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**Local 157, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO and Midwest Homes, Inc. Case No. 25-CC-133. October 1, 1965**

**DECISION AND ORDER**

On July 22, 1965, Trial Examiner Sidney Sherman issued his Decision in the above-entitled proceeding, finding that Respondent had engaged 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.

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 Jenkins 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, and the entire record in the case, 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 157, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, its officers, agents, and representatives, shall take the action set forth in the Trial Examiner's Recommended Order.

**TRIAL EXAMINER'S DECISION**

The charge herein was served on Respondent on March 10, 1965,<sup>1</sup> the complaint issued on April 9, and the case was heard on June 2 before Trial Examiner Sidney Sherman. The issues litigated related to alleged violations of Section 8(b)(4)(i) and (ii)(B). After the hearing briefs were filed by the General Counsel and Respondent.

<sup>1</sup> All events herein occurred in 1965, unless otherwise stated.

Upon the entire record, and my observation of the witnesses, I adopt the following:

## FINDINGS AND CONCLUSIONS

### I. THE BUSINESS OF THE EMPLOYERS INVOLVED

Midwest Homes, Inc., hereinafter called Midwest, is an Indiana corporation, engaged in the manufacture and sale of factory built homes and commercial structures. During 1964, Midwest manufactured and shipped to out-of-State points from its plant in Carlisle, Indiana, products valued in excess of \$50,000, and products in a like amount were delivered to the Carlisle plant from out-of-State points.

Modern Housing Facilities, Inc., hereinafter called Modern, is an Indiana corporation, with its principal office at Carlisle, Indiana. It is engaged in building, selling, and leasing commercial and residential property in Indiana and other States. Since August 1964, when it commenced operations, Modern has had gross income of more than \$750,000, of which more than \$100,000 was derived from operations in States other than Indiana.

It is found that Midwest and Modern are engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that they are engaged in an industry affecting commerce within Sections 8(b)(4) and 501(1) of the Act.

Respondent admits, and it is found, that Roach and Roach, a partnership, hereinafter called Roach, was engaged by Modern to perform services as a plumbing contractor in connection with the construction of a nursing home by Modern at Sullivan, Indiana. While denying that Roach is engaged in commerce, Respondent admits that Roach is "an employer in the construction industry." It is found that Roach is a person engaged in an industry affecting commerce within the meaning of Sections 8(b)(4) and 501(1) of the Act.<sup>2</sup>

It is undisputed that Usrey and Sims (hereinafter called Usrey), Alzman and Smith (hereinafter called Alzman), and Raymond Prose (hereinafter called Prose) were subcontractors engaged by Modern in connection with the construction of the foregoing nursing home. It is accordingly found that they, too, are persons engaged in an industry affecting commerce.

It is further found that it will effectuate the policies of the Act to assert jurisdiction herein.

### II. THE LABOR ORGANIZATION INVOLVED

Local 157, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, hereinafter called Respondent, is a labor organization within the meaning of the Act.

### III. THE UNFAIR LABOR PRACTICES

The complaint alleges that Respondent violated Section 8(b)(4)(i) and (ii)(B) of the Act by threatening to picket the site of a construction job, by picketing such site, and by inducing employees of neutrals to refuse to perform services for their employers. The answer admits that since on or about March 8, 1965, Respondent has picketed the aforesaid jobsite, but contends that such picketing was directed solely against Roach, the plumbing subcontractor on the job, because of a dispute between Respondent and Roach over an alleged violation of his agreement with Respondent. The answer further denies that Respondent violated the Act.

