

**Allied Industrial Workers of America, Local 681, AFL-CIO and Smith Engineering Works (Division of Barber-Greene Company).** Cases 30-CB-216 and 30-CC-85

February 10, 1969

## DECISION AND ORDER

BY CHAIRMAN McCULLOCH AND MEMBERS  
BROWN AND JENKINS

On October 11, 1968, Trial Examiner William Seagle issued his Decision in the above-entitled proceeding, finding that 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, only the General Counsel filed exceptions to the Trial Examiner's Decision.<sup>1</sup>

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 these cases 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 the entire record in these cases, and hereby adopts the findings,<sup>2</sup> conclusions, and recommendations of the Trial Examiner, as herein modified.

### 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, as modified below, and orders that Respondent, Allied Industrial Workers of America, Local 681, AFL-CIO, Milwaukee, Wisconsin, its officers, agents, and representatives, shall take the action set forth in the Trial Examiner's Recommended Order,

<sup>1</sup>After issuance of the Trial Examiner's Decision, the Charging Party requested that the unfair labor practice charges in these cases be withdrawn. Respondent, supporting the Charging Party's request, asserts that the parties have executed a collective-bargaining agreement and, that in connection therewith, they had agreed to withdraw pending unfair labor practice charges. It also asserts that the unfair labor practices found herein occurred at the beginning of the strike and that since there is no evidence of recurrence, the Charging Party's request for withdrawal should be granted. General Counsel opposes granting the request to withdraw the charges contending that the violations found herein were "of serious and continuing nature," and that the execution of a collective-bargaining agreement by the parties neither dissipates the effect of the unfair labor practices nor obviates the need for a remedial order. Upon the entire record, including the General Counsel's opposition to the withdrawal request, that request is hereby denied.

<sup>2</sup>In the absence of exceptions by Respondent, we adopt *pro forma* the Trial Examiner's findings that Respondent violated Section 8(b)(4)(i)(B), 8(b)(4)(ii)(B), and 8(b)(i)(A) of the act.

as herein modified:

1. Delete paragraph 2(b) of the Trial Examiner's Recommended Order and substitute the following therefor:

"(b) Sign and mail to the Regional Director for Region 30 sufficient copies of the said notice to be furnished by him, for posting by Smith Engineering Works (Division of Barber-Greene Company), Lupinski, Inc., Paul J. Gruneau Company, or any of their subcontractors, if willing."

2. Delete the heading of the Trial Examiner's notice attached to the Trial Examiner's Decision and substitute the following therefor:

TO ALL MEMBERS OF ALLIED INDUSTRIAL WORKERS OF AMERICA, LOCAL 681, AFL-CIO AND ALL EMPLOYEES OF SMITH ENGINEERING WORKS (DIVISION OF BARBER-GREENE COMPANY), LUPINSKI, INC., PAUL J. GRUNEAU, AND THEIR SUBCONTRACTORS.

### TRIAL EXAMINER'S DECISION

#### STATEMENT OF THE CASE

WILLIAM SEAGLE, Trial Examiner. Upon a charge filed in each case by Smith Engineering Works (hereinafter referred to as Smith) on July 5, 1968; a complaint issued by the Regional Director of Region 30 of the Board on July 31, 1968, in which it was alleged that the Respondent had violated Section 8(b)(4)(i), (ii)(B) and Section 8(b)(1)(A) of the Act, and the answer of the respondent denying the commission of any unfair labor practices, I, the duly designated Trial Examiner, heard this case at Milwaukee, Wisconsin, on August 26 and 27, 1968.

Subsequent to the hearing counsel for the General Counsel and for the respondent filed briefs with the Trial Examiner.

Upon the record so made and in view of my observation of the demeanor of the witnesses, I hereby make the following findings of fact:

#### I. THE RESPONDENTS

Allied Industrial Workers of America, Local 681, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act

#### II. THE EMPLOYERS INVOLVED

Smith is a Wisconsin corporation which maintains its offices and plant at 532 East Capitol Drive, which is at the corner of North Holton Street, Milwaukee, Wisconsin. Smith is engaged in the manufacture of aggregate machinery, consisting of mining, pit and quarry equipment.

During the past calendar year, which is a representative period, Smith sold and shipped in interstate commerce, i.e., to points outside the State of Wisconsin, products valued in excess of \$50,000.

Lupinski, Inc., and Paul J. Gruneau Company (hereinafter called Lupinski and Gruneau, respectively), are engaged in Milwaukee, Wisconsin, as general contractors in the building and construction industry.

