District Council 9, Brotherhood of Painters, Decorators and Paperhangers of America, AFL-CIO *and* Alfred Sherwood. Cases 29-CC-161 and 29-CC-170

June 12, 1969

DECISION AND ORDER

BY CHAIRMAN MCCULLOCH AND MEMBERS BROWN AND ZAGORIA

On March 5, 1969, Trial Examiner James V. Constantine issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the General Counsel and Respondent filed exceptions to the Decision and supporting 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 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 briefs, and the entire record in these cases, and hereby adopts the findings,[1] conclusions,[2] 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 the Respondent, District Council 9, Brotherhood of Painters, Decorators and Paperhangers of America, AFL-CIO, New York, New York, its officers, agents, and representatives, shall take the action set forth in the Trial Examiner's Recommended Order.

[1]We note and correct the following errors in the Trial Examiner's Decision which do not affect the result in this case. The charge in Case 29-CC-161 was filed on September 17, 1968, and not September 19, 1968. Joseph Sharkey's visit to Joseph Villano at Gracie Town House during the course of the general strike and the initial picketing by Respondent of Gracie Town House occurred about the first week in September 1968 and not on September 16, 1968. Also, Sharkey's second visit to Villano at Gracie Town House, his first visit following the termination of the general strike, occurred on or about September 16, 1968, and not on October 29, 1968. With regard to what was said during these visits on the above dates, we rely solely on the credited testimony of Villano. Further, the General Counsel did not, as stated by the Trial Examiner, limit his claim of unlawful conduct to events on and after September 16, but included therein the conversation which preceded the termination of the general strike on September 9.

[2]We agree with the Trial Examiner's conclusion that the Board's decision in *Plauche Electric, Inc.*, 135 NLRB 250, relates to situations not present herein, but do not rely on his interpretative comments with respect to that decision.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

JAMES V. CONSTANTINE, Trial Examiner: These are two unfair labor practice cases brought against the above-named Respondent, District Council 9, under the authority of Section 10(b) of the National Labor Relations Act, herein called the Act, 29 U.S.C. 160(b). They have been consolidated for purposes of trial. The charge in Case 29-CC-161 was filed on September 19, 1968, against said Respondent by Alfred Sherwood, and a complaint based thereon was issued on October 16, 1968,[1] by the General Counsel of the National Labor Relations Board (herein called the Board), through the Regional Director for Region 29 (Brooklyn, New York). That complaint alleges that Respondent violated Section 8(b)(4)(ii)(B) the Act.

Thereafter Alfred Sherwood on November 15 filed another charge against said Respondent in Case 29-CC-170. On November 29 said Regional Director issued (1) an Order consolidating Cases 29-CC-161 and 29-CC-170, and (2) a consolidated amended complaint. Said consolidated amended complaint alleges that Respondent violated Section 8(b)(4)(i)(B) and (ii)(B), and that such conduct affects commerce within the meaning of Section 2(6) and (7), of the Act. Respondent has answered admitting some facts but denying that it committed any unfair labor practices.

Pursuant to due notice this case came on to be heard, and was tried, before me at Brooklyn, New York, on December 11 and 16. All parties were represented at and participated in the hearing, and had full opportunity to adduce evidence, examine and cross-examine witnesses, submit briefs, and offer oral argument. The General Counsel and Respondent argued orally. Briefs have been received from the Respondent and the General Counsel.

Upon the entire record in this case, including the stipulations of the parties, and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. AS TO JURISDICTION

Albert Ginsberg, of New York, New York, is engaged in the real estate business, operating under the trade name of Algin Management Company. Algin manages buildings owned by corporations wholly owned by Ginsberg or in which he owns a controlling interest. Annually Algin receives gross revenues of between $7,000,000 and $8,000,000. These revenues include in excess of $500,000 from apartments owned or controlled by it in the State of New York. Revenues also include in excess of $100,000 from four office buildings it owns or controls in the State of Maryland. Its Maryland buildings are leased to four different agencies of the United States, each of said agencies paying annual rentals in excess of $100,000.

