

**General Truck Drivers and Helpers Union Local 467; International Brotherhood of Electrical Workers Local 477; and Carpenters Union Local 944 (J. B. Electric) and Jones and Jones, Inc., Independent Electrical Contractors Association of So. Calif., Inc. Case 31-CC-115**

May 21, 1968

### DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZAGORIA

On February 28, 1968, Trial Examiner Wallace E. Royster issued his Decision in the above-entitled proceeding, finding that Respondent Carpenters Union Local 944 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 they cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. He also found that the Respondents, General Truck Drivers and Helpers Union Local 467 and International Brotherhood of Electrical Workers Local 477, had not engaged in other unfair labor practices alleged in the complaint and recommended that such allegations be dismissed. Thereafter, the Respondent Carpenters Union Local 944 filed exceptions to the Trial Examiner's Decision and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and brief, and the entire record in 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 hereby adopts as its Order the Recommended Order of the Trial Examiner, and orders that Respondent, Carpenters Union Local 944, its officers, agents, and representatives, shall take the action set forth in the Trial Examiner's Recommended Order.

IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed insofar as it alleges violations of the Act not specifically found herein.

### TRIAL EXAMINER'S DECISION

#### STATEMENT OF THE CASE

WALLACE E. ROYSTER, Trial Examiner: This matter was tried before me in San Bernardino, California, on January 3, 1968. At issue is whether International Brotherhood of Electrical Workers Local 477, herein Local 477, General Truck Drivers and Helpers Union Local 467, herein Local 467, and Carpenters Union Local 944, herein Local 944, have induced and encouraged individuals employed by the Emory C. Jackson Company, Inc., herein Jackson, employed by Evans Plumbing Company, herein Evans, or employed by Pomona Ready-Mix, herein Pomona, to engage in strikes and refusals in the course of employment to use, manufacture, process, transport, or otherwise handle or work on goods, articles, materials, or commodities, or to perform services for their several employers and additionally have threatened, coerced, and restrained Jackson and Evans with objects (1) to force or require Evans and Pomona and other persons to cease doing business with Jackson in order to compel Jackson to cease doing business with J. B. Graham and Survilla L. Graham, a copartnership doing business under the trade name of J. B. Electric, and (2) to force or require Jackson to cease doing business with J. B. Electric. The acts and conduct of Local 477, Local 467, and Local 944, herein collectively called Respondents, are alleged to constitute unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(B) of the National Labor Relations Act, herein the Act.

Upon the basis of the entire record in the case, upon consideration of the briefs filed, and from my observation of the witnesses, I make the following:

#### FINDINGS OF FACT

##### I. THE BUSINESS ENTITIES INVOLVED

J. B. Electric is engaged in the electrical contracting business in the building and construction industry. A commerce stipulation entered into at the hearing permits a finding which I now make that in 1967 J. B. Electric purchased materials and supplies valued at more than \$50,000 from suppliers located within the State of California which suppliers received said materials and supplies directly from sources located outside the State of California.

Upon the basis of the same stipulation I find that Jackson, a California corporation, engaged as a general contractor in the building and construction

industry, in 1966 purchased for use in its operations materials and supplies valued in excess of \$50,000 which came to Jackson indirectly from States other than the State of California.

Similarly, I find that Evans, a sole proprietorship engaged in the building and construction industry, in 1967 in the course of its business used materials and supplies valued at least \$2,481 which came to Evans indirectly from points outside the State of California.

Pomona is an employer engaged in the building and construction industry and at all times material has been a supplier of ready-mix cement to Jackson.

## II. THE LABOR ORGANIZATIONS INVOLVED

Local 477, Local 467, and Local 944 are labor organizations within the meaning of Section 2(5) of the Act.

Local 477 has a labor dispute with J. B. Electric but at no time material herein has such dispute existed between Local 477 and Jackson or Evans.

## III. THE UNFAIR LABOR PRACTICES

In 1967, Jackson undertook as general contractor to construct a building in Bloomington, California, for the Bank of America. Jackson subcontracted the electrical installation work to J. B. Electric. Since sometime in 1964, J. B. Electric has had no contract with Local 477.

In the afternoon of April 17, 1967, Bill Dowse and Charley Geir,<sup>1</sup> both then representatives of Local 477, visited Jackson's office and spoke with Bob Lawrence, Jackson's vice president. Dowse said, according to the uncontradicted and credited testimony of Lawrence, that because Jackson had cooperated with Local 477 in the past he wished to alert Jackson to the probability of "trouble" on the Bank of America construction because of the electricians. Dowse declined Lawrence's request to define "trouble," saying that there were laws which made this impossible. Lawrence asked if the electricians on the job were union members. Dowse answered that he did not know but that their employer was not paying "the wage rates and conditions." Lawrence asked if he could avoid difficulty by changing the electrical subcontractor. Dowse answered "If he's paying prevailing wage rates, I suppose that would straighten it out."

