

3. By refusing to give the Union a seniority list of its employees, a list of its former employees subject to recall, and the formula and method of computing its monthly bonus; by delay in providing the Union with a workable list of employees with the wage rates and job classifications and a designation of its working foremen; by the sale of the assets of its tool and die shop and the transfer of its tool and die employees and discontinuance of their work without notice to or consultation with the Union; by refusing to discuss economic issues until all other issues had been agreed upon; and by engaging in various dilatory tactics as found herein, Respondent has failed to bargain in good faith with the exclusive bargaining representative of its employees in an appropriate unit in violation of Section 8(a)(5) of the Act.

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

[Recommendations omitted from publication.]

American Federation of Television and Radio Artists, San Francisco Local and National Association of Broadcast Employees and Technicians, Local 55 and Great Western Broadcasting Corporation, d/b/a KXTV. Case No. 20-CC-234. December 27, 1961

DECISION AND ORDER

On May 4, 1961, Trial Examiner Howard Meyers issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the Intermediate Report attached hereto. Thereafter, the Respondents filed exceptions to the Intermediate Report and a supporting brief and the Charging Party filed a brief in support of the Intermediate Report.

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 McCulloch and Members Rodgers and Fanning].

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, and finds merit in the Respondents' exceptions. Accordingly, the Trial Examiner's findings, conclusions, and recommendations are adopted only to the extent that they are consistent herewith.

THE FACTS¹

A primary dispute between the Respondents and KXTV resulted in a strike which commenced about the end of September 1960, and

¹The facts are set forth as found by the Trial Examiner based on stipulations submitted at the hearing and, therefore, not excepted to. The Respondents did except to the failure of the Trial Examiner to set forth additional stipulated facts. These are added

picketing of the KXTV premises ensued therefrom. John Geer Chevrolet, hereinafter called Geer, Capitol Studebaker, hereinafter called Capitol, Rainbo Bread Company, hereinafter called Rainbo, Shell Oil Company, hereinafter called Shell, Burgermeister Beer, hereinafter called Burgermeister, and Handy-Andy were advertisers who regularly used the services and facilities of KXTV to promote the sales of their products. About December 22, Respondents sent out a general request through committees to all of the advertisers who used KXTV to discontinue their patronage of the radio station and to assist the Respondents in their cause against KXTV.

On September 29 Respondents also mailed to the sponsors a letter setting forth the background of the strike and again requested the sponsors to discontinue advertising over station KXTV. As a result of pressure ensuing from this campaign Capitol canceled its advertising contract with KXTV and in a letter to the television station explained that its phones were jammed with people stating that they would not buy Capitol's cars because they continued to advertise over the station's facilities.

Thereafter on October 25 Respondents caused to be printed a leaflet² in which Geer, Rainbo, Shell, and Burgermeister were named as sponsors who continued to use the facilities of KXTV despite the Respondents' requests that the sponsors refrain therefrom. This handbill was distributed at the picket line in front of KXTV, at the Sacramento Labor Temple, and at various Sacramento grocery stores who handled Rainbo Bread and Burgermeister Beer. Copies of the leaflet were also found stuffed between loaves of bread at one of the supermarkets supplied by Rainbo. As a result of this pressure, on November 10 Rainbo canceled its contract with KXTV.

On October 31 the Respondents sent a letter to the San Francisco Labor Council³ in which the Respondents requested that the Labor Council ask its members and affiliated unions to aid Respondents by returning their Shell Oil Company credit cards because Shell continued to advertise through the facilities of KXTV. As a result of this request Shell received numerous letters enclosing Shell credit cards in which the individual writers explained that they would pick up their cards in the future when Shell discontinued its advertising over KXTV.

On November 10 the Sacramento Central Labor Council asked Shell directly by letter to discontinue use of the facilities of KXTV. Apparently Shell did not respond to this pressure.

