in this case was in terms of the Union's desires, concluded that the language was not substantially different, especially when coupled with the Employer's further statement in this case "*that Unions want money and they expect to be paid by the employees.*" Consequently, he concluded that the distribution of this material immediately before the election, when the Union had no opportunity to reply to the Employer and to inform the employees that under Florida's "Right-to-Work" law they did not have to pay any dues, fines, assessments, or other charges in order to retain their jobs, seriously impeded a determination of the employees' free choice of a collective-bargaining representative. Accordingly, he recommended that Petitioner's objection be sustained and the elections be set aside. We do not agree.

Upon the record in this case, we conclude, contrary to the Regional Director, that under all the circumstances the Employer's propaganda differed in tone, context, and impact from the type of preelection propaganda which would warrant setting aside the election.[3] In our opinion, the Employer's message does not state and could not be reasonably interpreted as stating, directly or impliedly, that the employees would be compelled to join the Petitioner and pay dues, fines, assessments, and other charges contrary to Florida's "Right-to-Work" law if the Petitioner won the election. As the Employer's statement was within the permissible limits of campaign propaganda, we shall overrule the Petitioner's objection and certify the results of the election.

[The Board certified that a majority of the valid votes was not cast for General Sales Drivers & Allied Employees Union, Local 198, an affiliate of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and that said labor organization is not the exclusive representative of the employees in the unit found appropriate.]

[3] The instant case is distinguishable from *Trane* in that (a) the Employer uses no words which imply involuntariness or compulsion in regard to the employees' paying money to the Union, and (b) there was another misrepresentation in *Trane*, i.e., in *Trane* the actual amount of the dues was misrepresented whereas in the present case it was not.

Local 638, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL–CIO (Rowland Tompkins, Inc.) *and* Nepco Terminal Corp. *Case No. 29–CC–29. June 9, 1966*

DECISION AND ORDER

On October 26, 1965, Trial Examiner Boyd Leedom issued his Decision in the above-entitled proceeding, finding that the Respond-

ent 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, exceptions to the Trial Examiner's Decision were filed by Respondent and by the General Counsel. A brief in support of exceptions was filed by the General Counsel.

The National Labor Relations 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 finds merit in certain of the Respondent's exceptions.

The Trial Examiner found that Respondent induced and encouraged its members, employees of Rowland Tompkins, Inc., hereinafter called Tompkins, to strike their employer for the purpose of securing certain work for employees represented by Respondent. He further found that, as Nepco had exclusive control over the work assignment sought, Respondent's strike against Tompkins was secondary within the proscription of Section 8(b)(4)(i) and (ii)(B) of the National Labor Relations Act, as amended.

Statement of Facts

The record herein reveals the following salient facts: Nepco, a distributor of fuel oil, was building a fuel oil pumping terminal which, when completed, would consist of six interconnecting storage tanks, with pipelines extending to the dock to receive oil from ships and with transmission lines to convey oil from the tanks to Nepco's customers. In connection therewith, Nepco contracted to Tompkins the installation of all mechanical piping. Nepco reserved the right, however, to take over and use, prior to completion of the entire job, any portion of the permanent construction completed by Tompkins to Nepco's satisfaction and, thereafter, to exclude Tompkins' employees therefrom. Accordingly, while Tompkins' employees were still working on and about the roof of tank #300, Nepco took over a 10-inch pipeline extending from that tank to the dock and a 20-inch line running from that tank to the customer and, on the evening of May 25, 1965,[1] began pumping oil through the 10-inch line. On the following morning, Tompkins' employees did not start work. When Tompkins' job superintendent, Mauro, arrived about 7:30 a.m. and asked why the employees were not working. Respondent's business agent, Good, replied that he had "pulled" them off the job because, as long as oil was being pumped through the 10-inch line, Respondent would require two of its men in attendance at the dock valve.

[1] Unless otherwise indicated, all dates refer to 1965.

