

all employees in the bargaining unit described below with respect to rates of pay, hours of employment, and other conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All production and maintenance employees at Asheboro, North Carolina, excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act.

WE WILL NOT, by refusing to bargain as aforesaid, interfere with, restrain, or coerce employees in the exercise of their right to self-organization to form, join, or assist any labor organization to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities.

All of our employees included in the aforesaid unit are free to become, remain, or refrain from becoming or remaining members of any labor organization.

RANDOLPH ELECTRIC MEMBERSHIP CORPORATION,
Employer.

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, 1831 Nissen Building, Winston-Salem, North Carolina, Telephone No. 724-8356, if they have any question concerning this notice or compliance with its provisions.

Milk Drivers and Dairy Employees' Local 680, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Ind. and Durling Dairy Distributors d/b/a Woolley's Dairy. *Case No. 22-CC-197. November 21, 1963*

DECISION AND ORDER

On August 16, 1963, Trial Examiner A. Bruce Hunt 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. There-

after, Respondent filed exceptions to the Intermediate Report and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the Board has delegated its powers in connection with this case to a three-member panel [Members Leedom, Fanning, and Brown].

The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.¹

ORDER

The Board adopts as its Order the Recommended Order² of the Trial Examiner.

¹ With respect to Respondent's reliance upon the court's decision in *Fruit and Vegetable Packers & Warehousemen, Local 760, etc (Tree Fruits, Inc.) v. N L.R.B.*, 308 F. 2d 311 (C A D.C.) [vacated and remanded 55 LRRM 2961, April 20, 1964], we note that the Board is respectfully adhering to its position that consumer picketing of a secondary establishment constitutes restraint and coercion within the meaning of Section 8(b)(4)(ii) of the Act. See *General Teamsters Local No. 324, International Brotherhood of Teamsters, etc. (Cascade Employers Association, Inc)*, 144 NLRB 836.

² The Recommended Order is hereby amended by substituting for the first paragraph therein, the following paragraph:

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 Respondent, Milk Drivers and Dairy Employees' Local 680, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Ind., its officers, agents, representatives, successors, and assigns, shall

INTERMEDIATE REPORT

STATEMENT OF THE CASE

This proceeding, in which the charge was filed on April 8, 1963, and the complaint was issued on May 3, 1963, involves allegations that the Respondent, Milk Drivers and Dairy Employees' Local 680, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Ind., violated Section 8(b)(4)(ii)(B) of the National Labor Relations Act, as amended, 29 U.S.C., Sec. 151, *et seq.* On May 14, 1963, the Respondent filed its answer. On June 10, the parties executed a factual stipulation. On June 11, they filed a joint motion to transfer the proceeding to the Division of Trial Examiners. In the motion, the parties waived a hearing and stipulated that certain documents shall constitute the record upon which the issues shall be decided. On June 12, the Chief Trial Examiner granted the motion and designated Trial Examiner A. Bruce Hunt to prepare an Intermediate Report. On August 9, the parties filed an amendment to their stipulation, and on the same day the Respondent filed a brief. Upon the record, I make the following:

FINDINGS OF FACT

I. THE VARIOUS EMPLOYERS

A. *The primary employer*

Durling Enterprises, herein called Durling, consists of three employers, each a New Jersey corporation, which together constitute an integrated enterprise engaged in the business of purchasing, processing, selling, and distributing milk, butter, orange juice, and related products. Durling's principal office is located at Whitehouse, New Jersey. The first of the three component employers is Durling Farms, Inc., which is engaged in processing, selling, and distributing the products mentioned. The second employer, Meschoppen Creamery Co., is engaged in processing, selling, and

distributing milk in New Jersey and Pennsylvania. The third employer, Durling Dairy Distributors, is engaged in selling and distributing milk, butter, orange juice, and related products in New Jersey under the name of Woolley's Dairy. Its place of business at Neptune, New Jersey, is involved in this proceeding.

During 1962, Durling purchased and caused to be transported to its places of business in New Jersey, directly from other States, products valued in excess of \$50,000. There is no dispute, and I find, that Durling is engaged in commerce within the meaning of the Act.

B. The neutral employers

At this point we consider the business operations of various restaurants, grocery stores, and similar establishments, all of which purchase milk and other products from Woolley's Dairy.

Guinco's Market, a retail grocery in Belmar, New Jersey, is a joint proprietorship of James and Louis Catalano. Guinco's annual "direct inflow" exceeds \$10,000 in value.¹

Harry's Grill, Inc., a New Jersey corporation, operates a restaurant in Asbury Park, New Jersey. It annually has a direct inflow exceeding \$3,000 in value.

