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**Southwest Regional Council of Carpenters and Carpenters Local Union No. 1506 United Brotherhood of Carpenters and Joiners of America and Held Properties, Inc. and The Laser Institute for Dermatology & European Skin Care.** Case 31–CC–2115 and 31–CC–2117

October 27, 2010

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS BECKER,  
PEARCE, AND HAYES

This case concerns whether the Respondent Unions violated Section 8(b)(4)(ii)(B) of the Act by displaying large, stationary banners proclaiming a “labor dispute” at the business locations of a secondary employer.<sup>1</sup> The judge found that these banner displays violated Section 8(b)(4)(ii)(B) of the Act because they were akin to picketing and constituted threats, coercion, or restraint with an unlawful cease-doing-business objective.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to reject the judge’s conclusions consistent with our recent decisions in *Carpenters Local 1506 (Eliason & Knuth of Arizona, Inc.)*, 355 NLRB No. 159 (2010), *Carpenters Local 1506 (AGC San Diego Chapter)*, 355 NLRB No. 191 (2010) (*AGC*), and for the reasons stated below. In *Eliason*, supra, we concluded that the union’s display of large stationary banners did not violate Section 8(b)(4)(ii)(B) of the Act. We find that the banner displays in this case were, for all relevant purposes, the same as the conduct found lawful in *Eliason*.

We address only one aspect of this case: whether picketing that preceded the banner display in this case creates any meaningful factual distinction from *Eliason*. Here, the Union engaged in area standards picketing 5 days before it began displaying the banner. The judge found that the picketing occurred in the plaza between two office buildings and in front of both entrances to the building containing the office of secondary employer and Charging Party Laser Institute for Dermatology and European Skin Care. The picket signs identified only the primary employer, Gingerich Construction. The banners,

<sup>1</sup> On April 2, 2004, Administrative Law Judge Burton Litvack issued the attached decision. The Charging Party and the Respondent each filed exceptions and a supporting brief, and the General Counsel filed cross-exceptions and a supporting brief. The Charging Party filed an answering brief to the Respondent’s exceptions, and the Respondent filed an answering brief to the General Counsel’s cross-exceptions.

in contrast, were displayed in front of the entrance to the plaza, 50 feet from the entrance to the building, and named only the secondary employer, Laser Institute for Dermatology. There is no evidence that the prior picketing or the subsequent banner display caused any employees to cease work.

The General Counsel does not allege that the prior picketing was unlawful or that it would have become unlawful if it had continued. Nor does the General Counsel allege that the prior picketing made the banner displays unlawful. Applying *Eliason*, and well-established Board doctrine, we conclude that there was no violation of the Act.

1. This case is most closely analogous to decisions in which the otherwise lawful distribution of handbills was preceded by picketing. In such cases decided after *Edward J. DeBartolo Corp. v. Florida Gulf Coast Building & Construction Trades Council*, 485 U.S. 568 (1988),<sup>2</sup> the Board has uniformly held that prior picketing does not render otherwise lawful distribution of handbills unlawful.<sup>3</sup> Indeed, handbilling has been found lawful even when it immediately followed *unlawful* secondary picketing.<sup>4</sup> We find in this case that, just as prior picketing does not render the peaceful distribution of handbills coercive, it does not render the peaceful display of stationary banners coercive.

2. In *Eliason*, we distinguished a number of prior cases in which the Board had found conduct not containing all the elements of traditional, ambulatory picketing nevertheless to be recognitional “picketing” barred by Section 8(b)(7), on the grounds that the unions in the earlier cases had engaged in picketing prior to the activity at issue while there was no prior picketing in *Eli-*

<sup>2</sup> As discussed in *Eliason*, supra, slip op. at 11–12, the Court in *DeBartolo* held that the distribution of handbills urging customers not to patronize a secondary employer did not violate Sec. 8(b)(4)(ii)(B).

<sup>3</sup> See *Service Employees Local 525 (General Maintenance Service Co.)*, 329 NLRB 638, 681 (1999), enfd. 52 Fed. Appx. 357 (9th Cir. 2002) (“[T]he Board has posited that handbilling is not to be regarded as coercive simply because picketing either precedes or follows it, even where no hiatus occurs between the two.”).

<sup>4</sup> For example, in *Laborers Local 332 (CDG, Inc.)*, 305 NLRB 298 (1991), about 100 union members handbilled for 2 days at the entrances to an office building. A week later, after a brief period of handbilling in the morning, 300 to 400 persons, many carrying signs, held a 30-minute rally in which they marched around the building, blocking all entrances. After the rally, 20 members remained to distribute handbills. The Board found that the march and rally constituted unlawful picketing, but that the handbilling before and after the rally was lawful. *Id.* at 298, 304–305. See also *Operating Engineers Local 139 (Oak Construction)*, 226 NLRB 759, 759–760 (1976) (pre-*DeBartolo* case holding that simultaneous picketing and handbilling were unlawful, but handbilling that continued after the picketing ceased was lawful under the publicity proviso).

