H. *Addendum*

The determinations above make it unnecessary to consider two additional questions: (1) whether the signs posted by the Company need be considered in resolving the issues and (2) assuming that the Repondent's picketing in Houston between February 25 and March 29 with its original picket signs was invalid, whether the picketing after the latter date with new signs was valid. I shall recommend that both complaints be dismissed.

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

CONCLUSIONS OF LAW

1. The operations of the Company constitute trade, traffic, and commerce among the several States within the meaning of Section 2(6) and (7) of the Act.
2. The Respondent is a labor organization within the meaning of Section 2(5) of the Act.
3. The allegations of the complaints that the Respondent engaged in unfair labor practices have not been sustained.

[Recommendations omitted from publication.]

Amarillo General Drivers, Warehousemen and Helpers Local Union No. 577, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America *and* Crowe-Gulde Cement Company. *Case No. 16–CC–87. February 4, 1959*

DECISION AND ORDER

On December 23, 1958, Trial Examiner C. W. Whittemore issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Charging Party, the General Counsel, and the Respondent filed exceptions to portions of the Intermediate Report. The General Counsel and the Charging Party filed briefs in support of their exceptions as well as in support of the Intermediate Report.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Leedom and Members Bean and Jenkins].

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 briefs, and the entire record in the case[1] and hereby adopts the findings, conclusions, and recom-

[1] By stipulation of the parties, the record made at the 10(l) injunction proceeding instituted prior to the instant complaint case, constitutes the record before the Board.

mendations of the Trial Examiner, with the following modifications and additions.

The Trial Examiner found, and we agree, that the Respondent Union violated Section 8(b)(4)(A) of the Act by picketing the construction sites of neutral employers at times when delivery employees of Crowe-Gulde were delivering ready-mixed concrete. That an object of Respondent Union's picketing at these projects was to induce employees of the neutral employers to engage in work stoppages in order to bring about a cessation of business between various purchasers of concrete and Crowe-Gulde, against whom Respondent Union was conducting an economic strike, is amply substantiated by the record. In finding this proscribed objective on the part of Respondent Union, we rely, as did the Trial Examiner, on the fact that Respondent Union picketed at the construction projects of neutral employers despite the existence of a permanent place of business maintained by Crowe-Guide where Respondent Union could and did publicize its economic dispute and solicit the support of Crowe-Gulde's nonstriking delivery employees who spent a substantial part of their working day at the premises and who crossed Respondent Union's picket line at the premises an average of 10 times a day.[2]

Moreover, there are additional grounds upon which we rely for our conclusion that an object of Respondent Union's picketing was to cause the employees of neutral employers[3] to cease work in order to terminate the business relationship between Crowe-Gulde and its customers. These grounds are as follows:

1. Respondent Union's pickets on several occasions patrolled the entire frontage of the secondary situs rather than confining their picketing to the proximity of Crowe-Gulde trucks.

2. On several occasions employees of secondary employers engaged in work stoppages as a result of the picketing.

3. Respondent Union sent letters to a large group of local contractors, among whom were customers of Crowe-Gulde, requesting that they cease doing business with Crowe-Gulde.[4]

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[2] The fact that these employees spent a substantial part of their working day at Crowe-Gulde's permanent place of business and crossed Respondent Union's picket line with such frequency distinguishes the instant case from the factual situation which obtained in *General Drivers, Warehousemen and Helpers, Local 968, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, et al. (Otis Massey Company, Ltd.)*, 109 NLRB 275, denied enforcement, *N.L.R.B.* v. *General Drivers, Warehousemen and Helpers, Local 968, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America,* 225 F. 2d 205 (C.A. 5). There, the primary employer's employees whose strike support the union was soliciting rarely came to the primary employer's place of business and thus could only be effectively solicited by the union at times when they were at various construction projects. See *N.L.R.B.* v. *Truck Drivers & Helpers Local Union No. 728 et al. (National Trucking Co.)*, 228 F. 2d 791 (C.A. 5).

[3] Specifically, we have reference to the employees of the following neutral employers: W. E. Wirtz, Claude Mathis, John T. Ellison, Floyd Richards, and A. E. Swift & Son.

[4] In this letter, which is set forth in the Intermediate Report, Respondent Union also requested permission from the contractors for its pickets to enter construction sites in order to picket immediately adjacent to Crowe-Gulde trucks. The letter further states

We deem it significant in ascertaining whether Respondent Union's object in picketing at the construction sites is interdicted by the Act that on the two occasions when the opportunity presented itself, Respondent Union's agents failed to dispel or mitigate the effect which its picketing could reasonably be expected to have on the employees of neutral employers.