On December 13 Respondents ordered additional copies of 11 separate leaflets naming 11 sponsors who continued to use KXTV's facilities stating that the firms named did not merit the patronage of the

² This is the leaflet No. 1 set forth in full in the Intermediate Report

³ This letter of October 31 is also set forth in full in the Intermediate Report.

public to whom the handbill was addressed because the firms continued to do business with KXTV.⁴ Although copies of these leaflets were not circulated, a copy was shown by the Respondent to Handy-Andy's president and at the same time an appeal was made to Handy-Andy to discontinue advertising on KXTV. On December 17 Respondents telephoned Geer's general manager and threatened that a leaflet was being printed in which Geer would be named as an unfair advertiser unless Geer discontinued using KXTV's facilities. Thereafter under date of December 27 Respondents again appealed to the Labor Council to enlist the Labor Council's support again in their strike with KXTV requesting that the Council's constituents' members refuse to purchase the products of the list of sponsors included therein who were still advertising on KXTV. As a result of this letter on January 6, 1961, a synopsis of the San Francisco Labor Council's meeting of January 6, 1961, was mailed to everyone on the mailing list including member unions and individual members in which it was again requested that these people discontinue the purchase of the products or the use of services of Geer, Blue Seal Bread, Shell Oil, Hamm's Beer, Continental Baking, Dr. Mann Optometrists, Baker Moving and Storage, and Crocker-Anglo Bank, all of whom were still advertising on KXTV.

There was no picketing at the places of business of any of the advertisers, the picketing being confined to KXTV premises. The handbills, hereinbefore mentioned, specifically stated that the Respondents did not request employees to cease performing services for their respective employers. The General Counsel makes no contention to the contrary, and in fact concedes in a stipulation submitted at the hearing that there was no picketing at any of the sponsors nor was there any work stoppage as a result of the publicity. Nor is there any contention that the leaflets were untruthful, that the picketing of KXTV was unlawful, that the handbills constituted picketing, or that the conversations had with the various sponsors before the occurrences of handbilling constituted threats to picket. The Respondents admitted that in addition to handbilling, union officials informed union members at meeting halls and members of the public at other places that certain advertisers were continuing to advertise on station KXTV during the strike and asked them not to patronize these advertisers; that union officials orally requested the advertisers to stop advertising before mentioning the publicity of handbilling, and the General Counsel is not contending that such oral requests standing by themselves are unlawful. It was conceded that there were no threats of physical violence or work disturbances and that at no time was there any action taken by the Respondents' officers with respect to employees of any employer aside

⁴The Intermediate Report refers to this leaflet as leaflet No. 2 and sets forth the leaflet in full

from KXTV as to continuity of work. Nor does the General Counsel contend that it was unlawful under the Act for advertisers voluntarily to withdraw their advertising from station KXTV during the strike nor to do so upon oral request of union officials not accompanied by threats, restraint, or coercion.

Moreover the General Counsel does not contend nor was there any proof that any member of the public other than the sponsors or advertisers was threatened, restrained, or coerced by the Union in connection with the distribution of the handbills, nor does the General Counsel contend or contest the fact that the Union left it entirely up to the voluntary choice of the public other than the sponsors or advertisers as to whether or not they wished to withhold patronage from advertisers who continued to use the facilities of KXTV. Finally, the General Counsel does not contend that the distribution of the handbills was other than peaceful.

However, the General Counsel does contend, as does the Charging Party, that the handbilling was not protected under the proviso to Section 8(b)(4) which protects publicity other than picketing because the Respondents' conduct was designed to inflict economic injury upon and to restrain employers and not merely to peacefully convey facts of the primary dispute to the public. They further contend that in any event the said proviso is not applicable here because KXTV, the primary employer, did not produce products which were distributed by the secondary employers above-named within the meaning of the proviso.

The Trial Examiner, without explication of his reasons therefor, concluded on the foregoing facts and contentions that the conduct of the Respondents constituted violations of Section 8(b)(4)(ii)(B). We do not agree with his conclusions.

