

In the Matter of INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO, LOCAL 291 and VERNON J. LUEBKE, AN INDIVIDUAL

In the Matter of INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO, LOCAL 291, AND ITS AGENTS, LAWRENCE MURPHY, LOUIS MUELLER, WILBUR KOCH, AND WALTER CAPPEL and WISCONSIN AXLE DIVISION, THE TIMKEN-DETROIT AXLE COMPANY

Cases Nos. 31-CB-2 and 13-CB-51.—Decided December 27, 1950

DECISION AND ORDER

On May 22, 1950, Trial Examiner Josef L. Hektoen issued his Intermediate Report in this consolidated case, finding that the Respondents had engaged in and were engaging in certain unfair labor practices in violation of Section 8 (b) (1) (A) and 8 (b) (2) of the National Labor Relations Act, as amended, and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondents filed exceptions to the Intermediate Report and a supporting brief. The charging parties and counsel for the 22 individuals affected by the unfair labor practices alleged in Case No. 13-CB-51, filed briefs in support of the Intermediate Report. The Respondents also requested oral argument. This request is denied as the record and briefs, in our opinion, adequately present the issues and the positions of the parties.

The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the Respondents' exceptions, the briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner insofar as they are consistent with our findings, conclusions, and order herein set forth.

The Trial Examiner found, and we agree, that the Respondents caused the Company to discharge Vernon Luebke and attempted to cause the discharge of other employees, in violation of Section 8 (b) (2) of the Act.

The critical facts in this case, as more fully related in the Intermediate Report, are undisputed:

Vernon Luebke and the 22 other employees involved in this proceeding had at one time been members of the Union. However, all of them had been delinquent in their dues since 1941; they did not consider themselves to be members of the Union, and until the time of the contract executed on July 8, 1946, there was no requirement that they become or remain members in good standing of the Union as a condition of employment.¹

On July 8, 1946, the Company and the Union executed a contract which contained a maintenance-of-membership clause requiring, as a condition of continued employment, that "members" of the Union, as well as "those who thereafter become members," shall remain members in good standing. The contract provided an "escape" period terminating on July 14, 1946; a "Memo of Intent" attached to the contract specified that such "escape" was available only to members in good standing, i. e. *suspended* members could not resign until they had paid all their past financial delinquencies. Disputes as to whether an employee was a member of the Union were to be adjudicated by arbitration.

On September 6, 1946, the Union filed a grievance with the Company requesting the discharge of Luebke for failure to maintain his union membership in good standing, asserting that he was a suspended member who, under the "Memo of Intent," could not have withdrawn from the Union without making up his financial delinquencies. When the Company refused to discharge Luebke, the Union followed the arbitration procedure and on March 31, 1947, received an award from Arbitrator Marshall to the effect that Luebke was a suspended member required to pay his delinquent "dues" as a condition of employment. When the Company refused to comply with the award and discharge Luebke, the Union, on June 6, 1947, filed a complaint with the Wisconsin Employment Relations Board (WERB) charging the Company with having failed to abide by an arbitration award.² On November 17, 1947, the WERB found the Company guilty of ignoring the award and ordered compliance therewith. On Decem-

¹ The first contract between the parties containing any maintenance-of-membership provision was executed in 1943, pursuant to an order of the National War Labor Board, but was expressly limited to members "in good standing" at the expiration of the 15-day escape period therein. The 1944 contract continued the requirement.

² The complaint alleged violations of the following sections of the *Wisconsin Statutes* (1949) *Employment Relations* 111.06, "Unfair Labor Practice For An Employer": "111.06 g. to refuse or fail to recognize or accept as conclusive of any issue in any controversy as to employment relations the final determination (after appeal, if any) of any tribunal having competent jurisdiction of the same or whose jurisdiction the employer accepted. 'f. to violate the terms of a collective bargaining agreement (including an agreement to accept an arbitration award).'"

ber 5, 1947, the Company, without further request by the Union, discharged Luebke.

Meanwhile, on June 30, 1947, the Union filed grievances with the Company with respect to 22 other employees, identical to that filed with respect to Luebke. Again the Company refused to comply and the Union took the matter to arbitration. However, the parties stipulated before an arbitrator, on September 4, 1947, that the final disposition of the Luebke case, then pending before the WERB, would govern the determination of these 22 grievances.

On April 12, 1949, a second arbitrator in the latter matter, Lieberman, issued an award with respect to the 22 which followed the Marshall award. On April 15, 1949, the Union wrote to the 22 employees quoting the Lieberman award and requesting them to contact the Union for the amount of their delinquencies. The Union also notified the Company of this action and stated that it would expect the Company to comply with the award. However, the Company again refused to comply with the award, and the Union, on April 28, 1949, again filed charges with the WERB. The latter proceeding is pending the outcome of an action filed before a State court by the Company and 19 of the 22 employees seeking relief from the Lieberman award. Two of the 22 employees made their peace with the Union by agreeing to pay the Union the amounts they allegedly owed in back dues and assessments, some \$200 each. On May 19, 1949, the Union notified the Company that 20 of the 22 had not paid up their union obligations and "under the terms of the Arbitrators award" should be discharged.

Although no charges have been filed, and no complaint issued, alleging that the Company violated Section 8 (a) (3) of the Act in the discharge of Luebke, the Union's liability for a violation of Section 8 (b) (2)³ in causing the discharge of Luebke requires a determination that the Company, were it before us, would have been found to have violated section 8 (a) (3) by such discharge.⁴ Likewise, the Union cannot be found to have violated Section 8 (b) (2) in attempting to cause the discharge of the other employees unless it is first deter-

³ Section 8 (b) (2) makes it an unfair labor practice for a labor organization or its agents "to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership."

⁴ For the reasons set forth in *National Union of Marine Cooks and Stewards, C. I. O., (Burns Steamship)*, 92 NLRB 877, the fact that the Company is not before us is not a bar to a determination that the Union caused the discharge of Luebke, in violation of Section 8 (b) (2), or to the issuance of an appropriate remedy for such violation. *Member Murdock*, though dissenting in that case, deems himself bound by the majority decision therein.

mined that, had they been effected, such discharges would likewise have been in violation of Section 8 (a) (3).

