3. By inducing and encouraging those employees of Rye Fuel whose duties required them to enter the premises of Sid Harvey not to cross the picket lines at said premises and by inducing and encouraging those employees whose duties required them to install heating parts not to install parts purchased from Sid Harvey with the object of forcing and requiring Rye Fuel to cease doing business with Sid Harvey, Respondent violated Section 8(b)(4)(i)(B) of the Act.

4. By the above conduct and by implying that retaliatory action might be taken, should Rye Fuel do business with Sid Harvey, Respondent threatened, coerced, and restrained Rye Fuel with the object of forcing and requiring it to cease doing business with Sid Harvey in violation of Section 8(b)(4)(ii)(B) of the Act.

5. General Counsel has failed to sustain the allegations of unfair labor practices in paragraphs 10(a) and 11(a) of the complaint.

[Recommended order omitted from publication.]

International Brotherhood of Electrical Workers, Local Union No. 113, AFL-CIO *and* I.C.G. Electric, Inc.

International Brotherhood of Electrical Workers, Local Union No. 113, AFL-CIO *and* I.C.G. Electric, Inc. *Cases Nos. 27-CC-90 and 27-CP-8. June 21, 1963*

DECISION AND ORDER

On September 10, 1962, Trial Examiner Wallace E. Royster issued his Intermediate Report in the above-entitled proceeding, finding that the 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. The Trial Examiner also found that the Respondent had not engaged in certain other unfair labor practices as alleged in the complaint. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

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 brief, and the entire record in these cases, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, except as modified below.[1]

Upon the basis of all the evidence detailed in the Intermediate Report, we find, as did the Trial Examiner, that an object of Respondent's picketing at the three construction projects involved was to force or require ICG to recognize or bargain with Respondent as the collective-bargaining representative of ICG's employees. Our dissenting colleague apparently assumes that we view the picketing which

[1] No exceptions were filed to the Trial Examiner's finding that the Respondent's picketing at the two Davis-Becker construction projects in April 1962 did not violate Section 8(b)(4)(B) of the Act. Accordingly, Members Rodgers and Leedom adopt such finding *pro forma*.

occurred during ICG's absence from the Chateau and Davis-Becker projects as picketing directed solely against the secondary employers. We do not so view it. The pickets at all times carried signs protesting the substandard working conditions of employees of ICG. In addition, we note that over a period of approximately 4 years, the Respondent had made efforts to obtain a contract with ICG, and that several times during the picketing the Respondent's representative expressly sought a contract with ICG. Plainly, the Respondent was picketing ICG. The absence of ICG from the projects during certain periods does serve to indicate that the picketing which occurred then was not directed solely against ICG, but was directed against the secondary employers as well. Such absence does not establish, however, in view of the wording of the picket signs and the other evidence of Respondent's contemporaneous efforts to secure a contract with ICG, that the picketing was directed solely against the secondary employers.[2] Accordingly, we adopt the Trial Examiner's further finding that as the picketing continued for more than 30 days without the filing of a representation petition, it violated Section 8(b)(7)(C) of the Act.

The Trial Examiner found, additionally, that the picketing had an informational purpose within the meaning of the Section 8(b)(7)(C) proviso because the picket sign stated that the employees of ICG were working under "substandard" conditions. He concluded, however, that the proviso afforded Respondent no defense because the picketing induced a stoppage of services. We do not adopt the Trial Examiner's reasoning in this regard. We do not read the picket sign protest against "substandard" working conditions as being encompassed within the language or purport of the proviso protecting picketing for the purpose of advising the public "that an employer does not employ members of, or have a contract with, a labor organization."[3]

Accordingly, we need not and do not rely on the Trial Examiner's finding, which we otherwise accept, that the effect of the picketing was to induce work stoppages.

ORDER

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

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[2] Cf. *Construction, Production & Maintenance Laborers Union, Local 383, AFL–CIO, et al. (Colson and Stevens Construction Co., Inc.)*, 137 NLRB 1650. We find it unnecessary in this case to reach the question, which our colleague would decide, namely, whether the provisions of 8(b)(7) apply to picketing of one employer for the sole purpose of forcing another employer to recognize or bargain with the picketing union as the representative of its employees.

[3] *Construction, Shipyard and General Laborers Local 1207, AFL–CIO; et al. (Alfred S. Austin Construction Company, Inc.)*, 141 NLRB 283; *Local 3, IBEW, AFL–CIO (Jack Picoult and Al Picoult d/b/a Jack Picoult)*, 137 NLRB 1401.

