

In light of all the foregoing statements, and the speech viewed in its entirety, I cannot agree with my colleagues' conclusion that the employees would not reasonably construe such remarks as pointing to a loss of employment which necessarily would follow the advent of the Union. Nor, in my opinion, is the speech made lawful because the relocation of the companies may have been generally known in Owosso. If this has any significance, it is only to heighten the employees' fear of unemployment which the Employer sought to impress upon them. The nature of such comments manifestly create and intensified a fear that job security could not be maintained if the Union won the election. Thus, by repeatedly emphasizing this theme, the Employer did not simply answer prior propaganda but created an atmosphere in which an uncoerced vote could not be cast. Accordingly, I would direct the Regional Director to hold another election.

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**Local 2346, United Brotherhood of Carpenters and Joiners of America, AFL-CIO [Erectors, Inc.] and Lathers' Local No. 39 a/w Wood, Wire and Metal Lathers' International Union, AFL-CIO and Foster Engineering Company, Ltd., Party of Interest and J. C. Penney Company, Party of Interest**

**Indiana and Kentucky District Council, United Brotherhood of Carpenters and Joiners of America, AFL-CIO [Erectors, Inc.] and Lathers' Local No. 39, a/w Wood, Wire and Metal Lathers' International Union, AFL-CIO and Foster Engineering Company, Ltd., Party of Interest and J. C. Penney Company, Party of Interest.** *Cases Nos. 25-CC-134 and 25-CC-137. January 24, 1966*

#### DECISION AND ORDER

On October 22, 1965, Trial Examiner David S. Davidson issued his Decision in the above-entitled proceeding, finding that the Respondent District Council 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. He also found that the Respondent Local 2346 had not engaged in unfair labor practices as alleged and recommended that the complaint against it in Case No. 25-CC-134 be dismissed. Thereafter, the Respondent District Council filed exceptions to the Trial Examiner's Decision and a supporting brief, and the General Counsel filed a brief in support of the Trial Examiner's Decision.

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 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 and the entire record in this case, including the exceptions and briefs, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

[The Board adopted the Trial Examiner's Recommended Order and dismissed the complaint in Case No. 25-CC-134.]

### TRIAL EXAMINER'S DECISION

#### STATEMENT OF THE CASE

Upon a charge filed March 11, 1965, by Lathers' Local No. 39, a/w Wood, Wire and Metal Lathers' International Union, AFL-CIO, referred to herein as the Lathers, and the General Counsel issued a complaint in Case No. 25-CC-134 against Respondent, Local 2346, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, referred to herein as Local 2346. The complaint alleges that Local 2346 violated Section 8(b)(4)(i) and (ii)(B) of the Act. The answer of Local 2346 denies the commission of any unfair labor practices.

A hearing on Case No. 25-CC-134, with all parties represented, was held before Trial Examiner David S. Davidson in Shelbyville, Indiana, on June 7, 1965. At the close of the hearing, oral argument was waived, and the parties were given leave to file briefs.

Thereafter, upon a charge filed on June 10, 1965, by the Lathers, the General Counsel issued a complaint in Case No. 25-CC-137 against Respondent Indiana and Kentucky District Council, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, referred to herein as the District Council, containing allegations substantially the same as those in the complaint against Local 2346 in Case No. 25-CC-134. The District Council in its answer denies the commission of any unfair labor practices.

On July 26, 1965, counsel for the General Counsel moved to consolidate Case No. 25-CC-137 with Case No. 25-CC-134. Following issuance by me of an order to show cause why the motion of the General Counsel should not be granted and the filing of a response in opposition to consolidation by the Respondents, the parties were notified that I would defer ruling and hear argument on the motion to consolidate on August 31, 1965, prior to the scheduled opening of the hearing in Case No. 25-CC-137 on that date in Indianapolis, Indiana. At that time the parties stipulated that the evidence submitted in Case No. 25-CC-134 is to be considered as the evidence in Case No. 25-CC-137 and that both sides would rest without the introduction of further evidence. Thereupon, the motion to consolidate was granted in view of the stipulation and the similarity of the factual and legal issues in the two cases.<sup>1</sup>

