

**Loft Painting Company, Inc. and William K. Shaw, Jr.**

**Painters Local 555, International Brotherhood of Painters and Allied Trades of the United States and Canada, AFL-CIO and Dean Riebesehl.**  
Cases 9-CA-18190 and 9-CB-5187

10 August 1983

### DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS  
ZIMMERMAN AND HUNTER

On 9 October 1982 Administrative Law Judge Thomas A. Ricci issued the attached Decision in this proceeding. Thereafter, Respondent Painters Local 555, International Brotherhood of Painters and Allied Trades of the United States and Canada, AFL-CIO (the Union), filed exceptions and a supporting brief, and the General Counsel filed cross-exceptions and a brief in support of the Administrative Law Judge's Decision.

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

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,<sup>1</sup> and conclusions<sup>2</sup> of the Administrative Law Judge and to adopt his recommended Order, as modified herein.

The Administrative Law Judge found that Respondent Union violated Section 8(b)(1)(A) and (2) by causing Respondent Employer to lay off employee Dean Riebesehl in order to replace him with a longstanding member of the Local. The Administrative Law Judge also found that Respondent Employer laid off Riebesehl for the unlawful reason after the Union threatened to strike. We have adopted these findings.

To remedy these violations, the Administrative Law Judge recommended a cease-and-desist order,

<sup>1</sup> Respondent Painters Local 555, International Brotherhood of Painters and Allied Trades of the United States and Canada, AFL-CIO, has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

We also find no merit in Respondent Union's claim that the Administrative Law Judge was biased.

<sup>2</sup> In adopting the Administrative Law Judge's finding that Respondent Loft Painting Company, Inc. (the Employer), and Respondent Union violated Secs. 8(a)(3) and (1) and 8(b)(1)(A) and (2) of the Act, respectively, we do not rely on the Union's having filed an unfair labor practice charge against Loft as probative evidence of any of the factual issues presented here, and we specifically disavow the Administrative Law Judge's reliance thereon.

and backpay to Riebesehl, with Respondent Union primarily liable and Respondent Employer secondarily liable.<sup>3</sup> The Administrative Law Judge failed, however, to provide reinstatement for Riebesehl; that is he failed to order Respondent Union to give written notice to Respondent Employer with a copy to Dean Riebesehl that it has no objection to the employment of Riebesehl, and he failed to order Respondent Employer to offer Riebesehl reinstatement. This is the Board's normal remedy for violations of this kind, and we find it appropriate here.<sup>4</sup> We further conclude that Respondent Union's backpay liability should not be tolled until 5 days after Respondent Union gives notice that it has no objection to the employment of Riebesehl, and Respondent Employer's backpay liability will run until it offers Riebesehl reinstatement.

### THE REMEDY

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

Having found that Respondent Union unlawfully caused Loft to discharge Dean Riebesehl and that Respondent Employer unlawfully acquiesced in Respondent Union's demand and pursuant thereto laid him off on 19 October 1981, we shall order that Respondent Union notify Respondent Employer, in writing, and furnish a copy to Riebesehl, that it has no objection to the employment of Riebesehl. Respondent Employer shall also be ordered to offer Riebesehl reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position. Respondent Union shall be primarily liable and Respondent Employer secondarily liable to Riebesehl to make him whole for any loss of wages and benefits resulting from Respondents' unlawful conduct. As stated above, in the case of Respondent Union, its backpay liability shall terminate 5 days after it notifies Respondent Employer and Riebesehl that it has no objection to the employment of Riebesehl, and, in the case of Re-

<sup>3</sup> We adopt this apportionment of the liability for the reasons stated in *Wisner and Becker*, 228 NLRB 779 (1977). We hereby correct the incorrect citation to the case contained in the Administrative Law Judge's Decision. We also correct the Administrative Law Judge's reference, in the first paragraph of sec. III of his Decision, to the Carpenters when, in fact, he was discussing the Painters Union.

