

**Alton-Wood River Building and Construction Trades Council; Local 646, International Hod Carriers, Building and Common Laborers Union of America, AFL-CIO; Retail Store Employees Local 344, Retail Clerks International Association, AFL-CIO; Local 553, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO; Local 525, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Jerseyville Retail Merchants Association.** *Case No. 14-CP-32. September 12, 1963*

### DECISION AND ORDER

On April 8, 1963, Trial Examiner Eugene E. Dixon issued his Intermediate Report in the above-entitled proceeding, finding that Respondents except Respondent Council had engaged in the unfair labor practices alleged in the complaint and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the attached Intermediate Report. Thereafter, the Respondents filed exceptions to the Intermediate Report and a supporting brief. The General Counsel and the Charging Party filed briefs in support of the Intermediate Report.

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 and the entire record in the case, including the exceptions and briefs, and hereby adopts the findings and conclusions of the Trial Examiner only to the extent consistent with this Decision and Order.

The Trial Examiner found that the Respondents<sup>1</sup> violated Section 8(b)(7)(A) of the Act by picketing for purposes of recognition at the stores, all located in Jerseyville, Illinois, of the members of the Charging Party, Retail Association, at a time when the Association, on behalf of its members, recognized Local 50, Congress of Independent Unions, and when a bargaining agreement between the Association and that Union barred raising questions concerning the representation of the member companies' employees. We disagree with the Trial Examiner's finding of a violation because we do not believe that the picketing which occurred here had a recognitional or organizational purpose within the meaning of Section 8(b)(7)(A).

For several years prior to the inception of this unfair labor practice proceeding, William Doty, secretary-treasurer of Local 525, IBT, had

<sup>1</sup> The Trial Examiner dismissed the complaint as to Respondent Alton-Wood River Building and Construction Trades Council, as there was no evidence showing the Council was involved in the picketing he found to be unlawful.

been disturbed by what he considered poor working conditions in Jerseyville, Illinois, and had frequently sought to interest AFL-CIO union representatives to aid in doing something about the situation. In the spring of 1962 he finally secured extensive support for his project and set up the "Cooperative Educational Committee" to coordinate and carry out activities in Jerseyville; 78 representatives of various AFL-CIO affiliated unions signed a joint appeal to "Union Members, Family and Friends" and publicized it in a weekly trade union newspaper. The substance of the appeal was that in Jerseyville, a community with a large number of union members, there were many merchants opposed to the ideals of organized labor and that some had formed or subscribed to "so-called 'Independent Unions'" with contracts whose wage scales were so low that they defeated the purpose of "Prevailing Labor Agreements" and were detrimental to the continued prosperity of the general area; "they" must be stopped, the appeal added, and it pointed out that the most powerful weapon a wage earner has is the dollar he spends. The appeal accordingly closed with a request that "our membership institute a personal boycott of these merchants and business establishments."

The Respondents thus launched their campaign to educate and persuade union members and the public to trade at establishments which hire employees who are members of the AFL-CIO and the Teamsters. Picketing in support of the "appeal" began in mid-April and continued until December,<sup>2</sup> and was directed at the consuming public. A wide variety of picket signs was utilized; some advised shoppers that they could "boost living standards by withholding patronage from unrecognized establishments, AFL-CIO and IBT"; others requested that shoppers patronize merchants who "cooperate with central bodies, AFL-CIO," and further urged them not to "be misled by phony unions." A number of the signs also urged that the "fair trades list" (a "do not patronize" list) be used in making purchases. This list contained the names of 28 firms, the first 7 of which were members of the Association. In addition to carrying signs, the pickets handed out literature including copies of the "Labor Tribune," a union-supported newspaper, which carried moderately long articles on the Jerseyville "informational" picketing campaign. In summary, the articles stated that AFL-CIO and IBT officials urged boycotting stores not employing their members and also attacked the Congress of Independent Unions and its locals as "phony unions."

The picketing itself, including the hand distribution of literature, occurred only during the busiest shopping hours in Jerseyville—from 6 until 9 on Friday evenings and from 9 a.m. to 5 p.m. on

<sup>2</sup> At that time the Respondents agreed to suspend picketing pending the outcome of this proceeding.

