

WE WILL NOT discourage membership in or activities on behalf of United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO, or in any other labor organization of our employees, by discharging or otherwise discriminating in regard to their hire and tenure of employment or any term or condition of employment of any employee.

WE WILL NOT interrogate our employees concerning their or other employees' union affiliation or activities, or protected concerted activities, in a manner constituting interference, restraint, or coercion in violation of Section 8(a)(1) of the Act.

WE WILL NOT in any other manner interfere with, restrain, or coerce any of our employees in the exercise of their right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection as guaranteed by Section 7 of the Act, or to refrain from any or all such activities.

All our employees are free to become or remain, or to refrain from becoming or remaining, members of United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO, or any other labor organization.

SAMSONITE CORPORATION,
Employer.

Dated _____ By _____
(Representative) (Title)

NOTE: We will notify Dean Walls if presently serving in the Armed Forces of the United States of his right to reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended, after discharge from the Armed Forces.

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 employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 746 Federal Office Building, 167 North Main Street, Memphis, Tennessee, Telephone No. 534-3161.

Local 25, International Brotherhood of Electrical Workers, AFL-CIO and Emmett Electric Company, Inc. and Industrial Workers of Allied Trades, Local 199, affiliated with National Federation of Independent Unions; United Construction Contractors Association, Inc.; D-Lion Construction Co., Inc. Case No. 29-CD-8 (formerly 2-CD-316). February 23, 1966

DECISION AND ORDER

On November 29, 1965, Trial Examiner Eugene F. Frey 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, the Respondent 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 Brown].

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

[The Board adopted the Trial Examiner's Recommended Order.]

MEMBER FANNING, dissenting:

As I indicated in my dissenting opinion in the Section 10(k) proceeding in this case (152 NLRB 671), I would have quashed the notice of hearing and now dissent from the majority's finding that a violation of Section 8(b)(4)(D) has occurred for the reasons stated in my dissenting opinion in *Local 25, IBEW, AFL-CIO (Sarrow-Suburban Electric Co., Inc., et al.)*, 152 NLRB 531.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

The issue in this case is whether Respondent Local 25, International Brotherhood of Electrical Workers, AFL-CIO, violated Section 8(b)(4)(i) and (ii)(D) of the National Labor Relations Act, as amended, 29 U.S.C., Sec. 151, *et seq.*, herein called the Act, by engaging in and inducing and encouraging employees of D-Lion Construction Co., Inc., herein called D-Lion, and Emmett Electric Company, Inc., herein called Emmett, and other persons, to engage in a strike or concerted refusal to perform services, and by threatening, coercing, and restraining D-Lion and Emmett and other persons, all in support of its claim for the assignment to its members of certain electrical work involved in the construction of a building in Long Beach, Long Island, New York, and with an object of forcing and requiring D-Lion to assign said work to contractors employing members of Respondent or to employees who are members of or represented by Respondent, rather than to employees who are members of or represented by Industrial Workers of Allied Trades, Local 199, affiliated with National Federation of Independent Unions, herein called Local 199. The issue arises on a complaint issued June 10, 1965, by the General Counsel of the Board through the Board's Regional Director for Region 29,¹ and answer of Respondent which admitted the establishment of a picket line at the project aforesaid, but denied the commission of any unfair labor practices.

A hearing on the issue was held before Trial Examiner Eugene F. Frey at New York, New York, on August 12 and September 1, 1965, in which all parties (excepting D-Lion) participated fully through counsel. General Counsel and Respondent presented oral argument at the close of the testimony and have submitted written briefs, all of which have been carefully considered in preparation of this Decision.

Upon the entire record in the case, including my observation of witnesses on the stand, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

Emmett is a New York corporation engaged in business as an electrical contractor, with its place of business in Levittown, Long Island, New York. In July through September 1964, Emmett was working as an electrical subcontractor in the construction of a new building at the East End Synagogue, Long Beach, Long Island, New York, where picketing and other events involving Respondent occurred as set forth below. At all times mentioned herein, Emmett was a member of United Construction Contractors Association, herein called the Association, an organization which

¹ The complaint issued after Board investigation following the usual 10(k) proceeding resulting in a Decision and Determination of Dispute issued May 17, 1965, which is reported in 152 NLRB 671.