It does not appear whether Lupinski and Gruneau are engaged in commerce or whether their activities affect commerce, but it is apparent that the operations of Smith

affect commerce, and meet the Board's jurisdictional standards, and I so find.

### III. THE UNFAIR LABOR PRACTICES

#### A. *Factual Findings*

There are two basic issues in the present proceeding. The first is whether the union violated Section 8(b)(4)(i) and (ii)(B) of the Act by picketing a gate at a construction site reserved by Smith for contractors and subcontractors with whom the union had no dispute. The second is whether the union also violated Section 8(b)(i)(A) of the Act by various acts of restraint or coercion in the course of its picketing.

The Smith plant, which occupies an area of approximately 7 acres, is surrounded by a wire mesh fence approximately 8 feet in height that is surmounted by three strands of barbed wire. The plant measures approximately 855 feet on North Holton Street, and approximately 390 feet on East Capitol Drive. Access to the plant is obtained through four gates. Gate 1, which gives the office employees access to the front parking lot, and is known, therefore, as the parking lot gate, is located on East Capitol Drive.<sup>1</sup> Gate 2, the first gate on North Holton Street, is adjacent to the plant's lumber shed, and is known as the lumber receiving gate, since it is used for unloading lumber trucks. Gate 3, the next gate to the north, is the main gate of the plant, and is used by trucks making deliveries of material to the plant, and by employees who drive to work, to gain access to the parking area.<sup>2</sup> Gate 4, the next gate, approximately 100 feet to the north of Gate 3, is denominated the contractors' gate (it will be referred to hereinafter as the reserved gate). It was established in 1964 or 1965 when an addition to the plant was being constructed but it was subsequently closed and padlocked.

In May 1968, work began on a capital improvements program that was to cost approximately \$500,000. It included four projects that consisted either of new structures or improvements in existing structures of the plant. These four projects were (1) the construction of a yard warehouse, (2) offices for the foremen of the fabricating division, (3) the construction of an erection floor area within the main building, and (4) the replacement of the existing heating system by a system of radiant heat, but this also involved, apparently, the demolition of the heating plant building, part of the area of which was to be used for the erection floor addition.

Lupinski was the general contractor for the construction of the yard warehouse and the offices for the foremen of the fabricating division. Smith was the general contractor for the erection floor project and for the conversion of the heating system but it had sublet the contract to Gruneau. Lupinski and Gruneau in turn employed a considerable number of subcontractors. Thus the demolition work was done by Bub Hillier; the concrete footings and masonry by Norman Brest; the roofing by the Christiansen Roofing Company, and the electrical work by the Midwestern Electric Company. The various projects were so set up that normal plant operations

<sup>1</sup>There is also a parking area to the east of the plant that is leased from the Milwaukee Journal. This parking area is located to the east of the plant and south of the plant's railroad track siding. Access to the parking lot is obtained through a private roadway that is known as Bituminous Drive.

<sup>2</sup>Employees can also walk into the plant through the entrance to the plant on East Capitol Drive.

would not have to be curtailed,<sup>3</sup> but the contractors were allowed at first to use Gate 3, the main gate of the plant on North Hilton Street.

In the month of June, Smith was attempting to negotiate a labor contract with Local 681 but the negotiations broke down, and the union called a strike that commenced on July 1 and that is still in effect. At this time the construction projects were in various stages of completion, and on Sunday, June 30, Frank M. Allen, vice president and works manager of Smith, instructed Kenneth C. Ehlert, the manufacturing coordinator of Smith, and John Kuhlenbeck, a foreman, to erect a sign at Gate 4, reserving this gate exclusively for the use of the contractors engaged in the various projects. Ehlert could not leave his house that day, however, and nothing was done about erecting the sign until early the following morning when the strike commenced.

At about 6:15 a.m. of July 1, Ehlert and Kuhlenbeck made a sign by nailing together some boards on which they lettered in black ink the words. "This gate for the exclusive use of building tradesmen only." They posted this sign at the gate between 7:15 and 7:30 a.m. and in addition they posted there by about 8:30 a.m. a metal sign that had been in use during the 1964 to 1965 period of construction. This sign had white lettering on a green background, the lettering was: "Lupinski, Incorporated. This gate for building contractors only. Employees use south gate." By the morning of July 2, both the wooden and the metal sign had disappeared from the gate. Ehlert, when he noticed this, made and posted by 8 a.m. at the gate another wooden sign that read: "This gate for building contractors only." Employees use south gate." The first wooden sign reappeared, however, on July 3, and both wooden signs have remained posted at the reserved gate ever since then.