Saturdays. However, unlike customary picketing activity, the pickets did not direct their activities against any specific store or stores; that is, no one paced up and down in front of any particular establishment. Instead, the pickets simply walked back and forth through Jerseyville's main shopping district, a distance of some four or five blocks. Furthermore, none of the picket signs mentioned the name of any firm or store. Rather, as indicated above, the picketing message was limited, in effect, to solicitation of the public to shop at AFL-CIO-organized stores, and not at "unfair" establishments.

It seems apparent from the foregoing that the picketing, like the "joint appeal" it was designed to implement, did not have as its target recognition by the assertedly "unfair" employers or organization of their employees. Rather, its essential thrust was to promote a consumer boycott of "unfair" stores and consumer support for the "fair"—i.e., AFL-CIO-IBT organized—employers. And the picketing was intended solely to support the purpose stated in the "appeal." The picketing was not preceded by any demands for recognition or by any attempt to organize employees represented by the Association. No such recognitional demands, with but one isolated exception, or organizational efforts accompanied the picketing: Nor was this a surprising development in the particular facts of this case. For retail store clerks comprise the largest segment in the existing bargaining unit, and of all the Respondent Unions participating in the joint picketing effort only the Retail Clerks could have even entertained any organizational or recognitional objective without ignoring traditional jurisdictional boundaries.<sup>3</sup>

Moreover, the picketing, which arose out of the aforescribed unique factual milieu, reflects in its form, its timing, the general message of its signs, and the fact that it was not specifically directed at any particular employers, their suppliers, customers, or employees, an attempt to achieve the limited purpose of disseminating information to the buying public generally in order to persuade the public to confine its patronage to AFL-CIO- and IBT-organized establishments. Success in persuading potential consumers to shop accordingly would undoubtedly assist AFL-CIO and IBT union members in their efforts to continue to enjoy established wages. In fact, this would appear to be a very realistic area of concern here since the current C.I.U.-Association contract contains a wage scale described by the Trial Examiner as containing "starting rates far below those advocated and recognized by Respondent in their contracts."

The language of Section 8(b)(7) clearly discloses, as the Board has held, that finding a violation depends initially upon resolving the

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<sup>3</sup> Parenthetically, it is interesting to note that the entire "joint appeal" was not initiated or coordinated by the Retail Clerks, but rather by the Teamsters, through Secretary-Treasurer Doty.

threshold issue of whether the Respondent Unions are picketing for a recognitional or organizational object. Obviously, the answer to this question involves an objective factual analysis of all the relevant evidence presented by each particular case. Having done so in the instant case, we are unable to discern any organizational or recognitional object in the Respondent's picketing.

However, the Trial Examiner apparently, and our dissenting colleague directly, relies on a number of scattered incidents which occurred during the 8 months of picketing to conclude that the Respondent's picketing did have a proscribed objective. First, reference is made to a request made some 3 weeks after the picketing started by representatives of Respondent Retail Clerks for recognition by Kranich Drug Store, a member of the Association. The request was immediately refused and the matter was then dropped. Second, they rely on certain comments by Doty, as quoted in the Labor Tribune, that potential customers should tell storeowners that they will not get their business until they deal with an AFL-CIO or IBT union. Lastly, they seem to argue that picketing to boycott the "unfair" employers is actually picketing to organize or to gain recognition from them. With respect to the latter contention, it is clear that picket sign language and other statements urging consumers to avoid the "unfair" stores do not alone establish a real purpose of organizing or gaining recognition from such stores.<sup>4</sup> And we are not persuaded on the entire record before us that the two other aforementioned incidents which occurred prior to Doty's November 8, 1962, disclaimer of a recognitional object are sufficient to demonstrate that the picketing was for an object proscribed by Section 8(b)(7). We shall therefore dismiss the complaint.

[The Board dismissed the complaint.]

MEMBER LEEDOM, dissenting:

I would adopt the findings, conclusions, and recommendations of the Trial Examiner.

