International Hod Carriers' Building & Common Laborers' Union of America, Road & Heavy Construction, Local 1298, AFL–CIO *and* Roman Stone Construction Company, and Kindred Concrete Products, Inc.[1] *and* Sand, Gravel, Crushed Stone, Ashes & Material Yard Local 1175, International Hod Carriers' Building & Common Laborers' Union of America, AFL–CIO,[2] Party in Interest. *Case No. 29–CP–6 (formerly 2–CP–285). June 28, 1965*

DECISION AND ORDER

On March 5, 1965, Trial Examiner C. W. Whittemore issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices within the meaning of the National Labor Relations Act, as amended, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent filed exceptions to the Decision and a supporting brief, and the General Counsel filed a brief in support of the Trial Examiner's Decision.

The National Labor Relations 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.[3] The Board

[1] Roman Stone Construction Company and Kindred Concrete Products, Inc., are collectively referred to herein as the Company.

[2] Referred to herein as Local 1175

[3] We agree with the Trial Examiner's ruling that Respondent was not entitled, in the circumstances present here, to attack the validity of the Company's recognition of Local 1175 by litigating Local 1175's representative status as of the time recognition was initially conferred in the early 1950's, during the term of the subsisting agreement, or when that contract was executed in July 1963 It is apparent that Local 1175's representative status could not be challenged directly in a proceeding under Section 8 or 9 of the Act The subsisting contract between Local 1175 and the Company is lawful on its face and was executed more than a year before Respondent's picketing began As the contract is of reasonable duration, the contract-bar rules would preclude interference with the existing relationship by a representation petition under Section 9(c) ; see, e g , *Paragon Products Corporation,* 134 NLRB 662 Further, Section 10(b) would bar an unfair labor practice complaint attacking Local 1175's representative status as of the time the present contract was executed ; *Local Lodge No. 1424, International Association of Machinists* v. *N L R B (Bryan Manufacturing Company),* 362 U S 411 Finally, in accordance with established principles, the validity of Local 1175's continued recognition would not be affected by loss of majority within the 3-year term of the present agreement ; *Shamrock Dairy, Inc., et al.,* 119 NLRB 998, 1002

Section 8(b) (7) (A) which proscribes recognitional picketing where another labor organization is lawfully recognized and a question concerning representation may not be raised, was intended in part to promote stability in established bargaining relationships, an interest also served both by the contract-bar rules and by Section 10(b). To hold, under the conditions presented herein, that an incumbent union's representative status may be placed in issue as a defense to 8(b) (7) (A) charges would permit a rival union to accomplish by means of picketing what it could not achieve under established Board procedures. Such an application of 8(b) (7) (A) would offend the very policy which that Section was designed to further. Consistent with the congressional scheme, it is our opinion that the term "lawfully recognized" was meant to include all bargaining relationships immune from attack under Sections 8 and 9 of the Act Accordingly, and as Local 1175's representative status could not be litigated under any other Section of the Act, we agree with the Trial Examiner that such testimony could not be adduced in the 8(b) (7) (A) proceeding for the purpose of collaterally attacking Local 1175's status as statutory bargaining representative Cf *Local 1199, Drug and Hospital Employees Union, et al. (Janel Sales Corporation),* 136 NLRB 1564, 1568.

has considered the Trial Examiner's Decision, the exceptions and briefs, and the entire record in this case, and hereby adopts the findings,[4] conclusions, and recommendations of the Trial Examiner.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby adopts as its Order the Order recommended by the Trial Examiner, and orders that Respondent, International Hod Carriers' Building & Common Laborers' Union of America, Road & Heavy Construction, Local 1298, AFL-CIO, Islip, New York, its officers, agents, and representatives, shall take the action set forth in the Trial Examiner's Recommended Order.[5]

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

[4] Islip is located in Nassau County rather than Suffolk County.