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

#### FINDINGS AND CONCLUSIONS

##### I. THE BUSINESS OF THE EMPLOYERS INVOLVED

C. Wayne Foster and Glen Foster, copartners, d/b/a Foster Engineering Company, Ltd., referred to herein as Foster, have their principal office at Indianapolis,

<sup>1</sup> After the close of the hearing, briefs were filed by the General Counsel and the Respondent. At the August 31 hearing the counsel for the General Counsel was permitted to withdraw a motion made at the earlier hearing to substitute the District Council for Local 2346 as Respondent in Case No. 25-CC-134.

Indiana. During all times material Foster has been engaged at Shelbyville, Indiana, as general contractor in construction work at a shopping center known as the Bel Aire Shopping Center, at which the unfair labor practices charged in the complaints are alleged to have occurred. As a general contractor in the building and construction industry during 1964, Foster engaged in the construction of various commercial and light industrial buildings valued in excess of \$1 million. Foster performs services outside the State of Indiana annually valued in excess of \$50,000.

J. C. Penney, referred to herein as Penney, is a Delaware corporation engaged primarily in the retail sale of general merchandise, and during 1964 sold goods valued at in excess of \$1 million from its various locations throughout the United States. During 1964, Penney received at its various facilities goods of a value in excess of \$50,000 which were shipped to such facilities directly from points outside the States in which such facilities are located. At all times material, Penney was a lessee of one of the stores in the Bel Aire Shopping Center and had carpenters and workmen in its employ at the jobsite engaged in preparing the store for occupancy.

Erectors, Inc., an Indiana corporation with principal offices in Indianapolis, Indiana, is a wholly owned subsidiary of Hugh J. Baker and/or Baker's firms, and is a subcontractor engaged in the installation of ceilings in light industrial and commercial buildings. During 1964 Erectors purchased, transferred, and delivered to its project sites in Indiana goods and materials valued in excess of \$50,000 which were transported to said sites directly from points outside the State of Indiana. At all times material Erectors was engaged as a subcontractor by Foster for the installation of ceilings in the Bel Aire Shopping Center. I find that Foster, Penney, and Erectors, Inc., are employers engaged in commerce or in operations affecting commerce within the meaning of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein. *Madison Building & Construction Trades Council, William Arnold, et al. (Wallace Hildebrant & John Kiefer, d/b/a H & K Lathing Co.)*, 134 NLRB 517; *Truck Drivers Local Union No. 649, International Brotherhood of Teamsters, etc. (Jamestown Builders Exchange, Inc.)*, 93 NLRB 386.

## II THE LABOR ORGANIZATIONS INVOLVED

Local 2346, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Indiana and Kentucky District Council, United Brotherhood of Carpenters and Joiners, AFL-CIO, and Lathers' Local No. 39 a/w Wood, Wire and Metal Lathers' International Union, AFL-CIO, are labor organizations within the meaning of Section 2(5) of the Act.

## III. THE ALLEGED UNFAIR LABOR PRACTICES

### A. Introduction

During March 1965, Foster, as general contractor, was engaged in the construction of the Bel Aire Shopping Center project. Erectors, Inc., held a subcontract from Foster to install grid-type acoustical ceilings in various stores in the shopping center. On Monday, March 8, 1965, Erectors started work on its subcontract. At the time both Foster and Penney employed carpenters on the project who were members of various local unions of the parent United Brotherhood of Carpenters and Joiners of America, AFL-CIO. When it was discovered that Erectors intended to assign a mixed crew of carpenters and lathers to the job, the carpenters took the position that all the work should be assigned to carpenters, and a dispute ensued. The General Counsel contends that in the course of the dispute Respondents engaged in, and induced and encouraged carpenters employed by Foster and Penney to engage in, a work stoppage and threatened Foster's superintendent with a lengthy strike with an object of forcing or requiring Foster and Penney to cease using, selling, handling, transporting, or otherwise dealing in the products of, and to cease doing business with, Erectors and with each other. Respondents deny that they engaged in any of the alleged conduct or that any conduct which may be attributed to them was for an objective proscribed by Section 8(b)(4)(B).

