

it immediately upon receipt thereof, and be maintained for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 9, in writing, within 20 days from the receipt of this Decision and Recommended Order, what steps the Respondent has taken to comply herewith.<sup>15</sup>

<sup>15</sup> In the event that this Recommended Order 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 Respondent has taken to comply herewith."

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT maintain any rule prohibiting solicitation in connection with our employees' exercise of their rights under Section 7 of the Act in nonworking areas of our plant and on nonworking time.

WE WILL NOT discourage or otherwise discriminate against any of our employees because of their exercise of any of the rights to engage in concerted activities for the purpose of collective bargaining or other mutual aid and protection or to refrain from any or all such activities, as guaranteed by Section 7 of the Act.

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

WE WILL offer to Charles Bole, Bernard Feltner, and Herman Clouse reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and WE WILL make them whole for any loss of pay suffered as a result of their discharges.

THE E. W. BUSCHMAN COMPANY, INCORPORATED,  
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, Federal Office Building, 550 Main Street, Cincinnati, Ohio, Telephone No. 381-2200, if they have any questions concerning this notice or compliance with its provisions.

**Local 3, International Brotherhood of Electrical Workers, AFL-CIO and Darby Electric Corporation and Industrial Workers of Allied Trades, Local 199, affiliated with the National Federation of Independent Unions, and United Construction Contractors Association, Inc., Parties to the Contract. Cases Nos. 29-CP-3 and 29-CP-4 (formerly 2-CP-243 and 2-CP-257). June 28, 1965**

DECISION AND ORDER

On October 28, 1964, Trial Examiner Samuel Ross issued his Decision in the above-entitled proceeding, finding that the Respondent had  
153 NLRB No. 66.

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 and a supporting brief.

Pursuant to the provisions of Section 3(b) of the Act, the National Labor Relations Board has delegated its powers in connection with these cases 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 no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions, brief, and the entire record in the cases, and hereby adopts the findings, 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 Recommended Order of the Trial Examiner, and orders that Respondent, Local 3, International Brotherhood of Electrical Workers, AFL-CIO, its officers, agents, and representatives, shall take the action set forth in the Trial Examiner's Recommended Order.

### TRIAL EXAMINER'S DECISION

#### STATEMENT OF THE CASE

Upon charges filed on February 24 and April 16, 1964, by Darby Electric Corporation, herein called Darby, against Local 3, International Brotherhood of Electrical Workers, AFL-CIO, herein called Local 3 or the Respondent, the General Counsel of the National Labor Relations Board issued a consolidated amended complaint on May 7, 1964, alleging that the Respondent, Local 3, had engaged in unfair labor practices within the meaning of Section 8(b)(7)(A) and Section 2(6) and (7) of the Act. More specifically, the complaint alleges that in February and April 1964, Local 3 picketed construction projects where Darby was engaged in performing electrical installations with an object of forcing or requiring Darby to recognize and bargain with Local 3 as the collective-bargaining representative of its employees or to force or require Darby's employees to accept Local 3 as their representative, notwithstanding that Darby, as a member of United Construction Contractors Association, Inc., herein called Association, has lawfully recognized Industrial Workers of Allied Trades, Local 199, affiliated with the National Federation of Independent Union, herein called Local 199, as the collective-bargaining representative of its employees, is a party to a collective-bargaining agreement with Local 199 covering the terms and conditions of employment of its employees, and a question concerning the representation of Darby's employees could not appropriately be raised.

The Respondent Local 3 has filed an answer denying the jurisdiction of the Board and the commission of unfair labor practices.

Pursuant to due notice a hearing was held at New York, New York, on July 15 and 16, 1964, before Trial Examiner Samuel Ross. All parties were afforded full opportunity to be heard, to introduce evidence, to examine and cross-examine witnesses, to present oral argument, and to file briefs. Oral argument at the close of the hearing was waived by all the parties except the General Counsel. On August 1, 1964, the Respondent filed a brief which has been carefully considered.