#### A. Sequence of events

For the past 10 years Midwest has been engaged at its plant in Carlisle, Indiana, in prefabricating houses and commercial structures. It has over 120 employees and in February 1964 executed a contract for a term of 3 years with a local of the United Brotherhood of Carpenters and Joiners of America. This contract covers all Midwest's production and maintenance employees, including those engaged at its plant in installing plumbing in the prefabricated structural units produced by Midwest. Such plumbing installations have to be connected at the jobsite to sewer and waterlines. This "hookup" work, and other plumbing work that can be done only at the jobsite, is not done by Midwest but by a plumbing subcontractor retained by the general contractor or builder. Early in 1965 Midwest entered into a contract with Modern to supply prefabricated units for a nursing home to be erected by Modern

<sup>2</sup> Sheet Metal Workers International Association, Local Union No. 299, AFL-CIO, et al. (S. M. Kisner and Sons), 131 NLRB 1196.

at Sullivan, Indiana. Modern engaged various subcontractors to perform work at that site, including Roach, who was to make the plumbing connections. Roach was at the time bound by an agreement with Respondent, which contained the following:

#### ARTICLE XV

##### Fabrication

The fabrication of all pipe stanchions, knee braces, hangers, and/or pipe supports of any description shall be fabricated on the job site or in the jurisdiction of the Local Union. Journeymen and Apprentice Pipe Fitters or Plumbers shall fabricate in the jurisdiction of the Local Union, all pipe to be erected under the terms of this Agreement.

Roach, together with some other subcontractors, performed work at the jobsite during the first days of March. On Friday, March 5, Gayso, Respondent's job steward and an employee of Roach, told Modern's superintendent at the jobsite, Davidson, that Respondent would post a picket line at the site. On the same day, Gayso told representatives of two of the subcontractors on the job, Alzman and Usrey, as well as at least one of their employees, that a picket line would be established the next day. Picketing actually began on Monday, March 8, when Gayso patrolled along the front of the jobsite with a sign bearing the legend "Unfair to Local 157, Plumbers and Steamfitters." Such picketing continued until April 21, when the sign was changed by inserting the words "Roach Plumbing and Heating" above the existing language. Picketing continued thereafter until April 28, when it was enjoined. During the period of such picketing Roach performed no work at the site. The operations of other subcontractors<sup>3</sup> were unaffected by the picketing except for a stoppage by their employees on the first day of the picketing.

#### B. Discussion<sup>4</sup>

##### 1. Inducement of employees

The general Counsel contends that Respondent violated Section 8(b)(4)(i) and (ii)(B) of the Act by the following conduct:

(a) Gayso's warning on March 5 to employees of two subcontractors (Usrey and Alzman) that Respondent would establish a picket line the next day.

(b) Picketing the jobsite on and after March 8.

As to (a), above, Gayso admitted that he issued such a warning to certain unidentified employees of subcontractors, and the record establishes that one of these was Bennett, an employee of Alzman. A representative of Alzman testified credibly that the warning included an admonition of the subcontractors and Bennett to remove their tools from the job. As to (b), there is no dispute that such picketing continued until April 21 with the "Unfair" sign described above and that it was not until that date that the sign was altered by the insertion of Roach's name.

Respondent defends on the ground that the picketing was aimed at Roach as the primary employer, and not, as the General Counsel contends, at Midwest. Even if, contrary to the conclusion reached below, it were found that Roach was the primary employer here, that circumstance would not excuse Respondent's warning on March 5 to Bennett, an employee of a concededly neutral employer (Alzman), that a picket line would be established the next day and to remove his tools. As such warning was manifestly intended to deter Bennett from reporting for work, Respondent thereby violated Section 8(b)(4)(i) and (ii)(B) of the Act. Moreover, as to the picketing, itself, even if Roach were deemed to be the primary employer, the

<sup>3</sup> These included Prose, the electrical subcontractor, as well as Alzman and Usrey.

<sup>4</sup> In *Local 157, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO* (Midwest Homes, Inc.), 153 NLRB 1184, a proceeding under Section 10(k) of the Act involving the same parties and many of the same incidents as are here involved, the Board made findings as to Respondent's object in picketing the nursing home. In view of the difference in the nature of the two proceedings, I have not treated the foregoing findings as *res judicata* here, but, as the ensuing discussion demonstrates, have based my findings on an independent review of the record before me. See *International Typographical Union, AFL-CIO and members of its Executive Council; et al. (Worcester Telegram Publishing Company, Inc.)*, 125 NLRB 759.

displaying of a picket sign at the common situs for a period of about 6 weeks, which failed to disclose that Respondent's dispute was with Roach, suffices, to establish the illegality of the picketing during that period.<sup>5</sup>