### B. The facts

On March 8 Erectors dispatched a crew of three men from Indianapolis to the Bel Aire project. Two were carpenters and the third was Malcolm Dayvolt, a lather, who was to act as a working foreman. When the crew arrived at the jobsite, Dayvolt

called Wendell Stapp; business representative for the District Council,<sup>2</sup> to arrange for work permits for Erectors' carpenters, who were working outside the jurisdiction of their Local. Stapp asked Dayvolt whether Respondent was going to hire local people, and Dayvolt replied that he had no authority to do so. Stapp then called Elmer Downham, superintendent for Erectors, who was in Indianapolis, and asked Downham if he could use any local carpenters. Their conversation concluded with apparent understanding that Downham would use some carpenters from Indianapolis, for whom Stapp would write permits, and some local men whom Stapp would supply.<sup>3</sup> There was no mention of lathers during the conversation.

In midafternoon, Stapp arrived at the project to write permits for the Indianapolis carpenters and discovered for the first time that Dayvolt was not a carpenter but a lather. Stapp immediately attempted to contact Downham, but was unable to do so until the following morning when they met at the jobsite.

Sometime during the afternoon, one of the carpenters on the jobsite told District Council steward Harry Corley that there was a lather on the job doing carpenter work.<sup>4</sup> Fields, another carpenter who was present and like Corley worked for Foster, asked Corley what he was going to do about it. Corley replied that he would go and make the lather quit. Later he told Fields that the lather refused to quit and that he, Corley, would have to call Stapp to find out what to do.<sup>5</sup>

At quitting time that afternoon, Pete Curran, project superintendent for Foster Engineering, met Corley in the parking lot. According to Curran's credited uncontradicted testimony, Corley said, "Well, we might not get to work tomorrow because . . . Wendell [Stapp] told us not to work if the lathers kept putting up the grid ceiling."

The next morning the Erectors crew, which began work at 7:30, before the Foster crew,<sup>6</sup> arrived on the jobsite with two carpenters and three lathers from Indianapolis, including Dayvolt. In addition three local carpenters reported to work with them, and the entire crew began to work. About 7:50, Corley came to the Danner's store where they were working and told the carpenters employed by Erectors to get off the scaffolds and quit. They did.<sup>7</sup>

When Fields reported to work for Foster shortly before 8 that morning he asked Steward Corley what they were going to do. Corley replied that they were going to wait until Stapp came and settled the dispute. Fields and the other carpenters employed by Foster and Penney, along with Erectors' carpenters, then stood around at the front of the Danner's store waiting for Stapp to find out what they were going to do.<sup>8</sup> The three lathers continued to work.

About 8:15 Downham arrived at the jobsite and entered the Danner's store. Stapp arrived shortly thereafter and also entered the store, followed after a few minutes by Curran and Glass, Curran's assistant. The four moved to the rear of the store where a lengthy conversation took place, principally between Downham and Stapp.<sup>9</sup>

<sup>2</sup> Stapp was also president of Local 2346. I credit his uncontradicted testimony that his activities in connection with the Bel Aire project were in his capacity as District Council business representative and did not concern Local 2346, which does not have jurisdiction over Shelbyville.

<sup>3</sup> There are minor conflicts between Downham's and Stapp's versions of the conversation which are not material to the issues herein and need not be resolved.

<sup>4</sup> Stapp in his capacity as District Council business representative had appointed Corley as job steward for the District Council and so notified Curran, the project superintendent for Foster Engineering.

<sup>5</sup> The findings as to these conversations among the carpenters are based on the uncontradicted testimony of Fields. Corley did not appear as a witness.

