We agree with the Petitioner that a unit of supply department employees is appropriate here.[4] All employees work together in carrying out various manual and clerical tasks associated with the daily operations of the supply department. Further, there is no interchange of employees between the supply department and other sections of the administration office or the branch banks; there is no bargaining history for these employees; the supply department is a distinct administrative division of the Employer servicing the entire bank; and the employees are geographically separate from other bank employees. In view of all these factors, we are satisfied that the supply department's functional distinctiveness (including administrative, geographic, and supervisory separateness) within the Employer's operations demonstrates a community of interest among its employees sufficient to warrant their placement in a separate unit.

Accordingly, we find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

All employees of the Employer's supply department, located in Richmond, California, including the manager's secretary, but excluding supervisors[5] as defined in the Act.

[Text of Direction of Election omitted from publication.]

[4] Although the Petitioner sought to exclude the manager's secretary, we shall include her in the unit, because there is no evidence that she is a confidential employee, and her job function closely identifies her with the interests of her fellow supply department employees.

[5] The record supports the stipulation of the parties, entered into at the hearing, that Fred Mattix is not a supervisor.

Orange Belt District Council of Painters No. 48, AFL-CIO *and* Frank A. Calhoun, d/b/a Calhoun Drywall Company. *Case No. 31-CC-7 (formerly Case No. 21-CC-686). September 7, 1965*

DECISION AND ORDER

On September 25, 1964, Trial Examiner E. Don Wilson issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, Respondent filed exceptions to the Trial Examiner's Decision and a supporting brief.

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

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions, the brief, and the entire record in this case, and hereby adopts the Trial Examiner's finding,[1] conclusions,[2] and recommendations.

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 the Respondent, Orange Belt District Council of Painters No. 48, AFL–CIO, Santa Ana, California, its officers, agents, and representatives, shall take the action set forth in the Trial Examiner's Recommended Order.[3]

[1] The Respondent has excepted to the Trial Examiner's credibility resolutions It is the Board's policy, however, not to overrule a Trial Examiner's resolutions with respect to credibility unless, as is not the case here, the clear preponderance of all the relevant evidence convinces us that the resolutions were incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544, enfd. 188 F. 2d 362 (C A 3).

[2] In adopting the Trial Examiner's finding that Respondent picketed for a prohibited object in violation of Section 8(b)(4)(i) and (ii)(B), we rely not only on the place of picketing, but also on a statement of a business agent of Respondent to Mays that if Mays did not get things "straightened out" on the jobsite (get rid of Calhoun), Respondent would take "economic action," and on the testimony of this agent at the hearing that the picketing was directed not only at Calhoun's employees and the public, but also at "workers on the job" and "other crafts on the job."

[3] Substitute for Region 21, where it appears in the Trial Examiner's Recommended Order and notice, Region 31.

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with Region 31, 17th Floor, U.S. Post Office and Court House, 312 North Spring Street, Los Angeles, California, Telephone No. 688–5801.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

Upon a charge filed by Frank A. Calhoun (herein called Calhoun) on November 20, 1963, and amended January 9, 1964, the General Counsel of the National Labor Relations Board (herein called the Board) issued a complaint, dated February 10, 1964, alleging that Orange Belt District Council of Painters No 48, AFL–CIO (herein called the Respondent), violated Section 8(b)(4)(i) and (ii)(B) of the National Labor Relations Act, as amended (herein called the Act).

Pursuant to due notice, a hearing in this matter was held before Trial Examiner E. Don Wilson at Los Angeles, California, on April 3, 23, and 24, 1964. The parties fully participated and their briefs have been received and considered.

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

FINDINGS OF FACT

I. THE BUSINESSES OF THE EMPLOYERS

Involved herein is the building and construction industry and especially incidents occurring at a jobsite where a medical arts building was being constructed at Santa Ana, California (herein called the jobsite). The particular issue relates to Respondent's primary dispute with Calhoun and Calhoun's work as subcontractor at the jobsite.

Calhoun is engaged in San Bernardino, California, as a drywall contractor in the building and construction industry. During the fiscal year, commencing July 1, 1962,

Calhoun performed construction work valued in excess of $19,000 at military projects and department of defense installations in California and has received goods and materials directly from outside California valued at substantial amounts.

Cecil Mays Construction Co. (herein called Mays) is a general contractor in the building and construction industry in California. At all material times he has been constructing the medical arts building at the jobsite.

Industrial Electric (herein called Industrial), Pacific Plumbing (herein called Pacific), and Carrara Marble Co. (herein called Carrara) are engaged as electrical contractor, plumbing contractor, and marble contractor, respectively, in the building and construction industry.

