officers, office clerks and stenographers, shop foremen, testers, watchmen and operators, guards, and all supervisors as defined in the act.[2]

[Text of Direction of Election omitted from publication.]

[2] The parties agree as to the unit composition except for the shipping and receiving clerk, the testers, the leadmen, and a watchman and operator The Petitioner would exclude them, but the Employer takes no position as to these employees. The shipping and receiving clerk is a salaried employee who receives, stores, issues, and ships materials. Most of his time is spent at manual labor. As he has no supervisory authority, we have included him. *American Lawn Mower Co.*, 108 NLRB 1589 The testers, who are metallurgists with college degrees, perform their duties in the laboratory under supervision of the general manager and are paid on a salary basis We find that the testers are technical employees with interests, duties, and conditions of employment which differ from other employees in the unit. Accordingly, we have excluded them *Copperweld Steel Company*, 102 NLRB 1229; *East Texas Steel Castings Company, Inc*, 95 NLRB 1135 The three hourly paid leadmen are engaged in manual labor at all times, often with the assistance of other laborers. They have no authority to hire, discharge, or effectively recommend such action. They do inform and show others how work is to be done. In so doing they exercise routine judgment. Accordingly, we find that they do not responsibly direct, and therefore we have included them. *Gerber Plastic Company*, 108 NLRB 403, *et seq.* The watchman and operator punches six time clocks hourly. This duty consumes approximately 1 hour during an 8-hour shift, the remainder of which is devoted to operating an annealing furnace and other nonprotection duties Also, he would engage in protection activities if the need arose. As part of his duties consist of plant protection, we find that he is a guard and therefore we have excluded him. *Walterboro Manufacturing Corporation*, 106 NLRB 1383.

ALBERT EVANS, TRUSTEE OF LOCAL NO. 391, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, AND INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, *and* THURSTON MOTOR LINES, INC.

DRIVERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION NO. 71, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, AND ITS AGENT, H. S. LITTLE *and* THURSTON MOTOR LINES, INC. *Cases Nos. 11–CC–5 and 11–CC–6. November 4, 1954*

Decision and Order

On July 14, 1954, Trial Examiner Robert L. Piper issued his Intermediate Report in the above-entitled proceeding, finding that Locals 391 and 71 had engaged in and were engaging in certain unfair labor practices within the meaning of Section 8 (b) (4) (A) of the Act, and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner further found that Respondents Little and International had not engaged in any of the alleged unfair labor practices and recommended dismissal of the complaint as to them. Thereafter, Locals 391 and 71 filed exceptions to

the Intermediate Report and a brief, and the General Counsel filed exceptions.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the modifications noted below:

1. The Trial Examiner found that the International had not violated Section 8 (b) (4) (A). The General Counsel excepts. We note that the amended complaint alleged that Evans at all material times was the trustee of Local 391 by virtue of an appointment by the International in accordance with its constitution, and had full and complete control of Local 391. The amended answer admitted this allegation. As we agree with the Trial Examiner that Local 391 violated Section 8 (b) (4) (A), we further find that the International, by virtue of its trusteeship of Local 391 at such times, also violated Section 8 (b) (4) (A) of the Act.[1]

2. The Trial Examiner recommended that the Respondents cease and desist from inducing strike action by the employees of any employer other than Thurston, where an object thereof is to force any employer to cease doing business with Thurston "or any other person." In accordance with our customary practice, we shall omit the quoted phrase.[2]

Order

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondents, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, its Locals 391 and 71, and their officers, representatives, and agents, shall:

1. Cease and desist from inducing or encouraging the employees of any employer other than Thurston Motor Lines, Inc., to engage in a strike or concerted refusal in the course of their employment to perform services for their employer, where an object thereof is to force or require any employer or person to cease doing business with Thurston Motor Lines, Inc.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

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[1] *Local No 600, Truck Drivers and Helpers, Gasoline & Oilers, etc. (Osceola Foods, Inc.)*, 107 NLRB 161.

