tity through which the Employer conducts its business operations, and therefore is inherently appropriate for purposes of collective bargaining.[5] Therefore, as the Petitioner in these cases is requesting single district office units at the Employer's offices located in McKeesport and Wilkinsburg, Pennsylvania, we find that separate units of employees at these two offices constitute units appropriate for collective-bargaining purposes.

Accordingly, we shall direct separate elections at the Employer's McKeesport and Wilkinsburg, Pennsylvania, offices among the following employees of the Employer:

All debit insurance district agents, excluding plant clerical and office clerical employees, inspectors, managers, assistant managers, guards, professional employees and all supervisors as defined in the Act.

[Text of Direction of Elections omitted from publication.]

MEMBERS RODGERS and LEEDOM, dissenting:

For the reasons stated in our dissenting opinion in *Quaker City Life Insurance Company*, 134 NLRB 960, we would find the units sought inappropriate and dismiss the petition.

[5] *Metropolitan Life Insurance Company*, 138 NLRB 512

Local Union 825, International Union of Operating Engineers, AFL–CIO *and* Nichols Electric Company. *Case No. 22–CC–127. September 13, 1962*

DECISION AND ORDER

On January 12, 1962, Trial Examiner John F. Funke issued his Intermediate Report in the above-entitled proceeding, finding that Respondent had not violated Section 8(b)(4)(B) as alleged in the complaint, and recommending that the complaint be dismissed in its entirety, as set forth in the attached Intermediate Report. Thereafter, the General Counsel filed exceptions with a supporting brief. The Board [1] 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 this case and finds merit in the General Counsel's exceptions. Accordingly, the Board adopts the findings of the Trial Examiner only to the extent consistent with this Decision and Order.

[1] 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 Leedom].

The facts are not in dispute. At all times material herein the State of New Jersey maintained a contract with Elmhurst Contracting Company, herein called Elmhurst, for the construction of a reservoir in Clinton, New Jersey. Elmhurst subcontracted excavation work to Selby Drilling Company, herein called Selby, which in turn subcontracted the construction of certain electrical transmission lines to the Charging Party, herein called Nichols. Selby and Elmhurst each had a collective-bargaining agreement with the Respondent, which contained the following clauses:

> This agreement shall bind all subcontractors while working for an Employer who is a party to this Agreement. Any Employer who sublets any of his work must sublet the same subject to all terms and conditions of this Agreement.
>
> . . . Shop Steward shall have access to the superintendent on the job at all times for the purpose of enforcing this Agreement.

On the morning of May 3, 1961, Albert O'Brien, a Nichols foreman, went to the jobsite with a crew of six men to dig post holes for the setting of transmission poles. Nichols had a collective-bargaining agreement with Local 262, IBEW, and its crew included members of that union. As soon as the crew began to dig a hole with a power-driven auger mounted at the rear of the Nichols' line truck, Joseph Le Pore, an employee of Selby and a member of the Operating Engineers, approached the truck and requested to see the union card of the auger operator. Upon ascertaining that the latter did not possess an "Operating Engineers" card, Le Pore immediately reported that fact to Gatti, the Engineers' shop steward.[2] Gatti then informed O'Brien it was the Operating Engineers' job to run the auger. O'Brien and Gatti then spoke to Yanuzzi, known also as Bates, the head mechanic on the job, who showed O'Brien the contract between Selby and Respondent and stated that the operation of the auger was work which belonged to Respondent under this agreement. A number of employees of Selby and Elmhurst, members of Respondent, meanwhile gathered in the vicinity of the Nichols truck. Bates then telephoned Respondent's business agent to have two operating engineers sent out to the site. O'Brien telephoned his business agent, Schaeffer, and Schaeffer informed O'Brien that the work in dispute properly belonged to the IBEW men. Hence, when the two engineers summoned by Bates arrived, O'Brien refused their services.

