

Local 60, International Association of Bridge, Structural, and Ornamental Iron Workers, AFL-CIO; Local 214, International Laborers' Union of North America, AFL-CIO; Oswego County Building and Construction Trades Council and Nalews, Inc. Cases 3-CC-461, 3-CP-133, 3-CC-464, 3-CP-135, 3-CC-465, and 3-CP-136

June 30, 1969

DECISION AND ORDER

BY CHAIRMAN McCULLOCH AND MEMBERS
BROWN AND ZAGORIA

On April 18, 1969, Trial Examiner Sidney J. Barban issued his Decision in the above-entitled proceedings, finding that the Respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondents and the Charging Party filed exceptions to the Trial Examiner's 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, conclusions, and recommendations of the Trial Examiner, as modified herein:

1. We adopt the Trial Examiner's finding, which is fully supported by the record and to which no exception has been filed, that the Respondents engaged in a joint venture or common cause in picketing Nalews, Inc. at the Fulton Plant of Armstrong Cork Company with an object of forcing or requiring Nalews to recognize the Respondents as collective-bargaining agents, in violation of Section 8(b)(7)(C) of the Act.

2. We also agree with the Trial Examiner that the Respondents violated Section 8(b)(4)(i) and (ii)(B) by inducing employees of a neutral employer to cease work in order to force or require Armstrong to cease doing business with Nalews in furtherance of their object of securing recognition by Nalews. In so finding, however, we rely only upon the incident which occurred at the main gate to the Fulton Plant on the morning of October 2, 1968. That morning Kenneth Lucas, a business agent of the Respondent Laborers, secured permission to speak to Phil Gioia, a shop steward working for Dygert Construction Company, Inc. (a neutral employer performing work for Armstrong), and told Gioia that ". . . you guys

went through the picket line." When Gioia protested that the picketing was not directed at Dygert, Lucas again said that "you guys went through . . . a legal picket line." Gioia then asked whether Lucas was telling him to go home or work, and Lucas replied "Well, that is up to you." As a result of this conversation, Dygert's laborers were to stop working at noon, but did not leave at that time because the picketing ceased. It is thus clear that the Respondents, by the conduct of Kenneth Lucas, induced or encouraged individuals employed by Dygert to engage in a refusal in the course of their employment to perform services for their employer, with an object of forcing or requiring Armstrong to cease doing business with Nalews, and thereby violated Section 8(b)(4)(i) and (ii)(B) of the Act.¹

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 60, International Association of Bridge, Structural, and Ornamental Iron Workers, AFL-CIO; Local 214, International Laborers' Union of North America, AFL-CIO; and, Oswego County Building and Construction Trades Council; their officers, agents, and representatives, shall take the action set forth in the Recommended Order of the Trial Examiner.

MEMBER BROWN, dissenting in part:

I would not, in the circumstances of this case, find a violation of Section 8(b)(4)(B) based on the single incident upon which my colleagues rely. Thus, primary picketing was extended to and continued at the main gate for approximately a week with no evidence of any secondary objective or activity. Business agent Lucas' appeal at the end of that period, although unlawful, is, in my opinion, too isolated to warrant the finding of a violation of Section 8(b)(4). This is particularly so in the context of all the picketing and in view of the fact that the very same picketing has been found to be violative of Section 8(b)(7)(C) and would be remedied by an order not materially different from that required by the additional violation found by my colleagues.

¹We do not adopt the Trial Examiner's statement that Armstrong's cancellation of its prior agreement permitting use of the main gate for deliveries to Nalews and its requiring return to use of a separate gate for Nalews' deliveries establishes that the picketing had an object prohibited by Sec. 8(b)(4) or reveals any success in unlawfully causing a change in the manner in which Armstrong was doing business with Nalews at the time.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

SIDNEY J. BARRAN, Trial Examiner: These matters were heard before me at Syracuse, New York, on December 12, 1968, January 21 and 22, and February 6, 1969, upon an order consolidating cases and a complaint issued November 19, 1968, as amended at the hearing (based

upon charges filed on October 8 and 23, and November 1, 1968, by Nalews, Inc., herein called Nalews) that the Respondents, acting individually, and in concert, violated Section 8(b)(4)(i) and (ii)(B) and 8(b)(7)(C) of the Act, by picketing the premises of Armstrong Cork Company (herein Armstrong), at Fulton, New York (herein the Fulton Plant), for more than 30 days without filing a petition for certification under the Act, and engaging in other, related conduct, with an object of forcing or requiring —

1. Nalews to recognize and bargain with Respondents as the representatives of certain of Nalews' employees, although Respondents are not currently certified under the Act as such representatives;

2. Employees of Nalews to accept or select Respondents as their collective bargaining representatives;

3. Armstrong and Northern Ready-Mix, Incorporated (herein Northern) to cease doing business with Nalews;

4. William C. Pahl Co., Inc. (herein Pahl) and Dygert Construction Company, Inc. (herein Dygert) to cease doing business with Armstrong, in order to force or require Armstrong to cease doing business with Nalews.