Puritan Luncheonette, Inc., a New Jersey corporation, operates a restaurant in Asbury Park. It annually has a direct inflow exceeding \$2,000 in value.

Amorosa's Market, a retail grocery in Belmar, New Jersey, is a joint proprietorship of Anthony and Anna Amorosa. Amorosa's annual "indirect inflow" exceeds \$4,500 in value.²

Gene's Grocery, an individual proprietorship of Gene Funston, is a retail grocery in Belmar which has an annual indirect inflow exceeding \$6,000 in value.

Ocean View Bakery, Inc., a New Jersey corporation, operates a wholesale and retail bakery in Long Branch, New Jersey. Ocean View's annual indirect inflow exceeds \$3,000 in value.

Pat's Diner, a New Jersey corporation, operates two restaurants in Belmar. Pat's Diner annually has an indirect inflow exceeding \$6,000 in value.

The parties stipulated, and I find, that each of the neutral employers is "engaged in commerce or in an industry affecting commerce within the meaning of Section[s] 8(b) (4) and 2(6) and (7) of the Act."³

II. THE RESPONDENT

The Respondent is a labor organization which admits to membership employees of Woolley's Dairy.

III. THE UNFAIR LABOR PRACTICES

A. The facts

On or about March 29, 1963, the Respondent informed Woolley's Dairy that it had obtained majority status in a unit of that employer's milk drivers, and requested that employer to enter into an agreement with it as the representative of the employees in the unit. On or about the same day, some of the drivers went on strike and began

¹ "Direct inflow refers to goods or services furnished directly to the employer from outside the State in which the employer is located," *Siemons Mailing Service*, 122 NLRB 81, 85, *Major Service Co., a Washington Corporation*, 129 NLRB 794, 796.

² "Indirect inflow refers to the purchase of goods or services which originated outside the employer's State but which he received from a seller within the State who received such goods or services from outside the State," *Siemons Mailing Service, supra*; *Major Service Co., a Washington Corporation, supra*

³ The monetary figures for the neutral employers reflect direct inflows of \$2,000 minimum and indirect inflows of \$3,000 minimum. In cases involving retailers, the Board's "legal" or "statutory" jurisdiction (as distinguished from its standards for exercising jurisdiction) is established by proof that the direct or indirect inflow of goods to a retailer exceeds *de minimis*, *Lamar Hotel*, 127 NLRB 885; *NLRB v. Suburban Lumber Company*, 121 F. 2d 829 (C.A. 3). In *NLRB v. Aurora City Lines, Inc.*, 299 F. 2d 229, 231 (C.A. 7), the court, speaking of indirect inflow, quoted from *Suburban Lumber* that "*De minimis* in the law has always been taken to mean trifles—matters of a few dollars or less," and added its own view that "[t]he time has not yet arrived when \$2,000 is but a trifle." The minimum figures recited for the neutral employers establish that each of those employers is engaged in commerce within the meaning of the Act.

picketing Woolley's plant in Neptune, New Jersey. The strike and picketing continued at least until June 10.

During April, the Respondent dealt with the neutral employers. On April 3, agents of the Respondent told James Catalano that, unless Guinco's Market would discontinue handling products of Woolley's Dairy, the Respondent would picket that grocery with signs reading:

This Establishment Sells Milk and Other Products of Durling Woolley's Dairies, which is on Strike. Please Help Us. Do Not Buy Durling Woolley's Dairies' Milk.

Milk Drivers and Dairy Employees' Union,
Teamsters, Local 680

I find that the remarks to Catalano constituted a threat. On April 5 and 8 the Respondent made like threats to Anthony Amorosa concerning Amorosa's Market. On April 19 and 20, respectively, the Respondent made like threats concerning Harry's Grill, Inc., and Puritan Luncheonette, Inc., the threats having been made to Harry Kyriakidis, owner of the former, and Louis Michaels, president of the latter.

On April 4 and 5, the Respondent picketed the customer entrance to Gene's Grocery with a sign, directed to the general public, and having a text as described above. On April 5, the Respondent picketed, in the same manner, both restaurants operated by Pat's Diner. On April 19 and 20, the Respondent picketed Harry's Grill and Puritan Luncheonette, and on April 21 the Respondent picketed Ocean View, all in the same manner.

B. Conclusions

The issue is whether the Respondent's conduct described above violated Section 8(b)(4)(ii)(B). Section 8(b)(4) provides in pertinent part that:

(b) It shall be an unfair labor practice for a labor organization or its agents—

* * * * *
 . . . (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where . . . an object thereof is:

* * * * *
 (B) forcing or requiring any person so cease . . . dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person. . . .