That the discharge of all of these employees would have constituted violations of Section 8 (a) (3) is well established in decisions of this Board. The discharges, which were sought for failure to pay union dues and fees,⁵ would be discriminatory unless they were privileged by the then existing union-security provisions of the contract. But the contract, in the circumstances of this case, afforded no such protection, for the employees involved were required to pay *past* union obligations which had arisen at a time when there was no contractual obligation to maintain membership in the Union as a condition of employment. We have held, with court approval, that neither Section 8 (3) of the original Act nor Section 8 (a) (3) of the amended Act sanctions such retroactive application of even a valid union-security agreement.⁶ Nor do the arbitration awards⁷ directing the discharge of Luebke, or the State Board action, whatever its eventual outcome may be, compel a different result.⁸ Under all the circumstances, we therefore conclude that the discharge of Luebke was, and the discharge of the other employees would have been, discriminatory, and that we would, in an appropriate proceeding, have found them to constitute violations of Section 8 (a) (3) of the Act.

⁵ For reasons stated below, it is unnecessary for us to determine whether annual assessments on behalf of the International are encompassed within the term "periodic dues" as used in Section 8 (b) (2). Such assessments were included in the sums which the Union claimed to be due from the 23 employees herein. See *Pen and Pencil Workers Union, Local 19593, AFL*, 91 NLRB 883.

⁶ *Colonie Fibre Company v. N. L. R. B.*, 163 F. 2d 65 (C. A. 2), enfg. 69 NLRB 589 and 71 NLRB 354; *Selig Manufacturing Company, Inc.*, 79 NLRB 1144; *Hamilton-Scheu & Walsh Shoe Co.*, 80 NLRB 1496; *New York Shipbuilding Corporation*, 89 NLRB 1446; *General American Aerocoach, etc.*, 90 NLRB 239. Cf. *Paramount Pictures, Inc.*, 79 NLRB 557, 574.

In these circumstances, it is unnecessary for us to determine whether the employees involved herein were former members or suspended members of the Respondent Union. Therefore we do not adopt the Trial Examiner's findings to the effect that the employees herein were not "any kind of" union members on July 8, 1946, nor his conclusion that the arbitration awards, which so held, were "erroneous." See *Public Service Corporation of New Jersey*, 77 NLRB 153; *New York Shipbuilding Corporation, supra*, and cases cited therein on page 10 of the Intermediate Report.

⁷ We find no merit in the Respondent Union's contention that the National Arbitration Act, 9 U. S. C. A. 1, Section 2, ousts the Board of jurisdiction or compels us to recognize such arbitration awards. Section 1 of that act expressly excludes "contracts of employment of . . . any . . . class of workers engaged in foreign or interstate commerce." See *International Union United Furniture Workers of America v. Colonial Hardwood Flooring Company*, 168 F. 2d 33 (C. A. 4); *Gatliff Coal Company v. Cox*, 142 F. 2d 876 (C. A. 6); the apparently contrary holding in *Watkins v. Hudson Coal Company*, 151 F. 2d 311 (C. A. 3), cert. den. 327 U. S. 777, 327 U. S. 816, relates merely to the discretionary power of a court to grant stays in proceedings.

⁸ *Combustion Engineering Company, Inc.*, 86 NLRB 1264, 1266-1267. Moreover, Section 10 (a) of the Act provides in pertinent part: "The Board is empowered, . . . to prevent any . . . unfair labor practice . . . This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise. . . ."

The question remains whether the Union "caused" the discharge of Luebke and "attempted to cause" the discharge of the other employees within the meaning of Section 8 (b) (2).

The Union's Responsibility for the Luebke Discharge

The Respondent Union contends that a finding that it caused Luebke's discharge gives retroactive effect to the Labor Management Act of 1947 because the Union's last act toward securing his discharge occurred on June 6, 1947, when it appeared before the WERB for an order to enforce the Marshall award which found Luebke a "suspended" member within the terms of the 1946 "Memo of Intent." We find no merit in this contention. It is true that when, as here, the last request or demand for an illegal discharge was made by a union before August 22, 1947, the effective date of the amended Act, and thus was not, when made, an unfair labor practice, the Board has required "some affirmative evidence" that the Union's demand "did, or was intended by it to, continue and remain operative after the amendments became effective."⁹ That the Respondent Union intended its earlier demand that Luebke be discharged to continue in effect after August 22, 1947, is affirmatively shown by the following, already noted, facts: (1) After the effective date of the Act, the Union continued to assert analogous demands upon the Company relating to other and similarly situated employees, and (2) while proceeding to arbitrate such demands, the Union, on September 4, 1947, stipulated that "a final decision in the case involving Vernon Luebke (now before WERB) . . . will control the disposition of each of the above grievances that an arbitrator shall find falls within the facts and decision of the Luebke case." Although not directly related to the request for Luebke's discharge, neither of these actions is consistent with any assumption that the Respondent Union had abandoned its demand for Luebke's discharge before the effective date of the Act.

Accordingly we conclude and find that the discriminatory discharge of Luebke was "caused" by the Respondent Union and that it thereby violated Section 8 (b) (2) of the Act.¹⁰

The "Attempt to Cause" the Discharge of the Other Employees

With respect to the remaining employees, the record shows that the Respondents asserted the same contractual claim against these em-

⁹ *Combustion Engineering Company, Inc., et al., supra*, at pages 1268—1269. In that case, the Board found no violation of Section 8 (b) (2) because there was no evidence that the alleged demand was repeated or regarded by the union as being operative. See *Bricklayers, etc., International Union of America, A. F. L. (Osterink Construction Co.)*, 82 NLRB 228; *Local 74 etc. and Ira A. Watson Co.*, 80 NLRB 533.

¹⁰ *New York Shipbuilding Corporation, supra*; *Kingston Cake Company, Inc., et al.*, 91 NLRB 288.

ployees as the Union had against Luebke and followed a course of action similar to that which had resulted in Luebke's discharge: (1) They requested enforcement of the "Memo of Intent"; (2) they continued the request beyond the effective date of the Act, reinstating the grievances in an arbitration proceeding held in January 1949; (3) knowing the outcome of the Luebke case before the WERB, they introduced the stipulation of September 4, 1947, wherein the parties had agreed that the WERB decision in the Luebke case would govern subsequent determination of the membership status of the other employees, as evidence in the 1949 arbitration proceeding; (4) they later requested compliance with the ensuing arbitration award which construed in the Union's favor the terms of the 1946 contract and memorandum of intent; and (5) they fortified the latter request by initiating proceedings, still pending, before the State Board.