Mauro replied that, as Nepco had taken over the operation of that line, Respondent should talk to Nepco's representative. Later, when Nepco's chief engineer Welch appeared and asked the same question, Good restated Respondent's demand that two of its men be assigned to the dock valve while the 10-inch line was in operation. He also indicated that when the pumps were started to transfer oil out of the tank through the 20-inch line, Respondent would require two more of its men in attendance at the pump on that line. In the ensuing discussion with both Mauro and Welch, Good stated as the reason for Respondent's request its concern for the safety of its members, Tompkins' employees, who would be required to do welding work on the roof of tank #300 while oil was being pumped through it. No agreement was reached, and Good ordered the employees to work pending the outcome of another meeting scheduled with the employers.

Later that afternoon, the New York City Fire Department made a fire inspection to determine whether it was safe for Tompkins' employees to continue their unfinished welding work on and about tank #300. As a result of the inspection, the fire department found that it was unsafe for persons to do welding on the roof of tank #300 without taking certain precautionary measures, some which had not theretofore been required, i.e., closing all open areas and manholes on the roof, placing asbestos blankets under areas being welded, installing a fire hose on the roof, and having somebody stand by during welding operations. Subsequently, on the same afternoon, May 26, representatives of Nepco, Tompkins, and Respondent met again. Stressing concern for the safety[2] of Respondent's members, Tompkins' employees, Good reiterated Respondent's request that two of its men be assigned to the valves on each of the pipelines connected to tank #300 while such lines were in operation and until Tompkins' phase of the construction work was completed.

At both meetings with the employers, Tompkins' reply to Respondent's demand was that, inasmuch as Nepco had taken over the operation of the lines, Tompkins was without authority to assign men to those lines and, therefore, Good should speak to Nepco. Conversely, Nepco's response to Respondent's request was that, since Nepco hired no plumbers and had no agreement with Respondent, Good should seek relief from Tompkins. Thus, neither meeting achieved accord and, on the following morning, May 27, Nepco began operating both the 10-inch and the 20-inch pipelines

[2] All three of the General Counsel's witnesses who participated in the meetings of May 26, and who were credited by the Trial Examiner in all respects, testified to the fact that Good repeatedly raised the safety factor as reason for the demand.

simultaneously and on a 24-hour-a-day schedule. Tompkins' employees refused to work that day and continued to refuse to work until June 3.

Motion to Withdraw Charge

On September 3, 1965, subsequent to the hearing herein but before the Trial Examiner's Decision issued, the Charging Party, Nepco, filed a motion requesting permission to withdraw the charge. In support of its motion, Nepco stated that new methods of operation had been adopted and were being followed which made it extremely unlikely that a similar dispute could arise in the future. The General Counsel opposed Nepco's request, and the Trial Examiner, in his Decision, denied the motion "with extreme reluctance," because of "a lack of *clear* authority in the Trial Examiner" to grant such a motion over the objections of the General Counsel. We find merit in Respondent's exception to the Trial Examiner's ruling.

Contrary to the Trial Examiner's assertion, National Labor Relations Board Rules and Regulations, Series 8, as amended, at Section 102.24, 102.25, and 102.35 expressly authorize and require a Trial Examiner to rule upon all motions [3] made during hearing and until the case has been transferred to the Board. More specifically, Section 102.9 permits the withdrawal of charges, at the hearing and until transfer of the proceedings to the Board, upon motion, only with the consent of the Trial Examiner designated to conduct the hearing. Thus, although the Trial Examiner is clearly authorized and required to rule upon motions while the case is before him, his actual decision to grant or deny a particular motion remains discretionary.[4] In the instant case, however, the Trial Examiner denied Nepco's motion for permission to withdraw the charge, not on the basis of his discretion, but because of an erroneous understanding of his authority to grant the motion over objections by the General Counsel.

Conclusions

The Board rules that the complaint be dismissed. Chairman McCulloch and Member Jenkins would do so by granting the motion to withdraw the charge, but without reaching the substantive issues of the alleged violation. Member Fanning concurs with Chairman McCulloch and Member Jenkins and would, moreover, dismiss the complaint for the separate reasons appearing in his concurring opinion. Members Brown and Zagoria join the dismissal upon considering the merits of the complaint and the motion to withdraw, as stated in their separate opinions.

