

This award is confined to the assembling or building of lumber loads used by carpenters in the shoring of cargo aboard ships. It does not include the movement of such loads to the loading area on the dock or the handling of dunnage customarily performed by longshoremen. In making this determination, we are assigning the disputed work to employees of APL and Matson who are represented by the Carpenters' Union, but not to that Union or its members. Our present determination is limited to the particular controversy which gave rise to this proceeding.

DETERMINATION OF DISPUTE

Upon the basis of the foregoing findings and the entire record in this proceeding, the Board makes the following determination of dispute, pursuant to Section 10(k) of the Act:

1. Carpenters employed by American President Lines, Ltd., and Matson Terminals, Inc., in San Francisco, California, and who are represented by Shipwrights, Joiners, Boatbuilders and Caulkers, Local 1149, affiliated with United Brotherhood of Carpenters and Joiners of America, AFL-CIO, are entitled to assemble or build lumber loads used by carpenters in the shoring of cargo aboard ships.

2. International Longshoremen's and Warehousemen's Union, Local 10, is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require the aforesaid Employers to assign the above work to longshoremen.

3. Within 10 days from the date of this Decision and Determination of Dispute, International Longshoremen's and Warehousemen's Union, Local 10, shall notify the Regional Director for the Twentieth Region, in writing, whether or not it will refrain from forcing or requiring American President Lines, Ltd., and Matson Terminals, Inc., by means proscribed by Section 8(b)(4)(D), to assign the work in dispute to longshoremen rather than to carpenters.

MEMBERS FANNING and BROWN took no part in the consideration of the above Decision and Determination of Dispute.

Local Union 825, International Union of Operating Engineers, AFL-CIO and Nichols Electric Company. Case No. 22-CD-52.
January 7, 1963

DECISION AND ORDER

On August 22, 1962, Trial Examiner Louis Libbin issued his Intermediate Report in the above-entitled proceeding, finding that the
140 NLRB No. 48.

Respondent had engaged in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Intermediate Report. Thereafter, the Respondent filed exceptions to 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 Leedom].

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 the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

1. Certain of the Respondent's exceptions to the Intermediate Report again present arguments, first raised at the Section 10(k) stage of the proceedings, which the Board has considered and rejected. These are (a) that the Board lacked jurisdiction to make its Decision and Determination of Dispute herein because Respondent and IBEW, through their membership in the Building Trades Council of the AFL-CIO, are bound to use the facilities of the National Joint Board for Settlement of Jurisdictional Disputes as the method for adjustment of this dispute; (b) that the Board's award arbitrarily disregarded a Joint Board decision, dated June 16, 1961, awarding the work in the present dispute to the Respondent; and (c) that the Board failed to give proper weight to the fact that the Joint Board in many decisions has awarded this type of work to the Operating Engineers. As to (a) and (b), we have already noted in the Decision and Determination of Dispute, 137 NLRB 1425, that Nichols was not a party to the Joint Board determination and that IBEW has consistently taken the position that it will not be bound by Joint Board determinations involving linework, which is the type of work in issue here. Consequently, there is no satisfactory evidence in this case that the parties had agreed upon a method for the voluntary adjustment of the dispute.¹ As to (c), we reaffirm our previous finding that there is no probative evidence in the prior Joint Board determinations, of any custom or practice in the industry which would support an award to the Respondent for the operation of a small power driven auger and winch mounted on a line truck, in electrical pole linework.

2. Respondent also argues that Gatti, the shop steward at the Spruce Run Dam project, was not acting as an agent of the Respondent in causing the work stoppage. We affirm the Trial Examiner's finding

¹ *International Union of Operating Engineers, Local 66, AFL-CIO (Frank P. Badolato & Son)*, 135 NLRB 1392.

that Gatti was acting within the scope of his authority in attempting to gain compliance with the Respondent's interpretation of its contracts with Selby and Elmhurst and in calling a work stoppage for that objective.²

3. In its exceptions Respondent also urges that its contracts with Selby Drilling Company and Elmhurst Contracting Company assigned to its members the work in dispute (the operation of a small auger and winch truck) and that Selby and Elmhurst breached these agreements by contracting this work to Nichols Electric Company, a firm whose employees are represented by IBEW. Respondent contends, in effect, that the work stoppage by its members was, therefore, a lawful protest against this breach of contract. We disagree. In our Section 10(k) Decision and Determination of Dispute in this proceeding, we carefully considered the agreements and determined that neither clearly assigned the disputed work to Respondent's members. We reaffirm this determination.

