Writers Guild of America, West, Inc. *and* Association of Motion Picture and Television Producers, Inc.[1] and American Broadcasting Companies, Inc. Columbia Broadcasting System, Inc. National Broadcasting Company, Inc.[2] *and* QM Productions. Cases 31–CB–1203–2, 31–CB–1316, 31–CB–1223, 31–CB–1313, and 31–CB–1355

May 13, 1975

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND PENELLO

On September 18, 1974, Administrative Law Judge Sidney J. Barban issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions[3] and a supporting brief, and Charging Parties Networks and the Association filed exceptions and supporting briefs.

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, and conclusions of the Administrative Law Judge to the extent consistent herewith, and to adopt his recommended Order.

1. The Administrative Law Judge found violations of Section 8(b)(1)(B) only with respect to the "hyphenates"[4] in the producer, director, and story editor classifications because the record showed that, except for Jerome Bredouw, all of the persons who were both charged and tried by the Union occupied those positions. With respect to Jerome Bredouw, he found that the charges against Bredouw were dismissed after trial, and that no penalty was assessed against him. The Administrative Law Judge therefore concluded that it was unnecessary to consider alleged violations as to those hyphenates in other classifications,[5] and he therefore did not resolve these additional allegations in the complaint. The Association and the Networks, two of the Charging Parties herein, except to this omission for reasons we deem meritorious.

There is no question that, although only some of the hyphenates were brought to trial and actually fined or disciplined for crossing the picket line, all of the hyphenates named in the complaint were threatened with similar discipline and adverse action if they crossed the picket line to go to work. There is also no question that when Respondent threatened the hyphenates, Respondent was determined to enforce its threats without regard to the fact that the Charging Parties uniformly followed a policy during the strike not to require hyphenates to perform any unit or struck work. Furthermore, if it had any doubt at all, Respondent could easily have ascertained whether any struck work was in fact performed by comparing dated scripts to the final film production. As we find that Section 8(b)(1)(B) proscribes the disciplinary action here taken against some hyphenates[6] (but only threatened against others), it would seem to follow, and we further find, that the proscription also encompasses the threat to take the prohibited disciplinary action[7] therefore sustain the complaint's alleged violations of Section 8(b)(1)(B) of the Act, *in toto*.

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 and hereby orders that the Respondent, Writers Guild of America, West, Inc., Los Angeles, California, its officers, agents, and representatives, shall take the action set forth in the said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

MEMBER FANNING, dissenting:

For the reasons stated in my dissenting opinion in *Triangle Publications, Inc.*, 216 NLRB No. 147, I

[1] Hereinafter referred to as the Association.

[2] Hereinafter referred to as the Networks.

[3] In its brief to the Board, Respondent withdrew its contention that certain issues should be deferred to arbitration under *Collyer Insulated Wire*, 192 NLRB 837 (1971). Accordingly, that issue is not before the Board for resolution.

[4] "Hyphenates" is a term applied to persons who are writers but possess the ability to perform in more than one capacity, such as producing, directing, or editing for their employers in the industry. We affirm the Administrative Law Judge's findings that hyphenates who are also producers, directors, and story editors are supervisors within the meaning of Sec. 2(11) of the Act.

[5] Included in these classifications are vice presidents for program production, vice presidents for production, vice presidents for program development, general programming executives, managers of film programs, and executives. Although the Administrative Law Judge made no finding on the supervisory status of persons occupying these positions, we find it necessary to do so. The record clearly reflects that persons in these classifications engage in hiring and are representatives, or potential representatives, of their employers in the adjustment of grievances. Accordingly, we conclude that persons occupying the above positions are supervisors and representatives of their employers within the meaning of Secs. 2(11) and 8(b)(1)(B) of the Act.

[6] *Chicago Typographical Union No. 16 (Hammond Publishers, Inc.)*, 216 NLRB No. 149 (1975); *New York Typographical Union No. 6, International Typographical Union, AFL-CIO (Daily Racing Form, a Subsidiary of Triangle Publishers, Inc.*, 216 NLRB No. 147 (1975).

[7] *Local 423, Laborers' International Union of North America, AFL-CIO (Mansfield Flooring Co., Inc.)*, 195 NLRB 241 (1972); *International Union of Operating Engineers, Local 406, AFL-CIO (New Orleans Chapter, Associated General Contractors of America, Inc.)*, 189 NLRB 255, 265 (1971); *United Slate, Tile & Composition Roofers, Damp & Waterproof Workers Association, Local No. 220 (Jones and Jones, Inc.)*, 177 NLRB 632, 653 (1969).

would dismiss the complaint. I wish to point out, once again, that the Supreme Court has, in *Florida Power & Light Co.*,[8] indicated that Section 8(b)(1)(B) was designed for the sole and limited purposes of preventing labor organizations from forcing employers into multiemployer bargaining negotiations and from dictating to employers whom they should select to represent them during grievance adjustment procedures and/or collective-bargaining sessions. Our prior "evolutionary" approach[9] to this section of the Act having thus been rejected by the Supreme Court, it is obvious that the very narrow thrust accorded the section in its early years must be reconstituted as its current thrust. Whatever the wisdom of Respondent's course of action herein, the plain fact is that its actions are not, in my view, proscribed by the section upon which the General Counsel relies. I thus dissent.

[8] *Florida Power & Light Co.* v. *International Brotherhood of Electrical Workers, Local 641*, 417 U.S. 790 (1974).

[9] For a discussion of the history of Section 8(b)(1)(B) see *id.* at 798–805.

APPENDIX

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

WE WILL NOT restrain or coerce any employer in the selection of representatives for the purpose of collective bargaining or the adjustment of grievances:

(a) by issuing rules, orders, directions, or instructions in any form to any such employer representative not to perform supervisory, executive, or managerial functions for an employer, or

(b) by threatening any such employer representative with fines, suspensions, or expulsion from membership, blacklisting, ostracism, or any other penalty or reprisal for performing supervisory, executive, or managerial functions, or

(c) by charging or trying any such employer representative for performing supervisory, executive, or managerial functions, or

(d) by fining or otherwise disciplining any such representative for performing supervisory, executive, or managerial functions, or

(e) by enforcing in any other manner any such rule, order, direction, or instruction.

WE WILL NOT in any like or related manner restrain or coerce any employer in the selection of representatives for the purpose of collective bargaining or the adjustment of grievances.

WE WILL rescind and revoke, and expunge from our records, any fine, suspension, or expulsion from membership or any other penalties to the extent previously imposed on the following persons, or on any other representative of an employer for the purpose of collective bargaining or the adjustment of grievances, who worked as a supervisor, executive, or in a managerial position during the strike which began on or about March 4, 1973, and advise such persons of this action:

Hugh Benson	Jon Epstein
Robert Blees	David Levinson
Cy Chermack	John T. Mantley
Robert A. Cinander	Herman S. Saunders
Barry Crane	David Victor

WE WILL reimburse the persons named and described above for any fines imposed upon them for working during the strike which began on or about March 4, 1973, with interest thereon at 6 percent per annum.

WRITERS GUILD OF AMERICA, WEST, INC.

DECISION

STATEMENT OF THE CASE

SIDNEY J. BARBAN, Administrative Law Judge: This matter was heard at Los Angeles, California, on several dates from May 21 until November 26, 1973.[1] The hearing was closed by an order dated January 25, 1974.

1. Procedure

Upon a charge filed in Case 31–CB–1203–2, on March 8, against Writers Guild of America, West, Inc. (herein "Respondent") by Association of Motion Picture and Television Producers, Inc. (herein "AMPTP"), and a charge filed in Case 31–CB–1223, on April 4, against Respondent by American Broadcasting Companies, Inc. (herein "ABC"), Columbia Broadcasting System, Inc. (herein "CBS"), and National Broadcasting Company, Inc. (herein "NBC") (herein jointly "the Networks"), the Regional Director for Region 31, on April 18, issued an order consolidating cases and a consolidated complaint against Respondent, which was amended by the issuance of a consolidated amended complaint on May 23. Respondent filed timely answers. Hearing on this complaint was concluded on June 13.

Upon a charge filed in Case 31–CB-1313, on July 11, by the Networks, and a charge filed in Case 31–CB–1316, on July 16, by AMPTP against the Respondent, the Regional Director, on July 25, issued an order consolidating those two

[1] All dates herein are in 1973, unless otherwise noted.

cases and a consolidated complaint. Respondent filed timely answer. By a joint motion dated August 2, the parties requested that the four cases be consolidated, and the record reopened for further hearing. This motion was granted by order dated August 10.

Upon a charge filed in Case 31–CB–1355, on September 5, against Respondent by QM Productions (herein "QM"), the Regional Director, on September 20, issued a complaint in that case. Respondent filed timely answer. By motion dated November 9, General Counsel requested that Case 31–CB–1355 be consolidated for the purposes of hearing and decision with the four cases previously consolidated. On November 13, an Order to Show Cause why this motion should not be granted was issued. The motion was granted at the hearing held on November 26. Thereafter, General Counsel filed a motion dated December 11, to substitute a second consolidated amended complaint for all complaints previously issued in the above-captioned cases, to which Respondent filed an answer dated December 13. Finally, in lieu of further hearing in these matters, all parties submitted a stipulation of facts with exhibits attached, dated December 17. By order dated January 15, 1974, General Counsel's motion to substitute the second consolidated amended complaint for all prior complaints was granted and the complaint and the answer thereto were received into the record, and the stipulation of facts, with specified exhibits, was recieved, the hearing in this proceeding was closed, and date set for receipt of briefs.[2]

2. Allegations

The various complaints issued in this proceeding, cumulated in the second consolidated amended complaint (herein referred to as the complaint), allege that Respondent violated Section 8(b)(1)(B) of the Act by restraining and coercing employer-members of AMPTP, and NBC, CBS, ABC, and QM in the selection of their representatives for collective bargaining and the adjustment of grievances by threatening to discipline and by disciplining certain persons and classes of persons employed by the aforesaid employers, such persons and classes of persons being, it is alleged, members of Respondent, and supervisors within the meaning of the Act for their respective employers and representatives or potential and likely representatives for their employers for the purposes of collective bargaining or the adjustment of grievances within the meaning of the Act.