Respondents' answer to the complaint admits allegations in the complaint sufficient to justify the assertion of jurisdiction under current standards of the Board, and to support findings that Local 60, International Association of Bridge, Structural, and Ornamental Iron Workers, AFL-CIO (herein Ironworkers) and Local 214, International Laborers' Union of North America, AFL-CIO (herein Laborers) are labor organizations within the meaning of the Act. The answer denies that Oswego County Building and Construction Trades Council (herein Council) is a labor organization within the meaning of the Act, and further denies that the Respondents engaged in unfair labor practices as alleged in the complaint.

Upon the entire record in this case, from observation of the witnesses and after due consideration of the briefs filed by the General Counsel and the Respondents, the Trial Examiner makes the following:

FINDINGS AND CONCLUSIONS

I. RELATIONSHIP OF THE COMPANIES

Armstrong is engaged at its Fulton Plant in the manufacture of flooring and other industrial products. Certain of its production and maintenance employees are represented under a collective-bargaining contract by a local of the Textile Workers of America, AFL-CIO (herein TWUA). During the course of its operations at the Fulton Plant, at times material herein, Armstrong had contracts with Pahl, Dygert, and Nalews to perform certain construction work at the plant. Both Pahl and Dygert were engaged in their activities near or at the main plant area, and used the main entrance to the plant premises which consists of an access off Route 57, a four lane, limited access highway (to which, it appears, the Fulton Plant has the only private access). The plant is apparently completely fenced in, and entrance through the main gate is controlled by a guard house. Certain of Dygert's employees, and apparently employees of Pahl are represented by the Laborers.

Nalews is engaged at the Fulton Plant in the construction of a waste disposal facility, which Armstrong has agreed with the State of New York to complete by the latter part of 1969. This work is being carried on somewhat north of the main plant area, and an access

gate to the project has been provided for Nalews in the fence on the northern side of the Fulton Plant premises, leading from Van Buren Road, a roadway running off Route 57 leading to two private residences only. No labor organization has been designated or certified to represent Nalew's employees on this project, and no petition for certification as such representative was filed during the period material herein.

During this period, another contractor, Mollineri Painting Contractors was also on the Fulton Plant premises, either as a contractor to Armstrong, or a subcontractor to Dygert, but had no apparent connection with Nalews.

II. RELATIONSHIP OF THE RESPONDENTS

The Council is one of a number of local building and construction trades councils chartered by the Building and Construction Trades Department of the American Federation of Labor-Congress of Industrial Organizations (herein Department). Like other such councils, the Council is composed of local unions having traditional roots in the construction industry, which are in turn affiliated with national and international unions which make up the membership of the Department. Among the members of the Council are the Ironworkers and the Laborers.

Among the "Objects and Principles" of the Department as shown by its Constitution, the Department seeks to "coordinate and harmonize the activities, functions and interests" of its affiliated unions; to "promote the growth and development of all building and construction trades unions"; to "foster, develop and advance apprenticeship training"; to "promote the development of health and safety practices"; to secure the adjustment of trade and jurisdictional disputes"; to "encourage the formation" of local councils, "in order to aid and assist in the organization and development and to coordinate the activities" of affiliated unions "on craft or trade lines", to "promote industrial peace and develop a more harmonious feeling between employers and employees"; and to "aid and assist" affiliated unions "in securing improved wages, hours and working conditions through the process of collective bargaining."

Within its geographical jurisdiction, the Council is clearly committed to the effectuation of the policies and purposes of the Department. In fact, under the standard "Constitution and By-Laws to Govern Local Councils" set forth in the Department's Constitution, to which the Council adheres, it is provided that the President of the Council "shall enforce the Constitution and By-laws of the . . . Department and of this Council, and their policies and decisions."

The evidence in this proceeding shows that in the effectuation of the policies and purposes stated, the Council, like other local councils and the Department itself, is much concerned that building construction in its jurisdiction should not be performed by employers who do not have agreements with labor unions traditionally affiliated with the Department or its councils; in other words, that construction in its area not be performed by non-union employers or workmen.¹

¹Aspects of this policy involving the Department and other local councils have been noted in numerous Board cases. See, *i.e.* *I.B.E.W., Local 1, AFL-CIO (E. Smith Plumbing Company)*, 164 NLRB No. 40, holding that by dealing with employers concerning the "presence of non AFL-CIO members on the job," a local building trades council acts as a labor