O'Brien then went to see Kangas, Selby's superintendent at the site, and advised him of the dispute over the operation of the machine. Kangas testified that at this time he could see from a distance a number

[2] As shop steward for the Respondent, Gatti had met frequently with officials of Selby and Elmhurst to discuss alleged violations of Respondent's collective-bargaining agreement, job safety factors, and the welfare of Respondent's members in the project.

of men gathered around the Nichols truck. Since he and O'Brien agreed that no progress was being made with the auger they discussed the possibility of digging the holes manually. O'Brien took no further action, however, but returned to his truck and removed both truck and crew for the remainder of the day.

About 8:30 a.m. on May 9, O'Brien and his crew returned to the site with the line truck and again commenced drilling operations with the auger. Either Gatti or Bates then asked O'Brien if he intended to use the power-driven auger. When O'Brien replied in the affirmative, members of Respondent who were employees of Selby or Elmhurst were called from their own work stations, some 100 to 500 feet away from the Nichols crew, and gathered around the auger truck. Gatti told these individuals that the Nichols crew was taking the bread out of their mouths and ordered them to stand around the machine so that it could not operate. Gatti and Bates again told O'Brien that he must have members of Operating Engineers to work the power-driven auger. Bates and Gatti also made reference to the contract between Local 825 and Respondent, which required, they said, that the work be performed by Respondent's members in the event of subcontracting. O'Brien contacted Kangas, who attempted to talk the matter over with Gatti. Gatti, however, avoided Kangas. Kangas, therefore, repeated his previous suggestion to O'Brien that the holes be dug manually. The employees of Selby and Elmhurst remained standing around the machine until 3 p.m. that day when O'Brien told his crew to go home. Either the next day or shortly thereafter O'Brien returned with his crew and completed the job manually without further interference from Respondent or its members.

On these facts the Trial Examiner concluded that there was no evidence that Bates or Gatti had the authority to act for the Respondent, or that Respondent induced any employee of Selby or Elmhurst to stop work with an object of forcing Selby or Elmhurst to cease doing business with Nichols. The Trial Examiner further found that there was no evidence that Respondent threatened, coerced, or restrained Selby or Elmhurst for such an objective.

In his exceptions and brief, the General Counsel urges that Gatti is the agent of Respondent, and that Respondent through Gatti caused a strike of the employees of Elmhurst and Selby and threatened and coerced these two employers with an object of forcing them to cease doing business with Nichols.

We agree with the General Counsel. Under Respondent's contracts, Gatti, as shop steward, was authorized to have access to the superintendent of each of these employers for the purpose of enforcing the collective-bargaining agreement. In fact, Gatti frequently did contact officials of these employers for this purpose. As soon as the dispute arose at the site on May 3, Gatti was summoned to handle

the matter by Le Pore, an employee of Selby and one of Respondent's members. On May 9, Respondent's members obeyed, without question, Gatti's instructions to stand around the Nichols truck. Thus, it is clear that Gatti was looked upon by both employers and employees at the site as the agent of the Respondent and that he did, in fact, act in Respondent's behalf in accordance with Respondent's contract. Accordingly, we conclude that he was an agent of Respondent and that Respondent is responsible for his actions.[3]

Gatti's instructions to Respondent's members to stand around the Nichols truck away from their assigned work stations with Selby and Elmhurst was clearly inducement or encouragement to engage in a work stoppage or strike. The resultant work stoppage by its very nature threatened, restrained, and coerced Selby and Elmhurst within the meaning of Section 8(b)(4)(ii) of the Act.[4]

Although there was no explicit demand by Respondent upon Selby or Elmhurst that either employer cease doing business with Nichols, we believe that all the surrounding circumstances establish that this was an object of Respondent in causing the work stoppages. The initial efforts of Gatti and Bates on May 3 were directed toward persuading O'Brien to hire Respondent's members to operate the auger. However, when O'Brien refused to hire the engineers referred by Respondent at the request of Bates, it was made clear to Respondent that Nichols would only continue to operate the auger with its own employees, who were members of the IBEW. Respondent's members, on May 3, therefore continued to stand around in the vicinity of the Nichols truck until it left the project. Respondent's members, at the behest of Gatti, also engaged in a work stoppage on May 9 at the appearance of the Nichols truck and crew and did not return to their work stations on that date until the truck and crew departed. Thus, Selby and Elmhurst, in order to keep their employees at work, were faced with the choice of ceasing to do business with Nichols or having the work done in some other manner. Although the work was finally accomplished manually by Nichols at the request of Selby's superintendent, Kangas, there is no indication that Respondent suggested this or any other alternative. We conclude, then, that an object of the strike was to force Selby and Elmhurst to cease doing business with Nichols. Even assuming, *arguendo*, that Respondent merely intended by its strike to force Selby and Elmhurst to require Nichols to change its method of operation, this in itself would have disrupted or seriously curtailed the existing business relationship between Nichols and these two other contractors, which would have