<sup>4</sup> See *C. B. Display Service*, 260 NLRB 1102 (1982); *Q.V.L. Construction*, 260 NLRB 1096 (1982). We are aware that, absent unfair labor practices, Riebesehl might have terminated his employment at the end of the project from which he was prematurely and unlawfully laid off. The record, however, does not clearly demonstrate that this would have happened. In fact, absent unfair labor practices, Riebesehl might have been transferred to another Loft project. The record is not clear, and the matter is more appropriately left to the compliance stage.

spondent Employer, its backpay liability shall terminate on the date that Riebesehl is offered reinstatement. The amount of backpay shall be computed in the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest thereon to be computed in the manner prescribed in *Florida Steel Corp.*, 231 NLRB 651 (1977).<sup>5</sup>

Respondent Employer shall be ordered to preserve and, upon request, make available to the Board or its agents any and all records necessary to analyze the amount of backpay due.

#### 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 Administrative Law Judge, as modified and set out in full below, and hereby orders that:

A. Respondent Loft Painting Company, Inc., Portsmouth, Ohio, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Encouraging membership in Painters Local 555, International Brotherhood of Painters and Allied Trades of the United States and Canada, AFL-CIO, or any other labor organization, by discharging employees or otherwise discriminating against them in regard to their hire or tenure of employment or any other term of employment, except as authorized by Section 8(a)(3).

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

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

(a) In conjunction with Respondent Union, with Respondent Union primarily liable, make whole Dean Riebesehl for any loss of earnings suffered as a result of the discrimination against him, in the manner set forth in the section of the Board's Decision entitled "The Remedy."

(b) Offer Dean Riebesehl immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority and other rights and privileges previously enjoyed.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the

amount of backpay due under the terms of this Order.

(d) Post at its office and work project in Piketon, Ohio, copies of the attached notice marked "Appendix A."<sup>6</sup> Copies of said notice, on forms provided by the Regional Director for Region 9, after being duly signed by an authorized agent of Respondent Employer, 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 employees are customarily posted. Reasonable steps shall be taken by Respondent Employer to ensure that said notices are not altered, defaced, or covered by any other material.

(e) Transmit to the Regional Director for Region 9 signed copies of said notices in sufficient number to be posted by Painters Local 555, International Brotherhood of Painters and Allied Trades of the United States and Canada, AFL-CIO, in all places where notices to its members are customarily posted.

(f) Post at the same places and under the same conditions as set forth in paragraph A, 2(d) above, as soon as forwarded by said Regional Director, copies of the attached notice marked "Appendix B."

(g) Notify the Regional Director for Region 9, in writing, within 20 days from the date of this Decision and Order, what steps Respondent Employer has taken to comply herewith.

B. Respondent Painters Local 555, International Brotherhood of Painters and Allied Trades of the United States and Canada, AFL-CIO, Portsmouth, Ohio, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Causing or attempting to cause Loft Painting Company, Inc., or any other employer, to discharge or otherwise discriminate against 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 which is necessary to effectuate the policies of the Act:

(a) Notify Loft Painting Company, Inc., in writing, with a copy furnished to Dean Riebesehl, that Respondent Union has no objection to the employment of Dean Riebesehl.

(b) In conjunction with Respondent Employer, with Respondent Union primarily liable, make

<sup>5</sup> In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

<sup>6</sup> See, generally, *Isis Plumbing Co.*, 138 NLRB 716 (1962).

whole Dean Riebesehl for any loss of earnings suffered as a result of the discrimination against him. Backpay shall be computed in the manner set forth in the section of the Board's Decision and Order entitled "The Remedy."

(c) Post at its office and meeting hall in Portsmouth, Ohio, copies of the attached notice marked "Appendix B."<sup>7</sup> Copies of said notice, on forms provided by the Regional Director for Region 9, after being duly signed by the business manager of Respondent Union, 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 Union to ensure that said notices are not altered, defaced, or covered by any other material.

(d) Transmit to the Regional Director for Region 9 signed copies of said notice in sufficient numbers to be posted by Loft Painting Company, Inc., in all places where notices to its employees are customarily posted.