From the above, it is manifest that the Council is engaged in a joint enterprise with the unions affiliated with it in the furtherance of the interests of the affiliated unions, and in particular in regard to the wages, hours and working conditions of the members of its affiliated unions. Indeed, the Council's Constitution and Bylaws (contained in the Department's Constitution) requires the affiliated unions to include specific language with respect to jurisdictional disputes, a condition of employment, in all of their contracts. In a number of cases, the Board has held similar building trades councils to be labor organizations within the Act, and agents of their affiliates when they were acting in furtherance of common interests. See, i.e., *I.B.E.W., Local 1 (E. Smith Plumbing Company)*, *supra*; *Building and Construction Trades Council of Reading, etc. (General Plumbing & Heating Company, Inc. 155 NLRB 1184*. According to William Glaser, president of the Council, the latter's affiliation with the Department, and its powers, functions, or authority are no different from that of other building trades councils generally. It is therefore found that the Council is an organization through which the affiliated local unions, including the Ironworkers and the Laborers, function as a unit, that the Council, is a labor organization within the meaning of the Act, and acts as an agent for its affiliated unions in matters of common interest.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background

Nalews, in 1966, was awarded a contract by the city of Fulton, New York, for the construction of a sewage treatment plant. In May of that year, Nalews' job superintendent on that project, Deming, was approached by Calderone, then President of the Council and also a business representative of the Laborers, Kline, representing local 545 of the Operating Engineers, which is affiliated with the Council, and a representative of the Teamsters' union, who asked if Deming would sign a union contract, and employ men from their unions for the job. Deming replied that he was willing to hire qualified men who applied for work, but that he had no authority to sign union contracts. Calderone, who identified himself as president of the Council, stated that he was being pressured by the others to picket the job by Monday of the following week. The Teamster representative stated that "his men" would not cross the picket line. Deming gave the representatives the name, address, and telephone number of Nalews' president, Philip Swett, in New Hampshire. Deming reported this to Swett, who thereafter received a telephone call from a man who identified himself as Calderone, business representative of the Laborers and president of the Council. Calderone advised that he had visited the job at Fulton and spoken to Deming, that the Council members wanted to supply men to the job, and they wanted Nalews to consider signing a union agreement. Calderone stated that other members of the Council were pressuring him to establish a picket line at the project, but that he was restraining them until a meeting could be arranged with Nalews. Swett stated that

organization within the meaning of the Act. See also *Selby-Battersby & Company v. N.L.R.B.*, 259 F.2d 151 (C.A. 4), in which a local building trades council, with the aid and assistance of the Department, engaged in a joint venture to prevent the employment of nonunion contractors on building and construction projects within the Council's jurisdiction.

such a meeting was arranged for June 1, 1966.

There is no evidence in the record as to whether such a meeting was ever held. The minutes of the Council for June 9, 1966, assert: "Picket line to be placed at the new Fulton Pumping station." The Fulton job was picketed by the Laborers and the Operating Engineers, Local 545, and charges were filed with the Board against those unions (Cases 3-CP-103-1, 3-CC-350-1, 3-CP-103-2, 3-CC-350-2). These cases were thereafter disposed of by informal settlement agreements. The minutes of the Council for July 1966, show: "The pickets at the Pumping station at Fulton to be withdrawn with orders of N.L.R.B.," and the minutes for November 11, 1966, state that a request was made to investigate the wage scales on the Fulton Pumping Station through the Federal government (the project being subject to federal and state prevailing wage laws), and also that "Motion was made that we pay for picket expenses for informational pickets at Fulton Pumping Station." Respondents adduced no evidence with respect to this background material.²

B. The Current Dispute

Preliminary

Prior to the time Armstrong solicited bids for the construction of its waste water treatment facility at the Fulton Plant, Kline, business agent for Operating Engineers Local 545, visited the assistant manager of the Fulton Plant, Ronald Carpenter, to ascertain whether the project would be put up for bids, and which contractors would be requested to bid on the work. According to Carpenter, Kline "proceeded to list a number of people or contractors who he understood would probably be asked to bid. . . . He listed a number of contractors and said these are all the good outfits, and we like to see them get the job. And then he said, and then there's Nalews. He said, of course, Nalews built the treatment plant here in the City of Fulton. We had lots of trouble with them and the Labor Council would be a little unhappy if Armstrong would give them this job. . . ., we would sure appreciate it if you would give the Local boys a break."

The minutes of the Council for Thursday, June [13?], 1968 (all dates hereinafter in 1968 unless otherwise noted), show that there was a discussion that "[t]he project at the Armstrong Cork Co. has been awarded to the Nehlu [sic] Corp. Discussion was on the floor as to Non Union status of the Corp."