Smith also took various other measures to publicize the strike and the availability of the reserved gate. On July 1 and 2, Ehlert, pursuant to Allen's instructions, notified all the contractors and subcontractors of the setting up of the reserved gate. At about 10:30 a.m. of July 1, Allen and Dennis G. Lindner, the company's attorney, took steps to notify the union's picket captains, one of whom was John J. Jasinski, the vice president of the union, of the setting up of the reserved gate; they also gave Jasinski a list of the contractors who would be using that gate, and told him that only contractors would be allowed to make use of that gate.

In addition, Lindner contacted Norbert Kane, the business agent of Local 681, and told him of the establishment of the reserved gate. Kane declined to discuss the matter with Lindner, however, and referred him to the firm representing the union in the present proceeding. Lindner attempted unsuccessfully that day to reach Richard Goldberg, a member of the firm, but the latter telephoned to Lindner the following day, and

<sup>3</sup>There is some evidence that *prior to July 1* a few of the plant employees did some minor work on the construction projects. Thus, Lawrence ("Larry") J. Johnson, the president of Local 681, who is a setup welder, testified that he spent about 7 hours cutting pipes off the boiler in the boiler room, and that three other employees named Lee Schwartz, James Moore and Lawrence Mercie, spent a day cleaning up the boiler room after the chimney had been torn down. John J. Jasinski, the vice president of Local 681, who is a maintenance electrician, testified that he spent about 35 hours removing electrical conduits and air lines, as well as in providing temporary wiring for a crane in the area. It should be noted also that although Midwestern Electric had done the electrical work involved in the manufacture of some of the Smith Company products it has not engaged in Smith work since the strike began.

Lindner discussed with him the legal aspects of the reserved gate situation, and attempted to impress upon him the importance of having the striking employees refrain from picketing at that gate.

The Smith employees were also notified of the setting up of the reserved gate, and instructed not to make use of it. On coming to work at 6:45 a.m. on July 2, Ehlert learned that the lock of Gate 3, the main receiving gate, had been plugged full with paper and that it could not be opened. Consequently, some of the employees had driven through the reserved gate. Ehlert immediately contacted about 90 percent of the employees and instructed them not to use this gate. On July 3, the next day, all Smith employees received written notices informing them of the setting up of the reserved gate, and the notice was also posted on the plant bulletin board. The notice read as follows:

#### NOTICE<sup>1</sup>

Our company has a reserved gate in the north end of our parking lot for the exclusive use of contractors that are engaged in our new building program.

Under no circumstances are any of our employees to use this gate either walking or driving.

(Signed) F. M. Allen

As an added precaution, Smith posted a sentry at the contractors gate to stop any trucks or personnel who were not working for contractors from coming through that gate.

The strike of July 1 was fully effective. Only management personnel and office employees continued on the job. Approximately 165 employees went out on strike, and the overwhelming majority of them engaged in picketing on the first day of the strike. Allen estimated the number of pickets to be between 125 and 150. Vincent C. Trawicki, the personnel director of Smith, who maintained a daily strike log during the first month of the strike, estimated the number of pickets on the first day of the strike to be between 110 and 130. The pickets marched around the gates of the plant in a circle in a continuous line, many of them carrying picket signs announcing that Local 681 was on strike against Smith. Allen estimated that there were more than 20 pickets that marched back and forth across each of the plant gates, while Trawicki estimated that there were perhaps 40 pickets at the parking lot gate on East Capitol Drive, and perhaps the same number at Gate 3, the main gate of the plant, a number at the lumber gate, and 7 or 8 pickets at the reserved gate. Ehlert estimated the number of pickets at the reserved gate on the first day of the strike to be about 12; these walked back and forth in front of the gate in a line. The pickets spoke to persons attempting to enter the plant but did not attempt to block their ingress or egress. Trucks could not get into the plant through the reserved gate on the first day of the strike in any event because an employee of the Coca Cola plant across the street from Smith had parked his car in the morning directly across the reserved gate, and did not return to move it until about 5 p.m. when the picketing ended for the day. The picketing had commenced as early as 6:15 a.m. at the reserved gate. The number of pickets gradually declined as the strike wore on. Allen estimated that on the second day of the strike the number of pickets who picketed at the gates of the plant were reduced to about 100, with 10 to 15 pickets at each gate. Ehlert testified that on the second day of the strike there were 9 to 10

pickets in the vicinity of the reserved gate but that only 2 of them actually stood at the gate entrance. During the first few weeks of the strike at least, Local 681 maintained an "observer" at the reserved gate almost continuously. This observer did not carry a picket sign but he was under instructions from the union to station himself at the reserved gate with a notebook and take down full particulars concerning any truck whose driver was attempting to pass through the gate into the plant, including the license plate number of the truck, the name of the company involved, and the nature of the cargo.