(e) Post at the same places and under the same conditions as set forth in paragraph B, 2(c), above, as soon as forwarded by said Regional Director, copies of the attached notice marked "Appendix A."

(f) Notify the Regional Director for Region 9, in writing, within 20 days from the date of this Order, what steps Respondent Union has taken to comply herewith.

<sup>7</sup> See fn. 6, *supra*.

#### APPENDIX A

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

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT discharge or otherwise discriminate against employees to encourage membership in Painters Local 555, International Brotherhood of Painters and Allied Trades of the United States and Canada, AFL-CIO, or any other labor organization, except as permitted by Section 8(a)(3) and 8(f) of the National Labor Relations Act.

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

WE WILL offer Dean Riebesehl immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority and other rights and privileges previously enjoyed.

WE WILL, in conjunction with the Union, with the Union primarily liable, make Dean Riebesehl whole for any loss of earnings he may have suffered as a result of the discrimination against him, with interest.

LOFT PAINTING COMPANY, INC.

#### APPENDIX B

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

WE WILL NOT cause or attempt to cause Loft Painting Company, Inc., or any other employer, to discharge or otherwise discriminate against any employee in order to encourage membership in this Union, except as permitted by Sections 8(a)(3) and 8(f) of the National Labor Relations Act.

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

WE WILL notify Loft Painting Company, Inc., in writing with a copy furnished to Dean Riebesehl, that we have no objection to the employment of Dean Riebesehl.

WE WILL, in conjunction with Loft Painting Company, Inc., with ourselves primarily liable, make whole Dean Riebesehl for any loss of earnings he may have suffered as a result of the discrimination against him, with interest.

PAINTING LOCAL 155, INTERNATIONAL  
BROTHERHOOD OF PAINTERS AND  
ALLIED TRADES OF THE UNITED  
STATES AND CANADA, AFL-CIO

#### DECISION

#### STATEMENT OF THE CASE

THOMAS A. RICCI, Administrative Law Judge: A hearing in this proceeding was held on August 18 and 19, 1982, at Portsmouth, Ohio, on a consolidated complaint

issued by the General Counsel against Loft Painting Company, Inc., herein called the Company or Respondent Employer and against Painters Local 555, International Brotherhood of Painters and Allied Trades of the United States and Canada, AFL-CIO, herein called Respondent Union or the Union. The complaint issued on April 30, 1982, based on a charge filed by Dean Riebesehl on February 17, 1982, against Respondent Union, and on a charge filed on April 7, 1982, by William K. Shaw, Jr., an attorney, against Respondent Employer. The two issues to be decided are whether Respondent Union unlawfully caused the Employer to discharge Riebesehl in violation of Section 8(b)(2) of the Act, and whether the Employer unlawfully discharged the man because of the pressure the Union put on it. Briefs were filed by the General Counsel and the Union.

Upon the entire record and from my observation of the witnesses, I make the following:

## FINDINGS OF FACT

### I. THE BUSINESS OF THE EMPLOYER

Loft Painting Company, Inc., is in the business of furnishing industrial and commercial painting services, with its principal place of business in Portsmouth, Ohio. During the 12 months preceding issuance of the complaint, a representative period, in the course of its business it purchased and received at its Portsmouth facility products, goods, and materials valued in excess of \$50,000 directly from points outside the State of Ohio. I find that Respondent Employer is engaged in commerce within the meaning of the Act.

### II. THE LABOR ORGANIZATION INVOLVED

I find that Painters Local 555, International Brotherhood of Painters and Allied Trades of the United States and Canada, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

### III. THE UNFAIR LABOR PRACTICES

#### A. *The Case in Brief*

Riebesehl is a painter employer from time to time by a contractor called Loft Painting Company, at a number of its jobs in different counties of Ohio. He was for a number of years a member of Locals 999 and 1072, both affiliated with the District Council of Carpenters International Union. In 1981, because the supervisors of the Loft Company liked his work, they brought him to one of their jobs in the jurisdictional area of Local 555, also of the Carpenters District Council, Respondent herein. With time Riebesehl transferred his membership book into Local 555 and started paying dues to that Local although he lived about 40 miles away. In October 1981 he was working at a large project for Loft called the Piketon Plant. Also working there were many other members of Local 555, including a painter named Gus Ison. Unlike Riebesehl, Ison had been a member of Local 555 for many years.