bargains and executes collective-bargaining contracts with labor organizations on a multiemployer basis on behalf of its members. The Board found in its Decision and Determination of Disputes aforesaid, involving all the parties herein, that the Association was engaged in commerce within the meaning of the Act, and that while Emmett's operation considered singly would not meet any of its jurisdictional standards, it would exercise jurisdiction over Emmett and its operations because of its membership in the Association. As this decision is binding on me, I find that the Association and Emmett are each engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The parties herein stipulated in the 10(k) proceeding that Respondent and Local 199 were labor organizations within the meaning of the Act. Respondent here admits that status for itself, but now denies that Local 199 is such a labor organization. The record herein shows that since February 1963, the Association has had a collective-bargaining agreement with Local 199 which indicates that said labor organization has been and is representing employees of employer-members of the Association for purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment. I find that both Respondent and Local 199 are labor organizations within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The dispute and Respondent's conduct therein*

During 1964 D-Lion was general contractor for construction of a new building on premises of East End Synagogue, a Jewish house of worship in Long Island, New York. In July or August 1964, D-Lion engaged Emmett as subcontractor to do the electrical work on the job. Emmett's employees were members of Local 199, with which organization Emmett had executed a collective-bargaining contract some time before, and Emmett, as a member of the Association, was also bound by the terms and conditions of the contract previously executed between the Association and Local 199 as found above. Emmett began work with its employees under its subcontract at the site early in September. On September 14 or 15, Joseph Cavanaugh, business agent of Respondent, visited the project and asked Mario Tucci, D-Lion general superintendent on the project, who was doing the electrical work for him. When Tucci told him Emmett was, Cavanaugh took from his pocket and referred to a list of electrical contractors who had signed contracts with Respondent, saw that Emmett was not listed on it, and told Tucci he did not think Emmett was signed up with Respondent or the "AFL Building Trades," and that the Emmett electricians did not belong to Respondent. At the same time he gave Tucci the list of contractors aforesaid, and said that one of them should be doing the electrical work, and that if D-Lion did not get one of them on the job, Cavanaugh would have pickets on the site. Tucci reported this talk at once to his superiors in D-Lion and also to Ely Emmett, owner of Emmett, asking the latter to "straighten it out" so that the job would run smoothly. Emmett said he would "join up" or straighten it out somehow.

On Wednesday, September 16, 1964, which was Yom Kippur, a holy day in the Jewish religion, Respondent established a picket line on the jobsite, which was across the street from the main temple in which members of the congregation were observing the holy day in the traditional manner. Two pickets paraded, carrying signs stating—"To the Public: The electricians on this job—Emmett Electric—do not work under wages or working conditions established by Local 25, IBEW, AFL-CIO. We do not have any dispute with any other Employer. Local 25, IBEW, AFL-CIO." No work was done on the job by any craft on Yom Kippur, but after the pickets appeared the next day, plumbers and laborers did not work on the job when requested, and none of these crafts returned to work until the picketing stopped about 10 days later. However, Emmett's employees worked until his removal from the job. On the 17th, a Mr. Milton Popper, chairman of the building committee of the synagogue, talked to both Tucci at the site and another D-Lion official on the telephone, very much upset, and demanded that D-Lion do something to have the pickets removed, because his congregation had complained and was embarrassed by the pickets parading on the job during the holiday. A D-Lion officer, Frank Vincent, then talked to Cavanaugh to find out how the pickets could be removed. Cavanaugh said they would not be removed unless D-Lion hired electricians who were receiving wages and benefits established by Respondent's contracts. He also said that the picketing was started because "we are protecting what Local 25 has taken thirty some odd

years to build up." D-Lion officers at once contacted Emmett, suggesting that he sign up with Respondent to stop the picketing, but he would not consider that unless Respondent accepted his employees as members. When nothing came of these discussions,² Emmett went to the Board on September 18, 1964, in an effort to secure an injunction against the picketing and to file the original charge herein. Shortly before September 26, Vincent told Emmett he had to stop work on the job because of the picketing by Respondent. About the same time D-Lion contacted several of the contractors on the "approved" list left by Cavanaugh with Tucci, and on or about September 26 removed Emmett from the job and shortly engaged M & M Electric, a contractor on Respondent's list, to finish the electrical work. When employees of M & M Electric started to work, the plumbers and other crafts returned to the job, and the project proceeded without interruption. M & M performed the electrical work for a while, and then D-Lion procured another contractor on the Respondent's list (Electrical Construction Associates, called "ECA" in the record), to continue the work.³