In addition Algin annually purchases for its New York apartments fuel valued in excess of $50,000 from Petro

[1]All dates mentioned herein refer to 1968 except where otherwise specifically noted.

Oil in Brooklyn, New York, electric power valued in excess of $100,000 from Consolidated Edison Company in New York, New York, and refrigerators and related kitchen appliances valued in excess of $30,000 from Frigidaire Division of General Motors Corporation in Lansing, Michigan.

In the year preceding the hearing in this proceeding, Alfred Sherwood, an individual engaged as a painting contractor in Forest Hills, Queens, New York, New York, and the Charging Party herein, performed painting services for Algin in New York, New York, valued in excess of $50,000.

I find that Algin and Sherwood are engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction over Respondent in this proceeding. *Karl Gerber et al., d/b/a Parkview Gardens,* 166 NLRB No. 80.

II. THE LABOR ORGANIZATION INVOLVED

District Council 9, Brotherhood of Painters, Decorators and Paperhangers of America, AFL-CIO, herein called the Union, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *General Counsel's Version*

Gracie Town House, Inc., owns and controls Gracie Town House, an apartment building in New York, New York. The managing agent for this building is Carlyle Construction. Joseph Villano is employed as superintendent and resident manager of said Town House by Gracie Town House, Inc., but his superiors are Messrs. Epstein and Zinn of Carlyle Construction. Villano responsibly directs nine employees, whom he has authority to discharge. I find he is a supervisor under Section 2(11) of the Act.

In the late summer of 1968 the Union engaged in a citywide or general strike in New York City against all painting contractors using District Council 9 members. During this strike the Union picketed a building in close proximity to Gracie Town House. On one occasion during the strike the captain of such pickets told Villano that he, the captain, saw a painter with a ladder enter Gracie Town House, but Villano assured him it was one of Gracie's porters and not a painter. Both during and after the citywide strike pickets appeared in front of Gracie Town House.

A few days later this captain, accompanied by Joseph Sharkey, again spoke to Villano, this time mentioning that he, the captain, observed Sherwood's painters enter Gracie Town House and that, therefore, the captain "would have to call his delegate." Within a day (and while the general strike was in effect) Villano was visited by Joseph Sharkey, admittedly a business representative of the Union and an agent thereof. (This was about September 16, 1968.) When Sharkey asked Villano who was painting the building, the latter replied that Al Sherwood was doing this work. Continuing, Sharkey asserted that he knew Sherwood, that Sherwood belonged to "this so called paper union, Local 400," and that District Council 9 did not recognize Local 400. Then Sharkey insisted that Villano "would have to stop Sherwood from painting in the building," and threatened to picket Gracie Town House if Sherwood remained on the job. Within a few days the building was picketed. The picket signs read "Painters in New York City on strike for better wages and conditions. Brotherhood of Painters, Decorators, AFL-CIO, District Council Number 9." As a result Villano had Sherwood stop painting at the apartment. Villano also assured Sharkey that Sherwood would be stopped from painting at Gracie Town House during the period of the citywide strike.

Following the termination of the general or citywide strike of the Union, Sherwood resumed his painting job at Gracie Town House. Sometime in September, but after the citywide strike of the Union had ended, Sharkey again visited Villano. (I find the correct date to be October 29, 1968.) No pickets were present at Gracie Town House at the time. After Sharkey stated that he understood that Al Sherwood was performing painting work in Gracie Town House, he insisted that Villano "would have to stop [Sherwood] from painting [because] . . . Sherwood does not belong to Council 9, he belongs to Local 400, which is considered a paper union." Sharkey concluded by threatening "to put up pickets in front of the building."