[5] The telephone number for Region 29, appearing at the bottom of the Appendix attached to the Trial Examiner's Decision, is amended to read: Telephone No. 596-5386.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

Upon a charge filed on October 15, 1964, by an officer of the above-named employers, the General Counsel of the National Labor Relations Board, on October 30, 1964, issued his complaint and notice of hearing. Thereafter the above-named Respondent Local 1298 filed an answer dated November 4, 1964. The complaint alleges and the answer denies that the Respondent has engaged in and is engaging in unfair labor practices in violation of Section 8(b)(7)(A) of the National Labor Relations Act, as amended.[1] Pursuant to notice, a hearing was held on January 11, 1965, in New York, New York, before Trial Examiner C. W. Whittemore.

At the hearing all parties except Local 1175 were represented by counsel and were afforded full opportunity to present evidence pertinent to the issues, to argue orally, and to file briefs. Briefs have been received from General Counsel and the Respondent Local 1298.

Upon the record thus made, and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYERS CONCERNED

Both Roman and Kindred are New York corporations with office and place of business at the same address in Islip, New York. Both are engaged in the manufacture, sale, and distribution of concrete products: Roman of conduit and Kindred of precast manhole boxes.

All officers, directors, and stockholders of both corporations are relatives, either through blood or marriage. C. T. Montalbine is president of Kindred and vice president of Roman and a director and stockholder in both. N. P. Montalbine is secretary-treasurer, a director and a stockholder in both. N. F. Montalbine, C. T. Montalbine, N. P. Montalbine, Ralph Gulmi, and Salvatore LaDolce actively supervise the operations of both Roman and Kindred.

[1] In relevant substance, the section invoked states that it shall be an unfair labor practice for a union to picket or threaten to picket any employer with an object of forcing an employer to bargain with it as the representative of its employees, or forcing employees to accept it as their representative, where the employer has lawfully recognized another labor organization and a question concerning representation may not appropriately be raised.

Employees of both Kindred and Roman now and for the past several years have been covered by succeeding collective-bargaining agreements between both companies and Local 1175. C. T. Montalbine negotiated and executed the current contract for both companies.

The foregoing facts establish and it is found that these two companies constitute a single, integrated business enterprise and administer a common labor policy affecting the employees of both companies.

During the year preceding issuance of the complaint the two companies purchased and had delivered to their place of business directly from points outside the State of New York materials valued at more than $50,000.

The Charging Companies are engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

Both labor organizations named in the caption of this case are labor organizations within the meaning of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *Setting and major issues*

In 1950 the two Companies were located in Brooklyn, New York, at the same premises. Since that time they have continuously recognized, dealt with, and have entered into succeeding contracts with, Local 1175 as the exclusive representative of all employees of both concerns in an agreed-upon unit.

The current contract was executed in July 1963, and is due to expire June 30, 1966. It contains a union-shop clause, lawful on its face. At negotiations before entering into this agreement the Local was informed that the Companies planned to move their place of business from Brooklyn to Islip, in another county of the same State.

In November 1963, when C. T. Montalbine was at the constructionsite in Islip, he was approached by one Morrison, who identified himself as a representative of the Respondent Local 1298. After learning from Montalbine the name and nature of the business coming to these premises, Morrison inquired if the Company was "union." Montalbine replied that the Companies were under contract with Local 1175. Morrison then declared that Local 1175 had no jurisdiction in Suffolk County, where Islip is located, and that Montalbine would have to sign a contract with Local 1298. Montalbine replied that the current contract did not expire until 1966 and he could not sign with Local 1298.

Construction of the new plant continued. In January 1964, Morrison again informed Montalbine that he would have to sign with Local 1298, and that he would find out "sooner or later" that his local had jurisdiction in that county.

A month or two later Morrison delivered the same message to Montalbine at the Islip site.

The foregoing facts, undisputed by any evidence, form the significant background for events occurring within the 6-month period before October 15, 1964, when the charge was filed, and which are placed in issue by the complaint.

By October 15, 1964, the Companies' move to Islip had been completed. All employees who had been at the Brooklyn operations were transferred to the new plant. The machinery and products remain the same. The transferred employees continue to be members of Local 1175. In short, and as General Counsel urges in his brief, except for location the Companies' entire operation has remained the same.

It is concluded and found that at all times material the Companies and Local 1175 have been parties to a lawful collective-bargaining agreement.

The major issue for resolution now is whether or not, within the Act's 10(b) period, the Respondent Local 1298 has threatened to picket, and has picketed, the Companies in order to force them to recognize and sign a contract with it, and to force the employees concerned to be represented by it.