During the first 2 weeks of the strike, the reserved gate was constantly picketed, or there were pickets always available nearby whenever a truck or car attempted to enter or leave through the gate. As the vehicle approached it would be surrounded by the pickets congregating around the gate. The result was that there were a considerable number of incidents involving attempts to interfere with the passage of trucks or cars through the reserved gate, and the action of the pickets sometimes caused truckdrivers to refuse to make deliveries to the struck plant, or to refuse to remove material from the plant. The incidents, were as follows.

*The Norman Breest incident:* Breest was a subcontractor of Lupinski. The incident involving the Breest truck occurred apparently, on July 2, the second day of the strike when mass picketing was still going on. On this day there were two pickets stationed at the reserved gate but when the Breest truck attempted to drive through the gate between 8:30 and 9 a.m., they were joined by other pickets until the pickets surrounding the truck numbered almost 10, including Larry Johnson, the president of the union and another Smith employee whose name is Zlab. The pickets called the truckdriver a scab and indulged in various obscenities, and he did not enter the gate.

*The Midwestern Electric incident:* This incident occurred probably on July 2 but certainly during the first week of the strike. Early in the afternoon a truck of the Midwestern Electric Co., Inc., drove up to the reserved gate where two pickets were stationed, one of them being a Smith employee by the name of Sheehan. As they saw the truck arrive, Johnson the president of the union, and four or five other pickets came over from the main gate of the plant, where they had been stationed, and joined the two pickets at the reserved gate. The pickets talked to the truckdriver and asked him not to enter the plant. But Allen and Trawicki, who were present at the time, intervened and the truckdriver went through the gate and entered the plant. In the conversation between Johnson and the company representatives at the time, the latter attempted to explain to Johnson that the truckdriver, who was not engaged in unit work, had a right to enter the plant but Johnson proceeded nevertheless to ask the truckdriver for his name, and took down the license plate number of his truck. Johnson also told the truckdriver that he meant it when he said that he did not want anyone going through the gate.<sup>4</sup>

*The Merget Sand and Gravel incident:* On July 5, there were two Breest employees who had entered the plant through the reserved gate to wait for the arrival of a Merget Sand and Gravel truck which was carrying

<sup>4</sup>Both Allen and Trawicki testified with reference to the Midwestern Electric incident and where accounts differ, I accept the testimony of the latter, since I believe his recollections to be clearer and more exact than those of Allen.

backfill for the footings of the welding department office. Apparently, there had been no pickets at the reserved gate when they entered but they were seen by the pickets at the main gate who hollered to them to ask what they were doing going to work. One of the pickets, Gene Hooser, the secretary-treasurer of Local 681, walked over to the reserved gate, and carried on a conversation with the two Breest employees through the fence in a further effort to dissuade them from working. They disappeared for a while but soon returned and informed Hooser that Breest had told them it was all right for them as construction people to go through the reserved gate. They then disappeared again into the plant.

When the expected Merget Sand and Gravel truck arrived, there was a picket by the name of Harold McCarthey at the reserved gate but he was soon joined by 9 or 10 pickets from the main gate of the plant. The pickets did not need on this occasion to ask the driver of the Merget truck, whose name was Beamon, not to go through the reserved gate because that gate was blocked by a truck which the Breest foreman, when he had arrived at the plant, had parked parallel to the gate entrance. The driver of the Merget truck stopped parallel to the Breest truck, and Gene Hooser talked to the Merget driver and asked the latter not to go through the reserved gate. The driver of the Merget truck pulled away from the gate, and departed to the cheers of the pickets. Since the Breest employees could not work without backfill, they also left the plant premises, and no work was done by them that day.

On July 8, Beamon did succeed in making a delivery of sand and gravel to the plant but he was stopped by pickets as he was coming out of the plant, and one of the pickets told Beamon that he was "accumulating a lot of trouble by coming back in there," and that other pickets were threatening to engage in "wapping heads."

*The Gruneau and Lupinski incidents:* On or about July 9, a Gruneau truck attempted to gain access to the plant through the reserved gate. The pickets walked in front of the truck and talked to the driver, who backed up and drove away. A Lupinski truck was also turned away from entering the plant.