<sup>6</sup> The Foster crew started work at 8.

<sup>7</sup> Dayvolt so testified without contradiction.

<sup>8</sup> This finding is based on Fields' testimony, as well as that of Downham, Curran, and Dayvolt who testified that no carpenter worked at the jobsite for the first 2 hours of the day. Stapp testified that he believed some carpenters worked and some did not, but admitted that he lacked any basis to know whether any carpenter then worked and that he recognized carpenters employed by Foster and Penney who were standing in Danner's store and not working. I do not credit Stapp's testimony concerning his knowledge of the stoppage by the carpenters on March 9 or his uncertainty whether the carpenters who were standing at the front of the store were upset by the assignment of the disputed work to lathers or merely pausing to drink coffee.

<sup>9</sup> The findings as to this conversation are based on the testimony of Downham, Curran, and Stapp. Although each recalled slightly different aspects of the conversation, none denied any of the material statements to which the others testified and there are no material conflicts in their testimony.

Downham asked Stapp what was happening. Stapp replied that he was striking the job. Downham asked why. Stapp replied that the work was all carpenters' work and he was not going to permit any lathers to work on it. Downham attempted to explain the reasons why he wished to work a mixed crew, and Stapp replied that he did not dispute Downham's reasons, but in his jurisdiction the work was carpenter work and he was going to strike the job unless the work was assigned exclusively to carpenters. At one point Downham said, "Come on, Wendell, let's get together on this thing, let's get these carpenters back to work." In response Stapp said, "Don't worry about my carpenters, they'll walk out that door up there for 3 months before they let you do this grid work." At another point during the discussion Downham said he was going to work lathers whether Stapp liked it or not, and, if necessary, would do the whole job with lathers. Stapp replied that it was Downham's prerogative to do so and then asked how long Downham thought it would take to do the job with lathers. When Downham answered that it would take 30 days, Stapp said, "As I came in here this morning you have only three lathers here for about half an hour and you have a problem and I have a problem. Now, if it takes you 30 days, we could both have a problem for 30 days." During the conference Curran stated that he would not like to have a shutdown or a stoppage because of a tight schedule and expressed the hope that the dispute could be settled so that work could resume. After discussion which lasted in excess of an hour, Downham capitulated and agreed to assign all the work to carpenters, keeping Dayvolt on the job as a nonworking foreman. Stapp agreed to this solution, left the back of the store, went to the group of carpenters at the front of the store, and told them that the matter was settled and they could all go back to work. The carpenters, at the jobsite, who did not work while the conference was in progress, then returned to work.<sup>10</sup>

There is no dispute that the only issue discussed by Downham and Stapp was whether lathers or carpenters should install the ceiling. There was no discussion as to whether Erectors or some other subcontractor should do the work.

Stapp denied that he ever instructed or told anyone to stop work on the Bel Aire project, and there is no evidence to the contrary.

After the settlement agreed to by Downham and Stapp, there were no further interruptions of work, and at the time of the hearing, Erectors had completed all work on its contract which it had been asked to perform.