Nalews began construction at the Fulton Plant on July 8, On August 8, the Laborers mailed a communication to Nalews at Meredith, New Hampshire,³ which advised that

²Respondents contend that evidence of these matters should not have been received because under Sec. 10(b) of the Act the Board is barred from finding acts occurring more than 6 months prior to the filing of the charge to be unfair labor practices, and also because the dispute involved had been resolved by a settlement agreement approved by the Regional Director. However, while such prior facts may not be used as evidence that Respondents, or any of them, engaged in unfair labor practices occurring entirely outside the 6-month statute of limitations, they may be used to explain Respondents' conduct within the 6-month period. See, i.e., *I B E.W. Local 953, AFL-CIO (Erickson Electric Company)*, 154 NLRB 1301.

³This was a form letter, which did not contain the name or address of Nalews on its face and was unsigned though it carried the name of the Laborers at the end. The envelope indicated that the letter came from Martin Calderone, Business Agent of the Laborers. It is noted that although Calderone was no longer president of the Council, he continued to be a trustee in that organization (see Charging Party's Exh. 17).

"our union has from time to time attempted to interest your employees in membership in our union." The letter continued that the employees had, as was their right, refused to join the Laborers. It was stated that "it is our understanding that their wages and conditions of employment are below" that sought by the Laborers. The letter referred to the fact that under the Laborer's contract, employees receive insurance for which the employer contributes 20 cents an hour, a pension plan for which the employer contributes 15 cents an hour, and \$4.23 per hour in wages, and also are entitled to double time for work after 8 hours in 1 day or 40 hours in a week. The letter further indicated that the Laborers intended to publicize that Nalews' employees were working under inferior wages and conditions, unless advised that Nalews would meet "union standards." The letter also stated that the writer was not suggesting that Nalews interfere with the employees' right to select or reject the Laborers as their representative, and was not requesting that Nalews negotiate with the Laborers or enter into an agreement with it.

Although the letter stated that there was enclosed a copy of the instructions which would be given pickets, and that a copy of the letter would be given to Nalews' employees, there is no evidence that copies of the letter were actually distributed to employees, and no enclosure was sent with the letter. In reply, Nalews requested copies of the Laborers' contract, and, after receiving these, by letter dated September 3, advised Calderone that Nalews' "impression" was that its wages and conditions "substantially exceed those reflected in [the Laborers'] agreement."

There is no evidence that any of the Respondents, in fact, had any other information concerning the wages and working conditions provided for employees of Nalews on the project at the Fulton Plant at the time of the letter or thereafter. The record indicates that Respondents made no attempt to find out what the employees were receiving.⁴ On the other hand, it appears that Nalews had made an investigation to determine what the area conditions were and was paying its workmen substantially in accordance with economic conditions established by the unions in the area for the work being performed.⁵

It also appears that Glaser, president of the Council (and also a business agent of a Painters' local union affiliated with the Council) called Donald J. Lamb, a business agent of TWUA, in July, asking if he was aware that Nalews, a nonunion contractor, had been awarded the contract for the waste treatment facility at the Fulton Plant and advised Lamb that "informational" pickets might be placed at Van Buren Road. Glaser asked Lamb for the cooperation of the latter's union, and that word be "put out" that Nalews was nonunion. Glaser further told Lamb that there might be an advertising campaign in the trade papers "against Armstrong products." Lamb asserted that he did not recall any reference to the Council in this conversation, although such reference appears in his prior affidavit given to the General Counsel.

⁴It is noted from the Council's minutes that it was not until *after* the "informational" picketing at the Fulton City project had been withdrawn in 1966 that it was proposed at a Council meeting that an investigation be conducted to see if the prevailing wages and conditions were being maintained on that project.

⁵Thus Nalews' total cost per hour for pensions, insurance, and wages for laborers on the project totaled \$4.58, the amount provided in the Laborers' contract. However, Nalews paid only time and one-half for overtime work, while the Laborers' contract called for double time.

The picketing activities

Other than the above, the record does not show any contact between Nalews or Armstrong and any labor organization prior to the inception of picketing at the Fulton Plant. On September 16, pickets appeared at Van Buren Road carrying a sign with the following legend:

INFORMATIONAL PICKET

Nalews Construction Company

DOES NOT EMPLOY MEMBERS OF

IRON WORKERS NO. 60

The wages, working conditions and fringe benefits are substandard and affect the economic standards of members of our union.

This is not intended to induce any workman from giving service or to make deliveries to this employer

Picketing of the Van Buren Road ingress to the Fulton Plant premises was continuous until November 7, with a change in the picket sign, on October 21, noted hereinafter. Because of this picketing, drivers of concrete ready-mix trucks belonging to Northern refused to deliver materials ordered from Northern to Nalews at the Fulton Plant, on a number of occasions, to the extent that Nalews was seriously delayed in its construction of the waste treatment facility. The president of Northern testified that during this period Northern made deliveries only when there were no pickets.