IT IS FURTHER ORDERED that the complaint, insofar as it alleges violations of Section 8(b)(4)(B) of the Act based on Respondent's picketing at the Davis-Becker Construction Company, Inc., housing and apartment projects in April 1962, be, and it hereby is, dismissed.

MEMBER BROWN, dissenting in part:

Like my colleagues, I would adopt the Trial Examiner's findings with respect to the 8(b)(4)(i) and (ii)(B) aspects of this case. Our sole disagreement stems from my colleagues' additional finding that the Respondent's picketing, in the particular circumstances presented, violated Section 8(b)(7)(C) of the Act.[4] In making this latter finding, my colleagues are evidently satisfied that *all* the Respondent's picketing, even that taking place in the absence of ICG and its employees, is cognizable under Section 8(b)(7) of the Act. Implicit in their decision is the underlying assumption, which I cannot accept, that Section 8(b)(7) is applicable to secondary boycott situations where, as here, a union directs its picketing solely at a secondary employer (such as Chateau and Davis-Becker), in furtherance of its object of forcing a primary employer (ICG) to recognize it as the bargaining representative of the primary's employees.

A strictly literal reading of Section 8(b)(7) admittedly lends support to my colleagues' position.[5] Frequently, however, literalness of construction is not conclusive as to a statute's meaning. Nor does absolute guidance come from a single sentence or member of a sentence. Rather, as the Supreme Court has repeatedly emphasized, we must look to the whole law, including an appraisal of its object and policy.[6] This is particularly important where, as here, we have before us an amendatory section like Section 8(b)(7) which was inserted into an established statutory scheme.

Therefore, in determining the applicability of Section 8(b)(7) in the instant situation, we look initially to the state of the law prior to the 1959 enactment of Section 8(b)(7). For, needless to say, legis-

[4] Section 8(b)(4)(ii)(B) and (7) proscribes picketing where an *object* thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees. The instant complaint alleged, and the Trial Examiner found, that the Respondent's recognitional picketing constituted a violation of the latter section, there was no separate Section 8(b)(4)(ii)(B) allegation with respect to picketing for this specific objective.

[5] The statutory language draws no distinction between primary and secondary picketing activities; it merely refers to picketing "*any* employer where an object thereof is forcing or requiring *an* employer to recognize or bargain with a labor organization as the representative of his employees . . ." [Emphasis supplied.]

[6] See, for example, *Mastro Plastics Corp., and French-American Reeds Mfg Co., Inc.* v. *N.L.R.B.*, 350 U.S. 270, 285; *N.L.R.B.* v. *Lion Oil Company*, 352 U.S. 282, 288; and *Local 761, International Union of Electrical, Radio and Machine Workers, AFL–CIO* v. *N.L.R.B.* (*General Electric Co.*), 366 U.S. 667, 672. In accord, see Sutherland, "On Statutory Construction" (3d ed.), sec. 4703. Also cf. *N.L.R.B.* v. *Drivers, Chauffeurs and Helpers Local Union No. 639, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America* (*Curtis Brothers*), 362 U.S. 274, 291–292; and *McCulloch* v. *Sociedad Nacional de Marineros de Honduras* (*United Fruit Co.*), 372 U.S. 10, 19.

lative language is to be interpreted with the understanding that the Congress was aware of existing statutes and relevant judicial decisions.[7]

An inquiry of this nature unveils several illuminating facts. The Congress, in 1947, took steps to ban secondary pressures for recognitional objects.[8] The Supreme Court commented on this legislative development thusly:

> In the comprehensive review of union practices leading up to the enactment of the Taft-Hartley Act, *picketing* practices were subjected to intensive inquiry by both House and Senate Labor Committees. The Senate bill, as brought to the floor by the Senate Labor Committee, regulated organizational activity in specified situations. Proposed 8(b)(4)(3), now 8(b)(4)(C) of the law, made "recognitional" picketing of a primary employer unlawful only where "another labor organization has been certified as the representative" of his employees. *Section 8(b)(4)(2), now 8(b)(4)(B), prohibited attempts to force recognition through secondary pressure.* [Emphasis supplied.][9]

Then, following passage of the aforementioned amendments, Section 8(b)(4)(B) proved, in general, sufficiently flexible to cope with secondary recognitional picketing.[10] In fact, long before passage of Section 8(b)(7) of the so-called Landrum-Griffin amendments, the Board had construed Section 8(b)(4)(B) to prohibit recognitional picketing which was conducted in the absence of the primary employer and his employees from the picketed premises.[11]

Given this background, it is not surprising that the problem of secondary picketing as a means of attaining recognition was virtually not discussed in the extensive legislative history of Section 8(b)(7). I submit that this was an intentional omission predicated upon Congress' awareness that such picketing activities were already sub-

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[7] Sutherland "On Statutory Construction," sec. 4510.