### C. Concluding findings

#### 1. The responsibility of Respondents for the conduct of Stapp and Corley

The complaints allege that the Respondents violated 8(b)(4)(i) and (ii)(B) by the acts and conduct of Stapp and Corley, who are alleged to be agents of the Respondents. Stapp and Corley were concededly business representative and steward, respectively, for Respondent District Council. Stapp appears to have been the principal representative of the District Council in dealing with Erectors at the Bel Aire jobsite. Thus, he dealt with Downham with respect to the number and identity of local carpenters to be hired, sent local carpenters to the job, issued work permits to out-of-town carpenters, and represented the District Council in seeking a resolution of the work assignment dispute with Downham. Corley was concededly appointed by Stapp to act as steward for the District Council at the jobsite. While the record contains no evidence as to the nature of Corley's duties as steward or the scope of his authority, in the light of the fact that it is the custom for stewards to represent labor organizations which they serve in the enforcement of union policy, and in the absence of any evidence to show that Corley's authority was limited or that his conduct was contrary to union policy, I conclude that in engaging in the conduct alleged to violate Section 8(b)(4) in this case, both Stapp and Corley were acting as agents of the District Council to whom their conduct is attributable. *Local No. 511, United Brotherhood of Carpenters & Joiners of America, AFL-CIO; et al. (New Mexico Building Branch, AGC)*, 120 NLRB 1658; *General Drivers, Salesmen and Warehousemen's Local No. 984, et al. (Humko Co., Inc.)*, 121 NLRB 1414, 1418, footnote 8; *N.L.R.B. v. Brewery and Beer Distributor Drivers, Helpers and Platform Men, Local 830, International Brotherhood of Teamsters, etc. (Delaware Valley Beer Distributor Assn.)*, 281 F. 2d 319, 322 (C.A. 3).

However, the evidence is not sufficient to establish that either was acting as an agent for Local 2346 as well. Although Stapp was president of Local 2346 as well as business representative of the District Council, the Bel Aire project was not within the geographical jurisdiction of Local 2346, and there is no evidence to rebut

<sup>10</sup> Foster's carpenters were not paid for the first 2 working hours on March 9

Stapp's testimony that his activities in Shelbyville were on behalf of the District Council and not the Local. As for Corley, there is no evidence to show that he acted in any capacity for Local 2346. Under the circumstances, I find that the conduct of Corley and Stapp cannot be attributed to Local 2346 and will recommend dismissal of the complaint in Case No. 25-CC-134 for that reason.

## 2. The work stoppage, its inducement, encouragement, and threats

Turning to the elements of the alleged violation, I find that Job Steward Corley induced and encouraged carpenter Paul Fields, an employee of Foster, to refuse to perform services for Foster on the morning of March 9 within the meaning of Section 8(b)(4)(i) when he told Fields to wait until Stapp came to the jobsite and settled the work assignment dispute before starting to work. Any ambiguity in Corley's usage of the word "wait" was dispelled by Corley's action, like that of all the other carpenters on the job, in standing and waiting at the front of the Danner's store for the dispute to be resolved before starting work. Moreover, the same factors persuade me that Corley was responsible for the work stoppage by the carpenters employed by Foster and Penney which occurred that morning.<sup>11</sup>

In addition, I find that both Corley and Stapp threatened, coerced, and restrained Foster's Superintendent Curran within the meaning of Section 8(b)(4)(ii). Corley threatened Curran at the close of the workday on March 8 that "we" might not work the next day because Stapp had told "us" not to work if lathers were kept on the job by Erectors. As Corley was himself a carpenter employed by Foster, the threat was clear that Foster's carpenters might refuse to work for Foster if the dispute between the District Council and Erectors was not resolved. *International Brotherhood of Boilemakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local No. 193 (Combustion Associates, Inc.)*, 144 NLRB 1206, 1208, 1218. As for Stapp, during the conference between Stapp, Downham, Curran, and Glass on March 9, when Downham suggested that they settle the dispute to get "these" carpenters back to work, Stapp replied, "Don't worry about my carpenters, they'll walk out that door up there for three months before they let you do this grid work." As "these" carpenters in Stapp's own belief included some of the carpenters working for employers other than Erectors at the jobsite, and in fact included all the carpenters at the site, it is clear that his response could only be reasonably understood to threaten a strike by all the carpenters on the job unless Erectors assigned the ceiling work to carpenters. Indeed another exchange between Downham and Stapp, to which Stapp testified, repeats the threat. Thus, when Downham at one point expressed an intention to proceed on the job with lathers whether Stapp liked it or not, Stapp in the ensuing exchange said that with only three lathers present for half an hour, "you have a problem and I have a problem. Now if it takes you 30 days, we could both have a problem for thirty days." Stapp's euphemistic usage of the word "problem" by his own testimony referred to the carpenters standing idle at the front of the store during the conference, and indeed could have had no other reference without further explanation by him at the time. I find implicit in this usage a further threat of a strike by all the carpenters on the job. In these circumstances any ambiguity in the nature of the strike which Stapp also openly threatened in his remarks to Downham must also be resolved to finding that Stapp threatened a strike by all the carpenters on the jobsite and not merely by those employed by Erectors.