After Emmett filed the charge herein on September 18, 1964, alleging that Respondent violated Section 8(b)(4)(D) of the Act, the Board conducted a hearing pursuant to Section 10(k) of the Act to determine the dispute, and on May 17, 1964, issued its Decision and Determination of Dispute, cited above, in which it found reasonable cause to believe that Respondent was claiming the electrical work on the project aforesaid for its members, that a jurisdictional dispute existed, and that there was reasonable cause to believe that Respondent had engaged in conduct violating Section 8(b)(4)(D) and that the dispute was properly before it for determination under Section 10(k). On the merits, the Board determined that (1) employees then represented by Local 199 were entitled to perform all electrical work connected with the construction on the synagogue project aforesaid, and (2) Respondent was not entitled, by means proscribed by Section 8(b)(4)(D) of the Act, to force or require D-Lion to assign the aforementioned work to a contractor employing its members. The Board directed Respondent to notify the Regional Director, in writing, whether or not it would refrain from the proscribed conduct. On May 21, 1965, Respondent advised the Regional Director that it would not comply with the Decision and Determination of Dispute. The complaint herein was issued on June 10, 1965.

B. Contentions of the parties, and ultimate findings and conclusions thereon

At the outset, it is settled that the award of the disputed work by the Board's Decision and Determination aforesaid cannot be reviewed by a Trial Examiner in a proceeding on a Section 8(b)(4)(D) complaint,⁴ hence I adopt and make part of these findings the decision of the Board that employees represented by Local 199 are entitled to perform all the electrical work in construction of the addition to the East End Synagogue, Long Beach, Long Island, New York.

On the facts found above, it is clear that Respondent on September 14, 1965, threatened to picket the project, and on and after September 16, 1964, actually picketed the site, and thereby threatened and coerced D-Lion, an employer, and

² There is no credible proof that Respondent ever discussed this subject with Emmett, or its employees, or that in its discussions with D-Lion officials it ever indicated any willingness to allow Emmett or its employees to continue on the job under any circumstances. For reasons considered below, I do not rely on testimony of Cavanaugh to the effect that, in his talk with Vincent, he suggested the pickets would be removed if electricians already on the job were to receive wages and benefits fixed by Respondent.

³ The above facts are found from credited testimony of Tucci and Emmett, which is mutually corroborative in essential aspects and is also corroborated by admissions of Cavanaugh. Testimony of any of these witnesses at variance with these findings is not credited. In crediting Tucci and Emmett, I have considered carefully their demeanor on the stand, as well as their apparent self-contradictions and vagueness on some dates, events, and other specific facts, including contradictions appearing in their testimony on those points in the injunction proceedings in the United States district court about 10 months before, and I concluded that both men, particularly Tucci, were relatively unsophisticated witnesses, who were trying sincerely to recall and state the true facts, under the natural handicap that their memories of all the details were far more dim than when they testified in October 1964, shortly after the event. Hence, in finding the essential facts, I have also considered their testimony in the prior proceeding, to the extent that they adopted and reaffirmed it under examination by counsel for both parties.

⁴ *Local Union No. 181, International Union of Operating Engineers (Service Electric Company)*, 150 NLRB 1353, and cases cited in footnote 1 of Trial Examiner's Decision therein.

induced and encouraged employees of other employers on the site to engage in a work stoppage, with an object of forcing and inducing D-Lion to get rid of Emmett and its employees, whom Respondent considered "non-union," and give the electrical work to a contractor on Respondent's contract list whose employees were members of Respondent, and that this conduct falls within the proscription of Section 8(b)(4)(i) and (ii)(D) of the Act.⁵

Respondent presents two main defenses: (1) there was not a jurisdictional dispute within the meaning of the Act, and (2) it conducted picketing at the site solely to inform the public that the wages and working conditions paid by Emmett to its employees on the site were not the same as those established by Respondent, that the facts on its picket signs were truthful, hence the picketing was purely for informational purposes and protected by the Act.

