

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

WE WILL make Richard Dolatowski whole for any loss of earnings he may have suffered as a result of discrimination against him.

All our employees are free to become or remain or refrain from becoming or remaining members of any labor organization except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act.

AETNA BEARING COMPANY, A TEXTRON DIVISION,
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, 881 U.S. Courthouse and Federal Office Building, 219 South Dearborn Street, Chicago, Illinois, Telephone No. 828-7572, if they have any question concerning this notice or compliance with its provisions.

Local No. 222, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America [W. S. Hatch Co., Inc.] and American Oil Company. Case No. 27-CC-149.
May 25, 1965

DECISION AND ORDER

Upon charges filed by American Oil Company, herein called American, the General Counsel for the National Labor Relations Board, by the Regional Director for Region 27, issued a complaint against Local No. 222, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(B) of the National Labor Relations Act, as amended. The Respondent filed an answer to the complaint denying the commission of the alleged unfair labor practices.

On January 25, 1965, the parties filed a joint motion to transfer this proceeding to the Board, agreeing that the entire record in this case shall consist of the formal papers and the transcript of testimony and exhibits in Civil No. C-241-64, United States District Court for the District of Utah. The parties waived a hearing before a Trial Examiner and the issuance of a Trial Examiner's Decision. They agreed that findings of fact, conclusions of law, and a decision and order be issued directly by the Board. Thereafter, the case was transferred to the Board. Briefs were filed by the General Counsel and the Respondent.

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 [Members Fanning, Brown, and Jenkins].

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYERS

American Oil Company is engaged at Salt Lake City, Utah, in refining, processing, selling, and distributing petroleum and petroleum products. Annually, American ships products valued in excess of \$50,000 to points outside the State of Utah.

W. S. Hatch Co., Inc., herein called Hatch, is engaged at Woods Cross, Utah, in the transportation of petroleum products and other commodities in interstate commerce. Annually, Hatch derives revenue in excess of \$50,000 from its interstate operations.

Clark Tank Lines and Pacific Intermountain Express Company, herein called Clark and Pacific, respectively, and Hatch are common carriers who do business with American.

The Respondent admits, and we find, that American and Hatch are engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and we find that it will effectuate the purposes of the Act to assert jurisdiction herein. The Respondent also admits, and we find, that Clark and Pacific are persons engaged in commerce or in an industry affecting commerce within the meaning of Section 8(b) (4) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Respondent, Local No. 222, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The facts:* As noted above, American operates a refinery in Salt Lake City and sells petroleum products. Hatch, Clark, and Pacific employ truckdrivers who pickup these products at the refinery for delivery to their respective customers. All these drivers are members of the Respondent. On October 3, 1964, after unsuccessful negotiations between the Respondent and Hatch for renewal of a collective-bargaining contract, the Respondent struck Hatch and began picketing its place of business in Woods Cross. Pickets also followed Hatch's trucks to American's refinery and picketed on the public streets fronting the various gates or entrances to the premises, with signs which read: "Our Dispute is With W. S. Hatch Co. Only. Teamsters Local 222." These signs were visible from within the premises.

American's physical property relevant to the dispute herein is comprised of two areas, referred to as the north compound, used for distributing heavy fuels, and the south compound, from which area light fuels are distributed. All sides of each area face public streets and are enclosed by a chain-link fence; the north compound is across the street from the south compound, both areas facing Eighth North Street.¹ As appears from the attached Appendix A, the pertinent truck entrances to each area are as follows: gates III and V in the north compound; and gates I, II, and IV in the south compound.

Between October 3 and 14, all drivers, including those employed by Hatch, used gates III and V to enter the north compound, and gates I and II to enter the south compound. The Respondent picketed all these gates during this period and drivers of Clark and Pacific refused to enter American's premises until the picketing ceased, which occurred after Hatch's trucks left the premises. On October 15, American established and posted two separate gates reserved exclusively for Hatch trucks: gate V in the north compound and gate IV, a newly created entrance, in the south compound. Thereafter, Hatch's drivers used these gates to enter and leave the respective areas and all other drivers used gates I and II of the south compound, and gate III of the north compound. Between October 15 and 19 the Respondent confined its picketing activities to gate V when Hatch's trucks were in the north compound, and to gate IV when these trucks were in the south compound. During this period, there were no work stoppages by other drivers who were using gates that were not being picketed.

