

Engineers and Scientists Guild (Lockheed-California Company, a Division of Lockheed Corporation) and Cecil R. Anderson and Fred Strunk and Emile F. Skaaf and C. L. Crockett Jr. and Norman Pedersen and Edmund J. Talbott and C. Ralph Riege and C. L. Crockett, Jr. and Norman Pedersen. Cases 31-CB-4079, 31-CB-4083, 31-CB-4090, 31-CB-4092, 31-CB-4120, 31-CB-4170, and 31-CB-4247

25 November 1983

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER

On 14 October 1982 Administrative Law Judge Roger B. Holmes issued the attached decision. The Respondent filed exceptions and a supporting brief, and Charging Party C. Ralph Riege filed an exception and a brief answering Respondent's brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

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

Article XIII, section 2, subsection C, of the Union's¹ constitution provides:

No withdrawals from membership shall be considered from the time a work stoppage is authorized until it is terminated.

Recently, in *Pattern Makers (Rockford-Beloit)*, 265 NLRB 1332 fn. 7 (1982), the Board found expunction of a similar constitutional provision² to be an "inappropriate" remedy for unfair labor practices similar to those found by the judge in this case. However, upon further consideration, we find that the mere maintenance of such a constitutional provision restrains and coerces employees, who may be unaware of the provision's unenforceability, from exercising their Section 7 rights. Its effect is analogous to the effect of an employer's maintenance of an overly broad no-solicitation rule.³ Just as an employee wishing to hand out union authorization cards at lunchtime may be restrained by the existence of an overly broad no-solicitation rule, so

¹ Engineers and Scientists Guild, Lockheed Section.

² The constitutional provision at issue in *Rockford-Beloit* provided that "no resignation or withdrawal from an Association, or from the League, shall be accepted during a strike or lockout, or at a time when a strike or lockout appears imminent." *Id.* at 1332.

³ It is well established that "[t]he mere existence of an overly broad rule tends to restrain and interfere with employees' rights under the Act even if not enforced." *Stanco, Inc.*, 244 NLRB 461, 469 (1979). See also *Custom Trim Products*, 255 NLRB 787, 788 (1981).

too here employees who wanted to resign from the Union and return to work during the strike may have been discouraged from doing so by article XIII, section 2, subsection C, in the Union's constitution. Therefore, we order the Union to expunge this provision from its constitution.⁴ See *Elevator Constructors Local 8 (San Francisco Elevator)*, 243 NLRB 53 (1979) (ordering expunction of a union bylaw which required payment of fines and assessments prior to dues).

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Engineers and Scientists Guild, Burbank, California, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 1(a) and reletter the subsequent paragraphs.

"(a) Maintaining in its constitution article XIII, section 2, subsection C, which provides: 'No withdrawals from membership shall be considered from the time a work stoppage is authorized until it is terminated.'"

2. Insert the following as paragraph 2(a) and reletter the subsequent paragraphs.

"(a) Expunge from its constitution article XIII, section 2, subsection C.

3. Substitute the attached notice for that of the administrative law judge.

⁴ According to the parties' stipulation of facts, the Union only represents the unit of Lockheed employees involved in this case. As this one unit is clearly under the Board's jurisdiction, the Union cannot claim as a defense to the expungement remedy that its constitutional provision is capable of valid application in units outside the Board's jurisdiction.

APPENDIX

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

WE WILL NOT restrain or coerce employees and members in the exercise of the rights guaranteed them in Section 7 of the National Labor Relations Act by maintaining in our constitution article XIII, section 2, subsection C, which provides: "No withdrawals from membership shall be considered from the time a work stoppage is authorized until it is terminated."

WE WILL NOT restrain or coerce employees in the exercise of the rights guaranteed them in Section 7 of the National Labor Relations Act by insti-

tuting, prosecuting, and enforcing by the imposition of court-collectible fines internal union disciplinary proceedings against employees of Lockheed-California Company, a Division of Lockheed Corporation, who resigned their union membership, where the entire amount of the fines, or portions thereof, is attributable to the employees' postresignation crossing of the Union's picket line.

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

WE WILL expunge article XIII, section 2, subsection C, from our constitution.