On the first point, Respondent says there is no proof that it sought or demanded the electrical work for its members as a matter of right, nor that there were any "competing" claims to it between employees of Emmett and members of Respondent, but that the facts show at most only a "rival union" dispute. I find no merit in this position, because the facts that members of Local 199 employed by Emmett were doing the work, and continued to do it to the apparent satisfaction of the general contractor until Emmett was forced off the job as found above, and that Emmett filed the charge herein after that event, shows clearly that such employees claimed and were doing the work. The competing claim is clearly shown by (1) Cavanaugh's statement to D-Lion that a contractor on Respondent's list (whose employees were members of Respondent) should be doing the work, and that if a contractor from that list was not put on the job, it would be picketed, (2) the subsequent picketing by Respondent which disrupted the job, (3) Cavanaugh's statements to D-Lion during the picketing that the pickets could be removed only if electricians receiving wages and benefits established by Respondent (which could only mean employees of contractors paying such wages and benefits under a contract with Respondent) were used on the job, (4) Cavanaugh's admissions that one of his duties is to increase job opportunities for Respondent's members in the area of its jurisdiction (which included the synagogue project), and to make sure that a contractor signed up with Respondent does the work on jobs in its jurisdiction, and that Respondent did not permit electricians other than its own members to do electrical work in its jurisdiction, and would prevent them from doing so when it found them doing it, and (5) on the synagogue job "it would have been fine" if, when talking to Tucci, he had found Emmett on Respondent's approved list, because that would have indicated that Respondent's members were working on the job and getting the wages and benefits that "I believe is their due" (obviously the wages and benefits in Respondent's contracts), and that since "that was not the case," the result was the picket line. These circumstances, considered with others found above, clearly show that Respondent was claiming the work on this job for its members as a matter of right based on its admitted practice of seeking and procuring by any means all electrical work in the area of its jurisdiction solely for its members, to the exclusion of employees represented by any other labor organization (including Local 199), and this presents the classic type of jurisdictional dispute between two "rival unions" competing for the same work for their respective members, which falls within the meaning of Section 8(b)(4)(D) of the Act.⁶

On the second phase of the defense, Respondent relies mainly on the wording of the picket sign, that Emmett electricians were not working under wages and working conditions established by Respondent, and argues that the picketing publicized these true facts to the general public for informational purposes only. The record clearly shows that Emmett employees on the job were receiving less in wages and benefits than members of Respondent working under contracts between their employers and Respondent, hence the picket signs stated true facts. In support of this claimed

⁵ There is no proof that at any of the times pertinent herein there existed an order or certification of the Board determining that Respondent was the bargaining representative for employees performing the work in question, hence I cannot find that D-Lion was failing to conform to any such order or determination in hiring Emmett and its employees to do the work.

⁶ *N.L.R.B. v. Radio and Television Broadcast Engineers Union, Local 1212, IBEW (Columbia Broadcasting System)*, 364 U.S. 573, 579; *Local 5, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (Arthur Venneri Company)*, 145 NLRB 1580; *Local Union No. 3, International Brotherhood of Electrical Workers (Western Electric Company)*, 141 NLRB 888. I have carefully considered other authorities cited by Respondent, in which the Board found no jurisdictional disputes, and consider them inapposite here on the facts.