On September 24, Carpenter, Armstrong's assistant plant manager, agreed to Nalews' request that the latter's suppliers be permitted to deliver through the main gate at the Fulton Plant rather than through the Van Buren Road gate as heretofore. The following day, shortly before 7 o'clock, pickets appeared at the main gate carrying the sign noted above. (Nalews' employees regularly began work at 8:00 a.m., though it is shown that some of its deliveries were made before that time.) Glaser had advised Lamb in advance that such pickets could be expected at the main gate, and TWUA had its local president, Pierce, at the main gate on the morning of September 25, to make sure the members of that union did not violate the no-strike clause of their contract with Armstrong. A picket told Pierce that they were not there to interfere with Armstrong employees represented by TWUA, but were at the main gate because the drivers of the ready-mix trucks delivering to Nalews might use that gate. Pierce stated that the pickets asserted that they were "informational." There is also evidence that one picket moved from Van Buren Road to the main gate that day because he understood that ready-mix trucks would use that gate. Picketing at the main gate with signs like that noted above continued to October 2.

On the morning of October 2, Kenneth Lucas, a business agent of the Laborers came to the Fulton Plant and asked to be permitted on the property so that he might speak to a shop steward at work there. Phil Gioia, then working for Dygert, was sent out to talk to Lucas. Gioia testified that Lucas "said, 'You know you went through a picket line?' and I said, 'Well, I don't know.' I said, 'They're not picketing my job.' And he said, 'Well, you guys went through the picket line, and you went through a legal picket line.' So I says, 'Well, what do you want me to do, go home or work?' And he said, 'Well, that is up to you.'" Then Lucas asked Gioia for the names of the laborers who were working and wrote these down

together with Gioia's name, and left, speaking to the pickets on the way out.

Gioia states that he returned to the job and told the laborers and the superintendent what had happened. The superintendent said that the Mason Foreman had said that craft was going to work until noon, and Gioia agreed that the laborers would also work until noon. At noon they were advised that the picket had been moved, and so the laborers did not leave the job. According to Carpenter however, some employees of Dygert did not start work or left work early that day.

During the time that Lucas was at the main gate of the Fulton Plant, he also attempted to wave off two trucks from going into the plant, and sought to have a masonry contractor respect the picket line and not go in to work at the plant. In each case, Lucas was unsuccessful.

During the course of this morning, Carpenter issued a written order that Nalews' men and suppliers were to use the Van Buren Road gate only, and would not be permitted to further use the main gate. A carbon copy of this order was given to the pickets at the main gate, one of whom left. Thereafter, Glaser, president of the Council and business agent of the Painters, Rando, business agent of the Boilermakers local, and Stevens, business agent of the Ironworkers, appeared outside the main gate of the plant. Stevens had a carbon copy of Carpenter's order, which had been given to the picket. Carpenter spoke with the three men. Stevens requested that since the carbon did not indicate that it originated with Armstrong, that he be given a copy that designated its origin, and that the memorandum be modified to state that the main gate would be used only by other union contractors. Someone, possibly Glaser, said that this would be discriminatory, and the others agreed. Carpenter had the memorandum redone with Armstrong's name and the Fulton Plant on it, and provided that all contractors other than Nalews were to use the main gate. After this was given to the union representative, Stevens assured Carpenter that the pickets would be removed, and, as Carpenter testified, "made a comment that they have a terrific investment in this community and they couldn't afford to have nonunion contractors take jobs away like this." As previously noted, pickets at the main gate were removed before noon on October 2. Pickets remained at the Van Buren Road access to the plant.

Beginning on October 21, and continuing until November 7, the pickets at the Van Buren Road entrance to the Fulton Plant started carrying a new sign, reading as follows:

INFORMATIONAL PICKET

NALEWS, INC.

Does not have a contract with nor employee [sic]
members of

Labor Local 214

This picket is purely for advising the public of these facts and is not to be construed as an inducement to anyone.

In addition to the above, the record shows that the Painters Local picketed Mollinari Painting Contractors for a part of 1 day on October 30.

Conclusions

1. *Responsibility of the Council:* Respondents' brief asserts that it has not been shown that the Council was