Upon the entire record in the case and from my observation of the witnesses and their demeanor, I make the following:

## FINDINGS OF FACT

### I. COMMERCE

The Charging Party, Darby, is a New York corporation whose office and principal place of business is located in Flushing, New York, and it is engaged in the business of electrical contracting in the building and construction industry. Darby's gross annual revenue from this business is approximately \$200,000. During the past year, Darby purchased electrical materials and supplies valued at about \$80,000 from local supply houses and jobbers located in the State of New York. Although some of such materials and supplies undoubtedly originated outside the State of New York, the record contains no probative evidence regarding the value of Darby's purchases which so originated. Accordingly, it is quite evident that the record does not establish that Darby's indirect inflow is sufficient to meet the Board's standards for the assertion of jurisdiction.<sup>1</sup> However, at all times material herein, Darby has been a member of United Construction Contractors Association, Inc.,<sup>2</sup> an employer organization composed of about 40 contractors, principally electrical, which bargains collectively with labor organizations and executes contracts on behalf of its members covering the wages, hours, and other terms and conditions of employment of its members' employees, including those of Darby. "In these circumstances the relevant criterion in determining the Board's jurisdiction is the effect on commerce of the combined operations of all the Employers" in the Association.<sup>3</sup>

The record discloses that Jack Picoult, another member of the Association whose principal office and place of business is located in the State of New Jersey, is engaged in the business of general and electrical contracting, and that during the last 12 months, Picoult's gross revenue for work performed outside the State of New Jersey was in excess of \$800,000. The record further shows that during the same period, Picoult purchased and caused to be shipped in interstate commerce across state lines, material and supplies valued in excess of \$50,000. The Board previously has asserted jurisdiction over the operations of Picoult alone.<sup>4</sup>

Accordingly, I find and conclude that the Association is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that on the basis of Darby's membership in the Association, it would effectuate the policies of the Act to assert jurisdiction in this proceeding over Darby's operations.

### II. THE LABOR ORGANIZATIONS INVOLVED

The pleadings admit and I find that Respondent Local 3 is a labor organization within the meaning of Section 2(5) of the Act.

The uncontroverted record discloses that Local 199 is an organization in which employees participate which exists for the purpose of dealing with employers concerning grievances, wages, rates of pay, hours of employment, and conditions of work. Accordingly, I find and conclude that Local 199 also is a labor organization within the meaning of Section 2(5) of the Act.

### III. THE UNFAIR LABOR PRACTICES

#### A. *The history of collective bargaining for Darby's employees*

Since December 5, 1960, Darby's employees have been represented by Local 199 pursuant to two successive collective-bargaining agreements between Darby and Local 199. The second such agreement by its terms expired on December 4, 1962. On December 21, 1961, during the term of the second such labor contract, Darby applied and shortly thereafter was accepted for membership in United Electrical Contractors Association, a multiemployer organization composed of about 30 to 32 electrical contractors. United Electrical was then also a party to a collective-bargaining agreement with Local 199 whose expiration date was February 21, 1963, covering the terms and conditions of employment of the employees of the Association's members.

<sup>1</sup> *Siemons Mailing Service*, 122 NLRB 81.

<sup>2</sup> The Respondent Local 3 contends that United Construction Contractors Association is not a "valid association." For the reasons stated hereinafter, that contention is rejected.

<sup>3</sup> *Belleville Employing Printers*, 122 NLRB 350, 352; *Westside Market Owners Association, et al.*, 126 NLRB 167, 169-170, *Siemons Mailing Service, supra*.

<sup>4</sup> *Local 3, International Brotherhood of Electrical Workers, AFL-CIO (Jack Picoult and Al Picoult d/b/a Jack Picoult)*, 137 NLRB 1401.

By the terms of Darby's application for membership in the Association, Darby agreed "to be bound by, and to comply with, the terms of any agreement now existing or which may hereafter be entered into between the Association and Industrial Workers of Allied Trades, Local 199, with the same force and effect as though [it] had executed the same as a party." On January 17, 1963, United Electrical Contractors Association changed its name and filed a certification of incorporation with the secretary of the State of New York under the name of United Construction Contractors Association, Inc. According to the uncontradicted and credited testimony of Solomon Rabinowitz, the president of the Association, the purpose for the change in name was to allow for the expansion of the Association to include "other trades" in addition to electrical contractors. In April 1963, after the incorporation of the Association and its change of name, Darby executed an additional application for continued membership in the Association. This application contained the same provision hereinabove quoted in respect to participation in contracts with Local 199. Also following its incorporation in April 1963, the Association negotiated and executed a new collective-bargaining agreement with Local 199, the terms of which were made retroactive to February 21, 1963, the expiration date of its prior agreement with Local 199. The termination date of this current labor agreement is November 15, 1964.

*B. Respondent's demands on Darby and its picketing of Darby's project*

On or about September 24, 1963, David Robertson, a business representative of the Respondent Local 3, visited Darby's office and left a message for Darby's president, William C. Lopresti, to call him. The latter did so, either later that day or the next day. According to Lopresti, Robertson told him that Darby was doing a lot of work wiring one- and two-family houses, and that it could not continue to do work, other than on small jobs, as a Local 199 contractor. Referring to a job involving 10 houses in "Belleville," Queens, New York, on which Darby was then working, Robertson said, "I shouldn't have let you finish that job." Robertson further told Lopresti that if he "signed up with Local 3," he "would have no problems." Lopresti agreed to meet Robertson to discuss the matter further.

