American Federation of Casino and Gaming Employees *and* New Pioneer, Inc., d/b/a New Pioneer Club. Case 31–CP–27

June 30, 1967

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZAGORIA

On May 10, 1967, Trial Examiner David F. Doyle 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 Decision and the General Counsel filed cross-exceptions and a supporting memorandum.

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.

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 entire record in this case including the Trial Examiner's Decision, the exceptions of the Respondent,[1] and the cross-exceptions and supporting memorandum of the General Counsel, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Recommended Order of the Trial Examiner, and hereby orders that the Respondent, American Federation of Casino and Gaming Employees, Las Vegas, Nevada, its officers, agents, and representatives, shall take the action set forth in the Trial Examiner's Recommended Order.

[1] Among other things, the Respondent excepts to the failure of the Trial Examiner to find as a fact and to conclude as a matter of law that the election referred to in his Decision was not a valid election within the meaning of Section 8(b)(7)(B) of the Act We find no merit in this exception in view of the Respondent's failure to request Board review of the Regional Director's decision in the representation proceeding, as provided by the Rules and Regulations of the Board

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

DAVID F. DOYLE, Trial Examiner This proceeding, brought under Section 10(b) of the Act, was heard at Las Vegas, Nevada, on January 20, 1967, pursuant to due notice to all parties.[1]

The complaint dated January 6, 1967, was based upon a charge filed by the Company on December 27, 1966. The complaint alleged in substance that the Union had violated Section 8(b)(7)(B) of the Act by picketing the Company for a recognitional or organizational object within 12 months of a valid election, which the Union had lost.

The Union duly filed an answer denying all charges of unfair labor practice and affirmatively alleging that its picketing after December 27, 1966, was for the object of protesting unfair labor practices committed by the Company.

At the hearing all parties were represented, were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence bearing on the issues, to argue the issues orally upon the record, and to file briefs and proposed findings. The General Counsel has filed a brief which has been carefully considered. Upon the entire record of the case and upon my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OPERATIONS OF THE COMPANY

The answer admits that the Company operates a bar, restaurant, and a gambling casino in Las Vegas, Nevada, and receives in excess of $500,000 annually from its gambling activities. The Company annually purchases, from sources in the State of Nevada, in excess of $50,000 worth of goods and services from enterprises which annually purchase directly from sources outside the State of Nevada in excess of $50,000 worth of goods and services.

Therefore it is found that the Company is now, and at all times material herein has been an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED; ITS NONCERTIFICATION

The pleadings also establish that the Union is now, and at all times material herein has been a labor organization within the meaning of Section 2(5) of the Act. In its answer the Union concedes that it is not currently certified, nor has it been certified by the Board, pursuant to the provisions of Section 9 of the Act, as the collective-bargaining representative of any of the employees of the Employer.

In the course of the hearing Counsel for the parties stipulated that Thomas Hanley, Vivian Brooks, Glen Herron, and Otho Dale Hill were officers of the Union, and Albert M. Dreyer its counsel.

[1] In this Decision American Federation of Casino and Gaming Employees is referred to as the Union, New Pioneer, Inc., d/b/a New Pioneer Club, is referred to as the Company or the Casino, the General Counsel of the Board and his representatives at the hearing, as the General Counsel, the National Labor Relations Board as the Board, and the Labor Management Relations Act, as amended, as the Act

III. THE UNFAIR LABOR PRACTICES

Undisputed Background

It is undisputed that the Company operates the New Pioneer Club, which is a gaming casino with restaurants and bars located at the corner of First and Fremont Streets in the city of Las Vegas, Nevada. It is likewise undisputed that the Union for many months has been actively engaged in organizing the employees of casinos in the State of Nevada. The employees whom the Union seeks to organize are those engaged in the actual conduct of gaming operations such as dealers, dicemen, and boxmen, below the management level.

The present proceeding is connected with prior proceedings of the Union in its attempt to organize these employees.