On October 2, 1981, Ison was laid off for lack of work. On October 19 Riebesehl too was laid off, but not for lack of work, for it is not disputed that there was

work for him and his immediate crew at the time. The complaint now alleges that agents of Local 555 caused the Loft Company to discharge Riebesehl because he had only recently become a member of the Local, and because Ison, a long-time member, should instead either have been returned to work together with Riebesehl or hired in place of Riebesehl, all in violation of Section 8(b)(1) and (2) of the Act. The complaint also alleges that because it in fact discharged Riebesehl for the reason urged upon it by the Union Respondent Loft violated Section 8(a)(3).

The Loft Company did not file an answer to the complaint against it. Indeed, its president, David Loft, appeared at the hearing and testified that the reason why he fired Riebesehl was because of the pressure put on him by Donald Bailey, business manager of Local 555, and other agents of that Union. Loft literally admitted the unfair labor practice charged to him. While denying the commission of any unfair labor practice, the Respondent Union was ambivalent in its position, its witnesses sometimes suggesting Loft released Riebesehl of its own volition apart from anything the Union wanted, and sometimes saying the man simply chose to quit and was not fired at all. At one point in his testimony Business Manager Bailey said he did not know whether Riebesehl had quit or been discharged. This, in the face of the fact that the complaint against the Loft Company rests on a charge Bailey's lawyer filed saying Riebesehl had been illegally laid off!

There is a question of credibility involved. Did the union agents pass the message to management that unless it replaced Riebesehl with Ison, or at least put Ison to work right away, it would call a strike to enforce its demand? Again ambiguity on the question of just what complaint did the Union voice to Loft—was it only that Riebesehl had failed to comply with the union rule that said all laid-off employees were required to sign the referral book, or was it that Ison had to be preferred because he was a longstanding member and Riebesehl only a recent newcomer?

#### B. *The Evidence*

The events which gave rise to this case occurred after Riebesehl was transferred by the Company, late in June, to its large project called the Piketon Plant. Before that Riebesehl had worked for Loft on other jobs located outside the territory of Local 555, somewhere in Ashland County, where he was a member of the other Painters locals. Loft wanted him to come to work at its jobs in the Local 555 jurisdiction, and brought him there. There is conflicting testimony as to whether Riebesehl first telephoned Bailey before going to the union hall, or whether he did not telephone but first talked to Bailey in the office. There is also conflicting testimony about whether Riebesehl was sent to work for Loft as a result of a request by the Loft Company, or simply because he, Riebesehl, asked Bailey to help him and Bailey, out of the kindness of his heart, sent him to Loft as a personal favor. As it happens, on this record in its entirety, I do not believe Bailey. In any event, that Riebesehl first started to work for Loft in the territory of Local 555,

with knowledge and agreement of Local 555—indeed was “referred” by that Local—is a stipulated fact. But all these earlier events have nothing to do with this case. It was only when, in October 1981, with both Ison and Riebesehl at work on the Company’s power plant job, and with Ison then being laid off on October 2 while Riebesehl was kept on, that the dispute between Loft and Local 555—whatever its nature—arose. As best I can understand the Union’s essential defense, it focuses on the fact Riebesehl did not work for a week early in September, and did not report that 1-week layoff to the union hall or sign the register. It was this delinquency, Bailey said, that caused all the trouble. I will therefore concern myself only with what happened, and what was said and done, during September and October 1981.