WE WILL rescind the fines, or portions thereof, levied against those employees of the Employer who resigned their union membership, where the entire amount of the fines, or portions thereof, is attributable to the employees' postresignation crossing of the Union's picket line.

WE WILL reimburse any employee who has already paid such a fine described above for the amount of the fine, or portion thereof, he paid which is attributable to his postresignation crossing of the Union's picket line, and WE WILL pay the employee appropriate interest on such money.

WE WILL expunge from the Union's records and files any reference to the fines, or portions thereof, as described above, which are attributable to the employees' postresignation crossing of the Union's picket line, and WE WILL notify the employees, in writing, that this has been done.

ENGINEERS AND SCIENTISTS GUILD

DECISION

ROGER B. HOLMES, Administrative Law Judge: The unfair labor practice charge in Case 31-CB-4079 was filed on February 10, 1981, by Cecil R. Anderson. The unfair labor practice charge in Case 31-CB-4083 was filed on February 13, 1981, by Fred Strunk. The unfair labor practice charge in Case 31-CB-4090 was filed on February 18, 1981, by Emile F. Skaff. The unfair labor practice charge in Case 31-CB-4092 was filed on February 18, 1981, by C. L. Crockett Jr. and Norman Pedersen. The unfair labor practice charge in Case 31-CB-4120 was filed on March 6, 1981, by Edmund J. Talbott. The unfair labor practice charge in Case 31-CB-4170 was filed on April 22, 1981, by C. Ralph Riege. That charge was amended on May 14, 1981, by Riege. The unfair labor practice charge in Case 31-CB-4247 was filed on June 16, 1981, by C. L. Crockett Jr. and Norman Pedersen.

The issues which are presented for decision in this proceeding are encompassed within the General Counsel's amended order consolidating cases, amended consolidated complaint and notice of hearing, which was issued on February 25, 1982, and Respondent's answer to

the amended consolidated complaint. (See G.C. Exhs. 1(z) and 1(bb).) The General Counsel alleges that the Engineers and Scientist Guild has engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

The trial was held on April 26, 1982, at Los Angeles, California. The due date for the filing of posttrial briefs was extended to June 22, 1982.

FINDINGS OF FACT

I. JURISDICTION

The jurisdiction of the Board over the business operations of the Lockheed-California Company, a Division of Lockheed Corporation, is not in issue in this proceeding. The employer is engaged in business as an aircraft and aircraft parts manufacturer, and it has an office and place of business located at Burbank, California. The employer meets the Board's direct outflow jurisdictional standard.

II. THE EVENTS INVOLVED IN THIS PROCEEDING

The attorneys for all the parties in this proceeding are to be commended for their efforts prior to the trial to arrive at numerous stipulations of fact. Their diligence resulted in a comprehensive "Stipulation of Facts" which was introduced into evidence as Joint Exhibit 1. The pre-trial work of the attorneys saved all the parties considerable time and expense by narrowing the issues in litigation and by significantly shortening the time scheduled for the trial.

Rather than paraphrasing the precisely worded stipulations on which the parties were able to come to agreement, I will set forth below the major portion of their stipulations as reflected in Joint Exhibit 1. I will commence with paragraph 4 of the document because paragraphs 1 through 3 pertain to the filing and service of the unfair labor practice charges and also pertain to commerce facts regarding the employer—both of which subjects have already been covered. In addition, the numerous attachments to the parties' stipulations will not be set forth here. However, attachments A through N are, of course, in evidence for review by those who have a need to do so. Those attachments have been considered, but they are too voluminous to set forth here. The parties agreed upon the following stipulations as set forth in Joint Exhibit 1 and beginning with paragraph 4:

4. (a) Respondent is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

(b) Respondent has been in existence since 1943.

(c) Respondent executed its first collective-bargaining agreement with the Employer in 1945, and Respondent and the Employer have been parties to successive collective-bargaining agreements since then until the expiration of the collective-bargaining agreement referred to below in subparagraph 6(a).

(d) Respondent is, and has been at all times material herein, the exclusive collective-bargaining rep-

representative of certain employees of the Employer only.