*The Bub Hillier incident:* Bub Hillier, the demolition subcontractor, employed the Misfit Wrecking Corporation to remove the brick from the wrecked chimney, which was over the old heating plant. On July 9, between 10 and 10:30 a.m., three Misfit employees went to the Smith plant with two dump trucks and a front-end loader to effect the removal of the debris from the chimney. When they arrived at the reserved gate, they were stopped by pickets who took their names and the license plate numbers of their vehicles, and told them that "they did not appreciate them going through the picket line." One of the three Misfit men was George Resch, the vice president of Misfit, who testified that when he arrived at the reserved gate there was "a little guy with a cigar in his mouth" who waved his picket sign at him and called him "a no-good, goddamn scab and everything else." This did not deter Resch, however, from going through the gate and entering the plant. Indeed, Resch made two round trips that day in and out of the plant. When he went through the gate the second time, one of the pickets, who was kneeling down, wrote down the license plate number of his truck. A rock was also thrown at Resch's truck, and pickets shouted that there were ways of getting him.

*The Langer Roofing incident:* Langer Roofing and Sheet Metal, Inc., was a roofing subcontractor. On or about July 10, Smith was expecting the arrival of a

Langer Roofing truck, and Ehlert was out watching for its arrival. As the driver of the truck was proceeding north on Holton Street toward the reserved gate, the pickets at the main receiving gate set up a clamor and shouted for the driver to come over and stop. The driver stopped on a grassy strip between the sidewalk and the curb on Holton Street, and talked to the pickets. Donald Zlab, who was one of the pickets, told the Langer driver that he would have to take his name and the license plate number of his truck, and also told the driver that "he could go through the contractors gate but that he did not know how he would get out." The foreman on the Langer truck asked who was in charge of the plant, and Ehlert, who was standing there, introduced himself, and convoyed the foreman through the gate. When in the plant, the foreman called his union business agent and his company, after which he came out and drove through the reserved gate, completing his trip.

*The John Hennes Trucking incident:* The John Hennes Trucking Company was employed by Gruneau, the heating plant subcontractor, to move two boilers within the Smith plant premises on July 15. There were five Hennes employees sent to the Smith plant that day in connection with the removal of the boilers. There were two ironworkers named Nowack and Koshen; a crane operator named Kopas; Jack Crittenden, a truckdriver; and Harold Link, a foreman. The two ironworkers rode to the Smith plant in a Pontiac convertible owned by Koshen; Link and Crittenden rode in the latter's tractor-trailer; and the crane operator came, of course, on his crane. The crane operator and the two ironworkers arrived at the Smith plant early in the morning and Link and Crittenden followed later at about 9:30 a.m. On their arrival, the crane operator and the two ironworkers in the Pontiac convertible were stopped at Gate 3, the main gate on Holton Street, by a group of pickets who included Johnson, the president of Local 681, who told the Hennes employees that they could not enter the plant even through the reserved gate. A still larger group of pickets, numbering 20 to 25, came over and surrounded the crane and the Pontiac convertible. Trawicki, who was on the scene, asked the drivers of these vehicles to park along the curb between the main gate and the reserved gate, and they did so. When Crittenden arrived with Link, he double-parked south of the main gate, partially blocking the street. The other Hennes employees spoke to Link and Crittenden and they decided that they could not cross the picket line without some proper authorization. Link and Crittenden walked across the street to the Coca Cola plant and called their office to discuss the problem. They were told they could enter through the reserved gate for construction workers. Link and Crittenden returned and talked to the ironworkers, who decided not to enter the plant, and since the others could not work without them, they all left. After they left, Johnson sent two pickets, one of them carrying a picket sign, over to the reserved gate, just to demonstrate that it could be picketed. These two pickets were McCarthey and John Daly.

There were also two incidents that did not involve the reserved gate, or the construction work being performed. Both incidents occurred on July 3.

In the early afternoon of that day a Consolidated Freightways truck, which was driven by Lee Morris Scheel, was to take on a load of machinery parts. It arrived at the main gate of the plant on Holton Street and was stopped by a group of pickets, numbering between 7 and 10, who including Johnson, and one of them told Scheel that he would not be able to hold his job very long.