In any event, the record shows, and it is found that the foregoing oral inducement and the picketing from March 8 to April 28,<sup>6</sup> stemmed solely from Respondent's dispute with Midwest over the representation of Midwest's plumbing employees, and that Midwest was therefore the primary employer here and Roach merely a secondary or neutral employer. This finding is based on the following considerations:

(1) McKinley, president of Midwest, testified that during the period of 5 years before March 5, 1965, Osborn, Respondent's business manager, had on at least three occasions demanded that Respondent be recognized as the representative of Midwest's plumbing employees; that on March 5, Mansard, Respondent's business agent, threatened a strike at the instant jobsite unless Respondent was recognized as the representative of Midwest's plumbing employees, and that a few days after the instant picketing began Osborn told McKinley that no plumbers would be permitted to work at the nursing-home site because Respondent did not represent Midwest's plumbers. Mansard acknowledged that he had a discussion with McKinley on March 5, and, when asked what was discussed at that meeting, proceeded to narrate a conversation with McKinley about certain work that Roach was doing at Midwest's plant.<sup>7</sup> However, he was not asked about, and so did not expressly deny, the strike threat ascribed to him by McKinley. Osborn denied that he had ever demanded representation of Midwest's plumbers. He admitted discussing the instant picketing with McKinley on March 8, but insisted that he attributed the picketing to the fact that Roach's agreement with Respondent required "job site fabrication." On the basis of demeanor, as well as the absence of any direct contradiction of his testimony about the Mansard incident, I credit McKinley and find that there was a long-standing dispute between him and Respondent over representation of Midwest's plumbers, that on March 5, Mansard threatened a strike at the nursing-home site unless Respondent's demand for recognition was granted, and that on March 8, Osborn acknowledged, in effect, that the strike was called because of the rejection of such demand.

(2) Mansard admitted at the hearing that Respondent's objectives in picketing the jobsite would have been satisfied if Midwest had repudiated its contract with Carpenters *pro tanto* and dealt with Respondent as the representative of Midwest's plumbing employees.

(3) Roach testified that on March 8 Osborn told him that the picketing would continue "until they got straightened up with" Midwest, and that at a meeting with Mansard,<sup>8</sup> he refused to discontinue the picketing, asserting that "they had been trying to get in down at the plant for so many years." While Mansard and Osborn insisted that on the foregoing occasions they ascribed the picketing solely to Roach's alleged breach of his undertaking with Respondent regarding on-site fabrication, I credit Roach, as I was more favorably impressed by his demeanor.

(4) Finally, I credit the uncontradicted testimony of Sheffler, Modern's chief engineer, that on March 8, Gayso, when pressed for the reason for his picketing, assured Sheffler, "There's no violation on the job. I told Roach that," and subse-

<sup>5</sup> *Sailors' Union of the Pacific, AFL (Moore Dry Dock Company)*, 92 NLRB 547; *Brotherhood of Painters, Decorators & Paperhangers of America, Local Union No. 1730 (Painting and Decorating Contractors of America, etc.)*, 109 NLRB 1163; *Local Union No. 55, and Carpenters' District Council of Denver and Vicinity, etc (Professional and Business Men's Life Insurance Company)*, 108 NLRB 363, enfd 218 F. 2d 226 (C.A. 10); *Local 25, International Brotherhood of Electrical Workers, AFL-CIO (A. C. Electric)*, 148 NLRB 1560.

<sup>6</sup> The oral inducement of a neutral employee (Bennett) on March 5 might, in itself, be deemed to establish that the picketing after April 20 was unlawful, even if it be assumed that such picketing otherwise complied with the standards for common situs picketing prescribed in *Moore Dry Dock Company, supra*. See *Local 895, International Brotherhood of Teamsters, etc. (Eastern New York Construction Employers, Inc.)*, 153 NLRB 993. Moreover, under the *Mobley* case, *supra*, the change in the legend on the picket sign would be ineffective to validate the picketing after April 20. However, for reasons appearing below in the text, there is no need to rely on these considerations.