The Representation Proceeding

It is undisputed that in the spring and early summer of 1964 the Union attempted to organize a unit of the casino's gaming employees. On July 17, 1964, it filed an RC petition with the Regional Office of the Board, then Region 20, San Francisco, California, seeking certification of the Company's employees in a unit described as follows, "all casino employees employed by the employer at its Las Vegas, Nevada location" except noncasino employees, office clerical employees, guards, and supervisors, etc. as defined in the Act. This proceeding which is docketed as Case 20–RC–6020 was later consolidated with other cases affecting similar units of employees in similar establishments in the gaming industry in Las Vegas, Nevada. On March 11, 1965, the Board issued a Decision and Direction of Election in *El Dorado Inc., d/b/a El Dorado Club,* 151 NLRB 579 in which it directed elections of employees in the various establishments including the unit of employees at the New Pioneer Club.

After one postponement the election was conducted on November 16, 1966. The tally of ballots indicated the following results:

1. Approximate number of eligible voters	78
2. Void ballots	0
3. Votes cast for American Federation of Casino and Gaming Employees (Independent)	14
4. Votes cast for Culinary Workers Union, Local 226	1
6. Votes cast against participating labor organizations	26
7. Valid votes counted	41
8. Challenged ballots	19
9. Valid votes counted plus challenged ballots	60

As will be noted the challenged ballots were sufficient in number to affect the results of the election.

It is undisputed that the Union filed objections to conduct affecting the results of election with the Regional Office of the Board, but it is likewise undisputed in this transcript of testimony that this document was not received through the mail by the Regional Office until November 25, 1966, and therefore was not *timely* filed.[2]

It is likewise undisputed that on December 7, 1966, a Supplemental Decision and Order in the case was issued by the Regional Director, Region 31, Los Angeles, California, to which the case had been transferred, which ordered that the challenged ballots be opened and counted. This Supplemental Decision and Order also ruled that the objections to conduct affecting the results of the election filed by the Union had *not been timely filed.*

It is undisputed that no appeal was taken by the Union from this Supplemental Decision and Order. Thereafter a revised tally of ballots was issued on December 20, 1966, which stated that a majority of ballots were cast against the participating labor organizations and a certification of results was issued.

The Efforts of the Union to Obtain Recognition and Bargaining

In addition to filing a petition seeking certification from the Board, the Union also sought recognition and bargaining through conferences with officers of the Company. Representatives of the parties met in a series of meetings which began on or about July 18, and concluded on November 7, 1966, but the Company consistently refused to afford recognition to the Union and efforts to negotiate a contract were unsuccessful.

At various points in its abortive dealings with the Company, the Union filed charges of unfair labor practice against the Company. On November 1, 1966, it filed a charge alleging violations of Section 8(a)(1) of the Act in that the Company had interrogated employees concerning their union sympathies and had engaged in surveillance of employees' union activities. Upon investigation, this charge was dismissed by the Regional Director (Region 31) on the merits by letter dated December 1, 1966. The Union did *not* appeal from this decision.

Later on December 9, 1966, the Union filed a second charge against the Company which alleged that the Company had violated Section 8(a)(1) of the Act by certain threats to, and interrogations of, employees and had refused to bargain with the Union in violation of Section 8(a)(5) of the Act. These charges were also investigated and, on December 23, 1966, the Regional Director by letter, dismissed these charges. The Union appealed the last-mentioned dismissal and refusal to issue complaint, but the General Counsel, Washington, D.C., affirmed the Regional Director's decision by a letter dated January 11, 1967.[3]

The Controversial Picketing

At the hearing, evidence was taken as to picketing

[2] Section 102.69(a), Board Rules and Regulations, Series 8, as amended, in pertinent part reads as follows: "Upon the conclusion of the election, the regional director shall cause to be furnished to the parties a tally of ballots. Within *5 days* after the tally of ballots has been furnished, any party may file with the regional director an original and 3 copies of objections to the conduct of the election or conduct affecting the results of the election, which shall contain a short statement of the reasons therefor. Such filing must be timely whether or not the challenged ballots are sufficient in number to affect the results of the election. Copies of such objections shall immediately be served on the other parties by the party filing them, and a statement of service shall be made "