[8] See 45 Cornell L.Q., 769, 771, and 48 Georgetown L J., 359, 361.

[9] *N.L.R.B.* v. *Drivers, Chauffeurs and Helpers Local Union No. 639, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Curtis Brothers)*, 362 U S. 274, 285–286.

[10] See, for example, *Service Trade Chauffeurs, Salesmen and Helpers, Local 145, etc. (The Howland Dry Goods Company)*, 85 NLRB 1037, enfd. 191 F. 2d 65 (C.A. 2); *Amalgamated Meat Cutters and Butcher Workmen of North America, AFL; Local Union No. 303, etc. (Western, Inc)*, 93 NLRB 336; *United Construction Workers, affiliated with United Mine Workers of America; et al. (Kanawha Coal Operators' Association)*, 94 NLRB 1731, enfd. 198 F. 2d 391 (C.A. 4); *International Brotherhood of Boilermakers, Iron Shipbuilders and Helpers of America, Subordinate Lodge No. 92; etc. (Richfield Oil Corporation)*, 95 NLRB 1191; *Local Union No. 55, and Carpenters' District Council of Denver and Vicinity, etc. (Professional and Business Men's Life Insurance Company)*, 108 NLRB 363, enfd. 218 F. 2d 226 (C.A 10), and *General Truckdrivers, Chauffeurs, Warehousemen & Helpers, Local 270, etc (Diaz Drayage Company)*, 117 NLRB 885, enfd. 252 F. 2d 619 (C.A D C)

[11] See, for example, *Local Union No. 313, International Brotherhood of Electrical Workers, AFL–CIO (Peter D. Furness Electric Co.)*, 117 NLRB 437, enfd. 254 F. 2d 221 (C.A. 3); and *Radio Broadcast Technician's Local No 1225, International Brotherhood of Electrical Workers, AFL–CIO (Rollins Broadcasting, Inc.)*, 117 NLRB 1491.

ject to existing statutory control, as evidenced by cases decided under Section 8(b)(4)(B). The Congress did find some loopholes; but, significantly, it chose to close these loopholes by amending Section 8(b)(4)(B) of Taft-Hartley.[12] Conduct, such as recognitional picketing which threatened, coerced, or restrained secondary employers, was prohibited under the express language of newly enacted subsection (ii) of Section 8(b)(4)(B). Thus, in 1959, secondary picketing for recognition was reassessed by the Legislature in its traditional milieu—Section 8(b)(4)(B) not Section 8(b)(7). This was a perfectly natural development. For there was no reason to ban secondary picketing through the back door of Section 8(b)(7) when such conduct had, in the past, and was still effectively being dealt with through the front door of Section 8(b)(4)(B). Finally, notwithstanding the enactment of Section 8(b)(7), it is interesting to note that secondary recognition picketing cases continue to be handled as 8(b)(4)(B) violations.[13] And rightly so, since the latter section, in conjunction with 10(l), appears to provide an adequate remedy for the specific conduct at hand.

If, as the majority concludes, secondary picketing does fall within the purview of both Sections 8(b)(4) and 8(b)(7), an unfair labor practice occurs under the former section on the first day of picketing, whereas, under 8(b)(7)(C), no violation would occur, absent unusual circumstances, until the picketing proceeded for 30 days. On its face, this reading of the two sections, in my opinion, is incompatible with the harmonious construction intended by Congress.

In computing the 30-day period which provided the basis for its 8(b)(7)(C) finding, the majority combined primary and secondary picketing—even that which took place in the absence of the primary employer and his employees from the picketed premises. For the reasons set forth above, I would not do so. As I cannot find that Respondent engaged in 30 days of recognitional picketing cognizable under Section 8(b)(7), I would dismiss the 8(b)(7)(C) allegation of the instant complaint.

[12] See, for example, vol. 2, Leg. Hist. of Labor-Management Reporting and Disclosure Act, pp. 856 and 475.

[13] *Sheet Metal Workers' International Association, Local Union No. 3, AFL–CIO (Siebler Heating & Air Conditioning, Inc.)*, 133 NLRB 650; *Plumbers Local Union No. 519, United Association of Journeymen, etc (Babcock Company)*, 137 NLRB 596; and *Hotel, Motel, & Club Employees' Union, Local 568, AFL–CIO (Leonard Shaffer Company, Inc., and Arthur A. Kober Company, Inc.)*, 135 NLRB 567.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

Upon separate charges duly filed on April 6, 1962, by I.C.G. Electric, Inc., herein called ICG, the General Counsel of the National Labor Relations Board issued separate complaints [1] alleging that International Brotherhood of Electrical Workers,

[1] That in Case No. 27–CP–8 is dated May 14; in Case No. 27–CC–90, May 23.