I believe it is abundantly clear, as the Trial Examiner found, that the picketing here, however unique its form, had a recognitional objective. The majority finds that the picketing was designed to support a consumer boycott of "unfair" employers and that in style and message it was directed exclusively to consumers. Such factors do not, however, preclude the presence of a proscribed objective. Neither does the fact that there was no demand for recognition made prior to the picketing foreclose a finding that a recognitional objective never-

<sup>4</sup> See *Alton Myers Brothers, Inc.*, 136 NLRB 1270; also, cf. *Calumet Contractors Association*, 133 NLRB 512; *Claude Everett Construction Company*, 136 NLRB 321; and *Keith Riggs Plumbing and Heating Contractor*, 137 NLRB 1125

theless existed.<sup>5</sup> On the contrary, such an objective is apparent from the following: (1) The Retail Clerks' unsuccessful request after the picketing commenced that it be recognized by Kranich Drug Store; (2) Doty's statement urging persons to explain to "unfair" employers that they will not get their business until they deal with AFL-CIO unions; (3) the assertion in the joint appeal that the existing contracts "defeated the purpose of 'Prevailing Labor Agreements'";<sup>6</sup> and (4) the language of the picket signs requesting consumers not to deal with "unrecognized business establishments."<sup>7</sup> Certainly, there was no way for an employer to avoid the Respondents' censure except by recognizing an AFL-CIO or IBT union. Moreover, it is evident from the tenor of Respondents' publicity that they were not merely seeking to induce the public to patronize stores whose employees they represented, but were instead actively seeking to displace Local 50, Congress of Independent Unions, as the bargaining agent for the employees represented by Local 50. Particularly significant in this respect, in my opinion, are the references to "phony unions" in connection with the Congress of Independent Unions and its locals; the linking of merchants assertedly opposed to organized labor with the "so-called 'Independent Unions'"; and the statement that "they" must be stopped.

When all this relevant evidence is considered in context it is clear and I would find that Respondents' picketing, although interlarded with ostensible appeals to the consumer, was part of a concerted campaign having as an object recognition by the so-called unfair employers then dealing with Local 50. As the recognition of Local 50 by the picketed employers was lawful, and as the existing contract barred the raising of a question concerning representation, the picketing was proscribed by Section 8(b) (7) (A) of the Act. In concluding that this picketing was not proscribed, my colleagues have accepted the fiction that picketing which realistically seeks recognition and can be avoided by granting such recognition is nevertheless not recognition picketing because the picketing unions have not clearly designated it as such. Accordingly, I must dissent from my colleagues' dismissal of this complaint.

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

<sup>5</sup> See *Sam M. Melson, d/b/a Sam Melson General Contractor*, 138 NLRB 460

<sup>6</sup> See the dissenting opinion in *Calumet Contractors Association*, 133 NLRB 512.

<sup>7</sup> See *Janel Sales Corporation*, 136 NLRB 1564

## INTERMEDIATE REPORT

### STATEMENT OF THE CASE

This proceeding, brought under Section 10(b) of the National Labor Relations Act, as amended (61 Stat. 136), herein called the Act, was heard before Trial Examiner Eugene E. Dixon at St. Louis, Missouri, on January 22, 1963, pursuant to due notice with all parties being represented by counsel. The complaint, issued by

a representative of the General Counsel for the National Labor Relations Board (herein called, respectively, the General Counsel and the Board) on December 12, 1962, and amended the following day, was based upon charges originally filed on June 8, 1962, by Dan Edwards as president of the Jerseyville Retail Merchants Association, and by Lester Hughes as president of the Jersey County Employers Association, and upon amended charges filed by the same two Charging Parties on June 27, 1962, and upon a second amended charge filed on behalf of the Jerseyville Retail Merchants Association by its attorney. The complaint as amended alleged that the Alton-Wood River Building and Construction Trades Council; Local 646, International Hod Carriers, Building and Common Laborers Union of America, AFL-CIO; Retail Store Employees Local 344, Retail Clerks International Association, AFL-CIO; Local 553, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO; Local 525, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Respondents, had engaged in unfair labor practices in violation of Section 8(b)(7)(A) of the Act, by picketing members of the Jerseyville Retail Merchants Association with an object of requiring or forcing said Association to recognize or bargain with Respondents or their affiliated labor organizations and/or to force or require employees of said association members to accept or select Respondent Unions or their affiliated labor organizations as their collective-bargaining representative notwithstanding that neither Respondent Unions nor any of their affiliated labor organizations were currently certified as the representative of such employees and notwithstanding further that the Employers Association had lawfully recognized in accordance with the Act another labor organization as the representative of such employees, and the question concerning the representation of such employees could not appropriately be raised under Section 9(c) of the Act.