[3] The letters setting forth the various reasons for these procedural decisions are G.C Exhs. 2(d); 10, 11 in evidence

which was conducted by the Union at the premises of the Company. The New Pioneer Club is located at the intersection of First and Fremont Streets in the city of Las Vegas, Nevada. According to testimony which was uncontradicted, the pickets patrolled the sidewalk from the corner to the Company's building line on First and on Fremont Streets, thus encompassing the entrances to the casino from each street. A stipulation of the parties states the following facts as to the picketing

> That between late November, 1966 and up to December 29, 1966 the Union picketed with three signs the legends of which read, on the first sign. "THIS HOUSE BLACK LISTS DEALERS MEMBERS OF AFC&GE UNION "
>
> The second sign. "THIS HOUSE IS NON-UNION."
>
> The legend of the third sign reads as previously testified to from General Counsel's Exhibit Number 4 and General Counsel's Exhibit Number 5: "PIONEER DOES NOT HAVE CONTRACT AFC-GE UNION "
>
> On or about December 28, 1966, the signs were changed in part and replaced by three signs, the first sign reading "THIS HOUSE VIOLATES FEDERAL WAGE LAWS "
>
> The second sign says "THIS IS A 'SWEAT SHOP' PAYS DEALERS $12 A DAY "
>
> The third sign says "THIS HOUSE DOES COMMIT UNFAIR LABOR PRACTICES "
>
> The signs were completely changed over by December 29, 1966. The first of the original three signs to cease being used was "THIS HOUSE IS NON-UNION "
>
> The last of the first three signs to come down read. "PIONEER DOES NOT HAVE CONTRACT AFC-GE UNION."

The Oral Testimony

In addition to the documentary evidence which is largely the basis for the findings above in regard to the representation proceeding and the dismissal of the two unfair labor practice charges, the General Counsel swore as witnesses, Dexter Smith, Norbert Jansen, and Milton Goldstein. Smith testified credibly as to the fact that he made photographs of the pickets and picket signs at various times. This testimony became surplusage when counsel for the parties by stipulation agreed upon the various dates upon which picketing was conducted and which signs were displayed by the parties

Norbert W Jansen, president of the New Pioneer Club testified that on approximately October 27, 1966, he met with Tom Hanley, Vivian Brooks, Otho Dale Hill, and Albert M. Dreyer at Jansen's office in the New Pioneer Club. Jansen testified that on this occasion the representatives of the Union stated that they wanted to show him some "signature cards" and to discuss a labor agreement covering the employees of the club He told the representatives of the Union that he did not wish to discuss an agreement with them or to look at their cards He told them that he would wait for an election to be conducted in the unit. Jansen also testified that on November 7 he met with the same representatives of the Union They again asked him to negotiate a contract with them but he told them again that he wouldn't negotiate with them and that he wanted to wait and see what the results of the election would be. At this meeting Mrs. Brooks showed him a copy of a contract which the Union had with the Golden Gate Casino. The union representatives and he discussed various terms in the contract. The union representatives said it was a copy of the contract which they would like him to sign. There was some discussion that the union representatives would provide him with a copy of the contract which he could send to his attorney in Los Angeles. Jansen said to the union representatives that he was not ready to have any agreement to bargain at that particular time. Hanley laid a copy of the contract on his desk but he gave it back to the officials as they were leaving the meeting.

On cross-examination Jansen said he was not sure whether it was at the first or second meeting that Mrs Brooks offered to show him the authorization cards which he refused to accept. Jansen denied that he ever met with the representatives of the Union for the purpose of negotiating a contract. Jansen denied that he ever admitted that the Union represented a majority of his employees. Jansen said that the last time he met with representatives of the Union was on the afternoon of November 7. Jansen denied that at any time he said he would sign the same contract as the California Club or the Four Queens Club.