Respondent's answer to the complaint, while admitting certain allegations, denies the alleged unfair labor practices.

Upon the entire record in this case, from observation of the witnesses, and after due consideration of the briefs filed by the General Counsel, the Respondent, and the Charging Parties,[3] I make the following:

Findings and Conclusions

I. Jurisdiction

AMPTP is an association located at Los Angeles admitting to membership firms engaged in the production and distribution of motion picture and television films, and existing, in part, for the purpose of negotiating, executing, and administering collective-bargaining agreements on behalf of its employer-members with the bargaining representatives of their employees, including the Respondent. AMPTP members collectively annually sell and ship from their studios in California directly to points outside that State motion picture films and other products valued in excess of $50,000.

ABC, CBS, and NBC each have offices in various locations throughout the United States including California, and each derives gross revenues in excess of $100,000 from sales to customers located outside California, and each annually purchases goods valued in excess of $50,000 directly from suppliers located outside California.

QM, a corporation with its principal place of business in Burbank, California, engaged in the production and distribution of motion picture and television films, annually sells such films valued in excess of $50,000 directly to customers located outside California.

Respondent's answer admits, and it is found, that the Association, and its members through the Association, CBS, NBC, ABC, and QM are employers engaged in commerce within the meaning of the Act.

Respondent's answer admits and it is found that Respondent is now and at all times material has been a labor organization within the meaning of the Act.

II. Preliminary Statement of Facts and Principal Issues

Respondent has for some time represented persons engaged in writing functions employed by members of AMPTP, the Networks, and certain independent producers such as QM. As a result of prior bargaining, Respondent was a party to collective-bargaining agreements with AMPTP, for its members, with the Networks, and with QM due to expire in 1973. The AMPTP agreements were terminated effective March 4, by notice from the Respondent pursuant to the terms of the agreements. On or about that same date, Respondent engaged in a strike against the AMPTP and its employer members which continued until June 24, during which time Respondent picketed some of those employers at various times. Beginning on or about March 29 and continuing until July 12, Respondent engaged in a strike against NBC, CBS, and ABC, and maintained picket lines at the premises of each of them. Beginning on or about March 4, and continuing until March 17, Respondent engaged in a strike against and maintained a picket line at the premises of QM.

In February and thereafter, Respondent adopted and distributed to all its members some 31 strike rules (later reduced to 30, as discussed hereinafter), in anticipation of the strike which ensued. In essence these rules (hereinafter considered

[2] Exhibit numbers have previously been assigned to all formal papers with the exception of my order of January 25, 1974, and General Counsel's telegraphic response thereto, received February 4, 1974. The Order is hereby received as G.C. Exh. 14L, and the response is received as G.C. Exh. 14M.

[3] After the decision of the Supreme Court in *Florida Power & Light Co.* v. *International Brotherhood of Electrical Workers Local 641*, 417 U.S. 790, the parties were invited to file briefs, no later than August 9, 1974, with respect to the impact of that decision upon this case and did so. I have also issued a separate order correcting some inaccuracies in the transcript.

in some detail) forbade members of Respondent to do any work of any sort for employers on strike, or to cross picket lines to go on the premises of such employers without specific permission of Respondent. Respondent took other action, and caused certain publicity to issue designed to impress on its members the consequences of violating these rules.

At the times material to this proceeding, Respondent's membership included a substantial number of persons engaged in performing functions other than writing for their employers in the industry. Because of their ability to perform in more than one capacity, such as producing, directing, or writing, these persons are referred to as "hyphenates." It would appear that many of these, if not most, have not engaged in creative writing for years. Respondent asserts, however, that even when their principal function is other than writing, the nature of the work is such that they must and do engage in some writing. The hypenate's principal work function (other than writing) will sometimes be referred to herein as his (or the) "primary function."

General Counsel contends that these hyphenates occupy supervisory position within the meaning of the Act, and are representatives, or potential and likely representatives, for their respective employees for the purpose of collective bargaining or the adjustment of grievances.

The record indicates that Respondent was particularly concerned that its hyphenate members should not cross picket lines or go to work during the strike. Members who were in a withdrawn status prior to the strike were reactivated. Most of the hyphenates appear to have held only associate membership in Respondent at the time. Those hyphenates questioned indicated their understanding that, as associate members, they had no right to vote on the adoption of the Respondent's strike rules, and did not do so. With one exception, the hyphenates also testified to the same effect with respect to the vote authorizing Respondent to strike. Herbert Wright, an associate producer, testified that at the strike vote meeting he was given a card permitting him to vote on authorization of the strike, but was not given an opportunity to vote on the strike rules.

Respondent's constitution and bylaws in evidence (G.C. Exh. 12a) are confusing on the issue. Those in effect until December 1972 provide in article IV, section 6, paragraph 1, that associate members shall not have the right to vote, while article XIV, section 8 (last paragraph) states certain restricted circumstances in which associate members may vote on strikes. In the latter part of the booklet are proposed changes in the constitution and bylaws. Assuming that these were in effect at times material to this case, article IV, section 7(b) provides that associate members under certain conditions (different from those noted above) might vote on strikes. However, it is not shown that any hyphenate involved herein satisfied these latter conditions. Counsel for Respondent, during the disciplinary hearing concerning hyphenate-member Coles Trapnell, asserted that associate members could not vote on the strike rules as such.

At least one of these hyphenate-members attempted, prior to the strike, to resign from membership in Respondent. In accordance with the provisions of the constitution and bylaws, Respondent rejected the attempted resignation, "in view of current contract negotiations and the importance to the Guild of maintaining effective communication with its membership," advising that the member must maintain his membership at least during the period of negotiations and probably for 6 months thereafter. This became known to other hyphenates prior to the strike. It was stipulated by the parties that at all times material this refusal to permit any member to resign from membership during the pendency of collective-bargaining negotiations, and for 6 months thereafter, was the policy of Respondent.

From approximately April 6 through about November 8, Respondent served charges for violation of strike rules and notice of disciplinary hearing on at least 31 hyphenate-members. At least 15 such hearings have been held and penalties imposed on no less than 10 of those charged. It is indicated that other trials were contemplated at the time of the receipt of the filing of the last stipulation of facts by the parties and that appeals were pending from penalties imposed. Other action appears to have been stayed pending disposition of this proceeding.

The major issues to be resolved are the following:

1. The alleged status of the various hyphenates as supervisors and representatives for collective bargaining and the adjustment of grievances. This was considerably litigated. However, in its brief, Respondent, as hereinafter noted, appears to concede that hyphenates performing many functions in dispute (other than that of story editor) are supervisors within the meaning of the Act, and may adjust grievances of employees other than writers represented by Respondent.

2. Whether various actions of alleged restraint and coercion of hyphenates by Respondent designed to compel the hyphenates to cease work for the struck employers, and Respondent's actions in charging, trying, and penalizing such members for going to work during the strike, violated Section 8(b)(1)(B) of the Act. Also whether Respondent's refusal to allow such hyphenates to resign from membership in these circumstances violated the Act.

3. Whether certain issues in this matter should be deferred to arbitration under the parties' collective-bargaining contracts.[4]

III. THE SUPERVISORY ISSUES

The General Counsel contends that persons performing the following functions are supervisors within the meaning of the Act, and are representatives or potential or likely representatives of their employers for the purposes of collective bargaining or the adjustment of grievances:

1. *Executive Producer, Producer, and Associate Producer:* The producer has the primary responsibility for the production of films for motion pictures or for television. This responsibility begins with the idea or concept for the film or the series; includes involvement in the budget for the film; the

[4] In its answer to the complaint Respondent asserted as three "Separate Special" defenses the claims that (1) by the terms and provisions of the various bargaining agreements, the employers had waived the right to designate Respondent's members as representatives for collective bargaining or the adjustment of grievances during the strike; (2) by the terms and provisions of the various bargaining agreements, the employers had agreed Respondent's members, including supervisors, might refuse to work during the strike "and be subject to Guild discipline for crossing picket lines or working for struck employers . . . "; and (3) that the two issues set forth should be deferred to arbitration. In its original brief, p. 19, Respondent has withdrawn its first two special defenses. The third is considered hereinafter.

employment of a writer or writers who develop and write the scripts under the supervision of the producer or others associated with the producer; the employment of a director and cast for the film, as well as other employees necessary to make the film (cameraman, etc.); the selection of sets, locations; the performance of executive functions during the filming; and the performance of executive functions in the postproduction stages after filming.

The producer has substantial responsibility and authority in adjusting grievances between directors and craft employees, directors and actors and actresses, between two or more actors or actresses, and in other similar situations. Producers also have responsibility and authority to adjust grievances involving writers, as in the case of disputes between writers and story editors. In one instance in which a dispute arose as to whether a commitment had been made to a freelance writer, the producer involved decided that no commitment had been made. The testimony shows that if the producer had decided that a commitment had been made, that would have been binding and resolved the dispute. Producers also make the initial determination in situations in which there may be dispute over the assignment of screen credits to writers, although this is a complex matter, subject to extensive review. In situations in which the film is being shot on a distant location, the producer may be involved in negotiating or agreeing to short-term agreements with local unions where the services of local craft members are required, and possibly adjusting, or attempting to adjust, local jurisdictional conflicts.