In their duly filed answers<sup>1</sup> the Respondents denied the commission of any unfair labor practices and alleged certain defenses which will be treated below.

Upon the entire record in the case,<sup>2</sup> and from my observation of the witnesses, I make the following:

#### FINDINGS OF FACT

##### I. THE BUSINESS INVOLVED

During the 12 months prior to the issuance of the complaints, members of the Jerseyville Retail Merchants Association in the course and conduct of their several business operations sold and distributed products the gross value of which exceeded \$500,000. During the same period of time said Association in the course and conduct of their business operations at Jerseyville, Illinois, received goods valued in excess of \$50,000 transported to their places of business in interstate commerce directly from States of the United States other than the State of Illinois. I find the Association is and has been at all times material herein engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

##### II. THE LABOR ORGANIZATIONS

Local 646, International Hod Carriers, Building and Common Laborers Union of America, AFL-CIO; Retail Store Employees Local 344, Retail Clerks International Association, AFL-CIO; Local 553, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO; Local 525, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and Local No. 50, Congress of Independent Unions, are labor organizations within the meaning of Section 2(5) of the Act.

<sup>1</sup>Through an inadvertence Respondents' answers were not included with the formal papers received in evidence. Accordingly, by stipulation of the parties, I hereby now receive in evidence as General Counsel's Exhibit No. 1(l) answer of the Building Trades Council to the original complaint; 1(m) answer of Local 646, Laborers Union to the original complaint; 1(n) separate, joint answer of Local 344, Retail Clerks, Local 553, Pipe Fitters, and Local 525, Teamsters to the amended complaint; 1(o) answer of the Building Trades Council to the amended complaint; 1(p) answer of Local 646, Laborers Union to the amended complaint. Also stipulated were the commerce facts found herein.

<sup>2</sup>The transcript of the court injunction hearing in this matter was made part of this record by stipulation which also provided that I was to rule *de novo* on all objections and motions made therein. I see no reason to disturb any of the judge's rulings

## III. THE UNFAIR LABOR PRACTICES

On September 7, 1960, the Congress of Independent Unions (herein called the CIU) was certified by the Board as the collective-bargaining agent of the employees of the Jerseyville Retail Employers Association, sometimes referred to herein as the Association. Thereafter Local No. 50 of the CIU and the Association entered into a collective-bargaining relationship with its second contract being effective for 2 years through October 1963.

In the spring of 1962 some 78 representatives of various AFL-CIO-affiliated unions under the chairmanship of William A. Doty, secretary-treasurer of Local 525, International Brotherhood of Teamsters (not affiliated with the AFL-CIO) entered into and signed a joint appeal<sup>3</sup> to their combined membership and their friends to "institute a personal boycott" of the Association and its members by patronizing only "the fair merchant and other businesses that are fair." This appeal was publicized in an article carried in the Southern Illinois Labor Tribune<sup>4</sup> on May 10, 1962, appearing under the following banner:

Why AFL-CIO and their Members Should Boycott Firms and Merchants Who Do Not Hire their Own Members But Employ those From "Congress of Independent Unions."

The article was summarized in the following subheading:

Group's Educational Committee Distributes pamphlets, signed by 78 top union officials, and Picket for Educational alleged Lower Wage Scales of CIU members which is Detrimental to Continued Prosperity of Area.