George Wooten, the foreman on the job over Riebesehl, testified that, shortly after Ison was laid off on October 2, Bailey came to him on the jobsite and “asked me if I was going to hire Mr. Ison back. I told him as quick as I got the work shook loose, and I could, I’d call Mr. Ison back.” A week or so later Bailey spoke to him again on the job. “Mr. Bailey told me then, he said, Mr. Ison is a local man, and Ms. Riebesehl is out of the country and he thought Mr. Ison should work in Mr. Riebesehl’s place.” Wooten continued to testify that while Riebesehl was still at work he heard Bailey tell Virgil Johnson, a painter and the Local 355 steward on the job, that “they was going to have a meeting to vote whether . . . . A special meeting, to vote, whether to close Loft Printing Company down, on strike, because of the Riebesehl case, or—and, for Mr. Johnson to be sure to attend a meeting. Q. Now, did he say anything at that time, if you recall, as to what he meant by the Riebesehl case? A. Well, whether to close us down, or not, because Dean Riebesehl was working, and Gussie Ison wasn’t.” “He (Bailey) said I could lay Riebesehl off, and hire Bailey in his place.” Also from Wooten’s testimony: “Mr. Johnson told me, I believe it was the following day, that they had the meeting, and it had been voted three to one, to let Loft keep working.”

Wooten also recalled another conversation he had with Bailey during this period. “He said that he would not refer any more men out to me to work there, until Mr. Ison would go—was recalled back to work, and that no one would come out there to work for me out of the hall, until Mr. Ison had been recalled to work.” On cross-examination the foreman also recalled that Bailey several times told him about Riebesehl not signing the book when laid off, and that this was a requirement so that the business manager could know who was working and who was not, that it was necessary for the referral system.<sup>1</sup>

<sup>1</sup> When Riebesehl was shifted back and forth several times from one Loft Company job to another before July 1981, he did not go to the Local 555 hall each time for referral. On this fact too, of the Company taking the liberty of calling a man who had worked for it many times without bothering to clear with Bailey, the Union made much to-do at the hearing. But like other things that happened before the critical September and October incidents, that too is really not a matter of concern in this proceeding. There is clear, undisputed evidence, that despite whatever the applicable collective-bargaining agreement provided, it was common practice for a company like Loft to recall a man who had worked for it not too long before, or who was merely on short-term

Wooten closed with saying that he repeated these conversations he had with Bailey to David Loft, about the planned strike vote to compel preferential treatment of Ison over Riebesehl.

President Loft corroborated Wooten, testifying that the foreman told him that in order to retain Riebesehl on the job the Company would have to hire Ison right away. Loft also testified to two conversations on the job with Bailey, who used to visit the site often. The first time Bailey said to him “that I work in order to settle the problem that we had at the A plant, involving Mr. Riebesehl, that I work Mr. Ison . . . . He just said that I was going to have to work Mr. Ison, and I said I don’t want to work Mr. Ison, ‘I’m not going to.’ Q. Did Mr. Ison Bailey explain to you why he felt Mr. Ison should be worked? A. Because Mr. Ison was a long-standing member of the Local, and Mr. Riebesehl was a ‘Johnny-come-lately clear-in,’ to use a phrase.” Loft added that several days later returned and repeated the same message to him, and that when he refused to hire Ison, Bailey said “he’d just have to talk it over with the Executive Board.”

Bailey denied ever telling Loft such things, he said the only thing he told Loft about this matter was that men had to sign the book whenever laid off. “I called David Loft up as he is the owner of Painting Loft Company and informed him that being . . . that his regular men had never been laid off possibly they didn’t know the hiring hall procedure. So, I informed him of the hiring hall procedure that we had other men on the job laid off for that one job and they had come in and adhered to our hiring hall procedure, and signed our work list, but this one particular man didn’t. And that he was going to have to adhere to it.” Bailey denied ever having told Loft anything else about Riebesehl. Both he and Johnson also denied ever having discussed between themselves the possibility of shutting Loft down, or striking the Company, or speaking about such a subject in the presence of Foreman Wooten.