responsible for any of the picketing activities at the Fulton Plant. It is suggested that Glaser's personal activities shown by the record were in behalf of the Painters Local which he also represents. These arguments are unpersuasive. The record is clear that it is the function of the Council to aid, assist, and coordinate the efforts of its affiliates in promoting the interests of their members in resisting the employment of nonunion contractors in the area, and in organizing those contractors who do not have agreements with affiliates of the Department or the Council. These matters were discussed at Council meetings. There are a number of references to the use of picketing as a method of "organizing contractors," or "to put union members on the job." In particular, there were discussions with respect to the problem raised by Nalews, as a nonunion contractor, performing work in the area, especially at the Fulton Plant, in 1968. Glaser's further activities, in notifying Lamb in advance of the picketing, asking the cooperation of TWUA, and threatening a boycott of Armstrong products, and in conferring with Carpenter with respect to the denial of the use of the main gate to Nalews and the withdrawal of the pickets from that gate, were not only within the scope of his normal responsibilities as president of the Council, but were obviously carried out in that capacity. Thus those activities were directed solely at Nalews, and it does not appear that the Painters Local, which Glaser also represented, had any relationship with Nalews. It would further appear from the Council's minutes that it was Glaser, certainly in his capacity as president of the Council, who assured the Court (apparently in proceedings under Section 10 (l) of the Act that picketing would cease) the Fulton Plant until the Board passed on the matter, to which the delegates to the Council agreed. The statements of Business Representative Kline of the Operating Engineers to Carpenter, before the award of the construction to Nalews, further confirms the Council's involvement in the project to prevent Nalews from performing the construction of the waste disposal facility at the Fulton Plant.* On the basis of all of the evidence, it is found that the Council, together with the Laborers and the Ironworkers, was engaged in "a joint venture or common cause" in the various activities undertaken against Nalews in this matter. Cf. *Bricklayers, Masons, and Tile Setters Local No. 20, etc. (I. C. Minium)*, 174 NLRB No. 185.

Respondents' objectives: The General Counsel and Nalews contend that Respondents' conduct had as objectives to compel Nalews to recognize Respondents, jointly or severally, as the bargaining representative of Nalews' employees (and to compel those employees to accept Respondents as such), in violation of Section 8(b)(7)(C) of the Act, or, in aid of that purpose, to compel Armstrong to stop doing business with Nalews, in violation of Section 8(b)(4)(i) and (ii)(B) of the Act. Respondents contend that their activities were designed solely against Nalews, and not to put any pressure upon Armstrong to cease doing business with Nalews; and further that the picketing involved was informational, not for the purpose of securing recognition of Respondents, or any of them, as bargaining representative of Nalews' employees, and constituted publicity protected by the Act.

*Although there is no direct evidence of Kline's relationship with the Council, as business representative of a local union affiliated with the Council, it would be normal, according to Glaser's testimony, that he would be a delegate from his local to the Council, and it is inferred and found that he occupied that position.

Section 8(b)(7)(C) of the Act bans picketing for recognitional or organizational purposes which has been carried on for more than a reasonable period of time (not to exceed 30 days) without a representation petition having been filed with the Board, with a proviso that "picketing or other publicity for the purpose of truthfully advising the public . . . that an employer does not employ members of, or have a contract with, a labor organization" is not prohibited, "unless an effect of such picketing is to induce any individual employed by any other person in the course of his employment, not to pick up, deliver or transport any goods or not to perform any services." See *Local 3, I.B.E.W., AFL-CIO (Jack Picoult)*, 144 NLRB 5.

In the *Jack Picoult* case, the Board, on remand from the court, said of the "Publicity" proviso, in part (144 NLRB at p. 8):

The court explained that the proviso "gives the union freedom to appeal to the unorganized public for spontaneous popular pressure upon an employer; it is intended, however, to exclude the invocation of pressure by organized labor groups or members of unions, as such." Accordingly, the court continued, in determining whether the picketing is "for the purpose of truthfully advising the public," it is necessary to ascertain the Union's tactical purpose. Was it seeking a response from the public at large, or from organized groups? If the former, the court stated, the picketing is privileged by the proviso unless it communicates more than the limited information permitted thereby or it in fact has an effect on deliveries; if the latter, the picketing is not privileged irrespective of its actual effects.

There is no doubt that the picketing of Nalews at the Fulton Plant had a recognitional or organizational objective. On the only other occasion that Nalews had done work within the jurisdiction of the Council, affiliates of the Council, with the apparent approval of the Council, had picketed Nalews with the purpose of compelling Nalews to sign up and become a union contractor. Though this was unsuccessful because of charges filed with the Regional Director, which were settled by the unions involved, it is clear that when Nalews thereafter obtained the waste treatment project at the Fulton Plant, the Council and its affiliates continued to object to Nalews' nonunion status and sought to compel Nalews to become a "union" contractor.