Villano answered that he would have to telephone his boss, Mr. Epstein. Thereupon, Villano made such a call in the presence of Sharkey, telling Epstein that Sharkey wanted Villano "to stop the painting in the building." Then Sharkey spoke to Epstein. In this latter conversation Sharkey informed Epstein that Sherwood "did not belong to Council 9," that Sharkey did not recognize Local 400 as a " *bona fide* union," and that Sharkey "would have to put pickets in front of the building."

However, Sherwood remained on the job. Not long after Sharkey's above-mentioned visit to Villano pickets appeared in front of Gracie Town House. I find this was on October 30. Such picketing has been continuous, except for a short period of "discontinuance," since then. Said picketing, which continues from 8:30 a.m. to about 3:30 p.m. on the days when Sherwood performs work at Gracie Town House, had not ceased as of the time of the hearing in this case. Sherwood's name is carried in crayon or indelible ink on the picket signs.

B. *Respondent's Evidence*

In his oral argument Respondent's counsel stated "there is no question that District Council 9 has been picketing Sherwood and there is no question that the object of picketing Sherwood is to . . . organize his employees for the purpose ultimately of having Sherwood recognize District Council 9." Nevertheless said counsel further contended that "we have a right to inform those employees through picketing and other means . . . to join up with District Council 9. . .," but he denies that illegal secondary action was directed at Gracie Town House. Respondent's evidence, supporting its defense was given by Joseph Sharkey, and is narrated in the paragraphs which follow below in this section.

Joseph Sharkey, a special organizer for District Council 9, had occasion during the citywide strike to visit pickets patrolling a building at 333 East 89th Street in New York City. During the course of that visit the picket captain, George Frank, a member of Sharkey's union, informed Sharkey that he, Frank, observed someone carrying paint and ladders to a building located at 401 East 89th Street and that, therefore, Frank placed two pickets in front of this building. Frank also said that the building manager at 401 East 89th Street claimed Sharkey had given

permission for painting to be performed there. This last assertion by Frank caused Sharkey to visit the building with Frank because Sharkey had not only not given anyone permission to paint during the strike, but Sharkey had never been to 401 East 89th Street at any prior time.

When Sharkey, accompanied by Frank, arrived at 401 East 89th Street, Sharkey found two District Council 9 pickets, "carrying general strike picket signs," stationed in front of the building. Entering the apartment office, Sharkey asked Villano, the building superintendent, for the identity of the contractor who did the painting for the landlord. When Villano replied that Sherwood had the contract, Sharkey insisted that he, Sharkey, never gave Sherwood permission to paint there although "Frank says that I [Sharkey] gave them permission." However Villano assured Sharkey that no one was painting in the building at the time and no one would paint there "during the strike." Since Sharkey became satisfied that no painting was being performed and Villano having promised there would be no further painting if Sharkey removed the pickets, he removed the two pickets. As he left Sharkey told Villano that "Sherwood was not one of our contractors in District Council 9," i.e., "a contractor who has a union shop contract and employs District Council 9 members." Thereafter District Council 9 did not picket 401 East 89th Street for the duration of the general strike.

About September 9, 1968, the general strike ended. A few days later Sharkey, as a result of pointed questions, learned from Villano that a painter was working in some rooms at 401 East 89th Street. Thereupon Sharkey spoke to this painter, ascertaining that the latter's name was Argyris, an employee of Sherwood, and eliciting the information that Argyris did not belong to any union and that Argyris was paid at the rate of $42 "per apartment."

Immediately thereafter Sharkey went to see Villano and told the latter that Argyris did not belong to District Council 9. Expressing surprise at this, Villano telephoned to Mr. Epstein, his superior, informing the latter of this fact. Then Villano turned the telephone over to Sharkey.