Johnson spoke to Scheel who told the former that since he was a dispatcher, a supervisory employee, he would not honor the picket line and the pickets responded by telling Scheel. "Well, you're going to have to get the cops to get you in." Soon the police arrived and Scheel was able to enter the plant. About 3 hours later, after Scheel had unloaded his truck, and taken on some freight, he had even more trouble in getting out of the plant. He attempted to leave by the gate on East Capitol Street, and was surrounded by a sizable group of pickets, numbering perhaps as many as 15. Scheel attempted to inch forward a bit at a time but could not make sufficient progress. August Miller, one of the pickets, flung a sign at him that hit the rear view mirror of his tractor, and Eli Gonzales and Norbert Lupinski, two other pickets, threatened to pull him out of his cab, and actually yanked the door open. But nobody attempted to drag him out of the cab. The pickets called him names, however, and Johnson told him: "Well, in order to get out, you're going to have to get the cops. You got the cops to get you in, so you're going to have to get the cops to get you out." At this point a Smith supervisor — apparently Trawick — came over and suggested that Scheel back into the plant and wait until the police arrived. They came in about 20 minutes, and was able to leave the plant.

The second incident of that day involved Richard C. Bosshard, who worked for Smith as an "expeditor," whose job was to insure the efficient flow of materials through the plant. At about 4:30 p.m. Bosshard left the Smith plant with the mail. As he was going out through the East Capitol Drive gate, several pickets were blocking the gate. Because the traffic was heavy at this time on East Capitol Street, Bosshard had to wait in any event for an opportunity to enter the stream of traffic. One of the pickets put his feet on the bumper of his car and pushed the bumper up and down. The pickets also shouted at him and called him a scab. As he entered the stream of traffic, one of the pickets shouted at him: "You'll be sorry." The names of the pickets involved in this incident were Olson, Skocil, Herman Hasse and Ralph Tafoya.

As a result of the interruption of deliveries during the strike, the various projects involved in the Smith capital improvements program were delayed in greater or lesser degree. The erection floor project, which was between 5 and 10 percent complete at the time of the strike, is now only 15 percent complete. The scheduled completion date of this project was December 1968 but, as of the time of the hearing, it was not expected to be completed until January or February of 1969. The warehouse extension, which was less than 10 percent complete at the time of the strike, and is now approximately 10 percent complete, was scheduled to be completed in July 1968. The projects have been also delayed by a ready-mix concrete strike but this strike did not begin until the third week in July.

### B. Concluding Findings

It is, apparently, the contention of counsel for the respondent that there was no unlawful picketing at the reserved gate except during the first few days of the strike when "confusion" prevailed, and even this picketing he would write off as "technical" or "insubstantial." The evidence does not support, however, such a casual view of the picketing, which was in fact serious and deliberate. The record contains many instances of oral inducement, and of threats to the employees of neutral employers, attempting to enter the plant through the reserved gate.

His gate was properly and adequately posted even during the first day of the strike from a very early hour in the morning<sup>5</sup> but, apart from the posting, the union's officers and attorneys had been informed by the Smith management of the availability of the reserved gate, which had been closed prior to the strike, and the reopening of the reserved gate served to emphasize its availability. Nevertheless, the numerous pickets literally swarmed about all the gates, including the reserved gate. While the number of pickets was somewhat less during the second day of the strike, and declined still further thereafter, there never came a time when the reserved gate was left unmolested. There was nearly always at least one picket at the gate or at least one observer, whose real function appears to have been to signal to the pickets at the other gates to rush over and prevent anyone from gaining entrance to the plant through the reserved gate. This constituted a pattern of conduct that occurred repeatedly.

Smith maintained, to be sure, a sentry at the reserved gate, in order to make sure that no unauthorized persons would make use of this gate and the union, apparently, felt that this gave it the right to have an "observer" stationed at the gate for the same purpose. But I am not called upon to decide the abstract question whether the "observer" was as legitimate as the sentry but the question whether the actual behavior of the observers was lawful. Quite apart from the fact that they acted in concert with the acknowledged pickets, they kept, concededly, a record of full particulars of all vehicles and their drivers who went through or attempted to go through the reserved gate. This procedure was inherently coercive, since it is obvious that the information sought and obtained could be used by the union for purposes of reprisal. The observers did nothing, moreover to inform the employees of the neutral contractors of their right to gain access to the plant through the reserved gate. The union's witnesses made much of the fact that the observers were instructed to remain "deaf and dumb" but this instruction, in the light of their actual behavior, only aggravated their unlawful conduct. I find, therefore, that the so-called observers at the reserved gate were engaged in unlawful activity in the nature of picketing.<sup>6</sup>

The conduct of the strikers who were picketing the reserved gate of the Smith plant on the first day of the strike is not rendered more lawful because the entrance happened to be blocked in any event by a car of a neutral employee, or because, after the strike had been in a progress for a few weeks, work was delayed because a strike halted the delivery of cement. These entirely fortuitous events do not excuse the striking employees who did everything in their power to block access to the plant and to halt deliveries thereto.

