

Local 2669, affiliated with Suffolk County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO and T & D Roofing Co., Inc.

Suffolk County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO and T & D Roofing Co., Inc.
Case 29-CC-125 and Case 29-CC-137

December 10, 1968

DECISION AND ORDER

BY CHAIRMAN McCULLOCH AND MEMBERS
BROWN AND ZAGORIA

Upon charges duly filed on December 26, 1967, and March 29, 1968, by T & D Roofing Co., Inc., hereinafter referred to as T & D, the General Counsel of the National Labor Relations Board, by the Regional Director of Region 29, issued a consolidated complaint on April 12, 1968, against Local 2669, affiliated with Suffolk County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, and Suffolk District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, alleging that the Respondents had engaged in and were engaging in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(B) of the National Labor Relations Act, as amended, by inducing and encouraging employees of Southampton College of Long Island University (hereinafter referred to as the College), to refuse to perform services, and by threatening, coercing, and restraining the College, with the object in both instances of forcing or requiring the College to cease doing business with T & D and forcing T & D to recognize Local 2669. On April 23, 1968, the Respondents filed an answer denying the commission of any unfair labor practices.

On various dates between June 14 and 25, 1968, the parties executed a stipulation by which they waived a hearing before a Trial Examiner and the issuance of a Trial Examiner's Decision and Recommended Order and agreed to submit the case to the Board for findings of fact, conclusions of law, and an order, based upon a record consisting of the charges,

the complaint, the answer, the stipulation, and the transcript of testimony, and all exhibits introduced into evidence in an injunction proceeding in the United States District Court, Eastern District of New York, in *Kaynard v. Local 2669, et al.*, 57 LC ¶ 12,698, brought pursuant to Section 10(l) of the Act.

On July 10, 1968, the Board approved the stipulation of the parties and ordered the case transferred to the Board, granting permission and time for the filing of briefs. Thereafter, the General Counsel, Charging Party, and Respondents filed briefs.

Pursuant to 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.

Upon the basis of the stipulation, the briefs, and the entire record in this case, the Board makes the following:

FINDINGS OF FACT

I JURISDICTION

T & D is a New York corporation with its principal office and place of business at Southampton, New York, where it functions as a roofing contractor on commercial buildings and residences. In the operation of its business during the past year, T & D made approximately \$16,000 indirect out-of-State purchases of materials in connection with all jobs including the Southampton repair project.¹

The College, a private educational institution in Southampton, New York, is a division of Long Island University. During the past year purchases were made for the College in the amount of \$670,000. Approximately \$90,000 was for furniture and \$50,000 for books, chemicals, and biological supplies purchased directly or indirectly from sources outside the State.

In cases involving allegations of unlawful secondary activity by a union, where, as here, the operations of the primary Employer do not meet the Board's jurisdictional standards, "the Board will take into consideration not only the operations of the primary employer but also the entire operations of the secondary employers at the location affected by the alleged conduct."² The out-of-State purchases of T &

¹ It is alleged in the Complaint, and denied in Respondents' Answer, that T & D and Terry and Dufrane Co., are affiliated businesses under common control and direction and constitute a single integrated business enterprise. Because the combined operations of T & D and Dufrane, as the primary employer, are insufficient to meet the Board's jurisdictional standards, we do not pass on and need not consider the issue raised in this allegation.

² *Local 719, International Brotherhood of Electrical Workers (Amoskeag Construction Company)*, 147 NLRB 166. Respondents'

contention that the commerce data of a primary employer and a secondary employer may not be combined under the Board's jurisdictional rule for secondary boycott cases is contrary to the precedent here cited and without merit. See also *Commisssion House Drivers, etc (Bondi's Mother Hubbard Market)*, 118 NLRB 130, and cases cited therein.

D and the College combined, representing direct and indirect inflow in excess of \$50,000, meet the nonretail standard set forth in *Siemons Mailing Service, Inc.*,³ and are sufficient to warrant assertion of jurisdiction over the Respondents' alleged unlawful activity.

Respondents contend, however, that the purchases of the College can not be combined with those of T & D to assert jurisdiction herein because the Board has declined to assert jurisdiction over educational institutions and, since such institutions are noncommercial in nature, they may not qualify as a "person engaged in commerce or an industry affecting commerce" within the meaning of Section 8(b)(4)(i) and (ii)(B) of the Act. We find no merit in these contentions.