[3] With specific exceptions not involved herein.

[4] *The Ingalls Steel Construction Company*, 126 NLRB 584, footnote 1.

[The Board dismissed the complaint.]

MEMBER FANNING, concurring:

I concur in the conclusion to dismiss the complaint in this case on the motion to withdraw the charge. It seems to me, however, as the Trial Examiner found, that the real thrust of Respondent's conduct was to force an assignment of work within the meaning of Sections 10(k) and 8(b)(4)(D). Such a charge had, in fact, been filed with the General Counsel, but was withdrawn. Apparently, the General Counsel preferred to test the legality of Respondent's conduct under the secondary boycott provisions rather than the jurisdictional dispute provisions of this Act. As I have in other decisions,[5] I call attention to the statutory scheme, which provides entirely different tests and remedies for violations of secondary boycotts as distinguished from jurisdictional disputes. With respect to conduct in furtherance of a secondary boycott, the statute requires that such conduct, if found, be enjoined. With respect to picketing or a strike in furtherance of a jurisdictional dispute, the statute permits the parties independently to resolve such controversies. Failing such nongovernmental resolution of the dispute, *the Board is directed to "hear and determine the dispute" by making an affirmative award to the incumbent or claiming group of employees.* In my view, these dual provisions are so different in substance and intended effect that I do not believe one can reasonably be substituted for the other. I would therefore dismiss cases, such as the instant one, where the General Counsel has improperly elected to seek an injunction against an alleged secondary boycott when the facts and circumstances make it clear that such an injunction would be warranted only if the striking union was not entitled to the work it was seeking under the provisions of Sections 10(k) and 8(b)(4)(D).

MEMBERS BROWN AND ZAGORIA, concurring:

While we agree with the Trial Examiner that the strike against Tompkins was induced by Respondent, and although we find that Respondent requested a temporary and limited assignment of certain work, the exact nature of which is not clear, the evidence, in our view, is insufficient to establish that Respondent's request and conduct in support thereof was for an unlawful object within the proscription of Section 8(b)(4)(i) and (ii)(B) of the Act.

It is well settled that in determining whether a union's actions are in pursuit of a lawful or a proscribed object, the Board must find

[5] *Local 5, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL–CIO (Arthur Venneri Company)*, 137 NLRB 828, 834, enfd. 321 F. 2d 366 (C.A.D.C.); *New York Paper Cutters' & Bookbinders' Local Union No. 119, International Brotherhood of Bookbinders, AFL–CIO (Automatic Sealing Service, Inc.)*, 146 NLRB 435, 441, and 148 NLRB 1350, 1351.

the true purpose or real motive behind the conduct,[6] and in the absence of admissions by the union of an illegal intent, the nature of acts performed shows the intent.[7] It is clear also that lawful primary action does not become unlawful merely because it has secondary effects.[8] The General Counsel has the burden of proving, by a preponderance of the evidence, that a violation of the Act has been committed.[9]

Viewing the recital in the statement of facts set forth above, we are unable to conclude, as did the Trial Examiner, that Respondent's conduct against Tompkins constituted unlawful secondary action, which was motivated by a desire to secure an assignment of work for its members. Rather, we find considerable support in the record for Respondent's contention that its request, and conduct in furtherance thereof, was motivated solely by a legitimate and, apparently, well-founded concern for the safety of its members, Tompkins' employees. The testimony of General Counsel's witnesses is at best ambiguous. For, as reflected in the Trial Examiner's Decision, the record does not establish in any clear fashion the precise nature of the work which Respondent wanted Tompkins' employees actually to perform at the valves except to be "in attendance," conceivably as a precautionary measure, while the lines were in operation. Nor does it establish conclusively that Respondent was seeking action by Nepco. It does appear from the record, however, that Respondent, although demanding a temporary and limited assignment for Tompkins' employees, was not seeking thereby to replace, even temporarily and/or partially, Nepco's operating crew. Additionally, the record is clear that Respondent first approached Tompkins, the employer of its members, which, disclaiming authority to grant the request, deferred to Nepco; and Nepco, when thereafter approached by Respondent, disclaimed any contractual obligation to Respondent or its members and deferred to Tompkins. In view of Nepco's deferral of Respondent's request to Tompkins for action and the fact that Tompkins' employees were still working on and around tank #300, it can readily be concluded that Nepco's exclusion of Tompkins and Tompkins' employees from the construction taken over by Nepco pursuant to its agreement with Tompkins, was more technical than real. For these reasons, the evidence is insufficient to substantiate that Respondent's conduct against Tompkins was in pursuance of a primary dispute with Nepco; i.e., that Respondent was in fact seeking some relief from Nepco. Accordingly, we are constrained to