Only recently, the Board in the *Lohman* case⁵ held that although handbilling and threats to handbill in a manner similar to that set forth above might constitute restraint and coercion, nevertheless, such conduct was protected by the proviso to Section 8(b)(4) which specifically permits truthfully advising the public, including consumers and members of labor organizations, that a product or products are produced by an employer with whom a labor organization has a primary dispute. Under these circumstances, we conclude that the handbilling and threats to handbill as set forth above were protected activities and therefore not violative of the Act provided, however, that the named proviso is otherwise applicable to the situation presented. Nor can we perceive of any reason to find the conduct unprotected because some of the handbills were found within the premises of a distributor of the products of a sponsor who advertised over KXTV. The literature was truthful, no work stoppage resulted, and the pur-

⁵ *Jack M. Lohman, d/b/a Lohman Sales Company*, 132 NLRB 901.

pose of the distribution of the handbills in this fashion was to inform the public of truthful facts. Additionally, as we similarly held in the *Lohman* case, since the distribution of such handbills is protected by the proviso so also were the threats by the Respondents to Gear and to Handy-Andy that handbills would be distributed unless these employers ceased advertising over the facilities of KXTV.

We come then to the issue of whether the proviso to Section 8(b) (4) is otherwise applicable to the situation presented in this case. As stated above, it is contended that the proviso is not applicable here because KXTV provides a service and does not produce a product within the meaning of the proviso. We have recently dealt with a similar issue involving a broadcasting company as a primary employer in the *Middle South Broadcasting* case.⁶ There we held that the publicity proviso is applicable because the primary employer radio station, by adding its labor in the form of capital, enterprise and service to the products which it advertises for secondary employers becomes one of the producers of the product which it advertises. And, of course, the secondary employers who are retail distributors of the products clearly distribute such products within the meaning of the proviso. Accordingly, we find for these reasons that the proviso is applicable here and that the distribution of the handbills was protected thereby.

We come finally to the question of whether requests to members of the Labor Council not to purchase the products or use the services of advertisers who continue to use the facilities of KXTV were unlawful. We need but to resort once again to the wording of the proviso for the answer to this contention. The proviso specifically states that the request not to use a product is protected where the purpose is to truthfully advise the public, including consumers and members of a *labor organization*, that a product or products are produced by an employer. It is therefore clear that the Act specifically enables a union which is involved in a primary dispute to seek assistance in such dispute from members of the public including members of a labor organization. Therefore, we conclude that the requests of the Central Labor Council that its members not use the products of the named advertisers was fully protected as permissible dissemination of truthful information.

Accordingly, we find that the Respondents' leaflet circulation and distribution and threats to circulate and distribute were protected by the publicity proviso to Section 8(b) (4), and therefore were not violative of Section 8(b) (4) (ii) (B).

As we have found that the Respondents' leaflet distribution and oral and written requests were not unlawful, we shall dismiss the complaint in its entirety.

[The Board dismissed the complaint.]

⁶ *Middle South Broadcasting Co.*, 133 NLRB 1698.

MEMBER RODGERS, dissenting:

In *Middle South Broadcasting Company*, 133 NLRB 1698, I dissent from my colleagues' conclusion that the publicity proviso to Section 8(b)(4) protected handbilling where the primary dispute involved a radio station. Here, too, as the Primary Employer, KXTV, a television station, produces no products, the proviso is unavailing as a defense. Accordingly, I would find the Respondent's threats to handbill and its subsequent handbilling to be violative of Section 8(b)(4)(ii)(B) of the Act.⁷

⁷ In view of my conclusion that Respondent's threats and handbilling violate Section 8(b)(4)(ii)(B) of the Act and that an appropriate remedy would require Respondent to cease and desist from such conduct, I find it unnecessary to pass upon the further question whether the Sacramento Labor Council's implied threat to place the Shell Oil Company on its "We Do Not Patronize" list would otherwise qualify as "publicity" within the meaning of the proviso.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

This proceeding, with all parties represented, was heard before the duly designated Trial Examiner, at San Francisco, California, on February 13, 1961, on complaint of the General Counsel, as amended at the hearing, and answer of Respondents. The issues litigated were whether Respondents, or either of them, violated Section 8(b)(4)(ii)(B) of the National Labor Relations Act, as amended from time to time, herein called the Act.

On petition of the then Regional Director for the Twentieth Region in the United States District Court for the Northern District of California under Section 10(1) of the Act, a restraining order pending this proceeding was issued against these Respondents on February 23, 1961, *Brown v. American Federation of Television & Radio Artists, San Francisco Local*; and *National Association of Broadcast Employees & Technicians, Sacramento Local 55*, Civil No. 8225.