Mays undertook at the jobsite to perform part of the work with his employees and subcontracted drywall work to Calhoun, electrical work to Industrial, plumbing work to Pacific, exterior marble work to Carrara, and other work to other subcontractors.

The subcontractors on the jobsite, including Air Conditioning Company, Inc.,[1] purchased directly from outside of California materials and products valued in excess of $50,000, for use on the jobsite.

Calhoun, Mays, Industrial, Pacific, Carrara, and Air Conditioning Company, Inc., are and each is, and at all material times has been, engaged in commerce or in an industry affecting commerce and is and has been an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.[2]

II. THE LABOR ORGANIZATION

At all material times Respondent has been a labor organization within the meaning of the Act.

III. THE UNFAIR LABOR PRACTICES [3]

A. *Background*

The jobsite faces on East 17th Street, in Santa Ana. It is a rectangle, about 619 by 1,000 feet, a smaller rectangle, about 100 by 250 feet, being carved from the southeastern portion thereof. Upon the smaller rectangle there is on the western side an avocado grove, and to its east a private house, with some space, variously used, to the rear, and at its easternmost part, a so-called private or dirt and gravel road for use by the owner of the smaller tract.[4] The private road, when entered from East 17th Street, leads directly to the jobsite.

Respondent has had, at all material times, a labor dispute with Calhoun. Respondent has had no labor dispute with Mays or any of his subcontractors other than Calhoun. Calhoun has had no agreement with Respondent.

Calhoun's employees were working on the jobsite before October 30, 1963.[5] Shortly before picketing began on October 30, Bill Seaquist, business representative of Respondent who was in charge of picketing at the jobsite for Respondent, told Mays' superintendent,[6] in effect and substance, that Calhoun was unfair and had not signed with Respondent. Seaquist added he hoped Mays could "get it straightened out other than put—probably have to be economic action taken on his job." [7] Picketing began October 30. Then and at all material times thereafter, the picket signs read:

> Frank A. Calhoun IS UNFAIR and operates under Sub-Standard Working Conditions. District Council of Painters No. 48.

During the October 30 picketing, employees of the subcontractors, other than Calhoun, left the jobsite because of the signs. Mays instructed Calhoun's employees to leave, the picketing stopped, and the subcontractors' employees returned to work. A few days later, substantially the same recurred.

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[1] In substance, stipulated to be one of Mays' subcontractors at all material times.

[2] *Siemons Mailing Service*, 122 NLRB 81; *Dennehy Construction Company (Carpenters Local Union No. 1028, United Brotherhood of Carpenters & Joiners of America, AFL)*, 111 NLRB 1025.

[3] In finding facts herein I have generally credited the testimony of Calhoun and Earl Mays whose respective demeanors impressed me favorably. As to many of the facts there is little or no dispute.

[4] At all material times the house was occupied by a caretaker.

[5] Hereinafter all dates refer to 1963.

[6] Earl Mays.

[7] This is Seaquist's testimony. Crediting Earl Mays, as I do, I find Seaquist also said there would be labor trouble if Calhoun's employees came on the job.

All picketing took place at 1125 East 17th Street, where there were two apparently adjacent entrances, hereinafter referred to as the main entrance or main gate.

General Counsel does not allege and I do not find the above-described picketing to be violative of the Act.

B. *November 17, 18, and 19*

Calhoun sent a night letter over Mays' signature, and with the latter's approval, to Respondent on November 17. The night letter read:

> DISTRICT COUNCIL OF PAINTERS NO 48
> 6370 MAGNOLIA AVENUE
> RIVERSIDE CALIFORNIA
>
> AND
>
> LIONEL RICHMAN
> 6700 WILSHIRE BOULEVARD
> LOS ANGELES CALIFORNIA
> YOU ARE HEREBY NOTIFIED THAT CALHOUN DRYWALL COMPANY AND HIS EMPLOYEES ARE NO LONGER PRIVILEGED TO USE THE ENTRANCES AT 1225 EAST 17TH STREET SANTA ANA FOR INGRESS AND EGRESS TO THE MEDICAL ARTS CONSTRUCTION PROJECT. A PRIVATE ENTRANCE FOR THE SOLE AND EXCLUSIVE USE OF CALHOUN AND HIS EMPLOYEES TO THE CONSTRUCTION PROJECT HAS BEEN ESTABLISHED AT 1207 EAST 17TH STREET REQUEST THAT YOU CEASE PICKETING THE ENTRANCES TO 1225 EAST 17TH STREET.
> CECIL MAYS, GENERAL CONTRACTOR
> 1111PM

On the morning of Monday, November 18, Mays, either directly and/or through Calhoun, caused the following sign to be plainly and conspicuously posted at the "main" entrance:

> Employees of all subcontractors use this entrance except employees of Calhoun Dry-Wall Co. who will use the private entrance at 1207 East 17th Street. Cecil Mays, Contractor.