[3] *Local Union 522, Lumber Drivers, Warehousemen & Handlers, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Mach Lumber Company)*, 126 NLRB 297, 304

[4] *Local Union 825, International Brotherhood of Operating Engineers, AFL-CIO (Carleton Brothers Company)*, 131 NLRB 452, 453.

been tantamount to causing the latter employers to cease doing business with Nichols.[5]

Our conclusion as to the existence of an unlawful objective is also buttressed by other actions of Respondent. In urging Respondent's entitlement to the work, Gatti and Bates on May 3 and 9 made reference to Respondent's contracts with Selby and Elmhurst. In its brief to the U.S. district court in the related 10(l) injunction proceeding,[6] Respondent frankly admitted that the strikes were in protest of the failure of Selby and Elmhurst to honor their agreements with Respondent. As noted above, both agreements required that where the employer sublet any of its work it had to sublet it subject to all the terms and conditions of the agreement. These included recognition of Respondent for work falling within its claimed jurisdiction and the payment of prescribed wage rates for each engineer classification. Hence, these agreements required, in effect, that Selby and Elmhurst cease doing business with any employer performing work falling in that jurisdiction which did not recognize the Respondent or did not pay wages at the rate specified. Although an agreement of this type may be lawful under Section 8(e) of the Act in the Construction industry, a strike to enforce such an agreement—a strike to require Selby and Elmhurst to cease doing business with Nichols—is an unfair labor practice within the meaning of Section 8(b)(4)(B) of the Act.[7]

THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The conduct of the Respondent set forth above, occurring in connection with the operations of Selby, Elmhurst, and Nichols as set forth in section I of the Intermediate Report, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tends to lead to labor disputes burdening and obstructing the free flow of commerce.

THE REMEDY

As we have found that the Respondent has engaged in unfair labor practices in violation of Section 8(b)(4)(i) and (ii)(B) of the Act, we shall order that it cease and desist therefrom and take certain affirmative action to remedy the unfair labor practices and otherwise effectuate the policies of the Act.

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[5] *Local 1066, International Longshoremen's Association, AFL–CIO, et al. (Wiggin Terminals, Inc.)*, 137 NLRB 45 (Members Fanning and Brown dissenting). *New York Mailers' Union No. 6, International Typographical Union, AFL–CIO (The Publishers Association of New York City)*, 136 NLRB 196.

[6] *John J. Cuneo v. Local No. 825, International Union of Operating Engineers*, Civil No. 435–61, U.S. District Court, N.J., affd. 300 F. 2d 832 (C.A. 3).

[7] *Construction, Production & Maintenance Laborers Union Local 383, AFL–CIO, et al. (Colson and Stevens Construction Co., Inc.)*, 137 NLRB 1650.

In its brief, the General Counsel contended that, because of the nature of the violation involved, and because of the Respondent Union's demonstrated disregard of the Act by engaging in secondary boycott activities against persons with whom it develops disputes,[8] a broad order against it was necessary in order to prevent it from continuing, with impunity, to violate the secondary boycott provisions of the Act. We agree that an order against Respondent to cease and desist from secondary activity against any person [9] in order to force such person to cease doing business with Nichols Electric Company or with other primary employers, not limited to those named in the Order, is necessary because of the extent to which Respondent has deliberately engaged in unlawful secondary activity in furtherance of its dispute with these and other primary employers.[10]

Conclusions of Law

1. Nichols, Selby, and Elmhurst are engaged in commerce within the meaning of the Act.
2. Respondent and Local 262, IBEW, are labor organizations within the meaning of the Act.
3. Respondent, by causing work stoppages with an object of forcing Selby and Elmhurst to cease doing business with Nichols, has engaged in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(B) 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.