objective, Cavanaugh testified that, if Emmett had worked its employees on the job under comparable wages and working conditions, he would have allowed them to continue on the job, and would have been forced to withdraw the picket signs because they would not be truthful, and that he so advised Frank Vincent of D-Lion. While I must credit this suggestion to D-Lion, as Vincent was not called to contradict it, and it also appears from testimony of Tucci and Emmett that, in his talk with Tucci, Cavanaugh probably made an alternate suggestion that Emmett could remain on the job if it signed up with Respondent (which would require payment of rates fixed by Respondent to its employees),⁷ I am convinced that this suggestion and method of solving the jurisdictional dispute was not bona fide and cannot support the claim that the picketing was informational, for several reasons: Cavanaugh admits that he did not make this suggestion to Vincent, when the latter asked how the pickets could be removed, saying, "I did not word it that way, but I told Mr. Vincent the reason for the picketing was because we are protecting what Local 25 has taken 30-odd years to build up"; he did not explain to Vincent exactly what Respondent was "protecting," but I am convinced from his own testimony as to his duty, among others, of securing all electrical work for his members, and the corollary duty to make sure they received the rates and benefits prescribed by Respondent's contracts, that he had in mind only the job and wage security of his own members, so that the only sincere suggestion in his talk with Vincent was the alternate one that he "hire electricians that do get these wages and fringes," which obviously referred to contractors signed up with Respondent whose employees were getting those wages and fringes; and this is consistent with his earlier threat to Tucci, that pickets would be set up unless a Local 25 contractor was used. If Respondent's purpose was solely or mainly the upgrading of wages and fringes paid to Emmett's employees on the job, it seems that Cavanaugh would have solicited Emmett or his employees, either on or off the jobsite, to join up with Respondent, rather than leave such a suggestion with the general contractor, for Emmett was the only employer with power to change the wages and benefits of his employees. The fact that Respondent did not contact Emmett is thus of great significance, and leads me to believe that Respondent did not have any altruistic purpose of securing the payment of its wages and benefits to all electricians working in its jurisdiction, whether or not they were members of Respondent or a "rival union," but that it was interested solely in getting the work on this site for its own contractors and members, who would be paid the higher rates and benefits fixed by it. The fact that Respondent now claims the dispute here was a "rival union" dispute, thus indicating it was an adversary of Local 199 *per se*, further shows that Respondent never desired, or tried, at any time to upgrade the wages and working conditions of Emmett employees, regardless of their affiliation, but was solely interested in ejecting from the job the "non-union" contractor Emmett, whose employees were members of the "rival" Local 199, and in procuring the work for its own members, in accordance with its admitted general policy and objectives. Another indication that this was the sole and real purpose of the picketing lies in Cavanaugh's admission that, when he reported to Respondent's business manager, Walter Kraker, that Emmett was on the synagogue job, Kraker replied at once that he believed Emmett was a "Local 199 contractor" and, after confirming it, repeated "that is a Local 199 contractor; take it from there," and told Cavanaugh the next day that Respondent would picket with "informational" signs; but there is no proof from Respondent that its officials talked about the difference in wages, or getting Emmett to sign up with Local 25 or pay Local 25 wages and fringes. Moreover, Cavanaugh admits he later removed the pickets on order of Kraker, after Emmett was off the job, on word from Kraker that the matter had been "resolved satisfactory to him," which indicated to Cavanaugh, not that Emmett was paying Local 25 wages and fringes, but that Emmett was off the job. A salient circumstance here is that the picketing was stopped as soon as Emmett was off the job and replaced by a Local 25 contractor. See *Local 25, International Brotherhood of Electrical Workers (Alexander M. Cutrone d/b/a A. C. Electric)*, 148 NLRB 1560, 1576. Another significant circumstance is that, when it began picketing, Respondent apparently made no attempt to apprise other crafts on the job specifically and clearly that, notwithstanding

⁷ Tucci was hazy on this subject, at first testifying that Cavanaugh claimed that Local 199 rates were lower than those required by Respondent, but he recalls no detailed discussion about it. However, in his testimony in the injunction proceeding, when his memory was better, and he was reminded of the affidavit he gave the Board, he admitted that Cavanaugh said, in effect, that Emmett should get in touch with him, and that Emmett had better sign up with Respondent, or he would have to get off the job, and a Local 25 contractor would take it over. Tucci passed this suggestion on to Emmett, who said he would "join up" or "straighten it out somehow."

ing the wording of the signs, this was informational picketing only and that they should continue to cross the picket line and work. Contrast *Fruit & Vegetable Packers & Warehousemen, Local 760 (Tree Fruit Labor Relations Committee)*, 132 NLRB 1172, 1176, 1177. Considering all these circumstances, I must agree with the claim of General Counsel that the wording and alleged purpose of the pickets and their signs was purely sham, designed to conceal Respondent's real objectives of getting the synagogue work for its members to the exclusion of Emmett and members of Local 199 working for it. I therefore find Respondent's second claim without basis in fact.⁸