The Board's declination of jurisdiction over the employer-employee relations of an enterprise does not prevent the Board from taking into account the operations of that endeavor in determining jurisdiction for purposes proscribed by Section 8(b)(4) of the Act.⁴ In asserting jurisdiction in cases involving secondary activity, for the purpose of determining, remedying, and preventing specific unfair labor practices, the significant factor considered is the scope and impact of the Union's conduct. Therefore, the Board does not consider all businesses with which the Respondent Union deals, but only those which are victims of the forbidden pattern of conduct complained of. Thus, where a pattern of conduct affects enterprises both within and without the jurisdictional standards⁵ or, indeed, outside the Act's definition of employer,⁶ all are a part of the impact of the Union's conduct and their operations are relevant in determining the measure of such impact for jurisdictional purposes.⁷ This approach is consistent with recognized "congressional policies of uniform control over labor abuses and protection of the parties injured by such practices."⁸ In this respect, an educational institution is no less a statutory "person" than and in no different position from that of an enterprise whose operations do not satisfy the Board's jurisdictional standards or an employer who is exempt from the Act's regulation of its employer-employee relations but whose operations are affected by the dispute. The fact is that the operations of the College do affect commerce as do those of political subdivisions which likewise do not exist for commercial purposes but indisputably are

"persons" within the meaning of Section 8(b)(4) of the Act.⁹

As the purchases of the enterprises affected by the immediate dispute have a substantial impact upon the shipment of goods and supplies in interstate commerce and upon industries affecting commerce within the meaning of Section 8(b)(4) and Section 2(6) and (7), we find that it will effectuate the policies of the Act to assert jurisdiction herein.

II THE LABOR ORGANIZATION INVOLVED

Local 2669, affiliated with Suffolk County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, and Suffolk County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, are labor organizations within the meaning of Section 2(5) of the Act.

III THE UNFAIR LABOR PRACTICES

A. Facts

In October 1967, T & D, whose employees are not represented by a labor organization, obtained a contract from the College to repair roofs on two campus buildings. The College employs its own maintenance staff, which is represented by Respondent Local 2669. This staff does not engage in extensive repairs. Rather, the College contracts out difficult repair work. In the past its subcontracts have been to union contractors, and have been completed without incident.

On November 3, 1967, before T & D began work, Keefer, business agent of the Suffolk County District Council of Carpenters, told the College's Superintendent of Buildings & Grounds, Batchelor, that he (Keefer) did not think Batchelor should use a nonunion contractor and that the District Council would be advised of the situation.

On November 20, still before T & D began work, Keefer again visited Batchelor at the campus and told him that if T & D began work, the District Council would place a picket line around the campus and that this line would be honored by utility workers, telephone men, truckdrivers, and other workers.

³ 122 NLRB 81, 85.

⁴ *Jemcon Broadcasting Company*, 135 NLRB 362, 367.

⁵ *Commission House Drivers (Bondi's Mother Hubbard Market)*, *supra*.

⁶ *Great Lakes District, Seafarers' International Union (Upper Lakes Shipping, Ltd.)*, 139 NLRB 216. See *Local 25, Teamsters v. NY, NH & HRR Co.*, 350 U.S. 155.

⁷ *New York Typographical Union No. 6 (Garvin Press Corporation)*, 141 NLRB 1209, 1212, fn. 2 (political subdivision), *District Lodge No*

123, IAM (Pacific Crane and Rigging Co.), 167 NLRB No. 136, fn. 3 (political subdivision), *Local 895, IBT (Eastern New York Construction Employers, Inc.)*, 153 NLRB 993 (nonprofit hospital), *Local 25, International Brotherhood of Electrical Workers (Sarrow-Suburban Electrical Co., Inc.)*, 152 NLRB 531, 532 (proprietary hospital).

⁸ *Plumbers, Steamfitters, etc., Local 298 v. County of Door*, 359 U.S. 354, 358.

⁹ *Ibid*. Also cases cited in fn. 7, *supra*.

T & D worked at the College from December 19, 1967, until December 22, 1967, without incident. On December 26, there were pickets at each of the four entrances to the College¹⁰ from 8 15 a.m. until at least 3 p.m. with signs stating:

NOTICE
TO THE PUBLIC
The Carpenters Employed By
T & D Roofing Co.
Do not receive Wages and Working
Conditions enjoyed by Carpenters
Covered by Agreements of the
SUFFOLK COUNTY
DISTRICT COUNCIL OF
CARPENTERS
AFL-CIO

The T & D employees left work as soon as the picket signs were erected and did not again report for work at the College until May 16, 1968, after the District Court granted an injunction against Respondents. Two of the College maintenance employees reported for work on December 26, but left. Although they were all scheduled, the others did not appear to work that day, but instead merely reported to an off-campus office.