On or about September 18, 1958, at a local union hall Respondent Union's business agent, Mitchell, addressed a group which included business agents of various building trades unions and cement finishing employees of Contractor John T. Ellison. Mitchell explained Respondent Union's economic dispute with Crowe-Gulde. When Winters, the business agent of the cement finishers local stated that it was up to the individual to decide whether or not to work, Mitchell remained silent.[5]

Realistically appraised, Mitchell's conduct at this meeting was an attempt to solicit support in the form of work stoppages by employees of contractors on construction sites and thus unlawfully widen the periphery of its economic dispute with Crowe-Gulde. The logic of this conclusion is amply evidenced by what transpired the very next day at the "Duniven Circle job" when the cement finishers employed by Ellison engaged in a work stoppage upon the arrival of Crowe-Gulde's trucks and Respondent Union's pickets. It was on this occasion that Respondent Union's assistant business agent Ebelt approached a group of cement finishers and suggested that they go to a union hall.

Thus, we find on the basis of the entire record[6] in this case that by its picketing at the construction sites, Respondent Union sought to induce and encourage employees of the picketed neutral employers to refuse to perform services with the object of causing employers to cease doing business with Crowe-Gulde.[7]

ORDER

Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Amarillo General Drivers, Warehousemen and Helpers Local Union No. 577, affili-

that Respondent Union does not seek to induce or encourage other employees to refuse to perform work or handle goods. The self-serving nature of this document is apparent, particularly when it is contrasted with the activities of Respondent Union's business agent and assistant business agent described later in this decision.

[5] This description of what transpired at this meeting is based solely on Mitchell's own testimony.

[6] We do not find it necessary to pass upon the picketing incident at the Strickland Transportation terminal since any finding of unlawful activity would be cumulative.

[7] See *Ready Mixed Concrete Company,* 117 NLRB 1266; *Campbell Coal Company,* 116 NLRB 1020, enfd. 249 F. 2d 512 (C.A., D.C.), cert. denied 355 U.S. 958; *Ready Mixed Concrete Company,* 116 NLRB 461.

ated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, its officers, representatives, and agents, shall:

1. Cease and desist from inducing or encouraging employees of any employer other than Crowe-Gulde Cement Company, to engage in a strike or concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on goods, articles, or commodities or to perform services for their respective employers where an object thereof is to force or require any employer to cease doing business with Crowe-Gulde Cement Company.

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

(a) Post at the business office of Amarillo General Drivers, Warehousemen and Helpers Local Union No. 577, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America in Amarillo, Texas, and at all other places where notices to their members are customarily posted, copies of the notice attached hereto marked "Appendix."[8] Copies of said notice, to be furnished by the Regional Director for the Sixteenth Region, after being duly signed by an official representative of the Respondent, shall be posted by the Respondent immediately upon receipt thereof and maintained by it for a period of 60 consecutive days thereafter in conspicuous places where notices to members of the Respondent are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material. The Respondent's representative shall also sign copies of the said notice which the Regional Director shall submit for posting, the employers willing, at the premises of Crowe-Gulde Cement Company, and the other employers found herein to have been affected by the Respondent's unfair labor practices.[9]

(b) Notify the Regional Director for the Sixteenth Region in writing, within 10 days from the date of this Order, what steps it has taken to comply herewith.

[8] 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 the United States Court of Appeals, Enforcing an Order."

[9] These employers are W. E. Wirtz, Claude Mathis, John T. Ellison, Floyd Richards, and A. E. Swift & Son.

APPENDIX

NOTICE TO ALL EMPLOYEES

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

WE WILL NOT induce or encourage employees of any employer other than Crowe-Gulde Cement Company, to engage in a strike or concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on goods, articles, or commodities or to perform services for their respective employers where an object thereof is to force or require any employer to cease doing business with Crowe-Gulde Cement Company.

AMARILLO GENERAL DRIVERS, WAREHOUSEMEN AND HELPERS LOCAL UNION NO. 577, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

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.

INTERMEDIATE REPORT

STATEMENT OF THE CASE

A charge having been filed by Crowe-Gulde Cement Company, a complaint and notice of hearing thereon having been issued and served by the General Counsel of the National Labor Relations Board, and an answer having been filed by the above-named Respondent Union, a hearing involving allegations of unfair labor practices in violation of Section 8(b)(4)(A) of the National Labor Relations Act, as amended (61 Stat. 136), herein called the Act, was held in Amarillo, Texas, on November 18, 1958, before the duly designated Trial Examiner.