## 3 The object of Respondent District Council's conduct

Respondents contend that there is in any event no evidence that they sought to force or require Foster or Penney to cease doing business with Erectors, but to the contrary that the record shows that they wanted the relationship between Foster and Erectors to continue with the work to be performed for Erectors by carpenters in *Local 3, International Brotherhood of Electrical Workers (New York Telephone Company)*, 140 NLRB 729, enfd. 325 F. 2d 561 (C.A. 2), the Respondent Union threatened the telephone company that it would withdraw its members from a construction project if the company did not renegotiate its contract with Delee, a contractor, to require that certain conduit work be performed by members of Local 3

<sup>11</sup> In making these findings I do not rely on Corley's instruction to Erector's carpenters on March 9 to get off the scaffolds and quit, as any stoppage by Erector's carpenters and inducements to them to stop were primary in character.

rather than by Delee's employees who were represented by a different union. In rejecting a contention similar to that of Respondent in this case, the Board held, *supra* at 730:

While it does not appear that Respondent explicitly demanded that the Company cancel the Delee contract if Delee refused to use its members, this was the only alternative the Company had if Delee continued to refuse replacement of its employees by members of Respondent. We conclude, therefore, that Respondent's threat to the Company had an object of forcing the Company to cease doing business with Delee. Even assuming, *arguendo*, that Respondent did not consciously contemplate imposition of this sanction, it is nonetheless clear that Respondent sought by its threat to require that the Company superimpose upon its existing agreement with Delee an added condition of performance, that the work had to be done by Respondent's members. Acceptance of this condition by Delee would require the Company to cease doing business with Delee on the basis of their original arrangement. The objective of causing such a disruption of an existing business relationship, even though something less than a total cancellation of the business connection, is a "cease doing business" object within the meaning of Section 8(b)(4)(B) of the Act.

Here, also, there is no affirmative evidence that Stapp expressly asked Foster to terminate its business relationship with Erectors. Likewise, there is no question that the only stated goal of the pressure exerted upon Erectors was to secure the assignment of carpenters by Erectors to the ceiling grid installation job. However, the exertion of secondary pressures by Corley and Stapp in behalf of Respondent District Council upon Foster in furtherance of that goal could have had only one of two alternative objects, for Foster could not itself reassign the disputed work to carpenters. Thus, it is clear that Foster was drawn into the dispute either to cause it to impose an added condition of performance upon its contract with Erectors requiring Erectors to utilize carpenters to perform the disputed work, or to cause Foster to terminate its subcontract with Erectors and seek other means to perform the disputed work.

Similarly, while there is no evidence of a business relationship between Penney and Erectors or between Penney and Foster, the only possible purpose for interrupting the work performed by Penney's carpenters and threatening such interruption was either to cause Penney to terminate its occupancy agreement with the owner of the shopping center or to cause Penney to impose as a condition of its continued tenancy the requirement that the owner require Foster in turn either to require that the disputed work be performed by carpenters or to terminate the subcontract. These objects are all proscribed by Section 8(b)(4)(B). *Local 3, International Brotherhood of Electrical Workers, AFL-CIO (New York Telephone Company), supra*.

