Local 25, International Brotherhood of Electrical Workers, AFL–CIO *and* Building Trades Employees Association. Case 29–CC–107

February 15, 1968

DECISION AND ORDER

BY CHAIRMAN MCCULLOCH AND MEMBERS FANNING AND BROWN

On December 5, 1967, Trial Examiner David London issued his Decision in the above-entitled proceeding, finding that Respondent had engaged in and was engaging in certain unfair labor practices within the meaning of the National Labor Relations Act, as amended, 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 and the General Counsel and the Charging Party filed answering briefs.

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 Trial Examiner's Decision, the exceptions, and briefs, and the entire record in the case, 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 Respondent, Local 25, International Brotherhood of Electrical Workers, AFL–CIO, Brooklyn, New York, its officers, agents, and representatives, shall take the action set forth in the Trial Examiner's Recommended Order.[1]

[1] Delete from paragraph 2(a) of the Trial Examiner's Recommended Order that part thereof which reads "to be furnished" and substitute therefor "on forms provided."

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

DAVID LONDON, Trial Examiner: Upon a charge filed July 21, 1967, by Building Trades Employers Association, the General Counsel, on August 24, 1967, issued the complaint herein alleging that Local 25, International Brotherhood of Electrical Workers, AFL–CIO (the Union), had engaged in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(B) of the National Labor Relations Act, as amended (the Act). The Union filed its answer denying the commission of any unfair labor practice. The hearing herein was held before me at Brooklyn, New York, on October 25–26, 1967, at which all parties hereto were represented by counsel. On November 27, 1967, the General Counsel and the Charging Party filed briefs which have been duly considered by me.

Upon the entire record in the case,[1] and my observation of the witnesses, I make the following:

FINDINGS AND CONCLUSIONS

I. THE BUSINESS OF THE EMPLOYERS

At all times material herein Dobson Construction Company, Inc., was, and presently is, a corporation duly organized under and existing by virtue of the laws of the State of New York, maintaining its principal office and place of business in Long Island, New York, where it is, and has been continuously, engaged in performing general contracting, construction, and related services. During the past year, which period is representative of its annual operations generally, it has derived gross revnues in excess of $5 million and purchased and caused to be transported and delivered to its Long Island, New York, place of business, and to its various construction sites, building materials valued in excess of $50,000 which goods were transported and delivered to its aforesaid place of business and construction sites in interstate commerce directly from States of the United States other than the State in which it is located. The complaint alleges, and I find that at all times relevant herein Dobson Construction Company, Inc., has been and is engaged in commerce, and in an industry affecting commerce, within the meaning of Sections 2(l), (6), and (7) and 8(b)(4) of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

During all times relevant herein, the Union was, and presently is, a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

Commencing in 1962 and continuing through the time and events with which this proceeding is concerned, the State of New York was engaged in the construction of a huge project in Long Island, New York, known as Suffolk State School, an institution for retarded children. The project, the cost of which will exceed $50 million, covers an oblong area of approximately 450 acres and, when completed, will consist of 70–80 buildings located as indicated on a plat of the area attached hereto as Appendix A.

There are four public entrances to the entire area indicated on Appendix A as points A, B, C, and F. Points B and C are at the extreme westerly boundary of the entire area, point B at the extreme northwest corner, and point C in the approximate center of the westerly border.

[1] Motions, on which ruling was reserved, are disposed of in accordance with the conclusions that follow.

Points A and F are in the center of the east boundary, F being approximately 1,500 feet south of the northwest corner of the area and A approximately 1,500 feet north of the southwest corner.

Among the general contractors engaged on the project described above during the summer of 1967[2] was the Dobson Construction Company, Inc. (Dobson), a member of the Charging Party, engaged in the construction of a psychiatric hospital designated as building 80 on Appendix A near the center of the southern border of the entire area. In the performance of its approximately $2.5 million contract, Dobson employed laborers, masons, wire lathers, carpenters, and sundry other employees, all of them represented by some union. Also employed on building 80 as prime contractors with contracts from the State of New York, were Charles A. Mulligan, Inc. (Mulligan), the electrical contractor, William J. Flood, Inc. (Flood), the plumbing contractor, Dierks Heating Company (Dierks), the heating contractor, and F. W. Koehler & Sons, Inc. (Koehler), the masonry contractor.[3]

During all times relevant herein, Pantel Contracting Corporation, pursuant to a contract with the State of New York, was engaged as prime electrical contractor for the installation of the outside ground lighting near buildings 2, 3, and 4 located near the north central portion of the entire area, and buildings 28, 29, and 30 at the area's northwest corner. Insofar as the record discloses, Pantel was a very small entrepreneur who began the performance of its contract in June. During that month and July, its only employees engaged in the performance of the aforementioned contract was Irving Pantel and one other employee. During that period, Pantel had a collective-bargaining contract with a union other than the Union herein, pursuant to which employees had an 8-hour day and a 40-hour week, with time and a half for overtime.

