in the past processed eggs for others, he has not done so to any substantial degree in recent years and contemplates no such processing in the future.[9]

For the foregoing reasons, we find that the egg processing workers, maintenance workers, and truckdrivers are agricultural laborers employed in conjunction with and incidental to the Employer's farming operation.[10] Accordingly, as no question affecting commerce exists concerning the representation of "employees" of the Employer within the meaning of Section 9(c)(1) of the Act, we grant the Employer's motion to dismiss the petition.

[The Board dismissed the petition.]

[9] *K Malofy & Son and Ray Hart*, 107 NLRB 943; *B. F. Maurer, doing business as John C Maurer & Sons*, 127 NLRB 1459; cf. *The Garin Co*, 148 NLRB 1499

[10] *Bodine Produce Company*, 147 NLRB 832.

Local 25, International Brotherhood of Electrical Workers, AFL–CIO *and* Sarrow-Suburban Electric Co., Inc. and Brunswick Hospital Center, Inc. and Industrial Workers of Allied Trades, Local 199, affiliated with the National Federation of Independent Unions, Parties in Interest. *Case No. 29–CD–7 (formerly 2–CD–314). May 10, 1965*

DECISION AND DETERMINATION OF DISPUTE

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following a charge filed by Sarrow-Suburban Electric Co., Inc., herein called Sarrow, and by Brunswick Hospital Center, Inc., herein called Brunswick, alleging a violation of Section 8(b)(4)(D) of the Act by Local 25, International Brotherhood of Electrical Workers, AFL–CIO, herein called Local 25. A hearing was held before Hearing Officer Jacques Schurre on November 12, 1964, at which all parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing upon the issues. The rulings of the Hearing Officer made at the hearing are free from prejudicial errors and are hereby affirmed. Thereafter, Sarrow, Brunswick, and Local 25 filed briefs which the National Labor Relations Board has duly considered.

Upon the entire record in the case, the Board [1] makes the following findings:

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

1. The business of the employer

The Employer, Sarrow, is engaged in the electrical contracting business with its place of business in Huntington Station, Long Island, New York. In May 1964, Brunswick commenced construction of a $1 million addition to its hospital facility in Amityville, Long Island, New York, and Sarrow was awarded a $70,000 subcontract to perform all of the electrical work. During the course of Sarrow's operations on this project, the alleged dispute occurred.

Local 25 contends that the Board should not take jurisdiction in this case because: (1) Brunswick is a proprietary hospital over which the Board as a matter of policy does not exercise its jurisdiction,[2] and (2) the commerce information contained in the record is insufficient to satisfy the Board's monetary standards for asserting jurisdiction.[3]

In answer to Local 25's first contention, it suffices to say that the employer in this proceeding is Sarrow, not Brunswick. There is likewise no merit in Local 25's second contention. While no commerce information was adduced regarding Sarrow's individual operations, the record does establish that materials in excess of $77,000 have been or will be received at the affected jobsite from locations outside the State of New York for the use of the general contractor and the various subcontractors performing work on the project. Thus, as it is our policy to consider the totality of the operations at the affected jobsite, in cases such as this, where the dispute involves an alleged 8(b)(4) violation in the building and construction industry, we find that it will effectuate the purposes of the Act to assert jurisdiction herein.[4]

2. The labor organizations involved

The parties stipulated, and we find, that Local 25 and Industrial Workers of Allied Trades, Local 199, affiliated with the National Federation of Independent Unions, herein called Local 199, are labor organizations within the meaning of Section 2(5) of the Act.

3. The dispute

No testimony was adduced at the hearing. In lieu thereof, the parties[5] stipulated to incorporate and make a part of the record herein the transcript and exhibits in the Section 10(l) proceeding[6] before

[2] See *Flatbush General Hospital*, 126 NLRB 144

[3] See *Siemons Mailing Service*, 122 NLRB 81

[4] Cf. *S. M. Kisner, et al., d/b/a S. M. Kisner & Sons*, 131 NLRB 1196

[5] Local 199 did not enter an appearance at the hearing and hence is not a party to the stipulation.