The Respondent also contends that, under any circumstances, the agreements also prohibited the subcontracting by either employer of any of its work to firms not employing the Respondent's members. It therefore argues that, since the latter contract provision is lawful under the proviso to Section 8(e) of the Act, which exempts certain construction industry agreements of this type from the proscription of that section, its members were lawfully entitled to protest the breach of this provision, occasioned by Selby's subcontract of the disputed work to Nichols. We find no merit in this contention. As the Board has previously held, the construction industry proviso to Section 8(e) only permits the making of voluntary agreements relating to the contracting or subcontracting of work to be done at the construction site. It does not legalize picketing, strikes, or other inducement of employees or persons, proscribed by Section 8(b)(4), in order to secure or enforce such agreements.³

ORDER

The Board hereby adopts as its Order the Recommended Order of the Trial Examiner.

² The Board had already come to the same conclusion, based on its analysis of the record in Case No. 22-CC-127, which was stipulated as the record in the instant case. See *Local Union 825, International Union of Operating Engineers, AFL-CIO (Nichols Electric Company)*, 138 NLRB 540.

³ *Construction, Production & Maintenance Laborers Union Local 383, AFL-CIO; et al. (Colson and Stevens Construction Co., Inc)*, 137 NLRB 1650; *Local Union 825, International Union of Operating Engineers, AFL-CIO (Nichols Electric Company)*, 138 NLRB 540. The reasons for the Board's finding in the *Colson and Stevens* case that the construction industry proviso to Section 8(e) is not available as a defense against alleged violations of Section 8(b)(4)(A) and (B) are equally applicable when the violation alleged is the improper inducement of employees or persons for an object proscribed by Section 8(b)(4)(D).

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

Upon a charge filed on May 11, 1961, by Nichols Electric Company, herein called Nichols, the General Counsel of the National Labor Relations Board, by the Regional Director for the Twenty-second Region (Newark, New Jersey), issued his complaint, dated July 27, 1962, against Local Union 825, International Union of Operating Engineers, AFL-CIO, herein called the Operating Engineers or the Respondent, alleging that Respondent engaged in unfair labor practices within the meaning of Section 8(b)(4)(D) and Section 2(6) and (7) of the Act. With respect to the unfair labor practices, the complaint, as amended at the hearing, alleges in substance that: (1) pursuant to Section 10(k) of the Act, the Board issued its Determination of Dispute out of which the charged unfair labor practice arose; (2) the determination of the Board was that Respondent was not entitled, by means proscribed by Section 8(b)(4)(D), to force or require Nichols to assign the work of operating power-driven drilling and hoisting equipment to employees engaged as operating engineers who are currently represented by Respondent; (3) the Respondent has not complied with the terms of the Board's Decision and Determination of Dispute; (4) the Respondent since on or about May 9, 1961, by means proscribed by Section 8(b)(4), engaged in conduct an object of which was to force or require Nichols to assign the disputed work of operating power-driven drilling and hoisting equipment for Nichols to employees engaged as operating engineers who are represented by Respondent; and (5) by such conduct, Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(D) of the Act. In its duly filed answer, Respondent denies generally the unfair labor practice allegations.

Pursuant to due notice, a hearing was held before Trial Examiner Louis Libbin at Newark, New Jersey, on August 13, 1962. All parties appeared, were represented by Counsel, and were afforded full opportunity to be heard, to adduce relevant evidence, to argue orally, and to file briefs. No witnesses were called to testify. Instead, all parties stipulated that: (1) if the witnesses who testified on behalf of the General Counsel on December 18, 1961, in the case of Local Union 825, International Union of Operating Engineers, AFL-CIO, and Nichols Electric Company, Case No. 22-CC-127, were called and testified in the instant proceeding, their testimony would be the same as in Case No. 22-CC-127; (2) said testimony in Case No. 22-CC-127 shall be incorporated into the instant proceeding for the purpose of making findings of fact; and (3) the Trial Examiner "shall credit" said testimony of the General Counsel's witnesses, "notwithstanding any contrary or conflicting testimony by witnesses for the Respondent in Case No. 22-CC-127 or at the Section 10(k) hearing in the instant proceeding."

Counsel for Respondent made a brief oral argument before the close of the hearing. Respondent's motion to dismiss the complaint on the ground that the evidence is insufficient to sustain the unfair labor practice allegations, upon which motion I reserved ruling, is hereby denied in accordance with the findings and conclusions hereinafter made. All parties waived their right to file briefs.