During the course of the hearing in the instant proceeding, the parties, through representative counsel, presented evidence and counsel for Respondents and counsel for KXTV filed briefs which have been carefully considered. Respondents' motion to dismiss the complaint, upon which decision was reserved, is hereby denied. On consideration of the entire record in the case, the Trial Examiner hereby makes the following:

FINDINGS OF FACT

I. THE BUSINESS OPERATIONS OF THE EMPLOYERS INVOLVED

Great Western Broadcasting Corporation, d/b/a KXTV, a Delaware corporation, is engaged at Sacramento, California, in the business of television broadcasting and in the operation of station KXTV. It is an affiliate of the Columbia Broadcasting System and its programs are rebroadcast in the State of Nevada and received also in other States. KXTV is wholly owned by Corinthian Broadcasting Corporation, a Delaware corporation, whose principal offices are located in New York, New York, which operates television stations in other States. During the year immediately preceding the hearing herein, KXTV had a gross income in excess of \$100,000, and received in excess of \$100,000 for services rendered firms outside the State of California advertising products of national advertisers and sponsors, companies engaged in interstate commerce selling and distributing products throughout many States by nationwide advertising. KXTV annually pays in excess of \$10,000 for national news services, including Associated Press, and annually pays in excess of \$20,000 for rental of syndicated film and other broadcast materials shipped to it in Sacramento from outside the State of California.

Benica Development Company d/b/a John Geer Chevrolet Company, herein called Geer, and Capitol Studebaker Company, herein called Capitol, California corporations, are each engaged in the sale and distribution of automobiles and commercial vehicles. Each has a gross annual income from sales in excess of \$500,000, and annually purchases and receives goods and supplies originating outside of the State of California valued in excess of \$50,000.

Rainbo Baking Company of the Sacramento Valley, herein called Rainbo, is engaged at Sacramento in the operation of a bakery and in the processing, sale, and distribution of "Rainbo Bread" and other baked goods. During the year immediately preceding the hearing herein, Rainbo purchased raw materials and supplies which were shipped to it at Sacramento from outside the State of California, valued in excess of \$50,000.

Shell Oil Company, herein called Shell, is a Delaware corporation having its principal offices in New York, New York. In Sacramento, Shell is engaged in the sale and distribution of gasoline and related products at wholesale and retail and has a gross income in excess of \$500,000, and annually both receives from and ships to points located outside the State of California goods, supplies, materials, or products valued in excess of \$50,000.

Burgermeister Brewing Corporation, herein called Burgermeister, a California corporation, is engaged at San Francisco, California, in the operation of a brewery and in the sale and distribution at wholesale of "Burgermeister Beer." Burgermeister annually both receives from and ships to points located outside the State of California, goods, supplies, materials, or products valued in excess of \$50,000.

Handy-Andy, a California corporation, is engaged at Sacramento in the operation of a retail store selling television sets, appliances, and other related products. During the fiscal year immediately preceding the hearing herein, Handy-Andy had a gross income from sales valued in excess of \$1,000,000 and purchased television sets, appliances, and other related products valued in excess of \$100,000 directly from outside the State of California.

Upon the basis of the foregoing facts, it is found, in line with established Board authority, that each of the above-named employers is engaged in, and during all times material was engaged in, business affecting commerce within the meaning of Section 2(6) and (7) of the Act and that the business operations of each meet the standards fixed by the Board for the assertion of jurisdiction.

II. THE LABOR ORGANIZATIONS INVOLVED

Respondents are labor organizations admitting to membership employees of KXTV.

III. THE UNFAIR LABOR PRACTICES

A. *The pertinent facts*

Since on or about September 26, 1960,¹ Respondents have had a labor dispute with KXTV and have been engaged in a strike of their members and other employees of KXTV represented by them. Since said date, Respondents have jointly picketed KXTV premises.

On or about and prior to September 26, Geer, Capitol, Rainbo, Shell, Burgermeister, and Handy-Andy were regular advertisers and sponsors of programs over television station KXTV.