At the hearing all parties were represented, were afforded full opportunity to be heard, to introduce evidence pertinent to the issues, to argue orally upon the record and to file briefs. Argument was waived. A brief from each party has been received and carefully considered.

At the opening of the hearing all parties stipulated that "in lieu of evidence for the instant proceeding, there is introduced the entire transcript of the record made in the 10 (l) proceeding in connection with the instant case, which proceeding began on October 21, [and ended October 27] 1958, being styled Edwin A. Elliott versus Teamsters Local 577, United States District Court, Northern District of Texas, Amarillo Division, Docket No. 2696, before United States District Judge, Honorable Joseph B. Dooley." It was also stipulated that "if called to testify in the instant proceeding, the witnesses would be the same and would testify as they testified in the 10 (l) proceeding just referred to."

In entering into this stipulation all parties specifically saved objections made to evidence before the court, and renewed all such objections before the Trial Examiner and the Board. The stipulation covered both oral and documentary evidence. Said transcript was received by the Trial Examiner on December 8, 1958.

In conjunction with its answer the Respondent filed a motion to dismiss the complaint on the ground that before its issuance certain sections of the Board's Rules and Regulations had not been complied with. A substantial part of the record before Judge Dooley is devoted to discussion, argument, and evidence on this motion. In effect it was finally overruled by him. From certain facts adduced and unrefuted claims voiced under oath by counsel for the Respondent, it is clear that in some respects the cited Rules were not complied with to the letter. Indeed, one of counsel for the Regional Director,[1] in urging opposition to the motion, quoted the Eighth Circuit Court of Appeals as stating that:

> the Board could relax its rules and regulations if no one was prejudiced by the relaxation[2]

[1] Mr. James M. Fitzpatrick.

[2] Counsel cited *N.L.R.B.* v. *Monsanto Chemical Company,* 205 F. 2d 763 (C.A. 8).

such quotation by counsel amounting, in the opinion of the Trial Examiner, to a tacit admission that the Rules were in fact departed from in some respects. The Trial Examiner is not persuaded, however, that the irregularities claimed or established actually deprived the Respondent of its rights to an extent of fatal prejudice or of warranting dismissal. Whatever merit there may be, if any, in counsel for the Union's protest regarding the procedure—as a matter of public policy: this, of course, is for determination by the Board, and not the Trial Examiner. The motion to dismiss is hereby overruled.

Upon the entire record in the case, the Trial Examiner makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE CHARGING PARTY

Crowe-Gulde Cement Company is a Texas corporation, with principal office and place of business in Amarillo, Texas, where it is engaged in the production and sale of ready-mix concrete and concrete blocks. It does a gross business of about $2,000,000 annually and during the past year sold and shipped in interstate commerce to points outside the State of Texas products valued at more than $50,000. During the same period it purchased and had shipped to it supplies and materials from points outside the State of Texas valued at more than $200,000. During the same period it sold and shipped products valued at more than $100,000 to concerns in Texas which are themselves engaged in interstate business. It operates a plant in Amarillo from which it delivers mixed concrete and concrete blocks to various customers at construction projects in and near Amarillo.

The Charging Party is engaged in commerce within the meaning of the Act.

II. THE RESPONDENT UNION

Amarillo General Drivers, Warehousemen and Helpers Local Union No. 577, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization.

III. THE UNFAIR LABOR PRACTICES

A. *Setting and issues*

In September 1958, the Charging Party was employing at its Amarillo plant 23 production and maintenance workers and about the same number of truck-drivers. All such employees were, until September 5, 1958, covered by a contractual agreement between the Respondent Union and the Charging Party.

In summary, operations of the Charging Party at the plant are as follows: (1) All employees, including the drivers, punch time clocks in and out at the plant each day; (2) all plant equipment is in one central area; and (3) batches of cement are fully mixed here before being poured into trucks for delivery by drivers to local customers.

The production and maintenance employees remain at the plant, or on plant premises, all day. Drivers spend, on the average, between 3 and 4 hours of each 10-hour working day at the plant, and the rest of each day en route to and from construction sites or at such sites. Drivers come in or go out of the plant premises about 10 times a day.