One day steward Johnson told Riebesehl on the job that he was to present himself at an executive board meeting of the Local that evening. Riebesehl went, at or about 7 p.m. Present there were Bailey, the steward, the president of the local, and several other officers. It is what took place there, and the evidence relating to the asserted reason for holding the meeting and calling Riebesehl to appear, that goes to the heart of the Union’s defense, and in my considered judgment completely destroys the credibility of the Union’s defense, as well as that of its principal witnesses.

We start with Riebesehl’s story. He arrived late and had to sit outside the room while the union officials dis-coursed inside. He was later called in the room and told, by several of the men present, “that they thought I should take a voluntary layoff, because Gus Ison was in

layoff, without clearing with the union hall. Bailey admitted this himself. From his testimony: “Q. Now, is there a provision in their contract that states in effect that if the employer has a right to recall a man that had worked for him in the past? A. Yes, he does, in the past 10 years . . . . In our jurisdiction, if he has worked for him, in our jurisdiction, that’s the way it states in there.”

the Union for more years than I was, and I explained to them that I was in the Local, and I didn't think I should take the layoff. But, if it was really necessary, I would take one, but didn't want to. Q. Who asked you that? . . . A. I think that just about all members on the executive board meeting." With this Riebesehl left the place and went to the home of Foreman Wooten, to inform him of what had happened. Wooten telephoned Paris Jenkins, the higher superintendent above him. Jenkins then advised calling Loft himself. Riebesehl then did that, and, when told of what was taking place, Loft "advised me to take a layoff, and sign up for my unemployment, and he would get back with me as soon as he could put me back to work." To this, Riebesehl's response was, still according to his testimony, "well, if I have to take a layoff, I'll just have to take one."

Four members of the executive board testified in defense—Bailey, steward Johnson, Gene Cox, the secretary-treasurer, and Richard Frost, president. Each of them denied Riebesehl was told he should leave the job. Their total testimony is that Bailey, and some others of them, did no more than remind Riebesehl of the signing requirement when a man was laid off. Cox said it was Riebesehl who first brought up the subject of leaving the job when he asked, "Well, shall I quit the job?" and that Bailey answered that he did not have to quit. Bailey put it differently, "I did mention to him that before he left, and in fact during the conversation, I told him, 'Now, I'm not telling you to leave that job, quit that job out there' . . . 'I'm just giving you a warning on our working agreement. Probably you didn't know it.'" But this means it was Bailey who brought up the subject of leaving work, and not Riebesehl. The sum total of the testimony of all four of these witnesses was that all that took place that night, insofar as Riebesehl was concerned, is that Bailey told him he should have signed the book when he was laid off. They insisted there was no talk of doing anything else about the fact Riebesehl was on the Loft job, or about getting him off, or about any possibility of strike action against the Company.

One asks: If the only reason for ordering the man to present himself at an executive board meeting—the only such meeting ever held throughout that entire year!—was to tell him it was all right for him to continue on the job but next time he was laid off he should come in and sign the book, why was he not just told that on any one of the many occasions when Bailey visited the jobsite during the months of September and October? Asked, on cross-examination, is it not a responsibility of the steward to advise a member of such a mistake as a normal part of his duties, Cox, the secretary-treasurer, came up with a lot of doubletalk and deliberately refused to answer. Bailey too was asked had he told either the foreman or the steward on the job to tell Riebesehl he should sign the book; like Cox, Bailey too avoided answering. For the business manager, the top man of the Local Union, to go to the trouble of having an ordinary member brought to an executive board meeting only so he might be given a passing remark makes no rational sense, and is an extremely unconvincing story. Since the reason for having Riebesehl come to that meeting logically could not have been merely to tell him to be more careful next

time, it must have been something else, a purpose concerning a different matter.