[6] Cf. *Local 357, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Los Angeles-Seattle Motor Express)* v. *N.L.R.B.*, 365 U.S. 667, 675.

[7] *Local 761, International Union of Electrical, Radio and Machine Workers, AFL–CIO (General Electric Company)* v. *N.L.R.B.*, 366 U.S. 667, 674.

[8] *Id.* at 673.

[9] *Falstaff Brewing Corporation*, 128 NLRB 294, footnote 2.

conclude that the record fails to establish, by the necessary preponderance of all the evidence, that Respondent's conduct against Tompkins was for an unlawful secondary object.

In view of the entire record in this case, which, as indicated above, is ambiguous at best, and the Charging Party's desire to withdraw the charge, we concur in dismissing the complaint in its entirety.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

This case was heard before Trial Examiner Boyd Leedom in Brooklyn, New York, on August 30, 1965. The complaint, dated June 30, was issued on a charge filed May 27, 1965. The complaint alleges that the Respondent Union engaged in unfair labor practices in violation of Section 8(b)(4)(i) and (ii)(B) of the National Labor Relations Act, as amended, in that it unlawfully induced and encouraged the employees of a contractor, Rowland Tompkins, Inc., to refuse to perform services, and coerced and restrained Rowland Tompkins, with an object of forcing or requiring them to cease doing business with Nepco Terminal Corp., with which Tompkins held a construction contract.

Nepco, in the process of building a fuel oil pumping terminal in Brooklyn (from which it would furnish fuel oil through pipelines to certain customers in the Borough of Queens) had contracted with Tompkins for the installation of all the mechanical piping and related equipment connected with large storage tanks. When, in the performance of Tompkins' contract, work on two lines and one pump had been completed and they were accepted by Nepco and had been put in operation by Nepco's own employees (represented by a union other than Respondent), Respondent, as hereafter appears, caused Tompkins' employees to strike, in an effort to get the work involved in the operation of the two lines and the pump, assigned to Tompkins' employees, Respondent's members. This work stoppage, affecting the completion of the construction of Nepco's plant, resulted in Nepco filing the charge against the Respondent.

On the basis of the record of the evidence adduced at the hearing, the demeanor of the witnesses as I observed them on the stand, and the arguments of counsel made at the close of the hearing, I make the following findings of fact and conclusions of law, and determine that Respondent violated the Act as alleged in the complaint; and the request to withdraw the charge is reluctantly denied.

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

I find and conclude that the allegations of the complaint as to the nature and the volume of business carried on by Nepco, and by Rowland Tompkins, Inc., are true and that each is a person engaged in commerce and in an industry affecting commerce within the meaning of the Act. These allegations of the complaint are not in dispute.

I also find and conclude that Respondent, Local 638 is, and at all times material herein has been, a labor organization within the meaning of the Act. That Respondent is a labor organization is not in dispute.