On April 19, 2 days after this visit, two pickets appeared at the Bank of America construction site carrying signs reading "J. B. Electric—Not Paying Prevailing Wages and Conditions." The signs identified Local 477 as the picketing union. The employees of J. B. Electric had not yet arrived at the jobsite although they were scheduled to do so a

few minutes after the picket appeared. Five carpenters, members of Local 944, and two other employees, all on Jackson's payroll, noticed the picketing and stopped work. The carpenters discussed among themselves what action if any, they should take. One of them, Ray Bianchi, was chosen to telephone Local 944 for advice. Bianchi did so and talked to James Ferris, a business agent of Local 944. He told Ferris of the appearance of the pickets. Ferris said that he had been to a meeting of the Building Trades Council on the previous evening and that the picketing was legal. Bianchi then asked Ferris what he and the other carpenters should do. Ferris answered that he could not advise Bianchi but that the Carpenters had a constitution to govern them. In his testimony Bianchi, after reciting the content of this conversation, said "That was all I needed, and I knew we had to go by the constitution; and we all got together—the five carpenters, I say, did; and we decided amongst ourselves that we would honor the picket line."

On April 18, a day before the picketing began, Local 467 wrote to Pomona:

PLEASE POST ON BULLETIN BOARD

A PICKET LINE EXISTS

AT

BANK BUILDING ON OLD VALLEY BLVD.

ONE BLOCK WEST OF CEDAR BLVD.

AT

BLOOMINGTON, CALIFORNIA

Although deliveries of ready-mix concrete were scheduled to be made on April 19 and perhaps on following days, no such deliveries took place while the picketing continued. On April 24, Jackson informed Local 477 that J. B. Electric would leave the job and that the electrical work would be completed by another contractor, Cross-State Electric. Representatives of Local 477 told Jackson that Cross-State Electric would be acceptable because it was paying prevailing wages and that if it finished the job there probably would be no picketing. Cross-State Electric did complete the electrical work. There was no picketing after it took over the job.

During the period of the picketing, the employees of Evans did not perform any work at the construction site. There is hearsay evidence that they were deterred from doing so by the presence of pickets. There is no evidence of any communication of any nature coming from any of the Respon-

<sup>1</sup> I take the spelling of these names from the brief filed by counsel for Local 477. Phonetic equivalents appear in the transcript.

dent Unions to Evans' employees except through the medium of the picket signs and the accompanying patrol.

### CONCLUSIONS

There is no contention to the contrary and the evidence makes clear that at all times the picketing by Local 477 conformed to *Moore Dry Dock* standards.<sup>2</sup> It is thus not inferable from the picketing alone that Local 477 was seeking to enmesh neutral employers in its dispute with J. B. Electric. The warning given Jackson by representatives of Local 477 on April 17, that there would be "trouble on the job because J. B. Electric was not meeting acceptable wage rates and conditions" does not in my opinion evidence an intention unlawfully to bring about action from employees of other employers on the project to aid Local 477 in its dispute. This is the sum of the evidence to support the complaint against Local 477. The picketing did, however, constitute a protest on the part of Local 477 against the circumstance that an employer (J. B. Electric) was performing electrical work at the construction site without meeting the wages and "conditions" that Local 477 thought should be met. Seemingly in the belief that it would be futile to attempt to persuade J. B. Electric to improve the situation of its employees by any direct approach to that employer, Local 477 sought to bring about the desired result by publicizing what it considered to be objectionable wage and working condition policies. The picketing was conducted in the hope that pressures would thus be engendered to force a change in the wages and working conditions maintained by J. B. Electric. That these pressures might be manifested by refusals to work at the site on the part of employees of neutral employers, often the consequence of primary picketing, was surely to be expected. That a further consequence would be the cancellation of the subcontract to J. B. Electric may have been thought to be likely. However, there was nothing about the picketing itself and there was no action taken by Local 477 otherwise to make the picketing unlawful. This was primary picketing. I find that it did not violate Section 8(b)(4)(i)(ii)(B) of the Act.<sup>3</sup>

The reaction of Bianchi and the other carpenters on the job to the appearance of the picketing was that they should ask their Union for advice. What these individuals would have done had James Ferris

told them without more that the decision was wholly theirs remains a speculation for he did not stop there. He told Bianchi that the picketing was "legal" and that Bianchi and the other carpenters had a constitution to govern them. I think it clear and I find that this reminder that a member of Local 944 could be fined, suspended, or expelled<sup>4</sup> for working behind a picket line was a consideration in reaching a decision about what action to take. It may be that the carpenters would have walked out anyway without any reminder from Ferris about the legality of the picketing and the Carpenters' constitution but he provided some inducement and encouragement to these employees to leave the job as they did. The fact that the picketing was lawful did not permit Local 944 to induce and encourage its members to stop work at the construction site. Clearly, Local 944 was coming to the aid of Local 477. It had no dispute with Jackson and it knew that the electrical workers were not Jackson's employees, yet it was obviously trying to get Jackson to do something and using its control over Jackson's employees to accomplish its object. The wages and working conditions of the employees of J. B. Electric were not within Jackson's control but the selection of an electrical subcontractor was. I think that the conduct of Local 944 in depriving Jackson of his carpenter employees in the context of the circumstances described could have been only for the object of forcing and requiring Jackson to take the subcontract away from J. B. Electric and to award it to an employer who would satisfy the requirements of Local 477.