* * * * *
 . . . *Provided further*, That for the purposes of this paragraph (4) only, nothing contained in such paragraph shall be construed to prohibit *publicity, other than picketing*, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution. [Emphasis supplied.]

At this point certain facts should be made clear. First, the Respondent's picket signs recited truthfully that the Respondent had a dispute with Woolley's Dairy and that the employers being picketed were distributors of Woolley's products. Second, insofar as appears, the picketing was peaceful, consumer picketing, and no employee of a neutral employer was induced or encouraged to refuse to handle any products, nor was there any effort to so induce or encourage an employee. Indeed, there is no allegation that the Respondent violated Section 8(b)(4)(i)(B) which proscribes certain inducement and encouragement of neutral employees. (The absence of such an allegation is perhaps due to the Board's current view that "picketing at the secondary employer's premises alone is not *per se* 'inducement or encouragement' within the meaning of clause (i)." *Upholsterers Frame & Bedding Workers Twin City Local No. 61, etc. (Minneapolis House Furnishing Company)*, 132 NLRB 40, 41.) Third, the Respondent's conduct consisted of (1) threatening certain neutral employers that there would be consumer picketing at their places of business unless they would discontinue selling the products of the primary employer, and (2) engaging in consumer picketing at the places of business of several neutral employers. Fourth, the Respondent's conduct was for an objective proscribed by Section

8(b)(4)(B). Fifth, the record does not establish the effect, if any, of the Respondent's conduct upon consumers or upon the business of any neutral employer.

The issue here is not new. In its brief, the Respondent states correctly that the outcome in this case will be determined by the decision of the Supreme Court of the United States in one or more other cases. The Board's view of the law appears in *Minneapolis House Furnishing Company, supra; United Wholesale and Warehouse Employees, Local 261, etc. (Perfection Mattress & Spring Company)*, 129 NLRB 1014, 134 NLRB 931. That view is concisely stated in *Fruit & Vegetable Packers & Warehousemen, Local 760, etc. (Tree Fruits Labor Relations Committee, Inc.)*, 132 NLRB 1172, 1177:

In the *Minneapolis House Furnishing* case the Board unanimously reiterated that "by literal wording of the proviso [to Section 8(b)(4)] as well as through the interpretive gloss placed thereon by its drafters, consumer picketing in front of a secondary establishment is prohibited." Such picketing "threaten[s], coerce[s], or restrain[s]" persons within the meaning of Section 8(b)(4)(ii). And when it has for an object forcing or requiring any person to cease selling or handling the products of any other producer or processor the picketing violates Section 8(b)(4)(i)(B).

On review by a court of appeals, however, the Board's view in *Tree Fruits* was disapproved, *Fruit & Vegetable Packers & Warehousemen, Local 760, etc. v. N.L.R.B.*, 308 F. 2d 311 (C.A.D.C.).⁴ The Board's petition for cert. was granted, 83 S. Ct 1693 (June 10, 1963). On the other hand, the Court of Appeals for the Fifth Circuit has sustained the Board's view and has expressed its disagreement with the view of the Court of Appeals for the District of Columbia, *Samuel H. Burr & Perfection Mattress & Spring Co. v. N.L.R.B.*, 321 F. 2d 612 (July 18, 1963). A Trial Examiner is bound by the Board's view unless it should be rejected by the Supreme Court. Consequently, I conclude that the Respondent, by threatening certain neutral employers that it would engage in consumer picketing at their places of business, and by engaging in consumer picketing at the places of business of certain neutral employers, violated Section 8(b)(4)(ii)(B).

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The unfair labor practices set forth 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, I shall recommend that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act.

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

⁴ There the court said:

As we construe the statute, it condemns not picketing as such, but the use of threats, coercion and restraint to achieve specified objectives. Some picketing might come within the ambit of that prohibition. But here, there was no work stoppage, no interruption of deliveries, no violence or threat of violence. The record does not show whether pickets "confronted" consumers or whether consumers felt "coerced" by their presence. Nor does the record show that the picketing—directed against only one of hundreds of products sold by [the neutral employer]—caused or was likely to cause economic injury.

Here the Respondent argues in its brief:

. . . The mere picketing of the stores with a sign requesting the public not to buy the milk of the primary employer is not of itself a violation. It is a violation only if the Board *infers* from this fact that respondent has *coerced* the storekeepers.

. . . the appropriate interpretation of the law should be that picketing of retail stores requesting the public to refrain from purchasing the product of the primary employer is not proscribed unless it affirmatively appears that employees of secondary employers have been intentionally induced to refrain from performing the work for which they have been employed.