They met on September 26, 1963,<sup>5</sup> at the parking lot of a Horn and Hardart Restaurant in Flushing, New York. According to Lopresti, Robertson again said that Darby "should sign up with Local 3" because it "was doing enough work . . . [to] be a Local 3 contractor," and that if it signed up, it "wouldn't have any trouble." Lopresti told Robertson that Darby currently had a contract with Local 199. Robertson replied, "Well, it doesn't mean too much because Glo Electric [a friend of Lopresti] also had a contract with 199, and he is Local 3 now, and he is not having any problems." Robertson gave Lopresti the telephone number of Mr. Stern, Respondent's counsel, and suggested that Stern would answer any questions regarding what would happen if Darby signed up with Local 3 while it had a contract with Local 199. Robertson further told Lopresti, "I will give you a week to think about it, and if you don't call me in a week, I will assume you don't want to do anything." Lopresti did not thereafter call either Robertson or Respondent's counsel, Stern.

According to Lopresti, about January or February 1964, while Darby was engaged in the installation of electrical wiring and appliances in a group of private dwellings under construction at 25th Drive and 146th Street in Flushing, New York, known as the Brookville job, he received a telephone call from Robertson. In that conversation, Robertson told Lopresti, "the only way I [Lopresti] would be able to finish the [Brookville] job . . . is that if I was Local 3, . . . if I didn't sign up with Local 3, I would have pickets on the job." Lopresti testified that he made no reply.

About 1 or 2 weeks later, on February 21 and 24, 1964, Local 3, using about three pickets, picketed Darby's Brookville construction project with picket signs bearing the following legend.

Electricians  
working on this job  
Employed by Darby  
are not members of  
Electrical Workers Local Union No. 3  
Established 1891  
International Brotherhood of Electrical Workers  
Affiliated with AFL-CIO

<sup>5</sup> Lopresti was admittedly uncertain of the dates of his telephone conversation and meeting with Robertson. The date of the meeting, as found above, is based on the credited testimony of Sanford Wohl, another electrical contractor, who was introduced to Lopresti at the Horn and Hardart parking lot. The date of the visit to Darby's office is based on Robertson's testimony, credited to this extent.

Subsequently, while Darby was engaged in the installation of electrical wiring and electric heating in a three-story apartment house in the Bronx, New York, the Respondent, on April 15, 16, and 17, 1964, picketed that project.

Robertson's version of his conversations with Lopresti differed considerably from Lopresti's testimony. According to Robertson, on September 24, 1963, he chanced to be driving past Darby's office, noticed its name on the window, and decided to pay it a visit. Upon inquiry in Darby's office, he learned for the first time that Lopresti was president of Darby, and since the latter was absent, he asked that Lopresti call him. Lopresti did so the next day, and said that he wanted to meet Robertson, and that he had intended to get in touch with Robertson "before." Robertson said, "Good," and then arranged to meet Lopresti at the Horn and Hardart Restaurant in Flushing, New York, on the next day, September 26, 1963. They met as scheduled. Lopresti repeated that he had "wanted to meet me [Robertson] for some time," he wanted to enlarge his work efforts to get "bigger and better jobs," and that he knew that this "could come about" only "by being with Local 3," because many general contractors "prefer the Local 3 contractors." Robertson testified that he asked Lopresti, "Do you belong to any organization?" and that Lopresti replied, "Yes, Local 199." Robertson said, "Well, there isn't much I can do to help you." Lopresti asked, "Is there somebody I can speak to?" Robertson responded, "If you wish, you could call my attorney and speak to him. I can't help you right at this point because you belong to another organization." Robertson further testified that Lopresti told him that his contract with Local 199 would terminate at the end of 1963, and that as soon as it "ran out," he wanted to "join Local 3," because "he wanted to take on bigger and better work." Robertson also testified that he replied, "That is up to you, you can do anything you please. There is nothing I can do to stop you."