<sup>7</sup> Mansard claimed that he was attempting to verify a report that Roach had been hired by Midwest to install plumbing in prefabricated units at Midwest's plant.

<sup>8</sup> Mansard's testimony establishes that this meeting occurred on March 10.

quently stated to Sheffler, "You're unfair." I credit, also, the testimony of Davidson, Modern's superintendent at the nursing home job, that on March 6 Gayso, when asked why he planned to establish a picket line, stated only that Modern was unfair to Respondent; and that on March 8, the witness heard Gayso say, in reply to McKinley's inquiry about the reason for the picketing, "You're unfair."<sup>9</sup>

In view of the foregoing findings, it is clear that Respondent was impelled to picket at the nursing-home site, not because of any alleged contract violation by Roach, but solely by Midwest's steadfast refusal to recognize Respondent as the representative of Midwest's plumbers, and the fact that Midwest's products were to be used at the nursing home project. In view of this finding, it may seem redundant to dwell on Respondent's contention that Roach was guilty of a breach of article XV of his contract with Respondent, quoted above. Such alleged breach could not avail Respondent unless it was the motivating cause of the picketing, and it has already been found that this was not the case.<sup>10</sup> Moreover, it would be necessary to Respondent's defense to establish, in addition, that article XV was applicable here and was not a hot cargo clause, such as is proscribed by Section 8(e) of the Act.

In view of Respondent's apparently sincere conviction that article XV affords an absolute defense to the instant charges, it may not be amiss to comment on that provision, even though I do not deem it essential to the disposition of this case.

At the threshold, there is a serious question whether article XV is applicable at all to a situation where, as here, the work in dispute (the prefabricated plumbing) was never subject to assignment by the signatory employer (Roach) to his employees. Article III of the Respondent's contract with Roach specifies:

All wages and *working conditions* hereunder shall be effective on all plumbing and pipefitting work performed by the Employer within the jurisdiction of the Local Union where plumbing and pipefitting work *is being performed or is to be performed* by the Employer. [Emphasis supplied.]

Obviously, the assembling and installation of the pipe in Midwest's prefabricated units was not work that was being performed or that was to be performed by Roach. And, the language of article XV, even if considered alone, lends itself more readily to a construction that it was intended to apply to work actually allotted to the signatory employer, than to a construction that would reach work allotted to other employers. Indeed, the reading of article XV which most readily suggests itself is that it merely required that any fabrication work for which he had contracted be performed by Roach either on the jobsite or in a shop within the territorial jurisdiction of Respondent, and that all such fabrication work be done by journeymen and apprentice pipefitters or plumbers.

However, it was Osborn's contention at the hearing that, as applied to the facts of this case, article XV required Roach to fabricate all pipe installed in the nursing

<sup>9</sup> Gayso denied only the last incident, insisting that on March 8, he told McKinley that he was picketing because of Roach's contract violation. As the other, similar incidents are undenied, I credit Davidson as to the March 8 incident.

<sup>10</sup> On this point, it may be noted that, even if there had been no independent evidence here of such motivation, in the form of the various statements by Respondent's agents cited above, it would have been proper to infer such motivation, in any event, from the fact that Roach was powerless to satisfy the avowed objectives of Respondent's picketing, as explained at the hearing by Osborn; namely, to have all the plumbing work performed at the jobsite. Only Modern, the general contractor, could have satisfied that objective—by canceling its contract with Midwest and assigning to Roach all the work of fabricating and installing plumbing. (Even if, as indicated by Mansard at the hearing, Respondent would have refrained from picketing if Midwest had recognized Respondent with respect to Midwest's plumbers, that solution lay in the hands of Midwest, and not of Roach.) It would have been proper to infer, therefore, that Respondent's true reason for picketing was not to force Roach to do something that was beyond his power but rather to force Modern to turn over all plumbing work to Roach (or to force Midwest to deal with Respondent). See *Ohio Valley Carpenters District Council, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, et al.* (Hankins & Hankins Construction Company), 144 NLRB 91, 93, enfd. 339 F. 2d 142 (C.A. 6); *Local 5, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO (Arthur Venneri Company)*, 137 NLRB 828, enfd. 321 F. 2d 366 (C.A.D.C.); *Metropolitan District Council of Philadelphia and Vicinity of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO, et al. (Charles B. Makin)*, 149 NLRB 646, *Local 217, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the U.S. and Canada, AFL-CIO, et al. (The Carvel Co.)*, 152 NLRB 1672.