5. At all times material herein, the following named persons occupied the positions set forth opposite their respective names, and have been, and are now, agents of Respondent, acting on its behalf, within the meaning of Section 2(11) of the Act: Richard P. Cappelletti—President; Jack Lentz—Secretary-Treasurer.

6. (a) At all times material herein, Respondent has been the exclusive representative for the purposes of collective bargaining of the employees in the unit described below, and by virtue of Section 9(a) of the Act, has been, and is now, the exclusive representative of all the employees in said unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment. The appropriate collective bargaining unit is as set forth in the expired collective-bargaining agreement between the Employer and Respondent, whose effective date is January 19, 1978, herein the 1978-1980 agreement, at Article VII, Section 2, pages 71-84. Attached hereto as Exhibit A is a true copy of the 1978-1980 agreement.

(b) On or about January 15, 1981, the Employer and Respondent entered into a collective-bargaining agreement, herein the current agreement, whose effective date is January 15, 1981, and which covers the employees of the employer in the appropriate unit. Attached hereto as Exhibit B is true copy of the current agreement.

(c) The 1978-1980 agreement contained, and the current agreement contains, provisions requiring maintenance-of-membership in Respondent as a condition of employment. (See Art. II, Sec. 7 in Exhs. A and B.)

(d) During the period from the expiration of the 1978-1980 agreement through January 14, 1981, inclusive, hereinafter called the hiatus period, there was no collective-bargaining agreement in effect between Respondent and the Employer.

7. (a) On or about October 26, 1980, at general membership meetings of Respondent, a strike authorization vote was taken and a strike against the Employer was authorized, if necessary to secure economic demands. On November 9 and 16, 1980, at membership meetings, Respondent's members rejected the Employer's contract proposals. On November 11, 1980, pursuant to Article I, Section 2A of the 1978-1980 agreement, Respondent gave the Employer a 5-day notice to terminate said agreement.

(b) From about 12:01 a.m. on or about November 17, 1980, through on or about January 14, 1981, inclusive, certain employees of the Employer, represented by Respondent for purposes of collective bargaining, pursuant to the work stoppage authorization mentioned above in subparagraph 7(a), ceased work concertedly and commenced and maintained an economic strike against the Employer and established and maintained picket lines at certain of

the Employer's facilities in support of Respondent's economic demands.

(c) During the strike referred to above in subparagraph 7(b) certain bargaining unit employees of the Employer who have been members of Respondent before the strike abandoned the strike and either continued to work for the Employer throughout the strike or returned to work for the Employer at some time during the strike after the start thereof. Approximately 445 of the employees who abandoned the strike sent letters by mail to Respondent which letters were received by Respondent during the strike and which letters stated a clear intent to resign from membership in Respondent. Attached hereto as Exhibit C is a list of the approximately 445 said employees who, according to Respondent's regular business records, sent letters of resignation to Respondent, indicating in the column captioned "Resignation Letters" the dates of said letters; and indicating in the column captioned "date rec." the dates on which Respondent received said letters according to Respondent's regular business records, and indicating in the column captioned "cr. pk. line" the dates on or about which said employees crossed Respondent's picket line as alleged in the respective internal union charges. Attached hereto as Exhibit D is a list of the same employees indicating the dates on which said employees returned to work according to the Employer's regular business records, which list has not been furnished to the date of this stipulation.

(d) Respondent had never engaged in a strike against the Employer prior to November 17, 1980.

8. (a) At all times material herein, Respondent has maintained in force and effect a set of internal rules, termed the Constitution, Engineers and Scientists Guild, Lockheed Section, herein called the constitution. Attached hereto as Exhibit E is a true copy of said constitution revised as of January 14, 1980. Said revised constitution was in effect at all times material after January 14, 1980, until February 9, 1981.

(b) At all times material herein Respondent's constitution referred to above in subparagraph 8(a) included a provision at Article III, Section 7, concerning termination of membership, in the following language:

A member may terminate by written resignation sent to the Guild office by registered or certified mail and upon payment of all monies due the Guild subject to and consistent with Guild security and membership provisions as are currently in effect in Agreements between the Guild and the terminating member's employer. The Guild shall be empowered and reserves the right to collect all dues and/or assessments owing the Guild by members or delinquent members in accordance with the provisions of current agreements between the Guild and the member's employer and/or courts of law having proper jurisdiction. Any member may have his membership terminat-

ed in accordance with Article VIII (Internal Discipline) of this Constitution.