[2] *International Brotherhood, etc. (Jay-K Independent Lumber Corp.)*, 108 NLRB 1323; *Brewery and Beverage Drivers, etc. (Washington Coca Cola Bottling Works, Inc.)*, 107 NLRB 299.

(a) Post at their respective business offices in Charlotte and Greensboro, North Carolina, copies of the notice attached to the Intermediate Report marked "Appendix A."[3] Copies of said notice, to be furnished by the Regional Director for the Eleventh Region, after being duly signed by official representatives of the Respondents, shall be posted by the Respondents immediately upon the receipt thereof, and maintained by them for a period of sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondents to insure that said notices are not altered, defaced, or covered by any other material.

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

AND IT IS FURTHER ORDERED that the complaint, insofar as it alleges that H. S. Little violated Section 8 (b) (4) (A) of the Act, be and it hereby is dismissed.

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[3] Such notice shall be amended, however, by substituting the words "A Decision and Order" for the words "The Recommendations of a Trial Examiner," by deleting the phrase "or any other person" in the last paragraph before the signatures, and by adding the signature of the International

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

Intermediate Report and Recommended Order

STATEMENT OF THE CASE

Charges having been duly filed and served, a consolidated amended complaint and notice of hearing thereon having been duly issued and served by the General Counsel of the National Labor Relations Board, and an answer having been duly filed by Albert Evans, Trustee of Local No. 391, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL (hereinafter called Local 391); International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL; and Drivers, Chauffeurs, Warehousemen and Helpers Local Union No. 71, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL (hereinafter called Local 71), and its agent, H. S. Little (all hereinafter collectively called Respondents), a hearing involving allegations of unfair labor practices in violation of Section 8 (b) (4) (A) of the National Labor Relations Act, 61 Stat. 136, was held in Greensboro, North Carolina, on June 8, 1954, before the Trial Examiner. In sum, the complaint alleges and the answer denies violations by Respondents of Section 8 (b) (4) (A) of the Act.

At the hearing all parties were represented by counsel, were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence pertinent to the issues, to argue orally upon the record, and to file briefs and proposed findings of fact and conclusions of law. Counsel for Respondents and for the General Counsel presented oral argument. Briefs have not been received from any of the parties.

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

FINDINGS OF FACT

I. THE BUSINESS OF THURSTON MOTOR LINES, INC.

Thurston Motor Lines, Inc. (hereinafter called Thurston), the Charging Party herein, is a North Carolina corporation engaged in hauling freight by motor carrier through the States of North Carolina and Virginia under certificates issued

by the Interstate Commerce Commission. Thurston has freight terminals in Charlotte and Greensboro, North Carolina. During the year preceding the issuance of the complaint, Thurston received revenue amounting to approximately $500,000 from such operations. In the course of such operations, a substantial portion of the freight carried by Thurston was handled by interchange with other interstate motor carriers. Respondents admit, and I find, that Thurston is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

Local 391, Local 71, and International Brotherhood of Teamsters are labor organizations within the meaning of Section 2 (5) of the Act.

III. THE UNFAIR LABOR PRACTICES

All of the facts in this case were stipulated by the parties and with the exception of one incident are substantially undisputed. At the opening of the hearing the parties entered into a written stipulation of facts which was received in evidence. In addition thereto, the parties made certain stipulations of fact upon the record, and stipulated the receipt in evidence of the transcript of the court proceedings held in the Federal district court in connection with the issuance of an injunction by said court involving the same parties and incidents. The parties stipulated that the testimony of the witnesses in the injunction hearing, if such witnesses were called and testified in the instant hearing, would be the same.

The amended complaint alleges and the amended answer admits that since on or about March 26, 1954, Local 71 has been engaged in a labor dispute with Thurston in respect to its Charlotte operations, and since on or about March 30, 1954, Local 391 has been engaged in a labor dispute with Thurston at Greensboro, North Carolina. It is undisputed in the record that there is primary picketing by Local 391 at Thurston's Greensboro terminal and by Local 71 at Thurston's Charlotte terminal, and it is not contended that such picketing is violative of Section 8 (b) (4) (A) of the Act.

