugar Council admits that it has attempted to enforce collection of these illegal dues [to the Council] by jeopardizing the job status of members of Local 1476." *King case, supra* at 393.

represented by the I.L.A. in the negotiations; or in what capacity the Council purported to be acting; or whether "the Union" was the four unions that signed the contract, the I.L.A., the two locals, and the Council; or whether "the Union" was three parties, the I.L.A. and two locals; or the two locals and the Council, we cannot attach determinative significance to the contract ratification, at least on the issue of Local 1476's affiliation with the Council. Indeed, under this same ratified contract, the members of Local 1476 were not complying with the purportedly legal contractual requirement that they pay dues to the Council in addition to their dues to the Local. Under duress of discharge the members then paid their Council dues. This scarcely bespeaks a comprehended affiliation on the Local's part with the Council by reason of the contract ratification.³²

The cornerstone of the asserted obligation of the members of Local 1476 to pay dues to the Council was the alleged affiliation of Local 1476 with the Council.³³ We find the evidence to be convincing that Local 1476 did not affiliate with the Council, albeit the I.L.A. had directed such affiliation. Accordingly, we find no obligation on the part of members of Local 1476 to pay dues to the Council since such obligation, under the various enactments of the I.L.A. and the Council, described above, emanated solely from, and was dependent upon, the affiliation of Local 1476 with the Council. Such affiliation, in our opinion, never occurred or existed.

For the reasons set forth above under our points (1), (2), and (3), above, we find that Respondent Council has violated Section 8(b)(1) and (2) of the Act with respect to the members of Local 1476 under the SuCrest and Pepsi contracts as alleged in the complaint.

Regarding Respondent SuCrest, we find liability under Section 8(a)(3) and (1) of the Act. In some respects SuCrest came within the exemption of the second proviso of Section 8(a)(3). Thus, we believe that on the question of affiliation of Local 1476 with the Council, SuCrest acted reasonably and in good faith. SuCrest reasonably believed as a fact that the Local was affiliated with the Council. On other questions of fact, we also incline to exculpate SuCrest under the aforementioned second proviso. But we do not regard the standard of reasonable knowledge or reasonable action pursuant thereto, to refer to question of law as contrasted to questions of fact. We believe, as we have stated in our point (1), above, that the Council was not the representative of the employees under Section 9(a) of the Act and we believe that the dues obligation of the union-security contract could run only to such representative. Apparently SuCrest (and the Council) did not accept this legal proposition. SuCrest presumably believed that the Local was affiliated with the Council, that the Council had signed the contract, ratified by the Local, and that the Federal district court had decided that

the dues were properly increased. Assuming, arguendo, that SuCrest thereupon concluded in good faith that the employee members of Local 1476 must pay the Council dues as a condition of employment, we find such a conclusion to have been legally erroneous.³⁴

CONCLUSIONS OF LAW

1. SuCrest Corporation and Pepsi-Cola Company are employers within the meaning of Section 2(2) of the Act and are engaged in commerce within the meaning of Section 2(2) and (7) of the Act.

2. Sugar Workers Council of North America, I.L.A., AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. Since October 16, 1964, and until September 1, 1965, Respondent Council has attempted to cause and has caused SuCrest Corporation to discriminate against employee members of Local 1476 in violation of Section 8(a)(3) of the Act and has thereby engaged in unfair labor practices within the meaning of Section 8(b)(2) and (1)(A) of the Act.