Explaining to Epstein that Argyris "was nonunion, was working under the prevailing rate of pay in the area, [and] was unfair competition to union contractors and union bosses," Sharkey asked Epstein "to find out what we could do to straighten this matter out." Epstein answered that Sherwood and Argyris "belonged to this Local 400." Sharkey retorted that Local 400 was not affiliated with the Brotherhood of Painters and Decorators, "was not a painters' union," and, "as far as we were concerned," it engaged in "sort of 'sweetheart deals'" with contractors. But Sharkey insists that he did not ask either Villano or Epstein "to knock Sherwood off because he was nonunion," or to have Sherwood stop painting there. However, Sharkey did tell Epstein that pickets were removed from in front of 401 East 89th Street because both Villano and Epstein had assured Sharkey that "no painting would be done in the building" by Sherwood.

About October 29, 1968, on a visit to the building, Sharkey ascertained from Villano that one of the apartments at 401 East 89th Street was being painted by an employee of Sherwood named Martin Medina. This employee told Sharkey that he, Medina, was nonunion but that his boss, Sherwood, belonged to Local 400. So Sharkey placed pickets at the building on the next day, October 30, 1968. They have remained there since that date. The picket signs bear the legend that "Painters work being done by Sherwood Paint Company is below decent wages and work standard established in this area by District Council Number Nine, Brotherhood of Painters, Decorators, Paperhangers of America, AFL-CIO."

IV. CONCLUDING FINDINGS AND DISCUSSION

Generally, all of the ingredients enumerated below must be established by the General Counsel, upon whom rests the burden of proof, in order to prove a violation of Section 8(b)(4)(i)(B) or (ii) (B):

(1) A labor organization engages in specified conduct; and

(2) that conduct (in the case of (i)(B)) consists of a strike, or induces or encourages a strike or a refusal to perform services, or (in the case of (ii)(B)) amounts to a threat, coercion, or restraint; and

(3) an object of such conduct is to force or require any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other person, or to cease doing business with any other person.

The question is whether the General Counsel has sustained his burden of proof. Although much of the evidence is not in dispute, I credit General Counsel's witness Villano in those instances in which he is contradicted by the testimony of Respondent's witness Sharkey. This resolution of credibility issues is based not only on the demeanor of the witnesses, but also because Villano is a disinterested witness in a controversy between Sherwood and District Council 9, so that it is less likely that Villano's testimony will be colored by a wish to accommodate it to a desired end.

Manifestly District Council 9 is a labor organization and I so find.

The next question is whether the admitted picketing constitutes inducement and encouragement as comprehended by Section 8(b)(4)(i). It is my opinion, and I find that it does. *Jones and Jones, Inc.*, 144 NLRB 49, 52; *J. C. Driscoll Transportation, Inc.*, 148 NLRB 845, 850. Nevertheless, if such picketing conforms to *Moore Dry Dock* standards (92 NLRB 547, 549), it does not contravene Section 8(b)(4)(i)(B) even though it takes place at the premises of a secondary neutral employer. In this connection I find that District Council 9 has a dispute with Sherwood, that this dispute is primary, and that Sherwood is the primary employer. Further, I find that District Council 9 has no dispute with Gracie Town House, and that Gracie is a neutral or secondary employer, and that Gracie's apartment building is a common *situs* when Sherwood is painting there. Additionally I find that at all times material Sherwood has had an agreement with Gracie Town House to paint its apartment building.

Preliminarily it may be mentioned that the General Counsel does not attack as unlawful any conduct of District Council 9 occurring prior to September 16, 1968. It is therefore unnecessary to decide whether such activities of District Council 9 violate the Act.

A. *The Picketing of September 16, 1968*

However, on September 16, 1968, Respondent did picket Gracie Town House with a sign which did not mention Sherwood. I find that since Respondent had no dispute with Gracie that such picketing is secondary, and therefore fails to comply with *Moore Dry Dock* guideposts for two reasons:

(a) The signs failed to identify Sherwood as the only person at these premises with whom Respondent had a dispute; and

(b) Sharkey told Villano that Gracie "would have to stop Sherwood from painting in the building," thus evidencing an unlawful objective to replace Sherwood rather than pursuing the lawful objective of informing the public of a primary dispute between Sherwood and Respondent. See *Kaynard* v. *District Council 9*, 70 LRRM 2467, 2470 (D.C.N.Y); *L. G. Electric Contractors, Inc.*, 154 NLRB 766, 767. Even on Sharkey's own testimony I find that he told Villano there would be pickets in front of Gracie House as long as Sherwood was painting there. This warrants the inference, which I draw, that the object of the picketing was not confined to Sherwood. *Riss & Company, Inc.*, 130 NLRB 943, 949-950.