CONCLUSIONS OF LAW

1. The Respondent is a labor organization within the meaning of the Act.
2. The primary employer and each of the neutral employers is engaged in commerce within the meaning of the Act.
3. By threatening Amorosa's Market, Guinco's Market, Harry's Grill, Inc., and Puritan Luncheonette, Inc., that it would engage in consumer picketing at the places of business of said neutral employers, and by engaging in consumer picketing at the places of business of Gene's Grocery, Harry's Grill, Inc., Ocean View Bakery, Inc., Pat's Diner, and Puritan Luncheonette, Inc., the Respondent has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(b)(4)(ii)(B) and Section 2(6) and (7) of the Act.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and pursuant to Section 10(c) of the Act, I hereby recommend that the Respondent, Milk Drivers and Dairy Employees' Local 680, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Ind., its officers, agents, representatives, successors, and assigns, shall.

1. Cease and desist from:

(a) Threatening Amorosa's Market, Guinco's Market, Harry's Grill, Inc., and Puritan Luncheonette, Inc., that it will engage in consumer picketing at the place of business of said employers with an object of forcing or requiring said employers to cease selling or otherwise dealing in the products of Durling Dairy Distributors d/b/a Woolley's Dairy, or to cease doing business with said Durling.

(b) Threatening, coercing, or restraining Gene's Grocery, Harry's Grill, Inc., Ocean View Bakery, Inc., Pat's Diner, and Puritan Luncheonette, Inc., by picketing their places of business, with an object as aforesaid.

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

(a) Post in its offices and meeting halls, copies of the attached notice marked "Appendix."⁵ Copies of said notice, to be furnished by the Regional Director for the Twenty-second Region, shall, after being duly signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof, and maintained by it for at least 60 consecutive days thereafter, in conspicuous places, including all places where notices to its members customarily are 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) Promptly after receipt of unsigned copies of said notice from the Regional Director, return to him signed copies for posting by the neutral employers named in paragraphs 1(a) and (b) of this Recommended Order, if those employers be willing, at their respective places of business.

(c) Notify said Regional Director, in writing, within 20 days from the receipt of this Intermediate Report, what steps the Respondent has taken to comply herewith.⁶

⁵ If this Recommended Order should be adopted by the Board, the words "As Ordered by" shall be substituted for "As Recommended by a Trial Examiner of" in the notice. In the further event that the Board's Order be enforced by a United States Court of Appeals, the words "A Decree of the United States Court of Appeals, Enforcing an Order of" shall be inserted immediately following "As Ordered by."

⁶ If this Recommended Order should be adopted by the Board, this provision shall be modified to read: "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith."

APPENDIX

NOTICE TO ALL OUR MEMBERS, OFFICERS, AND AGENTS

As recommended by a Trial Examiner of the National Labor Relations Board and in order to conduct the business of Local 680 as required by the National Labor Relations Act, we notify you that:

WE WILL NOT threaten, coerce, or restrain Amorosa's Market, Gene's Grocery, Guinco's Market, Harry's Grill, Inc., Ocean View Bakery, Inc., Pat's Diner, or Puritan Luncheonette, Inc., by picketing their respective places of business, or by threatening to do so, with an object of forcing or requiring said employers to

cease selling or otherwise dealing in the products of Durling Dairy Distributors d/b/a Woolley's Dairy, or to cease doing business with Durling Dairy Distributors.

MILK DRIVERS AND DAIRY EMPLOYEES' LOCAL 680,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF
AMERICA, IND.,

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.

If anyone has any questions about this notice or whether Local 680 is complying with its provisions, he may communicate with the Board's Regional Office, 614 National Newark Building, 744 Broad Street, Newark, New Jersey, Telephone No. Market 4-6151.

J. R. Simplot Company and International Union of Operating Engineers, Local 370, AFL-CIO. Case No. 19-CA-2554. November 21, 1963

DECISION AND ORDER

On June 3, 1963, Trial Examiner William E. Spencer 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.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Leedom, Fanning, and Brown].

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 this case,¹ and adopts the findings, conclusions, and recommendations of the Trial Examiner with the following modifications.

As described more fully in the Intermediate Report, the Respondent operates, among other things, an open pit phosphate ore and shale mine in Idaho. The Union has represented the Respondent's production and maintenance employees since its certification in 1954. Bargaining

¹ The Respondent's request for oral argument is hereby denied as the record, the exceptions, and the brief adequately present the issues and the positions of the parties.

The Respondent's motion to reopen hearing is also denied, as the incidents referred to in said motion, even assuming that they occurred as set forth therein, are irrelevant to, and would not affect, our disposition of the issues in this case.