(c) At all times material herein, Respondent's constitution referred to above in subparagraph 8(a), included a provision, at Article XIII, Section 2, subsection C, concerning membership withdrawals during a work stoppage, in the following language:

No withdrawals from membership shall be considered from the time a work stoppage is authorized until it is terminated.

This provision has been in the Respondent's constitution since at least March 23, 1959.

(d) With the exception of the constitutional provisions referred to above in subparagraphs 8(b) and 8(c), there were no written rules, resolutions, or policies of Respondent concerning resignation of membership in Respondent during the hiatus period between collective-bargaining agreements.

9. In response to the letters of resignation referred to above in subparagraph 7(c), Respondent, within a few days of receiving said letters, sent to the employees tendering said letters a form letter in effect rejecting the tendered resignation as being contrary to the provision of Respondent's constitution referred to above in subparagraph 8(c). Attached hereto as Exhibit F is a true copy of one of said letters of response.

10. (a) On or about April 14, 1981, and continuing thereafter to date, Respondent instituted, prosecuted, and enforced by imposition of court-collectible fines, internal union disciplinary proceedings against the employees who abandoned the strike as set forth above in subparagraph 7(c), including those from whom Respondent had received letters of resignation as set forth above in said subparagraph. Attached hereto as Exhibit G is a true copy of a form charge sent to said employee. Attached hereto as Exhibit H is a true copy of a form notice of hearing sent to said employees on said charges. Attached hereto as Exhibits I, J and K are true copies of form letters notifying employees of the results of said hearings and disciplinary action. Attached hereto as Exhibit L is a list of the results of the disciplinary proceedings, indicating the amounts of the fines imposed, if any, according to Respondent's regular business records.

(b) On or about December 5, 1980, at a Special Membership meeting of Respondent, a resolution was passed concerning the fining of members for crossing Respondent's picket lines during the strike referred to above in subparagraph 7(b). Attached hereto as Exhibit M is a true copy of a report of the same date by Respondent's president setting forth that resolution.

(c) One of the factors considered by Respondent's Hearing Officers in setting the amounts of the fines referred to above in subparagraph 10(a) was the length of time worked for the struck Employer

by the respective employees during the strike referred to above in subparagraph 7(b).

(d) Respondent has made no attempt to collect the fines assessed as described above in subparagraph 10(a); however, Respondent has not withdrawn or expunged its letters notifying the employees involved of the assessment of said fines.

11. (a) Attached hereto as Exhibit N is a document entitled "Burbank Membership Before and After Escape Periods" prepared by Respondent from its regular business records. The column entitled "CONTRACT" reflects the terms of applicable collective-bargaining agreements from October 1965 to the present between Respondent and the Employer. The column entitled "End escape period" reflects respectively the final day of the approximately 15-day escape period in each successive contract since October 1965 pursuant to the respective maintenance-of-membership provisions therein. The column entitled "# escapees" indicates the numbers of employees who "escaped" by resigning during the respective contractual escape periods. The column entitled "Membership BEFORE" indicates Respondent's membership prior to the respective escape periods. The column entitled "Membership AFTER" indicates Respondent's membership after the respective escape periods. The column entitled "# In Jurisdiction" indicates the size of the bargaining unit. The column entitled "Membership Percentage After" indicates the percentage of bargaining unit employees who were members of Respondent immediately after the respective escape periods.

(b) On November 16, 1980 Respondent's membership at Lockheed-California Company was 1569 in a bargaining unit of 2788.

12. This Stipulation of Facts is entered into by the parties of this proceeding for the purpose of this proceeding only. No party hereto waives any objection it may have as to the relevance or materiality of any of the facts stated herein or the exhibits hereto. All exhibits are submitted in duplicate herewith.

Richard Paul Cappelletti has been the president of the Union since July 6, 1977. He was one of the two persons who testified at the trial. Both of those persons gave credible testimony with regard to the matters about which each one testified.