Accordingly, I find that the picketing of Gracie on September 16, 1968, failed to conform to *Moore Dry Dock* standards and that it was secondary as to Gracie. It follows, and I find, that this picketing amounts to inducement and encouragement within Section 8(b)(4)(i)(B) of the Act, unless it can be salvaged under *Plauche Electric, Inc.*, 135 NLRB 250.

But *Plauche Electric* relates to situations presented by an ambulatory situs of the primary employer, rather than a common situs harboring both primary and secondary employers. An ambulatory situs, as far as I can ascertain, is one which by its nature is designed to travel, such as a moving vehicle. But I find that Sherwood was not engaged in a business using vehicles as a substantial part of his business. Hence I find that *Plauche Electric* is inapplicable here. Even if it is, I find a violation by Respondent as described below.

On the facts unfolded by the record, I find that an object of Respondent's said picketing was to force or require Gracie Town House to cease doing business with Sherwood. This is because I credit Villano that Sharkey told him that (a) District Council 9 did not recognize Sherwood's "paper" Local 400, and (b) Villano "would have to stop Sherwood from painting in the building." Patently this language connotes that Sharkey wanted Gracie Town House to cease doing business with Sherwood.

On the basis of the foregoing findings, and on the entire record, I find that the picketing under consideration violates Section 8(b)(4)(i)(B) of the Act. *Wilson Teaming Co.*, 140 NLRB 164.

B. *The Picketing of October 30, 1968*

On about October 29, 1968, Sharkey demanded of Villano that the latter would have to stop Sherwood from painting at Gracie Town House because Sherwood "belonged" to Local 400, a "paper" union. Sharkey also told Epstein, Villano's superior, that pickets would be placed in front of the building if Sharkey's said demand was ignored. Nevertheless, Sherwood was not removed from the job.

The next day, October 30, District Council 9 commenced picketing Gracie Town House with placards reading "Painters work being done by Sherwood Paint Company is below decent wages and work established in this area by District Council Number Nine, Brotherhood of Painters, Decorators, Paperhangers of America, AFL-CIO." Such picketing has continued since then, except for a short period of "discontinuance," during working hours on working days of Sherwood.

On the surface, the picketing since October 30 appears to accord with the criteria promulgated in *Moore Dry Dock*, 92 NLRB 547, 549. In other words (a) the picketing was strictly limited to times when Sherwood's men were working on the secondary employer's premises; (b) at the time of the picketing Sherwood was engaged at the common situs, i.e., Gracie Town House, in his normal business of painting; (c) the picketing was limited to a location reasonably close to the place where Sherwood was painting; and (d) the picketing announced that the dispute was confined to Sherwood, the primary employer.

But both the Board and the courts have shown little hesitancy in looking below the surface to discover whether picketing at a common *situs* is intended to attain ends other than those declared on the picket signs. I proceed to do so. While I find that the message on the picket signs is innocuous and, therefore, lawful, I also find that Respondent's conduct nullified and contradicted that message. In this connection I find that Sharkey told officials of Gracie Town House that he wanted them to stop Sherwood's painting in the building because Sharkey did not recognize Local 400 as a " *bona fide* union," and that Sharkey would have to place pickets in front of the building if Sherwood remained on the job.

