

however, another side to the coin. If an employer, by the commission of unfair labor practices, frustrates the right of his employees to designate a collective-bargaining agent or dissipates the majority status of a selected bargaining agent then I believe he must assume certain risks. Among them is the requirement that he be ordered to bargain with the labor organization selected by his employees if it can be established that it represented a majority in an appropriate unit. To hold otherwise is to permit the procedures established by the Act to be utilized to defeat its purposes.

For these reasons I find the Respondents have violated Section 8(a)(5) of the Act.

IV. THE REMEDY

Having found the Respondents have engaged in certain unfair labor practices, I shall recommend that they be ordered to cease and desist therefrom and take certain affirmative action in order to effectuate the policies of the Act.

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

CONCLUSIONS OF LAW

1. Respondents are engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Chauffeurs, Teamsters, Warehousemen and Helpers, Barre, Vermont, Local Union No. 597, and the Business Panel are labor organizations within the meaning of Section 2(5) of the Act.
3. By forming, dominating, and interfering with the Business Panel and by giving unlawful assistance and support to it, Respondents have engaged in and are engaging in unfair labor practices in violation of Section 8(a)(2) and (1) of the Act.
4. By refusing at all times since March 24, 1962, to bargain in good faith with Chauffeurs, Teamsters, Warehousemen and Helpers, Barre, Vermont, Local Union No. 597, as the exclusive bargaining representative of their employees in the unit found appropriate herein, the Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.
5. The aforesaid labor practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

[Recommended Order omitted from publication.]

**American Federation of Grain Millers, Local Union No. 16,
AFL-CIO and Bartlett and Company, Grain.** *Case No. 17-CP-16. March 29, 1963*

DECISION AND ORDER

Unfair labor practice charges were filed on behalf of Bartlett and Company, Grain, herein called Bartlett, on February 16, 1962, against the Respondent, American Federation of Grain Millers, Local Union No. 16, AFL-CIO. Thereafter, on June 14, 1962, the General Counsel of the National Labor Relations Board, by the Regional Director for the Seventeenth Region, issued a complaint and notice of hearing, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(b)(7)(C) and Section 2(6) and (7) of the Act, as amended.

On July 3, 1962, all parties entered into a stipulation by which they waived a hearing or any other proceeding before a Trial Examiner;

the making of findings of fact and conclusions of law, and the issuance of an Intermediate Report and Recommended Order by a Trial Examiner; and in which they stated their desire to submit this case for findings of fact, conclusions of law, and order directly to the Board.

The parties provided in their stipulation that the record in this case should consist of the charge, the complaint, and the stipulation, which incorporated by reference the record in Case No. 17-RM-205. In lieu of a formal answer, the stipulation also incorporated Respondent's admission of certain paragraphs of the complaint and its denial of others. By an Order dated July 13, 1962, the Board granted the joint motion of the parties, approved the stipulation, and ordered the proceeding transferred to, and continued before, the Board for the purpose of making findings of fact and conclusions of law and for the issuance of a Decision and Order. The Board further directed that the briefs and requests for oral argument be submitted not later than August 3, 1962. The General Counsel and Bartlett have filed briefs.

Upon the basis of the aforesaid stipulation and the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Bartlett, with its principal offices located at Kansas City, Missouri, is engaged in the grain business generally. As part of this enterprise, it operates a grain elevator in Kansas City, Kansas. In the course of business Bartlett annually ships products valued in excess of \$50,000 to destinations outside the States of Missouri and Kansas. At all times material herein, Bartlett has been and currently is an Employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Respondent, American Federation of Grain Millers, Local Union No. 16, AFL-CIO, is, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The facts*

The Respondent is not currently, and has not been since at least April 19, 1962, the certified bargaining representative of employees employed by Bartlett at its River Rail Elevator, at Kansas City, Kansas. A predecessor of Respondent had been certified in 1943 as bargaining representative of a multiemployer unit which included a predecessor of Bartlett. In 1958 Bartlett withdrew from the multi-

employer group bargaining and recognized and contracted with Respondent for a separate unit of Bartlett's employees. The parties completed at least one full contract term covering the single employer unit and were in the process of bargaining for a new contract, after due notice forestalling renewal of the preceding contract, when the strike and picketing occurred which led to the issues involved here.

The mentioned strike and picketing of Bartlett began on July 6, 1960.¹ The parties continued their contract negotiations until September 16, 1960, by which time all striking employees, substantially all those in the unit, had been replaced. At the last bargaining session on September 16, it appears that Bartlett was prepared to submit all unresolved contract issues to an arbitrator. Respondent indicated its willingness to do so provided the striking employees were first reinstated, by displacing their replacements if necessary. This Bartlett refused to do.² Thus, negotiations reached an impasse.