Milton Goldstein, the Casino manager of the New Pioneer Club, testified that he attended a meeting on approximately October 25 at which he and Jansen conferred with representatives of the Union. Goldstein testified that the union representatives said that they wanted Jansen to sign a contract. Hanley said that the Union represented a majority of the Casino employees. Jansen said that he was willing to wait until they had the election Goldstein testified that Hanley said that the Union represented a majority of the employees but that he did not offer to prove it by authorization cards. Goldstein denied that he made any promises or threats to influence any of the employees in regard to their union affiliations or sympathies.

The Defense

In his opening statement counsel for the Respondent stated that he intended to prove that the picketing conducted after December 28, 1966, was for the sole purpose of protesting unfair labor practices committed by the Company. This statement provoked considerable argument from all counsel on the question as to whether such evidence was admissible in this proceeding on the state of the record. Counsel for the Union placed his argument on the Board's decision in *Teamsters "General" Local No. 200, etc (Bachman Furniture Company)*, 134 NLRB 670. In that case the Union had pursued the usual representation procedures to obtain certification. After it lost an election, the Union conducted picketing. In that case, in which the facts were stipulated, a majority of the Board agreed with the Trial Examiner and found that the picketing of the Union after the lost election, was not for a recognitional or organizational object, but was for the sole purpose of protesting the Company's unfair labor practices [4]

The contention of the General Counsel as to the admissibility of the evidence was (1) that the election conducted by the Board in the representation proceeding had become *final* when the objections of the Union were not

[4] Members Rogers and Leedom dissented

timely filed with the Regional Office, and the Regional Director had so ruled, and issued a Certification of Results, and (2) that the Regional Director after investigation of all the Union's charges of unfair labor practice against the Company had dismissed those charges, and that the dismissal of the charges was affirmed by a ruling of the General Counsel, Washington, D.C. The General Counsel contended that the finality of those prior proceedings foreclosed the Union from introducing testimony to show that the conduct of the Union in picketing after the lost election was for the *sole* p ırpose of protesting the Company's unfair labor practices.

The Trial Examiner ruled that he would accept testimony and other evidence which the Union claimed would show that the object of the picketing after the lost election was solely for the purpose of protesting the unfair labor practices of the Company. The General Counsel asked that a specific objection be noted to the Trial Examiner's ruling.

Pursuant to the ruling the Union offered the oral testimony of union officers, Thomas Hanley, Vivian Brooks, and Otho Dale Hill and two documents which will be mentioned hereinafter. Thomas B. Hanley, general business manager of the Union, testified as follows as to the object of the picketing:

> The object of that picketing that was being conducted at the Pioneer Club was for the purpose of informing the public that we had grievances and disputes with the Employer which we were unable to settle with the Employer, namely that the Employer was committing and had committed unfair labor practices by offering rewards to the employees if they voted against the union, for the purpose of protesting the fact that the Employer had circulated copies of a proposed agreement that we had offered to him with certain deletions in it, and making the statement to certain employees that if the union was selected as the bargaining agent that they would be terminated, and also for the purpose of protesting the Employer making statements to certain employees that they would receive better benefits in the way of positions such as boxman and floormen, and for the purpose of protesting also the fact that the Employer was using employees from that establishment under the pretext that he was going to make them boxmen at the California Club, for the purpose of protesting the position of the Employer that he was going to do everything that he could to destroy the unionization of the employees in that establishment to the extent that he told myself and other representatives and employees that he was going to do everything he could to destroy the union, that he had lied to us for a period of months, and that he had pretended that he was going to bargain, but that he was only stealing time.