Nor is this purpose negated by the fact that Respondents avoided renewing their demands upon Nalews directly, or even by their "self-serving" declarations disclaiming a recognitional or organizational objective and claiming that their activity was solely for publicity. See *I.B.E.W., Local 953 (Erickson Electric Company)*, *supra*. Indeed, the legends on the two picket signs, advising that Nalews does not employ union members or have a union contract, clearly indicate that Respondents' purpose was, as in the past, to organize the nonunion employer, Nalews, by picketing pressure. As the Board stated, in similar circumstances, in *Local 429, I.B.E.W., AFL-CIO (Sam Melson)*, 138 NLRB 460, 462:

We further find that the picketing was for an object of organizing Melson's employees. Local 429 contends that its picketing was neither for a recognitional nor an organizational object but for the sole purpose of protecting the prevailing union wage scale and working conditions, and therefore such picketing was outside the proscriptive scope of Section 8(b)(7). We find no merit in this contention. As noted, Local 429 picketed with a

sign stating that Melson did not employ Local 429 members and did not have a contract with Local 429. *We have held that a statement on a picket sign that an employer does not employ members of a labor organization clearly implies a recognitional and bargaining object.* [emphasis supplied]

See also, to the same effect, *Local 1205, I.B.T.C.W & H. of A., et al., (Island Coal and Lumber Corp.)*, 159 NLRB 895; *Teamsters Local Union No. 5, etc. (Barber Brothers Contracting Co., Inc.)*, 171 NLRB No. 9.

Rather than using the picket line at the Fulton Plant as a means of "truthfully advising the public" of their dispute with Nalews, Respondents employed the pickets as a signal to other unions and union members to bring pressure on Nalews to accede to Respondents' wishes. Thus there can be no doubt that a prime purpose of the pickets was to interrupt the delivery of concrete by Northern's unionized drivers to Nalews, as is shown by the movement of the pickets to the main gate for that particular purpose. Cf. *Teamsters Local Union No. 5 (Barber Bros.)*, *supra*. The activities of Laborers' Business Agent Lucas at the main gate, in seeking to induce workers on the job to leave and others not to come onto the plant premises to perform services, as well as Glaser's request of Lamb to cooperate with the picket line, so far as TWUA could, further indicate that Respondents' "tactical purpose" was not so much directed at "seeking a response from the public at large," as "from organized labor groups." See *Local 3, I.B.E.W. (Jack Picoult)*, *supra*; *Carpenters Local No. 2133, et al. (Cascade Employers Assn., Inc.)* 151 NLRB 1378. Indeed, the geographical location of the plant, and, therefore, of the pickets, indicates that the pickets' message was not likely directed to the public, but was most certainly intended for the crafts, and other employees, who would use the gates being picketed. Nor is it credible, in the context of this record, that Respondents were truly interested in advertising Nalews' alleged substandard working conditions.

From the above and the record as a whole, it is found that an objective of the picketing, carried on as a part of a joint venture or common cause of the Respondents, was recognitional or organizational, and not merely informational or for the purpose of truthful publicity, as claimed, and, since these picketing activities had a substantial effect of interrupting deliveries to Nalews at the Fulton Plant, Respondents thereby violated Section 8(b)(7)(C) of the Act.

Under Section 8(b)(4)(B) of the Act, it is unlawful for a labor organization to induce individuals to refuse to perform services for employers engaged in an industry affecting commerce, or to threaten, coerce or restrain a person engaged in an industry affecting commerce, where, in either case, an objective of the action is to force or require one person to stop doing business with another person. It is clear that in picketing the main gate of the Fulton Plant, and in directly seeking to induce employees working on the job to leave, and individuals coming onto the plant premises not to perform services, Respondents had an objective of forcing or requiring Armstrong to stop doing business with Nalews, within the meaning of Section 8(b)(4)(i) and (ii)(B) of the Act. Indeed, although a violation of these sections may be made out irrespective of the actual success of the action taken, it is noted that to the extent that Armstrong was compelled to cancel its prior agreement permitting Nalews' use of the main gate of the Fulton Plant for deliveries, Respondents were successful in requiring Armstrong to change the manner in

which it was doing business with Nalews at the time.

CONCLUSIONS OF LAW

1. Nalews, Armstrong, Pahl, Dygert, and Northern, each is, and at all material times has been, an employer engaged in commerce or an industry affecting commerce within the meaning of Section 2(6) and (7) of the Act.

2. Respondent Ironworkers, Respondent Laborers, and Respondent Council, each is, and at all material times have been, a labor organization within the meaning of Section 2(5) of the Act.

3. Respondents, by picketing Nalews, or causing Nalews to be picketed, for a period of more than 30 days, with an object of forcing or requiring Nalews to recognize or bargain collectively with Respondents as representative of its employees, at a time when none of Respondents was certified as the collective-bargaining representative of such employees, and without a petition having been filed under Section 9(c) of the Act, engaged in unfair labor practices within the meaning of Section 8 (b)(7)(C) of the Act.