However, in addition to this primary picketing, the parties stipulated certain other picketing, approved and authorized by Locals 71 and 391, at or near the premises of other employers. Thurston does business with a group of companies described as "interlining" carriers. These companies are also interstate carriers, and either accept from or deliver to Thurston freight for continuation in interstate transport. In addition, Thurston does pickup and delivery work for other companies. It was stipulated that pickets authorized by Locals 391 and 71 followed Thurston's trucks to the various premises or terminals of the interlining carriers and customers of Thurston, and while Thurston was attempting to make deliveries or pickups to and from such carriers and customers, picketed around Thurston's trucks with picket signs containing legends that the respective local was engaged in a labor dispute with Thurston. It is undisputed that such picketing was limited to the times and appropriate places when Thurston's trucks were present, and that the picket signs clearly disclosed that the respective local's dispute was with Thurston and not with the employer at whose premises Thurston's truck was being picketed. It was also stipulated that Respondents, at approximately one-half of Thurston's customers and interlining carriers, after following a Thurston truck to such premises, requested a management official not to deliver to or accept freight from Thurston because Local 71 or Local 391 was on strike against Thurston. The General Counsel makes no contention that these requests of management officials constituted violations of Section 8 (b) (4) (A).

In addition to the admitted picketing of Thurston's trucks when they were present at premises of customers and interlining carriers, the record establishes certain other actions by and on behalf of Locals 391 and 71 which the General Counsel contends also constitute violations of Section 8 (b) (4) (A). The parties stipulated that at all times material H. J. Elmore was vice president and business agent of Local 391, C. H. Allen was a trustee and business agent of Local 71, and one Loftus was a shop steward of Local 391. The testimony of various witnesses referred to hereinafter is that of the witnesses who appeared in the district court injunction proceedings. No witnesses testified before me.

G. E. Lineberry, an employee of Bell Lines, Inc. (hereinafter called Bell) and a shop steward for Local 391, testified that on or about April 3, 1954, Elmore came to Bell's premises and told Lineberry that Local 391 was on strike at Thurston and that Bell's employees should not handle Thurston's freight while pickets of Local 391 were present picketing the truck. Lineberry further said that Elmore asked him to tell the employees not to handle Thurston's freight while the pickets were present

and that he did so. Elmore told Lineberry that under the provisions of the contract between Local 391 and Bell, which provisions will be referred to hereinafter, Bell's employees were required to honor such a picket line. Lineberry was of the same opinion. Lineberry stated that Bell did not object to the employees honoring the picket line under the provisions of the contract. Actually, as far as the Bell incident is concerned, that inducement and encouragement of Bell's employees did not exceed in scope the inducement and encouragement of them by the picketing itself, in effect hinges upon whether or not such picketing was in violation of Section 8 (b) (4) (A).

The record also reveals that while the pickets of Local 391 were picketing one of Thurston's trucks at the premises of P. H. Hanes Knitting Company (hereinafter called Hanes), Loftus, the shop steward of Local 391, told one of the drivers of another employer, McLean Trucking Company, that if he crossed Local 391's picket line at Hanes he would be in trouble with Local 391 and might lose his job. In other words, Local 391 sought to prevent an employee of a third employer from doing business with or making a delivery to the secondary employer while the picket line was present at the secondary employer's premises picketing a Thurston truck. George Brown, a driver for the Wicker Company, another motor carrier, testified that he came to Western Carloading Company (hereinafter called Western), in order to make a delivery. The pickets from Local 391 were present picketing one of Thurston's trucks and asked Brown not to cross their picket line and do business with Western. This is another instance where the Locals sought to persuade employees of third employers not to cross their picket line and do business with a secondary employer, with neither of whom the Locals had any dispute. Thomas Goad, a driver for Bottoms-Fisk Company, another motor carrier, testified to the same effect, that when he went to Western to make a delivery, pickets from Local 391 were present picketing a Thurston truck and asked him not to cross the line and do business with Western.