Upon the entire record in this case, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANIES

Nichols Electric Company is a New Jersey corporation with its office and principal place of business in Chester, New Jersey. It is engaged in providing and performing electrical line construction and related services as an electrical contractor in the building and construction industry. During the past year, it purchased and caused to be transferred and delivered to its place of business within the State of New Jersey goods and materials, valued in excess of \$50,000, from States other than the State of New Jersey.

Selby Drilling Company, herein called Selby, is a Nevada corporation with its office and principal place of business in Boise, Idaho. It is engaged in providing and performing drilling and excavating services as a contractor in the building and construction industry. During the past year, it has performed services in a value exceeding \$3 million in States other than the State of Idaho.

Elmhurst Contracting Company, herein called Elmhurst, is a division of Hagan Industries, Inc., and is a New York corporation with its office and principal place of business in New York, New York. It is engaged in providing and performing building and construction services as a general contractor in the building and con-

structure industry. During the past year, it has performed services, exceeding \$50,000 in value, in States other than the State of New York.

Upon the above admitted facts, I find, as Respondent admits in its answer to the complaint, that Nichols, Selby, and Elmhurst are each engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

The complaint alleges, the answer admits, and I find, that Local Union No. 262, International Brotherhood of Electrical Workers, AFL-CIO, herein sometimes called Local 262, and that the Respondent are each labor organizations within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

At all times material to this proceeding, the State of New Jersey has maintained a contract with Elmhurst for the construction of Spruce Run Reservoir in Clinton, New Jersey, herein sometimes referred to as the reservoir or the project. Elmhurst subcontracted certain drilling and excavating work at the reservoir to Selby which, in turn, subcontracted the construction of certain electrical lines and related work at the reservoir to Nichols.

At all times material herein, Nichols has assigned the work of operating power-driven drilling and hoisting equipment for Nichols at the reservoir to its employees engaged as electricians who are represented by Local 262. Since on or about May 3, 1961, the Respondent has demanded that Nichols assign the aforesaid work of operating power-driven drilling and hoisting equipment to employees engaged as operating engineers who are represented by Respondent rather than to employees who are engaged as electricians and who are represented by Local 262. At no times material herein has the Board issued an order or certification determining the bargaining representative for employees performing the above-described work.

The facts set forth in the preceding paragraphs are alleged in the complaint and admitted in Respondent's answer. Pursuant to a Section 10(k) proceeding, the Board, on July 18, 1962, issued its Decision and Determination of Dispute (137 NLRB 1425) in which it made the following determination of dispute:

1. Employees engaged as electricians, currently represented by Local Union No. 262, International Brotherhood of Electrical Workers, AFL-CIO, are entitled to operate power-driven drilling and hoisting equipment for Nichols Electric Company at the Spruce Run Dam project, Clinton, New Jersey.

2. Local Union 825, International Union of Operating Engineers, AFL-CIO, is not entitled, by means proscribed by Section 8(b)(4)(D), to force or require Nichols Electric Company to assign the work of operating such power-driven drilling and hoisting equipment to employees engaged as operating engineers, who are currently represented by Local Union 825, International Union of Operating Engineers, AFL-CIO.

3. Within 10 days from the date of this Decision and Determination of Dispute, Local Union 825, International Union of Operating Engineers, AFL-CIO, shall notify the Regional Director for the Twenty-second Region, in writing, whether or not it will refrain from forcing or requiring Nichols Electric Company by means proscribed by Section 8(b)(4)(D) to assign the work in dispute to operating engineers rather than electricians.

Upon the Respondent's failure to comply with the Board's 10(k) Determination of Dispute, the General Counsel issued his complaint in the instant proceeding which, as previously indicated, is concerned with whether Respondent engaged in conduct constituting an unfair labor practice within the meaning of Section 8(b)(4)(D) of the Act.¹ I now turn to a resolution of this issue.

A. The facts

As previously noted, no witnesses were called to testify at the hearing held on August 13, 1962, in this proceeding. The parties however stipulated that the testimony of witnesses who testified on behalf of the General Counsel on December 18, 1961, in a prior case² shall be incorporated into and made a part of the instant record. The parties further stipulated and agreed that the Trial Examiner "shall credit the

¹ *International Union of Operating Engineers, Local 926, AFL-CIO (Tip Top Roofers)*, 128 NLRB 1057, 1059.