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 Union, Local Union 825, International Union of Operating Engineers, AFL–CIO, its officers, agents, representatives, successors, and assigns, shall:

1. Cease and desist from:

(a) Engaging in or inducing or encouraging any individual employed by Selby Drilling Company or Elmhurst Contracting Company or by any other employer to engage in a strike or a refusal in

[8] *Local 825, International Union of Operating Engineers, AFL–CIO (R. G. Maupai Co., Inc.)*, 135 NLRB 578; *Local 825, International Union of Operating Engineers (Warren George Inc.)* (Case No. 22–CC–99, not published); *Local 825, International Union of Operating Engineers, AFL–CIO, et al. (United Engineers & Constructors Inc.)*, 138 NLRB 279. *Local Union 825, International Brotherhood of Operating Engineers, AFL–CIO (Carleton Brothers Company)*, *supra*.

[9] *W. D. Don Thomas Construction Co.*, 130 NLRB 1289.

[10] *International Brotherhood of Teamsters, etc. (Overnite Transportation Company)*, 130 NLRB 1007; *Local Union 522, Lumber Drivers, Warehousemen & Handlers, International Brotherhood of Teamsters, etc. (Republic Wire Corporation)*, 129 NLRB 376, enfd. 294 F. 2d 811 (C.A. 3); *Brewery and Beer Distributor Drivers, etc. (Delaware Valley Beer Distributor Association)*, 125 NLRB 12, enfd. 281 F. 2d 319 (C.A. 3).

the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, where an object thereof is to force or require Selby Drilling Company or Elmhurst Contracting Company or any other employer or person to cease doing business with Nichols Electric Company or any other employer or person.

(b) Threatening, coercing, and restraining Selby Drilling Company or Elmhurst Contracting Company or any other employer where an object thereof is to force or require Selby Drilling Company or Elmhurst Contracting Company or any other employer or person to cease doing business with Nichols Electric Company or with any other employer or person.

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

(a) Post in conspicuous places in the Respondent's business offices, meeting halls, and all places where notices to members are customarily posted, copies of the notice attached hereto marked "Appendix." [11] Copies of said notice, to be furnished by the Regional Director for the Twenty-second Region, shall, after being duly signed by the Respondent's authorized representative, be posted by Respondent immediately upon receipt thereof and be maintained by it for 60 consecutive days thereafter. Reasonable steps shall be taken to insure that such notices are not altered, defaced, or covered by any other material.

(b) Sign and mail sufficient copies of said notice to the Regional Director for the Twenty-second Region for posting, Selby Drilling Company, Elmhurst Contracting Company, and Nichols Electric Company willing, at all locations where notices to their respective employees are customarily posted.

(c) Notify the Regional Director, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith.

[11] 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."

APPENDIX

NOTICE TO ALL MEMBERS OF LOCAL 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL–CIO AND TO ALL EMPLOYEES OF ELMHURST CONTRACTING COMPANY, SELBY DRILLING COMPANY, AND NICHOLS ELECTRIC COMPANY

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 engage in, or induce or encourage any individual employed by Elmhurst Contracting Company or Selby Drilling Company or any other employer to engage in, a strike or a refusal in the course of his employment to use, manufacture, transport, process, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, nor will we threaten, coerce, or restrain Elmhurst Contracting Company or Selby Drilling Company or any other person where in either case an object thereof is to force or require Elmhurst Contracting Company or Selby Drilling Company or any other employer or person to cease doing business with Nichols Electric Company or any other employer or person.

LOCAL 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL–CIO,
Labor Organization.

Dated_____ By_____
(Representative) (Title)

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

Employees may communicate directly with the Board's Regional Office, 744 Broad Street, Newark 2, New Jersey, Telephone Number Market 4–6151, if they have any question concerning this notice or compliance with its provisions.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

Upon a charge filed May 15, 1961, by Nichols Electric Company, herein called Nichols, the General Counsel issued a compalint on June 14, 1961, against Local 825, International Union of Operating Engineers, AFL–CIO, herein called Local 825 or the Respondent. The proceeding, with all parties represented, was heard before Trial Examiner John F. Funke at Newark, New Jersey, on December 18, 1961, upon said complaint and the answer of Respondent.

