ferred to another job at her own request for lack of work. At another station, the production records are kept by computers, thereby eliminating the need for a plant clerk there.

An undisclosed number of clerk typists were shown to be employed in the power stations and in the general offices of VEPCO. Those employed in the power stations serve as switchboard operators and receptionists, do most of the typing of various reports, requisitions, memoranda, and keep certain simple records. It was stipulated at the hearing that, with one exception, all clerk typists are properly included in the unit represented by UEA. The one exception was the statistician at the Bremo plant who was a clerk typist prior to her promotion to the job she now holds. IBEW contends that even though she was in the clerical unit as a clerk typist she should have been in the unit represented by IBEW because the statisticians and the clerk typists, in the plants, although performing separate duties, are each performing the work that was formerly done by the plant clerks who were in the IBEW unit.

As indicated, the record shows that the classifications in question were in existence prior to the certification of IBEW's predecessor in 1946. Notwithstanding the latter's contention that they should be included within its unit, those categories were held to be within the unit for which UEA's predecessor was soon thereafter certified, which unit has since been represented by UEA and its predecessor. The record further reveals that there has been no substantial change in the nature of the duties of the disputed categories. Under these circumstances, the IBEW cannot now, by way of this motion for clarification of its certification, add these classifications to its unit.[3] Accordingly, we shall dismiss the petition.

[The Board dismissed the petition to amend and clarify certification.]

[3] Cf *Lapp Insulator Co, Inc*, 150 NLRB 596; *Douglas Aircraft Company, Inc*, 143 NLRB 592, 595–596

Bedford Can Manufacturing Corp. *and* Local 810, Steel, Metals, Alloys and Hardware Fabricators and Warehousemen, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Allied Trades Union, Local 18, Party to the Contract. *Case 29–CA–450. February 3, 1967*

DECISION AND ORDER

Upon a charge duly filed on November 4, 1965, by Local 810, Steel, Metals, Alloys and Hardware Fabricators and Warehousemen, Inter-

national Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, the General Counsel for the National Labor Relations Board, by the Regional Director for Region 29, issued a complaint on March 15, 1966, against Bedford Can Manufacturing Corp., herein called the Respondent, alleging that it had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (2) of the National Labor Relations Act, as amended. Copies of the complaint, the charge, and notice of hearing were duly served upon the Respondent and upon Allied Trades Union, Local 18, Party to the Contract, and upon the Charging Party.

The complaint alleges, in substance, that by continuing to deduct union membership dues under employee checkoff authorizations after revocations of such checkoffs and membership resignations following union deauthorization, the Respondent has interfered with the Section 7 rights of its employees in violation of Section 8(a)(1), and has rendered unlawful assistance and support to a labor organization and contributed financial support to it in violation of Section 8(a)(2). The Respondent filed an answer admitting the allegations in part and denying them in part.

On June 21, 1966, all parties entered into a stipulation in which the parties waived their rights to a hearing and to the issuance of a Trial Examiner's Decision. In view thereof, the parties stipulated that the entire record of this proceeding shall consist of the stipulation, the charge, the complaint, and the answer.

By an order issued on June 27, 1966, the Board approved the aforesaid stipulation, and transferred the matter to the Board.

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

Upon the basis of the aforesaid stipulation and the entire record in this case, including the briefs of the Respondent, and the General Counsel, the Board makes the following:

Findings of Fact

I. THE BUSINESS OF THE COMPANY

The Respondent has its principal office and place of business at 263 Classon Street in the Borough of Brooklyn, New York, where it is engaged in the manufacture, sale, and distribution of tin cans and related products. It annually sells and ships goods valued at more than $50,000 directly to customers located outside the State of New York. During the same period, Respondent has received goods and

materials valued in excess of $50,000 transported to its place of business in interstate commerce directly from States of the United States other than the State of New York.

II. THE LABOR ORGANIZATIONS INVOLVED

Allied Trades Union, Local 18, Party to the Contract, is a labor organization within the meaning of Section 2(5) of the Act. Local 810, Steel, Metals, Alloys and Hardware Fabricators and Warehousemen, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, the Charging Party, is a labor organization within the meaning of Section 2(5) of the Act.