In these circumstances, it can hardly be said that the Union's conduct constituted a mere attempt to *persuade* the Company to discriminate against these employees.¹¹ We find that by such conduct the Respondents attempted to cause the discharge of the employees in question for the same discriminatory reasons as were present in the Luebke case, and that they thereby also violated Section 8 (b) (2) of the Act.¹²

2. The Trial Examiner found that the above conduct of the Respondents also restrained and coerced employees in the exercise of their right to refrain from any and all of the concerted activities guaranteed them by Section 7 of the Act, thereby violating Section 8 (b) (1) (A) of the Act. We agree. The Union's conduct insofar as it relates to Luebke is disposed of by existing precedent. We have already held that a union which violates Section 8 (b) (2) by causing a discriminatory discharge thereby also restrains and coerces employees in violation of Section 8 (b) (1) (A).¹³ The question of whether an *attempt* to cause a discriminatory discharge also violates Section 8 (b) (1) (A) is one of first impression, but one which, in our opinion, must be answered in the same way. Here, no less than

¹¹ Cf. *Henry Shore*, 90 NLRB 224, and *Juneau Spruce Corporation*, 90 NLRB 1753.

¹² See *Acme Mattress Company*, 91 NLRB 1010.

As the charge relating to these employees was not served until May 12, 1949, we cannot adopt the Trial Examiner's finding that the attempt had constituted a violation since August 22, 1947. The limitations of Section 10 (b) require us to restrict our findings to attempts made or continued in the 6 months preceding the service of the charge. *Luzerne Hide and Tallow Company*, 89 NLRB 989. We likewise do not adopt the Trial Examiner's finding as to the number of employees affected by this violation, for the reasons that the record shows that some of the 22 named employees have been promoted to supervisory status. In view of the remedy involved, we find it unnecessary to determine the number of current employees named; it suffices for the present purpose that some employees have been, and are being, affected.

¹³ *New York Shipbuilding Corporation*, *supra*; *General American Aerocoach, etc.*, *supra*; and see *Clara-Val Packing Co.*, 87 NLRB 703.

in the *Clara-Val* case,¹⁴ the Union's conduct was primarily designed to secure discrimination against specific individuals, and is thus within the limitations which the Board, in the *NMU* case,¹⁵ placed upon the construction of Section 8 (b) (1) (A). That the Union's conduct did not succeed does not make it any the less proscribed by this section.¹⁶ Accordingly, we find that both by causing the discharge of Luebke and by attempting to cause the discharge of the others the Respondents violated not only Section 8 (b) (2) but also Section 8 (b) (1) (A) of the Act.¹⁷

The Remedy

Having found that the Respondents have engaged in unfair labor practices, we shall order them to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

We have found that the Union caused the discriminatory discharge of Vernon Luebke. As the Company is not before us, we cannot order his reinstatement. We shall however, order that the Respondents notify the Company and Luebke that they have no objections to Luebke's immediate reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges,¹⁸ and that, within the limitations of the order herein, the Union shall make him whole for any loss of pay or other incidents of the employment relationship he may have suffered by reasons of the Respondents' unlawful conduct.¹⁹ Since the issuance of the Trial Examiner's Intermediate Report, the Board has adopted a method by which, in a case such as this, the Union can restore these other benefits of the employment relationship which may have been diminished by reason of the discrimination²⁰ and a method of computing back pay different from that prescribed by the Trial Examiner.²¹ Consistent with these new policies we shall order the Respondent Union (1) to pay to Luebke a sum of money equal to the amount he normally would have earned as wages from December 5, 1947, the date of the discrimination, to 5 days after the date on which the Respond-

¹⁴ 87 NLRB 703.

¹⁵ *National Maritime Union of America (The Texas Company)*, 78 NLRB 971.

¹⁶ *Randolph Corporation*, 89 NLRB 1490.

¹⁷ Member Reynolds deems himself bound by the decision of the majority in the *Clara-Val* case with respect to the 8 (b) (1) (A) finding as to Luebke. However, for reasons set forth in his dissenting opinion in that case, he would not find that the respondents violated 8 (b) (1) (A) by attempting to cause the discharge of the 22 other employees.

¹⁸ See *The Chase National Bank of the City of New York, San Juan, Puerto Rico, Branch*, 65 NLRB 827.

¹⁹ *Pen and Pencil Workers Union, Local 19598, AFL (Wilhelmina Becker)*, 91 NLRB 883.

²⁰ *Ibid.*

²¹ *F. W. Woolworth Company*, 90 NLRB 289.

ent Union notifies the Employer and Luebke, in accordance with our Order, that it no longer has objection to his immediate reinstatement, less his net earnings²² during such period, as computed on the basis of each separate calendar quarter or portion thereof during this period,²³ and less such other sums as the Employer, absent the discrimination, would normally have deducted from his wages for deposit with State and Federal agencies on account of social security and other similar benefits; and (2) to pay to the appropriate State and Federal agencies, to the credit of Luebke and the Employer, a sum of money equal to the amount which, absent the discrimination, would have been deposited to such credit by the Employer, either as a tax upon the Employer or on account of deductions made from Luebke's wages by the Employer, on account of such social security and other similar benefits.²⁴

ORDER

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

1. The Respondent Union, International Union, United Automobile, Aircraft, and Agricultural Implement Workers of America, CIO, Local 291, its officers, representatives, and agents, shall:

(a) Cease and desist from:

(1) Causing or attempting to cause Wisconsin Axle Division, The Timken-Detroit Axle Company, Oshkosh, Wisconsin, its officers, agents, successors, and assigns, to discharge any of its employees because they are not members in good standing in International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, Local 291, except in accordance with Section 8 (a) (3) of the Act; or in any other manner causing or attempting to cause said Company, its officers, agents, successors, and assigns, to discrim-

²² By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the Employer, which would not have been incurred but for the unfair labor practices and the consequent necessity of his seeking employment elsewhere. See *Crossett Lumber Company*, 8 NLRB 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered earnings. *Republic Steel Corporation v. N. L. R. B.*, 311 U. S. 7.

²³ The quarterly periods, hereinafter called "quarters," shall begin with the first day of January, April, July, and October. Loss of pay shall be determined by deducting from a sum equal to that which Luebke would normally have earned for each quarter, or portion thereof, his net earnings, if any, in any other employment during that period. Earnings in one particular period shall have no effect upon the back-pay liability for any other quarter.

²⁴ In the absence of exceptions thereto, we adopt, without passing upon, the Trial Examiner's recommendation that we not order the Respondent Union to reimburse employees Elmer and Brown for the sums they have, or may have, paid to the Respondent Union. See Intermediate Report, footnote 5.

inate against any of its employees in violation of Section 8 (a) (3) of the Act.