Picketing continued and on December 4, 1961, Bartlett filed a petition with the Board for a representation election (Case No. 17-RM-205). At the January 12, 1962, hearing on this petition, the Respondent disclaimed any representation of the Employer's "present" employees, but carefully avoided extending its disclaimer to the displaced striking employees. The Board dismissed the petition³ in the RM proceeding on April 19, 1962, with the following explanation:

. . . in view of the Employer's withdrawal from that association, the subsequent history of bargaining on a single-employer basis, and the Union's disclaimer of any interest in representing the employees now working for the Employer, we hold that the Union is no longer the bargaining representative of the Employer's employees and that its certification does not extend to this unit.

The Board accordingly amended the certification by deleting Bartlett from the list of companies named therein.

When the picketing began in July 1960, it was confined to the grain elevator operation with signs which bore only the name of the Respondent Union and the words "ON STRIKE." Later that year, Bartlett's name was added to the picket signs. Using the same signs, Respondent extended the picketing to Bartlett's in-town offices in October 1961. On March 2, 1962, Respondent changed the picket signs at both sites and thereafter used the following two signs:

¹Charges alleging violation of Section 8(a)(5) filed on September 16, 1960, were dismissed by the Regional Director on October 26, 1960, and the appeal thereof was sustained by the General Counsel on December 14, 1960.

²Since that date, Respondent has not expressly requested recognition of Bartlett, although it has repeatedly "suggested" that Bartlett should do the "right thing" by the strikers "by getting them back to work."

³Not published in NLRB volumes.

UNFAIR
 BARTLETT & CO.
 NON-UNION
 REFUSES TO EMPLOY
 GRAIN MILLERS
 AF of L-CIO
 I HAVE BEEN
 ON STRIKE
 SINCE JULY 6th 1960 BARTLETT & CO.
 REFUSES TO REEMPLOYEE [sic] ME AND
 THEY HAVE REPLACED ME WITH
 NON-UNION EMPLOYEES

This picketing, as noted above, continued until June 14, 1962, when, pursuant to a stipulation in the Section 10(1) injunction proceeding, the pickets withdrew pending final disposition of the instant case.

Meanwhile, on April 9, 1962, Respondent advised the Regional Office, in response to a questionnaire, that:

. . . the object of the picketing is informational, to inform the general public that Bartlett & Company is unfair in that it does not employ members of . . . Grain Millers or any other union employees.

. . . pickets would be removed in the event that there was a certified bargaining representative for the employees . . . or Bartlett . . . employed union members.

At the grain elevator location, the picketing normally occurred on the sidewalk along the street where public, customer, and truck entrances were located. However, Bartlett has a railroad siding⁴ connected to the Union Pacific Railway tracks at points behind and approximately one-eighth of a mile to the north and south of the street entrance.

When a train approached, the pickets left the customer and public entrances unpatrolled, while they moved to the switching point involved and waved their picket signs at the approaching railroad employees. At times a picket was stationed at each end of the railroad siding.

The parties stipulated that the following refusals to deliver or transport goods to, or to perform services for, Bartlett were due to the presence of Respondent's picket line. Incidents listed as occurring prior to April 19, 1962, are shown for background purposes only.

a. Railroad employees (switching crews) have refused ever since on or about July 6, 1960, to switch railroad cars onto Bartlett's ele-

⁴This siding is used to receive boxcar loads of grain. The cars are transferred by switch engine to a car dumper which unloads the boxcars by dumping their contents into an elevator leg for transport to the scaling function and thence through other operations within the elevator.

vator siding. These refusals continued on an almost daily basis during the period from April 20 to June 13, 1962, inclusive.

b. Beginning on or about July 6, 1960, employees of Western Weighing & Inspection Bureau have consistently refused to perform cooperating services for Bartlett at Bartlett's elevator. At least 15 of these incidents took place during the period from April 20 to June 13, 1962, inclusive.

c. Beginning on or about July 6, 1960, employees of Western Weighing & Inspection Bureau have refused to deliver grain doors and other materials like nails to Bartlett's elevator. These incidents continued until the removal of the pickets on or about June 14, 1962, the last incidents occurring on May 31, June 7, and June 12, 1962.

d. Employees of Missouri Valley Electric Co. refused to make deliveries to the elevator on February 6, 9, and 19, March 22, and April 5, 1962.

e. Employees of Builders Steel Company refused to deliver materials to the elevator on or about February 14, during the last week of April and the first week of May, and on or about June 8, 1962.

f. On or about April 26, 1962, employees of Continental Electric Company refused to make a delivery to the elevator.

No petition under Section 9(c) has been filed since April 19, 1962, the date on which the Board amended the certification as set forth above.