It is also no defense that on the second day of the strike many Smith employees, apparently, entered the plant through the reserved gate due to the fact that the lock had been stuffed with paper the night before, so that entry through that gate would be prevented. It is difficult

<sup>5</sup>The allegation made in paragraph 10 of the respondent's answer that the signs erected by Smith "contained different wording at different times and that the instructions did not have sufficient clarity to clearly reserve it for the sole usage of people uninvolved in the Party's labor dispute" is either immaterial or frivolous. It would make no difference that the legends on the various signs were not in identical language, so long as each legend was clear in itself. This was undoubtedly true in the present case.

<sup>6</sup>See *Getreu v Local 1347, IBEW*, 66 LRRM 2084 (D C Ohio), June 20, 1967.

to perceive how the lock would be stuffed by someone wholly unconnected with the strikers. In any event, Smith immediately took steps to prevent any further use of the reserved gate by its employees, and the striking employee continued to picket at the reserved gate in defiance of the purpose for which it had been established.

It is clear that the respondent union violated Section 8(b)(4) (i) and (ii)(B) of the Act by its picketing at the reserved gate. The governing cases would seem to be *Local 761, Electrical Workers v N.L.R.B. (General Electric Co.)*, 366 U.S. 667 and *United Steelworkers v N.L.R.B. (Carrier Corp.)*, 376 U.S. 492, as interpreted and applied by the Board in *Building & Construction Trades Council etc. (Markwell and Hartz, Inc.)*, 155 NLRB 319. It has long been established that contractors and subcontractors on building construction projects are as to each other's labor disputes neutrals who are entitled to the protection of the Act's secondary boycott provisions.<sup>7</sup> The union was, therefore, under an obligation to conduct its picketing of Smith consistently with the right of the neutral employers to remain uninvolved in its dispute with Smith, and it would be engaged in primary picketing only so long as its pressure was directed toward deterring those engaged in contributing to the primary employer's operations, whether or not these were suppliers, carriers or employees of the primary employer.<sup>8</sup> In the *Markwell and Hartz* case, the union contended that these rules were no longer applicable to a building trades union involved in a dispute with one of several contractors on a common construction site, in view of the Supreme Court's decision in the *General Electric* case. The union asserted that since it confined its picketing to the primary employer's premises, all of its picketing, including picketing at the reserved gate, was lawful primary activity. But the Board held that the position of independent contractors was analogous to that of the various employers on a common situs; that the union, despite the fact that its picketing was limited to the primary employer's premises, was under an obligation to minimize the impact of its picketing in accordance with the *Moore Dry Dock* criteria; and that by picketing at the reserved gate the union had engaged in unlawful activity. The narrow point decided by the Court in the *General Electric* case was that the separate gate doctrine could not be applied in situations in which the independent contractors were engaged in performing work that was related to the normal operations of the struck employer, and that was of a kind that would, if done, when the plant was engaged in its normal operations, necessitate curtailing those operations. While it is true that in the present case the Midwestern Electric Company had in the past done electrical work involved in the manufacture of some Smith company products, no such work has been done by this company since the commencement of the strike. As for the work performed by Smith company employees on the construction projects, this, too, antedated the strike, and seems to have been so insubstantial, moreover, that it can be treated as *de minimis*.<sup>9</sup>

There can be no doubt but that the union also violated Section 8(b)(1)(A) of the Act by its mass picketing, by a number of acts of violence against persons seeking to gain

access to the plant, or to leave the same, and by making either open or veiled threats against such persons. The incidents involved are, too, serious to be treated as lightly or as cavalierly as counsel for the respondent would treat them. The responsibility of the union for the unlawful conduct is plain, moreover, since it is evident that it had the approval of the highest officers of the union, including the union president, and secretary-treasurer, who were themselves involved in some of the incidents.

#### IV. THE REMEDY

Having found that respondent has engaged in certain unfair labor practices, I shall recommend that it be required to cease and desist from such practices, and take certain affirmative action in order to effectuate the policies of the Act.