On or about September 27, Respondents established committees to call upon sponsors advertising on KXTV. Respondents' individual members and officers were authorized and did call on advertisers and sponsors advertising on KXTV, including Geer, Capitol, Rainbo, Burgermeister, and Shell. These committees solicited a hiatus in advertising during the strike saying that they intended to put out leaflets setting forth the names of those sponsors continuing to advertise on KXTV. This statement was told to Capitol on October 4. Capitol was also told at that time that the names of all sponsors who stopped advertising on KXTV would also be circulated and that this would be to their advantage.

Under date of September 29, Respondents mailed to sponsors advertising on KXTV, including Geer, Rainbo, Capitol, Shell, and Burgermeister a letter reading as follows:

A long, bitter, and mean strike has started at KXTV. Any advertiser on this station while it is being operated by strike breakers will give the impression of taking sides in this dispute. Since this affects you, we want to bring the facts to your attention. AFTRA and NABET (The National Association of Broadcast Employees and Technicians) are striking at Ambassador "Jock" Whitney's Sacramento Television station, KXTV. AFTRA has charged the Company with several unfair labor practices in violation of the National Labor Relations Act, and are striking in protest against the Company's conduct. We know that you are not interested in all the details of our dispute with this station. Suffice to say that protracted negotiations have failed to result in an agreement. All peaceful means have been exhausted.

¹ Unless otherwise noted, all dates hereinafter mentioned refer to 1960.

AFTRA offered to arbitrate the dispute and to be bound by the arbitrator's decision in all matters. **KXTV REFUSED TO ARBITRATE.** Both unions have now dug in their heels for a long and bitter strike. We are about to launch an intensive campaign to bring the facts behind this dispute to the attention of the entire population, covered by this station. We are sure you recognize the obvious fact that many members of organized labor and their families, and those sympathetic to the cause of organized labor, will have long-lasting resentment against any product or sponsor who takes sides in this dispute by advertising on this station during the course of this worthy strike.

If you are currently advertising for clients on this station, or have any advertising projected for the next six months, we are sure you will wish to change you plans to avoid the inevitable adverse reaction. For your future information, stations KCRA-TV and KOVR, which cover much of the same broadcast area, will not be affected by this strike.

On October 10, Capitol cancelled its \$8,500 advertising contract with KXTV. The cancellation letter, dated October 10, from Capitol's advertising agency, Media Scope, to KXTV, reads as follows:

This letter is to confirm the verbal conversation we had last week as to the cancellation of Capitol Studebaker's show, "The Vikings," for the duration of the strike.

We regret this happening. On our premiere showing, we televised a commercial which invited the public to call Capitol Studebaker and learn the prices of certain cars. The phones were jammed from 7:00 P.M. until 9:30 P.M. by people claiming to be union people. They all said much the same thing, i.e., that Capitol Studebaker is not supporting the strike by AFTRA and NABET therefore they wouldn't think of buying a car.

In a meeting with the representatives of AFTRA and NABET, they asked us to support them and related how union members were taking it upon themselves to call business' which were advertising on Channel 10. They related that the Labor Council would undoubtedly print the name of Capitol Studebaker in the Labor Bulletin as not supporting the strike if we continued to advertise on KXTV.

We cannot fight city hall!

Thank you for your attention to this matter.

On October 25, Respondents placed an order for the printing of 2,500 copies of a leaflet, herein called leaflet No. 1, which reads as follows:

STRIKE BULLETIN

VOL. 1

SACRAMENTO, CALIFORNIA—NOVEMBER, 1960

NO. 1

STILL ADVERTISING ON

UNFAIR	K X T V — C H A N N E L 1 0	UNFAIR
JOHN GEER CHEVROLET	SHELL OIL COMPANY	
RAINBO BREAD COMPANY	BURGERMEISTER BEER	

Union employees at this station charge that they were locked out because of UNFAIR labor practices. Charges covering these unfair practices have been filed with the NLRB.

In addition, the company has cancelled accrued vacation benefits and after four weeks employees have not received paychecks due them.