B. *Facts relevant to the issues*

Late in July Morrison and another representative of Local 1298, Genova, visited Montalbine at his Islip office and repeated the demand that this local be recognized. Genova declared that the Companies would "have to" recognize Local 1298, and added that if they did not "they would follow our trucks and stop the jobs or have the men on the jobs not accept our materials."

Early in September the two union representatives again called upon Montalbine and repeated both the demand and the threat.[2]

Late the same month Genova and another Local 1298 representative, Truicko, came to Montalbine, demanding recognition and a contract. Genova again threatened to have the trucks followed and to picket. (Montalbine's testimony as to this visit is uncontradicted by Genova.)

On October 5 four union representatives· Morrison, Genova, Truicko and Sajnacki came to the plant in Islip, where they met two of the Montalbines and the office manager. The union officials presented a Local 1298 contract to the company representatives, but the latter declined to sign it Upon this refusal Truicko declared that they would have to take "necessary steps" to force the signing.[3]

Beginning the next day, October 6, and continuing until October 23, Local 1298 picketed the premises in Islip, in front of employee entrances. The picket signs bore the legend:

TO THE PUBLIC
THE LABORERS EMPLOYED BY
ROMAN STONE
CONSTRUCTION CO.
DO NOT RECEIVE WAGES AND
WORKING CONDITIONS
OBTAINED BY CONTRACTS
WITH
LOCAL UNION
NO. 1298

It is undisputed that since the employees were transferred to the new plant Local 1175 has continued to represent them, and on their behalf has negotiated grievances with the employers. It is also unchallenged that the employers have continued to check off union dues as in the past. No employee has indicated his desire not to have Local 1175 continue to represent him.

C. *Conclusions*

In his brief, counsel for the Respondent Local 1298 contends that "the basic issue involved in this proceeding is whether a question concerning representation exists." This claim, if not frivolously advanced, at least is belated. The latter conclusion finds support in the facts: (1) That the Respondent's answer fails to deny the allegation of the complaint that the 1963 contract is a "lawful and valid written collective bargaining agreement," and (2) that in the presentation of his case counsel offered no direct evidence attacking in any way the validity of the contract held by the sister Local of the same International.

The frivolous nature of the claim is suggested by the fact that his client, Local 1298, was demanding that a contract be signed with it at a time when it plainly represented not a single employee of the Companies—and when it made no claim that it did.

The situation here is consistent with a trend becoming increasingly apparent: a labor organization delegating to itself the right which the Act accords to employees only—that of selecting a bargaining agent. The agent perverts its power as an agent and presumes to be the principal.

I conclude and find, from the facts set out above, that a valid contract exists between the Companies and Local 1175 and that no question concerning representation could validly be raised.

Undisputed testimony also, in my opinion, sustains the complaint's allegations to the effect that the Respondent Local 1298 has, within the 10(b) period, threatened to and has picketed the Employers with an object of forcing them to sign a contract with the Respondent. An additional uncontradicted fact, not noted above, provides

[2] Montalbine's testimony, from which the quotations are made, is uncontradicted as to these two incidents either by Morrison or Genova. Morrison was not a witness and Genova was not questioned concerning the events.

[3] Truicko denied stating they would take "necessary steps," while Genova and Sajnacki denied that anything was said about picketing. Not only having noted the casual manner of their denials, but also having well considered the undisputed threats of previous meetings, I cannot credit these denials. Furthermore, as noted hereinafter, the Respondent offered no evidence as to why picketing, which actually and undeniably occurred, was invoked. It would be unreasonable to believe, under all the circumstances, that a picket line would have been set up without previously voicing an ultimatum.

further support to the foregoing conclusion: during the period of the picketing Morrison told Montalbine that the only way such picketing "could be resolved was by our signing a contract with 1298."

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent Local 1298, set forth in section III, above, occurring in connection with the business operations of the Charging Companies, 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.

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

CONCLUSIONS OF LAW

By picketing and threatening to picket the Charging Companies, with an object of forcing them to recognize and bargain with it as the representative of their employees, and of forcing said employees to accept it as their collective-bargaining representative, at a time when said Employers have lawfully recognized Local 1175 and a question concerning representation may not be appropriately raised under Section 9(c) of the Act, the Respondent Local 1298 has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(b)(7)(A) and Section 2(6) and (7) of the Act.