home, which necessarily precluded him from carrying out his subcontract with Modern to hook up the pipe fabricated by Midwest. Even if this were so, it is not clear how it would help Respondent; for, under Osborn's contention, article XV would be a hot cargo clause, as it would have required Roach not to handle Midwest's products. Enforcement of such a clause by economic action is proscribed by Section 8(b)(4)(i) and (ii)(B), unless it falls within the Board's definition of a "work-preservation" clause. So far the Board has recognized as a valid work preservation clause only one which unconditionally bars an employer from diverting to others (e.g., by a subcontract) work which would otherwise have been assigned by him to his own employees.<sup>11</sup> However, here Respondent clearly was not seeking to invoke article XV to prevent a diversion by Roach of work which would otherwise have been assigned by him to his own employees, since the disputed work was never subject to assignment by Roach.<sup>12</sup> Moreover, even if one accepts the construction placed on article XV by Respondent, one is at a loss to find therein any *unconditional* requirement that all pipe erected at a particular project be fabricated by Roach. Thus, Osborn testified initially that Roach had breached his agreement, because it required that "all pipe to be installed will be fabricated in the jurisdiction of the Local Union by members of the Local Union or by employees represented by the Local Union." Later, Osborn related that he told McKinley on March 8 that Roach's agreement with Respondent required "job-site fabrication, required the prevailing rates to be paid for pipe that's fabricated and installed within the jurisdiction." And, still later, when asked what was meant by the phrase "in the jurisdiction of the Local Union" in article XV, Osborn explained that this denoted the "trade," as well as the geographical, jurisdiction of Respondent, adding that "trade jurisdiction" meant "within the jurisdiction of the agreement, with the prevailing rate being paid for that work."

While it is clear from Osborn's testimony that he would have considered Roach to be in compliance with the contract if he had fabricated on the jobsite all the pipe erected there, it may also be gleaned from his testimony, as quoted above, that he viewed Roach's contract as permitting him to connect at the jobsite plumbing which had been fabricated elsewhere, provided only that such fabrication was done by employees affiliated with, or represented by, Respondent or by employees who were paid the wages prevailing under Respondent's collective-bargaining contracts.

In view of this, and as Mansard conceded, in effect, as already noted, that Respondent's objectives in the instant dispute would have been achieved if Midwest had entered into a contract with Respondent for its plumbers, I find that, even under the construction propounded by Respondent, article XV did not qualify as a work preservation clause, such as Respondent would be free to enforce by economic action. For, apart from any other considerations, the article, so construed, did not reserve the disputed fabrication work exclusively to the employees of the contracting employer (Roach), but permitted it to be done under stipulated conditions by employees of other employers.<sup>13</sup>

Accordingly, even if one were to disregard all the evidence of Respondent's picketing objective, as reflected in the statements of its agents, related above, and give full credit to Respondent's contention that it was merely seeking to enforce article XV of its contract with Roach, and that such clause was applicable here, it would be necessary to conclude that such article was a hot cargo clause, unlawful under Section 8(e), and that Respondent's attempt to enforce such clause violated Section 8(b)(4)(i) and (ii)(B) of the Act.

<sup>11</sup> See *Milk Drivers' Union, Local 753, Teamsters (Pure Milk Association)*, 141 NLRB 1237, 1240, 1242, *Raymond O. Lewis, et al., as agents for the International Union, United Mine Workers of America, etc., et al. (Arthur J. Galligan)*, 144 NLRB 228, 237; *The Carvel Co., supra*; *Meat and Highway Drivers, Dockmen, Helpers and Miscellaneous Truck Terminal Employees, Local Union No. 710, Teamsters (Wilson & Co., Inc., et al.)*, 143 NLRB 1221, *enfd.* as modified 335 F. 2d 709 (C.A.D.C.); *Ohio Valley Carpenters District Council, supra*.