This station is on the UNFAIR list of the SACRAMENTO CENTRAL LABOR COUNCIL.

In spite of these facts THE FOLLOWING LOCAL COMPANIES AND DISTRIBUTORS CONTINUE TO ADVERTISE ON THIS STATION.

JOHN GEER CHEVROLET	SHELL OIL COMPANY
17th & "1" Sts.	1024 13th St.
GI 1-6961	GI 3-9061
RAINBO BREAD COMPANY	BURGERMEISTER BEER
3226 Montgomery Way	2600 5th St.
GI 6-3863	GI 1-0213

This statement is directed to the customers of the above advertisers. It is not a request to employees to refuse to pick up, deliver or transport, or to refuse to perform any service.

AFTRA-NABET JOINT COMMITTEE.

Respondents picked up the leaflets mentioned immediately above from the printer on November 1. On November 18, Respondents ordered an additional 1,500 copies of this leaflet, which were picked up 10 days later.

During November and December, copies of leaflet No. 1 were circulated by Respondents at, among other places, the picket line in front of KXTV, at the Sacramento Labor Temple, on the streets of Sacramento, and at Sacramento grocery stores, including Rod's Market.

On or about November 4, approximately 36 copies of leaflet No. 1 were found stuffed between loaves of bread at Bel Aire Market by the sales supervisor for Rainbo.²

On October 9, Rainbo signed a \$26,000 advertising contract with KXTV. On November 10, Rainbo canceled this contract because its name was being published in leaflet No. 1.

Under date of October 31, Respondent wrote the San Francisco Labor Council as follows:

On September 26, 1960, after months of attempting to negotiate a contract with the management of KXTV, a strike was unanimously voted by the members of two unions, AFTRA and NABET. The two unions involved have been working together since they first began preparations preceding the actual negotiations.

The strike has been in effect for five weeks, and it looks as though it may go for another five, and maybe five times five. The strike has been sanctioned by the Sacramento Labor Council.

The most effective way to combat broadcasting companies is to have the sponsors withdraw their support by canceling shows, therefore reducing the broadcaster's source of income.

In this respect, we are asking the S.F. Labor Council to aid us by returning their Shell Oil Company credit card and asking the members of their affiliated unions to do the same.

The Shell Oil Co. sponsors a news show on KXTV which is a major source of income to that station, and to have them cancel their participation would be of great benefit to the members of AFTRA and NABET who are out on the street.

On and after November 1, Shell received various letters in which were enclosed Shell credit cards. Each of the said letters indicated that the writer thereof was returning his or her credit card because he or she did not desire to use Shell products as long as Shell continued to advertise over KXTV during Respondents' strike of that station. One such letter, dated October 10, reads as follows:

To Whom It May Concern:

Approximately a year ago you sent us a routine form letter asking why we had not made greater use of our Shell Credit Card. If you will check your records, I am sure that you will agree we have been good, consistent customers.

However, this is to advise that until such time as your sponsorship of Shell News is removed from KXTV, Channel 10, which is now on strike, we will discontinue using our Shell Credit Card and purchasing any Shell products.

Most sponsors, working in cooperation with Unions in their own firms, have been more than willing to respect our two Union disputes, and have agreed to a hiatus of advertising on Channel 10 until an agreement is reached and the strike is over. We would certainly expect a firm of your dimensions to do no less.

We trust that it will not be too long before we can again feel justified in using our Shell Credit Card.

(Mr.) CONNIE SIMS,
Member of NABET
KXTV, Channel 10

Under date of November 10, Sacramento Central Labor Council, AFL-CIO, wrote Shell as follows:

The Sacramento Central Labor Council has officially placed KXTV-Channel 10 on the WE DO NOT PATRONIZE LIST.

This Council feels that your firm is friendly to organized labor, and, therefore, requests that you voluntarily cooperate with us.

Thank you for your consideration.

² "Rainbo Bread" and "Burgermeister Beer" are sold by both Rod's Market and at Bel Aire Market.

Under date of December 5, Respondent wrote Rainbo as follows:

On behalf of the striking members of this organization and the American Federation of Television and Radio Artists, I want to thank you for adopting the neutral position in the current difficulties at KXTV, Sacramento.