In general, an executive producer supervises one or more producers (this seems to be particularly the case in the television industry where an executive producer may have responsibility for several series or projects at the same time, each with its own producer). The associate producer is an assistant to the producer. Without distinguishing among them in detail, it is clear on this record that persons occupying these positions in the motion picture or television industries have the authority to hire, terminate, and responsibly direct other employees, and to adjust employee grievances, or to effectively recommend such action, and are thus supervisors within the meaning of Section 2(11) of the Act. Respondent does not contest this finding or conclusion, except, as noted, in respect to the producer's role in adjusting grievances of writers. As found above, however, I find that producers, executive producers and associate producers do or potentially may adjust grievances involving writers.

Respondent contends that persons performing the functions considered here, as well as those occupying positions described hereinafter, as a normal part of their work, perform writing functions coming within the jurisdiction of Respondent. This contention will be considered hereinafter in a separate section of this decision devoted to this issue.[5]

The record indicates approximately 80 hyphenate-members of Respondent in the position of executive producer, producer, or associate producer employed by the Charging Parties in this matter (including major members of AMPTP). Among them, the following were charged by Respondent with violation of its strike rules: Philip Barry, Hugh Benson, Cy Chermack, Robert Cinader, Barry Crane, Jon Epstein, Andrew J. Fenady, Stephen Heilpern, Ron Honthaner, Leonard Katzman, David Levinson, Roger Lewis, James McAdams, John T. Mantley, Thomas L. Miller, Martin Ransohoff, William Roberts, Albert Ruddy, Herman S. Saunders, David Victor, and Herbert Wright.[6] Of these, Cermack, Cinader, Crane, Epstein, Levinson, Saunders, Victor, Ruddy, Benson, and Roberts were brought before trial panels set up by Respondent. Some of these were disciplined by Respondent as noted hereinafter.

2. *Directors:* Persons in this category are in direct charge of the principal photography of the film. They hire or effectively recommend the employment of crew and actors, effectively direct such employees, and may discharge or effectively recommend the discharge of employees. They have authority to and do adjust grievances of such employees. It is found that persons performing the functions of director in the television and motion picture industries are supervisors and adjust grievances of employees within the meaning of the Act.

The record indicates approximately 15 hyphenate members of Respondent in this position employed by the Charging Parties (without duplicating those listed as producer-directors, or the like). Of these Respondent charged the following with violation of its strike rules: Philip Kaufman, Michael Crichton, and Sam Peckinpah; Crichton was brought before a trial panel and was disciplined.

3. *Story editors, story consultants, script concultants, executive story editors, executive story consultants:* Although there may be some differences among these classifications, or in the requirements of the various employers for these positions, these job functions may be considered together for our purposes under the title of "story editor." The story editor is of principal assistance to the producer in the highly important functions of dealing with scripts and writers. The story editor may be, and frequently is, concerned with reading and acquiring scripts, interviewing writers and recommending them for hire (or otherwise), directing and supervising writers in the development of ideas and the preparation of scripts, and in recommending that writers not be retained. On a television series, the story editor may participate with the producer in the initial determination of any dispute over screen credits. He also may serve as a buffer between management and the writer, as in ameliorating a writer's distress over material that has been rewritten. Thus one executive story editor testified that because he is the first person in the studio that the writer meets, and due to the story editor's close association with the writer, "if he [the writer] has a problem, more likely than not, he will come to me because it is usually a problem with a producer, or things aren't working out." During the disciplinary trial of one in this group, Coles Trapnell, it was indicated that he supervised story analysts employed by the employer.

[5] Respondent adduced considerable testimony concerning certain hyphenates who are legally employed by their own wholly owned corporations, which corporations furnish the hyphenates' services to employers involved in this proceeding. This is referred to in the record as a "loan out" agreement. The record is convincing and I find that such "loaned-out" employees occupy the same positions as more conventionally employed persons doing the same work and are treated the same by the employers here involved. It is noted that Respondent makes no point of this in its brief.

[6] There are two or three additional producers noted on G.C. Exh. 3 as having received charges who were not listed in the parties' posthearing stipulation and for whom copies of the charges were not submitted.

In all of these functions it is found the story editor is expected to and does use individual judgment, initiative, and responsibility. On the basis of the entire record, it is found that those persons in the television and motion picture industries performing the functions of story editor, story consultant, script consultant, executive story editors, and executive story consultants are supervisors and adjust grievances of employees within the meaning of the Act.[7]

Of approximately 15 hyphenate-members of Respondent in this position employed by the Charging Party in this matter. Respondent charged Robert Blees, Frank Paris, and Coles Trapnell with violation of Respondent's strike rules and brought them before a disciplinary trial board of Respondent.[8]

4. *Other classifications*: The General Counsel argues that hyphenates in other classifications, who received Respondent's strike rules, or were threatened with charges or were charged with violation of those rules, or were tried at disciplinary hearings for violation of those rules, are also supervisors and representatives, or potential representatives, of their employers for collective bargaining or the adjustment of grievances. The record indicates that these persons do occupy executive or management positions. However, my analysis of the record shows that all of the persons revealed by the record who were both charged *and* tried by Respondent for violation of the strike rules are contained in the classification previously considered, except Jerome Bredouw, and the charges against Bredouw were dismissed after trial, and, so far as this record shows, no penalty was assessed against him. In the circumstances it would serve no useful purpose to consider such other classifications in which those hyphenates are employed.

IV. THE WRITING FUNCTION

Respondent argues, in essence, *inter alia,* that all of the above categories normally and regularly engage in writing within the jurisdiction of the Respondent, and that it should be inferred, therefore, that those hyphenate-members of Respondent who went to work during the strike must have engaged in such writing. This is largely disputed by witnesses for the General Counsel and defendants at the disciplinary hearings who testified that they do not in the performance of their primary function for their employers normally or regularly perform writing coming within Respondent's collective-bargaining agreements and specifically did not do so during the strike. This requires, at the outset, some consideration of the functions of writers represented by the Respondent under the various agreements.

Referring to the 1970 theatrical and television basic agreement between Respondent and the employer members of AMPTP, it is noted that the parties recognized that members of the Guild could be employed in capacities other than as writers. It is provided in article 14, paragraph A, of that agreement, referring to "writers in non-writing capacities," that where such individual is employed "to render services in a capacity or capacities other than as a writer," those "services shall not be subject to this Basic Agreement."[9] It is further provided that where such an individual is employed as a writer (as defined in the agreement), such services shall be performed under a separate agreement providing for compensation as set forth in the agreement.

Article 14, paragraph B of that agreement also provides, in pertinent part, that "A person employed as a writer for a series whose duties include for that series interviewing other writers, suggesting story ideas or script changes to other writers, or recommending approval of material submitted by writers, shall be subject to this Basic Agreement (excluding Executives, Executive Producers, and Producers; and also excluding persons who are employed as bona fide Associate Producers, who do not perform services as a writer for the series and where the above duties of such persons are incidental to their primary duties)."

The term "writer" as defined in article 1, paragraph B,1,a, and paragraph C,1,a, of that agreement, includes, in pertinent part, a person "who performs services . . . in writing or preparing . . . literary material or making revisions, modifications, or changes in such literary material . . . , provided, however that any writing services described below performed by Producers, Directors, Story Supervisors (other than as provided in Article 14 hereof), . . . , or other employees, shall not be subject to this Basic Agreement and such sources shall not constitute such person a writer hereunder: (a) Cutting for time, (b) Bridging material necessitated by cutting for time, (c) Changes in technical or stage directions, (d) Assignment of lines to other existing characters occasioned by cast changes, (e) Changes necessary to obtain continuity acceptance or legal clearance, (f) Casual minor adjustments in dialogue or narration made prior to or during the period of principal photography, (g) Such changes in the course of production as are made necessary by unforeseen contingencies (e.g., the elements, accidents to performers, etc.), (h) Instructions, directions, or suggestions, whether oral or written, made to writer regarding story or teleplay." These latter eight exceptions were referred to during the hearing, and will be referred to herein as "A to H functions."

There is no dispute that a person writing an original story, story outline, treatment, or finished script for television or motion pictures is performing writing functions within the meaning of the contract between the Respondent and the various employers. Some persons who have written such scripts may thereafter, if they have the capacities, be engaged to produce those scripts or direct the photoplay made from such a script. In such cases, such director, or the producer

[7] In *Metro-Goldwyn-Mayer Studios,* 7 NLRB 662 at 696 (1938), the Board at the request of Screen Writers Guild, Inc., found story editors in the motion picture industry to be executives and supervisors and excluded them from a unit of writers sought by that union.

[8] It is noted that Respondent made no effort during these disciplinary hearings to show that these men did any writing or performed any functions during the strike which were not normal to the primary function of the classification. During the Trapnell hearing, indeed, Respondent's counsel stated, typical of Respondent's position in these hearings, that [i]t is immaterial [to Respondent's charges against Trapnell] what type of services were being rendered, whether they were writing services or other services."

[9] Although the heading of article 14 would indicate that it applies only to the "television" side of the industry, it is noted that Article 1,B,1, of the agreement, which defines the term "writing" in the "theatrical" side of the industry, also adopts the language of article 14.

Article 1,A,11, of the 1970 Networks basic agreement also states that with limited exceptions the agreement "shall not nor is it intended to cover the services of Producers, Directors, Story Supervisors, composers, non-writing capacity. . . ."

would have a separate agreement with the employer covering such sources, in accordance with Respondent's collective-bargaining agreement. Some producers and directors who have the capacity to write may have separate agreements with their employers covering possible writing assignments even in situations in which the employer does not actually require them to write.

An issue arises, however, as to what writing is done on scripts after the writer has delivered a finished script which has been accepted by the employer, and who does such writing. Again there seems no question that numerous changes are made in some scripts prior to principal photography, during principal photography, and thereafter before release of the film. Many of these changes, perhaps most, involve A to H functions, and may be made by producers or directors or story editors whether or not they are members of the Respondent. It is indicated that prior to the strike, other changes of a more substantial nature might be made in the script when the producer or the director desired. Such changes would be made by persons qualified under the applicable contract between Respondent and the employer.