Robertson denied that he told Lopresti that if "he continued under the contract with Local 199," he would be prevented from finishing his jobs. Robertson also denied that he had threatened to picket Lopresti's jobs, or that he had any further conversation with Lopresti after their meeting in September at the Horn and Hardart Restaurant. Finally Robertson testified that he ordered the picketing on the Brookville job, and that the object of the picketing was informational, "to advertise that Darby Electric was doing the electrical work on this premises, paying substandard wages, and not a member of the AFL-CIO."<sup>6</sup> However, on cross-examination, Robertson admitted that Respondent's picketing of Darby's projects was for the "same purpose" as its picketing of another electrical contractor, Hyland Electric Corporation, and that one purpose of the latter picketing was "attempting to organize the electricians employed by . . . [Hyland] on the job, and to enroll them as members of Local No. 3."

### C. Resolution of the credibility issue

Careful analysis of the conflicting testimony of Lopresti and Robertson regarding their conversations with each other leads me to conclude that Lopresti's version should be credited, except for the dates of their first conversation and meeting,<sup>7</sup> and that Robertson's testimony is unworthy of belief or credence.

As previously noted, Robertson's version was that Lopresti expressed a desire to become a Local 3 contractor, and that Robertson rejected this offer because Lopresti's firm, Darby, had a contract with Local 199 which still had 3 months to run before its expiration. On its face, this testimony stretches credibility beyond belief. If such an offer had been made by Lopresti, and Robertson was concerned with legal niceties (as his testimony implies), one would expect that Robertson at least would have utilized the remaining 3 months of the life of Darby's contract with Local 199 in efforts to sign up Darby's employees, then members of Local 199, as members of Local 3, and thereby achieve majority status, a necessary condition precedent to lawful recognition of Local 3. Admittedly, Robertson knew that Darby's contract with Local 199 did not prevent lawful efforts on his part to organize its employees. Yet he made no effort to do so. Moreover, if the only impediment to Respondent's acceptance of Lopresti's offer to sign up with Local 3 was the latter's unexpired contract with Local 199, it would appear reasonable to expect that, at the expiration of the contract, Robertson would have telephoned Lopresti with a view to concluding a contract between Darby and Local 3. According to Robertson, he did not telephone, and his explanation for not doing so was that he was "too busy." But obviously, Robertson was not that busy, since he had time enough to order the picketing of Darby's projects, and to cause signs, with Darby's name thereon, to be prepared.

<sup>6</sup> The Respondent offered no testimony other than hearsay (which was rejected) regarding the object of the picketing of Darby's job in the Bronx, New York

<sup>7</sup> See footnote 5, *supra*.

Finally, the picketing of Darby's construction projects, without even telephoning Lopresti, is inconsistent with Robertson's testimony that Lopresti expressed a desire to become a Local 3 contractor. In the light of its patent implausibility, and its inconsistency with subsequent events, I conclude that Robertson's version of his conversations with Lopresti merits no credence.

Conversely, since the Respondent's picketing of Darby's construction projects is wholly consistent with Lopresti's version of his conversations with Robertson, and I was otherwise favorably impressed by Lopresti's candor and demeanor as a witness, his testimony regarding the conversations with Robertson is credited.

#### D. Concluding findings

As previously noted, the complaint herein alleges that the Respondent, by picketing Darby's projects, engaged in unfair labor practices within the meaning of Section 8(b)(7)(A) of the Act.<sup>8</sup> It would appear from the language of the section that the elements essential to establish the violation are:

- (1) That the Respondent picketed and/or threatened to picket Darby.
- (2) That an object thereof was to force or require Darby to recognize or bargain with Respondent, or to force or require Darby's employees to accept Respondent as their bargaining representative.
- (3) That Darby has lawfully recognized Local 199.
- (4) That no question concerning the representation of Darby's employees may be raised.

The Respondent admits picketing Darby. However, it denies that the objective of the picketing was either recognitional or organizational, and contends that it was "purely informational." In addition, the Respondent contends that the contract between Darby and Local 199 is not a bar to the Board's consideration of a question concerning representation. The issues thus raised will be considered hereinafter.

#### 1. The object of Respondent's picketing

The Respondent, relying on Robertson's testimony discredited above, contends that its picketing of Darby's projects was "for purely informational purposes." However, contrary to that contention, Lopresti's credited testimony discloses that the picketing by Respondent was preceded by demands that Darby "sign up" with Local 3, and threats of "trouble" and "picketing" if it did not. Accordingly, it is quite apparent, and I therefore find, that an object of the Respondent's picketing was to force or require Darby to recognize and bargain with the Respondent within the meaning of Section 8(b)(7)(A) of the Act. Moreover, in view of Robertson's admission on cross-examination that an additional purpose of Respondent's picketing of Darby's projects was the same as its picketing of Hyland Electric Corporation, "to organize the electricians employed by [Hyland] and to enroll them as members of Local No. 3," it is quite evident that another object of Respondent's picketing, also proscribed by Section 8(b)(7)(A), was to force or require the employees of Darby to accept or select Local 3 as their collective-bargaining representative.