The foregoing incidents involving Bell and employees of tertiary employers were not denied and stand undisputed in the record. The general picketing of Thurston's trucks at the premises of numerous secondary employers was stipulated. The only incident concerning which there is any dispute or conflict in the testimony occurred at the premises of the Mason and Dixon Lines, Inc. (hereinafter called Mason-Dixon), one of the interstate motor carriers with which Thurston interlined freight. John H. Brooks, warehouse supervisor of Mason-Dixon in charge of 19 employees including the dock freight handlers, testified that early in April 1954, C. H. Allen came to the terminal of Mason-Dixon and advised Brooks that Local 71 was picketing Thurston because of a strike there, and that Brooks' men had stopped working at the instructions of Allen because a Thurston truck was attempting to make a delivery at Mason-Dixon and was being picketed by Local 71. The freight handlers of Mason-Dixon belong to Local 71. Brooks told Allen that Mason-Dixon would not receive Thurston's freight. Allen thereupon left the office and the men resumed work. Brooks said that he told Thurston's driver that Brooks could not accept the freight on account of the strike. Brooks testified that that was his understanding of the contract that Mason-Dixon had with Local 71. As in the case of the contract with Bell, the provisions of the contract with Mason-Dixon will be discussed hereinafter in connection with the defense of Locals 391 and 71. Brooks said that his employees stopped working while Allen was there and the Thurston truck was being picketed.

Allen admitted talking to Brooks upon the occasion when the Thurston truck was at the Mason-Dixon premises. Allen said that he told the employees of Mason-Dixon the picket line was there for the Thurston truck and that he asked Brooks if Mason-Dixon was going to accept Thurston's freight. After Brooks told him that Mason-Dixon would not, he left. Allen said that he told the Mason-Dixon men what to do but did not testify what he told them. He said that part of the men stopped working and part of them did not. Allen denied that he told the men at any time to stop work. He further denied that he told Brooks what he had told the men. In substance, the only conflict between Brooks' and Allen's testimony is whether Allen advised Brooks that Allen had told the men to stop working while the truck was there. A consideration of all of the testimony of both leads me to the conclusion that Brooks' testimony is correct, and that Allen told the men to stop working while the Thurston truck was at the premises and being picketed by Local 71. Allen admitted that in response to the Mason-Dixon employees' inquiry concerning what they should do about the situation, he advised them what to do. He did not testify what the advice was, but admitted that a substantial part of the men stopped working. Nobody other than Allen talked to the men prior to this incident. The fact that the men stopped performing their work corroborates

Brooks' statement that Allen said that he had told the men to stop working because the Thurston truck was there. Accordingly I find that on this occasion, Allen advised the employees of Mason-Dixon to stop working while the Thurston truck was present.

S. C. Jones, president of Local 391, admitted the picketing of Thurston's trucks at the premises of numerous secondary employers. He stated that Local 391 intended to appeal to anyone who read the picket sign which the pickets carried. He admitted that Local 391 asked drivers of other companies not to cross its picket lines at the premises of secondary employers and that Local 391 hoped that employees of various other carriers would honor its picket lines. He stated that Local 391 also hoped that the picket line would be honored by the employees of the secondary employer and that they would not work while the Thurston truck was present and being picketed. While Jones testified that the picketing of Thurston's trucks was limited to the times and places when they were present at secondary employers and was confined to the situs of the truck, and while the picket signs indicated clearly that the Locals' dispute was with Thurston and not the secondary employers, Jones admitted that one of the purposes of the picketing was to attempt to induce and encourage employees of third employers not to cross the picket line and do business with secondary employers, and employees of secondary employers to cease working and honor the picket line.