Thereafter, between October 20 and November 19, the Respondent picketed all gates, except gate III.² During this period, picketing occurred at gates I, II, and IV of the south compound while Hatch's trucks were in the south compound and when such trucks were in the north compound only. As a result of this picketing, drivers of Clark and Pacific refused to enter the south compound. The record does not show that gate V was picketed while Hatch's trucks were in the south compound. Between November 20 and December 20, picketing was confined to gates I, II, and IV while Hatch's trucks were in the south compound, which also resulted in the other drivers' refusal to enter this area. Gate V was picketed only when Hatch's trucks were in the north compound.

¹ Drivers scheduled to pick up a load of heavy fuel first enter the south compound where truck scales are located to weigh the empty truck. They then drive to the north compound to load up and return to the south compound to weigh the loaded truck. Drivers loading light fuels in the south compound do not use the scales as this fuel is measured by volume rather than by weight.

² It appears that the only picketing at gate III during this period was occasioned by confusion on the part of a new Hatch driver who mistakenly used gate III to enter the north compound.

The Respondent held two meetings of its membership, which included employees of Hatch, Clark, and Pacific, to discuss the strike against Hatch and the picketing at American's premises. At both meetings, the employees were informed of their rights to honor picket lines. At a meeting held on October 18, they were informed that the Respondent's picketing at one compound at American's premises should be considered as the picketing of both compounds. However, on November 19, they were told that the picketing at any gate of a particular compound should be viewed as the picketing of that entire compound, but should not be considered as picketing of the other compound.

On December 21, 1964, the aforesaid U. S. district court issued an injunction enjoining the Respondent from picketing the entrances to American other than those reserved for Hatch trucks. The Respondent was also enjoined from picketing a reserved entrance if there were no Hatch trucks within the particular area. Since that date, the Respondent has confined its picketing to gate V while Hatch's trucks are in the north compound, and to gate IV while these trucks are in the south compound.

B. Contentions of the parties: As alleged in the complaint, as amended, the General Counsel contends that the Respondent's picketing of entrances to American's premises, other than gates IV and V which were reserved for Hatch's trucks, violated Section 8(b) (4) (i) and (ii) (B) of the Act because the Respondent's picketing activities in pursuance of its primary dispute with Hatch induced or encouraged the neutral employees of American, Clark, and Pacific to engage in work stoppages, and threatened or coerced the neutral employers, in either case with an object of forcing or requiring American to cease doing business with Hatch. It is also contended that the picketing of an area at times when no Hatch trucks were within the particular area also violated the secondary boycott provisions of the Act.³ In effect, the General Counsel's position is that the picketing was unlawful because it did not conform to the requirements of *Moore Dry Dock*.⁴

The Respondent does not dispute its responsibility for the picketing. Its position is that the picketing was for a lawful primary object and did not violate *Moore Dry Dock* standards.⁵ In the alternative, the

³ In his brief, the General Counsel contends that the Respondent's oral appeals to its membership at union meetings also violated the Act. We make no such finding, as this conduct was neither alleged nor litigated as a separate unfair labor practice. We shall, however, consider the evidence relating to this matter in evaluating Respondent's picketing object.

⁴ *Sailors' Union of the Pacific AFL (Moore Dry Dock Company)*, 92 NLRB 547, 549

⁵ Respondent concedes that the factual situation herein does not present the "reserved gate" issue involved in the *General Electric* case. *Local 761, International Union of Electrical, Radio and Machine Workers, AFL-CIO (General Electric Company, Intervenor) v. N.L.R.B.*, 366 U.S. 667, where picketing occurred at the plant of the primary employer. The Court there noted with approval the Board's *Moore Dry Dock* standards

Respondent contends that Hatch and American are allies and therefore American is not entitled to the protection afforded neutral employers by Section 8(b) (4) (B) of the Act.

C. *Conclusions*: It is clear that the Respondent's primary dispute is with Hatch and, as the General Counsel concedes, the Respondent may lawfully picket Hatch's trucks at American's premises, a common work situs, provided the picketing was in accord with *Moore Dry Dock* standards. In that case, the Board held that picketing at premises of a secondary employer harboring the situs of the dispute is lawful where: (a) the picketing is strictly limited to times when the situs of dispute is located on the secondary employer's premises; (b) at the time of 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 picket signs disclose clearly that the dispute is with the primary employer. These standards are not, of course, "to be applied on an indiscriminate 'per se' basis, but are to be regarded merely as aids in determining the underlying question" of whether Section 8(b) (4) (B) has been violated.⁶ Thus, the totality of a union's conduct in a given situation may well disclose a real purpose to enmesh neutrals to a dispute, despite literal compliance with the *Moore Dry Dock* standards;⁷ on the other hand, a minor deviation from the standards may not be sufficient to establish an unlawful objective.⁸