When completed, Nepco's terminal will consist of six oil storage tanks with interconnecting lines, and lines to receive oil from ships at dock and to convey oil, received in the tanks, to customers. Rowland Tompkins' part in the construction the mechanical piping and installation of mechanical equipment as previously stated, was specified in great detail by a written contract accepted in evidence as General Counsel's Exhibit 2. Section 21 of this contract provides for acceptance, before the whole job is completed, of "any portion of the permanent construction . . . satisfactorily completed, . . . if the owner determines that such portion . . . is not required for the operations of the Contractor but is needed by the Owner . . .;" also that in case of acceptance of a part of the construction prior to final completion, "the Owner shall issue to the Contractor a certificate of partial completion, and thereupon or at any time thereafter the Owner may take over and use the portion of the permanent construction described in such certificate, and exclude the Contractor therefrom." While there is some indication in the record that Respondent claimed that construction hereinafter described, and that was accepted pursuant to section 21 of the contract before final completion of the job, was not "permanent" as required by such section, this is not a contention of any

real substance, and I find and conclude that such part of the construction was permanent and in all other respects met the conditions of section 21 of the contract and was taken over by the owner (Nepco) and was put in operation in the manner provided in the contract.

The construction thus involved was a 10-inch pipeline extending from the dock to tank #300 and a 20-inch delivery line, and specified connected pumps. The certificates indicating that this construction was complete and accepted were received in evidence as General Counsel's Exhibits 3 and 4.

On May 25, 1965, after the completed facilities, as described, had been accepted by the owner, Nepco, from its contractor, Rowland Tompkins, an oil tanker arrived at the dock. That evening Nepco began the discharge of oil from the tanker, through the 10-inch line, hereinbefore mentioned, running from the dock to the tank, using its own employees. There was no disruption in the work of unloading the ship that evening. On the next day, however, May 26, when Lawrence Welch, of Nepco's management, arrived at the worksite, he observed that the employees of Rowland Tompkins, the pipefitters, were not on the job but were grouped at a street intersection adjacent to the work location. With the men, was Joseph Good, representative of Respondent. Welch inquired of Good why the men were not working on the job and Good replied that he had pulled them off because as long as the ship was pumping oil through the 10-inch pipeline two men of Respondent would be required at the dock valve for the entire time that the line was in operation. Good also indicated that when the pumps were started, to transfer oil out of the tank, Respondent would require two more of its men in attendance at the pump for all the time that it was in operation. I credit Welch's testimony, including his statement that Joe Good said he "pulled" the men off. It is not refuted in the evidence. (Respondent called no witnesses and offered no exhibits in the case.)

Good and Welch then went to the construction trailer of Rowland Tompkins to discuss the matter further and ascertain precisely what Good's claims were. It was then decided that action would be withheld until after a 10 o'clock meeting the following Friday, 2 days hence, with the men to return to work. A minor dispute arose as to whether the men would be paid for the hour or so lost the morning of the 26th, and was resolved by Welch authorizing Rowland Tompkins to allow an hour's overtime pay for the men that evening.

Instead of waiting for the Friday meeting, to discuss the problem, by common consent the interested parties got together again on Wednesday about 3 p.m. This was attended by Good, two other representatives of Respondent, Patrick J. Mauro, superintendent for Rowland Tompkins, Welch, and Hugh M. Finneran, an attorney representing Nepco. Mauro and Finneran were called as witnesses by the General Counsel. They with Welch were the only persons who testified in the case. There is no significant or substantial conflict in the testimony of these three witnesses on the crucial questions as to Respondent's part in the work stoppage and the objects thereof, and I credit their testimony.

From the testimony of these witnesses, I find and conclude that when efforts failed to get the disputed work assigned to Rowland Tompkins' employees, Respondent induced them to strike for a period beginning May 27 and ending June 3. The ultimate object of the strike, and Respondent's purpose in calling it, as I find and conclude, was to get two of Rowland Tompkins' employees, Respondent's members, assigned to the valve on the 10-inch pipeline between the tanker and the tank, and two additional men assigned to the pump on the discharge side of the tank, throughout the total time of operation.