Simultaneously, there was similarly posted at the private entrance, the following sign:

> This private entrance for sole use of Calhoun Dry-Wall employees. All other subcontractors' employees use entrance on 1125 East 17th Street.,[8] Cecil Mays, Contractor.

Calhoun credibly testified he had proper permission to use the private entrance. There is no evidence that Respondent ever inquired of the owner or the caretaker of the smaller tract or the house thereon whether picketing of the private entrance was permitted.

On November 18 and 19, Calhoun and his employees used only the private road or reserve entrance. Employees of Mays and the subcontractors other than Calhoun used only the main entrance, as did customers or suppliers of the drugstore in operation on the jobsite and patients of doctors who were practicing thereon.

Despite Calhoun's night letter, and the signs at the main and private or reserved entrances noted above, Respondent picketed only at the main entrance and not at the private road or reserve entrance, on November 18 and 19. The picketing occurred at the main entrance when Calhoun's employees were on the job and ceased when they left. Respondent's pickets disregarded and refused Calhoun's personal invitation to picket at the reserved gate or private road during November 18 and 19 as they declined his simultaneous request to cease picketing him and his employees at the main entrance which neither he nor his employees were using.[9]

Seaquist was told on November 18, by one of the pickets, that a private or reserve entrance had been established and the signs at the main and reserve entrances were described. Seaquist told the pickets *not* to picket the private entrance because Respondent might get involved in "questionable procedures." [10] The picketing occurred at the main entrance when Calhoun's employees were working on the jobsite. Employees of other subcontractors either did not report for work during the picketing or left the jobsite. The only employees who worked were those of Mays

[8] The main entrance.

[9] There is insufficient credible evidence to find that Respondent picketed at any time that Calhoun's employees were not on the jobsite.

[10] Picketing private property.

and Calhoun. On November 19, Mays directed Calhoun's employees to leave the jobsite until the labor dispute was settled because the job was being delayed. Calhoun's employees left the jobsite and remained away from it until Respondent entered into an agreement not to picket pending disposition of this proceeding.[11]

During all picketing, even though asked questions, the pickets refrained from speaking and gave persons making inquiries written notices directing members of the Painters Union to contact Respondent and members of other crafts to consult their own unions. Seaquist admitted that the picketing was directed not only to Calhoun's employees and the public, but also "to the workers on the job," "other crafts on the job." [12]

C. *Conclusions*

It is clear that on November 18 and 19, with full knowledge that Mays had established a private or reserved entrance for Calhoun's employees, Respondent ignored such reserved entrance and picketed only the main entrance used by the employees of Mays and other subcontractors and the public and *not* by Calhoun's employees. It is manifest that such picketing was not addressed to Calhoun's employees or Calhoun but rather was designed to enmesh innocent neutrals into Respondent's dispute with Calhoun. I reject as without merit Respondent's contention that if it had picketed Calhoun at the priviate entrance or reserved gate it would have run the risk "of state civil or criminal prosecution." Respondent had no right to presume, as it appears to do, that Calhoun and his employees were "trespassers on November 18 and 19 when they undertook to use the dirt road." Properly, the presumption is that Calhoun and his employees acted legally and there is no evidence that Respondent made any effort to discover from the inhabitants or owner of the private home whether Calhoun and his employees used the private road with permission. Had Respondent wished to appeal to Calhoun's employees on November 18 and 19, it at least would have made such inquiry. The alleged defense is but a pretext.

Respondent's picketing activities at the jobsite on November 18 and 19 were consistent only with an intent to enlarge rather than limit the area of the dispute. Consequently, in the circumstances of this case, they were violative of the Act. *Monterey County Building & Construction Trades Council (Vito J. LaTorree, An Individual)*, 142 NLRBB 139.

By its picketing of the jobsite on November 18 and 19, Respondent unlawfully forced and required Mays to cease doing business with Calhoun and with such objective induced and encouraged individuals employed by Mays, Pacific, Carrara, Industrial, and other subcontractors of Mays, to engage in work stoppages or strikes; and threatened, coerced, and restrained Mays, Pacific, Carrara, Industrial, and other subcontractors of Mays. Respondent has thus violated Section 8(b)(4)(i) and (ii)(B) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent as set forth in section III, above, occurring in connection with the operations of Calhoun, Mays, Industrial, Pacific, Carrara, and others as 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 thereof.