[6] *Ivan C. McLeod, Reg. Dir. v. Local 25, International Brotherhood of Electrical Workers, AFL–CIO (Sarrow-Suburban Electric Co.)*, 236 F. Supp 214 (D C.E.N.Y.)

the United States District Court for the Eastern District of New York which involved the same issues and parties.

The alleged dispute arises out of Brunswick's decision to award the electrical work on the new addition of its hospital facility to Sarrow, an electrical contractor employing members of Local 199, rather than to an electrical contractor whose employees are members of Local 25.

The first contact between officials of Brunswick and Local 25 occurred in March or April 1964 when Joseph Bermel, the business representative for Local 25, telephoned Jules Stein, the assistant to the president of Brunswick, and inquired whether a contractor had been selected to perform the electrical work on the Brunswick project. When Bermel was advised that an electrical contractor had not as yet been selected, he offered to send Stein a list of contractors who employ Local 25 members and to encircle the names of several who, to Bermel's knowledge, had the necessary experience to perform this type of work.[7] After receiving the list of approximately 75 contractors sent by Bermel, Stein testified he had a further conversation with Bermel in the latter part of July 1964.[8] On this occasion, according to Stein, Bermel again inquired about the electrical work. When Stein advised him that it had not been awarded, Bermel replied that so long as the contractor was one on the list, Stein would have no trouble.

The electrical work on the project was subcontracted to Sarrow on August 14, 1964, and on the same day Sarrow entered into a collective-bargaining agreement with Local 199. Shortly thereafter, Bermel visited the jobsite and spoke with Dr. Benjamin Stein, president of Brunswick. Dr. Stein testified that when Bermel learned that the work had been assigned to Sarrow, he stated, "This is no good, they are not one of our recognized contractors, and you will have problems here." Dr. Stein then telephoned Douglas Sarrow and explained the difficulty to him. At Dr. Stein's request, Bermel spoke on the phone to Sarrow and, according to Sarrow, Bermel stated that Local 199 was not AFL–CIO and, therefore, he did not see how we (Sarrow) could work on the job because there is bound to be trouble. After the telephone conversation, Dr. Stein testified that Bermel suggested he break his contract with Sarrow and Bermel would recommend a Local 25 contractor who would meet Sarrow's price. When Dr. Stein refused, Bermel threatened a work stoppage. William King, one of the sub-

[7] The testimony concerning the above conversation is not in dispute, except that Bermel testified that the list was made available pursuant to Stein's request that Bermel recommend a contractor.

[8] Bermel in his testimony did not make reference to a second conversation with Jules Stein.

contractors on the project, was present during the conversation between Bermel and Dr. Stein. King testified that Bermel said that if Sarrow did the job there would probably be trouble because the other trades would not work with this local; however, he did not recall Bermel telling Dr. Stein to replace Sarrow. Bermel testified concerning the conversation and stated that when Dr. Stein told him the work had been awarded to Sarrow, he informed Stein that Sarrow did not have an agreement with Local 25. According to Bermel, at this juncture, Dr. Stein called Sarrow, and he (Bermel) took the phone and told Sarrow that he should tell Dr. Stein that he (Sarrow) could not supply AFL–CIO building trade mechanics. Bermel also testified that he told Dr. Stein that Local 199 does not supply mechanics who are compatible with the building trades and that it might create a problem for him. However, Bermal denied making any mention of a work stoppage or asking Dr. Stein to break his contract with Sarrow.