According to Cappelletti, over 800 persons attended the union meeting which was held on October 26, 1980. (See par. 7(a) of the parties' stipulation quoted above.) At that union meeting, a strike authorization vote was taken by secret ballot. According to the election committee findings furnished to Cappelletti after that meeting, approximately 95 percent of the persons present voted in favor of authorizing a strike.

At the two separate meetings held by the Union on November 9, 1980, approximately 935 attended one of those meetings and over 100 additional people attended the other meeting that day. The results of those union meetings also were furnished to Cappelletti who testified that 99 percent of the persons present voted by secret

ballot to reject the Company's contract proposals. At the union meeting held on November 16, 1980, approximately 1,000 people attended, and about 90 percent of those persons voted by secret ballot to reject the Company's contract offer at that time. (In this connection, see par. 7(a) from the parties' stipulation.) Cappelletti is the one who sent the "5-day notice" letters from the Union to the Company with regard to the termination of the contract. (See par. 7(a) from the parties' stipulation and also Attachment A to Jt. Exh. 1.)

With regard to paragraph 7(c) of the parties' stipulation, and Attachment D in particular, the limitations on the information set forth in that attachment, as agreed to by the parties, should be noted. (In this connection, see Tr. pp. 14-16.)

Introduced into evidence as Respondent's Exhibit 1 was a compilation of data from the Union's records with regard to the point in time when the members, who attempted to resign during the strike, had originally joined the union. (The figures, however, total 435 people, rather than 445.) The compilation does not necessarily mean that a person had continuous membership in the Union from the first time he became a member, because a person may have resigned at one time and then subsequently rejoined the union. Respondent's Exhibit 1 reflects the following data:

MEMBERSHIP HISTORY OF THOSE WHO ATTEMPTED
TO RESIGN DURING STRIKE

TIME PERIOD IN WHICH FIRST JOINED

From	To	Number
Aug. 1, 1980	Nov. 17, 1980	48
Jan. 1, 1980	July 31, 1980	80
Nov. 17, 1979	Dec. 31, 1979	3
Aug. 1, 1978	Nov. 16, 1979	84
Jan. 1, 1978	July 31, 1978	8
Jan. 1, 1975	2 contracts	30
Jan. 1, 1972	3 contracts	38
Jan. 1, 1969	4 contracts	43
Jan. 1, 1966	5 contracts	46
More than	6 contracts	55

The parties also stipulated at the trial that most of the letters of resignation were sent by certified mail or by registered mail. However, the Union does not contest any of the letters on the ground that the letters were not sent either by certified mail or by registered mail.

At the time of the trial, C. Ralph Riege was employed by the Lockheed-California Company in the job classification of design specialist-senior. Riege has both a bachelor's and a master's degree in engineering, and he has been an engineer for approximately 25 years. Riege testified that he was familiar with statistical correlations, that he knew how to determine such correlations, and that in the past he had made such statistical correlations.

Introduced into evidence as General Counsel's Exhibit 2 was a graph which depicts the analysis made by Riege of his examination of Attachments C and L to Joint Exhibit 1. Attachment C to that exhibit is a list of the names of employees who sent letters of resignation to the

Union during the strike, the dates on those letters, the dates the letters were received by the Union, and the dates on which the employees initially crossed the union's picket line, as alleged in the Union's internal charges against the employees. Attachment L is a list of the names of the employees who were fined by the Union, the amounts of their fines, the amount of the fine which was suspended, the amount of the fine remaining due, and whether the fine had been waived.

In making his analysis, Riege said, "We used every employee's data on the list, no outside names and no deletions, except when they said 'zero'." If there was an X in the first column of Attachment L to Joint Exhibit 1, that designation meant that the union's fine had been waived. Riege did not include those persons in his analysis. In Riege's opinion, the number of persons in that category was so small that it would not "appreciably" affect the outcome of his compilation. Riege further explained the method he used in his analysis as follows:

Since I had two lists, one with the dates and one with the fines, I had to put those two lists together. The two lists had exactly the same names, the same number of people.