I find that by inducing and encouraging the carpenter employees of Jackson to leave their work and by thus coercing and restraining Jackson with an object of forcing or requiring Jackson to cease doing business with J. B. Electric or with any other subcontract who would not pay wages and maintain conditions satisfactory to Local 477, Local 944 has engaged in unfair labor practices within the meaning of Section 8(b)(4)(i)(ii)(B) of the Act.

There is no evidence that the bulletin mailed to Pomona by Local 467 was posted or that it otherwise was brought to the attention of employees of Pomona. There is no record basis to support a finding that Local 467 induced and encouraged individuals or restrained and coerced Pomona to do anything for any object. There is no evidence concerning any action taken by any of the Respondent Unions with respect to Evans or its employees.

<sup>2</sup> In *Sailors' Union of the Pacific, AFL (Moore Dry Dock Company)*, 92 NLRB 547, 549, the Board set forth the following criteria to serve as a guide as to whether the picketing of a primary employer at a common situs is violative of Section 8(b)(4)(B) of the Act (1) At the time of the picketing the primary employer is engaged in its normal business at the situs, (2) the picketing discloses clearly that the dispute is with the primary employer; (3) the picketing is limited to places reasonably close to the location of the situs, and (4) the picketing is strictly limited to times when the

situs of dispute is located on the secondary employer's premises

<sup>1</sup> *International Brotherhood of Electrical Workers, Local 441, et al (Suburban Development Co., O'Brien Electric Co.)*, 158 NLRB 549

<sup>4</sup> The Carpenter's constitution permits such penalties to be visited upon a member who works "behind a picket line duly authorized by any subordinate body of the United Brotherhood" It would have been reasonable for Bianchi to conclude that a "legal" picket line was one "duly authorized"

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent Local 944 set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. THE REMEDY

Having found that Respondent Local 944 has engaged in unfair labor practices, it will be recommended that it cease and desist therefrom and that it take certain affirmative action designed 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. Local 477, Local 467, and Local 944 are labor organizations within the meaning of Section 2(5) of the Act.

2. J. B. Electric and Emory C. Jackson Company, Inc., are employers engaged in commerce or in an industry affecting commerce within the meaning of Sections 2(6) and (7) and 8(b)(4) of the Act.

3. By inducing and encouraging employees of Emory C. Jackson Company, Inc., to engage in a strike or refusal in the course of their employment to perform services, and by restraining and coercing Emory C. Jackson Company, Inc., with the object of forcing and requiring Jackson to cease doing business with J. B. Electric, Local 944 has engaged in unfair labor practices within the meaning of Section 8(b)(4)(i)(ii)(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.

5. The evidence does not establish a violation of the Act on the part of Local 467 or of Local 477.

#### 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 Carpenters Union Local 944, its officers, agents, and representatives shall:

1. Cease and desist from engaging in, inducing or encouraging individuals employed by Emory C. Jackson Company, Inc., or any other person engaged in commerce or in an industry affecting commerce, to engage in a strike or a refusal in the course of their employment to use, manufacture,

process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services and from coercing or restraining the aforesaid Employer or any other person where in either case an object thereof is to force or require Emory C. Jackson Company, Inc., to cease doing business with J. B. Electric.

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

(a) Post at its business offices and meeting halls copies of the attached notice marked "Appendix."<sup>5</sup> Copies of said notice, on forms provided by the Regional Director for Region 31, after being duly signed by a Carpenters Union Local 944 representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Local 944 to insure that said notices are not altered, defaced, or covered by any other material.

(b) Sign and mail copies of said notice to the Regional Director for Region 31 for posting by Emory C. Jackson Company, Inc., at all locations where notices to its employees are customarily posted.

(c) Notify the Regional Director for Region 31, in writing, within 20 days from the receipt of this Decision, what steps have been taken to comply herewith.<sup>6</sup>

<sup>5</sup> 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."

<sup>6</sup> 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 AND TO ALL EMPLOYEES

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 engage in or induce or encourage individuals employed by Emory C. Jackson Company, Inc., or any other employer to engage in a strike or refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services; or coerce or restrain the above-named Employer or other persons where an object in either case is to

force or require Emory C. Jackson Company, Inc., to cease doing business with J. B. Electric.

CARPENTERS UNION  
LOCAL 944  
(Labor Organization)

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.

Persons having any questions concerning this notice or compliance with its provisions may communicate directly with the Board's Regional Office, 215 West Seventh Street, Bartlett Building, Los Angeles, California 90014, Telephone 688-5850.

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)