The foregoing constitutes the facts in this case. The General Counsel contends that the picketing of Thurston's trucks at the premises of secondary employers, which picketing was admitted and stipulated, in itself constitutes a violation of Section 8 (b) (4) (A) irrespective of the other facts for the reasons expressed by the Board in the *Washington Coca Cola* and *Richfield Oil* cases.[1] In addition, the General Counsel contends, even assuming that the picketing of the Thurston trucks at the premises of secondary employers was not in violation of Section 8 (b)) (4) (A), that the additional incidents set forth above, namely, the inducement and encouragement of employees of third employers not to cross the picket line and do business with secondary employers, and the inducement and encouragement of employees of secondary employers to cease working entirely and engage in a strike as distinguished from refusing to handle Thurston's goods and accept deliveries from Thurston, went far beyond the picketing of Thurston's trucks at the situs of secondary employers and establishes beyond dispute a clear violation within the meaning of Section 8 (b) (4) (A).

The defense of Respondents is threefold. With respect to the picketing of Thurston's trucks at the premises of secondary employers generally, Respondents contend that this was the primary situs of the dispute and hence was not violative of Section 8 (b) (4) (A), in reliance upon the *Schultz, Moore Dry Dock* and *Howland Dry Goods* cases.[2]

With respect to the incidents at Hanes and Western, when the pickets asked the employees of third persons not to cross the picket lines and do business with the secondary employers, Respondents' defense is that the pickets were appealing to such employees for individual as distinguished from concerted activity and therefore such action was not violative of Section 8 (b) (4) (A) because of the holding of the Supreme Court in the *International Rice Milling* case.[3] With respect to the incidents at Mason-Dixon and Bell, and the incident involving the McLean driver at Hanes, Respondents contend that the existing contracts between the Locals and those companies permitted this action, because of the so-called "hot cargo" clause doctrine of the Board expressed in the *Conway's Express* case.[4]

Respondents' first contention is met squarely by the holding of the Board in the *Washington Coca Cola* case, *supra.* Respondents contend that the picketing of the trucks of Thurston was at the primary situs of the dispute, and because it was limited to the times and places when the trucks were present and the picket signs clearly revealed that the dispute was with the primary employer only, such picketing met the tests laid down in the *Schultz* and *Moore Dry Dock* cases, *supra,* and approved by the Court of Appeals for the Second Circuit in the *Howland Dry Goods* case, *supra.* The four tests set forth by the Board in the *Moore Dry Dock* case were that

[1] *Washington Coca Cola Bottling Works, Inc*, 107 NLRB 299; *Richfield Oil Corporation*, 95 NLRB 1191

[2] *Schultz Refrigerated Service, Inc*, 87 NLRB 502; *Moore Dry Dock Company*, 92 NLRB 547; *N. L. R. B.* v. *Service Trade Chauffeurs, Salesmen & Helpers Local 145, etc.* (*Howland Dry Goods*), 191 F 2d 65 (C. A. 2).

[3] *International Rice Milling Co., Inc., et al.* v. *N. L. R. B.*, 341 U. S. 665

[4] *Conway's Express*, 87 NLRB 972.

the picketing at the premises of the secondary employer is permissible only if: (1) It is strictly limited to the times when the situs of the dispute is located at the premises of the secondary employer; (2) at the times of the picketing, the primary employer is engaged in his normal business at such situs; (3) it is limited to places reasonably close to the situs of the dispute, i. e., the trucks; and (4) it clearly discloses that the dispute is with the primary employer only.

All of these tests are applicable only in situations where it has been found that the situs of the dispute is at the premises of the secondary employer. As pointed out by the Board in the *Washington Coca Cola* case, such is not the case when the employer has a primary place of business in the locality which can be picketed by the labor organization with which the employer has a dispute. In the *Coca Cola* case, the company had a primary situs which could be and was in fact being picketed by the union. Under such circumstances, the Board decided that the doctrine set forth in the *Schultz* and *Moore Dry Dock* cases was not applicable, because in those cases the employer had no permanent establishment in the area or vicinity of the dispute which could be picketed, and the primary situs of the dispute was that of the truck and the ship, respectively. Here, as in the *Coca Cola,* case, Thurston had a permanent place of business in both Greensboro and Charlotte. Both of these primary sites were picketed by the Locals from the beginning of their disputes with Thurston.