Local Union No. 113, AFL–CIO, herein called the Respondent, had by means of picketing engaged in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(B) and Section 8(b)(7)(C) of the National Labor Relations Act, as amended, herein called the Act.

Pursuant to due notice of consolidated hearing, the matter was tried before Trial Examiner Wallace E. Royster in Colorado Springs, Colorado, on June 25 and 26, 1962.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYERS

ICG is a Colorado corporation with its place of business in Colorado Springs, Colorado, where it is engaged in electrical contracting. ICG annually purchases goods and materials in connection with its operations directly from sources outside the State of Colorado and from suppliers who receive such goods and materials directly from sources outside the State of Colorado to a value in excess of $50,000. Ira C. Gilbreth, herein Gilbreth, is the president and active manager of ICG.

Davis-Becker Construction Company, Inc., herein called Davis-Becker, is engaged in Colorado Springs in the construction of apartments and dwelling houses. In connection with this construction, Davis-Becker has awarded subcontracts to: ICG, Olson Plumbing and Heating Company, Inc., Don Esch, Inc., and Herman's Plumbing and Heating.

Chateau Motel, Inc., herein called Chateau, is a motor hotel in Colorado Springs. In 1961, in its own behalf, Chateau began construction of 14 additional units to its motel and in that connection let contracts to ICG, Benbow Plumbing and Heating Company, and Boy's Glass Company.

The evidence establishes and I find that each of the employers named above are persons engaged in the construction industry and thus in an industry affecting commerce within the meaning of Section 8(b)(4)(i) and (ii) of the Act.

I further find that ICG is an employer engaged in commerce or in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Respondent is a labor organization admitting to membership workers engaged in electrical wiring and in other electrical work. The Respondent is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

ICG is a small electrical contractor with about six employees performing electrical installations in the Colorado Springs area. During its business life (about 4 years) it has had no contracts with any labor organization. In some employee classifications, at least, it does not pay wages as high as those paid by employers having contracts with the Respondent. Although ICG employees are paid penalty overtime rates for all hours worked in excess of 40 in any week, such payments are not made merely because an employee works more than 8 hours in a single day as is required of those contracting with the Respondent. It is thus accurate to say that working conditions of ICG employees are not up to the standard of those working under contracts negotiated by the Respondent.

Shortly after ICG began operations in 1958, John J. (Joe) Donlon, Respondent's business agent, asked Gilbreth to sign a contract covering the wages and working conditions of ICG employees. Gilbreth refused. Donlon repeated this request on subsequent occasions and mentioned the matter to Gilbreth in the fall of 1961. As to this last conversation, Gilbreth testified credibly and without contradiction that Donlon asked Gilbreth whether it was possible for the Respondent and ICG to "get together." Gilbreth answered in effect that he was willing to pay the wages set out in Respondent's contracts but would not agree to other conditions which Gilbreth seemingly interpreted as permitting the Respondent to "run" his shop. Donlon said that if ICG would not agree to all of the contract terms further talk about the matter would be futile.

In December 1961, ICG contracted with Chateau to make electrical installations in 14 units then under construction. ICG employees put in a few hours work at Chateau in December but had no occasion to resume work there until February 23, 1962. On February 12 the Respondent placed pickets at Chateau carrying placards reading: "I.C.G. HAS SUBSTANDARD WORKING CONDITIONS FOR ELEC-

TRICIANS. IBEW, LOCAL UNION NO. 113, AFL–CIO." The picketing continued until March 7. In the period of the picketing ICG had occasion to work at Chateau and did work on February 23 and March 2 and 3. The pickets at first patroled an area well back from the street but adjacent to the new units where ICG might be expected to work. At the request of Chateau's manager, and upon his assertion that they were trespassing, they then moved to a public walk at the driveway entry to Chateau. On March 7, with the reluctant consent of ICG, an arrangement for the completion of the electrical work was made with an employer under contract with the Respondent. Thereupon the picketing ceased. From February 12 to March 7, at times when the pickets were physically present at Chateau, employees of other employers refused to cross the picket lines to do plumbing work at Chateau, to install glass there, or to remove or deliver carpeting in connection with cleaning.[2]

In mid 1961, ICG obtained a contract from Davis-Becker to wire a number of houses then under construction in Colorado Springs and somewhat later was awarded by the same contractor the job of wiring on apartment construction in the same city. On March 18 and 25, 1962, both dates falling on Sunday, the Respondent caused pickets to appear for several hours at the housing project, displaying picket signs with the same wording as at Chateau. No work was being performed on these Sundays in connection with construction but a salesman or two was present at the premises to handle potential purchasers.

Beginning on April 2 and continuing until April 9 the Respondent picketed the housing and the apartment projects in the same fashion. At each location the pickets carried signs indicating that the dispute was only with ICG and patrolled as close to the areas where ICG employees were working as they were permitted. Late in the afternoon of April 3, Davis-Becker arranged with Gilbreth that ICG employees not work at the apartment project on April 4 in the expressed hope that the pickets would not, in the absence of ICG workers, resume their patrol. No official of the Respondent was told of this circumstance and the picketing took place as usual.

I find it to be the fact that because of the picketing employees of suppliers refused to make deliveries to both Davis-Baker projects and that employees of certain subcontractors [3] refused to perform services at the projects.

On April 6, at the request of Donlon, Gilbreth met with him at the office of Paul Evans, ICG counsel. Evans testified that before the meeting took place he telephoned Donlon and asked him whether the picketing was to obtain recognition or to inform. Donlon answered, Evans testified, that he had both objects in mind. At the meeting, according to Evans, Donlon said that he "was interested" in having ICG sign Respondent's contract. Gilbreth testified that Donlon on this occasion asked him to sign the contract. At the suggestion of Evans, Donlon left a copy of it for examination. Donlon made no mention of his telephone conversation with Evans in his testimony and as to the meeting in Evans' office, conceded that he told Evans "we would like to have Mr. Gilbreth as a Contractor."

On April 9 a meeting took place between Donlon, Gilbreth, and Barry Davis, a partner in Davis-Becker. Some of the subcontractors on the Davis-Becker projects and representatives of unions whose members were there employed attended. Davis and Gilbreth testified credibly and without contradiction that Donlon said that the purpose of the picketing was to inform and to advertise and that it was taking place at the Davis-Becker projects because it could not be done effectively at the place where ICG maintained its office. Donlon said that he wanted ICG under contract and that if this came about there would be no reason for the picketing. Davis said that he would not ask ICG to sign a contract with Donlon. This evoked a reply either from Donlon, or from another union representative seemingly stating Donlon's position, that if ICG would pay the wages, abide by apprenticeship ratios, and make contributions to a vacation fund (all matters covered by the contract) the objective of the Respondent would be reached. Donlon said that he had been trying to arrange a contract with Gilbreth for the past 2 years and that the picketing was attributable to his lack of success in that endeavor.

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The evidence summarized to this point establishes and I find that the Respondent was engaged in a primary dispute with ICG and not with any of the other employers

[2] These were employees of Benbow Plumbing and Heating Company, Boy's Glass Company, and Mo-Ham Carpet Cleaners, respectively.

[3] Among them Don Esch, Inc., Olson Plumbing and Heating Company, Inc., and Herman's Plumbing and Heating.

affected by the picketing. Leaving aside for the moment whether the picketing was designed to obtain recognition and a contract from ICG, it is plain under the rationale of the *Moore Dry Dock* decision [4] that any right of the Respondent to publicize its dispute with ICG at a location where employees of other employers were working must be balanced against the right of secondary employers, not directly involved in the controversy, to be free from the coercions of a picket line. Counsel for the General Counsel here appears to concede, as in any event I think he must, that Chateau was a *situs* of the dispute at all times when ICG employees were working there. It may be recalled that although the Respondent picketed at Chateau from February 12 to March 7, ICG employees were at work there on 3 days only and on the last of these (March 3, a Saturday) no pickets were present. Counsel for the Respondent contends that as ICG had contracted directly with Chateau to do the work, it was a "principal contractor" and thus deemed to be located on the Chateau jobsite throughout the duration of its contract. I am supplied with no authority for this proposition and I am aware of none that supports it. Lacking authoritative guidance on the point it seems to me to be a matter of no moment that ICG was dealing directly with Chateau in connection with the electrical work rather than with someone who might be designated as a prime contractor. Donlon conceded that when he arranged to have the pickets established at Chateau he did not know whether ICG employees were at work. Granting that it might have been difficult for the Respondent to arrange its picketing precisely to meet the work schedules of ICG here no attempt was made to do so. The picketing took place not in belief that ICG was actually at work at Chateau but with no information at all in that respect.

Although the Respondent, as has been said, had no dispute with Davis-Becker, its pickets carried signs referring to the working conditions maintained by ICG at the Davis-Becker housing project on March 18 and 25. On neither of these Sundays were ICG employees at work nor did the Respondent believe them to be.

In the factual setting of this case neither the Respondent's right to publicize its dispute with ICG by picketing at the apartment and housing projects nor the right of Davis-Becker to be free from such pressures is absolute. If:

> (a) The picketing is strictly limited to times when the *situs* of dispute is located on the [Davis-Becker] premises;
>
> (b) at the time of the picketing the primary employer is engaged in its normal business at the *situs;*
>
> (c) the picketing is limited to places reasonably close to the location of the *situs;* and
>
> (d) the picketing discloses clearly that the dispute is with the primary employer (*Moore Dry Dock, supra*),

the picketing is primary and thus not within the proscriptive reach of Section 8(b)(4)(B).

The General Counsel does not complain of the picketing at the Davis-Becker projects in respect to *situs* except for that occurring on the two Sundays in March and the April 4 date when no employees of ICG were at work. As to the Sunday picketing there is no doubt that no ICG workers were present at the housing project and no doubt that the Respondent knew this to be so. As to April 4, no representative of the Respondent was informed of the intended absence of ICG employees. They had been working on the days preceding that date and returned to work on the days following. I consider that the Respondent in the circumstances reasonably believed that the *situs* of its dispute with ICG remained at the housing project on that day. It appears to be true that one of the pickets was told that ICG was not working but nothing in this record suggests that the picket had any authority on behalf of the Respondent to do more than patrol and display his sign. Even were his agency something more than that, forbidden as he was by Davis-Becker to enter the project where he might verify that assertion, he was not required to accept it.

In picketing the premises of Chateau from February 12 to March 7 on many occasions when employees of ICG were not working there and thus at times when the *situs* of Respondent's dispute with ICG was not at Chateau, the Respondent induced and encouraged employees of employers other than ICG to refuse in the course of employment to perform services for their respective employers and threatened, coerced, and restrained persons engaged in commerce or in an industry affecting commerce with an object of forcing or requiring Chateau to cease doing business with ICG. By picketing the premises of Davis-Becker housing project on the Sundays March 18 and 25 when no employees of ICG or of other employers (save the

[4] *Sailors' Union of the Pacific, AFL (Moore Dry Dock Company)*, 92 NLRB 547.

Davis-Becker salesmen) were working and thus when the *situs* of dispute was not at the housing project, the Respondent threatened, restrained, and coerced Davis-Becker with an object of forcing or requiring Davis-Becker to cease doing business with ICG. The evidence does not persuade that the picketing on these two dates amounted to inducement or encouragement of the Davis-Becker salesmen to refuse to perform services for their employer.[5]

The business entities scheduled to work at Chateau and attempting to work there during the period of the picketing were, with the exception of Mo-Ham Carpet Cleaners, engaged in the construction industry and thus in an industry affecting commerce.[6] It follows that the inducement and encouragement of employees and the threatening, restraint, and coercion of persons accomplished by the picketing was directed to (1) individuals employed by persons engaged in an industry affecting commerce, and (2) persons engaged in an industry affecting commerce. Because there is no evidence that Mo-Ham Carpet Cleaners is engaged in commerce or in an industry affecting commerce and no basis for an inference that it is so engaged, I do not take into consideration the effect of the picketing upon that entity or its employees in connection with the 8(b)(4) aspects of these cases.

Because the picketing at the Davis-Becker projects from April 2 through 9 appears in all respects to have been tailored to the requirements of *Moore Dry Dock, supra,* I find no unlawful inducement, encouragement, threats, restraint, or coercion attending it within the meaning of Section 8(b)(4)(B) of the Act.

I find that Respondent's picketing at Chateau from February 12 to March 7, 1962, in the circumstances recited, constituted a violation of Section 8(b)(4)(i) and (ii)(B) of the Act.

I find that the picketing at the Davis-Becker apartment project on March 18 and 25, 1962, constituted a violation of Section 8(b)(4)(ii)(B) of the Act.