Even assuming that the Respondent's picketing of Darby's projects also was for "informational purposes," it would not be a defense to the Section 8(b)(7)(A) violation charged herein. The Act does not require that the sole object of the picketing be recognitional or organizational, but only that *an* object be such.<sup>9</sup> Moreover, the Board and the courts have held that the protection afforded to informational picketing by the second proviso to Section 8(b)(7)(C) of the Act applies only to that

<sup>8</sup> Section 8(b)(7)(A) of the Act provides, as follows:

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

\* \* \* \* \*

(7) to picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer where an object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees or forcing or requiring the employees of an employer to accept or select such labor organization as their collective-bargaining representative, unless such labor organization is currently certified as the representative of such employees:

(A) where the employer has lawfully recognized in accordance with this Act any other labor organization and a question concerning representation may not appropriately be raised under section 9(c) of this Act,

<sup>9</sup> *Local 345, Retail Store Employees Union (GEM of Syracuse, Inc)*, 145 NLRB 1168.

subparagraph and not to subsections (A) and (B) of 8(b)(7).<sup>10</sup> For all the foregoing reasons I conclude that the asserted informational character of the Respondent's picketing is not a defense to the charge of violation of Section 8(b)(7)(A) in this case.

## 2. The issue of whether Darby has lawfully recognized Local 199

As previously found, since December 5, 1960, Darby has recognized Local 199 as the exclusive bargaining representative of its employees pursuant to successive collective-bargaining agreements, first between Darby and Local 199, and later between the Association and that union. All of these labor agreements contain clauses which specifically acknowledged that Local 199 represented a majority of the employees covered thereby. In addition, the record discloses that on December 21, 1961, when Darby applied for membership in the Association and agreed to be bound by the Association's collective-bargaining agreement, all of Darby's employees were members of Local 199. There is no evidence in the record that at any time material herein, either when Darby executed its first labor agreement with Local 199, or at any time thereafter, Local 199 did not represent an uncoerced majority of Darby's employees.

In *Shamrock Dairy, Inc., et al.*,<sup>11</sup> the Board held that the extension by an employer of recognition to a union as the exclusive representative of his employees, and the execution of a collective-bargaining agreement acknowledging that status of the union, gives rise to two rebuttable presumptions: (1) That the union was the majority representative at the time it was recognized as bargaining agent; for otherwise the parties would have been guilty of unfair labor practices; and (2) that the majority status continued; i.e., that the union continued to be the majority representative after the execution of the contract. Since its *Shamrock* decision, the Board has consistently followed these principles.<sup>12</sup> In accordance with the holding in the *Shamrock Dairy* case, *supra*, and in the absence of any testimony that Local 199 was not the majority representative of Darby's employees at any time material herein, I conclude that Darby has "lawfully recognized" Local 199, "another labor organization," within the meaning of subsection (A) of Section 8(b)(7) of the Act.

## 3. The issue of whether a question concerning representation might appropriately be raised by Respondent

As previously noted, a finding that "a question concerning representation may not appropriately be raised under Section 9(c) of the Act" is a necessary element for the establishment of a violation of Section 8(b)(7)(A) of the Act.

In respect to this issue, the uncontroverted record discloses that there has been a 3-year history of collective bargaining on a multiemployer basis between the Association and Local 199, dating back to at least February 21, 1961. The record further discloses that Darby, as a member of the Association, has participated in the said multiemployer bargaining with Local 199 since December 21, 1961. Moreover, as previously noted, at the time of the Respondent's picketing of Darby's projects in February and April 1964, there was in effect a collective-bargaining agreement between the Association and Local 199, binding on Darby, covering, *inter alia*, the terms and conditions of employment of the electricians employed by Darby. Finally, the record as credited discloses no evidence that Darby at any time evinced any interest in withdrawing from the Association, or ever made any effort to do so.<sup>13</sup>

In the light of the foregoing, including the substantial 3-year history of bargaining on a multiemployer basis, and Darby's continued adherence to such multiemployer bargaining, it is fairly evident and found that the only appropriate unit for bargain-

<sup>10</sup> *Local 1199, Drug and Hospital Employees Union (Janet Sales Corporation)*, 136 NLRB 1564, 1567-1568; *International Hod Carriers' Building and Common Laborers' Union, Local 840 (Charles A. Blünne, d/b/a C. A. Blünne Construction Company)*, 135 NLRB 1153, 1158-1159, *Penello v. Retail Store Employees Local Union No. 692, Retail Clerks International Association (Irvms Inc.)*, 188 F. Supp. 192, 200 (C.A. 4), *aff'd* 287 F.2d 509 (C.A. 4).