For the reasons stated by the Board in the *Coca Cola* case, the picketing of the Locals at the situs of the secondary employer was not primary, but was an attempt to induce and encourage the employees of various secondary employers to engage in a strike or a concerted refusal in the course of their employment to handle or work on Thurston's goods or perform services involving Thurston's goods, an object thereof being to require such secondary employers to cease doing business with Thurston. In addition, even assuming that such picketing was primary and that the doctrine of the *Moore Dry Dock* case was applicable, Respondents would still be in violation of the fourth criterion set forth in that case, namely, that the picketing must clearly disclose that the dispute is with the primary employer only. As pointed out by the Board in the *Richfield Oil* case, *supra,* after the *Moore Dry Dock* case, the union there did not meet the fourth test, because, although its picket signs were limited to the primary employer, the pickets orally induced and encouraged employees of third employers not to cross the picket line and make deliveries to the secondary employer. This is exactly what occurred in this case and therefore, as found by the Board in the *Richfield Oil* case, Respondents failed to comply with the tests set forth in the *Moore Dry Dock* case

Respondents' second defense, that the urging of employees of third employers not to cross the picket line at the premises of secondary employers was not violative of Section 8 (b) (4) (A) because it was an attempt to induce individual as distinguished from concerted activity, within the finding of the Supreme Court in the *International Rice Milling* case, *supra,* is without merit. In that case the Supreme Court was considering primary picketing at the premises of the employer with whom the union was engaged in a dispute. In that context, the Court said that the inducement and encouragement of employees not to cross the picket line was an attempt to induce individual as distinguished from concerted action, and that since the right to strike was guaranteed by the Act, such striking and picketing at the premises of a primary employer could not be found to be violative of Section 8 (b) (4) (A). On the other hand, the Supreme Court made clear in its companion decisions in the *Denver Building Trades, IBEW* and *Carpenters* cases [5] that appealing to employees of secondary employers not to work or perform services for their employer was clearly violative of Section 8 (b) (4) (A).

This second defense of Respondents, as well as their first defense that the picketing of Thurston's trucks was primary and met the criteria set forth in the *Moore Dry Dock* case, can have no application to the incident at Mason-Dixon when its employees were asked not to work at all, as distinguished from refusing to handle Thurston's goods. Clearly, this was both inducement and encouragement to engage in a concerted refusal to work or perform services, and an extension of the dispute to the work of the secondary employer. As pointed out in the *Richfield Oil* case, the criterion that the picketing clearly disclose that the dispute is with the primary employer only is not met when the pickets attempt to interfere with the business of the secondary employer in general as distinguished from its business with the primary

[5] *N L R B* v. *Denver Bldg & Construction Trades Council, et al.,* 341 U. S 675; *International Brotherhood of Electrical Workers, Local 501, et al.* v. *N L R. B.,* 341 U. S 694; *N. L. R. B.* v. *Local 74, United Brotherhood of Carpenters and Joiners of America, AFL, et al.,* 341 U. S. 707.

employer. It is of course true, if the picketing were primary and permissible, it would necessarily have an effect upon the secondary employer's business with the primary employer. However, to expand it to interfere with the secondary employer's business generally, as distinguished with its business with the primary employer, is clearly to remove it from the criteria in the *Moore Dry Dock* case and expand the dispute to affect the business of a secondary employer. The same is true of the inducement and encouragement of employees of third persons not to cross the picket line and do business with the secondary employer. It also constitutes an extension of the dispute beyond the activities of the primary employer and interference with the business of the secondary employer and third persons.