A dispute arose between the Charging Party and the Respondent Union at the expiration of their contract, apparently as to terms of a new agreement, and on September 9 the Union began picketing the plant premises. General Counsel raises no issues as to the legality of the strike or the nature of the picketing at the plant itself.

On September 10 the Union sent the following letter to many construction concerns in the area:

> You are hereby advised of a labor dispute between this Union and Crowe-Gulde Cement Co. On the ninth day of September, 1958, employees of Crowe-Gulde went on strike to protect their wages and working conditions.
>
> We are writing to acquaint you with these facts, for *we hope and expect that you will make no purchases from or do any business with Crowe-Gulde Cement Co. until this labor dispute is settled.* While this labor dispute exists, we would appreciate it if you would divert your business to other suppliers.
>
> In reaching your decision of whether to continue to purchase from Crowe-Gulde Cement Co. you should consider how long this strike may last. The strike is supported by all proper groups within the Teamsters organization and

has the support of the employees involved. You may find that Crowe-Gulde will be unable to give you normal service during the existence of this strike.

We have another request to make of you. Should Crowe-Gulde succeed in hiring sufficient strike breakers, the union may wish to picket the Crowe-Gulde operations on which these strike breakers perform work and/or where other Crowe-Gulde employees may be working. Should you do any business with Crowe-Gulde which requires that such strike breakers or other Crowe-Gulde employees perform work on any of your jobs or at your premises, whether by unloading trucks or otherwise, the union wants the opportunity to picket at such primary site of the dispute and as near the actual operation of these Crowe-Gulde operations as possible.

In such event, our picket signs will indicate that the dispute is limited to Crowe-Gulde only, and we will not seek to induce or encourage any other employees to refuse to perform work or handle goods. Therefore, if the strike breakers come on your job, we hereby ask permission for our pickets to come within the premises controlled by you and picket directly adjacent to the place where Crowe-Gulde employees are working. Should we not receive such permission within the day following receipt of this letter, we shall assume you have refused this request. And in that event we may picket the entrances of your job when Crowe-Gulde employees are working within the job premises. Our only purpose will be as stated above; such picketing will not be directed to your company or your employees nor to subcontractors and their employees.

You may use this letter to advise your own employees or the employees of any other contractor, except Crowe-Gulde employees, that we do not seek to induce or encourage them to refuse to perform any work or to refuse to handle Crowe-Gulde or any other materials.

We hope for your cooperation.

The credible testimony of Business Manager Maurice Mitchell establishes, and it is found, that the Union waited until after receipt of the morning mail—between 10:30 and 11:30—on September 12 when, having received no reply from any of the contractors to whom the above letter was sent, pickets were dispatched from the union office to certain construction sites with specific instructions not to picket at the construction site of any general constructor other than those to whom the above letter was sent.

Union pickets thereupon appeared at a number of such construction sites, but only at periods when Crowe-Gulde trucks and drivers, hired during the strike, were at such premises, and reasonably close to entries used by such trucks.[3]

The complaint's major issue arises from the Union's picketing at premises other than at the plant of the Charging Party, and is limited to the facts and purpose (or object) of such picketing. There is no claim of violence, or mass picketing, at any point.[4]

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[3] Although the point is not, in the opinion of the Trial Examiner, a critical one, he believes that an official of the Charging Party, C. J. Gulde, and General Contractor W. E. Wirtz were in inadvertent error as to the date when pickets appeared at the latter's jobsite. As a matter of record, only Gulde fixed the date of September 10; Wirtz merely adopted the date suggested by counsel for the Regional Director (LeRoy W. Mather). Gulde quoted the legend on the picket sign he saw and his picket sign, according to the credible testimony of Mitchell, was not ordered from the printer until that date and was not received until late on September 11. General Counsel (or counsel for the Regional Director) did not challenge Mitchell's testimony that he did not receive the proper wording for such sign from counsel for the Union until September 10, or that the invoice from the printing concern showed that the order for such sign was not placed until September 10.

[4] The complaint contends that the Respondent Union violated Section 8(b)(4)(A) of the Act. The relevant section:

> It shall be an unfair labor practice for a labor organization or its agents—to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: forcing or requiring any employer or . . . other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person.

B. *The conduct in issue*

Since testimony regarding them is in small dispute, it appears unnecessary to narrate in detail all incidents of picketing at sites other than that of the primary dispute: the premises of the Charging Party. The following summary, based upon testimony credited by the Trial Examiner, is therefore made.