B. Discussion

The General Counsel contends that after the amendment of the certification on April 19, 1962, the picketing had for one of its objects organization or recognition, and that as no representation petition was filed within 30 days after that date, and the effect of the picketing was to interfere with pickups, deliveries, and the transportation of goods and performance of services for Bartlett, such picketing violated Section 8(b)(7)(C) of the Act. Respondent denies that its picketing had one of the proscribed objectives of Section 8(b)(7).

In support of his contention as to the object of the picketing, the General Counsel asserts that the legend on the picket signs used by Respondent is the equivalent of, and has the same meaning as, the words contained in the proviso to Section 8(b)(7)(C) and that, therefore, the picket sign language itself establishes the proscribed objective. Alternatively, the General Counsel contends that when considered in context, including the original object of the strike, Respondent's statements to the Board's Regional Office concerning conditions under which the pickets would be removed, and the language of the picket signs, the picketing is proved to have had a recognition or bargaining objective.

Whether picketing has as an objective recognition or bargaining can ordinarily be determined only by scrutinizing all the evidence in the

case, including events which precede as well as those which accompany the picketing.⁵ Respondent or its predecessor had been the recognized bargaining representative of Bartlett's employees from 1943 to at least 1961. In the spring of 1960, Respondent and Bartlett began negotiations for a new collective-bargaining contract to succeed one which was to expire on May 31, 1960. Unable to reach agreement on the terms of a new contract, Respondent called a strike on July 6, 1960, in which all employees joined. Notwithstanding the strike, contract negotiations continued until an impasse was reached on September 16, 1960. Meanwhile, Bartlett replaced all the striking employees. Picketing which began with the onset of the strike continued, first at Bartlett's elevator and later also at its in-town offices, until enjoined by the court in June 1962. Until Respondent disclaimed representation rights at the January 12, 1962, hearing on Bartlett's representation petition, there is not the slightest evidence that Respondent had abandoned the original objective of the strike, to obtain an acceptable bargaining contract, although to this was undoubtedly added the further objective of securing job reinstatement for the replaced striking employees.

Despite the fact that the Board accepted at face value Respondent's disclaimer of January 12, 1962, that disclaimer is not necessarily conclusive of Respondent's objective in picketing from on and after April 19, 1962, the critical date alleged in the complaint. The present record contains more evidence, principally later happenings, which bears on Respondent's objectives in such picketing. We note in this connection that Respondent used the same picket signs from the beginning of the strike to March 2, 1962, well after the disclaimer, when the signs were changed to read that Bartlett was nonunion, refused to employ members of Respondent, and refused to reemploy the strikers who had been replaced by nonunion employees. These new signs carried language which is substantially equivalent to that in the proviso to Section 8(b) (7) (C), namely, "that an employer does not employ members of, or have a contract with, a labor organization. . . ." Such language, it has been held, may constitute evidence of an organization or recognition objective.⁶ This interpretation of the meaning of the picket sign language is reinforced by the April 9, 1962, letter from the Respondent to the Board's Regional Director in which Respondent stated that the object of the picketing was informational, to inform the public that Bartlett did not employ members of Respondent or of any other union. Moreover, the letter said that the

⁵ See *Barker Bros. Corp. and Gold's, Inc., etc.*, 138 NLRB 478; *Janel Sales Corporation, etc.*, 136 NLRB 1564; *Oakland G. R. Kinney Company, Inc., etc.*, 136 NLRB 335; *Marriott Motor Hotels, Inc., etc.*, 136 NLRB 759.

⁶ *Local Joint Executive Board of Hotel and Restaurant Employees, etc. (Crown Cafeteria)*, 135 NLRB 1183.

pickets would be removed if "there was a certified bargaining representative for the employees . . . or Bartlett . . . employed union members." What is this but a thinly disguised bid for recognition to end the picketing?

We conclude on the basis of all the evidence that an object of Respondent's picketing from on and after April 19, 1962, remained that of "forcing or requiring [Bartlett] to recognize or bargain with [Respondent] as the representative of [its] employees" within the meaning of Section 8(b)(7) of the Act. Further, assuming the posture most favorable to Respondent, that the picketing during the relevant period was informational within the meaning of the proviso to Section 8(b)(7)(C) of the Act,⁷ we find that it was not protected by that proviso because it had the effect of inducing individuals employed by other persons "not to pick up, deliver or transport any goods or not to perform any services." Finally, as the picketing continued for more than 30 days after April 19, 1962, without the filing of a representation petition, we find that it was unlawful under Section 8(b)(7)(C) of the Act.

IV. THE EFFECTS OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth above, occurring in connection with the operations of Bartlett set forth 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, we shall recommend that it cease and desist therefrom and take certain affirmative action that we find necessary to effectuate the policies of the Act.