<sup>11</sup> 119 NLRB 998, 1001-1002.

<sup>12</sup> *Oilfield Maintenance Co., Inc., et al.*, 142 NLRB 1384, 1386, *Bud's Cooling Corporation, et al.*, 138 NLRB 596, 601; *Lori-Ann of Miami, Inc., et al.*, 137 NLRB 1099, 1111, footnote 36; *Paul Robey, an individual, Crown Drug Company*, 136 NLRB 865, 869.

<sup>13</sup> Indeed, in the light of the existing agreement between the Association and Local 199 whose terms were binding on Darby, the latter could not have withdrawn from its multi-employer bargaining obligations when the Respondent demanded that Darby sign up with Local 3, and when it picketed Darby's construction projects. *Donaldson Sales, Inc.*, 141 NLRB 1303, 1305.

ing in respect to Darby's employees was the Association-wide unit.<sup>14</sup> Accordingly, Respondent's effort to secure recognition as the representative of Darby's employees only, could not appropriately raise a question concerning representation for the reason that the unit sought was inappropriate.

As an additional ground for the above conclusion, the General Counsel also urges that the current contract between the Association and Local 199 was a bar to the raising of a question concerning the representation of Darby's employees. The Respondent contends, however, that the current contract was not such a bar for the following reasons: (a) The Association is not a valid association; (b) there is insufficient evidence of ratification by the members of Local 199 of the latter's affiliation with the National Federation of Independent Unions; (c) the contract "is illegal because of its retroactive prehire union-security clause"; and (d) the unit of employees covered by the contract is not an appropriate unit for the purposes of collective bargaining. These contentions and the reasons asserted therefor will be considered *seriatim*.

(a) The contention that United Construction Contractors Association, Inc., "is not a valid association" is based on the fact that its name formerly was United Electrical Contractors Association, the assertion that the proof is inadequate to establish that the members of Association "knowingly and unanimously" transferred when the Association incorporated and changed its name, and on the further fact that the Association has no office or telephone listing.

I regard this contention and the reasons asserted therefor as specious. As previously found, the uncontroverted record discloses that the Association consists of about 40 employer-members. It has duly elected officers, meets regularly at monthly intervals, has a constitution and bylaws, and bargains on behalf of its employer-members with at least one labor organization. Thus, the record adequately establishes the existence of a valid association. Moreover, the existence of a formal employer association is not required to establish an appropriate multiemployer unit.<sup>15</sup> Accordingly, the Respondent's contention that the current contract between the Association and Local 199 is not a bar because the Association is not a "valid" one is rejected.

(b) The second reason asserted by Respondent for the contract not being a bar is based on Local 199's change in affiliation from the Confederated Unions of America to the National Federation of Independent Unions. In this regard the Respondent urges that there is no proof that the members of Local 199 "intended to be bound by an allegiance to the [latter federation]" or that "the members of the . . . Association intended to bargain with an affiliate of this new parent body."<sup>16</sup>

This contention is likewise regarded as devoid of any merit. The current contract between the Association and Local 199 discloses on its face that the latter union is affiliated with the National Federation of Independent Unions. Moreover, the uncontroverted testimony of Local 199's president, Gordon, discloses that the change of affiliation resulted from a merger of Confederated Unions of America with the National Federation of Independent Unions, which antedated the execution of the current contract between Local 199 and the Association. Since neither the contracting parties nor the members of either of them have questioned the regularity of the merger, and the contract on its face discloses that it is between a valid association and labor organization, absent any proof to the contrary, regularity will be presumed.<sup>17</sup> For the foregoing reasons, and since no proof of irregularity has been offered, the contention of the Respondent that the contract is not a bar because of the merger of Confederated Unions of America with National Federation of Independent Unions is likewise rejected.

(c) The third reason asserted by Respondent for the contract between the Association and Local 199 not being a bar is based on "its retroactive prehire union security clause." In respect to union security, the contract shows that it was executed in April 1963 retroactive to February 21, 1963, the expiration date of the prior contract. Originally, it contained the following union-security provision:

Each employee covered by this agreement shall become a member of the Union seven (7) days after the date of this agreement.