Applying these considerations to the matter at hand, we find that the Respondent's picketing between October 3 and 14, during which period Hatch's drivers were using all entrances to the north and south compounds, and the picketing between October 15 and 19, which was confined to gates IV and V, the entrances then reserved for Hatch's drivers, constituted lawful primary activity. Any resultant work stoppage between October 3 and 19 by employees of American, Clark, or Pacific was an incidental effect of this primary activity, which did not render the picketing unlawful.⁹

A different finding is required, however, with regard to the picketing between October 20 and December 20. It has been shown to our satisfaction that, during this period, the picketing at gates I and II was for the purpose of enmeshing neutral employers in the Respondent's dispute with Hatch. This is manifest from the fact that, to Respondent's knowledge, gates I and II were in no manner used by Hatch's trucks but were used by trucks of Clark and Pacific and the

⁶ *International Brotherhood of Electrical Workers Local Union 861, et al (Plauche Electric, Inc)*, 135 NLRB 250, 255

⁷ *Highway Truckdrivers and Helpers, Local No. 107 International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent (Riss & Company, Inc.)*, 130 NLRB 943, enfd. 300 F. 2d 317 (C.A. 3).

⁸ See *Plauche Electric, Inc., supra*.

⁹ See *International Union of Operating Engineers, Local 545 (Syracuse Supply Company)*, 139 NLRB 778, 781.

fact that the Respondent had the opportunity to, and did, picket at the gates through which all the Hatch trucks passed, from which entrances the pickets could be seen from within the compound. As to gate IV of the south compound, this entrance was picketed at times when there were no Hatch trucks within the compound. Of particular significance, too, are Respondent's instructions to its members, including drivers of Clark and Pacific, which are reported above. Clearly Respondent's picketing during this critical period substantially departed from the *Moore Dry Dock* standards of permissible common situs picketing. We are persuaded by all the evidence that such picketing was directed at employers and employees who were not parties to the dispute between Respondent and Hatch. As we see it, it had as its purpose and effect the inducing of employees of American, Clark, and Pacific to refuse to perform their work, thereby coercing and restraining those neutral employers, all for the purpose of forcing or requiring American to cease doing business with Hatch. Accordingly, we conclude that the Respondent violated Section 8(b)(4)(i) and (ii)(B) of the Act.¹⁰

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 companies herein involved, 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 thereof.

V. THE REMEDY

Having found that the Respondent violated Section 8(b)(4)(i) and (ii)(B) of the Act, we shall order it to cease and desist therefrom and take certain affirmative action designed to effectuate the purposes of the Act.

¹⁰ See *Monterey County Building & Construction Trades Council (Vito J La Torre)*, 142 NLRB 139, 141, 150; *Glass Workers Local Union 1892, Brotherhood of Painters, Paperhangers and Decorators of America, AFL-CIO, et al (Frank J Rooney, Inc)*, 141 NLRB 106, 117. Cf. *Local No 1, International Brotherhood of Electrical Workers AFL-CIO (Mallinckrodt Chemical Works)*, 148 NLRB 340.

As indicated above, the *Moore Dry Dock* rule makes it clear that picketing of a primary employer at a common situs must be limited to "places reasonably close to the location of the situs." While this criterion does not necessarily limit such picketing to a separate gate established for the sole use of employees of a primary employer, it is no defense to Respondent's picketing of gates used exclusively by employees of neutral employers in the circumstances of this case.

The Respondent's argument that American's premises should be considered as a primary situs on the ground that Hatch and American are allies to the dispute, is clearly without merit. See *Brewery Workers Union No. 8 International Union of United Brewery, Flour, Cereal, Soft Drinks & Distillery Workers of America, AFL-CIO (Bert P Williams, Inc)*, 148 NLRB 728. *Douds v Metropolitan Federation of Architects, Engineers, Chemists and Technicians, Local 231 (Ebasco Services, Inc)* 75 F Supp 672 (D C N Y).

CONCLUSIONS OF LAW

1. American, Clark, and Pacific are engaged in commerce or in an industry affecting commerce within the meaning of Section 2(6) and (7) or Section 8(b) (4) of the Act.

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

3. By picketing American's premises with an object of forcing American to cease doing business with Hatch, the Respondent has engaged in unfair labor practices within the meaning of Section 8(b) (4) (i) and (ii) (B) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Local No. 222, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Salt Lake City, Utah, its officers, agents, and representatives, shall:

1. Cease and desist from engaging in, or inducing or encouraging individuals employed by American Oil Company, Clark Tank Lines, Pacific Intermountain Express Company, or any other person engaged in commerce or in an industry affecting commerce, other than W. S. Hatch Co., Inc., to engage in, a strike or refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on materials, or to perform any services; and from threatening, coercing, or restraining the aforesaid employers or persons other than Hatch, where an object in either case is to force or require American to cease doing business with Hatch.