So, I took the date that was indicated as crossing the line, and by using a calendar, put down in the next column the number of days that that person crossed—working days—that person crossed the line. I did exclude weekends and holidays.

And in the next column after that, I put in just the number of fines exactly as it was on the second—I believe evidence (1), or Exhibit (1).

So, I had the number of working days crossed and the fines. And I plotted that first. And that gave us a visual indication of what had happened. Then I took the mathematical mean, by taking this RMS—root mean square—mean of all the figures by the—I lumped it by the weeks.

In other words, there were seven weeks of a strike, and therefore, those people that crossed for seven weeks, were lumped in that seven weeks. Those that crossed only for six weeks, were lumped in the six weeks.

A line showed up that was definitely a linear regression that showed that there was about a \$350 fine that was applied to everybody, and then about a \$54 or \$55 fine per week that they crossed the line.

Riege also explained:

If you look at the calendar, you will find ten days around Christmas and New Years that were left out, and a couple of extra days of Thanksgiving. And I said those were working days, sir. There were seven weeks of working days.

In other words, I used the total number of days, and you will find there are 33 working days that we either crossed or didn't.

III. CONCLUSIONS

Subsequent to the time of the trial and the time for filing posttrial briefs, the Board issued on September 10, 1982, its decision in *Machinists Local 1327 (Dalmo Victor)*, 263 NLRB 984 (1982). In part, the Board held in that case (at 986):

Clearly then, the Supreme Court's remarks in *Granite State [NLRB v. Granite State Joint Board, Textile Workers Local 1029 (Intl. Paper Box Machine Co.)]*, 409 U.S. 213 (1972)], read in conjunction with the *Scofield [Scofield et al. v. NLRB]*, 394 U.S. 423 (1969)] requirement that union members must be free to leave the union and escape the rule, lead inescapably to the conclusion that a member's right to resign from a union applies both to strike and non-strike situations.¹⁹ We hold today that a union rule which limits the right of a union member to resign only to nonstrike periods constitutes an unreasonable restriction on a member's Section 7 right to resign.

¹⁹ Indeed, the Board in *Ex-Cell-O [Auto Workers Local 1384 (Ex-Cell-O Corp.)]*, 227 NLRB 1045 (1977)] found unenforceable a union rule that, *inter alia*, accorded no weight to the competing considerations which might have necessitated the resignation of members during a strike.

Applying the rationale and the holding of the Board in the *Dalmo Victor* supplemental decision to the present case, I conclude that the Respondent Union's constitutional provision in article XIII, section 2, subsection C. which provides, "No withdrawals from membership shall be considered from the time a work stoppage is authorized until it is terminated," is an unreasonable restriction on a union member's Section 7 right to resign from the union. In accord with the Board's supplemental decision in *Dalmo Victor*, I further conclude that the Union's "constitutional provision as a restriction on resignation is unenforceable." (*Id.* at 987). The Board's "general rule" (*ibid.*) in *Dalmo Victor* would not be applicable to the facts in this case since the limitation placed by the union here was not "applicable during both strike and nonstrike periods." *Id.* at 986-987.)

As paragraph 9 of Joint Exhibit 1 and Attachment F thereto make clear, the basis for the Union's rejection of the resignations tendered by the employees involved in this proceeding was the Union's constitutional provision noted above and in paragraph 8(c) of Joint Exhibit 1. In view of the Board's holding in *Dalmo Victor*, I conclude that the resignations of the employees involved herein were valid when those resignations were received by the Union.

In connection with the foregoing, I have considered the fact that the maintenance-of-membership provisions in the prior collective-bargaining agreement between the company and the Union precluded resignations from union membership at the times material herein until November 17, 1980. The "escape period" of the prior collective-bargaining agreement occurred long before the events pertaining to the resignations involved in this proceeding. Thus, insofar as this proceeding is concerned, until the termination of the prior collective-bargaining

agreement on November 16, 1980, the maintenance-of-membership provisions precluded resignation from the Union until that contract expired. Even though a strike was authorized on October 26, 1980, the maintenance-of-membership provisions of the prior collective-bargaining agreement continued in effect until November 17, 1980. Thereafter, from November 17, 1980, through January 14, 1981, there was what was referred to in the parties' stipulation as a "hiatus period" when no collective-bargaining agreement was in existence between the Company and the Union. (See pars. 6(d) and 7(b) of Jt. Exh. 1.) Therefore, there were no contractual maintenance-of-membership provisions to bar resignations from union membership during that "hiatus period." The new and current collective-bargaining agreement between the Company and the Union became effective on January 15, 1981, and it also has maintenance-of-membership provisions.