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The record evidence preponderately establishes that the Respondent throughout the picketing was attempting to force ICG to sign its contract. Clearly, Donlon had in the past attempted to obtain Gilbreth's signature to that document and I credit the testimony of Evans that on April 6 Donlon said that recognition was one object of the picketing. Also on April 6 Donlon said that he would like to have ICG as a "contractor" and on April 9 affirmed that design. I recognize that a labor organization may entertain the hope that the passage of time will bring an employer to terms without having a present object of forcing or requiring the employer to capitulate. It is true also that Donlon denied that the picketing had any purpose other than to inform the public of the fact that ICG had established working conditions for its employees which did not conform to Respondent's standards. The fact that such testimony is self-serving subjects it to possible discount but it must nonetheless be given the weight that in context with other circumstances it appears to merit. I think it reasonable to conclude, and I do, that the Respondent has been trying to obtain recognition as bargaining representative of ICG employees for the past 4 years and that the picketing at Chateau and at the Davis-Becker projects was in furtherance of this objective. In reaching this conclusion I disbelieve Donlon's testimony that the picketing had a purpose *only* to inform the public of "substandard" working conditions. As to Donlon's testimony on this point I note that in general he was a truthful witness, that he did not deny telling Evans that the picketing was designed in part to obtain recognition, that he admitted saying to Evans on April 6 that he would like to have ICG as a "contractor," that as to the April 9 meeting with Davis and others he did not deny saying that he wanted ICG under contract, and that if this came about there would be no occasion for picketing. It thus becomes clear that Donlon could bring himself to deny the general allegation as to the purpose of the picketing but when particular statements inconsistent with that denial were attributed to him he did not disclaim them.

The picketing at Chateau extended over a period of about 23 days Eleven days later, on March 18, and still later on March 25 came the Sunday picketing at the housing project. Finally, there was picketing at the apartment and housing projects on a daily basis for about a week. From February 12, the beginning of the picketing, to April 9, its end, more than 30 days elapsed without the filing of a representation petition. Section 8(b)(7) of the Act is in general designed to limit organiza-

[5] *Plumbers Local Union No. 519, United Association of Journeymen, etc. (Babcock Company)*, 137 NLRB 596.

[6] *Sheet Metal Workers International Association, Local Union No 299, AFL–CIO, etc. (S M Kisner, et al., Partners, d/b/a S. M Kisner and Sons)*, 131 NLRB 1196, 1199

tional picketing and permits it for no more than 30 days or a lesser "reasonable period" during which it is contemplated that the desires of the affected employees in connection with representation may be tested by an election. Considering that Colorado Springs is only about 65 miles from Denver where the Board maintains a Regional Office it would seem to me that the duration of the picketing at Chateau encompassed a "reasonable time" within which the Respondent could have filed the required petition. However, decision need not turn on that circumstance. At all times the picketing was directed toward an objective of obtaining recognition from ICG and it seems of no moment that it occurred at the several places where ICG was performing work. I find that the picketing took place at the several locations with substantial continuity for a total of more than 30 days and over a period exceeding 30 days without the filing of a representation petition.

At all times the picket signs carried by agents of the Respondent informed, not untruthfully, that the working conditions of ICG employees were "substandard." Were it the fact that the Respondent had no object to force or require ICG to recognize or bargain with it or to force or require employees of ICG to accept or select the Respondent as their collective-bargaining representative, the picketing, coupled as it was with a cessation of deliveries and a refusal by employees of other employers to cross the picket line, would not come within the reach of Section 8(b)(7)(C).[7] However, as I have found that an object of the picketing at all times was to obtain recognition and a contract from ICG and to impose the Respondent upon employees of ICG as their bargaining representative, and as the effect of the picketing was to induce individuals employed by Benbow Plumbing and Heating Company, Boy's Glass Company, and Mo-Ham Carpet Cleaners,[8] in respect to the Chateau *situs;* individuals employed by Olson Plumbing and Heating Company, Inc. and Don Esch, Inc., in respect to the Davis-Becker apartment project *situs;* and individuals employed by Herman's Plumbing and Heating in respect to the Davis-Becker housing project *situs,* not to perform services for their respective employers,[9] it follows and I find that the protection afforded informational picketing in the proviso to Section 8(b)(7)(C) was lost and that the picketing in the period from February 12 to April 9 was conducted in violation of Section 8(b)(7)(C) of the Act. The fact that the picketing on the Sundays, March 18 and 25, could not have interfered with deliveries because none were scheduled to be made on those days is of no moment. It is the total "effect of such picketing" which must be appraised.

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 employers 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 unfair labor practices it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

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

CONCLUSIONS OF LAW

1. I.C.G. Electric, Inc. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Davis-Becker Construction Company, Inc.; Olson Plumbing and Heating Company, Inc.; Don Esch, Inc.; Herman's Plumbing and Heating, Chateau Motel, Inc.; Benbow Plumbing and Heating Company; and Boy's Glass Company are persons engaged in an industry affecting commerce within the meaning of Section 8(b)(4)(i) and (ii) of the Act.

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[7] *Carpenters District Council of St. Louis, AFL–CIO (Vestaglas, Inc.)*, 136 NLRB 855.