(2) Restraining or coercing employees of the Company, in the exercise of their right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3).

(b) Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(1) Immediately notify the Company and Vernon Luebke, at his last known place or residence, in writing, that it has no objection to the immediate reinstatement of Vernon J. Luebke to his former or substantially equivalent position, without prejudice to his seniority and other rights and privileges.

(2) Make whole Vernon Luebke for any loss of pay or other incidents of the employment relationship he may have suffered because of the discrimination against him, in the manner described in The Remedy section of the Decision.

(3) Post in conspicuous places in its business office at Oshkosh, Wisconsin, and such other places as notices to its members are customarily posted, copies of the notice attached hereto and marked Appendix A.²⁵ Copies of said notice, to be furnished by the Regional Director for the Thirteenth Region, shall, after having been duly signed by official representatives of International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, Local 291, be so posted by it immediately upon receipt thereof and be maintained by it for a period of not less than sixty (60) consecutive days thereafter. Reasonable steps shall be taken by it to insure that said notices are not altered, defaced, or covered by any other material.

(4) Mail to the Regional Director for the Thirteenth Region signed copies of the notice attached hereto and marked Appendix A, for posting, the Company willing, in its plant at Oshkosh, Wisconsin, in places where notices to employees are customarily posted. Copies of said notices to be furnished by the Regional Director, shall, after having been signed as provided in paragraph 1 (b) (3) of these rec-

²⁵ In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be inserted before the words "A Decision and Order," the words: "A Decree of the United States Court of Appeals Enforcing."

ommendations, be forthwith returned to said Regional Director for the purpose of so posting them.

(5) Notify the Regional Director for the Thirteenth Region, in writing, within ten (10) days from the date of this Order what steps it has taken to comply herewith.

2. Lawrence Murphy, Louis Mueller, Wilbur Koch, and Walter Cappel, and each of them, and their respective agents, successors, and assigns, shall:

(a) Cease and desist from:

(1) Causing or attempting to cause Wisconsin Axle Division, The Timken-Detroit Axle Company, Oshkosh, Wisconsin, its officers, agents, successors, and assigns, to discharge employees because they are not members in good standing in International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, Local 291, except in accordance with Section 8 (a) (3) of the Act, or in any other manner causing or attempting to cause said Company, its officers, agents, successors, or assigns, to discriminate against any of its employees in violation of Section 8 (a) (3) of the Act.

(2) Restraining or coercing employees of the Company in the exercise of their right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3).

(b) Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(1) Immediately notify the Company and Vernon Luebke, at his last known place of business, in writing, that they have no objections to the immediate reinstatement of Vernon J. Luebke to his former or substantially equivalent position, without prejudice to his seniority and other rights and privileges.

(2) Post in conspicuous places in their offices at Oshkosh, Wisconsin, and such other places as notices to members of the Respondent Union are customarily posted, copies of the notice annexed hereto and marked Appendix B.²⁶ Copies of said notice, to be furnished by the Regional Director for the Thirteenth Region, shall, after having

²⁶ See footnote 25 *supra*.

been signed by them, be posted by them immediately upon receipt thereof and be maintained by them for a period of at least sixty (60) consecutive days from the date of posting, in conspicuous places, including all those where notices to members are customarily posted. Reasonable steps shall be taken by them to insure that such notices are not altered, defaced, or covered by any other material.

(3) Mail to the Regional Director for the Thirteenth Region signed copies of the notice attached hereto and marked Appendix B, for posting, the Company willing, in its plant at Oshkosh, Wisconsin, in places where notices to employees are customarily posted. Copies of said notice, to be furnished by the Regional Director, shall, after having been signed as provided in paragraph 2 (b) (2) of these recommendations, be forthwith returned to said Regional Director for the purpose of so posting them.

(4) Notify the Regional Director for the Thirteenth Region in writing, within ten (10) days from the date of this Order what steps they have taken to comply herewith.

APPENDIX A

NOTICE TO ALL MEMBERS OF INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO, LOCAL 291

Pursuant to a Decision and Order 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 WISCONSIN AXLE DIVISION, THE TIMKEN-DETROIT AXLE COMPANY, its officers, agents, successors, or assigns, to discharge or otherwise discriminate against any of its employees because they are not members in good standing of INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO, LOCAL 291, except in accordance with Section 8 (a) (3) of the Act, or in any manner cause or attempt to cause that company, its officers, agents, successors, or assigns, to discriminate against its employees in violation of Section 8 (a) (3) of the Act.

WE WILL NOT restrain or coerce employees of WISCONSIN AXLE DIVISION, THE TIMKEN-DETROIT AXLE COMPANY, its officers, agents, successors, or assigns, in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of

collective bargaining or other mutual aid or protection, and to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3).

WE WILL make Vernon J. Luebke whole for any loss of pay or other incidents of the employment relationship which he may have suffered because of the discrimination against him.

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AIRCRAFT AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, CIO, LOCAL 291,
Labor Organization.

By -----
(Agent or Representative) (Title)

Dated -----

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 INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO, LOCAL 291

Pursuant to a Decision and Order 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 WISCONSIN AXLE DIVISION, THE TIMKEN-DETROIT AXLE COMPANY, its officers, agents, successors, or assigns, to discharge or otherwise discriminate against any of its employees because they are not members in good standing of INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO, LOCAL 291, except in accordance with Section 8 (a) (3) of the Act, or in any other manner attempt to cause that company, its officers, successors, or assigns to discriminate against its employees in violation of Section 8 (a) (3) of the Act.

WE WILL NOT restrain or coerce employees of WISCONSIN AXLE DIVISION, THE TIMKEN-DETROIT AXLE COMPANY, its officers, agents, successors, or assigns, in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of

collective bargaining or other mutual aid or protection, and to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3).

LAWRENCE MURPHY

LOUIS MUELLER

WILBUR KOCH

WALTER CAPPEL

As agents for International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, Local 291.

Dated -----

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

Mr. Morris Slavney, for the General Counsel.

Mr. O. S. Hoebreck, of Milwaukee, Wis., for the Company.

Mr. Max Raskin, of Milwaukee, Wis., *Mr. Walter F. Cappel*, of Milwaukee, Wis., and *Mr. Lawrence A. Murphy*, of Oshkosh, Wis., for the Respondent Union and the individual Respondents.

Mr. H. E. Meyer, of Oshkosh, Wis., for Luebke.

Mr. R. Curtis Laus, of Oshkosh, Wis., for certain employees.