We appreciate the fact that the advertising for Rainbo Bread has been withdrawn from Channel Ten, and we intend to see that all union members and their families in the Sacramento area are informed of this fact.

On December 13, Respondents ordered 1,000 copies of each of 11 leaflets, conjointly referred to herein as leaflet No. 2. These leaflets were picked up from the printer by Respondents on December 14. The leaflet, except for the names of the employer the public was asked not to patronize,³ reads as follows:

PLEASE DO NOT PATRONIZE
JOHN GEER CHEVROLET CO.
GI 1-6961 16th & Eye Sts.

THIS FIRM DOES NOT MERIT YOUR PATRONAGE

This firm continues to advertise on Channel 10 (KXTV) despite the following facts:

1. A complaint against KXTV has been issued by the National Labor Relations Board, charging KXTV with five separate counts of unfair labor practice.
2. 42 employees are currently on strike against KXTV, protesting this station's policies.
3. The California Labor Federation and Sacramento Central Labor Council has declared that KXTV is Unfair.

The purpose of this leaflet is to inform you that the above named firm continues to do business with KXTV. We think you will agree that this continued association is contrary to the best interests of working people and the public.

NOTE.—These statements are addressed exclusively to you as customers and individual members of the public. They are not directed to Employers. Further, this appeal is not a request to employees to refuse to pick up, deliver or transport, or to refuse to perform any service.

AFTRA-NABET JOINT COMMITTEE.

Copies of leaflet No. 2 were not circulated except that Handy-Andy's leaflet was shown by Respondents to Keith Anderson, Handy-Andy's president, in conjunction with an appeal made to Anderson by Respondents to cease advertising on KXTV.

On December 17, Respondents telephoned Geer's general manager, Don Hammon, and in conjunction with an appeal to have Geer cease advertising on KXTV, informed Hammon that a second batch of leaflets was being printed which consisted of separate leaflets, each naming a particular sponsor still advertising on KXTV, and that if Geer continued to advertise on KXTV the leaflet bearing Geer's name would be passed out in front of Geer's establishment, among other places.

Under date of December 27, Respondent wrote the San Francisco Labor Council as follows:

For the past 13 weeks this union and AFTRA have been on strike against television station KXTV in the Sacramento, California. The strike has been wholeheartedly endorsed by the Sacramento Labor Council

Enclosed is a list of sponsors still advertising on KXTV⁴ Any aid which the San Francisco Labor Council, and its affiliated members, can give in this sponsor area would be most appreciated by the unions involved and by the 48 striking union members.

One of our delegates to the Council will be present at the next meeting on January 6 to answer any questions the Council may have.

Thank you for your help.

³The other employers named are Handy-Andy, Mayfair-Lucky Markets, Grand Rapids Furniture, Crocker-Anglo Bank, Continental Baking Co., Hamilton Furniture, Swanson's Cleaners; Dr. Layne Optometrist; Payless Drug Store, and Delta Pontiac

⁴Namely, Blue Seal Bread, John Geer Chevrolet, Shell Oil Company, Hamm's Beer, Continental Baking Co. (Hostess Cakes), Dr. Layne Optometrist, Bekins Moving & Storage, and Crocker-Anglo Bank

On or shortly after January 6, 1961, a synopsis of the minutes of the San Francisco Labor Council meeting of January 6, 1961, was mailed by said Council to those on its usual mailing list which includes member-unions and individual union members. Regarding KXTV, the summarized minutes read as follows:

From NABET enclosing a list of sponsors still advertising on KXTV despite AFTRA and NABET strike against this television station. They ask that union members not use products or services of John Geer Chevrolet, Blue Seal Bread, Shell Oil, Hamm's Beer, Continental Baking Co., Dr. Layne Optometrist, Bekin's Moving and Storage, Crocker-Anglo Bank.

B. Concluding findings

The General Counsel asserts that Respondents by having engaged in the above-described activities, for an object of forcing or requiring Geer, Shell, Rainbo, Burgermeister, and Capitol (secondary employers) to cease doing business with KXTV (primary employer), violated the Section 8(b)(4)(ii)(B) of the Act because such activities restrained and coerced the aforesaid secondary employers. The Trial Examiner agrees with this assertion.