III. UNFAIR LABOR PRACTICES

At all times since on or about November 1, 1960, Respondent and Local 18 have maintained collective-bargaining agreements containing a union-security clause and checkoff provisions. The most recent contract containing such provisions is effective from November 1, 1964, to November 1, 1967. Both before and after November 1960, Respondent's employees executed checkoff authorizations, revocable not less than 30 days nor more than 60 days before any anniversary date or on the termination date of the collective-bargaining agreement, "whichever occurs sooner."

On September 9, 1965, a deauthorization petition was filed seeking to withdraw the authority of the Union to require membership as a condition of employment in the bargaining unit. An election was held on October 13 wherein a majority of eligible employees voted to rescind the Union's authority to require membership as a condition of employment. On October 21, the Regional Director issued a certification of results of the election to that effect. On the same day, the following petition signed by 13 employees was addressed to the Respondent:

> Please be advised that we do not wish you to deduct any monies for dues for Local 18, Allied Trades Union and this Union is no longer authorized to represent us, having been deauthorized by the National Labor Relations Board.

This petition was received on November 1 by Respondent, which in turn notified the Union. Thereafter, on January 24, 1966, 12 employees sent identical letters to the Respondent and the Union in which the employees resigned from the Union and notified both Respondent and the Union to cease deducting dues and initiation fees from their wages. Nevertheless, since November 1, 1965, Respondent has continued to deduct dues and initiation fees on behalf of the Union from the wages of its employees and has deposited the money in a joint

account in a savings bank under the name of Respondent's and the Union's attorneys pending final determination of this matter.

In *Penn Cork*[1] the Board held that an employer violates Section 8(a)(1) and (2) by continuing to deduct membership dues, pursuant to valid checkoff authorizations which were executed during the existence of a union-security clause, from the pay of individual employees who resigned from the union and revoked their checkoff authorizations after a majority of the employees rescinded the authority of the union to require union membership as a condition of employment. The Board regarded the checkoff authorizations as an implementation of the existing union-security provisions of the contract and held that when the union-security provisions were canceled by an affirmative deauthorization vote, such checkoff authorizations became vulnerable to revocation regardless of their term. The Board observed that it would not infer that the employees who authorized the checkoff would have done so apart from the existence of the union-security provision at the time such authorizations were given.

The Respondent concedes that the instant case resembles *Penn Cork* with respect to those employees who signed checkoff authorizations when the union-security clause was in effect and who subsequently resigned their membership in the Union and attempted to revoke their checkoff authorizations by sending the January 24 letters. But with regard to the October 21 petition, the Respondent maintains that this document cannot be considered an attempt to resign from the Union, and therefore under *Penn Cork* it has no legal significance. Respondent further contends that *Penn Cork* does not apply to employees who signed checkoff authorizations when there was no existing union-security clause in effect. Hence, Respondent urges that the *Penn Cork* principle does not govern the deductions for the four employees who signed checkoff cards before the first union-security contract of November 1960, or for the employee who signed his checkoff authorization after the October 13 deauthorization election but prior to the certification of results.

We reject these contentions. While the facts in *Penn Cork* required the Board only to deal with checkoff authorizations executed when a union-security contract clause became effective, the same principle is applicable where, as here, such authorizations are permitted to *renew* during the existence of a series of contracts continuing a union-security provision. Both must be viewed as an implementation of the union-security provision. We will not infer in such a situation that, absent the compulsion of the union-security clause, the employees would have acquiesced in the renewal of their checkoff authorizations.

[1] *Penn Cork & Closures, Inc.*, 156 NLRB 411.

Hence, we find that following the successful deauthorization vote, the outstanding checkoff authorization maintained by employees while the union-security clause was in effect could have been revoked regardless of their terms or when such authorizations were initially executed.[2] Further, so long as the intent to cancel the existing checkoff authorization was clear, there was no need that such revocations be stated in any particular form. In our view, the petition of October 21 clearly conveyed the intent and was adequate for revocation purposes.

Accordingly, based on the record before us and for the reasons stated above, we find that by continuing to deduct union membership dues and initiation fees after revocation of checkoff authorizations[3] following withdrawal of the Union's authority to require membership as a condition of employment, the Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them in Section 7 of the Act, in violation of Section 8(a)(1) of the Act, and has rendered unlawful assistance and support and contributed financial support to a labor organization, in violation of Section 8(a)(2) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with the operations described 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 Respondent has engaged in unfair labor practices, we shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

The record reveals that Respondent's employees attempted to revoke their checkoff authorizations on October 31, 1965, and January 24, 1966. Although most of the employees undertook to do so on both dates, some executed only one or the other of such documents. As set out above, Respondent first received notice of such revocations

[2] Since a contract union-security provision is not fully suspended until the affirmative result of the deauthorization election is certified by the Regional Director, the employee who signed his authorization after the election but prior to the certification was still subject to such provision. See *Monsanto Chemical Company*, 147 NLRB 49, 51. Accordingly, we see no reason for disposing of his revocation of checkoff in any different manner.

[3] While the facts in *Penn Cork* indicate that the employees resigned from the union, we do not deem such resignation to be a prerequisite to revoking a checkoff authorization.

on November 1, in the form of the petition, but nevertheless continued to deduct dues and initiation fees on behalf of the Union and deposited such funds in a joint account in a savings bank under the names of Respondent's and the Union's attorneys pending final determination of this matter. The Parties stipulated that the money was earning interest at 4½ percent compounded quarterly, and according to Respondent, such interest has been increased to 5 percent on July 1, 1966. Respondent urges that if the Board finds a violation, the reimbursement portion of the Order should be limited to the payment of interest actually earned, and not at the 6-percent rate utilized in *Penn Cork*. No opposition thereto is advanced.

Under these circumstances, and, as the Board's order is remedial rather than punitive, we shall order the Respondent to reimburse all present and former employees, who after union deauthorization attempted to revoke their checkoff authorizations, for all sums in payment of union dues and initiation fees improperly deducted from their wages following the first notice of such cancellation, together with interest actually earned.

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

Conclusions of Law

1. Bedford Can Manufacturing Corp., is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Allied Trades Union, Local 18, is a labor organization within the meaning of the Act.
3. By continuing to deduct union membership dues and initiation fees pursuant to checkoff authorizations maintained by individual employees during the existence of a union shop contract, after the employees had attempted to revoke their checkoff authorizations following an affirmative deauthorization election, the Respondent has violated Section 8(a)(1) and (2) of the Act.
4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Bedford Can Manufacturing Corp., Brooklyn, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Continuing to deduct union membership dues and initiation fees pursuant to checkoff authorizations maintained by individual

employees during the existence of a union shop, after an affirmative union deauthorization vote has been held and said employees have attempted to revoke their said checkoff authorizations.

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

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

(a) Reimburse all present and former employees who signed checkoff authorizations, and, who, after union deauthorization, attempted to revoke their dues and initiation fees checkoff authorizations, for all sums improperly deducted from their wages in payment of union dues and fees in the manner set forth in the section above entitled "The Remedy."

(b) Post at its plant in Brooklyn, New York, copies of the attached notice marked "Appendix."[4] Copies of said notice, to be furnished by the Regional Director for Region 29, after being duly signed by the Respondent's representative, shall be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 29, in writing, within 10 days from the date of this Order, what steps have been taken to comply herewith.

[4] In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "a Decision and Order" the words "a Decree of the United States Court of Appeals Enforcing an Order."

APPENDIX

NOTICE TO ALL EMPLOYEES

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

WE WILL refund to all present and former employees who signed checkoff authorizations, and, who, following union deauthorization, attempted to revoke such authorizations, all sums improperly deducted from their wages in payment of union dues and initiation fees.

WE WILL NOT continue to deduct union membership dues and initiation fees under the foregoing circumstances, and 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.

BEDFORD CAN MANUFACTURING CORP.,
Employer.

Dated_____ By_____
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material. Employees may communicate directly with the Board's Regional Office, Fourth Floor, 16 Court Street, Brooklyn, New York 11201, Telephone 596–5386.

Phil-Modes Inc., and Harold Berlin d/b/a Berlin Coat Manufacturing Co *and* International Ladies' Garment Workers' Union AFL–CIO. *Case 16–CA–2661. February 6, 1967*

DECISION AND ORDER

On November 3, 1966, Trial Examiner William W. Kapell issued his Decision in the above-entitled proceeding, finding that Respondent had engaged in and was engaging in certain unfair labor practices within the meaning of the National Labor Relations Act, as amended, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. He further found that Respondent had not engaged in certain other unfair labor practices alleged in the complaint and recommended that such allegations be dismissed. Thereafter, the Respondent filed exceptions to the Trial Examiner'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 powers in connection with this case to a three-member panel [Members Fanning, Jenkins, and Zagoria].

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

[The Board adopted the Trial Examiner's Recommended Order.]