Commencing during the early morning of July 5 and continuing through every workday thereafter to and including July 11, the Union placed pickets at the main entrances to the entire project designated as points A, B, C, and F on Appendix A. During the same period, it also placed one or more pickets carrying similar signs at the point marked D on Appendix A, south of building 80 where Dobson was engaged in the construction of the psychiatric hospital, the critical picketing post involved herein. All the pickets bore signs carrying the following legend:

> To the public: The electricians of Pantel Electric are not working under conditions established by Local 25 I. B. E. W., AFL–CIO (Respondent Union). We have no dispute with any other contractor.

Joseph E. Cavanagh, business agent of Respondent Union, testified that Pantel's "working conditions" which Respondent Union was protesting were twofold, both of which were allegedly contrary to and in violation of those generally prevailing in the area and specifically prohibited by Respondent Union's collective-bargaining agreements with other employers. Thus, he testified, (1) that Pantel's 8-hour week, with time and a half for overtime, was contrary to the conditions prevailing in the area and to the terms of the contract which Respondent Union "has in the Nassau and Suffolk county area" requiring only a 7-hour day, 35-hour week, with double pay for overtime, and (2) that on one occasion he saw Pantel working "with tools on the job," and that this also was in violation of Respondent Union's collective-bargaining agreements which contain "a prohibition [against] members of firms, partnerships or corporations to work with tools."[4]

The principal thrust of the General Counsel's case against the Union's picketing is directed to that activity at point D on Appendix A, the *only* approach to the Dobson project at building 80, on which Flood, Dierks, Mulligan, and an electrical contractor whose employees were members of the Union, were also engaged. Point D was located a short distance north of Half-Hollow Road, the latter being a paved public road. From point D, running north approximately 200–300 feet, was a dirt road leading directly to building 80. There are no connecting roads between building 80 and the remainder of the project. John G. Ferguson, assistant superintendent of construction for the State of New York, testified, and I credit his testimony, that this dirt road was used *only* by contractors working at building 80, and that it was impossible for a truck "to go through point D on to any other point in the complex." It would be done, he testified, only "at the risk of getting stuck in the sand."

During June and July, the only work by Pantel and his other single employee at the Suffolk State School project was performed adjacent to buildings 2, 3, and 4 at the northeast corner of the entire project. While so engaged the *only* entrance Pantel ever used was at point B. Neither Pantel, nor his employee, ever used, or had occasion to use, the dirt road leading from point D to building 80 where the Union was picketing. Ferguson estimated that it was between one-half and three-fourths of a mile from building 80 to buildings 28, 29, and 30, and three-fourths of a mile to a mile from building 80 to buildings 2, 3, and 4 where Pantel was then engaged.

About 7:50 a.m. on July 5, Willfried Hebmann, Dobson's superintendent, was informed that there were pickets at the job entrance. Hebmann went to the pickets, asked why they were picketing, but got no reply. About 11 a.m., the bricklayer-union delegate visited the site and talked to the bricklayers employed by Koehler. All the "tradesmen" on the job worked until lunchtime when "*everybody* left the jobsite—the job was dead." *No work* was performed on building 80 thereafter until July 12. In the meantime, on July 10, Hebmann handed to the pickets at point D a notice reading as follows:

> To whom it may concern:
>
> Please be advised that this entrance is for the employees of DOBSON CONSTRUCTION COMPANY, INC., and their subcontractors only and is not used for any employees of Pantel Electric. We therefore insist that the pickets be removed from this entrance.
>
> DOBSON
> CONSTRUCTION CO.
> INC.

[2] Unless otherwise indicated, all reference to dates herein are to the year 1967.

[3] The Union's answer admits that all of these contractors were engaged in commerce and in an industry affecting commerce within the meaning of Sections 2(1), (6), and (7) and 8(b)(4) of the Act.

[4] Cavanagh testified that Kraker, Respondent Union's business manager, told him "that on one occasion on a job in another State hospital . . Mr. Pantel was observed working with his wife on Sunday pulling wire and conduits "

Hebmann also posted the following sign at the entrance to the building 80 site:

> This entrance for Dobson construction employees only and subcontractors, not for Pantel.