Respondent also argues that no violation of Section 8(b)(4)(i)(D) of the Act appears because there is no proof that Respondent talked to other craftsmen on the job, or otherwise induced or encouraged them to refuse to work or stop work. This claim is without merit because (1) the record shows no dispute between D-Lion and employees of other subcontractors which would afford a basis for the failure or refusal of such craftsmen to work during the picketing, hence I must infer that they were satisfied with their own wages and working conditions and would have remained on the job to earn a living, absent the picketing; (2) assuming that such craftsmen as well as the public saw the picket signs on and after September 17, they were thus advised not that Emmett as such was paying substandard wages, but that it was not paying wages and fringes established by Respondent, an organization representing one of the building trades crafts and an AFL-CIO affiliate, which was clear notice to them that Emmett was not signed up with Respondent, hence was a "non-union" contractor;⁹ (3) when such building trades craftsmen engaged in a work stoppage with that knowledge, the inference is compelling that they did so because the signs told them there were "non-union" employees on the job, which is traditionally an inducement or signal for a strike or work stoppage;¹⁰ (4) it follows that the picketing, with the signs worded as above, had the reasonable tendency to induce other building trades craftsmen to refuse to cross the picket line and refuse to work so long as the pickets were present and Emmett's employees were on the job. Respondent did nothing to negate or neutralize this tendency, and the work stoppage actually occurred. I must conclude that by establishing the picket line, Respondent also violated Section 8(b)(4)(i) for the object set forth in subparagraph (D) of that section.

In urging that coercion of employers within Section 8(b)(4)(ii)(D) has not been proven, Respondent relies in part upon a conclusory admission of Tucci on cross-examination that he "guessed" Emmett was removed as a result of the request of the synagogue and its members. However, it is clear from the facts found above that before Popper's protests to D-Lion, Cavanaugh had already threatened D-Lion directly with picketing if Emmett was not removed. This was the initial act of coercion. Respondent admits that picketing on Yom Kippur was bound to embarrass the congregation, but says that this was a legitimate effect on the "public" which "informational picketing is intended to have." Having found that the picketing was not true informational picketing, but for a proscribed object, I must conclude that Respondent's choice of Yom Kippur for the start of the picketing, when only the congregation was sure to see it, was well calculated to upset them, and Respondent

⁸ It has been held that sham informational picketing is illegal. *Local 25, International Brotherhood of Electrical Workers (Alexander M. Cutrone d/b/a A.C. Electric)* 148 NLRB 1560, 1576, and cases cited in footnote 23 thereof.

Even if I found that publicity of the lower wages and fringes paid by Emmett was a reason for the picketing, the circumstances noted above clearly establish that this reason was an afterthought, following the clear threat of picketing for the proscribed object found above, or at most a reason secondary to the main objective of reassignment of the work to Local 25 members. That conclusion does not militate against a finding of violation where, as here, the removal of Emmett and its employees and reassignment of their work to Respondent's members was the main purpose, or at least one of equal importance with the matter of proper wages and fringes. See *International Brotherhood of Electrical Workers, Local 639 (Bendix Radio Division of The Bendix Corporation)*, 138 NLRB 689, 694.

⁹ It has been held that a picket line is a potent instrument, and that picket signs often speak louder than words. *Local 25, IBEW (A.C. Electric)*, *supra*, at 1577.

¹⁰ It is well settled that a picket line necessarily invites employees to make common cause with the strikers and refrain from working behind it irrespective of the literal appeal of the legends on the picket signs. *Laundry, Linen Supply & Dry Cleaning Drivers Local No. 928, et al. (Southern Service Company)*, 118 NLRB 1435, 1437, *enfd.* 262 F. 2d 617 (C.A. 9); *Local 254, Building Service Employees International Union (Herbert Kletjian, d/b/a University Cleaning Co.)*, 151 NLRB 341 (Trial Examiner's Decision).

thus used them to bring additional pressure on D-Lion to remove Emmett, which in fact occurred. Thus, picketing on that day was not incidental, but was well calculated to continue and intensify, through the use of the neutral and innocent congregants, the pressure already put on D-Lion by Cavanaugh's threat of a few days before, for the proscribed object. This strengthens the conclusion that Respondent's conduct violated Section 8(b)(4)(ii)(D).¹¹

In summary, I conclude that General Counsel has sustained the ultimate burden of proving by a preponderance of credible evidence on the record as a whole, and I find that by its threat of picketing to D-Lion and actual picketing of the project aforesaid, Respondent violated Section 8(b)(4)(i) and (ii)(D) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth above, occurring in connection with the operations of the Employers described herein, 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 has engaged in certain unfair labor practices affecting commerce, I will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