In the conversations held on Wednesday, May 26, both Welch of Nepco, and Mauro of Rowland Tompkins, explained to Joe Good, Respondent's representative and the primary actor in calling the strike, that the operation of the facilities involved in the dispute had passed over to Nepco under the contract provision that gave Nepco the right to accept and put in operation Rowland Tompkins' construction piecemeal, that Nepco's own employees, represented by another union, Local 15C of the Operating Engineers, held the work in dispute under an assignment from Nepco, and that Rowland Tompkins had nothing whatever to do with it and could not control the assignment. Good, however, contended that this work was under the jurisdiction of Respondent and claimed it until the job was completely finished and Respondent's last man had moved off the jobsite.

Counsel for Respondent sought through cross-examination of the General Counsel's three witnesses, to put emphasis on Joe Good's position, in his discussions with representatives of Rowland Tompkins and Nepco, that the safety of the employees he represented was the real reason back of the work stoppage. There is no question but that Good injected the question of safety into the conversation.

But the evidence relating to the safety factor has only the status of hearsay testimony inasmuch as neither Good nor Dolan (the other representative of Respondent who mentioned safety) saw fit to take the stand and put such evidence into the record as sworn testimony. But even if full weight were given to all the testimony in the record that bears on the subject of the safety factor, the preponderance of the evidence would not establish that safety was the motivating cause back of the refusal to work, but rather that it was Respondent's desire to have the work involved, assigned to employees it represented. This is quite conclusively established by the uncontroverted evidence that Good's claim, made in behalf of Respondent, was for Respondent's people to be assigned to the disputed work not only when they were on the job and subjected to whatever hazard there was, but also for the balance of the 24-hour period when they were not on the job. Rowland Tompkins' employees, represented by Respondent, were on the jobsite only one out of three shifts in a 24-hour pumping period. Furthermore, there is no evidence to support a finding that the Rowland Tompkins *employees*, either individually or in concert, on their own initiative or under inducement from Respondent, *refused* to go to work because of hazardous working conditions.

The evidence is that the conditions were not unduly hazardous, as established through a second inspection made by the fire department of the city of New York, after the labor dispute arose on the job. Another certificate issued from Nepco to Rowland Tompkins, General Counsel's Exhibit 5, indicating, again, approval for acceptance of the completed work for operation. This document indicated that certain precautions should be taken to guarantee safety, the implementation of which were all under the control of Rowland Tompkins' employees.

A. *The secondary aspect of Respondent's action*

Inasmuch as the record is clear that the work assignment provoking the dispute, was under the control of Nepco and completely beyond the control of Rowland Tompkins, it follows that Respondent's strike against Rowland Tompkins was secondary action notwithstanding the strike was by employees against their own employer. See *International Longshoremen's Association (Board of Harbor Commissioners)*, 137 NLRB 1178, 1182; *Local 5, United Association of Journeymen and Apprentices of Plumbing and Pipefitting Industry (Arthur Venneri Company)*, 137 NLRB 828.

B. *Respondent's object in the work stoppage*

It has been previously determined herein that Respondent induced and encouraged the employees of Rowland Tompkins to engage in a strike and refusal to perform services; and the strike necessarily coerced and restrained the Employer, all within the meaning of Section 8(b)(4)(i) and (ii) of the Act. The question remains unresolved, however, as to whether Respondent's object in the strike conforms to that proscribed in (B) of the said subsection (4), that is, whether Respondent's object was to force or require Tompkins' employees and Tompkins to cease doing business with any other person as alleged in the complaint.

As previously indicated it is clear that the *ultimate* object of Respondent in calling the strike was to obtain the work assignment involved in manning the valve of the 10-inch pipe and the pumps of the 20-inch pipe being operated by Nepco. This "ultimate object" gives great appeal to the commonsense of the statement of Respondent's counsel made in his closing argument as he sought to negate the subsection (B) object. Said he, "We did not want at any time, nor do we want now Rowland Tompkins to cease doing business with Nepco because Rowland Tompkins is a good employer of our men." Even so, and notwithstanding the additional fact that the conduct of Respondent here involved seems to come quite clearly within the proscriptions of subsection (D) of 8(b)(4), it also conflicts with the provisions of subsection (B), under the interpretation of the statute by the Board and the courts. The opinion of the Board in *International Longshoremen's Association, etc.*, cited above, makes it clear that both the Supreme Court and the Board recognize that the term "an object" of Section 8(b)(4) is not limited to one object, but encompasses more than one, some of which are designated as "ultimate," "conditional," "immediate" and "alternative." And in the cited case the statutory object of subsection (B), that is to force or require any person to "cease doing business with any other person" is held to be present if the objectionable conduct effectively disrupts established business relations between the parties affected. Thus, on the authority of the cases hereinbefore cited, it seems clear that inasmuch as the strike induced by Respondent among the employees of Tompkins resulted in a disruption of the business relations of such employees, and