I have also considered the fact that certain union members had opportunities in past years to resign from union membership. (See Resp. Exh. 1, paragraph 11(a), and Attachment N to Jt. Exh. 1.) Nevertheless, in view of the Board's holding in its *Dalmo Victor* supplemental decision, I conclude that the Union's constitutional limitation on resignations noted above is unenforceable in these circumstances because the constitutional provision is limited to the period from when a strike is authorized until the strike is terminated.

Since I have concluded that the employees' resignations from union membership, as described in this proceeding, were valid resignations, I turn now to a consideration of the Union's actions with regard to those employees who tendered their resignations during what has been referred to above as the "hiatus period" when there was no contract to bar such resignations. Although the internal union charges allege the initial crossing of the Union's picket line by the employees involved, I conclude that the fines here were not based simply on the employees' initial crossing of the picket line, and that multiple crossings were not regarded as a single crossing as in *Carpenters (Campbell Industries)*, 243 NLRB 147 (1979). In this connection, I have considered the December 5, 1980, resolution of the union membership which reveals that the "sense" of the union was "that each and every one of the members crossing the picket line should be fined in the amount of not more than 80% of the wages received from the Lockheed-California Company during the strike" (See par. 10(b) of Jt. Exh. 1 and Attachment M thereto.) In addition, one of the factors considered by the Union's hearing officers, who set the amounts of the fines, was the length of time worked by the employees during the strike. (See par. 10(c) of Jt. Exh. 1.) When the analysis made by Charging Party Riege is considered in the context of the foregoing facts, his statistical analysis is persuasive that the Union's fines were not levied just for the initial crossing of the Union's picket line. (See G.C. Exh. 2.) I conclude that Riege has given a reasonable basis for his analysis for the purpose of this proceeding. Thus, he used the data for those persons against whom fines were actually levied, and he used the original amounts of those fines. Also, Riege

used working days in his analysis, as distinguished from calendar days. Especially in view of the holiday period which occurred during the strike, Riege's basis for his analysis seems to be reasonable. I have considered Respondent's argument that the amounts of the fines could have a relationship to the timing of the crossing of the Union's picket line. Respondent urges that an early crossing of the Union's picket line would be more damaging to the strike effort than a later crossing would be. The attorney for Respondent urges that "the logical corollary of this rule is that the earlier an employee returned to work during the strike, the greater damage that is done to Respondent's strike effort." (See the Resp. posttrial br. at 15. See also pp. 7-8 and 32.) Nevertheless, in view of the December 5, 1980, resolution, the fact that one of the factors considered by the Union's hearing officers was the length of time worked by employees during the strike, and Riege's statistical analysis referred to above, I conclude that the fines were not levied just for the employees' initial crossing of the union's picket line.

In view of the foregoing, I conclude that the General Counsel and the Charging Parties have established by a preponderance of the evidence that Respondent Union has engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) as alleged in the General Counsel's amended consolidated complaint. In these circumstances I conclude that the employees involved herein fall into three categories: (1) those employees who returned to work for the employer during the strike after their resignations from union membership had been received by the Union; (2) those employees who returned to work for the employer during the strike on the same day that their resignations from union membership were received by the Union; and (3) those employees who returned to work for the employer during the strike prior to the time their resignations from union membership were received by the Union, and they continued to work for the employer after their resignations from union membership had been received. As to those employees in category one, I conclude the entire amount of the Union's fine should be rescinded. As to those employees in category two, I conclude that the portion of the Union's fine attributable to the time after their first day of work should be rescinded. (See *Electrical Workers UE, Local 1012 (General Electric Co.)*, 187 NLRB 375 (1970).) As to those employees in category three, I conclude that only the portion of the Union's fine which is attributable to the employees' postresignation crossing of the Union's picket line should be rescinded.