RECOMMENDED ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, it is hereby ordered that the Respondent, International Hod Carriers' Building & Common Laborers' Union of America, Road & Heavy Construction, Local 1298, AFL–CIO, its officers, agents, and representatives, shall:

1. Cease and desist from picketing or threatening to picket Roman Stone Construction Company and Kindred Concrete Products, Inc., where an object is forcing or requiring said Employers to recognize or bargain with it as the representative of their employees, or forcing said employees to accept it as their representative, where said Employers have lawfully recognized another labor organization and a question concerning representation may not appropriately be raised.

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

(a) Post at its business offices and meeting halls copies of the attached notice marked "Appendix." [4] Copies of the notice to be furnished by the Regional Director for Region 29, shall be duly signed and posted by the Respondent immediately upon receipt, and shall be maintained, in conspicuous places, including all locations where notices to members are customarily posted, for a period of 60 consecutive days. Reasonable steps shall be taken to insure that the notices are not altered, defaced, or covered by any material.

(b) Mail or deliver to the said Regional Director signed copies of said notice for posting by the Employers named herein, if willing

(c) Notify the said Regional Director, in writing, within 20 days from the date of receipt of this Trial Examiner's Decision, what steps have been taken to comply herewith.[5]

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[4] If the Board adopts this Recommended Order, the words "a Decision and Order" shall be substituted for the words "Recommended Order of a Trial Examiner" in the notice. If the Board's Order is enforced by a decree of a United States Court of Appeals, the words "a Decree of the United States Court of Appeals, Enforcing an Order" shall be substituted for the words "a Decision and Order".

[5] If the Board adopts this Recommended Order, this provision shall be modified to read: "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps Respondent has taken to comply herewith "

APPENDIX

NOTICE TO ALL OUR MEMBERS AND TO ALL EMPLOYEES OF ROMAN STONE CONSTRUCTION COMPANY AND KINDRED CONCRETE PRODUCTS, INC.

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board and in order to bring our actions in conformity with the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT picket or threaten to picket Roman Stone Construction Company and Kindred Concrete Products, Inc., where an object is forcing or requir-

ing these employers to recognize or bargain with us as the representative of their employees, or forcing such employees to accept us as their representative, where these employers have lawfully recognized another labor organization and a question concerning representation may not appropriately be raised.

INTERNATIONAL HOD CARRIERS' BUILDING & COMMON LABORERS' UNION OF AMERICA, ROAD & HEAVY CONSTRUCTION, LOCAL 1298, AFL-CIO,
Labor Organization.

Dated_____ By_____
(Representative) (Title)

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

Employees may communicate directly with the Board's Regional Office, 16 Court Street, Brooklyn, New York, Telephone No. 596-3751, if they have any questions concerning this notice or compliance with its provisions.

Garwin Corporation; S'Agaro, Inc., a New York Corporation; S'Agaro, Inc., a Florida Corporation; Joseph Winkelman; Milton Mirsky *and* Local 57, International Ladies' Garment Workers' Union, AFL-CIO. *Case No. 29-CA-45 (formerly 2-CA-9791). June 28, 1965*

DECISION AND ORDER

On December 31, 1964, Trial Examiner Samuel M. Singer issued his Decision in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondents and the Charging Party filed exceptions to the Trial Examiner's Decision with supporting briefs.

The National Labor Relations 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 entire record in this case, including the Trial Examiner's Decision, the exceptions, and briefs,[1] and hereby adopts the Trial Examiner's findings, conclusions, and recommendations, with the modifications indicated below.

For the reasons fully set forth in his Decision, we agree with the Trial Examiner's conclusions that Respondents violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act, as amended, by closing their New York facility, discharging their employees, and removing their operations to Miami, Florida, for the purpose of depriving said employees of rights guaranteed by Section 7 of the Act and to avoid dealing with the Union as majority representative of

[1] The Respondents' request for oral argument is hereby denied because the record, the exceptions, and briefs adequately present the issues and positions of the parties.