² *Local Union 825, International Union of Operating Engineers, AFL-CIO (Nichols Electric Company)*, Case No 22-CC-127 [138 NLRB 540].

testimony" of said witnesses, "notwithstanding any contrary or conflicting testimony by witnesses for the Respondent in Case No. 22-CC-127 or at the Section 10(k) hearing in the instant proceeding." Pursuant to the foregoing stipulations, the factual findings hereinafter set forth are based on the credited testimony of the witnesses who testified on behalf of the General Counsel in said prior proceeding (Case No. 22-CC-127).

On May 3, 1961, Albert O'Brien, supervisor for Nichols, appeared on the jobsite at the reservoir with a crew of six employees to start performing pole line construction work by digging holes and setting poles with the use of mechanical equipment such as a line truck and a pole auger. A pole auger is a machine on the back of the line truck and is used for digging holes and setting poles. In the crew were members of Local 262, as Nichols has a collective-bargaining contract with Local 262 covering its employees who do that work. When the boom was raised to start digging, Joseph LePore, an employee of Selby and a member of Respondent, came out to the machine and asked the driver, Kenneth Budd, for his "card." When Budd produced his Local 262 card, LePore called over Guido Gatti, an employee of Selby and the shop steward for Respondent on the reservoir job. Gatti told O'Brien that the machine could not be run without operating engineers, that it was the "Operating Engineers' job to run the machine." When O'Brien disagreed, he was told to see Mr. Bates, the leadman for the Operating Engineers on the reservoir job. O'Brien went to the office of Selby and Elmhurst where he talked about the matter to Bates, who thereupon made a telephone call. At the conclusion of the telephone call, Bates told O'Brien that the operation of the auger would require an operator and an oiler. O'Brien went back to the field, told his crew what had happened, and was advised to get in touch with Schaeffer, business manager for Local 262. O'Brien telephoned Schaeffer, who stated that the operation of that machine belonged to Local 262. O'Brien then told Bates that he was not going to put any operating engineers on that job. By that time it was already noon, and, believing that the day was wasted, O'Brien sent his crew home.

During the course of the day on May 3, O'Brien discussed the matter with Richard Kangas, superintendent of Selby. O'Brien told Selby that the Operating Engineers had complained about his linemen running the auger drill and that there was a dispute with the Respondent about its operation. As a result of the discussion, it was agreed that if O'Brien could not make any progress toward using the machine, the holes should be dug by hand. The machine was removed from the grounds, and no holes were dug that day.

About 8:30 a.m. on May 9, O'Brien returned with the auger machine and the same crew of six employees. They went out in the field, set up the auger, and started digging a hole. After about 15 minutes, either Bates or Gatti came over and asked O'Brien if he intended to dig the holes with the auger machine. When O'Brien replied in the affirmative, the operating engineers, all members of Respondent employed on the reservoir project by Selby and Elmhurst, were called and about 10 to 15 of them gathered around the machine. Most of them were employees of Selby, working on machines located at various distances within 500 feet from where the Nichols' auger machine was placed. They left their equipment, shut the compressors off, shut down the drills, and walked over to the Nichols' auger drill. Several in the group were employees of Elmhurst, who were running bulldozers, cranes, and similar equipment in locations about 200 to 300 feet from the site where Nichols was to operate the auger machine. They too left their equipment and walked over to the Nichols' auger drill.

Gatti told the operating engineers that O'Brien and his crew "were taking bread out of your mouths. Are you going to stand for that? They are taking your work." Gatti then told these operating engineers employed by Selby and Elmhurst that "I want you to gather around the machine so that it doesn't do any more digging." The men thereupon completely surrounded the machine on all sides, with one of them standing on the digging platform. Kangas tried to talk to Gatti on this occasion but the latter avoided him. The operating engineers remained in this position around the machine from about 9 a.m. until about 3 p.m. when O'Brien told his crew to go home. The machine was not used that day, and the digging of the hole which had been started was finished by hand.

O'Brien talked to Kangas again that day and stated that he was going to take the machine off and do the digging by hand. Kangas replied that if the digging was done by hand, they would not be bothered by the Operating Engineers and that the job would then go along smoothly. The machine was then removed from the grounds. Either the next day or the day after, O'Brien returned with his crew and completed the posthole digging by hand, without any interruption or interference from Gatti and the operating engineers. The machine was not used again.