their employer, with Nepco, although only temporarily, and incidentally to the "ultimate" object of obtaining assignment of certain work, there is present in Respondent's conduct, the object of "forcing any person to cease doing business with any other person " proscribed by 8(b)(4)(B) This inevitable result of Respondent's action meets the Board interpretation of the "cease doing business' object of subsection (B), and supplies the final element of the 8(b)(4)(i) and (ii)(B) violations which I find and conclude Respondent committed

C *The Charging Party's request to withdraw the charge*

After the case was heard the Charging Party, Nepco, filed with the General Counsel a request for permission to withdraw the charge, addressed to the General Counsel and me In the request the Charging Party indicated that up until the time of filing it, Nepco had believed that construction activity would be likely to give rise to the same kind of dispute against which the charge was directed, but that as of the time of making the request for withdrawing the charge, for the first time it became apparent that it was extremely unlikely that any further opportunity for such disputes would arise on the job

Counsel for the General Counsel, following what seems to be an unbreakable pattern, filed written opposition to the granting of such request on the ground that "when an unfair labor practice charge is filed, the General Counsel proceeds, not in the vindication of private rights but as the representative of an Agency entrusted with the enforcement of public law and the assertion of the public interest therein," copying into the objection to the withdrawal request, a statement that has appeared interminably in the reports of NLRB Decisions over the years With equal submissiveness to the established pattern I have joined in the denial of the request to permit the parties in this case to settle their own differences Insofar, however, as I am concerned, this position has been taken with extreme reluctance, not so much for the reason that the facts in this case fail to support the violation of Section 8(b)(4)(i) and (ii)(B) as charged, but because (1) of the nebulous quality of the public interest being vindicated by a continuation of this litigation, especially in the light of (2) following, (2) the indication in the record in this case that an 8(b)(4)(D) violation with a related 10(k) proceeding is being prosecuted on the facts involved in this case, and (3) a lack of *clear* authority in me to grant permission for withdrawal of a charge over the objection of the General Counsel, even after the hearing

While it is well established that Section 8(b)(4)(B) of the Act, on the one hand, and Section 8(b)(4)(D) on the other, serve wholly separate and distinct functions, and that the two sections are not mutually exclusive, it should not necessarily follow that in every fact situation that seems to support a violation of both sections, both need be prosecuted to protect the public interest In the instant case the real thrust of Respondent's unlawful conduct in inducing a strike was to require the assignment of particular work to employees in Respondent s organization, contrary to the provisions of subsection (D) Why an order entered in an 8(b)(4)(D) case in this situation would not adequately protect the public interest is not clear If one case rather than two does adequately protect the public interest, it would be highly desirable, particularly in view of the overburdened condition of the National Labor Relations Board to prosecute one case only Even so, and for the three specific reasons hereinbefore given, which merge into a belief that the effort to reduce litigation by granting the motion to withdraw the charge might actually extend this particular litigation, the request for permission to withdraw the charge, on the part of the Charging Party, is hereby denied

On all of the foregoing I find and conclude that Respondent by inducing and encouraging employees of Tompkins to engage in a strike or a refusal in the course of their employment to perform services, and by threatening, restraining, and coercing Tompkins, with the object of forcing or requiring them to cease doing business with Nepco has engaged in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(B)

II THE REMEDY

It having been found that Respondent violated Section 8(b)(4)(i) and (ii)(B) of the Act, it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act

[Recommended Order omitted from publication]

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