Another question: Why was this meeting held? Riebesehl said very plainly it took place on October 19. His employment record with Loft, received in evidence in writing, shows he was discharged that day, that same night, and this was consistent with his testimony. To prove the meeting took place instead of October 14, the Union produced a wall calendar kept in the secretary's office, on which Cox said he makes note of important activities scheduled. On the date of October 14 there appears written, in his handwriting, the words: "Executive Board Meeting with D. Riebesehl." That the purpose for holding that meeting at all was to consider whatever had to be decided with respect to that one man, that the meeting was literally to take place "with" him could not be clearer than is shown by the secretary's own words. At the hearing, Cox, as well as all three of his colleagues, kept repeating that Riebesehl had nothing to do with the meeting. They continued to detail how they only discussed other matters, primarily relating to the apprenticeship program. But conferences of all kinds were held throughout that year involving apprenticeship matters, and each time they were scheduled and noticed in advance on the calendar and designated as such matters. No such notation about an apprenticeship program was made as to this meeting. I do not know when Cox made that one special entry, but I must conclude that all four of these witnesses were lying at the hearing.

There is more. As stated above, before the months of July and August Riebesehl worked at more than one construction project for Loft. He did not report his shifts in assignment, or intervening layoffs, to Local 555 then. Continuing with the Respondent's asserted defense: the layoff for which it says it criticized Riebesehl occurred in September, when he had been on this job already for over a month, and where Ison had later come only to be laid off on October 2. That it was that layoff that provoked the "problem" with Loft, as the Union now contends, is clear from its own witnesses' stores. The Loft Company keeps payroll records for each of its employees and they show Riebesehl worked continuously throughout that period except for a full week ending September 9.

The final hole in the dike of the affirmative defense appears in a document put into evidence by the Union itself. In order to prove that Riebesehl had in fact been off work for a full week, and not just a day now and a day then due to inclement weather or some such other reason, it presented a monthly report the Loft Company sends to the Union's organizing fund. It shows the number of hours worked each week by every member of the Union during the month and proves Riebesehl worked no hours the second week of September. On cross-examination the question arose as to how did the union officials know Riebesehl had been laid off, and therefore remiss in not signing the book. From Cox's testimony: "Q. Well, in the period that you say he failed to come in and sign the book, which was the reason for this executive board meeting. How did you know that Riebesehl had been laid off? A. I knew he was laid off from

those monthly reports. Q. That's how you found out, from the monthly reports? A. Uh, huh. Q. You saw that there was a space in there, where he had not worked, is that right? A. Well, that alerted me to the fact that he hadn't worked." Bailey spoke about reminding the Company's foreman, Wooten, and the Union's steward, Johnson, about failure to sign the book. Asked when had he come there, he answered: "It was sometime after the layoff that they had in September, probably long towards October." Asked again about the layoff that precipitated the executive board meeting, "Q. Do you remember when that layoff occurred? A. Sometime in September around the first or second or third week of September . . . Probably the first or second week of September."

One last excerpt from the secretary-treasurer's testimony will suffice:

Q. But, is it your testimony that when you got the monthly report, you noticed on there, there was a period when Dean Riebesehl had not worked. And, you assumed that he'd been laid off, or he would have worked—there would have been hours on that for him, is that correct?

A. That is correct.

Q. And, that was why this executive board meeting then, was scheduled to be held, so you could explain to Mr. Riebesehl that he was supposed to come in and sign the book?

A. That was one of the reasons for the meeting.

Q. What was the other reason?

A. The other meeting, was to review the apprenticeship, which was undertaken and studying at the time. Now, we have it in effect now.

Q. But, it was only to tell Mr. Riebesehl to come in and that he would have to sign the out-of-work book, that was the only reason you are having the meeting with respect to him?

A. That's correct.

The Union's exhibit, the report sent by Loft Company to its organization fund for the month of September, bears the notation, again in Cox's handwriting: "Received 10-27-81." He said these reports are usually received on the 15th of the month, but this one came even later in October. In the light of the admissions that it was this report that "alerted" the Union to Riebesehl's failure to sign into the hall, and with its own exhibit proving the Union did not even know about that failure to sign in, how can one find that the reason for holding the executive board meeting "with" Riebesehl was to discuss that matter at all? The members of the executive committee did not even know about that matter until much later!