Hanley further testified to the events which occurred at two meetings of union representatives and company representatives on October 25 and November 7. Hanley stated that on October 25 that he, Mrs. Brooks, and Messrs. Herron and Dreyer met with Messrs. Jansen and Goldstein representing the Company. At this meeting the Union offered to show to the representatives of the Company that the Union could establish the fact of its majority through authorization cards which it had obtained from the employees; the Union offered to have these cards checked by a third party. Jansen refused to examine the cards or to agree to a third party check. On this occasion, according to Hanley, Jansen said that "he was going to bargain" on various types of agreements and recognize the Union, but that he felt that he "would go to an election, that he was not going to sign an agreement to bargain, and was not going to accept the proof of representation," and he asked Hanley, if Hanley thought that he was crazy. Hanley agreed that he looked neither crazy nor stupid. Jansen then asked why Hanley thought he would accept the Union when he was trying to destroy the Union. Hanley asked Jansen what he meant and Jansen replied, that he had his men use listening devices into the employees' room, and he knew who were the union adherents; that he had gained time by lying to the union representatives, and that he never had any intention of bargaining with the Union.

Hanley stated that the last date upon which the Union sought recognition from, or bargaining with, the Company was on October 27, 1966. Hanley testified further that he received reports from a man by the name of Karnes, a union adherent, that the Company had promised him a position at the California Club as a boxman, if Karnes would not support the Union. He also received reports from Karnes that Karnes was transferred from the New Pioneer Club to the New Pioneer Hotel, a job out of the unit. Hanley also received reports from one, White, to the effect that Jansen had told him to make no committments to the Union and he would receive a better position and better benefits at the California Club immediately after the election. Hanley stated that he and the executive board of the Union made the decision to establish the picket line on the New Pioneer Club, after the union representatives met with Jansen and Jansen told them that he had been deliberately lying to the union representatives during the time that the election proceeding was pending, and that he never had any intention at any time of bargaining with the Union. Hanley said that the Union had a majority of the employees on the basis of authorization cards and the payroll records of the employer. Hanley testified that as soon as the Union lost the election the Union abandoned the first set of signs as quickly as new picket signs could be made. After that the signs read "This is a sweat shop pays dealers $12 a day," and "This house violates Federal Wage Laws." The witness could not recollect the legend on the third picket sign but the stipulation states that it read, "This house does commit unfair labor practices."

Hanley stated that on several occasions he told officers of the Company that the picketing was not for the purpose of inducing or persuading the Company to recognize the Union or to persuade the employees to join the Union.

Hanley also testified that he mailed objections to the election in Case 31–RC–59 at the post office in Las Vegas, Nevada, on November 22, at 5:30 p.m. in the afternoon. This is the untimely filed objections to conduct affecting election.

Mrs. Vivian Brooks, an organizer for the Union, testified that she attended two meetings at which representatives of the Company and the Union had met. The first one occurred on October 25. There had been prior meetings with representatives of the Company, but at this meeting Jansen said that he had stalled for time over the previous months and that now he did not want to go any further toward reaching an agreement or a contract with the Union. Brooks said that, on a prior occa-

sion and on this occasion, she offered to show Jansen authorization cards to establish that the Union represented a majority of the casino employees, but he would not look at them.

She met again with Jansen on October 27 On this date, she was accompanied by representatives Hill and Herron. In the course of this meeting, Jansen asked her what the cost to his company would be, if he agreed to a contract like the one the Union had at the Golden Gate Casino, which they were discussing. She asked Jansen if she could see his payroll for the purpose of making this computation. Jansen gave his permission to see the payroll data so she conferred with the bookkeeper of the casino, and made a payroll list from the payroll records.[5]

Mrs. Brooks stated that before the election, she received numerous reports about unfair labor practices committed at the casino and they filed an 8(a)(1) charge with the Board. This charge was subsequently dismissed by the Regional Director, Region 31 After the election, the Union also filed an unfair labor practice charge but this was also dismissed by the same Regional Director. It was then stipulated by counsel that this charge is the one referred to in the 8(a)(1) and 8(a)(5) charge which was dismissed by the Regional Director and affirmed by the General Counsel. According to Brooks, the picket line was initiated around the first of November, after Jansen had said that he was stalling, and it was initiated for the purpose of compelling the Company to sign a contract and to protest the Company's unfair labor practices.