B. Concluding findings

The complaint alleges that the Respondent, by the conduct of its agent, Guido Gatti, on March 9, 1961, induced and encouraged individuals employed by Selby, Elmhurst, and Nichols to engage in a strike and refusal in the course of their employment to perform services for their respective employers, and, by the same conduct, threatened, coerced, and restrained Selby, Elmhurst, and Nichols, with an object in each case being one proscribed by Section 8(b)(4)(D) of the Act. The facts hereinabove detailed fully sustain these allegations.

Guido Gatti, an employee of Selby, was Respondent's shop steward on the reservoir project. Both Selby and Elmhurst had collective-bargaining agreements with Respondent. As shop steward, Gatti was concerned with the safety of Respondent's members and compliance with the contracts. In this capacity, he brought to the attention of Kangas, superintendent of Selby, any unsafe working conditions on the job and any violations of the contract; and also discussed with Gibson, project manager of Elmhurst, matters pertaining to safety, the allotment of the work, and the kind of jobs which Respondent required its members to cover. As Respondent was claiming that the operation of the Nichols' auger machine was work which its members were required to perform and that it was a contractual violation to assign that work to employees who were not members of Respondent, Gatti was clearly acting within the scope of his authority on May 3 and 9 when he engaged in the conduct previously described. Moreover, at no time was Gatti's conduct or that of the operating engineers disavowed or repudiated by Respondent. Accordingly, I find that at all times material herein Guido Gatti was an agent of Respondent within the meaning of Section 2(13) of the Act and that Respondent is liable for his conduct in connection with the operation of the Nichols' auger machine.³

Gatti's conduct on May 9 in having the operating engineers employed by Selby and Elmhurst leave their work and gather around the Nichols' auger machine, in telling them that O'Brien and his crew "were taking bread out of your mouths. Are you going to stand for that? They are taking your work," and in directing them "to gather around the machine so that it doesn't do any more digging," constituted the clearest kind of inducement and encouragement to these employees of Selby and Elmhurst to engage in a strike or refusal to perform services for their employers as well as to prevent the employees of Nichols from operating the auger machine. Gatti's conduct brought about a complete work stoppage of these employees from about 9 a.m. until about 3 p.m., when the Nichols' crew was sent home. In addition, the operating engineers' interference, at the instigation of Gatti, with the operation of the auger machine by the Nichols' crew was clearly calculated to restrain the employees who were represented by Local 262 from continuing with the performance of the services for which they had been hired by Nichols. "Restraint of that kind constitutes the clearest and strongest form of inducement" proscribed by Section 8(b)(4)(i) of the Act⁴ I further find that this work stoppage by the operating engineers employed by Selby and Elmhurst, induced by Gatti, also constituted coercion and restraint of Selby and Elmhurst within the meaning of Section 8(b)(4)(ii), and that their conduct in interfering with the operation of the auger by the Nichols' crew constituted a threat against, as well as restraint and coercion of, Nichols within the meaning of the same section. Finally, I find, as is self-apparent from the facts above detailed, that Gatti's object in engaging in this conduct was to force or require Nichols to assign the work of operating the auger machine to operating engineers represented by Respondent rather than to employees of Nichols who were represented by Local 262, an object specifically proscribed by Section 8(b)(4)(D).

I find that by the above-described conduct, Respondent violated Section 8(b)(4)(i) and (ii)(D) of the Act.⁵

³ See, e.g., *Local 3, International Brotherhood of Electrical Workers, AFL-CIO (Picker X-Ray Corporation)*, 128 NLRB 561, 564; *Combustion Engineering, Inc.*, 130 NLRB 184; *International Association of Bridge, Structural and Ornamental Ironworkers, Local 600 (Bay City Erection Company, Inc.)*, 134 NLRB 301; and *Brunswick Corporation*, 135 NLRB 574.

⁴ *United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry etc., Local 428, AFL (Frank W. Hake, et al, t/a Frank W Hake)*, 112 NLRB 1097, 1111-1112.

⁵ Although not binding upon me, the findings of Trial Examiner Funke in his Intermediate Report in Case No 22-CC-127 (IR-11-62, dated January 12 1962) [138 NLRB 540], upon which Respondent relies, are not inconsistent with the findings in the text. In that case, the complaint alleged that the same Respondent had violated Section 8(b)(4)(i) and (ii)(B) of the Act. Based on the same testimony which has been in-

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with the 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 of commerce.

V. THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I will recommend that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act

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

CONCLUSIONS OF LAW

1. The Respondent, Local Union 825, International Union of Operating Engineers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

2. By inducing and encouraging individuals employed by Nichols, Selby, and Elmhurst to engage in a work stoppage and refusal in the course of their employment to perform any services, by coercing or restraining Nichols, Selby, and Elmhurst, and by threatening Nichols, with an object in each case of forcing or requiring Nichols to assign the work of operating power-driven drilling and hoisting equipment at the Spruce Run Reservoir to employees engaged as operating engineers who are represented by Respondent and who were not then lawfully entitled to such work rather than to employees engaged as electricians who were represented by Local 262 and were lawfully entitled to such work, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii) (D) of the Act.

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

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, I recommend that Respondent, Local Union 825, International Union of Operating Engineers, AFL-CIO, and its officers, agents, representatives, successors, and assigns, shall:

1. Cease and desist from engaging in, or inducing or encouraging any individual employed by Nichols Electric Company, Selby Drilling Company, Elmhurst Contracting Company, or by any other person engaged in commerce or in an industry affecting commerce, to engage in, a strike or refusal in the course of his employment to perform any services, or from threatening, coercing, or restraining the above-named Companies and persons, where an object thereof in either case is to force or require Nichols Electric Company to assign the work of operating power-driven drilling and hoisting equipment to employees engaged as operating engineers who are represented by Respondent rather than to employees represented by another labor organization, except insofar as any such action is permitted under Section 8(b)(4)(D) of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Post at its business office, copies of the attached notice marked "Appendix A."⁶ Copies of said notice, to be furnished by the Regional Director for the Twenty-

incorporated in the instant record, Funke found that there was no evidence to "support a finding that Local 825 [Respondent] 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*" [Emphasis supplied] He also found that there was no evidence to support a finding that Respondent "threatened, coerced, or restrained Selby or Elmhurst *for such an objective*" [Emphasis supplied] He specifically reserved the question as to whether the conduct fell within the purview of another section of 8(b)(4), an issue which, he stated, was not before him but is before me in the instant case.

⁶ In the event that this Recommended Order be adopted by the Board, the words "A Decision and Order" shall be substituted for the words "The Recommendations of a Trial Examiner" in the notice. In the further event that the Board's Order be enforced by a decree of a United States Court of Appeals, the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order" shall be substituted for the words "Pursuant to a Decision and Order"

second Region (Newark, New Jersey), shall, after being duly signed by the Respondent, be posted by it immediately upon receipt thereof, and be maintained for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that such notices are not altered, defaced, or covered by any other material.

(b) Furnish to the Regional Director for the Twenty-second Region signed copies of said notice for posting by the above-named Companies, if willing, in places where notices to employees are customarily posted. Copies of said notice, to be furnished by the Regional Director, shall, after being signed by the Respondent, as indicated, be forthwith returned to the Regional Director for disposition by him.

(c) Notify the said Regional Director, in writing, within 20 days from the date of this Intermediate Report and Recommended Order, what steps the Respondent has taken to comply herewith.⁷

⁷ In the event this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply therewith."

APPENDIX A

NOTICE TO ALL OUR MEMBERS AND TO ALL EMPLOYEES OF NICHOLS ELECTRIC COMPANY, SELBY DRILLING COMPANY, AND ELMHURST CONTRACTING COMPANY

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

WE WILL NOT engage in, or induce or encourage any individual employed by Nichols Electric Company, Selby Drilling Company, Elmhurst Contracting Company, or by any other person engaged in commerce or in an industry affecting commerce, to engage in, a strike or refusal in the course of his employment to perform any services, or threaten, coerce, or restrain the above-named Companies and persons, where an object thereof in either case is to force or require Nichols Electric Company to assign the work of operating power-driven drilling and hoisting equipment to employees engaged as operating engineers who are represented by Local Union 825, International Union of Operating Engineers, AFL-CIO, rather than to employees represented by another labor organization, except insofar as any such action is permitted under Section 8(b)(4)(D) of the Act.

LOCAL UNION 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 of posting and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 614 National Newark Building, 744 Broad Street, Newark 2, New Jersey, Telephone No. Market 4-6151, if they have any question concerning this notice or compliance with its provisions.

Reeves Broadcasting & Development Corporation (WHTN-TV)
and National Association of Broadcast Employees and Technicians, AFL-CIO. *Cases Nos. 9-CA-2465 and 9-CA-2512. January 7, 1963*

DECISION AND ORDER

On June 26, 1962, Trial Examiner John H. Eadie issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in certain unfair labor practices and recom-