And finally, Frost, the union president, testified that after being criticized for ignoring the signing-in rule, Riebesehl signed the book that night at the executive board meeting. Why should the Union have him sign in then? He was at work, and, if the Union's witnesses are to be believed, he was not expected to leave that job. I do not believe any of the Union's witnesses, and credit the witnesses of the General Counsel against them.

#### Conclusion

Did the Union "cause" the Company to discriminate, i.e. discharge, Riebesehl, in the words of Section 8(b)(2) of the statute? I think the answer is yes. Loft did say, at the hearing, that the business manager did not directly "threaten" him if he did not yield to the Union's demands. And the Union did strike. But when a union advises an employer it will decide tomorrow whether or not to strike in order to have its way, is this not one form of threat, if not another? If nothing else one thing is proved directly: Loft did not want to fire Riebesehl. That he did it because (and the word "cause" is part of the word "because") the Union gave him too much of a "hassle" (this is Loft's word) could not be clearer on this record. A court long ago said: "This relationship of cause and effect, the essential feature of Section 8(b)(2), can exist as well where an inducing communication is in terms courteous or even precatory as where it is rude and demanding." *NLRB v. Jarka Corp.*, 198 F.2d 618 (3d Cir. 1952), enfg. 94 NLRB 326 (1951). See also *United Food & Commercial Workers Local 454 (Central Soya of Athens)*, 245 NLRB 1295 (1979), and *Electrical Workers IBEW Local 441 (Otto K. Olesen Electronics)*, 221 NLRB 214 (1975).

Under this statute a union may not demand the discharge of a man, and cause his dismissal, merely for the reason that his membership in the union was not of long-standing. This is precisely why Union Respondent here caused the Employer involved to discharge Riebesehl. The painter was a regular paid-up member of Local 555; his book is in evidence and proves the fact directly. Cf. *Operating Engineers Local 18 (Ohio Contractors Assn.)*, 204 NLRB 681 (1973). I find that by causing the Loft Company to discharge Riebesehl, Respondent Union violated Section 8(b)(1)(A) and (2) of the statute. I also find that Respondent Employer, by discharging Riebesehl for that reason, violated Section 8(a)(1) and (3).

#### IV. THE REMEDY

The Union must be ordered to stop causing any employer to discriminate against employees merely because the Union desires that others of its members must be preferred, and the Company must be ordered to stop discriminating against the employees because of such reasons urged upon it by any Union. And Riebesehl, of course, must be made whole for what loss of earnings he suffered because of the illegal layoff of October 19, 1981. I agree with the General Counsel's contention that, in the circumstances of this case, while both Respondents must be held liable for the backpay owing to the discriminatee, the Employer should be deemed only secondarily liable. Again and again both President Loft and Foreman Wooten of the Company resisted the demands of the union agents that they replace Riebesehl with Ison, the Union's choice for the job. It was only when the threat of strike to enforce the illegal demand surfaced that the Company yielded. For very pointed authority, see *Wismern & Becker*, 228 NLRB 779 (1977).

V. THE EFFECT OF THE UNFAIR LABOR PRACTICES  
UPON COMMERCE

The activities of both Respondents as set forth above, occurring in connection with the operations of Respondent Employer described above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among several States and tend to lead and have lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

CONCLUSIONS OF LAW

1. By discharging Dean Riebesehl, Respondent Employer has encouraged membership in Respondent Union in violation of Section 8(a)(3) of the Act.

2. By interfering with, restraining, and coercing its employees in the exercise of the right to refrain from union activities guaranteed in Section 7 of the Act, Respondent Employer has violated Section 8(a)(1) of the Act.

3. By causing Respondent Employer to discriminate against employees in violation of Section 8(a)(3) of the Act, Respondent Union has violated Section 8(b)(2) of the Act.

4. By restraining and coercing employees of Respondent Employer in the exercise of the rights guaranteed them in Section 7 of the Act, Respondent Union has violated Section 8(b)(1)(A) of the Act.

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

[Recommended Order omitted from publication.]