At all sites and on all occasions noted below, a Respondent Union picket carried a sign bearing the following legend:

> CROWE-GULDE CEMENT COMPANY ON STRIKE
> We are ONLY picketing CROWE-GULDE CEMENT COMPANY and its employees working on this job site.
> We are NOT picketing any other company
> Teamsters, Chauffeurs, Warehousemen and Helpers
> LOCAL UNION 577
> Amarillo, Texas

Picketing occurred *only* at times when Crowe-Gulde equipment and drivers were entering, leaving, or on the premises of construction sites.

Picketing was engaged in as follows:

(1) On or about September 12, 13, 15, 16, and 18 at the construction site of a high school, the general contractor being W. E. Wirtz. On both September 15 and 16, while the pickets were present, 6 or 7 craftsmen, employed either by Wirtz or his subcontractors, walked off the job.

(2) On or about September 12 at an ordnance plant construction site, where Claude Mathis was the general contractor. No employee of any employer left the site during the picketing.

(3) On or about September 19 at the main gate of the Amarillo Air Force Base, where the Charging Party delivered cement both to the above-noted Claude Mathis and the Amarillo Air Force Base maintenance department. There is no credible evidence that any employee left the premises during the picketing.

(4) On or about September 16 and 17, at a construction site referred to in the record as the "Duniven Circle job," where Floyd Richards was the general contractor and John T. Ellison was a subcontractor handling the cement delivered by the Charging Party. No employee left the job.[5]

(5) On or about September 19, at the same site, and near a delivery truck of the Charging Party which had become stuck in the mud just before entering the premises. No employee left the job while pickets were there; [6] three or four of Ellison's employees, however, declined to enter the premises while the pickets were present, and left before the pickets did.[7]

(6) On or about September 16, at a filling station construction job located on 15th and Fillmore streets, where A. E. Swift & Son were the contractors laying the cement. There is no evidence of any employee leaving the job.

(7) On an occasion of date uncertain [8] at a construction site at 1917 Philadelphia Street, where two or three truckdrivers for another cement company

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[5] Floyd Richards testified as to another incident of a like nature, concerning which the Trial Examiner makes no finding. It is cumulative. Furthermore, no credible date is established. Richards merely agreed with Attorney Mather's leading question fixing the date as September 10. As found heretofore, on the basis of more credible testimony, no picketing at secondary sites began until September 12.

[6] The Trial Examiner is unable to accept as accurate the testimony of C. J. Gulde that he saw Ellison employees go off the job that day. It finds no support—but on the contrary refutation—in the testimony of contractor Ellison and two of Ellison's employees whom Gulde said he saw leave the job, all of whom were also witnesses for General Counsel.

[7] Counsel Mather labored long and zealously, mainly by use of plainly leading questions, to elicit testimony from three of his witnesses (Whitlow, George, and Cherry), who were Ellison's employees, in an effort to establish that something was said or done at a local Trade Council meeting on September 18 which caused these employees not to cross the picket line the next day. The Trial Examiner agrees with Judge Dooley's comments upon this testimony—at one point characterized by him as "a lot of confusion" and in his final remarks as "about as muddled as it could possibly be." The Trial Examiner is unable to find, from the testimony, that the Respondent Union was responsible for any statement or occurrence at the September 18 Trades Council meeting which bears upon the issues in this case.

[8] Witness Bowers attempted to fix no date. Mather said it was "sometime between September 9 and 24."

(Panhandle Concrete) were at work. There is no evidence that any employee left the job.

(8) On or about September 15 at a school construction job where the above-identified Ellison was the cement subcontractor, for Southwestern Brick-laying Company. No employee left the job.[9]

C. *Conclusions*

The Trial Examiner considers that his conclusions in this case must be governed by the Board's decision in *Ready Mixed Concrete Company,* 117 NLRB 1266, a case heard by him. The Board said, in part:

> The Trial Examiner found, and we agree, that this picketing was *per se* violative of Section 8(b)(4)(A). . . . because Ready Mixed and Reimars-Kaufman, the primary employers, each had one or more fixed places of business in the area which could be, and in fact were, picketed so as to expose all of the employees of the primary employers, for a substantial part of their working day, to any message sought to be conveyed by the picketing.

Except for the detail of the Union's letter of September 10 to general contractors the circumstances of this case are substantially the same as those found by the Trial Examiner in the above-cited case. And this letter, in the opinion of the Trial Examiner, in no way relieved the Respondent Union from its accountability under the law as interpreted by the Board.