It being undisputed that none of the employees working at building 80 were engaged in a dispute with their employer, and Pantel having no occasion to use the dirt road leading exclusively to building 80, the Union, by picketing at that entrance, violated Section 8(b)(4)(i) and (ii)(B) of the Act.[5]

No one questions the right of the Union to publicize its dispute with Pantel Electric Company wherever the latter is engaged in the conduct of its business and thereby seeking to impose economic pressure on Pantel to comply with the Union's demands. *International Brotherhood of Electrical Workers, Local No. 11 [L. G. Electric Contractors, Inc.]*, 154 NLRB 766. For that purpose, the Union could unquestionably place its pickets at Pantel's office or established place of business, or adjacent to the work it was performing on buildings 2, 3, 4, 28, 29, and 30. There is, however, no testimony that it did so at *any of these places*. Its failure to do so indicates that its objective was to enmesh neutrals in its dispute, rather than exerting pressure on Pantel alone at the situs where that pressure would normally be the most effective.

It may even be assumed, *arguendo*, and there is no contention by the General Counsel to the contrary, that the Union could, with the proper safeguards, publicize that dispute at the public entrances to the entire school project which could be used by Pantel in the performance of its work on the six buildings aforementioned, a subject to which reference is hereafter made. The Union could not, however, picket building 80 or point D, the private approach thereto, an approach never used by Pantel, and used *only* by those working on building 80, thereby enmeshing neutral employers and employees in a dispute with which they had no concern. In his closing argument, the Union's counsel conceded that the approach to building 80, point D, "is different in character than point A, B, and C," the public entrances to the entire project. The Union had no more right to picket at point D, than it would have to picket at the inside dirt road approaches to, or the immediate vicinity of, any of the other approximately 80 buildings within the entire school area where only neutral employers were engaged. It was to avoid that very result that Congress enacted Section 8(b)(4) of the Act. *N.L.R.B.* v. *Denver Building & Construction Trades Council*, 341 U.S. 675, 692.

At the opening of the hearing, counsel for the General Counsel and the Union agreed that the Union's conduct complained of must be appraised and adjudged by the well-established and recognized standards laid down by the Board in its *Moore Dry Dock* decision, *Sailors Union of the Pacific (Moore Dry Dock Company)*, 92 NLRB 547. In that case, the Board established a set of four standards which a picketing union is required to observe at a common jobsite in order to demonstrate, as it must, that it is attempting to limit its dispute with the primary employer working at the site and that it is not seeking to enmesh other neutral employees who are also working at that site. The parties also agreed that, of the four standards prescribed by *Moore Dry Dock*, the only standard which Respondent failed to comply with, and of which complaint is made, is standard (c) which requires that "the picketing [be] limited to places reasonably close to the location of the situs."

Here, the *specific* situs of Pantel, the primary employer, was at the six buildings mentioned above, all being at least half to three-quarters of a mile distant from the picketing which the Union imposed at the approach to building 80 and of which complaint is made. Such a distance from the *situs* cannot be said to be a place "reasonably close to the location of the situs."

Assuming, *arguendo*, as indicated above, that the entire area of approximately 450 acres be considered to be Pantel's situs, my ultimate conclusion concerning the Union's violation of the Act would be no different. The only entrance ever used by Pantel was at point B and it may be assumed that picketing at that main public entrance, or any of the other main public entrances, was not proscribed. It was, however, undisputed that, other than employees engaged on building 80, no other employees ever used, or had occasion to use, the private dirt road approach at point D leading to building 80. J. E. Cavanagh, the Union's business agent who installed all the picket lines, admitted that he made no inquiry to ascertain whether Pantel was engaged on building 80.

Turning now to the *objective* of the Union's picketing, and there being no direct evidence thereof, I can only rationalize with respect thereto. Its objective was certainly not for the purpose of inducing or requiring any of the six contractors engaged on building 80 to cease doing business with Pantel, for none of them were then so engaged with Pantel. Indeed, there was no showing or contention that they ever did business with Pantel. In that state of the record, and all of these six contractors and Pantel having contracts with the State of New York, I can only conclude that the Union's objective was to force the six prime contractors engaged on building 80 to cease performance of their contract with the State of New York, i.e., cease doing business with the State of New York, and to force the State to cease doing business with Pantel, an objective which all of them "were powerless to effect."[6] I can conceive of no other objective, nor has any other objective, been established or suggested by the record. By reason of all the foregoing I conclude that Respondent Union by picketing at the entrance to building 80 it violated Section 8(b)(4)(i) and (ii) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The course of conduct chargeable to Respondent Union, set forth in section III, above, since it occurred in connection with the operations described in section I, above, had a close, intimate, and substantial relation to trade, traffic, and commerce among the several States,

[5] Section 8(b)(4), insofar as relevant, makes it an unfair labor practice for a labor organization or its agents:

> . . . (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to . . . perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is: . . . (B) forcing or requiring any person . . . to cease doing business with any other person . . . .