<sup>12</sup> See the *Ohio Valley Carpenters* case, *supra*, where the Board held that a work protection clause afforded no defense to the picketing of a construction job by carpenters because of the fact that work covered by such clause was not assigned by the general contractor to the carpentry subcontractor but to an off-site fabricator.

<sup>13</sup> The construction industry proviso in Section 8(e) of the Act does not save the instant clause, insofar as it limits the use of prefabricated plumbing. *Ohio Valley Carpenters District Council, Carpenters (Cardinal Industries, Inc.)*, 136 NLRB 977, 988-989. In any event, a clause within such proviso would not be enforceable by economic action. *Ibid.*

## 2. Coercion of employers

The complaint alleges that on March 5 Respondent violated Section 8(b)(4)(ii)(B) of the Act by the following:

(a) Mansard's statement to Roach that Respondent would picket the nursing home job.

(b) Gayso's similar statement to two subcontractors (Usrey and Alsmen).

As to (a), Mansard admitted that on March 5 he warned Roach that the nursing home job would be picketed, but insisted that he cited Roach's alleged breach of contract as the reason for the picketing. Roach, on the other hand, could not recall that Mansard on that occasion gave any reason for the picketing other than a reference to "unfair." In any event, I have credited Roach's testimony that on March 10, Mansard confirmed Osborn's warning to Roach of March 8 that the picketing would continue until Respondent's representation dispute with Midwest was settled. On the basis of the foregoing, I find that Respondent threatened to picket, and to continue to picket Roach, with an object of forcing him to cease doing business with Modern, and to cease handling Midwest's products, and that Respondent thereby violated Section 8(b)(4)(ii)(B) of the Act.

As to (b), above, Gayso admitted that on March 5 he warned a representative of Alsmen that a picket line would be posted, and I credit the uncontradicted testimony of such representative that a representative of Usrey was also present on that occasion. While Gayso testified that he explained to those present that the pickets would be posted because of Roach's alleged breach of article XV, Alsmen asserted that the only reason given by Gayso was that "they was unfair" and that some "rules" had been violated. However, it is unnecessary to resolve this conflict, for, even if one credits Gayso on this point, it is clear that the object of his threat to picket the nursing home job was to force the two subcontractors to discontinue their operations on that job, and, thereby, to cease doing business with Modern, the general contractor. Accordingly, by such threat Respondent violated Section 8(b)(4)(ii)(B).

## IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth above, occurring in connection with the operations of Midwest and Modern as set forth in section II, 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 Respondent engaged in certain unfair labor practices, it will be recommended that the Respondent be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

## CONCLUSIONS OF LAW

1. Midwest Homes, Inc., and Modern Housing Facilities, Inc., are engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Alsmen and Smith, Usrey and Sims, Roach and Roach, Raymond Prose, Modern Housing Facilities, Inc., and Midwest Homes, Inc., are persons engaged in an industry affecting commerce within the meaning of Sections 8(b)(4) and 501(1) of the Act.

3. Respondent induced and encouraged employees of Alsmen and Smith, Usrey and Sims, Roach and Roach, and Prose to engage in a strike or refusal to perform services for their employers, with an object of forcing or requiring (1) such employees to cease doing business with Modern, (2) Modern to cease doing business with Midwest, and (3) Roach and Roach to cease handling the products of Midwest.

4. By such inducement of employees, Respondent coerced Prose, Roach and Roach, Alsmen and Smith, and Usrey and Sims, with an object of forcing them to cease doing business with Modern, Modern to cease doing business with Midwest, and Roach and Roach to cease handling Midwest's products.

5. By the conduct described in paragraphs 2 and 3, above, Respondent has violated Section 8(b)(4)(i) and (ii)(B) of the Act.

6. By warning Roach and Roach, Alsmen and Smith, and Usrey and Sims of its plan to picket the nursing home job, Respondent coerced them with an object of forcing them to cease doing business with Modern and of forcing Roach and Roach to cease handling Midwest's products. By such conduct Respondent violated Section 8(b)(4)(ii)(B) of the Act.