On December 27, the pickets returned to the four campus entrances. At about 11 a.m. Babula, shop steward of Local 2669, told the College Assistant Superintendent of Buildings & Grounds, Mason, that the pickets had been withdrawn and that they would not be returned unless T & D returned to the campus to complete its work. At 12:30 the College maintenance crew returned.

In January 1968, Babcock, Secretary-Treasurer of the District Council, told T & D's Vice President Zaleski that if T & D would not withdraw from the College contract, the Union would place another picket line on the jobsite. In April, Babcock reiterated the threat.

On April 16, 1968, the Regional Director filed a petition for a temporary injunction in the U.S. District Court.¹¹ The hearing was held on May 2, 1968, and on May 8, the Court issued an order granting the temporary injunction against further picketing by Respondents in connection with the dispute.

B *Contentions of the Parties*

Respondents contend that the picketing complied with the standards of *Moore Dry Dock*,¹² and therefore was lawful. The General Counsel argues that *Moore Dry Dock* standards were not met since the picketing took place at all four gates to the College despite the fact that only one entrance, set aside as the truck entrance, was used by T & D during the course of its work and since the picketing continued for 1½ days after T & D's men left the campus and, in any event, the statements made by Respondents' agents showed that Respondents' objective was to force the College to cease doing business with T & D because of its nonunion status. Further the General Counsel points out that Respondents cannot claim they were trying to preserve unit work, since the College maintenance staff did not perform such specialized work and, in the past, the College had subcontracted such work without protest from Respondents.

C. *Conclusion*

It is clear that Respondents picketing did not comply fully with the *Moore Dry Dock* standards,¹³ since their picketing was conducted when T & D employees were not on the premises. In any event, such picketing does not stand in isolation, but must be viewed with the Respondents' overall pattern of conduct in determining if the Respondents' true objective is the enmeshment of neutral employers and employees in the primary dispute.

It is clear from the record that Respondents had a primary dispute with T & D because that Company employed persons who were not union members. Respondents had not objected to the College's contracting out work in the past, when it had been to companies whose employees were represented by labor organizations. It is clear, moreover, that Respondents' object in picketing the College was to cause the College to cancel its contract with T & D. Thus, on November 3, Keefer told Maintenance Superintendent Batchelor that Batchelor should not use a nonunion contractor and on November 20, told him that if he did so Respondents would place around

¹⁰ Of the four entrances to the campus, one marked "truck entrance" was normally used for deliveries and was the only one used by T & D employees in the performance of work. However, they used all four entrances to the College to come on and leave the campus. The College did not post a sign at the truck entrance reserving it for T & D employees only.

¹¹ *Kaynard v. Local 2669, et al.*, 57 LC ¶ 12, 698.

¹² *Sailors' Union of the Pacific, AFL (Moore Dry Dock Company)*, 92 NLRB 547, 549.

¹³ These requirements are (1) that the picketing is strictly limited to the times when the situs of the dispute is located on the secondary employer's premises, (2) at the time of the picketing that the primary employer is engaged in its normal business at the situs, (3) that the picketing is limited to places close to the location of the situs, and (4) that the picketing discloses clearly that the dispute is with the primary employer.

the campus a picket line which would be honored by employees working at the College and by others servicing the College. On December 27, Shop Steward Babula told another College official that the picket line would not be returned unless T & D returned to complete its work, and in January and April 1968, Secretary-Treasurer Babcock threatened to resume the picketing if T & D returned to the job.

From an examination of this entire course of conduct, we are convinced, and accordingly find, that the picketing engaged in by Respondents was deliberately designed to enmesh the College in its dispute with T & D, with an object of forcing the College to cease doing business with T & D. For this reason, we conclude that the conduct of Respondents was for an unlawful secondary purpose in violation of Section 8(b)(4)(i) and (ii)(B) of the Act.