#### CONCLUSIONS OF LAW

1. Smith Engineering Works (Division of Barber-Greene Company) is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Allied Industrial Workers of America, Local 681, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By inducing or encouraging individuals employed by Lupinski, Inc., Paul J. Gruneau Company, and various of their subcontractors to engage in a strike or in a refusal in the course of their employment to transport materials or perform services with an object of forcing or requiring said persons to cease doing business with Smith Engineering Works, the respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(4)(i)(B) and Section 2(6) and (7) of the Act.

4. By threatening, coercing, and restraining Lupinski, Inc., Paul J. Gruneau Company and various of their subcontractors with an object of forcing said persons to cease doing business with Smith Engineering Works, the respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(4)(ii)(B) and Section 2(6) and (7) of the Act.

5. By engaging in mass picketing at the gates of the Smith Engineering Works plant, by blocking ingress into and egress from the said plant, by engaging in physical violence or verbal threats against employees of Smith Engineering Works or other persons, the respondent, through its agents, engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and Section 2(6) and (7) of the Act.

#### RECOMMENDED ORDER

Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, I recommend that respondent, Allied Industrial Workers of America, Local 681, AFL-CIO, its officers, agents, and representatives, shall.

1. Cease and desist from.

(a) Inducing or encouraging individuals employed by Lupinski, Inc., Paul J. Gruneau Company, and various of their subcontractors to engage in a strike or in a refusal in the course of their employment to transport materials or perform services with an object of forcing or requiring said persons to cease doing business with Smith Engineering Works,

<sup>7</sup>See *Denver Building & Construction Trades Council*, 341 U.S. 675, 689-900.

<sup>8</sup>See *United Steelworkers v. N.L.R.B. (Carrier Corp.)*, *supra* at 499.

<sup>9</sup>See *Local 761 etc.*, *supra*, at p. 682.

APPENDIX

NOTICE TO ALL MEMBERS OF AND TO ALL  
EMPLOYEES OF LUPINSKI, INC., PAUL J. GRUNEAU,  
AND THEIR SUBCONTRACTORS

(b) Threatening, restraining, or coercing Lupinski, Inc., Paul J. Gruneau Company and various of their subcontractors, where an object thereof is to force or require said persons to cease doing business with Smith Engineering Works under circumstances prohibited by Section 8(b)(4)(ii)(B) of the Act.

(c) Posting an observer at or near the reserved gate of the Smith Engineering Works plant for the purpose of signalling to any pickets at the other gates of the plant, or for the purpose of obtaining information about entries or deliveries into the plant.

(d) Engaging in mass picketing of the gates of the Smith Engineering Works plant; blocking ingress into or egress from the said plant; or engaging in physical violence or verbal threats against employees of Smith Engineering Works or other persons;

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

(a) Post at their business offices and meeting halls in Milwaukee, Wisconsin, copies of the attached notice marked "Appendix."<sup>10</sup> Copies of said notice to be furnished by the Regional Director for Region 30, shall, after being duly signed by the union's representative, 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) Sign and mail to the Regional Director for Region 30 sufficient copies of the said notice, to be furnished by him, for posting by Lupinski, Inc., Paul J. Gruneau Company, or any of their subcontractors, if willing.

(c) Notify the said Regional Director, in writing, within 20 days of the date of the receipt of this Decision and Recommended Order, what steps have been taken by the respondent to comply herewith.<sup>11</sup>

<sup>10</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 Recommendations of a Trial Examiner" in the notice. In the further event that the Board's Order be 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>11</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 the respondent has taken to comply herewith."

Pursuant to a 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 in any manner prohibited by Section 8(b)(4)(B) of the Act induce or encourage employees of Lupinski, Inc., Paul J. Gruneau Company and their subcontractors, to engage in a strike, or in a refusal in the course of their employment to transport materials or perform services or threaten, coerce, or restrain the said employers by striking, or picketing where in either case an object thereof is to force or require said persons to cease doing business with Smith Engineering Works (Division of Barber-Greene Company).

WE WILL NOT post an observer at or near the reserved gate of the Smith Engineering Works plant for the purpose of signalling to any pickets at the other gates of the plant, or for the purpose of obtaining information about entries or deliveries into the plant.

WE WILL NOT engage in mass picketing of the gates of the said Smith Engineering Works plant; or block ingress into or egress from the said plant, or engage in physical violence or verbal threats against employees of the said Smith Engineering Works or other persons; or commit any other acts prohibited by Section 8(b)(1)(A) of the Act.

ALLIED INDUSTRIAL  
WORKERS OF AMERICA,  
LOCAL 681, 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, 2nd Floor Commerce Building, 744 North 4th Street, Milwaukee, Wisconsin 53203, Telephone 414-272-3861.