Respondent relies on *N.L.R.B. v. United Brotherhood of Carpenters & Joiners of America, Local 80, United Brotherhood of Carpenters & Joiners of America (Wendnagel & Company)*, 261 F. 2d 166 (C.A. 7), setting aside 119 NLRB 1444, as supporting a contrary conclusion. It does not appear, however, that the rationale subsequently set forth by the Board in the *Local 3 IBEW* case, *supra*, was relied upon by the Board or passed upon by the Seventh Circuit in that case. Moreover, to the extent that the decision of the Seventh Circuit rests upon the decision of the Second Circuit in *Charles T. Douds v. International Longshoremen's Association, Independent, et al.*, 224 F. 2d 455, the restricted view of the term "object" which the *Douds* decision adopted has not been followed by the Board and has since been rejected by the Second Circuit in subsequent decisions. See *National Maritime Union of America (Weyerhaeuser Lines & Houston Maritime Assn.) v. N.L.R.B.*, 342 F. 2d 538, 544-545. Under the circumstances I find the *Local 3* decision, *supra*, applicable and controlling.

Respondents also contend in defense that no violations should be found herein because of the failure of the General Counsel to act upon companion charges of violation of Section 8(b)(4)(i) and (ii)(D) filed by the Lathers against them. Respondents argue that under *N.L.R.B. v. Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO (Columbia Broadcasting System)*, 364 U.S. 573, the Board was required to decide the jurisdictional dispute, and that its failure to do so may have prejudiced Respondents in the instant case, as a 10(k) proceeding might have disposed of the entire matter under *Local 1248, International Longshoremen's Association (Hampton Roads Maritime Association)*, 152 NLRB 891. I find no merit in this defense.

While a work assignment dispute may generate charges of violation of both Section 8(b)(4)(B) and (D), the violations are separate and distinct. Section 8(b)(4)(B) concerns involvement of neutral or secondary employers in such disputes while 8(b)(4)(D) concerns the use of proscribed force in such disputes against the primary employer with whom the work assignment dispute exists. Reasons which justify the quashing of a notice of hearing under Section 10(k), such as submission of evidence of agreement upon methods for the voluntary adjustment of the dispute, are irrelevant to an 8(b)(4)(B) violation. Whatever the duty of the General Counsel with respect to the 8(b)(4)(D) proceeding, no evidence was adduced or offered before me to show that the General Counsel did not perform his duty.

Moreover, the *Hampton Roads* case relied upon by Respondents is not apposite. In that case the 10(k) proceeding had been held and resulted in action by the Board which "proscribed the very conduct" in question in the 8(b)(4)(B) proceeding. Here the 10(k) proceeding has not been held and the mere pendency of such a proceeding is not a bar to an 8(b)(4)(B) proceeding. *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, 831-832, enfd. as modified 321 F. 2d 366 (C.A.D.C.), cert. denied 375 U.S. 921. As that decision makes clear, Respondents' claim of prejudice is without foundation, for assuming they succeeded in obtaining a determination that the disputed work should have been assigned to carpenters, thereby justifying the exertion of primary pressures against Erectors to obtain the assignment, that determination would not justify the involvement of Foster and Penney in the dispute by inducing or threatening work stoppages by their employees.

Accordingly, I find that Respondent District Council by its above-described conduct has violated Section 8(b)(4)(i) and (ii)(B) and has thereby violated the Act.

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

The activities of Respondent District Council as set forth in section III, above, occurring in connection with the operations of Erectors, Foster, and Penney 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 that Respondent District Council 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 designed 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. C. Wayne Foster and Glen Foster, d/b/a Foster Engineering Company, Ltd., J. C. Penney, and Erectors, Inc., are each employers engaged in commerce or an industry affecting commerce within the meaning of Section 2(2), (6), and (7) and Section 8(b)(4) of the Act.

2. Local 2346, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Indiana and Kentucky District Council, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, and Lathers' Local No. 39, a/w Wood, Wire and Metal Lathers' International Union, AFL-CIO, are labor organizations within the meaning of Section 2(5) of the Act.