Otho Dale Hill, a member of the executive board and president of the Local of the Union, stated that at the meeting of representatives of the Union and the Company on October 25, there was a discussion as to the Golden Gate Casino contract and the cost of the wages and health and welfare terms to Jansen. At this meeting, Jansen also stated that he had a listening device in the employees' room and that he listened to them talking about the Union. At this meeting, Jansen said that he didn't need a union and that he had been stalling for time and "playing among the raindrops" and that he wanted to go to an election, since he had stalled it this long

It is undisputed that on December 6, 1966, Albert M. Dreyer, attorney for the Union wrote the following letter to the New Pioneer Club, Inc..

> Attention: Mr Norman Jensen, President
>
> Gentlemen:
>
> In order to dispel any doubt on the subject, we hereby inform you that the picketing now being conducted in front of your place of business by this Union is not for the purpose of compelling or inducing you to recognize or bargain with this Union as the collective bargaining representative of any of your employees or to enter into collective bargaining contract. Its sole purpose is to inform the public (including your customers and patrons) of facts which it is entitled to know and of which it should be apprised.
>
> Copies of this letter are being sent to all labor organizations in Las Vegas, Nevada
>
> Yours Very truly,
>
> AMERICAN FEDERATION OF CASINO AND GAMING EMPLOYEES
>
> By Albert M. Dreyer

It is undisputed that all picketing at the Company's premises ceased on January 13, 1967, pursuant to an injunction issued by the appropriate U S. District Court.

The General Counsel offered no testimony in rebuttal, resting his case on the evidence in his case-in-chief and cross-examination of the Union's witnesses.

Concluding Findings

From the brief summary of the testimony and evidence above, it is clear that there are no factual questions; all witnesses are in agreement on the sequence of events. However the Trial Examiner deems it appropriate to comment upon the testimony of the witnesses and the manner in which they testified. Jansen, the president of the Company, was a most uneasy witness. His testimony was marked by extreme caution and evasiveness. Even on direct examination he testified like a man who feared entrapment by the questioner. His memory was not good except as to two pertinent facts: (1) that he did not examine the union authorization cards offered to him and (2) that the Union demanded recognition and bargaining. Goldstein, the manager of the Casino, was equally evasive and his testimony too is marked by limited memory.

On the other hand the trio of union officers, Hanley, Brooks, and Hall, testified with every evidence of forthrightness and candor. They testified willingly and their testimony was marked by a certain spontaneous indignation at the treatment accorded them by the representatives of the Company in the union-company conferences. I credit the entire testimony of the union representatives, and I credit the testimony of Jansen and Goldstein only to the extent that it is consistent with the testimony of the union representatives.

From all the evidence in the case I find that the union representatives had ample grounds to accuse the Company of unfair labor practices and had ample grounds to believe that the Union should protest the unfair labor practices This finding is required by undisputed facts in the transcript of testimony It is undisputed that representatives of the parties met prior to October 25, and met on October 25 and November 7. At these meetings the Union asked for recognition and bargaining and offered to display the authorization cards which the Union had obtained. It is undisputed that Jansen refused to look at these cards. It is also not disputed that they discussed the contract which the Union had with the Golden Gate Casino. This discussion had gone so far that Jansen asked Brooks just how much it would cost the Company to pay the same health and welfare payments and wages as stated in the union-Golden Gate Casino Contract. It cannot be controverted, and it is not, that Jansen gave Brooks access to his payroll records and his bookkeeper for the purpose of making such a computation. In her testimony Brooks stated this and produced the computations and payroll data taken from the books of the Company. It appears plain to this Trial Examiner, that when representatives of a union and an employer reach a point where they are making computations to see exactly how much compliance with a certain union-employer contract