Respondent's third defense is that because of certain contracts Locals 391 and 71 had with Mason-Dixon, Bell, and McLean, the incidents which occurred at Mason-Dixon and Bell, when the employees were asked not to work at all, and not to handle Thurston's freight while the pickets were present, respectively, and at Hanes when a McLean driver was asked not to cross the picket line and do business with Hanes, were not violative of Section 8 (b) (4) (A) because of the Board's decision in the *Conway's Express* case, *supra*.

It was stipulated that Mason-Dixon and Bell had contracts with Local 71 which provided, *inter alia:*

> The company recognizes the right of the union's members to refuse to cross a picket line where a legal strike is in progress. No such refusal shall be a breach of this agreement, nor shall the company require any employee to perform the above act.

The contract between Locals 71 and 391 and McLean provided, *inter alia:*

> The membership of the union shall have the right at all times to refuse to make pickups or deliveries at points where there is a strike authorized by this local union, Piedmont Conference of Teamsters, or by the International Brotherhood of Teamsters.

Neither of the contracts is applicable to the situations present in this case and hence can constitute no defense to Respondents. In the Mason-Dixon incident, Local 71 induced and encouraged the employees of Mason-Dixon to stop working completely as long as the Thurston truck was present. There was no existing strike, legal or otherwise, at Mason-Dixon. There was a picket line around Thurston's truck, limited to the Local's dispute with Thurston and to the truck. Causing the employees of Mason-Dixon to cease working entirely could not fall within the provision of the contract permitting them to refuse to cross a picket line where a legal strike is in progress, even assuming the validity of such a provision and the picketing. Local 71 caused the employees to cease working entirely, as distinguished from refusing to cross the picket line or perform services in connection with the business of the primary employer. Clearly, it cannot be Respondents' contention that there was a strike in progress at Mason-Dixon. This would constitute an admission of a violation of Section 8 (b) (4) (A), since Respondents had no dispute with Mason-Dixon. It is Respondents' position that the primary dispute was with Thurston and that the picketing was primary because the truck was present.

In the Bell incident, the facts establish that the employees were induced and encouraged only to refuse to cross the picket line around the Thurston truck. Even under such circumstances the contract constitutes no defense to Respondents for the following reasons. It has been found that the picketing of the truck at the premises of the secondary employer was violative of Section 8 (b) (4) (A), because it was not the situs of the primary dispute and because there was a primary situs at which picketing could be and was carried on. Accordingly, there was not a legal strike in progress at the situs of the truck when it was present at Mason-Dixon and hence the provision of the contract is inapplicable.

Substantially the same applies to the contract the Locals had with McLean, which was advanced as a defense to persuading McLean's driver not to cross the picket line and do business with Hanes. The provisions of that contract authorized union members to refuse to make pickups or deliveries at points where there was a strike authorized by the Locals. As at Mason-Dixon and Bell, there was no strike at Hanes, but rather there was picketing of Thurston in pursuance of a strike against it. For this reason the provisions of the contract are inapplicable as a defense.

As was pointed out by the Board in the *Jay-K Lumber* case,[6] similar contractual provisions were not applicable absent a strike against the secondary employer, and

[6] *Jay-K Independent Lumber Corp.*, 108 NLRB 1323.

assuming, without passing on the validity of the socalled "hot cargo" clause upheld in the *Conway's Express* case, could not protect the inducement and encouragement of employees of secondary and tertiary employers not to perform services for their employers.

In addition, as found above, the picketing at Hanes and all of the secondary employers was illegal because of the existence of an appropriate primary situs where the picketing could be and was conducted, and hence a contractual provision permitting the honoring of a picket line where an authorized strike is taking place can be no defense when that strike is in itself violative of the Act. It is clear that the intention of the provisions of the contracts between the Locals and the respective companies was to permit the members of the Locals to refuse to cross picket lines and do business with an employer who was engaged in a primary dispute with a labor organization, and not to permit members of the Locals to honor a picket line not aimed at the secondary employer where the picketing was taking place, and thereby refuse to do business with such employer with whom the striking labor organization had no dispute.