General Counsel requests an order of the broadest type on the ground that Respondent's unlawful action shown by the record herein, and its similar action in earlier cases, demonstrate that it has served notice on the construction industry and other employers on Long Island that it will not permit any electrical work on Long Island to be performed by any employees other than its own members. Admissions of Cavanaugh noted above clearly show that Respondent's general policy and objectives include the procurement of all electrical work for its members, to the exclusion of employees represented by Local 199 and any others not represented by Respondent, on all construction jobs in the area of its jurisdiction, which apparently covers all of Nassau and Suffolk Counties, Long Island, New York. The Board considered a similar claim made by Respondent in 1963 in *Communications Workers of America, Local 1104 (Frederick Bond, d/b/a Bond Electric Company)*, 146 NLRB 388 (where it rejected the claim and awarded the work to another union, in determining a dispute involving a Nassau County project in a 10(k) proceeding), but found in a connected proceeding, 146 NLRB 1564, that Respondent had not implemented the claim in that situation by conduct violative of Section 8(b)(4) of the Act. The Board found in *Local 25, International Brotherhood of Electrical Workers, AFL-CIO (A. C. Electric)*, 148 NLRB 1560, enfd. 351 F. 2d 593 (C.A. 2), that Respondent had made the same claim on another Nassau County project and had successfully caused the removal of a Local 199 contractor from the job by threats and picketing in violation of Section 8(b)(4)(i) and (ii)(D). In *Local 25, International Brotherhood of Electrical Workers, AFL-CIO (New York Telephone Company)*, 152 NLRB 723, the Board considered the same broad claim made by Respondent in 1963 and 1964 on various projects in the same area, found reasonable cause to believe that it was seeking to implement it by unlawful secondary boycott activities, and made an award contrary to Respondent's claim, to the same union involved in *Bond Electric Company, supra*. Together, these cases and Respondent's similar conduct herein indicate a continuing campaign by Respondent to achieve the objective found above by unlawful means,¹² and justify recommendation of an order which will make the remedy coextensive with the continuing threat to disruption of commerce and the policies of the Act. I shall therefore recommend that a broad cease-and-desist order issue, which will prevent the above unlawful activity, not only against the secondary employers named in the complaint, but also other primary and secondary employers

¹¹ I have carefully considered other corollary arguments and authorities submitted by Respondent, and conclude that the arguments are without merit and the authorities cited in support of them are not controlling on the issues here or inapposite on the facts.

¹² In reaching this conclusion, I have discounted as irrelevant testimony of Cavanaugh and Emmett indicating that during 1964 Respondent did not engage in picketing or other persuasive activities on certain projects running under Federal Government supervision, where wages and fringes comparable to those approved by Respondent were being paid to electricians, for these facts do not establish that differing wages and benefits paid on other projects, as here, were improper or illegal, nor do they justify Respondent's implementation of its objectives aforesaid by means proscribed by the Act.

(which includes both general and subcontractors on construction projects, including members of the Association), operating in commerce within the jurisdictional area of Respondent.¹³ Notice of the Order should be posted by all such contractors, if known, including all employers who are members of the Association aforesaid, if said employers are willing, on all their projects presently operating and to be worked on by them in the future in the area aforesaid.

CONCLUSIONS OF LAW

1. Respondent and Local 199 are labor organizations within the meaning of Section 2(5) of the Act.

2. By threatening to picket, and actually establishing and maintaining a picket line at, the building project aforesaid, and inducing and encouraging individuals employed by D-Lion and other employers engaged in commerce and in industries affecting commerce, to engage in strikes and refusals in the course of their employment to perform services, and by threatening and coercing D-Lion, an employer, with an object of forcing or requiring said Employer to assign electrical work involved in construction of said project to employees represented by Respondent rather than to employees represented by Local 199, Respondent has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Sections 8(b)(4)(i) and (ii)(D) and 2(6) and (7) of the Act.

RECOMMENDED ORDER

Upon the entire record in the case and pursuant to Section 10(c) of the National Labor Relations Act, as amended, I recommend that Respondent, Local 25, International Brotherhood of Electrical Workers, AFL-CIO, its officers, agents, and representatives, shall:

1. Cease and desist from engaging in, or inducing or encouraging any individual employed by D-Lion Construction Company, Inc., Emmett Electric Company, Inc., or any other member of United Construction Contractors Association, or any other person engaged in commerce or in an industry affecting commerce, to engage in, a strike or a refusal in the course of his employment to handle or work on any goods, articles, materials, or commodities, or to perform any services, and from threatening, coercing, or restraining the above-named Employers or any other employer or person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is to force or require D-Lion Construction Company, Inc., or any other employer or person engaged in commerce or in an industry affecting commerce, to assign electrical work on any construction projects presently in progress or to be initiated in the future within the territorial jurisdiction of Respondent in the State of New York, to employees who are members of or represented by Respondent rather than to employees who are members of or represented by Industrial Workers of Allied Trades, Local 199, affiliated with The National Federation of Independent Unions, or any other labor organization, except insofar as any such action is permitted under Section 8(b)(4)(D) of the Act.

2. Take the following affirmative action which I find will effectuate the policies of the Act:

(a) Post in Respondent's business offices and meeting halls, copies of the attached notice marked "Appendix."¹⁴ Copies of said notice, to be furnished by the Regional Director for Region 29, shall, after being 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 conspicuous places, including all places where notices to its members are customarily posted. Reasonable steps shall be taken by Respondent to insure that such notices are not altered, defaced, or covered by any other material.

(b) Furnish to the Regional Director for Region 29 signed copies of said notice for posting by D-Lion Construction Company, Inc., other general contractors operating in Nassau and Suffolk Counties, New York, if known, and all members of United Construction Contractors Association, Inc., if said Employers are willing, in

¹³ *International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, et al. (Overnite Transportation Company)*, 130 NLRB 1007, 1008-1010.

¹⁴ In the event that this Recommended Order is adopted by the Board, the words "a Decision and Order" shall be substituted for the words "the Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order is enforced by a decree of a United States Circuit Court of Appeals, the words "a Decree of the United States Circuit Court of Appeals, Enforcing an Order" shall be substituted for the words "a Decision and Order".

places where notices to their employees are customarily posted. Copies of said notice, to be furnished by said Regional Director, shall be signed by Respondent as directed above and returned forthwith to said Regional Director for disposition by him.

(c) Notify said Regional Director, in writing, within 20 days from the date of receipt of this Decision, what steps Respondent has taken to comply herewith.¹⁵

¹⁵ In the event 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, ALL EMPLOYEES OF D-LION CONSTRUCTION COMPANY, INC., AND TO ALL EMPLOYEES OF SUBCONTRACTORS OF D-LION CONSTRUCTION COMPANY, INC.

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 give notice that:

WE WILL NOT engage in, or induce or encourage any individual employed by D-Lion Construction Company, Inc., or by Emmett Electric Company, Inc., or any other member of United Construction Contractors Association, or any other person engaged in commerce or in an industry affecting commerce to engage in, a strike or refusal in the course of his employment to handle or work on any goods, articles, materials, or commodities, or to perform any services; or threaten, coerce, or restrain the above-named Employers or any other employer or person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is to force or require D-Lion Construction Company, Inc., or any other employer or person engaged in commerce or in an industry affecting commerce, to assign electrical work on any construction projects presently in progress or which may in the future be initiated within the territorial jurisdiction of our Union in the State of New York, to employees who are members of or represented by our Union, rather than to employees who are members of or represented by Industrial Workers of Allied Trades, Local 199, affiliated with The National Federation of Independent Unions, or any other labor organization, except insofar as any such conduct is permitted under Section 8(b)(4)(D) of the Act.

LOCAL 25, INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS, AFL-CIO,

Labor Organization.

Dated _____ By _____
(Representative) (Title)

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

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, Fourth Floor, 16 Court Street, Brooklyn, New York, Telephone No. 596-5386.

Tennessee Packers, Inc., Frosty Morn Division and Amalgamated Meatcutters and Butcher Workmen of North America, AFL-CIO, Local No. 405. Cases Nos. 26-CA-2083, 26-CA-2103, and 26-CA-2103-4. February 23, 1966

DECISION AND ORDER

On October 26, 1965, Trial Examiner Louis Libbin issued his Decision in the above-entitled cases, finding that the Respondent had
157 NLRB No. 7.