Approximately a week after the above conversation, Dr. Stein was visited again by Bermel and by Walter Kraker, the business manager of Local 25. According to Dr. Stein, at this meeting Kraker suggested he break his contract with Sarrow and offered to supply a contractor who would meet Sarrow's price. Dr. Stein also testified that Kraker said he wanted Local 25 electricians on the job, that Local 25 members were better trained, and that Local 199 members were not competent electricians. Bermel and Kraker both denied that they had attempted to persuade Dr. Stein to break his contract with Sarrow or that they had made threats of any kind. Bermel admitted that his motive for visiting Dr. Stein was to see that the electrical work was done by a contractor who employed members of Local 25, but he denied that there was any discussion concerning the respective wage rates paid to Local 199 and Local 25 members,[9] or that he discussed their qualifications as electricians. Bermel also testified that he at no time claimed or demanded jurisdiction and that he did not recall saying anything about supplying a contractor who would meet Sarrow's price. Kraker testified that he discussed "economy" with Dr. Stein and spoke about the difference in wage rates and fringe benefits between Local 199 and Local 25 in order to explain why Sarrow's bid was so low. He denied telling Dr. Stein that he could recommend a contractor who would meet Sarrow's price, or that he told Dr. Stein there would be problems unless Local 25 members were put on the job.

[9] The record establishes that Local 199 members are employed at a wage rate substantially lower than the wage rate for Local 25 members Bermel testified that although he has never seen a Local 199 contract and never asked what rate was being paid to Sarrow employees, he was aware that Local 199 rates are considerably lower than those of Local 25.

Sarrow began operations at the jobsite in the latter part of August 1964. On September 3, 1964, Local 25 commenced picketing and also distributed handbills at the construction site. The handbills contained the following language:[10]

TO THE PUBLIC
THE ELECTRICIANS EMPLOYED BY
SARROW SUBURBAN ELECTRIC INC.
ARE NOT WORKING UNDER WAGES AND CONDITIONS
ESTABLISHED BY LOCAL UNION 25, IBEW, AFL-CIO
WE HAVE NO DISPUTE WITH ANY OTHER EMPLOYER
AT THIS SITE

There is evidence that during the course of the picketing and handbilling employees of other subcontractors on the job refused to cross the picket line and work on the project was substantially halted. The picketing continued until it was enjoined by the United States District Court for the Eastern District of New York on October 9, 1964.

4. Contentions of the parties

Local 25 contends that the record does not reveal a jurisdictional dispute cognizable under Section 10(k) of the Act and that, therefore, the notice of hearing must be quashed. In furtherance of this contention, Local 25 claims that: (1) It never demanded jurisdiction over the work in question; (2) it engaged in picketing and handbilling at the jobsite solely for the purpose of advising the public that the electricians on the job, employed by Sarrow, were not being paid the prevailing area wage rate for such work; and (3) the record does not support a finding that there is reasonable cause to believe that Local 25 engaged in proscribed activity within the meaning of subsections (i) and (ii) of Section 8(b)(4)(D). Local 25 also takes the position that in the event the Board should make an affirmative award in this case, the work here involved should be awarded to the employees of Sarrow who are represented by Local 199. The Employer and Brunswick contend that the dispute is properly before the Board for determination under Section 10(k) of the Act and that the record establishes reasonable cause to believe that Local 25 has engaged in conduct violative of Section 8(b)(4)(D) of the Act. They also request that the Board award the disputed work to the employees of Sarrow. Local 199 did not appear at the Section 10(l) injunction proceeding or the Section 10(k) hearing and has entered no appearance before the Board.

[10] There is no evidence in the record as to the exact wording of the picket signs; however, the record does indicate that the picket sign legend was substantially the language of the handbill.

In view of the agreement of all parties present at the hearing that in the event the Board should make an affirmative award it should be in favor of the employees employed by Sarrow, no evidence was submitted in connection with this issue.

5. Applicability of the statute

In a Section 10(k) proceeding, it is necessary to determine whether there is reasonable cause to believe that a violation of Section 8(b)(4)(D) of the Act has occurred. In the instant case, this requires, in view of Local 25's contentions, a finding as to whether there is reasonable cause for believing Local 25 was claiming the work in question, and if so, whether Local 25 used proscribed means to enforce its claim.

Although Local 25 claimed an interest in seeing that the electrician's on the Brunswick project were paid the area wage rate, Bermel, Local 25's business representative, admitted that his motive in visiting Dr. Stein after the electrical work had been awarded to Sarrow was to see that the electrical work was done by a Local 25 contractor. Nor did Bermel, according to his testimony, ever ask to see the contract between Sarrow and Local 199, inquire about the wages being paid to Sarrow's electricians, or discuss the wage rates paid to Local 199 and Local 25 members, respectively. Also significant is Dr. Stein's testimony that Bermel suggested that Dr. Stein break his contract with Sarrow and at the same time offered to supply a Local 25 contractor who would meet Sarrow's price.