As indicated in the above quotation, to implement the boycott appeal picketing was resorted to. This picketing began about the middle of April and continued to about the middle of December when Respondents volunteered to abstain from it pending a decision by the U.S. District Court on the Board's 10(1) injunction petition. This picketing was conducted "generally on Fridays, between the hours of 6 and 9 p.m. and on Saturdays, between the hours of 9 a.m. and 5 p.m.," the pickets walking the three or four blocks length of the Jerseyville business area which included businesses not in the Association.

An attempt was made to establish a quota for the furnishing of pickets by each local union as was reflected in the minutes of an August 7 meeting of the Alton-Wood River Federation of Labor, an organization made up of building trades<sup>5</sup> and industrial unions. Officials of all the Respondents personally participated or aided in the picketing. The minutes of a March 6 meeting of Respondent Council reveal that:

A report was made on the picketing in Jerseyville, Illinois. All crafts are taking their turns in manning the picket line. The line is accomplishing its purpose.

During the picketing signs were carried bearing the following legends:

You can boost your own living standards by withholding patronage from unrecognized business establishments, AFL-CIO and IBT.

Get in the act withhold your purchasing power from anti-labor employers and merchants, AFL-CIO and IBT.

The most powerful economic weapon of labor is the purchase power of its membership—use the fair trades list—AFL-CIO and IBT.

Patronize merchants who cooperate with the central bodies, AFL-CIO and IBT.

Conscious purchasing is the strongest link in maintaining a high standard of living—use the central bodies fair trades list, AFL-CIO and IBT.

Signs of the times—bona fide union labels—shops cards—buttons, AFL-CIO and IBT.

<sup>3</sup> Representatives of all of the named Respondents signed except of the Alton-Wood River Building and Construction Trades Council. Financial contributions to the cause were made by four of the Respondents. A \$50 contribution was also made in the name of Dennis Chester by his personal check. Chester is the executive secretary of Respondent Alton-Wood River Building and Construction Trades Council.

<sup>4</sup> Under its masthead Southern Illinois Labor Tribune is described as "an official weekly trade union newspaper voicing the interests of the American Federation of Labor and the Congress of Industrial Organizations." Named as one of its endorsers is the Alton-Wood River Building and Construction Trades Council.

<sup>5</sup> The building trades unions were also members of Respondent Council.

Get for the forward look, don't be misled by phony unions, use the fair trades list, AFL-CIO and IBT.

The union label is the emblem of industrial democracy, AFL-CIO and IBT. Get on the beam buy only union products. Smoke out anti-labor opposition and propaganda by purchasing from the fair trades list, AFL-CIO and IBT.

In addition to the picket sign messages, printed material was also given to the public in the form of handbills and copies of the Southern Illinois Labor Tribune. The following are excerpts from the various issues of that publication pointed to by the General Counsel which he contends "patently exhibit a continuing recognitional objective in the picketing."<sup>6</sup>

April 12, page 6, columns 5 and 6:

Business Representative Robert "Bob" Screier who headed the negotiating committee said they were the only two unionized food store outlets in Jerseyville. He urged residents of the area to give their patronage exclusively to business firms which employ members of AFL-CIO affiliates.

Same issue, page 5, columns 1 and 2:

Headline—"FIRMS EMPLOYING CIU LABOR AND NOT AFL-CIO." lists Retail Merchants Association members and other CIU employers in Jerseyville with the following statement: "Check the list below of firms which employ and allegedly dominate the 'Congress of Independent Unions.' Clip out this list and use for future reference. Don't Patronize them, say AFL-CIO and Teamster union officials."

Same issue, front page:

Headline—"AFL-CIO AND TEAMSTER UNIONS URGE THEIR MEMBERS TO ONLY PATRONIZE AFL-CIO EMPLOYERS-ESTABLISHMENTS: PLEASE PATRONIZE NO OTHER."

Same issue, page 6:

Contains the usual type "We Do Not Patronize" lists which contain the usual wording, *inter alia*, ". . . No firms or products are placed on 'We Do Not Patronize' lists until every effort is made to peaceably negotiate Union agreements."