[6] *American Broiler Mfg. Assn.*, 154 NLRB 285, 290, enfd. in relevant part 366 F.2d 815, 822 (C.A. 8); *Local 5, United Assn. of Journeymen Plumbers [Arthur Venneri Co.] v. N.L.R.B.*, 321 F.2d 366, 371 (C.A.D.C.), cert. denied 375 U.S. 921; *Ohio Valley Carpenters District Council*, 144 NLRB 91, enfd. 339 F.2d 142 (C.A. 6).

and, absent correction, would tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the Union has engaged in unfair labor practices, I shall recommend that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act. In view of the Respondent's repeated violations of the Act, particularly with regard to 8(b)(4) violations,[7] it may reasonably be anticipated that Respondent will engage in similar unfair labor practices. I will therefore recommend that the Respondent Union cease and desist from engaging in such unfair labor practices in respect to any other person engaged in commerce or in an industry affecting commerce.

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. The Union is a labor organization within the meaning of Section 2(5) of the Act.
2. Dobson, Mulligan, Flood, Dierks, and Koehler are individual employers engaged in commerce or in an industry affecting commerce within the meaning of the Act.
3. By inducing and encouraging individuals employed by the employers named immediately above, and other employers, to engage in strikes or refusals in the course of their employment to perform services, an object thereof being to force the above-named employers, and others, to cease doing business with each other and the State of New York, the Union engaged in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(B) of the Act.
4. By the acts described above in paragraph 3 for the objects set forth above in said paragraph, the Union threatened, coerced, and restrained persons engaged in commerce and in an industry affecting commerce, and thereby engaged in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(B) of the Act.
5. 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 and conclusions of law, and upon the entire record in the case, I recommend that Respondent Local 25, International Brotherhood of Electrical Workers, AFL–CIO, its officers agents, and representatives, shall:

1. Cease and desist from:

(a) Inducing or encouraging any individual employed by Dobson, Mulligan, Flood, Dierks, and Koehler, or by any other person engaged in commerce, or in an industry affecting commerce, other than Pantel Contracting Corporation, to engage in a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, where an object thereof is to force or require the aforesaid employers and others, or the State of New York, to cease doing business with Pantel Contracting Corporation.

(b) Threatening, coercing, or restraining Dobson, Mulligan, Flood, Dierks, and Koehler, or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is to force or require the aforesaid employers and others, or the State of New York, to cease doing business with Pantel Contracting Corporation.

2. Take the following affirmative action which I find necessary to effectuate the policies of the Act.

(a) Post at its business office and meeting halls, copies of the attached notice marked "Appendix B."[8] Copies of said notice, on forms provided by the Regional Director for Region 29, after being duly signed by a representative of the Union, be posted by the Union 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 the Union to insure that said notices are not altered, defaced, or covered by any other material.

(b) Furnish to the Regional Director for Region 29 signed copies of said notice for posting by the five employers named above, if willing, in places where notices to employees are customarily posted. Copies of said notice, to be furnished by the Regional Director, shall, after being duly signed by Respondent, be forthwith returned to the Regional Director for disposition by him.

(c) Notify the Regional Director for Region 29, in writing, within 20 days from the receipt of this Decision, what steps have been taken to comply herewith.[9]