STATEMENT OF THE CASE

Upon charges duly filed by Vernon J. Luebke, herein called Luebke, and Wisconsin Axle Division, The Timken-Detroit Axle Company, herein called the Company, the General Counsel of the National Labor Relations Board, herein called the Board, by the Regional Director for the Thirteenth Region (Chicago, Illinois), issued his consolidated complaint dated August 19, 1949¹ against International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, Local 291, herein called the Respondent Union, and Lawrence Murphy, Louis Mueller, Wilbur Koch, and Walter Cappel, its agents, herein called the individual Respondents,² and collectively called the Respondents, alleging that the Respondents, and each of them, had engaged in and were engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (b) (1) (A) and (2) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act.

With respect to the unfair labor practices, the complaint and supplement, herein called the complaint, alleged in substance that the Respondents: (1) On and after August 22, 1947, restrained and coerced employees of the Company by (a) on August 22, 1947, and thereafter, threatening Luebke that the Respondent Union would deny or terminate his membership on grounds other than his failure

¹ On August 23, 1949, a supplement thereto was issued.

² There is no issue of their being agents of the Respondent Union. Murphy is president of the union, Mueller vice-president, Koch recording secretary, and Cappel international representative of the UAW in the area.

to pay periodic dues and fees and would cause or attempt to cause the Company to discharge him in violation of the provisions of Section 8 (a) (3) of the Act, and (b) on August 22, 1947, and thereafter, particularly on December 21, 1948, April 16, 1949, and at other times, threatening 22 named employees³ to the same effect, all in violation of Section 8 (b) (1) (A) of the Act; and (2) caused and attempted to cause the Company to discriminate against employees in violation of Section 8 (a) (3) of the Act by: On and after August 22, 1947, attempting to cause and on December 5, 1947, causing the Company to discharge Luebke in violation of Section 8 (a) (3) of the Act; on April 15, 1949, and thereafter, attempting to cause the Company to discharge said 22 named employees in violation of Section 8 (a) (3) of the Act; and did and are doing so for the additional reason that Luebke and the 22 named employees refused to join and assist the Respondent Union, all in violation of Section 8 (b) (2) of the Act.

The Respondents thereafter filed their joint answer admitting certain allegations of the complaint, but denying the commission of any unfair labor practices and setting up certain affirmative matter which is hereinafter fully considered.

Pursuant to notice, a hearing was held on September 6, 7, and 8, 1949, at Oshkosh, Wisconsin, before the undersigned Josef L. Hektoen, the Trial Examiner duly designated by the Chief Trial Examiner. The General Counsel, the Respondents, the Company, Luebke, and the 22 named employees were represented by counsel and participated in the hearing. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues. At the close of the hearing, the General Counsel moved to conform the complaint to the proof in respect of formal matters. The motion was allowed without objection. The parties waived oral argument. After the close of the hearing, and pursuant to stipulation of the parties, excerpts from certain union constitutions were supplied; pursuant to understanding reached at the hearing, the documents containing them, together with said stipulation, are hereby admitted into evidence as General Counsel's Exhibit No. 46. Also after the close of the hearing, the General Counsel, and counsel for the Company, Luebke, and the Respondents filed briefs with the undersigned.⁴

Upon the entire record in the case, and from his observation of the witnesses, the undersigned makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Company, Wisconsin Axle Division, The Timket-Detroit Axle Company, is an Ohio corporation maintaining its principal office and place of business at

³ E. C. Ahlswede, Henry Abraham, Fred Arne, Jr., Adrian Broderick, J. M. Brown, Karl Cihlar, Clarence Davis, George Ehrenberg, Earl W. Hanson, Edwin Elmer, Alex Miller, John Nowicki, Earl Zellmer, Alois Seidl, John Roth, George Wonser, Fred Sohn, Andrew Wiotrowski, John Paffenroth, Stanford Wittaker, Jr., George Hartman, and Hans Hanson.

⁴ The briefs of the Company and Luebke contain certain recommended findings and conclusions of law, recommended orders, and recommended affirmative actions. Although recommended orders and recommended affirmative actions are not normally contemplated by the Board's Rules and Regulations, all have had the close attention of the undersigned. Except as hereinafter appears, they are allowed. The most important exception is the recommended affirmative action put forward by the Company, to the effect that the Respondent Union be required to reimburse employees Elmer and Brown for the sums they have, or may have, paid to the Respondent Union. The undersigned does not follow said recommendation for the reason that he considers that neither the General Counsel nor the Board has jurisdiction over these private transactions. The two employees chose to compose their differences forthwith; this was their privilege. (See *infra*.)

Oshkosh, Wisconsin, where it is engaged in the manufacture and sale of truck axles, transfer cases, and transmissions. During 1948, it purchased raw materials in the amount of \$10,000,000, of which some 80 percent was shipped to it from points outside the State of Wisconsin. During the same period, it sold finished products in the amount of about \$15,000,000, of which some 95 percent was shipped by it to points outside the State of Wisconsin. The Respondents admit, and the undersigned finds, that the Company is engaged in commerce, within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

The Respondent Union, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, Local 291, is a labor organization admitting to membership employees of the Company.

III. THE UNFAIR LABOR PRACTICES

A. *The chronology of events*⁵

The Respondent Union and the Company have been in contractual relations since April 24, 1937, when the first of a series of seven collective bargaining agreements between them was entered into. The last, dated June 14, 1948, and extending to June 14, 1950, was in effect at the time of the hearing.

The Respondent Union has been governed, during the period in question, by a series of nine constitutions of the International, the first adopted on September 1, 1936, and the last in November 1947, and in effect at the time of the hearing.

Strikes of the employees of the Company occurred April 25–May 14, 1938; May 6–July 4, 1946; and July 14–August 4, 1948.

At the close of the 1946 strike, the parties entered into the fifth of the agreements between them.⁶ It was dated July 8, 1946, and provided, among other things, as follows:

Article II, Sec. 1. The members of the Union as of July 8, 1946, and those who thereafter become members of the Union shall be required as a condition of employment to remain good standing members of the Union for the duration of this agreement. If any dispute arises as to whether or not an employee is or is not a member of the Union, the question shall be adjudicated by the Arbitrator⁷ whose decision shall be final and binding upon the parties.

Sec. 2. Such members of the Union who desire to sever their membership in the Union on, or before July 14, 1946 shall make known such position in writing by registered mail to the parties to the contract.