The 1959 amendments to Section 8(b)(4) of the Act provide, in pertinent part, as follows:

(b) It shall be an unfair labor practice for a labor organization or its agents—

* * * * *

(4)(ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where . . . an object thereof is:

* * * * *

(B) forcing or requiring any 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, . . . ;

* * * * *

. . . *Provided further*, That for the purposes of this paragraph (4) only, nothing contained in such paragraph shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution;

Prior to the enactment of the 1959 amendments, the Board held that Section 8(b)(4) prohibited the inducement of *employees* only and that a labor organization was free to coerce an employer (secondary) to cease doing business with another employer (primary).⁵ The 1959 amendments changed the law in this regard by making "such coercion unlawful by the insertion of clause 4(ii) forbidding threats or coercion against 'any person engaged in commerce or in an industry affecting commerce.'" ⁶

That Respondents have engaged in unlawful threats, restraint, and coercion is illustrated by the following: (1) Capitol canceled its advertising contract with KXTV because of a telephone campaign organized by union supporters. Those who called Capitol stated, in effect, that since Capitol was not supporting Respondents' strike they would not think of patronizing Capitol. (2) Rainbo canceled its advertising contract with KXTV when its attention was called to the fact that copies of Respondents' leaflet No. 1 (described above) were being distributed at places where Rainbo sold its products; (3) a copy of Respondents' leaflet No. 2, pertaining to Handy-Andy, was shown by Respondents to the president of Handy-Andy in conjunction with an appeal to him to stop advertising on KXTV. This was clearly an unlawful threat; (4) Respondents telephoned Geer's general manager and "informed him that a second batch of leaflets (No. 2) was being printed which consisted of separate leaflets, each naming a particular sponsor still advertising on KXTV and that if [Geer] continued to advertise on KXTV the John Geer leaf-

⁵ *Sealright Pacific, Ltd.*, 82 NLRB 271; *Samuel Langer*, 82 NLRB 1028

⁶ Analysis of Representative Griffin, NLRB Legislative History of the Labor-Management Reporting and Disclosure Act, vol. II, p. 1523.

let . . . would be passed out in front of John Geer's store, among other places." This was clearly an unlawful threat; and (5) Respondents' request of the San Francisco Labor Council, to aid them in their campaign to compel the sponsors to withdraw their advertisements from KXTV by asking their members to return their Shell Oil Company credit card and by asking the members of their affiliated unions to do the same because Shell is a major source of income to KXTV.

The Trial Examiner has carefully considered the various defenses of Respondents and finds each to be without merit or substance.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondents set forth in section III, above, occurring in connection with the business operations of the companies 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 thereof.

V. THE REMEDY

Having found that Respondents have engaged in certain unfair labor practices, the Trial Examiner 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 case, the Trial Examiner makes the following:

CONCLUSIONS OF LAW

1. Respondents are labor organizations within the meaning of Section 2(5) of the Act.

2. Great Western Broadcasting Corporation, d/b/a KXTV, is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

3. Geer, Capitol, Rainbo, Shell, and Burgermeister are engaged in commerce or in an industry affecting commerce.

4. By threatening, restraining, or coercing a person in an industry affecting commerce with an object of forcing him to cease doing business with another person, Respondents have engaged in an unfair labor practice within the meaning of Section 8(b) (4) (ii) (B) of the Act.

5. The aforesaid unfair labor practice is an unfair labor practice affecting commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommendations omitted from publication.]

**Tex-Tuft Products, Inc. and Textile Workers Union of America,
AFL-CIO-CLC.** *Case No. 10-CA-4730. December 27, 1961*

DECISION AND ORDER

On September 13, 1961, Trial Examiner Sidney Sherman issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not engaged in the unfair labor practices alleged in the complaint and recommending that the complaint herein be dismissed, as set forth in the Intermediate Report attached hereto. Thereafter, the General Counsel filed exceptions to the Intermediate Report and supporting brief.

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 McCulloch and Members Rodgers and Fanning].