V. THE REMEDY

Having found Respondent has violated Section 8(b)(4)(i) and (ii)(B) of the Act, I shall recommend that it cease and desist therefrom, and take certain affirmative action to effectuate the policies of the Act.

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

CONCLUSIONS OF LAW

1. The businesses of employees and status of Respondent as a labor organization have been discussed under sections I and II, above, and corresponding conclusions are herein made.

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[11] Agreement made at least more than several days after November 19.

[12] Seaquist self-servingly testified it was not his objective to persuade employees of other contractors to stop work. He added there was nothing he "specifically" wanted such employees to do.

2. By picketing and other conduct, and by inducement and encouragement and by threats and coercion, at the Mays' project or jobsite with an object of forcing or requiring Mays to cease doing business with Calhoun, Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(B) of the Act.

3. 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 pursuant to Section 10(c) of the National Labor Relations Act, as amended, I recommend that the Respondent, Orange Belt District Council of Painters No. 48, AFL–CIO, its officers, agents, and representatives, shall:

1. Cease and desist from, by picketing or other conduct, inducing or encouraging any individual employed by Mays or his subcontractors or any other employer, to engage in a strike or refusal in the course of his employment to use or handle any materials or perform any services, or threatening or coercing or restraining Mays, his subcontractors, or any other employer where an object thereof is to force or require said employers to cease doing business with Calhoun.

2. Take the following affirmative action which it is found will effectuate the policies of the Act:

(a) Post at its business offices or meeting halls in Santa Ana, California, copies of the attached notice marked "Appendix."[13] Copies of said notice, to be furnished by the Regional Director for Region 21, shall, after being duly signed by Respondent's authorized representative, be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by 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 Region 21 for posting by Mays, Pacific, Carrara, Industrial, and Calhoun, these employers willing, at all locations where notices to their employees are customarily posted.

(c) Notify the Regional Director for Region 21, in writing, within 20 days from the date of the receipt of this Decision, what steps Respondent has taken to comply herewith.[14]

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[13] In the event that this Recommended Order be 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 be 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".

[14] 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 Respondent has taken to comply herewith."

APPENDIX

NOTICE TO ALL MEMBERS OF ORANGE BELT DISTRICT COUNCIL OF PAINTERS NO. 48, 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 engage in or induce or encourage, by picketing, or any other conduct, any individual employed by Cecil Mays Construction Co., or any other employer, to engage in, a work stoppage or threaten or coerce or restrain Cecil Mays Construction Co., or any other employer, where an object in either case is to force or require such employers to cease doing business with Calhoun Dry-Wall Co.

ORANGE BELT DISTRICT COUNCIL OF PAINTERS NO. 48, 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.

Information regarding the provisions of this notice and compliance with its terms may be secured from the Regional Office of the National Labor Relations Board, Eastern Columbia Building, 829 South Broadway, Los Angeles, California, Telephone No. 688–5206.

Plains Cooperative Oil Mill *and* United Packinghouse, Food and Allied Workers, AFL–CIO. *Case No. 16–CA–2016. September 7, 1965*

DECISION AND ORDER

On April 16, 1965, Trial Examiner Rosanna A. Blake issued her Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. She further recommended that the complaint be dismissed insofar as it alleges that the Respondent engaged in conduct violative of the National Labor Relations Act, as amended, other than that found in her Decision. Thereafter, the General Counsel and the Respondent filed, respectively, exceptions and cross-exceptions to the Trial Examiner's Decision, with supporting briefs.[1]

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

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and briefs, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the following modifications.[2]

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[1] The General Counsel also filed a motion to strike Respondent's exceptions, brief, and brief index on the ground of untimeliness, and a motion to strike a portion of Respondent's brief as exceeding the scope of the exceptions. Respondent moved to strike General Counsel's exceptions and supporting brief for lack of specificity. The motions to strike lack merit and are hereby denied. Respondent's exceptions are clearly intended to serve as cross-exceptions, within the meaning of Section 102.46(e), Rules and Regulations and Statements of Procedure, Series 8, as amended, and will be treated as such.

[2] We concur in the Trial Examiner's conclusion that Respondent's use of a questionnaire among its employees concerning the unfair labor practices with which it was charged was unlawful and violative of Section 8(a)(1) because of Respondent's hostility toward the Union and the further fact that employees were neither told that their participation in answering such questionnaire was voluntary nor were they assured that no reprisals would result. *Johnnie's Poultry Co.*, 146 NLRB 770, 775. Accordingly, we find it unnecessary to consider or rely on additional reasons cited by the Trial Examiner to the effect that employees chosen for questioning were arbitrarily selected or that a question as to whether employees had given a statement to anyone had "nothing to do with the facts in issue."