⁵ There is substantially no dispute respecting the evidence which forms the basis for the following findings. They are based upon credible testimony by witnesses for all concerned and upon largely stipulated documentary evidence.

⁶ Pursuant to a National War Labor Board directive, the May 19, 1943, contract between the parties, for the first time in their relationship, contained a maintenance-of-membership clause providing:

All employees who, fifteen (15) days after the date of the National War Labor Board's Directive Order in this matter, are members of the Union in good standing in accordance with the constitution and by-laws of the Union, and all employees who thereafter become members, shall, as a condition of employment, remain members of the Union in good standing for the duration of this contract.

The same provision appeared in the 1944 contract which carried over until 1946.

⁷ Arbitration was elsewhere provided for in the contract.

Attached to the 1946 contract was a "Memo of Intent" to "clarify" certain contract provisions. It provided in part as follows:

Item 1. It is contemplated by the language appearing in Section 2 of Article II that only good standing members of the Union as of the date of the contract have the right of severing their membership in the Union. That suspended members as of that date may not exercise their right of withdrawal from the Union unless and until they have first reinstated their good standing membership in the Union by the payment in full of their financial delinquencies.

Luebke, who had worked for the Company since 1932, joined the Respondent Union in 1937, and paid dues to it from April of that year through March 1938, when he ceased doing so.

On September 6, 1946, the Respondent Union filed a grievance with the Company respecting Luebke under Article II, Section 1 of the 1946 contract. The matter went to arbitration and on March 31, 1947, Arbitrator Philip Marshall rendered his award finding that Luebke, as a suspended member of the Union, was required to pay all past obligations thereto before he could withdraw from membership therein, failing which, the Company was directed to discharge him. Luebke did not make the payments directed and the Company failed to discharge him. The Respondent Union thereupon brought an action against the Company before the Wisconsin Employment Relations Board. That Board, on November 17, 1947, issued its decision and order to the effect that the Company must follow the Marshall award. On December 5, 1947, the Company complied and discharged Luebke.

Meanwhile, on June 30, 1947, the Respondent Union filed 22 grievances with the Company under the same article of the 1946 contract, respecting the 22 employees herein involved.

On July 12, 1947, the Respondent Union and the Company executed their 1947 agreement, effective June 30, specifically superseding the 1946 agreement and "Memo of Intent," and providing, in part, that union members as of July 12, 1947, and employees who thereafter became members were to be required to remain in good standing with the Respondent Union for the duration of the agreement, that the question of membership was to be subject to arbitration binding upon the parties, and that members desiring to resign must give notice thereof within a stated time.

The grievances respecting the 22 employees thereafter went to arbitration as an incident to which the parties entered into a stipulation that their disposition, in such cases as the arbitrator found to be factually similar, would be governed by the decision of the Wisconsin Employment Relations Board in the Luebke matter. After the Wisconsin Board's decision, the arbitrator, Herman Rauch, however, found that he had insufficient evidence upon which to determine the controversy and on April 2, 1948, he returned the grievances to the parties for such further action as might be found appropriate.

At the end of the 1948 strike, the parties entered into a further agreement, dated June 14, 1948, specifically superseding the 1947 agreement and all written matters in connection therewith.

On September 24, 1948, pursuant to a consent election,⁸ the Board certified that the Respondent Union was authorized to bargain for a union-security agreement with the Company.

⁸ Case No. 31-UA-329.

On October 26, 1948, grievance negotiations between the parties having proved unfruitful, pursuant to the terms of the 1948 contract, the Company wrote the Wisconsin State Industrial Commission requesting that it appoint an arbitrator "based solely on the wording of this contract." The Commission thereafter appointed Joseph Lieberman arbitrator. On December 21, 1948, the Respondent Union, by Lawrence Murphy, its president and one of the individual Respondents, wrote Lieberman asking that he, in addition to other pending matters, take up the grievances respecting the named employees, stating:

The 22 grievances are in regard to Maintenance of Membership, and the request made by the Union that Management discharge these people for failure to keep up their membership in the Union. These grievances are under the 1946 Contract and Memo of Intent and were heard by the arbitrator [Rauch] as such.

On January 10-15, 1949, Lieberman conducted hearings on the grievances and on April 12, rendered his award. At the hearings, the Respondent Union demanded that the employees concerned be discharged if they did not pay back dues, readmission fees, assessments, and the like, allegedly owing it in amounts of from \$178.50 to 219.50 and based the demand upon the terms of the 1946 contract and memo of intent. The Company contended that the arbitrator's authority was limited to an interpretation of the 1948 contract and that he was without authority to process the 22 grievances because they involved interpretation of the 1946 contract. Arbitrator Lieberman found, however, that the cases were similar to that of Luebke and that absent payment of back dues and the like, the employees involved should be discharged.

On April 15, the Respondent Union notified the Company that it would be expected to follow the arbitrator's direction and also notified the employees involved of his award and of the amounts allegedly due it from them. On April 28, the Respondent Union brought action against the Company before the Wisconsin Employment Relations Board for its failure to follow the arbitrator's award.⁹

On May 13, the Company brought action to set aside the Lieberman award in the Circuit Court of Winnebago County, and on May 14, 20 of the employees involved brought a similar action against the Wisconsin Board, the Company, the Respondent Union, and two of its officers in that forum.

On May 19, the Respondent Union notified the Company that 20 of the 22 employees had failed to remit the sums allegedly due from them and requested their discharge.

On May 23, 19¹⁰ of the 20 employees deposited sums of money allegedly due the Respondent Union in escrow in the Winnebago County Circuit Court. These payments and those of Elmer and Brown were made to avoid their losing their employment. At the time of the hearing the Wisconsin Board proceeding was in abeyance pending the outcome of the circuit court cases.

⁹ At about the same time employees Elmer and Brown made their peace with the Respondent Union by lump sum and installment payment arrangements.

¹⁰ Ahlswede paid nothing into escrow nor to the Respondent Union. The record is not altogether clear as to whether Ahlswede was in the employ of the Company at the time of the hearing. Murphy, president of the Respondent Union, testified that, to the best of his knowledge, Ahlswede was. However, the General Counsel's comprehensive marshalling of the many details involved herein, included in his brief to the undersigned, indicates that Ahlswede was "Laid off 8-26-49." In any event, it appears, and the undersigned finds, that Ahlswede was not discharged by the Company for his failure to remit or deposit in escrow.