This demand of Sharkey is clear in its meaning and implications. It does more than publicize a dispute between Respondent and Sherwood. It also connotes that Sharkey insists that Sherwood be taken off the job because he is not a union contractor recognized by District Council 9. Hence I find that Respondent by this demand made a direct and purposeful effort to involve Gracie Town House, The neutral employer, in a dispute between Sherwood and the Union. *N.L.R.B.* v. *Associated Musicians*, 226 F.2d 900, 904 (C.A. 2), cert. denied 351 U.S. 962. And it is immaterial that Respondent may also have had a second, lawful objective if it also had an objective of enmeshing a neutral employer in its dispute with Sherwood, the primary employer. *N.L.R.B.* v. *Denver Bldg. & Construction Trades Council*, 341 U.S. 675, 688-689.

In this connection, I find that an object of the picketing was to put pressure on Gracie Town House, so that Gracie would cancel its contract with Sherwood, the primary employer. "Were it otherwise [Respondent] need only have said that if [Sherwood] paid wages up to those in area contracts, the picketing would cease." *Kaynard* v. *District Council 9*, 70 LRRM 2467, 2470 (D.C.N.Y.).

It follows, and I find, that the picketing of Gracie Town House since October 30 violates Section 8(b)(4)(i)(B) of the Act. *Local 2669, affiliated with Suffolk County District Council of Carpenters and Joiners of America, AFL-CIO*, 173 NLRB No. 188.

C. *Threats, Coercion, and Restraint*

Section 8(b)(4)(ii)(B) makes it an unfair labor practice for a labor organization or its agents

> to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce where . . . an object thereof is . . . forcing or requiring any person . . . to cease doing business with any other person . . . .

1. The events of September 16, 1968

About September 16 Respondent picketed Gracie Town House under circumstances found above to transgress Section 8(b)(4)(i)(B) of the Act. I now find that said picketing also constitutes forbidden coercion and restraint within the contemplation of Section 8(b)(4)(ii)(B) of the Act. *Boston Gas Company,* 137 NLRB 1299, 1304; *Kisner and Sons,* 131 NLRB 1196, 1200-01; *J. C. Driscoll Transportation, Inc.* 148 NLRB 845, 852.

In addition, I find that Sharkey is an agent of Respondent and that he warned Villano that Respondent would picket Gracie Town House if Villano did not stop Sherwood from painting in the building. This warning, in the circumstances of the dispute, constituted a threat within the proscription of Section 8(b)(4)(ii)(B) of the Act, and I so find. *N.L.R.B.* v. *International Brotherhood of Electrical Workers, AFL-CIO, and its Local Union No. 769,* 405 F.2d 159 (C.A. 9). See *N.L.R.B* v. *Fruit and Vegetable Packers, Local 760,* 377 U.S. 58, 68; *N.L.R.B.* v. *District Council of Painters No. 48,* 340 F.2d 107, 111 (C.A. 9).

And I find that said threats were directed to a secondary person, Gracie Town House, with an object of forcing or requiring Gracie to cease doing business with Sherwood. *N.L.R.B.* v. *International Hod Carriers, Building, and Common Laborers' Union of America, Local No. 1140, AFL-CIO,* 285 F.2d 397 (C.A. 8), cert. denied 366 U.S. 903.

Accordingly, I find that said picketing and the threat to picket if Sherwood remained on the job are forbidden by Section 8(b)(4)(ii)(B) of the Act.

It is desirable to point out that I find Sherwood is the primary person and that Gracie Town House is a neutral or secondary person. This is because I find that Respondent has a primary dispute with Sherwood, that Respondent has no dispute with Gracie, and that Respondent's demands upon Gracie Town House are secondary. That such demands are secondary emerges from the fact, which I find, that they have arisen only because of a primary and underlying dispute between Respondent and Sherwood relating to Sherwood's painting jobs. *Catalina Island Lines,* 124 NLRB 813, 830.