4. By inducing individuals employed by Dygert and other employers to engage in refusals in the course of their employment to perform services, with an object of forcing or requiring Armstrong to cease doing business with Nalews, and thereby threatening, coercing, and restraining Armstrong with the object aforesaid, Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(b)(i) and (ii)(B) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

It having been found that the Respondents have engaged in certain unfair labor practices, it will be recommended that they cease and desist therefrom and that they take certain affirmative action designed to effectuate the purposes 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, it is recommended that Respondents Local 60, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO; Local 214, International Laborers' Union of North America, AFL-CIO; Oswego County Building and Construction Trades Council, their officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Picketing, or causing to be picketed, or threatening to picket Nalews, Inc., where an object thereof is to force or require said employer to recognize or bargain with any of the Respondents, or any other labor organization, as the bargaining agent of the employees or prospective employees of Nalews, Inc. in circumstances violative of Section 8(b)(7)(C) of the Act.

(b) Inducing or encouraging any individual employed by a person engaged in commerce, or in an industry affecting commerce, to engage in a strike or refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services where an object thereof is to force or require any person

to cease doing business with Armstrong Cork Company, or with Nalews, Inc., or to force or require Nalews, Inc. to recognize or bargain with any of Respondents, or any other labor organization, which has not been certified by the Board as the representative of the employees of Nalews, Inc.

(c) Threatening, coercing, or restraining any person engaged in commerce, or in an industry affecting commerce, where an object thereof is to force or require such person to cease doing business with Armstrong Cork Company, or with Nalews, Inc., or to force or require Nalews, Inc., to recognize or bargain with any of Respondents, or any other labor organization, which has not been certified by the Board as the representative of the employees of Nalews, Inc.

2. Take the following affirmative action which it is found will effectuate the purposes of the Act.

(a) Post at the respective business offices and meeting halls of each of the Respondents described above, copies of the attached notice marked "Appendix." Copies of said notice, on forms provided by the Regional Director for Region 3, shall, after being duly signed by a representative of each one of the Respondents, be posted by each respective Respondent 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 to insure that such notices are not altered, defaced, or covered by any other material.

(b) Furnish to the Regional Director for Region 3 signed copies of said notice for posting by Nalews, Inc., Armstrong Cork Company, and their subcontractors and suppliers, if willing, for posting in places where such notice will come to the attention of employees of Nalews, Inc., Armstrong Cork Company, and the employees of their subcontractors and suppliers. Copies of said notices on forms provided by the Regional Director, shall, after being duly signed by each of the respective Respondents, be forthwith returned to the Regional Director for distribution by him.

(c) Notify the Regional Director for Region 3, in writing, within 20 days from the receipt of this Decision, what steps Respondents have taken to comply herewith.⁸

⁸In the event that this Recommended Order is adopted by the Board, the words "a Decision and Order" shall be substituted for the words, "the Recommended Order of a Trial Examiner" in the Notice. In the further event that the Board's Order is enforced by a decree of a United States Court of Appeals, the words "a Decree of the United States Court of Appeals Enforcing an Order" shall be substituted for the words "a Decision and Order."

⁹In the event that this Recommended Order is adopted by the Board, the provision shall be modified to read: "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps Respondent has taken to comply herewith."

APPENDIX

NOTICE TO ALL MEMBERS OF LOCAL 60, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL, AND ORNAMENTAL IRON WORKERS, AFL-CIO; LOCAL 214, INTERNATIONAL LABORERS' UNION OF NORTH AMERICA, AFL-CIO; OSWEGO COUNTY BUILDING AND CONSTRUCTION TRADES COUNCIL

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:

DECISIONS OF NATIONAL LABOR RELATIONS BOARD

WE WILL NOT picket, or cause to be picketed, or threaten to picket Nalews, Inc., with a purpose of causing Nalews to deal with any of us, or any other union, for the working conditions of Nalews' employees, in circumstances which would violate the law.

WE WILL NOT try to get any individual employed by an employer subject to the National Labor Relations Act to refuse to do work or to refuse to perform services in the course of his employment for the purpose of having such employer stop doing business with Nalews, or with Armstrong Cork Company, in order to put pressure on Nalews to deal with any of us, or any other union, which has not been certified by the Labor Board, for the working conditions of Nalews' employees.

WE WILL NOT threaten, coerce, or restrain any person subject to the National Labor Relations Act for the purpose of causing such employer to stop doing business with Nalews, or with Armstrong, in order to put pressure on Nalews to deal with any of us, or any other union, which has not been certified by the Labor Board for the working conditions of Nalews' employees.

LOCAL 60,
INTERNATIONAL
ASSOCIATION OF BRIDGE,
STRUCTURAL, AND

ORNAMENTAL IRON
WORKERS, AFL-CIO;
LOCAL 214,
INTERNATIONAL LABORERS'
UNION OF NORTH
AMERICA, AFL-CIO;
OSWEGO COUNTY
BUILDING AND
CONSTRUCTION TRADES
COUNCIL.
(Labor Organizations)

Dated	By	(Representative)	(Title)
Dated	By	(Representative)	(Title)
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, The 120 Building, 120 Delaware Avenue, Buffalo, New York 14202, Telephone 716-842-3100.