<sup>14</sup> Although the contracts between the Association and Local 199 originally contained illegal union-security clauses, they also provided for the separability of any provisions "rendered or declared illegal, invalid or unenforceable," and for the continued validity of the remainder of the contract. Accordingly, notwithstanding the said illegal union-security clauses, the bargaining history supports the multiemployer unit found above. *American Broadcasting Company, etc.*, 134 NLRB 1458; *Columbia Broadcasting System, Inc., et al.*, 134 NLRB 1466.

<sup>15</sup> *Electrical Contractors of Troy and Vicinity*, 116 NLRB 354, 358-359; *Santa Clara County Pharmaceutical Association, etc.*, 114 NLRB 256.

<sup>16</sup> Respondent's brief, p. 20.

<sup>17</sup> See *Shreveport-Bossier Cleaners & Laundries, Inc.*, 124 NLRB 534, 535, footnote 3

However, on August 5, 1963, long before the Respondent first picketed Darby, this provision of the contract was amended by the parties to conform with the language of Section 8(f) of the Act, and thereafter read as follows:

Each employee covered by this agreement shall become a member of the Union after the seventh day following the beginning of such employment or the effective date of this agreement, whichever is later.

Accordingly, assuming that the members of the Association are "engaged primarily in the building and construction industry" and Section 8(f) of the Act is applicable, the failure of the contract originally to provide a 7-day grace period for new employees to join Local 199 was cured by the amendment which conformed the union-security clause with Section 8(f).<sup>18</sup>

However, the Respondent also contends that Section 8(f) is inapplicable to the contract because of the failure of the General Counsel "to establish that all [the members of the Association] were engaged *primarily* in construction work," and that, to be lawful, the union-security clause should have provided a 30-day grace period in accordance with the proviso to Section 8(a)(3) of the Act. Contrary to this contention, the record discloses that Darby is engaged primarily in the building and construction industry, that Picoult, another member of the Association, upon whose interstate commerce the Board's jurisdiction was found above, is likewise so engaged, and that both the name and the bylaws and constitution of the Association limit membership to employers "engaged in construction."<sup>19</sup> Moreover, no proof was offered or adduced that any member of the Association was not so engaged. In the light of this record, I conclude that the record adequately establishes the applicability of Section 8(f) to the operations of the Association.

Finally, the Respondent's characterization of the collective-bargaining agreement between the Association and Local 199 as a "prehire" labor contract is not supported by the record.<sup>20</sup> In this regard the evidence discloses first that Darby's employees were members of Local 199 before Darby first elected to join the Association and participate in multiemployer bargaining with Local 199. Furthermore, the current contract and all prior contracts between the Association and Local 199 expressly acknowledged that Local 199 represented a majority of the employees whose employment conditions were the subject matter of the agreement. Finally, there is no evidence in the record that this was a prehire labor contract. Accordingly, the characterization of this contract by Respondent as a "prehire" one is clearly without basis.

(d) Finally, the Respondent asserts that the labor contract between the Association and Local 199 is not a bar to raising a question concerning representation because the unit of employees covered thereby, allegedly including both electrical workers and other crafts, is not an appropriate unit for the purposes of collective bargaining. The short answer to this contention is that it has no factual basis. The contract (paragraph 4) describes the unit as "all workers . . . with the exception of non-electrical workers." Paragraph 2 of the contract further discloses that the contract coverage is limited to "electrical workers." Thus, even assuming, *arguendo*, that a unit which also covered other crafts would be inappropriate, the record clearly establishes no basis for concluding that such a unit is here involved.

Accordingly, it is concluded and found that a question concerning the representation of Darby's employees could not appropriately be raised by the Respondent at the times material herein, for the additional reason that the contract between the Association and Local 199 was a bar to the raising of that question.

For all the reasons above stated, it is concluded that the Respondent, by threatening to and by picketing Darby's construction projects for recognition and organizational objectives, engaged in unfair labor practices within the meaning of Section 8(b)(7)(A) of the Act.

<sup>18</sup> Since, if Section 8(f) is applicable, the union-security clause was thereafter valid on its face and was in effect for more than 6 months before the Respondent's picketing of Darby occurred, and no evidence was adduced that any employee was denied the appropriate 7-day grace period in which to join Local 199, the Respondent's reliance on *Standard Molding Corporation*, 137 NLRB 1515, to establish the illegality of the union-security clause is misplaced. Cf. *Local Lodge No. 1424, International Association of Machinists (Bryan Manufacturing Co.) v. NLRB*, 362 U.S. 411.

<sup>19</sup> General Counsel's Exhibit No. 10, article III, section 1.