Respondent argues, however, that even when management executives and supervisors perform functions which have been excluded from the bargaining agreements, such as A through H functions, they are nevertheless performing writing functions within the jurisdiction of Respondent. The argument misses the point. It is not necessary to decide here what constitutes writing, or even what different segments of the industry might consider writing as such. The important point is that when these executives and supervisors perform those functions excluded from the Respondent's bargaining agreements they thereby perform functions which the parties have acknowledged do not constitute work reserved to Respondent's nonhyphenate members under the agreements, but rather are accepted as a normal part of the duties and responsibilities of the executives and supervisors (as hereinabove discussed) employed by the employers involved.[10]

V. STRIKE RELATED ACTIVITIES

1. Respondent's strike rules

In February, the Respondent promulgated and distributed to all its members, including hyphenates occupying positions discussed above, a list of 31 RULES FOR CONDUCT OF MEMBERS DURING A STRIKE. These received considerable publicity in the local papers and the trade press. Fifteen of these strike rules relate, in whole or in part, to prohibitions against writing for struck employers, or the submission of literary material to such employers (Rules 2–11, 14, 16, 18, 23, 25). Various rules with which we are not particularly concerned here deal with such matters as the use of fictitious names (rule 15), acts of agents (rules 17, 20), individual negotiations by members (rule 21), penalties provided by Respondent's constitution and bylaws (rule 29), and enforcement of the rules by committees (rule 31). The remaining rules in pertinent part, are as follows:

1. Any act or conduct which is prejudicial to the welfare of the Guild is subject to disciplinary action. Conduct tending to defeat a strike or in any way weaken its effectiveness is per se conduct prejudicial to the welfare of the Guild.
12. All members are prohibited from crossing a picket line which is established by the Guild at any entrance to the premises of a struck producer.
13. Members are prohibited from entering the premises of any struck producer for the purpose of discussion of the sale of material or contract of employment, regardless of the time it is to take effect. Members are also prohibited from entering the premises of any struck producer for the purpose of viewing any film . . . should a member find it necessary to visit the premises of a struck producer for any reason apart from the foregoing he should inform the Guild in advance of the nature of such prospective visit.
19. A member may not, during the course of a strike, conduct negotiations with a struck producer for financing the production of any of his literary material or scripts, or for his participation in such production in any capacity.
22. A member is chargeable with knowledge of all strike rules and regulations, . . . circularized through the mail to the membership and of any strike information made known . . . through . . . trade papers, newspapers, radio broadcasts or telecasts. . . .
24. All members, regardless of the capacity in which they are working, are bound by all strike rules and regulations in the same manner and to the same extent as members who confine their efforts to writing.
26. The term "member" encompasses anyone admitted to the membership rolls of the Writers Guild of America, both West and East, and classified as either active or inactive, associate, withdrawn or suspended, whether in good standing or bad.
27. No member may be relieved of the responsibility for the payment of any fine, or from any disciplinary action resulting from any infraction of strike rules by offering his resignation from the Guild. Membership in any guild or union is not a voluntary association of parties but a binding contract between them which cannot be abrogated unilaterally by either party except under provisions of the Guild constitution or state or federal law. It should be noted that fines levied for infringement of strike rules are collectible in a suit at law.
28. The Guild shall have the authority to assign and direct members in the performance of duties relating to the strike including, but not limited to, picket duty. Any member found guilty of refusal to perform picket duty shall be fined not less than $100 per day for each day of such refusal to perform.
30. No member shall work with any individual, including a writer-executive who has been suspended from Guild membership by reason of his violation of strike rules, or has been found by the Council to have vi-

[10] In some of the disciplinary trial transcripts, it is noted that Respondent's counsel argued vigorously that functions excluded from Respondent's agreements, such as A through H, were excluded because the economic strength of the employers in bargaining. However, this is the classic way in which management and supervisory rights and functions are differentiated from rank-and-file functions under a bargaining agreement.

olated strike rules, in the event no disciplinary action was instituted against such person.

By means of meetings and publicity, and through personal contact, memos, telegrams, and letters, Respondent emphasized and confirmed that these rules would be enforced against the hyphenate-members.[11] The hyphenate-members were particularly vulnerable to pressure under rule 30 because in their primary work as producers, directors, story editors, and executives, they would be unable to effectively function in the future if writer-members of Respondent refused to work for or with them. In telephone conversations with certain of the hyphenates, agents of Respondent emphasized this consequence should the hyphenate cross the picket line to work. The wife of one hyphenate-member was assured that Respondent would end her husband's rather distinguished career by not permitting writers to work with him if he crossed the picket line. On April 14 during the strike, Respondent issued a press release, which received wide publicity, concerning the filing of charges against "five writer-producers", Jon Epstein, Cy Chermak, Herman Saunders, David Victor, and Jack Webb, for "crossing a picket line for the purpose of going to work for a struck company." The release stated that in addition to other possible penalties, if they were convicted, these men would, "according to Guild officials", "appear on a 'Roll of Dishonor,' " and "be listed in Guild publications 'in perpetuity so that Guild members for years to come will never forget.' " The Guild official assertedly "characterized those members guilty of scabbing as 'pariahs who have betrayed their colleagues.' "

After the issuance of the original consolidated complaint in this matter Respondent, on April 30, rescinded rule 30, and by letter to all its members, dated May 7, advised:

> Old Rule 30 provided that no member shall work with any individual suspended or disciplined because of violating strike rules. The Guild's position has been, and remains, that it will press disciplinary action as vigorously as the law and good union principles permit, against every member guilty of violating strike rules. Because the old rule could be misconstrued to mean that the Guild was maintaining an improper sanction, a matter of anathema to this Guild, the Board of Directors rescinded old Rule 30 at its regular monthly meeting of April 30, 1973. This action was taken voluntarily, in the belief that ample disciplinary measures remain available to trial committees, including penalties of fines, expulsion from membership and other sanctions, and with the conviction that even in the pursuit of strike discipline, members of the Guild do not wish to be a part of an action which carries the odious implications of a "black list."

[11] One such communication was a telephone conversation between Herbert Wright, a producer, and Alan Griffiths, assistant executive director of Respondent. During the hearing, Respondent asserted a variance between Wright's testimony and his affidavit held by the General Counsel and further requested that I accept Wright's affidavit as substantive evidence under the rule of evidence in California. See *Starlite Manufacturing Company* 172 NLRB 68, 71–73. The issue is not mentioned in Respondent's briefs. I have carefully considered Wright's testimony and his affidavit, and I credit Wright's testimony as given at the hearing. Treating Wright's affidavit as substantive evidence would not affect the findings made herein.

2. Pressures on hyphenates by employers and others

As previously noted, the hyphenates here involved in most cases had personal services agreements with their employers to perform in their primary capacities as directors, producers, story editors, and the like. It would also appear that many were members of labor organizations representing them in those capacities, some of which organizations, if not all, apparently held bargaining contracts with the employers.

Prior to the strike, various employers parties to bargaining contracts with Respondent sent communications to hyphenates they employed insisting that they come in to work to perform their regular functions other than writing in the event of a strike. The following letter, in pertinent part, from Twentieth Century-Fox Film Corporation is typical:

> We intend to continue our operations and meet our contractual and moral obligations to supply theatrical and television motion pictures to our customers and the public.
>
> If you are a member of the Writers Guild you may have received from the Guild a set of rules purporting to govern your conduct during the strike "regardless of the capacity" in which you are employed. We also understand that the Guild may have threatened you with fines and blacklisting in the event it calls a strike and you render services for us in any capacity or you fail to report for picket duty. Any attempt of the Guild to interfere with your services for us in a capacity other than as a writer is unlawful and the Guild's threat of fines, censure, expulsion and blacklisting is unenforceable.
>
> * * * * *
>
> We expect you to fulfill your contractual obligations to us as a supervisor[12] and report to work notwithstanding any picket lines or other attempt to interfere with your complying with your contractual obligations. We trust that you understand that we will have no alternative but to resort to our legal rights and remedies in the event of a failure on your part to do so. Should the Guild attempt to fine or otherwise discipline you for meeting such obligations to us, you will be provided with a defense to any such proceeding, without cost to you, and you will be indemnified against any fine which might be imposed and which is legally sustained.

Prior to sending these letters, the members of the AMPTP and the networks had determined that they would not require the hyphenate-members of Respondent to write during the strike.

In addition to these letters, it appears that the hyphenates were placed under certain pressure to perform by the unions holding contracts with the employers covering the principal function for which the hyphenate was employed. Thus, according to a counsel for the Directors Guild, at the time of the Respondent's strike, the Director's Guild held a no-strike contract with employers of hyphenates working as directors, assistant directors, and unit production managers, and felt obligated to inform its members that if they refused to render

[12] At this point some employers inserted the specific function, e.g., director, producer, etc., for which the individual was engaged by that employer.

services covered by the bargaining agreement and the hyphenate's personal service contracts (other than writing), they would be subject to suits for large damages and other penalties.[13]

3. Enforcement of Respondent's strike rules

As has been previously noted, Respondent, by issuance of the strike rules, by a meeting with the hyphenate-members prior to the strike, by communications and publicity, emphasized that it would take disciplinary action against the hyphenates who went to work during the strike in any capacity. The hyphenates held meetings of their own to determine the proper course to follow.

Some hyphenates went to work. The record shows that a number of the hyphenates (I would assume most of them, if not all) advised their employers that they would do no writing, but would only perform services under their personal services contracts as producers, directors, etc., as the case might be. There is evidence that Respondent was informed of this.[14]

During the various disciplinary trials of the hyphenates who worked during the strike, Respondent, as noted above, for the most part professed little or no interest in what kind of work was done during the strike, and presented no proof that the work done by the hyphenates was covered by the recently terminated contracts held by Respondent.[15] The evidence is that the hyphenates who worked during the strike performed the normal functions of the primary positions for which they were employed prior to the strike, e.g., director, producer, story editor, etc., or in some other executive position, and exercised the authority appertaining to such positions.[16]

From April 6 through November 8, 1973, Respondent notified more than 30 hyphenate-members that they had been charged with violation of Respondent's strike rules and set hearings on the charges. The only rules alleged to have been violated were rules 1, 12, 13, and 28. Most hyphenates were alleged to have violated rules 1, 12, and 13; some only rules 12 and 13; some rules 1, 12, 13, and 28; some rules 12, 13, and 28, and one only rule 12. Typical of the language of the charges is the following:

> NOTICE IS HEREBY GIVEN that you are charged with violation of the Guild's Strike Orders and Sections 1, 12, 13, and 28 of the Rules for the Conduct of Members during a Strike, dated February 20, 1973, as amended May 1, 1973, copies of which is attached hereto.
>
> Specifically, you are charged with: (1) having crossed the Guild's picket lines at CBS Studio Center, during the months of March, April, May and June 1973, without having informed the Guild in advance of the nature of your business with said company and without having obtained a Guild pass to enter said premises; (2) having during the months of March, April, May and June 1973, rendered services for Columbia Broadcasting System, Inc., a company against whom the Guild was at such times on strike; and (3) refusing to perform picket duties during the strike after having been requested to do so by representatives of the Guild.[17]

The record contains the transcript of disciplinary trials of 15 of those charged. The charges against at least one of these were dismissed. From June 25 through September 28, 1973, Respondent's board of directors issued the following disciplinary penalties against 10 hyphenate-members, in addition to costs of the hearing: Two were expelled from membership and fined $50,000 each; one was expelled from membership and fined $10,000; one was suspended from membership for 2 years and fined $10,000; one was suspended for 2 years and fined $7,500; one was suspended for 3 years and fined $5,000; one was expelled from membership and fined $2,000; one was expelled and fined $100; and one was suspended for 2 years and fined $100.[18] These penalties received wide publicity in the local press and trade papers. The appeals of nine of these men has been voted on by Respondent's membership at a special meeting and the penalties were drastically reduced. Apparently all remaining actions with respect to discipline of hyphenate-members for working during the strike are now being held in abeyance pending resolution of these cases.

[13] This statement was made during the disciplinary trial of John Michael Crichton. There are indications of similar action by the Producers Guild, and legal action taken against that union by Respondent.

[14] Frank R. Pierson, a producer, advised Respondent that he had a personal services contract to produce a film which he intended to perform during the strike, that the script was finished and no more writing services would be performed. Pierson offered to provide and did later provide a copy of the final shooting script so that Respondent "could compare it with the shooting continuity . . . to see whether . . . anyone had indeed done any writing." Herbert Wright, after informing Respondent that he would work only as an associate producer and was not employed to write, nor would he write, was advised that he would be in violation of the strike rules if he went to work. Crichton, who performed as a director during the strike, also informed Respondent that he had ceased writing on the project and testified that Respondent could confirm this. During his disciplinary hearing it appears that Crichton's employer did provide means for confirming this. Paris, an executive story editor informed Respondent that he would work in an executive capacity. Trapnell, also an executive story editor, did work as an executive during the strike.

[15] It was stipulated at the hearing in this matter that counsel for the Respondent who participated in the disciplinary hearings instituted by Respondent would testify that he took the position at such hearings that the hyphenates charged "are subject to discipline for crossing Respondent's picket line without regard to whether they cross the picket line for the purpose of performing bargaining [unit] services for a struck employer or not. And that the charges will properly lie for crossing the picket line even if the person charged has given assurances to a representative of [Respondent] that he is not and will not perform any [writing] services for the struck employer."

[16] E.g., Robert A. Cinader, during his disciplinary hearing, referred to the adjustment of a dispute between a cameraman and an actor and others; Producer Albert S. Ruddy testified to hiring a lead actor; others asserted their general function and authority as supervisors and in the adjustment of grievances.

[17] Testimony by Respondent's officials in the disciplinary hearings makes clear that passes would not have been granted to hyphenates to go in to work as producers, directors, or the like, even if requested. It is also noted that some hyphenates did agree to perform picket duty at some places notwithstanding they were crossing other picket lines, which, understandably, tended to create some confusion.

[18] The 10 hyphenates penalized for violation of Respondent's strike rules were Hugh Benson, Robert Blees, Cy Chermack, Jon Epstein, David Levinson, John Mantley, Herman Saunders, David Victor, Robert Cinader, and Barry Crane. No disciplinary hearing transcript for Crane appears in the record.

VI. THE REQUESTS FOR ARBITRATION

During the course of the strike, by letter dated April 28, 1973, Respondent made certain requests for arbitration upon AMPTP and the Networks, with carbon copy to the Board's Regional Director. The following letter to AMPTP sets forth the basis for the requests:

> Gentlemen:
>
> Reference is made to the Writers Guild of America 1970 Theatrical and Television Film Basic Agreement ("Agreement"). A dispute exists between the Guild on the one hand and the Association its member companies on the other hand concerning the interpretation of the terms of the Agreement and their application and effect with respect to the effect of the current strike by the Guild on the employment contracts of its members and the claimed right of yourself and the companies to complain of the Guild's enforcement of its strike rules with respect to all its members, including those employed in other capacities. The Guild submits the following questions to grievance and arbitration:
> 1. Whether by virtue of the provisions of said Agreement, and particularly Article 7, all contracts of members of the Guild with employer companies as to whom the Guild is on strike have been suspended, including the contracts of all members no matter in what capacities they have been employed; and
> 2. Whether by virtue of the provisions of said Agreement, and particularly Article 7, the definition of writer, and other provisions, the Association and the Companies have waived the right to designate or select members of the Guild as representatives of employers for the purposes of collective bargaining or the adjustment of grievances and the right to complain of discipline threatened or imposed by the Guild on any of its members.
>
> This will constitute a notice of grievance in accordance with the provisions of the Agreement with you and your member companies that the Guild submits the dispute to grievance and arbitration pursuant to the provisions of Articles 10, 11, and 12 of the Agreement. In that connection, the Guild is willing to waive the grievance step and proceed directly into arbitration.

By letters dated May 14 and 18, AMPTP and the Networks replied denying Respondent's grievance and request for arbitration. The pertinent part of the AMPTP letter, in substance similar to the Network's reply, is as follows:

> This is in response to your letter of April 28, 1973, in which you claimed that there is a dispute between the Guild and the Association and its member companies concerning the interpretation an application of the terms of the . . . ("Agreement") in connection with the current strike of the Guild.
>
> * * * * *
>
> In view of the legal nature of the questions raised by you, and by virtue of the fact that your letter was obviously an effort to make a record for purposes of the imminent National Labor Relations Board proceeding in which a complaint has been issued against the Guild, your letter was carefully reviewed by our attorneys.
>
> Your request to arbitrate the foregoing issues is hereby denied for the following reasons:
>
> 1. The Grievance and Arbitration procedure which you seek to invoke is no longer in effect between the Guild and the members of the Association as to any matters arising subsequent to March 5, 1973. By your letter of February 2, 1973, you terminated the collective bargaining agreement containing these provisions effective March 4, 1973. Additionally, after we had reached an impasse by letter of March 27, 1973, we advised you that effective April 2, 1973, our member companies intended to effectuate certain changes in working conditions including that they would no longer apply the Grievance Arbitration provisions of the Agreement, except as to matters arising before March 5, 1973. You were given an opportunity to bargain about this intended change but failed to do so and on April 2, 1973, said change was implemented.
>
> 2. There is no colorable claim that could be made for the applicability of the Grievance and Arbitration Procedure of the Agreement to the two issues raised by you even if such Grievance and Arbitration Procedure were still available. The effect of Article 7 upon the status of individual employment cannot possibly be subject to grievance or arbitration, inasmuch as the status of such agreements is expressly excluded from grievance and arbitration. There is not a word in the entire Agreement which would support the position taken in the second issue which you have posed. You have heretofore advanced this theory unsuccessfully to the General Counsel of the National Labor Relations Board. You will no doubt urge it again in the impending hearing on the complaint issued by the General Counsel.

In Respondent's answer to the complaint, it raised three affirmative defenses based on the above. In the first two "special defenses," Respondent asserted, almost *in haec verba,* the two positions set forth above, which would have required the Board to interpret the agreement, or find the defenses irrelevant. In its original brief, as previously noted, Respondent has withdrawn these two defenses. In Respondent's "Third Separate Special Defense," Respondent recites the fact that it has requested the Association and the Networks to arbitrate the two issues set forth, and concludes: "In view of the pendency of the above described arbitration proceedings, Respondent respectfully requests that the issues raised in the Second Consolidated Amended Complaint be deferred to arbitration and the Board retain jurisdiction pending the arbitral decision thereof."

Analysis and Conclusions

Under Section 8(b)(1)(B) of the Act it is an unfair labor practice for a labor organization "to restrain or coerce . . . an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances." The Board, in a series of cases, some of which are discussed in *Florida Power & Light Co., supra,* has previously held that action by a union to restrain or coerce the performance of duties by supervisors who were or might be selected

by their employers for the purposes of collective bargaining or adjustment of grievances violates that section of the statute. Thus it has been held that union threats to discipline supervisors for allegedly violating bargaining agreements or asserted practices or policies of the union, charges brought by a union against such supervisors, trials held, and penalties levied against them for contravening the purposes and directives of the union were prohibited by this section of the law, on the ground that such action subverted the loyalties the employer was entitled to expect from the supervisor in the performance of his functions and deprived the employer of the supervisor whom the employer had selected—or potentially might select—to represent the employer for purposes of collective bargaining or adjustment of grievances. In the two cases considered by the Supreme Court in *Florida Power & Light,* the Board had held that union discipline of union-member supervisors who had crossed union picket lines and performed rank and file struck work during the strikes involved there thus violated Section 8(b)(1)(B). The Court of Appeals for the District of Columbia, which considered these cases, disagreed. As stated by the Supreme Court, p. 797:

> In a 5–4 decision, the court [of appeals] held that "[S]ection 8(b)(1)(B) cannot reasonably be read to prohibit discipline of union members—supervisors though they be—for performance of rank-and-file struck work," . . . and accordingly refused to enforce the Board's orders. Section 8(b)(1)(B), the court held, was intended to proscribe only union efforts to discipline supervisors for their actions in representing management in collective bargaining and the adjustment of grievances. It was the court's view that when a supervisor forsakes his supervisory role to do work normally performed by nonsupervisory employees, he no longer acts as a managerial representative and hence "no longer merits any immunity from discipline." . . . 487 F.2d, at 1157. We granted certiorari 414 U.S. 1156, to consider an important and novel question of federal labor law.

The Supreme Court itself affirmed the court of appeals by a vote of 5–4, holding that the legislative history of the pertinent amendments to the Act made it clear that in enacting Section 8(b)(1)(B), "Congress was exclusively concerned with union attempts to dictate to employers who would represent them in collective bargaining and grievance adjustment" (p. 803), and not the general problem of the supervisor's conflict of loyalty as between his employer and his union. As the Supreme Court said (p. 804):

> Nowhere in the legislative history is there to be found any implication that Congress sought to extend protection to the employer from union restraint or coercion when engaged in any activity other than the *selection* of its representatives for the purposes of collective bargaining and grievance adjustment. The conclusion is thus inescapable that a union's discipline of one of its members who is a supervisory employee can constitute a violation of §8(b)(1)(B) only when that discipline may adversely affect the supervisor's conduct in performing the duties of, and acting in his capacity as, grievance adjuster or collective bargainer on behalf of the employer.

The Court then noted that in the cases before it *(Florida Power & Light* and *Illinois Bell)* "it is certain that these supervisors were not engaged in collective bargaining or grievance adjustment, or in any activities related thereto, when they crossed union picket lines during an economic strike to engage in rank-and-file struck work." (p. 805.)

The Court concluded, "for these reasons, we hold that the respondent unions did not violate §8(b)(1)(B) of the Act when they disciplined their supervisor-members for performing rank-and-file struck work." (p. 813.)

In coming to this conclusion, the Court also noted that the result was not inequitable, inasmuch as it derived from the options exercised 1) by the employers in recognizing the unions as representatives of these supervisors under the union contracts, and 2) by the supervisors in becoming and remaining members of the unions for their own benefit. As to the supervisors, the Court stated, in pertinent part (p.812, fn. 22):

> There can be no denying that the supervisors involved in the present cases found themselves in something of a dilemma and were pulled by conflicting loyalties. But inherent in the option afforded the employer by Congress, must be the recognition that supervisors permitted by their employers to maintain union membership will necessarily incur obligations to the union. . . . And, while both the employer and the union may have conflicting but nonetheless legitimate expectations of loyalty from supervisor-members during a strike, the fact that the supervisor will in some measure be the beneficiary of any advantages secured by the union through the strike makes it inherently inequitable that he be allowed to function as a strikebreaker without incurring union sanctions.
>
> The supervisor-member is, of course, not bound to retain his union membership absent a union security clause, and if, for whatever reason, he chooses to resign from the union, thereby relinquising his union benefits, he could no longer be disciplined by the union for working during a strike. . . .
>
> In these cases, the supervisors' dilemma has been somewhat exaggerated . . . in *Illinois Bell,* the company did not command its supervisors to work during the strike and expressly left the decision to each individual. Those who chose not to work were not penalized, and some were in fact promoted by their employer after the strike had ended. Those who did work during the strike but performed only their regular duties were not disciplined by the union. In *Florida Power,* the record does not disclose whether the supervisors crossed the picket lines at the company's request or not, but in any event, the union did not discipline those who did so only to perform their normal supervisory functions.

Similarly, in *N.L.R.B.* v. *San Francisco Typographical Union No. 21, International Typographical Union [California Newspapers, Inc.],* 486 F.2d 1347 (C.A. 9, 1973) (also relied on by Respondent), where the Board had found the union there involved had violated Section 8(b)(1)(B) by disciplining supervisor-members for crossing the union's picket lines, the court held that "the Board's broad interpretation of Section 8(b)(1)(B) . . . is an unjustified extension of the limited language of Section 8(b)(1)(B). Had the members

elected to resign from the union, the power of the Union over them would have ended. But here the members remained in the Union, and therefore continued to be subject to their obligations as members." The court also noted that although those disciplined were supervisors, "the Union did not punish them for exercising any management duty." (486 F.2d at 1349–50.)

Compare *Scofield (Wisconsin Motor Corp.)* v. *N.L.R.B.*, 394 U.S. 423 (1969), where, in the course of holding that Section 8(b)(1)(A) did not proscribe a union's enforcement of productivity ceilings through the discipline of members, the Supreme Court stated (p. 430), " . . . Section 8(b)(1) leaves a union free to enforce a properly adopted rule which reflects a legitimate interest, impairs no policy Congress has imbedded in the labor laws, and is reasonably enforced against union members *who are free to leave the union and escape the rule.*" [Emphasis supplied.]

In this case we are concerned with certain supervisory, executive, and managerial personnel (referred to as hyphenates) principally employed to perform functions *not* covered by Respondent's collective-bargaining agreements (which agreements provide for the conditions of employment and the recompense of writers who furnish certain writing services to the television and theatrical industries), but who are nevertheless members of Respondent and who on occasion may do work properly falling within the terms of those bargaining agreements. The case involves the attempts of Respondent to coerce and restrain those hypenates from going to work in any capacity during the course of a strike by Respondent against the hyphenates' employers over the terms for renewal of Respondent's bargaining agreements. Respondent promulgated and distributed strike rules to all its members forbidding the members to go to work in any capacity during the strike. These received wide publicity. These were further enforced by personal and written communications, and at Respondent's meetings with the hyphenates, to impress on them that the strike rules applied to the hyphenates and would be enforced against them.[19] Some hyphenates who allegedly violated one or more of the strike rules were charged, tried before trial boards of Respondent, and when convicted were disciplined.

During this same period, Respondent also had and enforces a policy, well known to the hyphenates, under which Respondent refused to permit such hyphenate-members to resign from membership prior to or during the strike.

At the same time, many of the hyphenates, probably most, were obligated to perform their primary managerial and supervisory functions under personal service contracts with their employers. Prior to the strike the hyphenates were informed by their employers that they would be expected to fulfill their contracts and come in to perform their normal work during the strike. In some cases, perhaps most, these primary functions were also covered by collective-bargaining agreements with other labor organizations requiring that the hyphenates not engage in strikes. At least one or two such unions directed their hyphenate-members to perform during the strike in accordance with that union's contract.

It is clear, as has been found, that the normal performance of the hyphenates' primary functions involves the adjustment of employee grievances, and, in the case of producers on distant location, to engage in collective bargaining with labor organizations. Those hyphenates charged by Respondent with violation of its strike rules, who testified in this hearing or before Respondent's trial boards denied performing any writing function during the strike other than that which had been commonly agreed in the past to be permissible for hyphenates performing supervisory and managerial functions. Indeed, the employers had determined in advance not to require writing of the hyphenates who worked during the strike. Evidence was offered to Respondent by certain hyphenates to substantiate the fact that those hyphenates, though working during the strike, nevertheless did no writing. Respondent, indeed, points to no instance of any hyphenate doing any "rank and file" work during the strike. In its original brief, Respondent stated its position as follows, in pertinent part:

> . . . we believe that the record here supports an inference that hyphenate Guild members who crossed picket lines necessarily performed services of a non-supervisory character which bring them within [the Court of Appeals' decisions in *Illinois Bell* and *California Newspapers*].
>
> Virtually all of the hyphenate writers called as witnesses by General Counsel conceded that they performed only (a) through (h) writing functions which, upon their view, were not strike defeating because such services were outside the coverage of the Guild contract. . . .
>
> Rather, it is our contention that such writing falls within the prohibitions of [Respondent's strike rules] and that the scope of such rules was legally permissible. . . .
>
> The permissible scope of the strike rules, as to hyphenates, can only be judged fairly in connection with the production activities of the struck employers which the Guild had the right to frustrate . . . the most critical service of the producers is the finding and participation in the hiring of writers . . . while this is a statutory supervisional function, nevertheless, in a strike situation the performance of this non-writing function requires the producer to be the active recruiter of strike-breaking writers. The average foreman union member in an industrial plant is not in a strike situation, normally called upon to act as the *principal recruiter of strike breakers.*
>
> In order to perform under his producer contract, the hyphenate Guild member necessarily must place himself directly in direct opposition to the strike strategy of the Guild and, at the same time, be free from the normal discipline imposed upon strike-breakers. The matter of disloyalty arises from the continued performance of the hiring function itself.[20]

[19] Originally one of the rules, later officially rescinded, provided for the perpetual ostracism of any hyphenate working during the strike, which would clearly have wrecked the further careers of such persons. The impact of the rule itself, as well as the indication of the implacable attitude which prompted it, were clearly coercive of the hyphenates' freedom of action.

[20] In its supplementary brief, Respondents states that while it considers the "record as a whole" supports a finding that "rank and file" work was done, its position is that *Florida Power* makes the finding "irrelevant." (Supp. brief p.5)

These arguments, however, do not meet the issue. The fact is that, according to the record, such writing as the hyphenates did during the strike was limited to that commonly accepted in the industry as part of the managerial and supervisory function and thus was not rank-and-file work. I so find. Indeed, although a number of Respondent's strike rules forbade writing for struck employers, none of the hyphenates was charged with violating those rules. It was stipulated that Respondent's counsel, during the disciplinary hearings, was not concerned with what work the hyphenates did when working during the strike.

In its supplementary brief, Respondent argues that it would be difficult to determine in these cases what the supervisors did after they went to work during a strike, for the supervisors and employers would not likely cooperate. However, in the one instance in which Respondent's trial panel is shown to have requested evidence, it was supplied by the employer. In another instance the hyphenate supplied evidence voluntarily, without request. In one of the disciplinary trials there was testimony by a union member that when he returned to work after the strike, he found no writing that had been done by a hyphenate (with whom the member was closely associated) who had worked during the strike, the union member stating that he was satisfied that some writing had been done by an executive who was not a member of Respondent. From this it seems clear that if hyphenates working during the strike had performed rank-and-file work, Respondent had means for discovering it.

Though the evidence is sparse, the record indicates that during the strike, where the situation arose, the hyphenates dealt with grievances of employees who worked during the strike, or, in any event, were available to deal with such matters in their normal capacities when and if such grievances arose.

Further, it has long been established that an employer may legally employ replacements for striking employees during a strike (in union terminology "strikebreakers") see *N.L.R.B.* v. *Mackay Radio & Telegraph Co.*, 304 U.S. 333, 345. Thus action by managerial or supervisory employees in recruiting employees during a strike would manifestly fall within the normal functions of such persons. There is no evidence of which I am aware that any hyphenate performing as a producer during the strike (as argued by Respondent) recruited or hired a writer during the strike—for the most part the evidence is that such producers were involved with scripts already written and ready for production—but if any such writer were recruited or hired by a producer, this was clearly a proper managerial or supervisory function.

Nor is it material, in the circumstances of this case, that by going in to work at managerial and supervisory functions during the strike, hyphenate-members frustrated Respondent's strike strategy, or provided the employers with more economic clout than they otherwise might have possessed. Respondent cannot deny the hyphenates the right to resign from membership, and thus be free of the obligations of membership, while at the same time argue that because the hyphenates continued to be members they cannot be "free from the normal discipline imposed upon strike breakers." It was well known among the hyphenates that Respondent would not permit them to resign prior to or during the strike. At least one hyphenate's attempt to resign from membership in Respondent during this period was rejected. It is, of course, not known how many hyphenates would have resigned if this had been an option available to them. It is inferred that at least those who went back to work during the strike would have done so, and possibly others. The rights of the hyphenates and their employers are not reduced because the exercise of those rights might make Respondent's position more difficult.

The results of the strike would be of only problematical benefit to many of the hyphenates involved. Respondent's contracts did not cover the hyphenates' managerial and supervisory functions (as was the situation in *Florida Power)* and would have benefited the hyphenates only if they engaged in writing covered by the bargaining agreements. There was testimony from a number of hyphenates that they had done no substantial writing of such character for a considerable number of years. There is little indication that the hyphenates received other substantial benefits from their membership in Respondent, except that derived from being part of the writing community which provided significant contacts with writer-members of Respondent, a sense of pride in belonging to the organization, and, perhaps most important, providing the hyphenate with a wider range of capabilities and thus enhancing his usefulness to his employer.

It has been previously found that those hyphenates occupying the positions of executive producers, producers, associate producers, directors, story editors, story consultants, script consultants, executive story editors, and executive story consultants, as considered hereinabove, are supervisors within the meaning of Section 2(11) of the Act selected by their employers to adjust grievances, and, in the case of the producer function, to negotiate agreements with labor organizations within the meaning of Section 8(b)(1)(B) of the Act. On the basis of the above discussion and the record as a whole it is found that by issuing strike rules designed to compel such hyphenates from going to work during the strike called by Respondent, and by meetings, personal contacts, telegrams, and phone calls designed to restrain and coerce such hyphenates from going to work during the strike, Respondent restrained and coerced the hyphenates from performing managerial and supervisory services for their employers during the strike, including the adjustment of employee grievances and participation in collective bargaining, and thus coerced and restrained those employers in the selection of representatives for collective bargaining and the adjustment of grievances within the meaning of Section 8(b)(1)(B); that those hyphenates involved in this matter who worked during the strike performed managerial and supervisory functions including the adjustment of grievances on collective bargaining as required, and did not perform rank-and-file work; and that by charging, trying, and disciplining such hyphenates who worked during the strike in such circumstances, Respondent further coerced and restrained the employers in the selection of their representatives for the purposes of collective bargaining within the meaning of Section 8(b)(1)(B) of the Act. It is therefore found that Respondent, by the activities set forth above, violated Section 8(b)(1)(B) of the Act.

In coming to this conclusion, I have given careful consideration to Respondent's contention that the Supreme Court in *Florida Power,* not only disapproved of the Board's finding that a violation of Section 8(b)(1)(B) had occurred in those cases, in effect held that coercion, restraint, and discipline of supervisor-members by a labor organization for working during a strike cannot be held by the Board to violate the Act. I disagree. It is clear that Respondent's action in this case violated the plain meaning of the statute without the necessity of resort to statutory exegesis. To illustrate: A person performing the function of a director acts in a managerial or supervisory capacity, which normally includes the adjustment of grievances of actors, actresses, craft employees, and others. One occupying the position of a producer normally has a similar capacity and similar duties with respect to employee grievances. In addition, if the film is being shot on distant location, the producer has authority to negotiate on-the-spot agreements with local unions. Thus when Respondent prevented or sought to prevent, such hyphenate-members from going to work in their managerial and supervisory capacities as producers and directors during the strike, Respondent obviously coerced and restrained their employers in the selection of those specific producers and directors for the purpose of collective bargaining and the adjustment of grievances of employees working during the strike within the plain meaning of the statute. Similarly, those persons employed as story editors or in like classifications perform executive functions normally, and appear to have done so during the strike, in which the record indicates they were engaged as supervisors and actual or potential representatives of their employers for the adjustment of grievances.[21] Respondent, by coercing or restraining persons in these classifications from going in to do their normal work thereby actually coerced and restrained their employers from selecting those persons as the employers' representatives for the adjustment of grievances and for collective bargaining during the strike.

The General Counsel also contends that Respondent's rule restricting the right of hyphenate-members to resign from membership should also be found to violate the Act. This raises what seems to me a quite important and difficult issue, one which may well have different consequences for supervisors as distinguished from rank and file employees.[22] I do not, however, have to determine these matters in this case. The General Counsel did not allege this matter as a violation of the Act in his complaint, nor put it properly in issue during the hearing. In the circumstances, I do not pass on the issue.

Lastly, I have carefully considered Respondent's contention that certain issues should be referred to arbitration and the complaint in this proceeding be dismissed. I have determined that this contention should be denied for the following reasons:

1. The parties have not agreed that the issues presented by the complaint in this matter should be determined by arbitration. The bargaining agreements held by Respondent which expired on or about March 4, or shortly thereafter, contain no restriction on Respondent's issuance of strike rules, or on its right to restrain members to comply with its rules, or on Respondent's right to discipline its members, or on Respondent's right to strike when it did. Respondent, indeed, does not claim that there were any contractual provisions which forbade or approved of such actions. It does claim that there was a contractual provision which would have protected the hyphenates if they desired to respect Respondent's picket line.[23] The employers, on their part, refer to provisions of the agreements in support of their contentions that the agreements do not cover or apply to the functions performed by the hyphenates, and further that these provisions of article 7 are specifically exempted from arbitration. There is no need to consider the merits of these contentions. We are not here concerned with whether there was agreement that these hyphenate-members of Respondent could respect Respondent's picket lines or its strike call with impunity from action by the employers, but we are concerned with whether the Respondent may legally restrain and coerce the hyphenate-members from going to work, at the insistence of their employers, to perform functions not covered by Respondent's contracts, and whether Respondent may discipline such members for going to work in such circumstances. No contractual basis appears and Respondent points to none which would authorize an arbitrator to pass on such issues.[24]

Assuming, without deciding, that the employers had agreed to absolve Respondent's hyphenate-members of all liability for breach of their personal services contracts (which, as noted, the employers vigorously dispute), it does not follow, as Respondent argues, that the employers thereby agreed not to ask, direct, or insist that such members come in to work, or agreed that the employers would not select such members as their representatives for adjustment of grievances or collective bargaining, or that the employers agreed that Respondent could restrain or coerce the members not to

[21] As previously noted, two executive story editors, Paris and Trapnell, appear to have worked as executives during the strike. According to the disciplinary transcript, Trapnell is a supervisor over story analysts who apparently did not strike.

[22] As to the rank-and-file employees, since they are compelled by law to accept labor organizations chosen by the majority in the unit, and may be compelled to join or assist such unions even if violently opposed to them, and to comply with their rules even if personally obnoxious to the employees involved, it may well be argued that such employees should be afforded reasonable opportunity at proper times to resign their membership in such organizations and escape the imposition of such rules. Some commentators who have considered the subject indicate that this is a likely direction of the law. See *Restrictions on the Right to Resign: Can a Member's Freedom to Escape the Union Rule Be Overcome by Union Boilerplate?*, 42 Geo. Wash. L. Rev. 397 (1974); 26 Vand. L. Rev. 837 (1973); *Union Disciplinary Fines and the Right to Resign*, 30 Wash. & Lee L. Rev. 664 (1973); 5 St. Mary's L. J. 176 (1973); 40 Geo. Wash. L. Rev. 330 (1971). There may be, as the Court of Appeals for the First Circuit has indicated, " . . . a limit of reasonableness beyond which a union may not be permitted to go in holding captive its members." See *N.L.R.B.* v. *International Union, United Automobile Workers [John I. Paulding, Inc.]*, 297 F.2d 272, 276 (1961).

[23] Section 2, article 7, in certain expired agreements provided, in pertinent part, that "If, after the expiration or other termination of the effective term of this Basic Agreement, the [Respondent] shall call a strike against any Company, then each respective current employment contract of writer members of [Respondent] (hereinafter . . . referred to as 'members') with such Company shall be deemed automatically suspended, both as a service and compensation, where such strike is in effect, and each such member of [Respondent] shall incur no liability for breach of his respective employment contract by respecting such strike call . . ."

[24] Cf. *Houston Mailers Union No. 36 (Houston Chronicle)*, 199 NLRB 309 (1972), relied on by Respondent, in which the Board held that where the employer and the union there involved had specifically agreed in their bargaining agreement that the union "shall not discipline the foreman," and where the only issue before the Board concerned discipline of a foreman by the union, the Board deferred to the arbitration process in accordance with the bargaining agreement of the parties.

work, or, if the members did come in to work at the employers' insistence, that Respondent could discipline the members for doing so.

2. There is substantial doubt that Respondent's actions which are the basis for the complaint in this matter are subject to arbitration in any event. Almost all of Respondent's conduct with which we are here concerned, including the charges against the hyphenates, the disciplinary trials and the penalties imposed, occurred after the termination of the bargaining agreements and at a time when neither Respondent not the employers had consented to arbitration of their actions.

3. The legal issues involved in this proceeding are matters of importance to the administration of the Act, as shown by the Supreme Court's recent decision in *Florida Power.* The application of the principles laid down in that decision and the development of the law in this area should be made by the Board in a unified and consistent fashion and not delegated to the diverse opinions of various arbitrators who have neither been selected to administer the Act nor sworn to do so. This matter is highly complex and involves many factual and legal issues having little or no relation to contractual questions. The parties have spent much time litigating these issues and at considerable expense. It would seem to me an act of administrative abnegation of duty to tell the parties to start over again before another tribunal when the proceeding has already been tried before the agency appointed by Congress to hear and decide the issues.

CONCLUSIONS OF LAW

1. The employer members of the Association of Motion Picture and Television Producers, Inc., American Broadcasting Companies, Inc., Columbia Broadcasting System, Inc., National Broadcasting Company, Inc., and QM Productions (herein collectively referred to as "the employers") are, and each of them is, employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Writers Guild of America, West, Inc., is a labor organization within the meaning of Section 2(5) of the Act.

3. By restraining and coercing the employers of hyphenate-members of the Respondent, and of the employers, in the selection of their representatives for the purpose of collective bargaining or the adjustment of grievances, as found hereinabove, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(1)(B) of the Act.

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

THE REMEDY

Having found that the Respondent engaged in unfair labor practices in violation of Section 8(b)(1)(B) of the Act, it will be recommended that Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

The record is convincing that Respondent, well aware of the primary supervisory, management, and executive functions of its hyphenate-members, drafted its strike rules and enforced them with the intent of compelling those hyphenate-members from going to work during the strike, without regard to the capacity in which they performed or the work done. In particular, by threatening to blacklist in perpetuity such hyphenates who worked during the strike, the rules threatened to drive those hyphenates out of the industry. Though the mandatory effect of the rule was rescinded (see Resp. Exh. 11), there are other indications that Rspondent's actions encourage a voluntary blacklist. Thus, in its letter to members explaining their options on appeals from penalties imposed upon certain hyphenates who worked, Respondent stated, *inter alia,* "There is obviously a stigma attached to expulsion which might cause individual members of the [Respondent] to refrain from working for such a person. The Guild itself cannot order its members to refrain from working with an individual merely because he was expelled." (Resp. Exh. 12.) In at least one instance, in the disciplinary transcript relating to Robert Blees, a writer-member of Respondent expressed his intent not to work with Blees because the latter had worked during the strike, though the writer-member acknowledged that he was under no compulsion from Respondent to take that position. I fully realize that this member as well as others might have adopted this position even if Respondent had not suggested it by its rule and other communications and publicity. However, the fact is that Respondent did suggest it, and it is now impossible to disentangle the consequences flowing from its actions. I shall recommend a broad order in order to restore the *status quo* and remedy the various effects of Respondent's actions found to have violated the Act.

The General Counsel and the Charging Parties have requested a number of particular remedies, some of which I find appropriate in the circumstances and have included in the following order. It is requested that the fines, suspensions, and expulsions from membership of the hyphenates be rescinded and revoked. In the ordinary case I would be loath to hold that a union may not suspend or expel a member who worked during a legal strike. However, here, where the hyphenates have been forced to undergo the stigma of suspension or expulsion by Respondent's deliberate action in refusing them a free choice to withdraw in a normal manner prior to working during the strike, and where Respondent has further suggested that members not work with hyphenates who were expelled, I am convinced that the effects of Respondent's actions can best be remedied by restoration of the *status quo ante.* It is also noted that in the four cases in which appeals were perfected, Respondent's membership rejected the penalties of suspension or expulsion. Inasmuch as the record is incomplete as to the status of the other hyphenates charged, I shall recommend the normal remedial order as to all, without distinction between those whose suspension or expulsion has already been revoked and those for whom it has not.

It is also requested that Respondent be ordered to mail a copy of the notice to each of its members and to publish the notice in the local trade papers, "Hollywood Reporter" and "Daily Variety," as well as in local papers of general circulation. The record shows that Respondent was careful to mail its strike rules, directions, orders, and instructions to all its members in order to give those actions wide and personal service; and further that the matter of compulsion of the hyphenate-members to abide by Respondent's rules and the

trials of those members and the penalties imposed on them was given wide publicity in the trade papers and the local press through press releases and other information supplied by Respondent and its officers. The request that equal publicity be given to the Board's notice is clearly justified. However, I believe that this can be accomplished through requiring Respondent to publish the Board's notice in the two trade papers for 1 week (six consecutive issues). I do not think that it is necessary that the notice be published by Respondent in the local press, or that the publication in the trade papers be for 3 consecutive weeks as requested. I further do not agree, as has been requested, that there is any necessity that the notice be read at Respondent's membership meetings, in addition to the normal positing of the notice, and the mailing and publication just considered.

There is a further request that Respondent be ordered to reimburse those hyphenates who were brought to trial for violating Respondent's strike rules for the reasonable expenses of defending their conduct in their trials. A persuasive argument can be made on the point. There is no question but that Respondent deliberately used the difficult position of the hyphenates in a power play against the employers. However, the hyphenates are not entirely without responsibility in the result; for whatever their reasons, they had maintained membership in Respondent until the very last minute. There is also no evidence that Respondent did not sincerely believe that it had the right to do as it did. While sincerity does not excuse violation of the law, it has weight in considering an unusual remedy such as that requested. I do not believe that this remedy is justified in these circumstances.

Upon the foregoing findings of fact, conclusions of law and the entire record, I issue the following recommended:

ORDER[25]

Writers Guild of America, West, Inc., the Respondent herein, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Restraining or coercing any employer in the selection of its representatives for the purpose of collective bargaining or the adjustment of grievances by (1) issuing rules, orders, directions, or instructions in any form to any supervisor, executive or other management personnel whose functions involve or may involve collective bargaining or the adjustment of grievances not to perform supervisory, managerial, or executive functions for such employer; (2) threatening any such employer representative with fines, suspension, or expulsion from membership, blacklisting, ostracism, or any other penalty or reprisal for performing supervisory, managerial, or executive functions for such employer; (3) citing or charging any such employer representative with violation of any such rule, order, direction, or instruction, or by summoning any such employer representative before any committee, board, panel, or tribunal to be tried for, or by trying any such employer representative for violation of such rule, order, direction, or instruction forbidding such representative from performing supervisory, executive, or managerial functions; (4) fining or otherwise disciplining such employer representatives for performing supervisory, executive, or managerial functions; or (5) enforcing in any other manner any such rule, order, direction, or instruction.

(b) In any like or related manner restraining or coercing any employer in the selection of representatives for the purpose of collective bargaining or the adjustment of grievances.

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

(a) Revoke, rescind, and expunge from Respondent's records, the fines, suspensions, or expulsions from membership, or other disciplinary action, or penalty imposed on Hugh Benson, Robert Blees, Cy Chermack, Jon Epstein, David Levinson, John T. Mantley, Herman S. Saunders, David Victor, Robert A. Cinader, Barry Crane, or on any other employer representative as described in paragraph 1, (a), (1) above, for working during the strike beginning on or about March 4, 1973, as a supervisor, executive, or in a managerial capacity.

(b) Reimburse Hugh Benson, Robert Blees, Cy Chermack, Jon Epstein, David Levinson, John T. Mantley, Herman S. Saunders, David Victor, Robert A. Cinader, and Barry Crane, and any other employer representative as described in paragraph 2(a) above, for the fines levied against them, with interest thereon at 6 percent per annum.

(c) Advise Hugh Benson, Robert Blees, Cy Chermack, Jon Epstein, David Levinson, John T. Mantley, Herman S. Saunders, David Victor, Robert A. Cinader, and Barry Crane, and any other employer representative as described above, in writing, that any fines levied against them, and any action suspending or expelling them from membership in the Respondent, or any other penalty imposed upon them for working during the said strike, has been revoked and rescinded, and that such fines and suspensions or expulsions, or other penalties have been expunged from Respondent's records.

(d) Post at its office and meeting halls copies of the attached notice marked "Appendix."[26] Copies of said notice, on forms provided by the Regional Director for Region 31, after being signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and 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 to insure that said notices are not altered, defaced, or covered by any other material.

(e) Mail a signed copy of the attached notice marked "Appendix" to all Respondent's members to whom Respondent's strike rules dated February 20, 1973, were mailed.

(f) Publish the attached notice marked "Appendix" for 1 week (six consecutive issues) in "Hollywood Reporter" and "Daily Variety," immediately after posting said notice.

(g) Notify the Regional Director for Region 31, in writing, within 20 days from the date of the receipt of this Decision, what steps have been taken to comply herewith.

[25] In the event no exceptions are filed as provided by Sec. 103.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[26] In the event that the Board's 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."