2. Take the following affirmative action which the Board finds will effectuate the purposes of the Act:

(a) Post at its business office and meeting halls in Salt Lake City, Utah, copies of the attached notice marked "Appendix B."¹¹ Copies of said notice, to be furnished by the Regional Director for Region 27, shall, after being duly signed by an authorized representative of the Respondent, be posted immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to its members are customarily

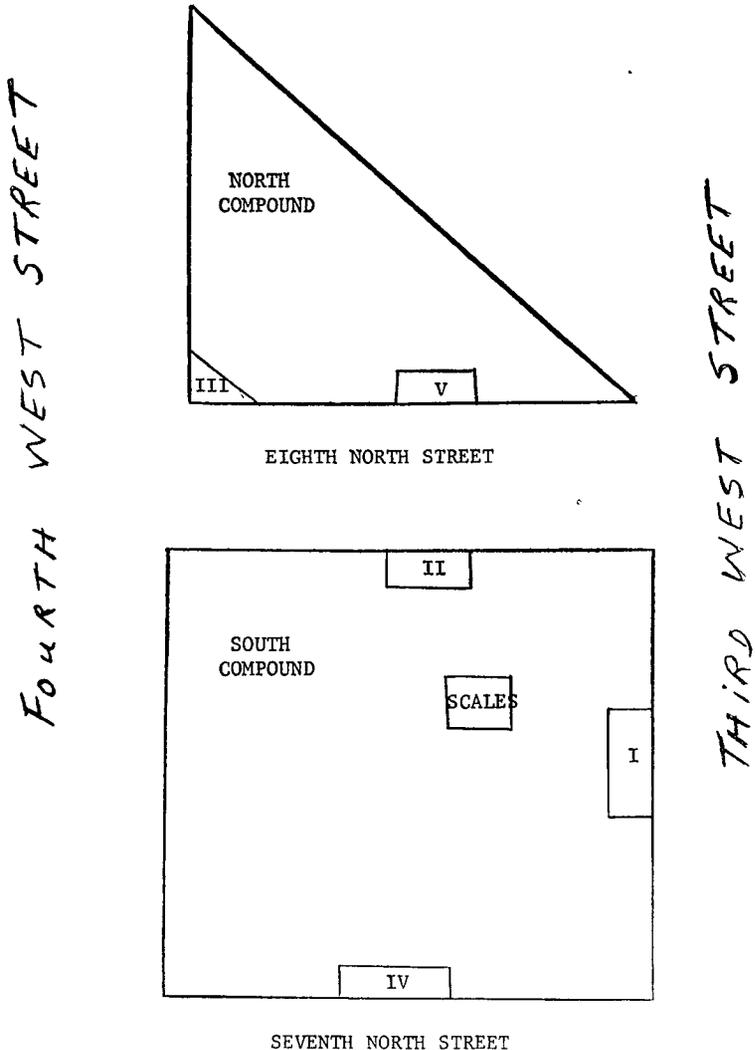
¹¹In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "a Decision and Order" the words "a Decree of the United States Court of Appeals, Enforcing an Order."

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) Sign and mail copies of said notice to the Regional Director for posting by American, Clark, and Pacific, these companies willing, at all locations where notices to their respective employees are customarily posted.

(c) Notify the Regional Director, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith.

APPENDIX A



APPENDIX B

NOTICE TO ALL OUR MEMBERS AND ALL EMPLOYERS

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT engage in, or induce or encourage individuals employed by American Oil Company, Clark Truck Lines, Pacific Intermountain Express Company, or any other employer other than W. S. Hatch Co., Inc., to engage in, a strike or refusal in the course of their employment, to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services; or threaten, coerce, or restrain the aforesaid employers other than Hatch, where an object in either case is to force or require American to cease doing business with Hatch.

LOCAL NO. 222, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Labor Organization.

Dated _____ By _____
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 609 Railway Exchange Building, 17th and Champa Streets, Denver, Colorado, Telephone No. 534-4151, if they have any question concerning this notice or compliance with its provisions.

Carroll-Naslund Disposal, Inc. and Truck Drivers Local No. 551, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent. Case No. 19-CA-2770. May 25, 1965

DECISION AND ORDER

On June 4, 1964, Trial Examiner Ramey Donovan issued his Decision in the above-entitled proceeding, finding that it would not effectuate the purposes of the National Labor Relations Act, as amended, to assert jurisdiction in the instant case, and recommending dismissal