It seems simple and plain reasoning, requiring no array of many words, to conclude, as the Trial Examiner does, that "an object" of the picketing at the neutral sites was to seek cessation of business between various employers and the Charging Party, and that attainment of this object was sought by means of a picket sign which the Union "hoped" and intended would induce employees of such neutral employers to cease handling the Charging Party's cement. The purpose of the letter and the picketing was identical. Action thereafter taken to reach an already expressed "hope" must, absent convincing rebuttal, be considered as having as an "object" the attainment of that hope: in this instance cessation of customer business with the Charging Party.

Under circumstances described above, it may not be held that the only object of picketing at such sites was to reach the drivers of the Charging Party. These drivers, passing in and out of the primary premises 10 times a day, undoubtedly saw—and clearly had opportunity to see—notice of the strike and the dispute far more often than employees who remained on the premises all day.

The legal conclusion of violation follows from the fact of the events, the Board seems to have clearly said, and if the picketing union is to rebut such conclusion, the burden is upon it to bring in substantial evidence to the contrary. For example, the union would have to show in some fashion, when picketing away from premises of the primary employer, that it did not want that employer's customers to cease doing business with him, and did not want customers' employees to cease working to cause such cessation. For, as Judge Wyzanski, of the U.S. District Court, District of Massachusetts, has said: "All picketing . . . has his indirect, general intent and secondary effect." [10]

In short, the Trial Examiner concludes and find that by picketing at construction sites of neutral employers, as described in section III, B, above, the Respondent Union violated Section 8(b)(4)(A) of the Act.

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[9] There is testimony concerning another similar incident on October 8, not at a construction site but at the terminal of Strickland Transportation, a freight business which handles freight for the Charging Party. This testimony, however, was not brought forward, although available, as a part of General Counsel's case-in-chief, but was adduced by the Charging Party after both General Counsel and the Respondent Union had rested. The court overruled the Union's objection to the receipt of such testimony as not proper rebuttal and not properly offered by the Charging Party. The Trial Examiner believes that there is merit in the objection to such testimony when, as now, it is in effect offered at a Board proceeding. The testimony, however, if the Charging Party wishes, will be considered as an offer of proof by it, and is hereby rejected. The transcript, at page 446, records the fact that after informing the court that he had a witness subpenaed and present, in reference to the Strickland Transportation Company, Attorney Mather stated: "His testimony would not relate to a construction site matter and is something that came to my attention after I arrived here on October 13th." Without calling this witness, Mather immediately rested.

[10] *Alpert, etc.* v. *United Steelworkers of America, AFL–CIO,* 141 F. Supp. 447 (D.C. Mass.).

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent Union set forth in section III, above, occurring in connection with the operations of the Charging Party in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the Respondent Union has engaged in activities violative of Section 8(b)(4)(A) of the Act, the Trial Examiner will recommend that it cease and desist therefrom, and take certain affirmative action designed to effectuate the policies of the Act.

Upon the basis of the above findings of fact, and upon the entire record in the case, the Trial Examiner makes the following:

CONCLUSIONS OF LAW

1. Crowe-Gulde Cement Company is engaged in commerce within the meaning of the Act.
2. Amarillo General Drivers, Warehousemen and Helpers Local Union No. 577, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.
3. By inducing and encouraging employees of employers, including those listed above in section III, B, to engage in a concerted refusal in the course of their employment to use, handle, or work upon products of Crowe-Gulde Cement Company, and/or to perform services for their respective employers, with an object of forcing or requiring such employers to cease doing business with Crowe-Gulde Cement Company, the Respondent Union has engaged in unfair labor practices within the meaning of Section 8(a)(4)(A) of the Act.
4. The aforesaid labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommendations omitted from publication.]

Sutherland Paper Company *and* Amalgamated Lithographers of America, Petitioner. *Case No. 7-RC-3717.*[1] *February 5, 1959*

DECISION AND DIRECTION OF ELECTIONS

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Iris Meyer, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.[2]

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Leedom and Members Rodgers and Jenkins].

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[1] On September 10, 1958, the Board granted the request of International Printing Pressmen and Assistants Union of North America, AFL-CIO, to withdraw its petition in Case No. 7-RC-3796, which had been consolidated with this case.

[2] For the reasons stated below, the motions to dismiss of the Employer and of Local 1010, United Papermakers and Paperworkers, AFL-CIO, the Intervenor, are denied. Their requests for oral argument are likewise denied because the record and briefs adequately state the issues and their positions.