CONCLUSIONS OF LAW

1. The Lockheed-California Company, a Division of Lockheed Corporation, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Respondent Union is a labor organization within the meaning of Section 2(5) of the Act.
3. The Respondent Union has engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act by restraining and coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act by on or about April 14, 1981, and continuing there-

after, instituting, prosecuting, and enforcing by the imposition of court-collectible fines internal union disciplinary proceedings against employees of the employer, who resigned their union membership, where the entire amount of the fines, or portions thereof, are attributable to the employees' postresignation crossing of the Union's picket line.

4. The unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Since I have found that Respondent Union has engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act, I shall recommend to the Board that Respondent be ordered to cease and desist from engaging in such unfair labor practices.

Paragraph 10(d) of the parties' stipulation, which was introduced into evidence as Joint Exhibit 1, establishes that Respondent has made no attempt to collect the fines involved herein. However, in the event that some employees may have already paid such fines, without any effort by the Union to collect the fines, I believe that the employees should be reimbursed for the money that they paid with appropriate interest in accordance with Board formula. Such reimbursement would apply to the fines, or portions thereof, attributable to the employees' postresignation crossing of the Union's picket line.

As indicated earlier in the section of this decision entitled "Conclusions," I found that the employees involved herein may be placed into three categories. The fines to be rescinded will be described in the recommended Order to provide that the amount of the fines, or portions thereof, which are attributable to the employees' postresignation crossing of the Union's picket line are the amounts to be rescinded. The actual computations of the amounts may be more appropriately determined in the compliance stage.

In light of the Board's decision in *Sterling Sugars*, 261 NLRB 472 (1982), I shall recommend to the Board that a similar expunction remedy be provided for, but that the remedy be tailored to fit the circumstances presented here.

On these findings of fact and conclusions of law and on the entire record in this proceeding, I issue the following recommended

ORDER¹¹

The Respondent, Engineers and Scientists Guild, Burbank, California, its officers, agents, and representatives, shall

1. Cease and desist from
 - (a) Restraining and coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act by instituting, prosecuting, and enforcing by the imposition of court-collectible fines internal union disciplinary pro-

¹¹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ceedings against employees of the Lockheed-California Company, a Division of Lockheed Corporation, who resigned their union membership, where the entire amount of the fines, or portions thereof, are attributable to the employees' postresignation crossing of the Union's picket line.

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

2. Take the following affirmative action which is deemed necessary in order to effectuate the policies of the Act.

(a) Rescind the fines, or portions thereof, levied against those employees of the Lockheed-California Company, a Division of Lockheed Corporation, who resigned their union membership, where the entire amount of the fines, or portions thereof, are attributable to the employees' postresignation crossing of the Union's picket line.

(b) In the event that an employee has already paid such a fine as described above, reimburse that employee for the amount of the fine he paid, or the portion thereof, which is attributable to his postresignation crossing of the Union's picket line, and pay that employee appropriate interest on such money in accord with the Board's formula regarding interest.

(c) Preserve and, on request, make available to agents of the Board for examination and copying, all records which are needed to analyze and determine the amount of money to be reimbursed to employees who have paid such fines, if any, and also to determine the amounts of the fines, or portions thereof, levied against the employees which are attributable to the employees' postresignation crossing of the Union's picket line.

(d) After the amounts of the fines, or portions thereof, attributable to the employees' postresignation crossing of the Union's picket line have been determined to the Board's satisfaction, expunge from the Union's records and files any reference to the fines, or portions thereof, levied against the employees, which are attributable to the employees' postresignation crossing of the Union's picket line, and notify the employees involved, in writing that this has been done.

(e) Post at its offices in Burbank, California, and at the Union's meeting location copies of the attached notice marked "Appendix."¹² Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Sign and return to the Regional Director for Region 31 sufficient copies of the notice for posting by Lockheed-California Company, a Division of Lockheed Corporation, if that employer is willing to do so, in conspicuous places, including all of the places where the employer customarily posts notices of its employees.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

¹² If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."