## RECOMMENDED ORDER

Upon the entire record in the case and the foregoing findings of fact and conclusions of law, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, it is recommended that Respondent, Local 157, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Inducing any individual employed by Roach and Roach, Raymond Prose, Alzman and Smith, Usrey and Sims, or by any other persons engaged in commerce or in an industry affecting commerce, to strike or refuse in the course of his employment to perform services for his employer, with an object of forcing or requiring (1) the foregoing employers or such other persons to cease doing business with Modern Housing Facilities, Inc., (2) Modern Housing Facilities, Inc., to cease doing business with Midwest Homes, Inc., or (3) Roach and Roach to cease handling the products of Midwest Homes, Inc.

(b) Coercing or restraining Roach and Roach, Prose, Usrey and Sims, and Alzman and Smith, or any other persons engaged in commerce or in an industry affecting commerce, with an object of forcing or requiring (1) the foregoing employers or such other persons to cease doing business with Modern Housing Facilities, Inc., (2) Modern Housing Facilities, Inc., to cease doing business with Midwest Homes, Inc., or (3) Roach and Roach to cease handling the products of Midwest Homes, Inc.

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

(a) Post in the Respondent's business offices and meeting halls, copies of the attached notice marked "Appendix."<sup>14</sup> Copies of said notice, to be furnished by the Regional Director for Region 25, shall, after being duly signed by official representatives of the Respondent, be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Mail to the Regional Director for Region 25 signed copies of the aforementioned notice for posting, Roach and Roach, Usrey and Sims, Prose, and Alzman and Smith being willing, in places where notices to their employees are customarily posted. Copies of said notice, to be furnished by the Regional Director for Region 25, shall, after being signed by the Respondent, as indicated, be forthwith returned to the Regional Director for disposition by him.

(c) Notify the Regional Director for Region 25, in writing, within 20 days from the date of receipt of this Decision, what steps the Respondent has taken to comply herewith.<sup>15</sup>

<sup>14</sup> If 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"

<sup>15</sup> If 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 OUR MEMBERS, AND TO ALL EMPLOYEES OF ROACH AND ROACH,  
USREY AND SIMS, RAYMOND PROSE, AND ALSMAN AND SMITH

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 any individual employed by Roach and Roach, Usrey and Sims, Raymond Prose, or Alzman and Smith, or by any other person to engage in, a strike or a refusal to perform services, or otherwise coerce or restrain the above-named Employers or any other person, with an object of forcing or requiring (1) said Employers or any other

person to cease doing business with Modern Housing Facilities, Inc., (2) Modern Housing Facilities, Inc., to cease doing business with Midwest Homes, Inc., or (3) Roach and Roach to cease handling the products of Midwest Homes, Inc.

LOCAL 157, UNITED ASSOCIATION OF JOURNEYMEN AND  
APPRENTICES OF THE PLUMBING AND PIPEFITTING IN-  
DUSTRY OF THE UNITED STATES AND CANADA, 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 may communicate directly with the Board's Regional Office, 614 ISTA Center, 150 West Market Street, Indianapolis, Indiana, Telephone No. Melrose 3-8921, if they have any question concerning this notice or compliance with its provisions.

**The Archer Laundry Company and AFL-CIO Laundry & Dry  
Cleaning International Union.** *Case No. 5-CA-3040. Octo-  
ber 4, 1965*

### DECISION AND ORDER

On July 15, 1965, Trial Examiner David London issued his Decision in the above-entitled proceeding, finding that 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 Decision and a supporting brief.<sup>1</sup>

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

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 Decision, the exceptions, the brief, and the entire record in this case, and hereby adopts the Trial Examiner's findings,<sup>2</sup> conclusions, 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

<sup>1</sup> Respondent's request for oral argument is hereby denied as the record and brief adequately present the issues and positions of the parties

<sup>2</sup> The Board's Decision and Certification of Representatives issued January 8, 1965 (150 NLRB 1427); the Trial Examiner inadvertently fixes the date as January 28, 1965, in his Decision.