Same issue, page 7, column 2:

Byline—"WILLIAM DOTTY, CHAIRMAN COOPERATIVE EDUCATION COMMITTEE AND SECRETARY TREASURER TEAMSTERS LOCAL 525" states, *inter alia*, ". . . Even if your purchases involve a union that is not the one which your husband belongs. Support it! . . ."

May 10, front page, columns 1 to 4:

Headline—"WHY AFL-CIO AND TEAMSTER MEMBERS SHOULD BOYCOTT FIRMS AND MERCHANTS WHO DO NOT HIRE THEIR OWN MEMBERS BUT EMPLOY THOSE FROM 'CONGRESS OF INDEPENDENT UNIONS'"

April 19, page 7, column 2, last paragraph:

"'AS we pointed out in last week's Labor Tribune,' Doty said, '. . . Finally, if you patronize any FAIR EMPLOYER tell him why you are giving him your patronage: If you know any CIU employer, tell him why you WON'T patronize him *until he deals with the respective AFL-CIO or Teamster affiliates who have jurisdiction in his field.*' Doty concluded." [Emphasis supplied.]

April 26, page 1, columns 3 to 5:

Headline—"INFORMATION PICKETING IS HURTING JERSEYVILLE, ILLINOIS, BUSINESS FIRMS NOT DEALING WITH AFL-CIO UNIONS." [Emphasis supplied.]

May 17, page 2, columns 4 and 5:

Headline—"LIST OF JERSEYVILLE AREA FIRMS NOT HIRING AFL-CIO OR TEAMSTERS BUT MEMBERS OF SO-CALLED 'CIU.'"

May 31, page 1, columns 1 and 2:

Headline—"WHY THE AFL-CIO & TEAMSTER ACCEPTED THE CIU-EMPLOYERS CHALLENGE: PICKETING CONTINUES."

Same article, first paragraph:

States, "The Southern Illinois AFL-CIO together with the Teamsters Unions intend to oppose what it considers a pseudo-union which calls itself the 'Congress of Independent Unions' *wherever it challenges or seeks to infiltrate into the AFL-CIO movement.*" [Emphasis supplied.]

<sup>6</sup>Doty testified that he mailed the first issue of the paper carrying material on the campaign to all registered voters in Jersey County. Because of the mailing cost he had subsequent copies passed out on the picket line. He did this, he explained in his testimony, "so that we could get our side of the story across to the general public." In view of the foregoing, Respondents' contention that the newspaper articles were not binding on Respondents is without merit.

June 7, page 1, columns 3 to 6:

Headline—"AFL-CIO AND TEAMSTERS FURNISH SKILLED WORKMEN TO EMPLOYERS; TYPICAL IS IBEW 309 WHICH GRADUATES 92 JOURNEYMEN; UNIONS CONTINUE FIGHT ON CIU GROUPS. Informational Picketing by AFL-CIO and Teamster Continues in Jerseyville, Ill. Area To Urge General Public, And Especially Their Union Members, To *ONLY Patronize Their 'Fair' Employers Under Contract With Their Particular Long-Established Unions.*" [Emphasis supplied.]

June 14, page 1, columns 5 and 6:

". . . The purpose of the educational campaign is to persuade union members and other residents of Jerseyville and the surrounding areas to *patronize firms* and services *which employ, exclusively, only members of AFL-CIO and Teamsters affiliates* and to *refrain from patronizing firms which employ members of the self-styled Congress of Independent Unions (CIU)* . . ." [Emphasis supplied.]

June 21, page 1, columns 3 and 4:

Headline—"INFORMATION UNION PICKETING AT JERSEYVILLE IS GETTING GOOD RESULTS, COMMITTEE REPORTS; TAKING AUTO LICENSES OF PICKET LINE CROSSERS." Article states, *inter alia*, ". . . 'Our educational campaign is coming along well,' stated William Doty . . . 'All of the people who are circulating our pamphlets and copies of our campaign . . . the importance of giving their patronage to stores and firms employing only AFL-CIO or Teamster members, and refraining from patronizing those which identify themselves with the Congress of Independent Unions . . .'"