2. The Events of October 29 and 30, 1968

As found above Sharkey on or about October 29 insisted that Villano prevent Sherwood from further painting at Gracie Town House and warned Epstein that pickets would be placed in front of the building if this demand was not met. For the reasons mentioned above in finding a similar demand on about September 16 constituted a threat, I find that this ultimatum on about October 29 amounts to a threat.

On about October 30 Respondent commenced picketing Gracie Town House and has maintained this activity since then. For the reasons set forth above relating to the illegality of the September 16 picketing, I find that the picketing on and since October 30 constitutes coercion and restraint of Gracie. Further I find that Sherwood is the primary employer and that Gracie is a neutral or secondary employer so far as this picketing is involved. And I find that an object of Respondent's conduct outlined above is to force or require Gracie to cease doing business with Sherwood. Hence I find that such conduct is embraced within the proscription of Section 8(b)(4)(ii)(B) of the Act.

V. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

Those activities of Respondent set forth in section IV, above, found to constitute unfair labor practices, occurring in connection with the operations of Sherwood described in section I, above, 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.

VI. THE REMEDY

Having found that Respondent has violated Section 8(b)(4)(i)(B) and (ii)(B) of the Act, it will be recommended that it be ordered to cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act. Since Respondent has engaged in a narrow type of secondary boycott, i.e., against Sherwood only, the order recommended will be limited to protecting Sherwood against proscribed secondary pressures. On the record before me I am unable to find an order broader in scope is warranted.

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

CONCLUSIONS OF LAW

1. District Council 9 is a labor organization within the meaning of Section 2(5) of the Act.

2. Alfred Sherwood and Algin each is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

3. By (a) picketing in a manner calculated to induce and encourage individuals employed by Gracie Town House and other persons (other than Sherwood) to engage in a strike or a refusal in the course of their employment to perform services, and (b) threatening, coercing, and restraining Gracie Town House, in both cases with an object of forcing or requiring Gracie Town House to cease doing business with Sherwood, Respondent has committed unfair labor practices comprehended by Section 8(b)(4)(i)(B) and (ii)(B) of the Act.

4. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

RECOMMENDED ORDER

Upon the basis of the above findings of fact and conclusions of law, and upon the entire record in this case, I recommend that the National Labor Relations Board enter an Order that Respondent, and its officers, agents, representatives, successors, and assigns, shall:

1. Cease and desist from:

(a) Inducing or encouraging, by picketing or other means, individuals employed by Gracie Town House or any other person (other than Sherwood) to engage in a strike or a refusal in the course of their employment to perform services, where an object thereof is to force or require Gracie Town House or any other person to cease doing business with Sherwood.

(b) Threatening, coercing, or restraining Gracie Town House, or any other person (other than Sherwood), where an object thereof is to force or require Gracie Town House or any other person to cease doing business with Sherwood.

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

(a) Post at the business offices and meeting halls of District Council 9 copies of the attached notice marked "Appendix."[2] Copies of said notice, on forms provided by the Regional Director for Region 29, after being signed by a representative of Respondent thereunto duly authorized, 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 displayed. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for the Twenty-ninth Region, in writing, within 20 days from the receipt of this decision, what steps Respondent has taken to comply herewith.[3]

[2]If 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. If 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."

[3]If 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, of the steps which Respondent had taken to comply herewith."

APPENDIX

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 induce or encourage, by picketing or any other means, individuals employed by Gracie Town House or any other person (other than Alfred Sherwood) to engage in a strike or a refusal in the course of their employment to perform services, where an object thereof is to force or require Gracie Town House or any other person to cease doing business with Alfred Sherwood.

WE WILL NOT threaten, coerce, or restrain Gracie Town House or any other person (other than Alfred Sherwood), where an object thereof is to force or require Gracie Town House or any other person to cease doing business with Alfred Sherwood.

DISTRICT COUNCIL 9,
BROTHERHOOD OF
PAINTERS,

DECORATORS AND
PAPERHANGERS 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, Fourth Floor, 16 Court Street, Brooklyn, New York 11201, Telephone 212-596-5386.