While Local 25 may also have had an interest in maintaining area wage rates, the foregoing testimony plainly establishes reasonable cause to believe that Local 25 was claiming the work in question for its members and, hence that a jurisdictional dispute exists.[11] In addition, there is evidence that Local 25 engaged in proscribed conduct by threatening to cause a work stoppage if the disputed work was not assigned to a Local 25 contractor and that Local 25 engaged in picketing in furtherance of that object. On this same record the United States district court found reasonable cause to believe that an object of Respondent's acts and conduct was "to force" the assignment of the disputed work "to employees who are members of or represented by respondent, rather than to employees who are members of or represented by Local 199 or who are not members of or represented by respondent." We agree, and accordingly we find reasonable cause to believe that Local 25 engaged in conduct violative of Section 8(b)(4)(D) and that the dispute is properly before the Board for determination under Section 10(k) of the Act.

[11] The fact that the controversy involves unions engaged in the same craft has not hitherto led the Board to find that there was no work assignment dispute under Sections 8(b)(4)(D) and 10(k) as our dissenting colleague urges here *William Matera, Inc (Local No 1266, United Brotherhood of Carpenters and Joiners of America, AFL–CIO)*, 137 NLRB 68, *Peabody Coal Co*, 151 NLRB 358, *Decora, Inc*, 152 NLRB 278

6. Merits of the dispute

As stated previously, Sarrow, Brunswick, and Local 25 all agreed that if the Board found reasonable cause to believe that an unfair labor practice had occurred, the work assignment should be made in favor of the employees of Sarrow, who are presently performing the disputed work. Therefore, in accordance with this agreement by the parties, we shall determine the dispute by assigning the work to the electricians employed by Sarrow. In making this determination, we are assigning the disputed work to the employees of Sarrow who are represented by Local 199 but not to that Union or its members. In consequence, we also determine that Local 25 was not and is not entitled, by means proscribed by Section 8(b)(4)(D) of the Act, to force or require Brunswick to assign the disputed work to its members.

DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the foregoing findings and the entire record in this proceeding, the National Labor Relations Board hereby makes the following Determination of Dispute.

1. Employees currently represented by Industrial Workers of Allied Trades, Local 199, affiliated with the National Federation of Independent Unions, are entitled to perform all the electrical work connected with the construction of the new hospital wing for Brunswick Hospital Center, Inc., Amityville, Long Island, New York.

2. Local 25, International Brotherhood of Electrical Workers, AFL–CIO, is not entitled, by means proscribed by Section 8(b)(4)(D) of the Act, to force or require Brunswick Hospital Center, Inc., to assign the aforementioned work to a contractor employing its members.

3. Within 10 days from the date of this Decision and Determination of Dispute, Local 25, International Brotherhood of Electrical Workers, AFL–CIO, shall notify the Regional Director for Region 29, in writing, whether or not it will refrain from forcing or requiring Brunswick Hospital Center, Inc., by means proscribed by Section 8(b)(4)(D), to assign the work in dispute to employees represented by Local 25 rather than to those represented by Local 199.

MEMBER FANNING, dissenting:

I would quash the notice of hearing. This is not a jurisdictional dispute. This is a dispute over the price of labor in which the Respondent made certain demands in order to protect its overall bargaining position in the area. We have held in numerous cases [12] that area stand-

[12] *International Hod Carriers, Building and Common Laborers' Union of America, Local No. 41, AFL–CIO (Calumet Contractors Association and George De Jong)*, 133 NLRB 512; *Houston Building and Construction Trades Council (Claude Everett Construction Company)*, 136 NLRB 321; *Local 107, International Hod Carriers, Building and Common Laborers' Union of America, AFL–CIO, et al (Texarkana Construction Company)*, 138 NLRB 102

ards picketing is protected, and in fact, this is a legitimate obligation which a union would be remiss in not undertaking.