Same article continues at page 6, columns 3 and 4:

". . . In an adjoining column on page 1, the Labor Tribune is publishing the first of a number of licenses of automobiles whose drivers or occupants were seen leaving their cars and entering places who do not employ AFL-CIO or Teamster members. Please check the names and addresses of the persons to whom the car licenses was issued. If you know them, ask them to give their patronage to firms which employ AFL-CIO or Teamster members. They too can help us. If they know the business people well to whom they or occupants of their car give their patronage, may we suggest they *inform them that their future patronage depends upon their disassociation with the alleged employer-dominated Congress of Independent Unions.* This organization is challenging the AFL-CIO and Teamster organizations in the area, and we have accepted that challenge. The free choice is theirs."

Paul Kranich, owner of Kranich Drug, a member of Retail Merchants, whose employees are represented by Local No. 50 CIU, pursuant to that organization's certification and current contract with Retail Merchants, testified credibly concerning a conversation he had 3 or 4 weeks after the picketing started with Richard Habing and Robert Schreier of Respondent Retail Clerks, Local 344. Kranich knew Habing; Schreier, the business agent, identified himself. In the conversation that lasted 3 or 4 minutes Schreier asked Kranich if he "would be interested in joining the union"—the AFL-CIO. Kranich declined, explaining to Schreier that he "already belonged to another union." On the stand Kranich explained that it was his employees, not he, that belonged to a union—Local No. 50, CIU.

### Contentions and Conclusions

The General Counsel and the Charging Party maintain that the picket signs and statements contained in the newspapers which were passed out by Respondents together with the above request for recognition made by Schreier to Kranich clearly and patently show that a purpose of the picketing was to force or require the Association or its members to recognize or bargain with Respondents.

The Respondents deny that any such showing is made by the evidence. They maintain that the picketing was "undertaken to induce consumers not to patronize establishments which pay sub-standard wages<sup>7</sup> and maintain sub-standard working conditions" and that such informational picketing (notwithstanding that it occurs where another union has been certified) has been approved by the Board. Respondents also defend on the grounds that the Association is an assisted union within the meaning of Section 8(a)(2) of the Act and thus does not come within the purview of Section 8(b)(7)(A). The contention is also made that the Alton-Wood River Building and Construction Trades Council is not a labor organization within the meaning of the Act.

<sup>7</sup>The Association contract with Local No 50 shows starting rates far below those advocated and recognized by Respondents in their contracts.

There is no doubt that absent an object of recognition or bargaining so-called area standards picketing is "outside the literal scope of Section 8(b)(7) altogether." *Leonard Smitley et al. d/b/a Crown Cafeteria*, 135 NLRB 1183; *Alton Myers Brothers, Inc.*, 136 NLRB 1270. One of the problems, of course, is to determine what kind of wording is permitted to publicize the attempt to eliminate substandard conditions. While there is no showing of a direct initial attempt by Respondents here to seek recognition,<sup>8</sup> there is, I believe, enough information in the picket signs and newspaper handouts and the record as a whole to show conclusively under Board precedent that an object<sup>9</sup> of the picketing was recognition and thus violated Section 8(b)(7)(A) of the Act.<sup>10</sup> I so find.<sup>11</sup>

#### Respondents' 8(a)(2) Defense

On February 20, 1963, in Case No. 14-CA-2815 I issued an Intermediate Report (IR-80-63) in which I found that Dan Edwards d/b/a Western Auto Associates Store had assisted Local No. 50, CIU, by paying the CIU dues of his employees. I did not, however, recommend the customary remedy for an 8(a)(2) violation. I recommended simply that Edwards cease his unfair labor practices but did not recommend the usual remedy to cease recognizing the assisted union until it might be certified by the Board. Even if I were now to find that the Association was chargeable with Edwards' unfair labor practice, I would still, under the circumstances of that matter, recommend the same remedy. Such being the case, the Association's contract would continue in effect and thus would bar the raising of any question concerning representation under Section 9(c) of the Act.<sup>12</sup> Accordingly, the 8(a)(2) assistance here would avail Respondents no defense under the wording of Section 8(b)(7)(A) of the Act in any event.