<sup>20</sup> Although not specifically urged by the Respondent, it is quite apparent that if the labor contract between the Association and Local 199 was a "prehire" agreement, under the language of the proviso of Section 8(f) it would not be a bar to raising a question concerning representation. Cf. *Island Construction Co., Inc., et al.*, 135 NLRB 13, 15-16.

#### 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 Association described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

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

#### CONCLUSIONS OF LAW

1. United Construction Contractors Association, Inc, is engaged in commerce and in an industry affecting commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Respondent, Local 3, International Brotherhood of Electrical Workers, AFL-CIO, and Industrial Workers of Allied Trades, Local 199, affiliated with the National Federation of Independent Unions, are labor organizations within the meaning of Section 2(5) and 8(b)(7)(A) of the Act

3. By threatening to picket and by picketing the construction projects of Darby Electric Corporation with an object of forcing or requiring Darby to recognize and bargain with it as the collective-bargaining representative of its employees, and with a further object of forcing or requiring Darby's employees to accept or select the Respondent as their collective-bargaining representative, at a time when Respondent was not currently certified as such representative, Darby had lawfully recognized another labor organization as the collective-bargaining representative of its employees, and a question concerning representation could not be raised under Section 9(c) of the Act, the Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(7)(A) of the Act.

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

#### RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, it is recommended that the Respondent, Local 3, International Brotherhood of Electrical Workers, AFL-CIO, its officers, agents, and representatives, shall:

1. Cease and desist from:

Picketing or threatening to picket either the premises of Darby Electric Corporation, or any of its construction projects, where an object thereof is forcing or requiring Darby to recognize or bargain with the Respondent as the collective-bargaining representative of its employees, or forcing or requiring said employees to select or accept the Respondent as their collective-bargaining representative, where Darby has lawfully recognized, in accordance with the National Labor Relations Act, as amended, Industrial Workers of Allied Trades, Local 199, affiliated with the National Federation of Independent Unions, or any other labor organization other than the Respondent, and a question concerning the representation of said employees may not appropriately be raised under Section 9(c) of the Act, unless the Respondent is then currently certified as the collective-bargaining representative of Darby's employees.

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

(a) Post at its business office, meeting halls, and all places where notices to its members are customarily posted, copies of the attached notice marked "Appendix."<sup>21</sup> Copies of the said notice, to be furnished by the Regional Director for Region 2 [now Region 29], shall, after being signed by a duly authorized representative of the

<sup>21</sup> In the event that this Recommended Order is adopted by the Board, the words "a Decision and Order" shall be substituted for the words "the Recommended Order of a Trial Examiner" in the notice. In the further event that 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."

Respondent, be posted by Respondent 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 posted. Reasonable steps shall be taken by the Respondent to insure that the said notices are not altered, defaced, or covered by any other material.

(b) Forthwith mail to the aforesaid Regional Director for Region 2 [now Region 29], signed copies of the said notice for posting by Darby Electric Corporation, if it so chooses, in places where notices to its employees are customarily posted.

(c) Notify the Regional Director for Region 2 [now Region 29], in writing, within 20 days from the date of receipt of this Decision, what steps Respondent has taken to comply herewith.<sup>22</sup>

<sup>22</sup> In the event that this Recommended Order is 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 MEMBERS OF LOCAL 3, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO

Pursuant to the Recommended Order of a Trial Examiner 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 picket, or cause to be picketed, or threaten to picket Darby Electric Corporation or any of its projects where an object thereof is to force or require Darby Electric Corporation to recognize or bargain with us as the representative of its employees, or to force or require the employees of Darby Electric Corporation to accept or select us as their collective-bargaining representative, where Darby Electric Corporation has lawfully recognized, in accordance with the National Labor Relations Act, as amended, Industrial Workers of Allied Trades, Local 199, affiliated with the National Federation of Independent Unions, and United Construction Contractors Association, Inc., or any other labor organization, and a question concerning the representation of said employees may not appropriately be raised under Section 9(c) of said Act, unless we are then currently certified by the National Labor Relations Board as their representative.

LOCAL 3, INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, 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 other material.

Employees or members may communicate directly with the Board's Regional Office, Fifth Floor, Squibb Building, 745 Fifth Avenue, New York, New York, Telephone No. 751-5500 [now address of Region 29], if they have any question concerning this notice or compliance with its provisions.

**Fox Valley Truck Service, Inc., Valley Leasing Co., Inc., and John Toppins, an Individual and General Drivers and Helpers Union, Local 563, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.**  
*Case No. 30-CA-60 (formerly 13-CA-6389). June 29, 1965*

## DECISION AND ORDER

On March 22, 1965, Trial Examiner Abraham H. Maller issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices