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Local 25, International Brotherhood of Electrical Workers, AFL-CIO and Sarrow-Suburban Electric Co., Inc., and Brunswick Hospital Center, Inc. and Industrial Workers of Allied Trades, Local 199, affiliated with National Federation of Independent Unions, Party in Interest. Case No. 29-CD-7. March 15, 1966

DECISION AND ORDER

On December 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.¹]

MEMBER FANNING, dissenting: As I indicated in my dissenting opinion in the 10(k) proceeding in this case (152 NLRB 531), 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 therein.

¹ In adopting the Recommended Order of the Trial Examiner, we do not rely on *Communications Workers of America Local 1104, AFL-CIO (Bond Electric Company)*, 146 NLRB 388, where, unlike the instant case, Local 25 was not charged with forcing an employer to assign particular work to its members. The Trial Examiner's Decision in *Local 25, International Brotherhood of Electrical Workers, AFL-CIO (Emmett Electric Company, Inc.)*, 157 NLRB 44, to which the Trial Examiner referred has recently been adopted by the Board.

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 certain employers and persons engaged in commerce to engage in, a strike or concerted refusal to perform services, and by threatening, coercing, and restraining certain employers and other persons engaged in commerce, in support of its claim for the assignment to its members of electrical work involved in construction of a building at Amityville, Long Island, New York, and with an object of forcing or requiring Brunswick Hospital Center, Inc. (herein called Brunswick) to assign said work 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 7, 1965, by the General Counsel of the Board through the Board's Regional Director for Region 29,¹ and answer of Respondent which admitted its establishment of a picket line at the project site aforesaid, but denied the commission of any unfair labor practices.

Pursuant to notice, a hearing on the issue was held before Trial Examiner Eugene F. Frey at Brooklyn, New York, on November 4 and 5, 1965, in which all parties except Sarrow-Suburban Electric Co., Inc. (herein called Sarrow) and Brunswick participated fully through counsel. General Counsel and Respondent presented oral argument at the close of the testimony and have filed written briefs, all of which have been carefully considered in preparation of this Decision.²

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

Brunswick is a New York corporation which at all material times herein has been operating a proprietary hospital with office and facilities in Amityville, Long Island, New York, where it provides hospital and related services. During 1964 Brunswick was engaged as general contractor in the construction of an addition to said hospital at a cost of over \$1 million. Sarrow is a New York corporation with its principal office and place of business in Huntington Station, Long Island, New York, where it is in the business of performing and providing electrical contracting services in the building construction industry. In the course of construction of the addition aforesaid, Brunswick awarded to Sarrow a subcontract for performance of all labor necessary for installation of electrical lines, supplies, and fixtures in said addition at a gross contract price of approximately \$70,000, and also subcontracted the carpentry work to Biko Construction Corp. (herein called Biko), the general labor work to Abco Construction Corporation (herein called Abco), the excavating work to Muncy Excavating Corp. (herein called Muncy), and the plumbing work to Brenner and Direct Plumbing Co. (herein called Brenner). Respondent admitted that all work at the jobsite aforesaid was in interstate commerce. The Board determined in its Decision and Determination of Dispute in the 10(k) proceeding aforesaid that it would assert jurisdiction over the totality of operations at said jobsite. I find that said jobsite and the persons and employers aforesaid engaged in construction thereof are in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

I find that Respondent is a labor organization within the meaning of Section 2(5) of the Act. While Respondent stipulated the same status for Local 199 in the 10(k) proceeding, it formally denied such status in this adversary proceeding, contending that Local 199 is not a true labor organization within the meaning of the Act, but only a "phony racket outfit." On this point, Respondent established through uncon-

¹The complaint issued after Board investigation following the usual 10(k) proceeding resulting in a Decision and Determination of Dispute, 152 NLRB 531.

²On December 6, 1965, General Counsel and Respondent submitted a stipulation for correction of the record in certain respects. There being no objection from other parties, I approve the stipulation, which is hereby added to the record as Joint Exhibit 1, and the record shall be considered corrected accordingly.

tradicted testimony of Michael Gordon, president of Local 199 (whom it called as an adverse witness), that Local 199 has been in existence as a separate organization since 1956, that its membership adopted a formal constitution and bylaws in that year, that its members pay dues and elect officers periodically at meetings called for that purpose, that it holds other periodic and special membership meetings each year, on notice to members, at which members vote on matters involving the internal affairs of the organization, that it makes collective-bargaining contracts on behalf of its members with employers, including Sarrow, and presently has a contract with United Construction Contractors Association, an association of employers (herein called the Association), of which Sarrow is a member,³ that it administers such contracts for its members, in part by checking employer contributions to pension funds which are administered by joint Employer and Local 199 trustees. Although Respondent argues that the setup and administration of the pension fund in some manner violates Section 302 of the Act, it presents no authority of the Board or the courts which establishes that such violations would prevent Local 199 from achieving or continuing the status of a labor organization under Section 2(5). In *Alto Plastics Manufacturing Corporation*, 136 NLRB 850, the Board held that an organization is a labor organization within the scope of that section if (1) it is an organization in which employees participate, and (2) it exists in whole or in part for the purpose of dealing with employers concerning wages, hours, and other terms and conditions of employment, and that it does not lose that status merely from the circumstances that it may be ineffectual as a bargaining agent, or its contracts may not secure the same benefits for its members that other employees in the area enjoy, or that its operations may involve criminal actions showing betrayal of the trust and confidence of its membership or theft or misuse of its funds. The Board also held that the Act provides individual employees, and the public through the intervention of the Secretary of Labor or the Department of Justice, certain remedies with respect to improper or corrupt practices in administration of internal union affairs, but the existence of these remedies in the same statute does not automatically illegalize the labor organization charged with improper practices, or permit the Board to withhold its processes under Sections 8, 9, and 10 from it, when it appears that it meets the two tests outlined above. On the basis of the facts stated above, and the above authority, I am constrained to conclude and find that Local 199 is a labor organization within the meaning of Section 2(5) of the Act.⁴

III. THE ALLEGED UNFAIR LABOR PRACTICES

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

In May or June 1964, apparently before the hospital project aforesaid was ready for electrical installation, Joseph Bermel, a business agent of Respondent, visited the site and asked Jules L. Stein, an agent of Brunswick,⁵ if he had decided on an electrical contractor or let the electrical contract. Stein said, no. Bermel asked if that work would be "union." Stein said it would be.⁶ Bermel asked if a list of Respondent's contractors who had collective-bargaining contracts with Respondent would help him. Stein said it would, so Bermel sent him a list with four or five names circled in pencil; Bermel indicated to Stein that these were reliable contractors, based on Bermel's experience with them. Stein considered and interviewed some of the firms on this list, as well as one Ben Cammarata, an official of Suburban Electric Co., which had been recommended to Stein by a friend. Cammarata told Stein he was merging his business with that of Douglas Sarrow, and that the new concern would be equipped to handle the hospital work and would be doing "union" work. Sarrow

³ As noted hereafter, Sarrow signed up with Local 199 on August 14, 1965, with the contract effective from August 17 through November 15, 1965. Local 199 executed its current contract with the Association on November 17, 1965, and Sarrow joined that Association at a later date.

⁴ See also *Edward Fields, Incorporated*, 141 NLRB 1182, 1184, 1185; *Meijer Supermarkets, Inc.*, 142 NLRB 513; *Midax International Corp., et al.*, 150 NLRB 486 (TXD).

⁵ Dr. Benjamin B. Stein and his wife are the owners of Brunswick and operate the hospital center, as well as being the proprietors of Amityville Physicians Realty Corporation, which owns and leases to Brunswick the realty and facilities used by the center. Julius (Jules) L. Stein, a nephew of Dr. Stein, at all times mentioned herein was associated with Brunswick and as its agent negotiated and awarded most of the subcontracts for work and materials on the hospital addition.

⁶ Brunswick had determined at the outset that all work on the project would be unionized, and all of its subcontractors, with the exception of Sarrow, used employees who were members of building craft unions affiliated with the local AFL-CIO Building Trades Council.

then submitted a bid to Stein, which he accepted on the basis of price. In so doing, he apparently assumed that Sarrow would sign up with Respondent when it began work, as at that time he knew of no other electrical union in the area, hence he asked no specific questions of Sarrow about its union contract or the labor organization involved. When Sarrow brought the subcontract to Stein for signature on August 13, Stein would not sign because Sarrow had no evidence of a union contract. Sarrow assured him the union contract would be signed on August 14. As Stein was leaving town that night, he told Sarrow that the subcontract would be signed the next day by Dr. Benjamin B. Stein, president of Brunswick, but only after Sarrow produced the union contract. After ascertaining that its employees had signed up with Local 199, Sarrow executed a collective-bargaining agreement on August 14 with Local 199, and exhibited the signed document to Dr. Stein, who then executed the subcontract with Sarrow. Employees of Sarrow began work on the project site sometime after August 14, 1964, performing preliminary tasks at the outset and starting actual production at a later date in August.

About a week after the Sarrow subcontract was signed, Bermel talked to Dr. Stein in his office at the site. After asking and learning from Dr. Stein that Sarrow got the electrical contract, Bermel told him that Sarrow was "not one of our recognized contractors," as it did not belong to Local 25. Dr. Stein asked, "So what?" and Bermel replied "that is not what we want, Sarrow-Suburban cannot work on the job, we want you to give it to a Local 25 man." Bermel handed Dr. Stein a list of contractors signed up with Respondent, pointed to a few whose names were marked in pencil, and said he felt these contractors would give Stein the best bid. Dr. Stein said he had already signed a contract with Sarrow, and would have to break it in order to give the work to a Local 25 contractor. Bermel said, "Well, break it." Dr. Stein said he would be sued if he did that. In the discussion Bermel said Local 199 was an "illegitimate union" and had had trouble in New York State and intimated that Sarrow had procured his subcontract improperly by leading Brunswick to believe that it was signed up with Respondent. Stein asked if Local 199 was licensed in New York State, and Bermel admitted that it was. Finally, Dr. Stein said that he did not want a Local 25 contractor on the job, because Brunswick was supplying the materials. Bermel then said that if a Local 25 contractor did not do the work, Dr. Stein would "run into work stoppages" and "trouble" on the job, that if the electricians were not members of the AFL-CIO Building Trades Council, craftsmen who were members of it would not work. This conversation was overheard by William C. King, owner of subcontractors Biko and Abco, who was working in the small site construction office at the time.

Shortly before Sarrow began work at the site in August, Douglas Sarrow received a telephone call from Dr. Stein, who said that a man from Local 25 was with him and had said that Sarrow was "not union," that he (Dr. Stein) was confused by this because he had seen Sarrow's union contract. He asked Sarrow to explain it to the Local 25 man, because he knew nothing about unions. When the Local 25 man came on the telephone, he asked Sarrow if he was "union." Sarrow said that he was. The agent said he did not have "your listing." Sarrow said his company was not signed up with Respondent, but with Local 199. The agent asked if Local 199 was AFL-CIO, and Sarrow said, no. The agent asked Sarrow "how are you planning to work on this job with other trades, if you are not with the AFL-CIO?" and also asked if Sarrow had explained that to Dr. Stein. Sarrow replied that as far as he knew, his concern was signed up with an "authorized" union, and he did not expect any trouble on the job.

About 2 weeks after Bermel's visit, Walker Kraker, business manager of Respondent, talked to Dr. Stein at the hospital, telling Stein that Sarrow was not with a "recognized union," was not a member of the AFL-CIO Building Trades Council, that Sarrow employees were not as qualified to do the electrical work as members of Respondent, who went to a school maintained by Respondent, and that Dr. Stein should break the contract with Sarrow and give the work to a Local 25 contractor. Kraker also suggested that he would see to it that the work was done by such a contractor at the same price as Sarrow charged. Dr. Stein said he could not do this because he would be sued for breach of the Sarrow contract. Kraker then said that Dr. Stein would "run into trouble, there would be work stoppages."

Respondent established a picket line at the site on September 3, 1965, and maintained it daily until October 9, when it was enjoined from such conduct by order of the United States District Court for the Eastern District of New York. In this period, the pickets at times walked with picket signs, at other times distributed handbills, both of which stated "TO THE PUBLIC—The Electricians Employed By SARROW SUBURBAN ELECTRIC INC. are not working under wages and conditions established by LOCAL UNION 25, IBEW, AFL-CIO. We have no dispute with any other employer at this site."

During the picketing, plumbers employed by Brenner, and carpenters and laborers employed by Biko and Abco refused to cross the picket line to work at the site, and all work on the project stopped, except for work done by Sarrow employees who continued to work throughout the picketing, so that the scheduled progress of the job was set back about 3 months. Before or during the picketing, neither Brunswick nor said subcontractors had any dispute with any of said craftsmen employed by the latter at the site.

The above facts, which I find from a composite of credible and mutually corroborative testimony of various witnesses called by General Counsel, establish *prima facie* that Respondent claimed the electrical work at the site for its members to the exclusion of employees of Sarrow represented by Local 199, and that in furtherance of its claim Respondent threatened Brunswick and Sarrow with a work stoppage if the electrical work was not done by a Local 25 contractor, and implemented that threat by establishing a picket line which caused employees of other employers, subcontractors on the job, to refuse to work while the picketing was in progress, and that Respondent thereby violated Section 8(b)(4)(i) and (ii)(D) of the Act.

B. Respondent's defense, and testimony thereon

Respondent presents three defenses: (1) there was no dispute here between two competing groups of employees for the electrical work, so as to bring the case within Section 8(b)(4)(D), (2) the picketing with signs and handbills was purely informational picketing protected by the Act, so that (3) the preponderant proof does not show that Respondent either induced or encouraged employees, or threatened or restrained employers, in order to get the electrical work for its members.

On the first point, Respondent claims that the record fails to show that it made any jurisdictional claim to the work as a matter of right by virtue of area practice, contract, constitutional provisions, past employer practice, worker skills, or efficiency, so as to make a traditional jurisdictional dispute between competing groups of workers. It argues that the record shows at most a "rival union" dispute. The remarks of Bermel and Kraker to the Steins, as evidenced by testimony of the Steins and King, noted above, clearly shows that Respondent wanted the electrical work for its own contractors (and their employees who were members of Respondent) and tried to persuade Brunswick to oust Sarrow and its "non-union" employees and substitute a Local 25 contractor, to that end, and that Kraker tried to justify his claim and persuade Brunswick to go along with it by arguing that Local 25 members were better trained and more efficient than members of Local 199 employed by Sarrow. Kraker's own version of the talk with Dr. Stein admits that he emphasized the alleged superior training and ability of Local 25 electricians, by asking him to compare their status and importance of their training, with his own reliance on trained, professional doctors and nurses in the operation of his hospital; he made this argument especially after Dr. Stein had maintained that the Sarrow contract was far less costly than he could get from a Local 25 contractor. It is therefore patent that Respondent based its claim to the work partly on the alleged superior skill and efficiency of its members, one of the very elements which Respondent's own theory poses as a requirement for a jurisdictional dispute. The other element of a true dispute, i.e., the competing claim of Sarrow employees to the work, is shown by the fact that they continued to do the disputed work, after Respondent expressed its own claim to Dr. Stein through Bermel and Kraker, and to Sarrow through Bermel who indicated to Sarrow that other craftsmen affiliated with the AFL-CIO would not work with his men because they were not affiliated with that organization or Local 25, but with another unaffiliated organization, thus implying that his men could work at the site without difficulty only if they were members of Respondent, an AFL-CIO affiliate.⁷ Sarrow and its employees continued on the job despite these threats and the ensuing picketing. The existence of the claim and basic objective falling within Section 8(b)(4)(D) is also proven by the admissions of Bermel that: (1) when he visited the jobsite as early as February or March 1964 to talk to the general contractor about the electrical work, he was referred to Jules Stein, and asked him if any of Respondent's contractors had talked to him about the electrical work. When Stein said they had not, Bermel offered to send him a list of those firms, with those experienced in hospital work underlined, and mailed it to him shortly thereafter; (2) admitting the talk with Dr. Stein in the second week of August, Bermel testified that he again asked Stein about the electrical work, and on learning that Sarrow had the contract, he told both Dr. Stein and King that Sarrow was not a Local 25 contractor, that Dr. Stein said he was

⁷ Bermel admitted the telephone talk with Sarrow, as noted below.

confused and called Sarrow, told him an agent of Local 25 was there, and turned the telephone over to Bermel, who queried and confirmed from Sarrow that the latter was signed up with Local 199, not Local 25, and then advised him, with Dr. Stein present, that "you can't supply Dr. Stein with building trades mechanics to do this job" and that he ought to tell Dr. Stein that; and (3) Bermel's testimony that he had a second talk with Dr. Stein at the site about August 20 or 25, in which he again tried to persuade him to break his contract with Sarrow, arguing it was not legal because he had apparently thought he was signing a contract with a Local 25 contractor; it is obvious that he would not have been using this argument unless he wanted Brunswick to hire a contractor using members of Respondent. Another indication that this was the sole objective of Respondent is Bermel's and Kraker's admissions that their duties involved visiting construction sites to see that Respondent's members do all the electrical work on construction sites within Respondent's jurisdiction on Long Island, and to "change that decision" where, as here, they find its members are not doing the work.

On the claim of informational picketing, the record shows that the wording of the picket signs and handbills was true, and that the wages and benefits received by members of Respondent from their employers who were "Local 25 contractors" were greater than those received by employees of Sarrow who were members of Local 199. Respondent therefore claims the signs and handbills merely publicized the true facts that Sarrow employees were not receiving the higher wages and benefits established by Respondent. However, I am satisfied that this publicity, while lawful on its face, was not in fact the true purpose of the picketing. While Respondent now emphasizes the variance between the wages and benefits received by its members and those received by Local 199 members, that variance is not spelled out in the wording of the signs and handbills, so that the "public" would know at a glance that Sarrow workers were receiving "substandard" wages and benefits, compared to Respondent's members. The only persons who could know or reasonably *infer* this variance would be the subcontractors on the job, or their employees affiliated with the local AFL-CIO Building Trades Council, since they might presumably be in a far better position to have some knowledge of or access to the rates paid to members of Respondent, an affiliate of the Council, under its contracts. Again, the Steins and Sarrow testified, and Respondent's agents admitted, that in their talks with Brunswick officials and Sarrow the agents did not mention the variance so as to make it clear that Respondent considered Sarrow employees were being paid substandard wages, thereby subverting a "prevailing wage" pattern established by Respondent. More important, there is no proof that Respondent in any of these talks suggested that Sarrow could solve the "problem" mentioned by Bermel by paying Respondent's rates to its employees.⁸ It is also quite significant that in establishing the picket line Respondent made no attempt to advise other AFL-CIO Building Trades craftsmen on the job that the pickets, signs, and handbills were there merely to publicize the *variance*, and that such craftsmen were free to cross the picket line.⁹ Finally, there is no proof that Respondent tried to solicit Sarrow employees directly, either on or off the job, to join up with Respondent so that they could get the Local 25 wages, fringes, and benefits that Respondent wanted to "prevail on the job"; nor did it make that suggestion to Sarrow, the only employer with direct power to change wages, etc., of its employees. Hence, I must conclude that Respondent, by its picketing, had no real intention of making sure that *Sarrow employees* on the jobsite received Local 25 wages, and that the wording of the signs and handbills was a pure sham to cloak another and sinister motive for the picketing activities, which is discussed in my consideration of the third defense. I therefore find Respondent's second claim without basis in fact.

⁸ In testimony, Kraker indicates that he would have withdrawn the pickets if the electrical contractor had paid the wages and fringes of Local 25, but I cannot accept this self-serving statement *after the event* as any credible indication of Respondent's true objective, because he admits he never suggested this to Dr. Stein in their single talk, even though he tries to paint that discussion as mainly an amicable discussion of spiraling wage costs and the "economy." If payment of Local 25 wages, etc., to *Sarrow* employees were his only objective, he need only have said to Stein that there would be no trouble or "problem" on the job, and that he would be satisfied, if Sarrow paid wages up to those in the Local 25 contracts in the area, as suggested by the Board in a similar situation in *International Brotherhood of Electrical Workers, Local Union No. 11, AFL-CIO, et al. (L.G. Electric Contractors, Inc.)*, 154 NLRB 766.

⁹ Contrast *Fruit & Vegetable Packers & Warehousemen, Local 760, Teamsters (Tree Fruits Labor Relations Committee Inc.)*, 132 NLRB 1172, 1176, 1177.

On the third contention relating to the alleged threats and actual causation of the actual stoppage, while denying that in his first talk with Dr. Stein he mentioned "picketing" or "trouble," Bermel does admit that he told Stein and King that Sarrow "might possibly cause a problem on the job," in that Sarrow employees would not be "compatible" with other building trades mechanics on the job.¹⁰ In light of his admitted query of Sarrow on the telephone, made in the presence of both Stein and King, as to how he was "planning to work with other trades, if he was not AFL-CIO," and his warning that he could not supply Dr. Stein with building trades mechanics to do the work since he was not with the AFL-CIO, it is clear that he was implying to both the general contractor and one subcontractor that employment of non-Local 25 electricians would result in a work stoppage by the other building trades craftsmen. His own testimony thus supports the story of Dr. Stein and King that he told them, and Sarrow in their presence, that Sarrow "could not" work on the job. Standing alone, this warning might be as susceptible of the inference that the AFL craftsmen would walk off the job of their own initiative, as that Respondent would persuade or cause them to do so. However, in the absence of proof that other craftsmen had any dispute with their employers or Brunswick which might lead to a work stoppage, the only reasonable inference that Stein and King could draw from Bermel's remarks was that Respondent would take some action which would cause the work stoppage. While the testimony of Dr. Stein and Kraker indicates that, in his talk with Dr. Stein, Kraker was careful to avoid any mention of picketing or direct action by Respondent if Brunswick did not accept his suggestion to break the Sarrow contract and replace Sarrow with a Local 25 contractor, the circumstances that: (1) both union officials talked to Brunswick with the clear objective of getting the work transferred to its members, as found above, (2) Kraker admitted that, from long experience as a union man, members of one building trades craft will not cross the picket line of another, (3) he admitted that when he put up the picket line he reported that action to the local Building Trades Council, as he was "obliged to," (4) that the picket signs and handbills clearly notified all building trades craftsmen on the job that a "non-union" electrical contractor was employed thereon (without any explanation from Respondent that the picketing was purely to publicize standard wages, etc., or advice that they should continue working notwithstanding), and (5) Respondent's clear animosity to Local 199, as depicted by its claim that it is a "racket outfit," and Kraker's attempt to discredit it in the eyes of Dr. Stein by saying it was "illegitimate," in trouble with State authorities, and composed of poorly trained craftsmen,¹¹ all convince me that Kraker put out the picket signs and handbills solely as a signal to the other building trades craftsmen to stop work in order to implement Respondent's purpose of getting the work for its own members, and its thinly veiled threat to Brunswick, King, and Sarrow of a work stoppage for that purpose.¹² On all the facts I am satisfied that by the remarks of Bermel and Kraker found above, Respondent threatened neutral, secondary employers (Brunswick and the contracting concerns owned by King) with a work stoppage, and then carried out the threat by picketing which actually caused employees of neutral subcontractors to engage in a work stoppage for an object of causing Brunswick to oust employees of Sarrow represented

¹⁰ While Bermel explained in testimony that the "problem" he mentioned might arise from the possible inability of Sarrow to get "qualified" electricians to do the job, so that their work might be done improperly, this is a pure afterthought, for he admits he did not explain this to Stein. He also says that when he used the word "compatible," he meant that other building trades craftsmen might "just pick up and leave the job," but he did not tell this either to Dr. Stein or any other official on the job. For these reasons, I do not credit his version of the talks with Stein, except to the extent that they confirm or corroborate testimony of Stein and King thereon.

¹¹ This direct animosity was not casual but had existed at least since 1963, when Respondent had disparaged Local 199 in like fashion in the course of unlawful activities against another contractor affiliated with Local 199 by contract, as shown in *Local 25, International Brotherhood of Electrical Workers, AFL-CIO (A.C. Electric)*, 148 NLRB 1560, 1570.

¹² It has been held that a picket line is a potent instrument, that picket lines often speak louder than words (*Local 25, IBEW (A.C. Electric)*, 148 NLRB 1560, 1577, enfd. 351 F. 2d 593 (C.A. 2)), and that a picket line necessarily invites employees to make common cause with the strikers and to 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, Teamsters (Southern Service Company, Ltd)*, 118 NLRB 1435, 1437, enfd. 262 F. 2d 617 (C.A. 9); *Local 254, Building Service Employees International Union, AFL-CIO (University Cleaning Co.)*, 151 NLRB 341.

by Local 199 from the jobsite and give their work to a contractor whose employees were represented by Respondent, and thereby violated Section 8(b)(4)(i) and (ii) (D) of the Act.¹³

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 and other persons 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 issuance of an order of the broadest type on the ground that Respondent's unlawful conduct in this case is of a particular aggravated nature, since its stoppage of the hospital addition had a personal and direct adverse effect on the entire community served by the hospital enterprise at a time when the hospital operator was striving to complete the enlargement of its facilities before the winter months of 1964 and 1965 when its facilities would be most in demand, that its conduct forced many other craftsmen on the job to remain out of work almost 6 weeks, and that this conduct was all part of a pattern of similar activities considered earlier by the Board, by which Respondent has served notice on the entire construction industry and other persons on Long Island that it will not permit electrical work in that area which it claims for its members to be performed by any employees other than its own members, and by contractors employing its members. While the record shows that Respondent's conduct in this case had the direct purpose of ousting Local 199 members from this job and replacing them with members of Respondent, Kraker's blunt disparagement of Local 199 as a labor organization during this conduct, as well as Respondent's description of the situation as a "rival union" dispute, shows that Respondent had general animosity toward Local 199 as a rival organization competing with Respondent for electrical work, which also colored its conduct and emphasized its objective found above. The Board has considered similar claims and conduct by Respondent in the Long Island area, in *Communications Workers of America Local 1104, AFL-CIO (Bond Electric Company)*, 146 NLRB 388 (where it rejected the claim and awarded the work to another union, although it found in a companion case, 146 NLRB 1564, that General Counsel had not proven that the claim in that situation had been implemented by conduct violating 8(b)(4) of the Act), and in *Local 25, International Brotherhood of Electrical Workers, AFL-CIO (A.C. Electric)*, 148 NLRB 1560, enf. 351 F. 2d 593 (C.A. 2) where Respondent had implemented the claim by causing removal of a Local 199 contractor from a job by unlawful conduct similar to that in this case, and in *Local 25, International Brotherhood of Electrical Workers, AFL-CIO (New York Telephone Company)*, 152 NLRB 723, a 10(k) proceeding, in which the Board considered the same claim and awarded the work to the same union involved in the *Bond Electric* case. I have also recently found the same claim and similar unlawful conduct by Respondent in the case of *Local 25, International Brotherhood of Electrical Workers, AFL-CIO (Emmett Electric Company, Inc.)*, 157 NLRB 44. All these cases, considered together, disclose a broad and continuing campaign by Respondent in the area of its jurisdiction on Long

¹³ *Local 5, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO (Arthur Venneri Company)*, 145 NLRB 1580; *Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO (Western Electric Company, Incorporated)*, 141 NLRB 888; and compare *International Brotherhood of Electrical Workers, Local 11 (L.G. Electric Contractors, Inc.)*, *supra*. Even if I accepted Respondent's claim that publicity of the lower wages and benefits paid by Sarrow under the Local 199 contract was a reason for the picketing, all the circumstances shown above clearly establish that the reassignment of work to a Local 25 contractor was another objective of at least equal importance, so that a finding of violation of the Act is still proper. See *International Brotherhood of Electrical Workers, AFL-CIO and its Local 639 (Bendix Radio Division of The Bendix Corporation)*, 138 NLRB 689, 694; *Northeastern Indiana Building and Construction Trades Council (Centlivre Village Apartments)*, 148 NLRB 854, 857; *N.L.R.B. v. Denver Building and Construction Trades Council, et al. (Gould & Preisner)*, 341 U.S. 675, 689.

I have carefully considered other and subsidiary arguments made by Respondent, with citation of authorities, and find the arguments without merit and the authorities either inapplicable in law or inapposite on the facts.

Island to achieve the objective found above by unlawful means, which justifies recommendation of an order which will make the remedy coextensive with the continuing threat to commerce and the policies of the Act. I will therefore recommend a broad order which will be designed to prevent the above unlawful activity, not only against Brunswick Hospital Center and the other secondary employers named in the complaint, but also other employers operating in commerce or in an industry affecting commerce in Nassau and Suffolk Counties, on Long Island, New York.¹⁴ Notice of the order should be posted by all such employers, if known and to the extent feasible, if they are willing, on all their pending and future construction projects 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 making threats to Brunswick Hospital Center, Inc., and other employers to picket and cause work stoppages, and by actually establishing and maintaining a picket line, at the building project described above, and inducing and encouraging individuals employed by Biko Construction Corp., Abco Construction Corporation, Brenner and Direct Plumbing Co., and other employers engaged in commerce and in an industry affecting commerce, to engage in strikes and refusals in the course of their employment to perform services, and by threatening and coercing Brunswick Hospital Center, Inc., and other employers by the conduct aforesaid, with an object of forcing or requiring Brunswick Hospital Center, Inc., to assign electrical work on the project aforesaid 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 Brunswick Hospital Center, Inc., Sarrow-Suburban Electric Co., Inc., Muncy Excavating Corporation, Brenner & Direct Plumbing Co., Biko Construction Corp., Abco Construction Corp., and any other employer or 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, 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 Brunswick Hospital Center, Inc., or any other employer or person engaged in commerce or in an industry affecting commerce to assign electrical work on any construction project 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 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, meeting halls, and all places where notices to its members are customarily posted, copies of the attached notice marked "Appendix."¹⁵ Copies of said notice, to be furnished by the Regional Director for

¹⁴ *International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, et al. (Overnite Transportation Company)*, 130 NLRB 1007, 1008-1010. The pertinent multiemployer contract of Respondent with Nassau & Suffolk Chapter of National Electrical Contractors Association, Inc., indicates that Respondent claims jurisdiction of all electrical work on construction projects in the area covered by said counties.

¹⁵ In the event that this Recommended Order is adopted by the Board, the words "a Decision and Order" shall be substituted for the words "the Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order is enforced by a decree of a United States Court of Appeals, the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order" shall be substituted for the words "Pursuant to a Decision and Order."

Region 29, shall, after being signed by Respondent's authorized representative, be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to 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 said Regional Director signed copies of the said notice for posting by Brunswick Hospital Center, Inc., Sarrow-Suburban Electric Co., Inc., Muncy Excavating and Grading Corporation, Brenner & Direct Plumbing Co., Biko Construction Corp., Abco Construction Corp., and any other general contractor or subcontractor engaged in the construction industry on construction projects in the territorial jurisdiction of Respondent on Long Island, New York, if such employers or persons are known and are willing, and such posting is feasible, in all 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 in accordance herewith.

(c) Notify said Regional Director, in writing, within 20 days from the receipt of this Decision and Recommended Order, what steps Respondent has taken to comply herewith.¹⁶

¹⁶ 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 BRUNSWICK HOSPITAL CENTER, INC., SARROW-SUBURBAN ELECTRIC CO., INC., MUNCY EXCAVATING AND GRADING CORPORATION, BRENNER & DIRECT PLUMBING CO., BIKO CONSTRUCTION CORP., ABCO CONSTRUCTION CORP., AND ALL OTHER EMPLOYERS ENGAGED IN THE CONSTRUCTION INDUSTRY IN NASSAU AND SUFFOLK COUNTIES, LONG ISLAND, NEW YORK

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 you notice that:

WE WILL NOT engage in, or induce or encourage any individual employed by Brunswick Hospital Center, Inc., Sarrow-Suburban Electric Co., Inc., Muncy Excavating and Grading Corporation, Brenner & Direct Plumbing Co., Biko Construction Corp., Abco Construction Corp., and any other employer or 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, 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 Brunswick Hospital Center, Inc., or any other employer or person engaged in commerce or in an industry affecting commerce to assign electrical work on any construction project presently in progress or to be initiated in the future within our territorial jurisdiction in the State of New York, to employees who are members of or represented by our organization, 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, or any other labor organization, except insofar as any such action 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 members or employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 16 Court Street, Fourth Floor, Brooklyn, New York, Telephone No. 596-5386