[8] In connection with the violation of 8(b)(7)(C) it is irrelevant that Mo-Ham Carpet Cleaners may not be engaged in commerce or in an industry affecting commerce.

[9] I find no merit in the argument of Respondent's counsel to the effect that no employment relation is established by the evidence running between the individuals refusing to cross the picket lines and the persons named here as employers.

3. The Respondent is a labor organization within the meaning of Section 2(5) of the Act.

4. By picketing at Chateau Motel, Inc., with an object of forcing or requiring Chateau to cease doing business with ICG, the Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(B) of the Act.

5. By picketing at the Davis-Becker Housing Project on March 18 and 25, 1962, with an object of forcing or requiring Davis-Becker Construction Company, Inc., to cease doing business with ICG, the Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(4)(ii)(B) of the Act.

6. By picketing at Chateau Motel, Inc., and at Davis-Becker apartment and housing projects with an object of forcing or requiring ICG to recognize and bargain collectively with the Respondent as the representative of its employees and with an object of forcing or requiring the employees of ICG to accept or select the Respondent as their collective-bargaining representative although the Respondent has not been certified as the representative of any such employees and has not since the inception of such picketing within a reasonable period of time filed a petition under Section 9(c) of the Act, the Respondent has committed unfair labor practices within the meaning of Section 8(b)(7)(C) of the Act.

7. 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, I recommend that the Respondent International Brotherhood of Electrical Workers, Local Union No. 113, AFL–CIO, Colorado Springs, Colorado, its officers, representatives, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening, coercing, or restraining Chateau Motel, Inc., or Davis-Becker Construction Company, Inc., or any other person engaged in commerce or in an industry affecting commerce where in either case an object thereof is to force or require Chateau Motel, Inc., or Davis-Becker Construction Company, Inc., or any other person engaged in commerce to cease doing business with I.C.G. Electric, Inc

(b) Inducing or encouraging employees of Benbow Plumbing and Heating Company or Boy's Glass Company or any individuals employed by any person engaged in commerce or in an industry affecting commerce to engage in a strike or a refusal in the course of employment to perform any services with an object of forcing or requiring Chateau Motel, Inc. to cease doing business with I.C.G. Electric, Inc.

(c) Picketing or causing to be picketed or threatening to picket I.C.G. Electric, Inc., in circumstances violative of Section 8(b)(7)(C) of the Act, wherein an object thereof is forcing or requiring I.C.G. Electric, Inc , to recognize or bargain with it as the representative of employees of I.C.G. Electric, Inc.

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

(a) Post at its business offices and meeting halls, copies of the attached notice marked "Appendix." [10] Copies of said notice, to be furnished by the Regional Director for the Twenty-seventh Region, shall, after having been duly signed by Respondent's representative, be posted immediately upon receipt thereof, and be maintained for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Mail to the Regional Director for the Twenty-seventh Region signed copies of the aforementioned notice for posting by I.C.G. Electric, Inc., or any of the employers affected by the unfair labor practices found herein, at the election of such employers. Copies of said notices, to be furnished by the Regional Director for the Twenty-seventh Region, shall, after being signed by the Respondent, be forthwith returned to the said Regional Director for disposition.

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[10] In the event that this Recommended Order is adopted by the Board, the words "A Decision and Order" shall be substituted for the words "The Recommended Order 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 "

(c) Notify the Regional Director for the Twenty-seventh Region, in writing, within 20 days from the date of receipt of this Intermediate Report and Recommended Order, what steps have been taken in compliance therewith.[11]

[11] In the event that this Recommended Order is 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 herewith."

APPENDIX

NOTICE TO ALL MEMBERS AND TO ALL EMPLOYEES OF I.C.G. ELECTRIC, INC.

Pursuant to the Recommended Order of a Trial Examiner 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 threaten, coerce, or restrain Chateau Motel, Inc., or Davis-Becker Construction Company, Inc., or any other person engaged in commerce or in an industry affecting commerce, where an object is to force or require Chateau Motel, Inc., or Davis-Becker Construction Company, Inc., or any other person engaged in commerce to cease doing business with I.C.G. Electric, Inc.

WE WILL NOT in violation of Section 8(b)(7)(C) of the Act picket I.C.G. Electric, Inc., or threaten or cause such picketing where an object thereof is forcing or requiring I.C.G. Electric, Inc., to recognize or bargain with us as the representative of its employees.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,
LOCAL UNION NO. 113, 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. Interested persons may communicate directly with the Board's Regional Office, Room 609, Railway Exchange Building, 17th and Champa Streets, Denver, Colorado, 80202, Telephone No. Keystone 4-4151, Extension 513, if they have any question concerning this notice or compliance with its provisions.

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