The complaint alleged that Local 825 induced and encouraged individuals employed by Selby Drilling Company, herein called Selby, and Elmhurst Contracting Company, herein called Elmhurst, to engage in a strike or refusal to perform services for Selby and Elmhurst with an object of forcing and requiring Selby and Elmhurst to cease doing business with Nichols. It further alleged that Local 825 threatened, coerced, and restrained Selby and Elmhurst by said inducement and encouragement of their employees with the same object of forcing and requiring Selby and Elmhurst to cease doing business with Nichols. Such conduct was alleged to be in violation of Section 8(b)(4)(i) and (ii)(B) of the Act.

Respondent's answer denied such inducement, encouragement, threats, coercion, and restraint and denied the commission of any unfair labor practices.

Decision was reserved on Respondent's motion made at the conclusion of the General Counsel's case and renewed at the close of the hearing to dismiss the complaint. The motion is disposed of in accordance with the recommendation herein.

At the conclusion of the case the parties were given 20 days in which to file briefs and counsel for Respondent submitted oral argument. No briefs were received at the expiration of the filing date.

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

FINDINGS AND CONCLUSIONS

I. THE BUSINESS OF THE COMPANIES

Nichols is a New Jersey corporation maintaining its office and principal place of business in Chester, New Jersey. It is engaged in providing and performing electrical line construction services as an electrical contractor in the building and construction industry. During the fiscal year ending November 30, 1960, it purchased and caused to be transferred and delivered to its places of business within the State of New Jersey goods and materials from States other than the State of New Jersey in a value in excess of $50,000.

Selby is a Nevada corporation having its office and principal place of business in Boise, Idaho. It is engaged in drilling and excavating in the building and construction industry and during the past year it has performed services in a value exceeding $3,000,000 in States other than the State of Idaho.

Elmhurst is a division of Hagan Industries, Inc., and is a New York corporation having its office and principal place of business in New York City, New York. It is engaged in the building and construction industry and during the past year has performed services exceeding $50,000 in value in States other than the State of New York.

The complaint alleges, the answer admits, and I find that Nichols, Selby, and Elmhurst are engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. LABOR ORGANIZATION INVOLVED

The complaint alleges, the answer admits, and I find that Respondent is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The facts*

During a period identified in the complaint as "at all times material herein," the State of New Jersey maintained a contract with Elmhurst for the construction of a reservoir known as the Spruce Run Reservoir in Clinton. Elmhurst subcontracted certain excavation work to Selby which in turn subcontracted the construction of the electrical lines to Nichols.

The facts are few and simple and in stating and evaluating them I shall rely on the meager testimony of the General Counsel's witnesses.

Albert O'Brien, supervisor for Nichols, testified that on May 3, 1961, he went to the jobsite with a crew of six men to start the digging of post holes and the setting of the poles. Nichols had a collective-bargaining contract with Local 262, IBEW, and the crew were members of Local 262. For the digging O'Brien brought a line truck with an auger. When the boom was raised to start digging, an employee of Selby and a member of Local 825, identified at Joseph LePore, came over to the machine and asked the driver, Kenneth Budd, for his "card." When LePore discovered that the men operating the auger were not members of Local 825 he called Guido Gatti, the shop steward for 825. According to O'Brien, Gatti told him it was the "Operating Engineer's job to run the machine." O'Brien disagreed and was told to see John Yanuzzi, referred to by the witnesses and herein as Bates, lead mechanic at the job. O'Brien talked to Bates and, after Bates made a telephone call, he was told by Bates that the job of operating the auger required an operator and an oiler.[1] O'Brien went back to the field and told his men what had happened and was told by them to talk to Schaeffer, business manager for Local 262. He called Schaeffer and, not unexpectedly, was told that the work belonged to Local 262. By this time it was noon and O'Brien, concluding the day was wasted, sent the men home.