3. By engaging in, and inducing and encouraging employees of Foster and Penney to engage in, a refusal in the course of their employment to perform services, and by threatening, coercing, and restraining Foster, with an object of forcing and requiring Foster and Penney to cease doing business with Erectors, Inc., and the owner of the Bel Aire project, respectively, Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(B) of the Act which affect 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 recom-

mend that Respondent Indiana and Kentucky District Council, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, its officers, representatives, and agents, shall:

1. Cease and desist from engaging in, or inducing or encouraging any individual employed by C. Wayne Foster and Glen Foster, d/b/a Foster Engineering Company, Ltd., J. C. Penney, or any other person engaged in commerce or in any industry affecting commerce, to engage in, a strike or refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services; or threatening, coercing, or restraining C. Wayne Foster and Glen Foster, d/b/a Foster Engineering Company, Ltd., or any other person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is to force C. Wayne Foster and Glen Foster, d/b/a Foster Engineering Company, or any other employer or person to cease doing business with Erectors, Inc., or to force J. C. Penney or any other employer or person to cease doing business with the owner of the Bel Aire Shopping Center at Shelbyville, Indiana.

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

(a) Post in conspicuous places at its business offices, meeting halls, and all places where notices to members are customarily posted, copies of the attached notice marked "Appendix."<sup>12</sup> Copies of said notice, to be furnished by the Regional Director for Region 25, shall, after being duly signed by Respondent District Council's authorized representative, be posted by Respondent District Council immediately upon receipt thereof and be maintained by it for 60 consecutive days. Reasonable steps shall be taken by Respondent District Council to insure that such notices are not altered, defaced, or covered by any other material.

(b) Sign and mail sufficient copies of said notice to the Regional Director for Region 25 for posting by each of the employees named in the preceding paragraphs who are willing, at all places where notices to their respective employees are customarily posted.

(c) Notify said Regional Director, in writing, within 20 days from the receipt of this Decision, what steps the Respondent District Council has taken to comply herewith.<sup>13</sup>

It is further recommended that the Board dismiss the complaint in Case No. 25-CC-134 in its entirety.

<sup>12</sup> 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."

<sup>13</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 the Respondent District Council has taken to comply herewith."

## APPENDIX

### NOTICE TO ALL MEMBERS OF INDIANA AND KENTUCKY DISTRICT COUNCIL, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, 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 any individual employed by C. Wayne Foster and Glen Foster, d/b/a Foster Engineering Company, Ltd., J. C. Penney, or any other person engaged in commerce or in any industry affecting commerce, to engage in, strikes or refusals in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services; or threaten, coerce, or restrain C. Wayne Foster and Glen Foster, d/b/a Foster Engineering Company, Ltd., or any other person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is to force C. Wayne Foster and Glen Foster, d/b/a Foster Engineering Company, Ltd., or any other

employer or person to cease doing business with Erectors, Inc., or to force J. C. Penney or any other employer or person to cease doing business with the owner of Bel Aire Shopping Center at Shelbyville, Indiana.

INDIANA AND KENTUCKY DISTRICT COUNCIL, UNITED BROTHERHOOD  
OF CARPENTERS AND JOINERS OF AMERICA, 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.

If members have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 614 ISTA Center, 150 West Market Street, Indianapolis, Indiana, Telephone No. 633-8921.

**Edward M. Lindsey and Oscar H. Lindsey, a Partnership d/b/a Lindsey's and Teamsters, Chauffeurs, Helpers and Taxicab Drivers Local Union 327, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.** *Case No. 26-CA-2020. January 25, 1966*

### DECISION AND ORDER

On September 1, 1965, Trial Examiner Jerry B. Stone issued his Decision in the above-entitled proceeding, findings that the Respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. The Trial Examiner also found that the Respondents had not engaged in certain other unfair labor practices alleged in the complaint, and recommended that these allegations be dismissed. Thereafter, the Respondents filed exceptions to the Trial Examiner's Decision and a supporting brief.

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 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 Decision, the exceptions, brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner only to the extent consistent herewith.

The facts leading up to the alleged violation of Section 8(a)(3) as disclosed by the record and found by the Trial Examiner are as follows: During the late summer of 1964 Respondents decided to remodel their plant facilities at Lawrenceburg, Tennessee, so as to