#### The Status of the Council

I deem it unnecessary to determine whether or not it has been established on this record that Respondent Council is a labor organization within the meaning of the Act,<sup>13</sup> since I find that the evidence here does not show that the Council was a party to or participated in the picketing. Thus, no one on behalf of the Council signed the original compact or agreement to publicize the Respondents' dispute with the employees' Association. Nor is there any showing that the Council contributed financial support to the project.<sup>14</sup> Furthermore, the fact that Dennis Chester may have personally assisted in the picketing does no more bind the Council than did Edwards' payment of his employees' CIU dues bind the Association.

#### 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 various of the Respondents have engaged in certain unfair labor practices, it is recommended that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

<sup>8</sup> See *Sam M. Melson d/b/a Sam Melson, General Contractor*, 138 NLRB 460

<sup>9</sup> *N L R B v Denver Building and Construction Trades Council (Gould & Preisner)*, 341 U.S. 675, 689.

<sup>10</sup> *Janel Sales Corporation*, 136 NLRB 1564; *Leonard Smitley et al d/b/a Crown Cafeteria*, 135 NLRB 1183; *Charles Schmitt et al. d/b/a Charhe's Car Wash*, 136 NLRB 934.

<sup>11</sup> In making this finding I take into consideration that in the November 8 issue of the union paper a long article appears in which any recognition purpose by the picketing is denied on behalf of Respondents

<sup>12</sup> *Pacific Coast Association of Pulp and Paper Manufacturers*, 121 NLRB 990

<sup>13</sup> In *Alton-Wood River Building and Construction Trades Council (Kopp-Evans Construction Company)*, 144 NLRB 206, I found said Council to be a labor organization.

<sup>14</sup> As previously indicated, the evidence shows that Dennis Chester, the executive secretary of the Council, contributed a sum of \$50 by personal check. While I have a suspicion this was in fact a contribution by the Council, I would not make a finding on suspicion

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. Jerseyville Retail Merchants Association and its constituent members are employers within the meaning of Section 2(2) of the Act.

2. Local 646, International Hod Carriers, Building and Common Laborers Union of America, AFL-CIO; Retail Store Employees Local 344, Retail Clerks International Association, AFL-CIO; Local 553, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO; Local 525, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and Local No. 50, Congress of Independent Unions are all labor organizations within the meaning of Section 2(5) of the Act.

3. By picketing the members of the Jerseyville Retail Merchants Association when such Association had lawfully recognized another labor organization and a question concerning representation could not appropriately be raised under Section 9(c) of the Act, with an object of such picketing being to force or require the Association and its members to recognize and bargain with them or any of them as the representative of the Association's employees, Respondents have engaged in unfair labor practices within the meaning of Section 8(b)(7)(A) 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.

5. Respondent Alton-Wood River Building and Construction Trades Council has not committed unfair labor practices as alleged in the complaint.

[Recommended Order omitted from publication.]

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**General Teamsters Local No. 162, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent and Furniture Workers Local 3182, affiliated with United Brotherhood of Carpenters and Joiners of America, AFL-CIO and B. P. John Furniture Corporation, Party to the Contract. Case No. 36-CD-27. September 12, 1963**

#### DECISION AND ORDER QUASHING NOTICE OF HEARING

This is a proceeding pursuant to Section 10(k) of the Act, following a charge filed by Furniture Workers Local 3182, affiliated with United Brotherhood of Carpenters and Joiners of America, AFL-CIO, hereinafter called Furniture Workers. The charge alleged that on or about February 6, 1963, General Teamsters Local No. 162, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent, herein called Teamsters, had threatened, coerced, and restrained B. P. John Furniture Corporation, hereafter called B. P. John or the Company, with the object of forcing and requiring B. P. John to assign certain work to employees belonging to the Teamsters, which work had previously been done by employees belonging to the Furniture Workers, in violation of Section 8(b)(4)(D) of the Act. A hearing was held before