There is no evidence in the record that Respondents H. S. Little and International Brotherhood of Teamsters engaged in, authorized, or in any other manner participated in the foregoing unfair labor practices, and accordingly it will be recommended that the complaint be dismissed as to them.

Summarizing, a preponderance of credible evidence in the entire record convinces me, and I find, that Locals 391 and 71 induced and encouraged the employees of secondary employers to engage in a strike or concerted refusal in the course of their employment to handle or transport goods, articles, commodities, materials, or perform services for their employers, an object thereof being to force and require such secondary employers to cease doing business with Thurston; and induced and encouraged employees of tertiary employers to engage in a strike or concerted refusal in the course of their employment to handle or transport goods, articles, commodities, materials, or perform services for their employers, an object thereof being to force and require their employers to cease doing business with secondary employers, and in turn forcing or requiring such secondary employers to cease doing business with Thurston, all in violation of Section 8 (b) (4) (A) of the Act.

IV. THE REMEDY

Having found that Locals 391 and 71 have engaged in certain unfair labor practices, I shall recommend that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, I make the following:

CONCLUSIONS OF LAW

1. The activities of Locals 391 and 71 set forth in section III, above, occurring in connection with the operations of Thurston described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.
2. Local 391, Local 71, and International Brotherhood of Teamsters are labor organizations within the meaning of Section 2 (5) of the Act.
3. By inducing and encouraging employees of secondary employers to engage in a concerted refusal to perform services for their employers, with an object of requiring such employers to cease doing business with Thurston, and by inducing and encouraging employees of tertiary employers to engage in a concerted refusal to perform services for their employers with an object of requiring such employers to cease doing business with secondary employers, and in turn requiring such secondary employers to cease doing business with Thurston, Locals 391 and 71 have engaged in unfair labor practices within the meaning of Section 8 (b) (4) (A) of the Act.
4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.
5. Respondents H. S. Little and International Brotherhood of Teamsters have not engaged in unfair labor practices in violation of Section 8 (b) (4) (A) of the Act, as alleged in the complaint.

[Recommendations omitted from publication.]

Appendix A

NOTICE TO ALL MEMBERS OF LOCAL NO. 391 AND LOCAL NO. 71, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL

Pursuant to the recommendations of a Trial Examiner of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, we hereby give notice that:

WE WILL NOT induce or encourage the employees of any employer other than Thurston Motor Lines, Inc., to engage in a strike or concerted refusal in the course of their employment to perform any services for their employers, where an object thereof is to force or require any employer or person to cease doing business with Thurston Motor Lines, Inc. or any other person.

LOCAL NO. 391, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,
Labor Organization.

Dated_____ By_____
(Representative) (Title)

LOCAL UNION NO. 71, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,
Labor Organization.

Dated_____ By_____
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

THE JEFFERSON COMPANY, INC. *and* INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 349, AFL. *Case No. 10–CA–1469. November 4, 1954*

Decision and Order

On August 21, 1953, the Board issued its proposed findings of fact, proposed conclusions of law, and proposed order in the above-entitled proceeding, a copy of which is attached hereto. Thereafter, the Respondent filed exceptions thereto and a supporting brief. The Board has considered the proposed findings of fact, proposed conclusions of law, and proposed order, the exceptions and brief filed by the Respondent, and the entire record in the case, and hereby adopts as its Decision and Order herein the said proposed findings of fact, proposed conclusions of law, and proposed order, with the following additions and modifications.

1. Respondent does not dispute the commerce facts detailed in the proposed findings, but excepts to the conclusion that it is engaged in commerce within the meaning of the Act, and that it will effectuate the policies of the Act to assert jurisdiction. In this respect, Respondent challenges not only the jurisdiction of the Board but also the wisdom of asserting jurisdiction on the basis of indirect inflow. Simi-