4. Since October 16, 1964, and until September 1, 1965, Respondent SuCrest has discriminated against employee members of Local 1476 in violation of Section 8(a)(3) and (1) of the Act and has thereby engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

5. Since January 13, 1965, and until September 1, 1965, Respondent Council has attempted to cause and has caused Pepsi-Cola Company to discriminate against employee members of Local 1476 in violation of Section 8(a)(3) of the Act and has thereby engaged in unfair labor practices within the meaning of Section 8(b)(2) and (1)(A) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent Council and Respondent SuCrest have engaged in unfair labor practices as described and found, it will be recommended that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

As heretofore stated, we have found that Respondent SuCrest has violated Section 8(a)(3) and (1) of the Act. However, it is our opinion that the initiative and impetus for the violation rested primarily with Respondent Council. We do not believe that either equitable considerations or the policies of the Act dictate that responsibility for remedying the unfair labor practices should rest in equal proportions on both Respondents. We

³² There would in fact be something of an inconsistency if it was asserted that the Union's right to make internal rules regarding membership, affiliation, and dues was shown to have been exercised, or that it functioned, by reference to an external event, an employer contract as evidence that there was affiliation and consequently a valid internal union rule.

³³ Resolution of Council, August 1964, *supra*, requiring all members of each local affiliated with the Council to pay \$2 per month to Council.

³⁴ An "erroneous view of the law, even if held in good faith is not defense to a charge of refusal to bargain." *N.L.R.B. v. Burnett Construction Co.*, 350 F.2d 57, 60 (C.A. 10), *United Aircraft Corp v. N.L.R.B.*, 333 F.2d 819, 822 (C.A. 2), cert. denied 380 U.S. 910,

Florence Printing Co. v. N.L.R.B., 333 F.2d 289, 291 (C.A. 4), *Old King Cole, Inc. v. N.L.R.B.*, 260 F.2d 530, 532 (C.A. 6), *Taylor Forge & Pipe Works v. N.L.R.B.*, 234 F.2d 227, 231 (C.A. 7), cert. denied 352 U.S. 942. The bargaining obligation under Section 8(a)(5) of the LMRA is simply to bargain in good faith. "Good faith" is by definition a less exacting standard than "reasonable" or "reasonable belief," since one may act in good faith albeit not reasonably under objective standards. However, even the obligation to bargain in good faith is not discharged if the good faith relates to an "erroneous view of the law" and, *a fortiori*, discrimination under Section 8(a)(3) is not excused by an erroneous legal position.

therefore recommend that the employee members of Local 1476 be repaid the Council dues exacted from them for the period from October 1964 to September 1965, in the case of SuCrest employees, and, for the period from January 1965 to September 1965, in the case of Pepsi employees. The repayment of said dues to be the responsibility and obligation of Respondent Council in the proportion of 75 percent of the total Council dues of the SuCrest employees for the aforesaid periods and to be the responsibility and obligation of Respondent SuCrest in the proportion of 25 percent of the total Council dues of the SuCrest employees for the aforesaid periods. The repayment of said Council dues of the Pepsi employees to be the entire responsibility and obligation of Respondent Council. It is further recommended that the dues be repaid with interest in accordance with the principle in *Isis Plumbing & Heating Company*, 138 NLRB 716.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law and the entire record in the case, it is recommended that Respondent Council, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Causing or attempting to cause SuCrest Corporation or Pepsi-Cola Company to discriminate against employee members of Local 1476, I.L.A., AFL-CIO, in violation of Section 8(a)(3) of the Act by requiring payment of dues to Sugar Workers Council of North America, I.L.A., AFL-CIO, as a condition of employment, or in any like or related manner causing or attempting to cause SuCrest or Pepsi to discriminate against said employees in violation of Section 8(a)(3) of the Act.

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

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

(a) Repay to the employee members of Local 1476, employed at SuCrest Corporation, 75 percent of Council dues exacted for the period from October 16, 1964, to September 1, 1965.

(b) Repay to the employee members of Local 1476, employed at Pepsi-Cola, all Council dues exacted for the period from January 13, 1965, to September 1, 1965.