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

CONCLUSIONS OF LAW

1. Bartlett and Company, Grain, is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Respondent is a labor organization within the meaning of Section 2(5) of the Act.
3. By picketing or causing to be picketed Bartlett and Company, Grain, with an object of forcing or requiring Bartlett and Company, Grain, to recognize or bargain with Respondent as the representative

⁷ Cf. *Atlantic Maintenance Co., et al.*, 136 NLRB 1104.

of Bartlett and Company's employees, although Respondent is not currently certified as the representative of such employees, without a petition under Section 9(c) having been filed within 30 days after the commencement of such picketing, Respondent has engaged in unfair labor practices within the meaning of Section 8(b) (7) (C) 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, American Federation of Grain Millers, Local Union No. 16, AFL-CIO, its officers, agents, representatives, successors, and assigns, shall:

1. Cease and desist from:

(a) Picketing, or causing to be picketed, Bartlett and Company, Grain, where an object thereof is forcing or requiring Bartlett to recognize or bargain collectively with the Respondent, or forcing or requiring the employees of Bartlett to accept or select the Respondent as their collective-bargaining representative, in violation of Section 8(b) (7) (C) of the Act.

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 and meeting halls, in Kansas City, Missouri, and all other places where notices to its members are customarily posted, copies of the attached notice marked "Appendix."⁸ Copies of said notice, to be furnished by the Regional Director for the Seventeenth Region, shall, after being duly signed by official representatives of the Respondent, be posted by the Respondent immediately upon receipt thereof and be maintained by it for 60 consecutive days thereafter. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Mail to the Regional Director for the Seventeenth Region signed copies of the aforementioned notice for posting by Bartlett and Company, Grain, the latter willing, in places where notices to employees are customarily posted. Copies of said notice, to be furnished by the aforesaid Regional Director, shall, after being signed by the Respondent as indicated, be returned forthwith to the Regional Director for disposition by him.

⁸ In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

(c) Notify the aforesaid Regional Director, in writing, within 10 days from the date of this Decision and Order, what steps have been taken to comply herewith.

MEMBERS RODGERS and LEEDOM, concurring:

We are satisfied that the evidence here clearly shows that Respondent's picketing had as its objective and purpose both the organization of Bartlett's employees and Bartlett's recognition of Respondent as the employees' bargaining representative. See our dissent in *Crown Cafeteria* (Supplemental Decision and Order), 135 NLRB 1183.

Moreover, even were we to assume that the picketing had an "informational" purpose, it is clear that work stoppages and delivery failures within the meaning of the proviso to Section 8(b)(7)(C) were "an effect" of the picketing. See our dissent in *Barker Bros. Corp.*, 138 NLRB 478.

Accordingly, we agree with our colleagues that Respondent has violated the Act, and concur in the issuance of the Order herein.

MEMBER BROWN took no part in the consideration of the above Decision and Order.

APPENDIX

NOTICE TO ALL MEMBERS OF AMERICAN FEDERATION OF GRAIN MILLERS, LOCAL UNION No. 16, AFL-CIO, AND TO THE EMPLOYEES OF BARTLETT AND COMPANY, GRAIN, EMPLOYED AT ITS RAIL RIVER ELEVATOR, KANSAS CITY, KANSAS

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, under conditions prohibited by Section 8(b)(7) of the Act, picket or cause to be picketed, or threaten to picket or cause to be picketed, Bartlett and Company, Grain, Kansas City, Kansas, where an object thereof is to force or require the aforesaid company to recognize or bargain with us as the representative of its employees, or to force or require the employees of the aforesaid company to accept or select us as their collective-bargaining representative.

AMERICAN FEDERATION OF GRAIN MILLERS,
LOCAL UNION No. 16, 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, 1200 Rialto Building, 906 Grand Avenue, Kansas City 6, Missouri, Telephone No. Baltimore 1-7000, Extension 731, if they have any questions concerning this notice or compliance with its provisions.

Local 38, International Brotherhood of Electrical Workers, AFL-CIO and S. Simon Construction Company

Local 38, International Brotherhood of Electrical Workers, AFL-CIO and The Cleveland Electric Illuminating Company. Cases Nos. 8-CC-166 and 8-CC-167. March 29, 1963

DECISION AND ORDER

On January 11, 1963, Trial Examiner Sidney Sherman issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Intermediate Report. Thereafter, the Respondent filed exceptions to the Intermediate Report and a brief in support thereof, and the Charging Parties 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 Leedom].

The Board has reviewed the rulings made by the Trial Examiner 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 this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

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

INTERMEDIATE REPORT

Copies of the charges herein were served upon the Respondent on August 3 and 9, 1962, a consolidated complaint issued on September 6,¹ and the case was heard on November 13 and 14. The issues litigated were whether the Respondent had violated Section 8(b)(4)(i) and (ii)(B) of the Act. After the hearing, briefs were filed by all parties.

¹ All events herein related occurred in 1962, unless otherwise stated.