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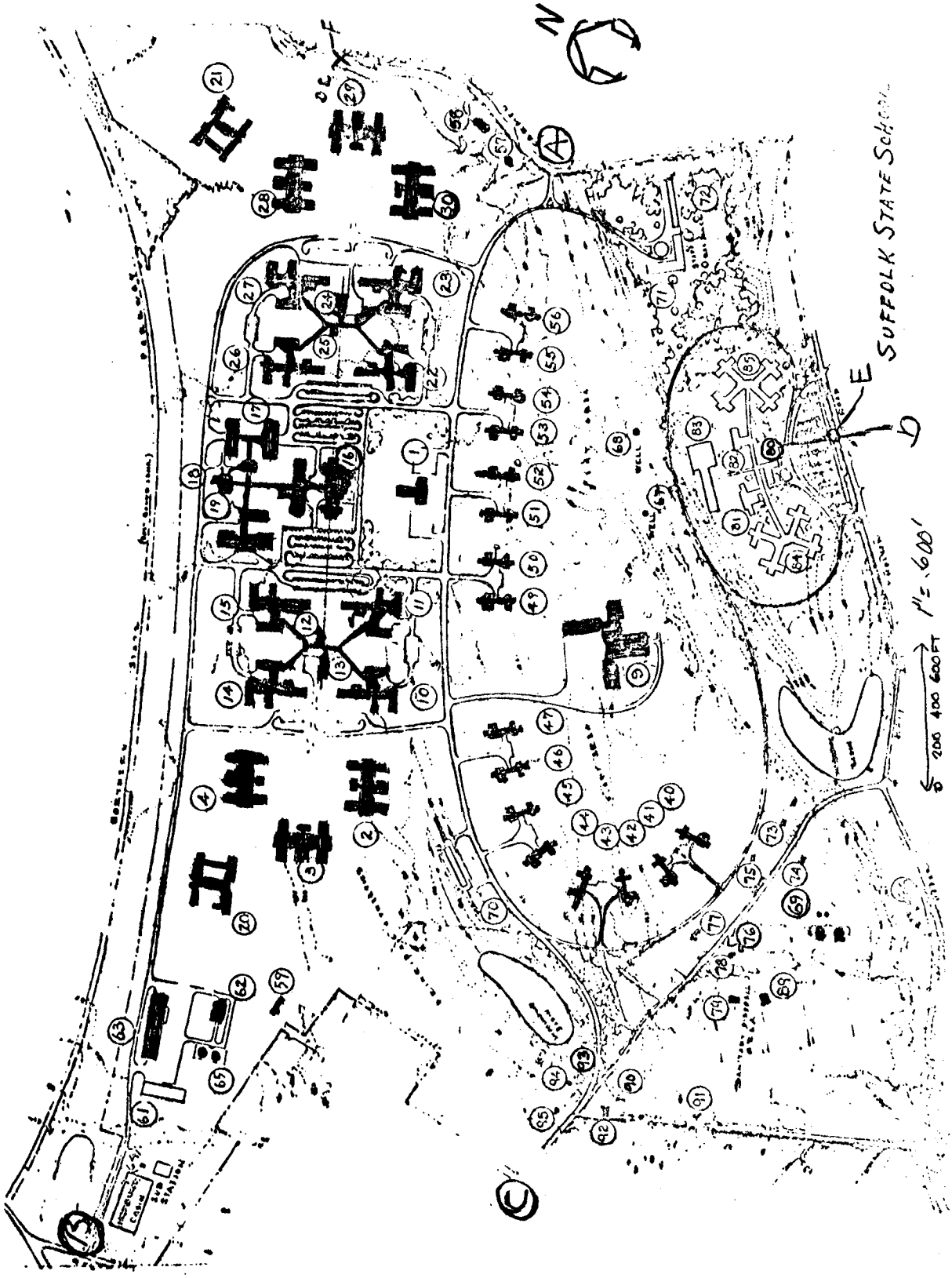
[7] See *Local 25, International Brotherhood of Electrical Workers, AFL–CIO,* [*A.C. Electric*], *148 NLRB 1560; Local 25, International Brotherhood of Electrical Workers, AFL–CIO* [*New York Telephone Company*], *162 NLRB 703; Local 25, I.B.E W* [*Emmett Electric Co.*], *157 NLRB 44, Local 25, I.B.E W.* [*Sarrow Suburban*], *157 NLRB 715*

[8] 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"

[9] 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 A



APPENDIX B

NOTICE TO ALL MEMBERS OF LOCAL 25, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL–CIO

Pursuant to the Recommended Order of a Trail 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 our members that:

WE WILL NOT induce or encourage any individual employed by Dobson Construction Company, Inc., Charles A. Mulligan, Inc., William J. Flood, Inc., Dierks Heating Company, F. W. Koehler & Sons, Inc., or any other person engaged in commerce or in an industry affecting commerce, except Pantel Contracting Corporation, to engage in a strike or refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, materials, articles, or commodities, or to perform any services where an object thereof is to force or require any of the aforesaid employers, or any other employer or person, to cease doing business with each other or with the State of New York.

WE WILL NOT threaten, coerce, or restrain any of the above-named employers or persons, or any other person engaged in commerce or in an industry affecting commerce, other than Pantel Contracting Corporation, where an object thereof is to force or require said employers or others to cease doing business with the State of New York.

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 have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 16 Court Street, 4th Floor Brooklyn, New York 11201, Telephone 596–5386.