[5] This payroll list was introduced into evidence as Resp Exh 2

will cost the particular employer, that they have passed far beyond the stage of initial recognition and have really arrived at the hard core of all labor negotiations—cost to the employer. According to the union witnesses Jansen later admitted that he had lied and by his delaying tactics had gained time in which to undermine the Union and dissipate its majority. That conduct of Jansen's, I deem to be the reason for the indignation which is apparent in the testimony of the union's representatives. From this it is clear, and I find that the Union had ample grounds to feel that it should protest the unfair labor practices of the Company.

Unfortunately for the Union, it seems equally clear that the Union did not avail itself fully of the Board's procedures to correct the Company's unfair labor practices. When the election was lost, the Union did not *timely* file its objections to the conduct of the election. Section 102.69(a) of the Rules and Regulations of the Board requires that objections to the conduct of the election or conduct affecting results of the election must be filed within 5 days of the tally of ballots furnished to the parties. Under the rule the Union's objections of conduct affecting the results of election were required to be in the office of the Regional Director on November 23. It is undisputed that they were not received on that date. November 24, 1966, was Thanksgiving Day and the date on which the Regional Office received the objections was November 25. The Board and the courts have always construed this rule of time for filing strictly, so the objections were not timely filed.[6] Further, since the Union failed to file timely objections to the election the election was valid and the Company therefore could not be required to bargain with the Union.[7]

In this connection it should be noted that at the hearing the Trial Examiner received in evidence as Respondent's Exhibit 3 a document entitled objections to conduct of election and conduct affecting results of election, the document which was not timely filed. At the request of counsel for the Union the Trial Examiner permitted the withdrawal of this exhibit for duplication but ordered that counsel "submit 2 copies to the Reporter within 8 days of the end of the hearing." On February 2, 1967, 13 days after the close of the hearing, the counsel for the General Counsel by letter informed Respondent of his intention to move to strike all testimony referring to Respondent's Exhibit 3 because the required copies had not been forwarded to the official reporter pursuant to the Trial Examiner's order. In his brief, counsel for the General Counsel moved that Respondent's Exhibit 3, and all testimony referring thereto be striken from the record. Because of counsel for the Union's failure to submit the copies in accordance with the Trial Examiner's order the motion to strike is hereby granted.

Upon all the evidence I find that the Union did not cease to ask for recognition and bargaining on December 28 and 29 and thereafter, when it changed its picket signs. It is true that Dreyer, counsel for the Union by his letter of December 6, 1966, tried to disclaim any intention of compelling or inducing the Company to bargain with the Union as the representative of the employees in the appropriate unit, but the letter is disclosed to be a mere gesture by the testimony of the union representatives who stated that the picket signs were not changed until December 28 and 29. A close reading of the testimony of the union representatives indicates that they regarded the picketing at the premises of the Company as one continuous operation. Although they changed the picket signs on December 28–29, the inference from their testimony is that the picketing after that date was to protest the unfair labor practices of the Company, in addition to continuing the Union's demand for recognition and bargaining. It is well-settled law that picketing for dual objects is violative of this section of the Act if *one* of the objects is proscribed by the section.[8] Therefore I find that the Union has conducted picketing at the premises of the Company in violation of Section 8(b)(7)(B) of the Act as alleged in the complaint.