B. *The issues*

With matters in this posture, the General Counsel contends that: (1) The Board, under Section 10 (a) of the Act, has exclusive jurisdiction over the controversy,¹¹ the arbitrations, the Wisconsin Employment Relations Board decision and second action, and the actions in the Winnebago County Circuit Court notwithstanding; (2) assuming that all employees involved joined the Respondent Union (there is some doubt as to one), four of them, as revealed by the evidence, sought to withdraw and were wrongfully refused, while one was granted his request; (3) assuming that all joined and none withdrew, nevertheless, under the terms of the 1937 union constitution, all but two who later paid further dues, were, after 3 months, "automatically suspended" and, under another provision thereof, forfeited their membership and could be reinstated "only by paying initiation fee and such other penalties as may be imposed by the Local Union to which application for membership is made"¹² and that since 6 of the employees were thereafter readmitted into membership upon payment of a small initiation fee (but shortly thereafter again ceased paying dues and have not done so since), the Respondent Union is clearly shown to have conducted its affairs under the second provision,¹³ none (with the two exceptions) have been members since, at the latest, May 1938; (4) the Respondent Union, by its failure to submit their names to the War Labor Board as required by the 1943 contract containing the first maintenance-of-membership clause, demonstrated that it did not consider them to be members, and also did so by failing to submit their names to the Company as being delinquent and by failing to include their names on listings of delinquent members posted in the plant during the terms of the 1943 and 1944 contracts; (5) the 1946 contract containing the "Memo of Intent" did not enlarge the application of the maintenance of membership since the "Memo" merely referred to withdrawal and did not, therefore, require the 23 employees to bring themselves into good standing; (6) the 1947 and 1948 contracts contained no "Memo of Intent" and the same result is therefore reached; (7) assuming that the employees involved were nevertheless "suspended members," under the *Colonic Fibre*,¹⁴ and other cases cited, the requirement that employees pay past dues, assessments, and fees in order to obtain future employment is not within the protection of the proviso of Section 8 (a) (3) and hence illegal; (8) since the Respondent Union was not authorized to bargain for union security until September 24, 1948, the 1948 contract being dated June 14, 1948, and the Act providing for a 30-day interval of escape, its demand for back dues for the 4-month period not covered by the agreement was illegal; and (9) that under these circumstances the Respondents have acted and are acting in violation of the provisions of the Act as alleged in the complaint.

Counsel for the Company takes much the same position, including that: (1) Under the holding of the Board in the *Newman*¹⁵ case, the activities of the Respondents constituted violations of Section 8 (b) (1) (A) and (2) of the Act

¹¹ The Board has previously taken jurisdiction over the Company in 11 NLRB 91, a complaint case, and in the union-security election matter cited in footnote 8, above.

¹² The quoted matter appears in the record by stipulation of the parties.

¹³ The constitution of the International Union at that time constituted the bylaws of Local 291.

¹⁴ *Colonic Fibre Co. v. N. L. R. B.*, 163 F. 2d 65 (C. A. 2).

¹⁵ *H. Milton Newman*, 85 NLRB 725.

on account of the attempted discrimination against the 22 employees involved¹⁶ with respect to the payment of union dues; (2) the 22 employees were not covered by the maintenance-of-membership provisions of any of the contracts because most of them had ceased paying dues in 1938, and none paid dues after 1941, thereby revealing their having withdrawn from their affiliation with the Respondent Union and that by not posting their names on delinquent lists nor, before the Luebke case, interesting itself in their status, it understood their status to have been that of nonmembers; (3) because the 22 grievances were filed under the 1947 contract which became effective on the day of the filing thereof, June 30, 1947, rather than the fifth, or July 8, 1946, contract including the "Memo of Intent," any disability the employees involved may have been under as a consequence of the provisions of the latter, was removed, and since the Lieberman arbitration was asked for under, and his award rendered during the term of the 1948 contract, their rights must be determined under its terms;¹⁷ (4) and since those involved were not "good standing" members when the contract became effective, the Lieberman proceeding is void.¹⁸

Counsel for the Respondents contends that: (1) The Respondents at no time "demanded or caused" the Luebke discharge, having merely set in motion a chain of events which culminated in the decision of the Wisconsin Employment Relations Board, over which they had no control, and that when the Company discharged Luebke, it did so "acting under what it considered to be legal compulsion"; (2) the same is true respecting the 22 other employees involved, the Respondent Union having merely initiated the events concerning them by filing the grievances; and (3) neither the General Counsel nor the Board has the right or power to inquire into the status of the employees involved, nor the propriety of the Respondent Union's claims for dues, assessments, and the like, both matters being solely within the province of the Respondent Union.

C. Concluding findings

There is no question but that the Board, under Section 10 (a) of the Act, has jurisdiction of the subject matter; it has taken jurisdiction before; none of the parties has raised any question thereof.¹⁹

The crux of the case, in the opinion of the undersigned, is the weight to be given to the "Memo of Intent" forming a part of the 1946 contract. The 23 employees had not paid dues since 1941, and most of them not since 1938. The 1937 and 1938 contracts contained no provision for maintenance of membership.

¹⁶ The Company does not include the Luebke case in its consideration of the merits of the consolidated case. Since it is not a respondent in the matter, this omission appeals to the undersigned as understandable.

¹⁷ The 1948 contract provided that ". . . members of the Union and those who thereafter become members of the Union shall be required as a condition of employment to remain good standing members of the Union for the duration of this agreement."

¹⁸ Counsel for Luebke takes largely the same position, with special emphasis on that individual's case.

¹⁹ See e. g., *N. L. R. B. v. Newark Morning Ledger Co.*, 120 F. 2d 262. No question of difficulty under Section 14 (b) (*Algoma Plywood and Veneer Company v. Wisconsin Employment Relations Board*, 336 U. S. 301), is seen. The Wisconsin Board in the Luebke matter held, according to the brief of counsel for the Respondents, that the matter of his status was not before it and that it had no power to decide that question, but merely found that the Company's refusal to abide by the Marshall award constituted an unfair labor practice. See *Bethlehem Steel Co. v. New York State Labor Relations Board*, 330 U. S. 767, *La Crosse Telephone Corp. v. Wisconsin Employment Relations Board*, 336 U. S. 18, and *Plankinton Packing Company v. Wisconsin Employment Relations Board*, 338 U. S. 593. (February 13, 1950.)