In addition, we view Keefer's statement to Batchelor on November 20 and Babula's statement to Mason on December 27, both threatening the College with picketing of its campus if T & D proceeded with its work, as threats against a secondary employer without restriction or limitation, and therefore a violation of Section 8(b)(4)(ii)(B).¹⁴

IV. THE EFFECTS OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondents set forth above, occurring in connection with the operations of T & D and the College, have a close, intimate, and substantial relation to trade, traffic, and commerce, among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V THE REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, we shall order that they cease and desist therefrom and take certain affirmative action as provided for in the Order hereinafter, to remedy and remove the effects of the unfair labor practices and to effectuate the purpose of the Act.

CONCLUSIONS OF LAW

1. T & D Roofing Co., Inc. and Southampton College of Long Island University are persons engaged in commerce or in an industry affecting commerce within the meaning of Section 2(6) and (7) and Section 8(b)(4) of the Act.

2. Respondents, Local 2669, affiliated with Suffolk County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, and Suffolk County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, are labor organizations within the meaning of Section 2(5) of the Act.

3. By threatening the College with a picket line if T & D attempted to perform roof work on the College buildings, in furtherance of a dispute with T & D Roofing Co., Inc., Respondents have engaged in unfair labor practices within the meaning of Section 8(b)(4)(ii)(B) and Section 2(6) and (7) of the Act.

4. By engaging in picketing on December 26 and 27, 1967, inducing and encouraging individuals employed by the College to engage in a strike and a refusal in the course of their employment to perform services, with an object of forcing the College to cease doing business with T & D Roofing Co., Inc., Respondents have engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(4)(i) and (ii)(B) and Section 2(6) and (7) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondents, Local 2669, affiliated with Suffolk County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, and Suffolk County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, their officers, agents, and representatives, shall

1. Cease and desist from:

(a) Engaging in or inducing or encouraging employees of Southampton College of Long Island University, or any other person engaged in commerce or in an industry affecting commerce, 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 where an object thereof is to force or require Southampton College of Long Island University, or any other person, to cease doing business with T & D Roofing Co., Inc., under circumstances prohibited by Section 8(b)(4)(i) and (ii)(b) of the Act.

¹⁴ *Sheet Metal Workers International Association (S.M. Kisner and Sons)*, 131 NLRB 1196, 1202, 1203, *General Drivers, Chauffeurs, and*

Helpers, Local Union No. 886 (The Stephens Company), 133 NLRB 1393, 1395, 1396 (the first letter)

(b) Threatening, coercing, and restraining Southampton College of Long Island University, or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is to force Southampton College of Long Island University, or any other person, to cease doing business with T & D Roofing Co., Inc., under circumstances prohibited by Section 8(b)(4)(ii)(B) of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Post at their business offices and meeting halls, in Southampton, Long Island, copies of the attached Notice marked "Appendix."¹⁵ Copies of said Notice, on forms provided by the Regional Director for Region 29, shall, after being duly signed by authorized representatives of Respondents, be posted by Respondents immediately upon receipt thereof, and be maintained by them for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondents to insure that said Notices are not altered, defaced, or covered by any other material

(b) Sign and mail to the Regional Director for Region 29, sufficient copies of said Notice, to be furnished by him, for posting by T & D Roofing Co., Inc., and Southampton College of Long Island University, if willing.

(c) Notify the said Regional Director, in writing, within 10 days from the date of this Order, what steps have been taken to comply herewith.

APPENDIX

NOTICE TO ALL MEMBERS OF LOCAL 2669, AFFILIATED WITH SUFFOLK COUNTY DISTRICT COUNCIL OF CARPENTERS, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO AND SUFFOLK COUNTY DISTRICT COUNCIL OF CARPENTERS, UNITED

¹⁵ In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "a

BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO

Pursuant to the Decision and Order 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, in any manner prohibited by Section 8(b)(4)(i) and (ii)(B) of the Act, (1) engage in, or induce, or encourage employees of Southampton College of Long Island University, or any other person engaged in commerce or in an industry affecting commerce, to engage in a strike or refusal in the course of their employment to perform any services for their employers; or (2) threaten, coerce, or restrain any of the above-named persons or any other person engaged in commerce or any industry affecting commerce where in either case an object thereof is to force or require Southampton College of Long Island University, or any other person to cease doing business with T & D Roofing Co. Inc.

LOCAL 2669, AFFILIATED WITH
SUFFOLK COUNTY DISTRICT
COUNCIL OF CARPENTERS,
UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS
OF AMERICA, 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 212-596-3535.

Decision and Order" the words "a Decree of the United States Court of Appeals Enforcing an Order."