It is not suggested that the picketing and handbilling activities engaged in by Respondent, by themselves, indicate anything other than a protest that the wages and other working conditions applicable to the employees performing the electrical work on the Brunswick project were below the claimed area standard. Hence, my colleagues are forced to place great stress upon prior conversations between Local 25 representatives and Jules Stein and Dr. Benjamin Stein in an attempt to establish an objective proscribed by Section 8(b)(4)(D). In my opinion, this testimony is unpersuasive. These conversations do not show anything more than that Respondent demanded that Brunswick cancel its contract with Sarrow-Suburban and substitute therefore a subcontractor under agreement with Respondent. The basis for this demand was not that Sarrow-Suburban's employees were not entitled to work as electricians—Respondent concedes that they were—but that, as electricians, they were performing electrician work too cheaply. To the extent these conversations disclose that Respondent's picketing was not solely for the purpose of publicizing the substandard working conditions of Sarrow-Suburban's employees, they disclose that Respondent's real dispute is with Brunswick, over the latter's undermining of IBEW standards by subcontracting electricians' work to a substandard electrical subcontractor. As, even in this posture, the underlying dispute does not raise issues as to the proper work jurisdiction of either of the "competing" groups of employees, I find that this dispute is not the type of work assignment dispute Congress intended to be settled by the extraordinary provisions of Section 10(k) of the Act. At worst, from Respondent's point of view, this is simply a dispute over whom Brunswick may do business with, and the validity of Respondent's picketing is appropriately determined under the provisions of Section 8(b)(4)(B). At best, it is a dispute over Sarrow-Suburban's practice of providing allegedly substandard working conditions to its employees.

The preservation of a wage scale it has struggled to achieve is a legitimate objective of any union. We recognize this by permitting picketing for the sole purpose of publicizing substandard conditions. We cannot now say that the union's interest ends when the work has been assigned to another. It is at this point, when the standard is being flouted and undermined, that the need to publicize what is happening is most acute. While Respondent's picketing may have violated Section 8(b)(4)(B) or 8(b)(7), those issues are not before us, and I am unwilling to deprive Respondent of the right to attempt to preserve its wage scale by making an award of work in a case in which no issue is raised as to the proper work assignment under the existing business

arrangements of the employers involved, and in which it is not possible to determine whether the picketing is violative of Section 8(b) (4) (B) or 8(b) (7).

Boulevard Storage & Moving Co., Inc., Irving Kirsch Corporation, United Fire Proof Warehouse Co., Walsh Packing & Storage Co. *and* Chauffeurs, Teamsters & Helpers "General" Union Local 200, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. *Case No. 30–CA–47*[1] *(formerly 13–CA–6308). May 11, 1965*

DECISION AND ORDER

On November 30, 1964, Trial Examiner Frederick U. Reel issued his Decision in the above-entitled proceeding, finding that the Respondents had not engaged in certain unfair labor practices as alleged in the complaint, and recommending that the complaint be dismissed in its entirety, as set forth in the attached Trial Examiner's Decision. Thereafter, the General Counsel and the Union filed exceptions to the Trial Examiner's Decision and supporting briefs. Respondent United Fire Proof Warehouse Co. filed an answering brief.

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

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial errors was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and briefs, the Respondent's answering brief, and the entire record in this case, and hereby adopts the Trial Examiner's findings and conclusions only to the extent consistent with this Decision and Order.

Contrary to the Trial Examiner, we find that the Respondents violated Section 8(a) (5) and (1) of the Act by failing to produce certain financial data requested by the Union during collective-bargaining negotiations and by unilaterally reducing wages.

The Respondents, individually referred to as Boulevard, Kirsch, United, and Walsh, are engaged in local and over-the-road hauling of household furniture. Since 1955, the Union has been in contractual relations with the Respondents covering all employees, including local and over-the-road drivers; since 1961, Respondents have bargained as a multiemployer group with the Union covering such employees. In

[1] At the hearing, the Trial Examiner granted the General Counsel's motion to sever this case from Case No. 30–CB–15.