The 1943 contract, containing the first maintenance-of-membership clause, inspired by War Labor Board action, resulted in no effort by the Respondent Union to cause them to make up their alleged deficiencies, nor did the 1944 contract, which extended to mid-1946. None of them provided that "all of the complainants were required to maintain their membership in good standing while employed with said company," as alleged in the Respondents' answer and asserted in their brief. This contention is therefore found to be without merit.²⁰ It is further found, upon the record as a whole, that during this period the Respondent Union did not consider them to be members, "suspended" or in any other category, and that, in fact they were not.

With the execution of the July 8, 1946, contract and "Memo of Intent," the Respondent Union, after a long lapse of time, renewed its interest in the 23. On September 6, 1946, it filed a grievance against Luebke²¹ under the article of the contract quoted above and providing that members of the Union as of July 14, were required to remain in good standing for the duration of the agreement. The accompanying "Memo of Intent" provided, as is set forth above, that only "good standing members of the Union as of the date of the contract have a right of severing their membership. . . . Suspended members . . . may not exercise their right of withdrawal . . . until they have reinstated their good standing membership . . . by the payment in full of their financial delinquencies."

It having been found that Luebke and the others involved were not members of any kind at this time, it follows that the Marshall award was, in the opinion of the undersigned, erroneous in finding that Luebke was a "suspended" member and must liquidate his delinquencies, failing which, the Company must discharge him.

Even had the award properly found that Luebke was a suspended member, his discharge would, under the holding of the court in the *Colonie* case (*supra*) have been improper. The court in that case stated that "approval of a contract which would make it possible for the contracting Union to require payment of past dues as a condition of future employment would have a seriously detrimental effect on freedom of organization."

It follows that the grievances of the 22 others, filed under the same article of the 1946 contract and the Respondents' activities respecting those involved, suffered from the same impropriety. The Lieberman award was made under that contract, despite the fact that the arbitrator was specifically appointed to hear all matters under the terms of the 1948 contract and over the protests of the Company. He followed the Luebke award. The undersigned considers him to have been in error.

The Respondents insist that they did not in any way cause or attempt to cause the Company to take discriminatory action against any of the employees and that they did not restrain them in their right to refrain from any and all concerted activities. In September 1946, after the grievance against him had been filed, Luebke was called to the company office and informed of the fact that the Respondent Union was making a claim for back dues and assessments against him and that if he did not defray the delinquency, he would be discharged. This position remained unchanged until he was actually discharged some 14 months later. As to the others, on April 17, 1947, the Respondents wrote them, quoting

²⁰ Conclusions reached in testimony by officers of the Respondent Union that, by once having joined and paid dues to it, the employees assumed a continuing obligation with respect to dues for the remainder of their employment are likewise found to be without merit.

²¹ The record does not disclose why he was chosen.

the terms of Marshall award and stated: "According to our records you are a suspended member of Local 291 UAW-CIO. We suggest that you make arrangements to clear this matter up on or before May 1, 1947." On April 15, 1949, the Respondents wrote the employees quoting the Lieberman award which stated, in part, that unless they defrayed their alleged indebtedness within 30 days, they would be discharged. On the same day, the Respondents wrote the Company stating that if the employees involved did not, within 30 days, "meet their financial obligations we expect the Company to carry out the terms of the arbitrator." On May 19, 1949, the Respondents again wrote the Company requesting the discharge of the 20 who had not made their peace with them. It is found that the contentions of the Respondents are without merit.

It is found that the Respondents, and each of them, have, since August 22, 1947, the effective date of the Act, by restraining and coercing the 23 named employees in their right to refrain from any and all concerted activities, have engaged in and are engaging in unfair labor practices, within the meaning of Section 8 (b) (1) (A) of the Act; it is further found that since that date, by causing the Company to discriminate against Luebke in violation of Section 8 (a) (1) and (3) of the Act, and by attempting to cause it to so discriminate against 22 other named employees because they failed and refused to become members of the Respondent Union, and for reasons other than their failure to tender periodic dues and fees, the Respondents, since August 22, 1947, have engaged in and are engaging in unfair labor practices, within the meaning of Section 8 (b) (2) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondents set forth in Section III, above, occurring in connection with the operations of the Company set forth in Section I, above, 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.

V. THE REMEDY

Having found that the Respondents, and each of them, have engaged in and are engaging in unfair labor practices, it will be recommended that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondents have caused the Company to discriminate in regard to the hire and tenure of employment of Vernon J. Luebke, it will be recommended that they, and each of them, notify the Company, in writing, that they withdraw all objections to his employment and that they request the Company to offer him immediate and full reinstatement to his former or substantially equivalent position,²² without prejudice to his seniority and other rights and privileges.

It will be further recommended that the Respondent Union make Luebke whole for any loss of pay he may have suffered by reason of the discrimination against him,²³ by the payment to him of a sum of money equal to the amount he would normally have earned as wages from the date of his discharge to the

²² *Chase National Bank, etc.*, 65 NLRB 827.

²³ There being no charge or complaint against the Company, the normal "joint and several" recommendation does not lie.

date of the Respondents' request that the Company offer him reinstatement, less his net earnings during said period.²⁴

It will be further recommended that the Respondents cease and desist from causing or attempting to cause the Company, Wisconsin Axle Division, The Timken-Detroit Axle Company, to discharge or otherwise discriminate against any of its employees because they are not members in good standing of the Respondent Union, except in accordance with the provisions of Section 8 (a) (3) of the Act.

Upon the basis of the foregoing findings of fact and the entire record in the case, the undersigned makes the following:

CONCLUSIONS OF LAW

1. The Respondent Union, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, C. I. O., Local 291, is a labor organization, within the meaning of Section 2 (5) of the Act.

2. Lawrence Murphy, Louis Mueller, Wilbur Koch, and Walter Cappel, the individual Respondents, are duly authorized and acting agents of the Respondent Union.

3. By attempting to cause and causing the Company to discriminate in regard to the hire and tenure of employment of Vernon J. Luebke, in violation of Section 8 (a) (3) of the Act, the Respondent Union has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (b) (2) of the Act.

4. By attempting to cause the Company to discriminate against 22 other named employees, in violation of Section 8 (a) (3) of the Act, the Respondents have engaged in and are engaging in unfair labor practices, within the meaning of Section 8 (b) (2) of the Act.

5. By restraining and coercing employees of the Company in the exercise of their right to refrain from any and all of the concerted activities guaranteed them by Section 7 of the Act, the Respondents have engaged in and are engaging in unfair labor practices, within the meaning of Section 8 (b) (1) (A) of the Act.

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

[Recommended Order omitted from publication in this volume.]

²⁴ *Crossett Lumber Company*, 8 NLRB 440.