On May 9, O'Brien returned with his crew, set up the auger, and started digging again. Either Bates or Gatti asked him if he intended to dig with the auger and when O'Brien said he did the members of Local 825 on the job (employees of either Selby or Elmhurst) were called and gathered around the machine. O'Brien testified that these employees were told by Gatti that they (the Nichols crew) were "Taking the bread out of your mouths" and were ordered to stand around so the machine could not operate. The employees of Selby and Elmhurst did stand around the

[1] Bates testified that he talked to O'Brien after the work had been stopped and showed him the contract between Local 825 and Selby which indicated the job belonged to 825 and that O'Brien agreed to use 825 men. Bates stated the purpose of the call was to have 825 send the two men required.

machine until about 3 p.m. when O'Brien told his crew to go home.[2] Either the next day or the day after, O'Brien returned with his crew and completed the post hole digging by hand. The machine was not used again and no further incidents occurred.[3]

On cross-examination O'Brien testified that on May 3 he also had a conversation with Richard Kangas, superintendent for Selby, and that as a result of this conversation he agreed to take the line truck and auger off the jobsite. O'Brien also had a conversation with Kangas on May 9, when O'Brien agreed to dig the post holes by hand. On the same day he was told again by Gatti and Bates that if the machine were used two members of Local 825 would have to operate it, and reference was made to the contract between Selby and Local 825 which required that the work be performed by members in the event of subcontracting.[4]

Richard Kangas, whose direct testimony ran to only four and one-half pages of the transcript, testified that the Selby employees were represented by Local 825 and that on May 3, O'Brien came to him and told him Local 825 was protesting the use of the auger by the Nichols employees. Kangas stated that he and O'Brien discussed the situation and the possibility of digging the holes by hand. He also testified that his employees stopped work on May 9 and gathered around the auger. On this occasion Kangas tried to talk to Gatti but Gatti avoided him. While Kangas' testimony is not clear on this point he did again discuss the digging with O'Brien and Kangas understood that if the holes were dug by hand (Kangas was indifferent as to the manner of digging) there would be no further disturbance. In any event it was following this discussion that Nichols did resume digging by hand and the job was completed without disturbance.

The testimony of Joseph Gibison, project manager for Elmhurst,[5] was confined to the fact that Elmhurst employed about a dozen members of Local 825 at the jobsite and that on May 9 there was a work stoppage in the field and his men did not work a full day.[6]

This concluded the evidence presented by the General Counsel.

On the basis of the foregoing I find that there is no evidence, testimonial or documentary, direct or inferential, credible or otherwise, to support a finding that Local 825 induced or encouraged any individual employed by Selby or Elmhurst to stop work with an object of forcing or requiring Selby or Elmhurst to cease doing business with Nichols. Neither is there any evidence that Local 825 threatened, coerced, or restrained Selby or Elmhurst for such an objective. The dispute between Local 825 and Nichols was clearly focused on the assignment of the operation of the auger. Local 825 claimed it by virtue of its contract with Selby; Nichols reserved the right to assign it to its own employees. At no time during the dispute did Local 825 seek the removal of Nichols and the substitution of another subcontractor and when the source of dispute, the auger, was removed from the jobsite, the work proceeded without interruption. Whether or not such a dispute falls within the purview of another subparagraph of Section 8(b)(4) is not a question before me. Clearly it is not within the purview of Section 8(b)(4)(B).[7]

RECOMMENDED ORDER

I recommend that the complaint be dismissed in its entirety.

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[2] O'Brien testified that on this day one hole was dug with the auger until it struck rock and the hole was then finished by hand.

[3] The testimony of O'Brien was corroborated in substance by that of Kenneth Budd and Vernon Tayburn, employees of Nichols.

[4] The second paragraph of this agreement reads:

> This Agreement shall bind all subcontractors while working for an Employer who is a party to this Agreement. Any Employer who sublets any of his work must sublet the same subject to all terms and conditions of this Agreement.

Boring and drilling machines were included in the types of machines covered by the contract

[5] Elmhurst also had a contract with Local 825.

[6] Gibison's entire testimony covered three pages

[7] In reaching this conclusion I have not relied upon the fact that there is no evidence that either Bates or Gatti had the authority to act for Local 825 in causing or effecting any work stoppage