(c) Post at its offices, meeting halls, and hiring halls, copies of the attached notice marked "Appendix."³⁵ Employers SuCrest Corporation and Pepsi-Cola Company being willing, copies of said notice to be also posted at their respective places of business in locations where notices to employees in the category of Local 1476 members are customarily posted. Copies of said notice, to be furnished by the Regional Director for Region 29, after being duly signed by Respondent Council's representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent Council to insure that said notices are not altered, defaced, or covered by any other material. Sign and forthwith return sufficient copies of said notice to the Regional Director

aforementioned for posting by SuCrest Corporation and Pepsi-Cola Company, the employers being willing, at locations aforementioned.

(d) Notify the Regional Director for Region 29, in writing, within 20 days from the receipt of this Decision, what steps have been taken to comply herewith.³⁶

Upon the basis of the foregoing findings of fact and conclusions of law and the entire record in the case, it is recommended that Respondent SuCrest, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discriminating against employee members of Local 1476 I.L.A., AFL-CIO, in violation of Section 8(a)(3) of the Act by requiring payment of dues to Sugar Workers Council of North America, I.L.A., AFL-CIO, as a condition of employment or in any like or related manner discriminating against said employees in violation of Section 8(a)(3) of the Act.

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

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

(a) Repay to the employee members of Local 1476 employed at SuCrest Corporation, 25 percent of Sugar Workers Council dues exacted from the period from October 16, 1964, to September 1, 1965.

(b) Post at its place of business in Brooklyn, New York, copies of the attached notice marked "Appendix A."³⁷ Copies of said notice, to be furnished by the Regional Director for Region 29, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 29, in writing, within 20 days from the receipt of this Decision, what steps have been taken to comply herewith.³⁸

³⁵ In the event that this Recommended Order is adopted by the Board, the words "a Decision and Order" shall be substituted for the words "the Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order is enforced by a decree of a United States Court of Appeals, the words "a Decree of the United States Court of Appeals Enforcing an Order" shall be substituted for the words "a Decision and Order."

³⁶ In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps Respondent taken to comply herewith."

³⁷ See footnote 35, *supra*

³⁸ See footnote 36, *supra*

APPENDIX

NOTICE TO ALL MEMBERS OF SUGAR WORKERS COUNCIL OF NORTH AMERICA, I.L.A., AFL-CIO

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board and in order to effectuate the policies of the National Labor

Relations Act, as amended, we hereby notify you that:

WE WILL NOT cause or attempt to cause SuCrest Corporation or Pepsi-Cola Company to discriminate against employee members of Local 1476, I.L.A., AFL-CIO, in violation of Section 8(a)(3) of the Act, by requiring payment of dues to Sugar Workers Council of North America, I.L.A., AFL-CIO, as a condition of employment or in any like or related manner to discriminate against said employees in violation of Section 8(a)(3) of the Act.

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

WE WILL repay to the employee members of Local 1476, employed at SuCrest Corporation, 75 percent of Sugar Workers Council dues exacted for the period from October 16, 1964, to September 1, 1965.

WE WILL repay to the employee members of Local 1476, employed at Pepsi-Cola Company, all Sugar Workers Council dues exacted for the period from January 13, 1965, to September 1, 1965.

SUGAR WORKERS COUNCIL
OF NORTH AMERICA, I.L.A.,
AFL-CIO
(Labor Organization)

Dated _____ By _____
(Representative) (Title)

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

If members have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 16 Court Street, 4th Floor, Brooklyn, New York 11201, Telephone 596-5386.

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT discriminate against employee members of Local 1476, I.L.A., AFL-CIO, in violation of Section 8(a)(3) of the Act, by requiring payment of dues to Sugar Workers Council of North America, I.L.A., AFL-CIO, as a condition of employment or in any like or related manner discriminate against said employees in violation of Section 8(a)(3) of the Act.

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

WE WILL repay to the employee members of Local 1476 employed at SuCrest Corporation, 25 percent of Sugar Workers Council dues exacted for the period from October 16, 1964, to September 1, 1965.

SUCREST CORPORATION
(Employer)

Dated _____ By _____
(Representative) (Title)

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

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 16 Court Street, 4th Floor, Brooklyn, New York 11201, Telephone 596-5386.