IV. THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, it shall be recommended that it cease and desist therefrom and take certain affirmative action that I find necessary to effectuate the policies of the Act.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, I make the following:

CONCLUSIONS OF LAW

1. New Pioneer, Inc., d/b/a New Pioneer Club is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Respondent is a labor organization within the meaning of Section 2(5) of the Act.
3. By picketing the above-named Employer from November 25, 1966, to January 13, 1967, with an object of forcing and requiring New Pioneer Club to recognize and bargain with the Respondent as the collective-bargaining representative of New Pioneer Club's employees and of forcing and requiring New Pioneer Club's employees to accept and select the Respondent as their bargaining representative, although Respondent was not currently certified as such representative and a valid election having been held within the 12-month period prior thereto under Section 9(c) of the Act, the Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(7)(B) of the Act.
4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact, conclusions of law, and the entire record in this case, it is recommended that American Federation of Casino and Gaming Employees, their officers, agents, successors, and assigns, shall:

1. Cease and desist from:
(a) Picketing or causing to be picketed, or threatening to picket New Pioneer Inc., d/b/a New Pioneer Club where an object thereof is to force or require New Pioneer Club to recognize and bargain with it as the representative of its employees, or to force or require the

[6] *N.L.R.B.* v. *Conlon Bros Mfg. Co.*, 187 F.2d 329 (C.A. 7); *General Box Company*, 115 NLRB 301; *Tung-Sol Electric, Inc., and Triangle Radio Tubes, Inc.*, 114 NLRB 104; *General Electric Company, Niles Glass Works, Lamp Division*, 103 NLRB 108.

[7] *Irving Air Chute Company, Inc*, 149 NLRB 627.

[8] *Woodward Motors, Inc. (Local 182)*, 135 NLRB 851

employees of New Pioneer Club to accept or select it as their bargaining representative for a period of 1 year from January 13, 1967.[9]

(b) Picketing or causing to be picketed, or threatening to picket New Pioneer Club for either of the aforementioned objects, where within the preceding 12-month period a valid election under Section 9(c) of the Act has been conducted which the Respondent did not win.

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."[10] Copies of said notice, to be furnished by the Regional Director for Region 31, after being duly signed by official representatives of the Respondent, shall be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to its members are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Mail to the Regional Director for Region 31 signed copies of the aforementioned notice for posting by New Pioneer, Inc., d/b/a New Pioneer Club, if it be willing, in places where notices to employees are customarily posted. Copies of said notice, to be furnished by the Regional Director for Region 31, after being signed by the Respondent, as indicated, shall be forthwith returned to the Regional Director for disposition by him

(c) Notify the Regional Director, Region 31, in writing, within 20 days from the date of the receipt of this Trial Examiner's Decision, what steps the Union has taken to comply herewith.[11]

IT IS FURTHER RECOMMENDED that, unless the Union shall, within 20 days from the date of receipt of this Trial Examiner's Decision, notify said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the Union to take the action aforesaid.

[9] *Retail Store Employees' Union Local No 692, Retail Clerks International Association, AFL-CIO (Irvins, Inc)*, 134 NLRB 686

[10] 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 "a Decree of the United States Court of Appeals Enforcing an Order" shall be substituted for the words "a Decision and Order "

[11] In the event that 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 Respondent has taken to comply herewith "

APPENDIX

NOTICE TO ALL MEMBERS OF AMERICAN FEDERATION OF CASINO AND GAMING EMPLOYEES AND TO ALL EMPLOYEES OF NEW PIONEER, INC., D/B/A NEW PIONEER CLUB

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT picket or cause to be picketed, or threaten to picket, New Pioneer, Inc., d/b/a New Pioneer Club, where an object thereof is to force or require New Pioneer Club to recognize or bargain collectively with us, or to force or require its employees to accept or select us as their collective-bargaining representative, for a period of 1 year from January 13, 1967.

WE WILL NOT picket or cause to be picketed, or threaten to picket New Pioneer Club, where an object thereof is to force or require New Pioneer Club to recognize or bargain collectively with us, or to force or require its employees to accept or select us as their collective-bargaining representative, where a valid election which we did not win has been conducted by the National Labor Relations Board among the employees of New Pioneer Club, within the preceding 12 months.

AMERICAN FEDERATION OF
CASINO AND GAMING
EMPLOYEES
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, 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, 10th Floor, Bartlett Bldg., 215 West Seventh Street, Los Angeles, California 90014, Telephone 688-5850.