ason.<sup>5</sup> There was prior picketing in this case, but it was area-standards picketing and not recognitional picketing governed by Section 8(b)(7). Properly conducted area-standards picketing is lawful, and there are no limitations on how long it may continue.<sup>6</sup> By contrast, in the 8(b)(7) cases cited in *Eliason*, the unions, which the Board determined were acting with a recognitional object, could not lawfully have continued picketing.<sup>7</sup> Thus, the conduct at issue in those cases served as a means of circumventing the statutory limitations on recognitional picketing—of continuing to obtain the benefits of picketing after it became unlawful without engaging in conduct displaying all the elements of traditional picketing. Moreover, in the 8(b)(7) cases, the picketing involved signs that named only the primary employer and the later conduct continued to be expressly directed at the same primary employer (indeed, often using the same picket signs but without accompanying patrolling). Thus, the Board, explicitly or implicitly, found that the unions in these prior cases intended their conduct to operate as a signal to employees to continue to honor the prior picket lines.<sup>8</sup>

For all of these reasons, we conclude that the prior picketing in this case does not distinguish the facts here from those in *Eliason*.<sup>9</sup> To rule otherwise, we would

<sup>5</sup> Sec. 8(b)(7) proscribes recognitional picketing by a union under any of the following conditions: where the employer has lawfully recognized another union; where the picketing union has lost a valid election in the preceding 12 months; and—subject to a proviso for informational picketing—where the picketing has been conducted without a representation petition being filed within a reasonable period of time, not to exceed 30 days from the commencement of the picketing.

<sup>6</sup> “The law is settled that if a union pickets using a sign which on its face is aimed at forcing an employer, which in fact pays substandard wages, to conform to area standards, . . . the picketing is lawful unless there is independent evidence to controvert the Union’s overt representations of its objective.” *Carpenters Local 1622 (Paul E. Iacono Structural Engineer, Inc.)*, 250 NLRB 416, 418 (1980); *Giant Food Markets*, 241 NLRB 727, 728 (1979), order set aside on other grounds, 633 F.2d 18 (6th Cir. 1980).

<sup>7</sup> See *NLRB v. United Furniture Workers*, 337 F.2d 936, 938 (2d Cir. 1964) (union had lost a valid election within the last 12 months); *Lawrence Typographical Union No. 570 (Kansas Color Press)*, 169 NLRB 279, 284 (1968), enfd. 402 F.2d 452 (10th Cir. 1968) (same); *Lumber & Sawmill Workers Local 2797 (Stoltze Land & Lumber Co.)*, 156 NLRB 388, 394 (1965) (same); *Teamsters Local 812 (Woodward Motors)*, 135 NLRB 851 (1962), enfd. 314 F.2d 53 (2d Cir. 1963) (same); *Mine Workers Local 1329 (Alpine Constr. Corp.)*, 276 NLRB 415, 431 (1985), vacated 812 F.2d 741 (D.C. Cir. 1987) (union failed to file a representation petition within 30 days).

<sup>8</sup> It apparently was understood as such in *Woodward Motors*, supra. When the union stopped its ambulatory picketing and instead posted two picket signs in a snowbank at the company’s entrance, deliveries were interrupted when drivers refused to pass the picket signs. 135 NLRB at 857.

<sup>9</sup> Having concluded that the banner displays did not “threaten, coerce, or restrain” the secondary employer and therefore did not violate Sec. 8(b)(4)(ii)(B), we need not reach Charging Party Held Properties’

have to conclude that the lawful display of the banner somehow became unlawful because it was preceded by picketing which was *not* alleged to be unlawful and could have lawfully continued. We see no basis in law or logic for such an outcome.

#### ORDER

The complaint is dismissed.

Dated, Washington, D.C. October 27, 2010

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Wilma B. Liebman, Chairman

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Craig Becker, Member

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Mark Gaston Pearce, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER HAYES, dissenting.

The banner activity at issue in this case is essentially the same as in *Eliason & Knuth*, 355 NLRB No. 159 (2010). For the reasons fully set forth in the joint dissent in that case, I would find a violation here.<sup>1</sup> The banner activity involves the placement of union agents holding large banners proximate to the premises of neutral employers who are doing business with an employer who is the primary target in a labor dispute with the Respondents. The predominate element of such banner activity is confrontational conduct, rather than persuasive speech, designed to promote a total boycott of the neutral employers business, and thereby to further an objective of forcing those employers to cease doing business with the primary employer in the labor dispute. Like picketing, this banner activity is the precise evil that Congress intended to outlaw through Section 8(b)(4)(ii)(B), and the proscription of this conduct raises no constitutional concerns. I therefore dissent from my colleagues’ failure to enforce the Act as intended.

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exception to the judge’s finding that, under common-law agency principles, Respondent Southwest Regional Council of Carpenters was not legally responsible for the banner displays.

<sup>1</sup> Unlike in *Eliason*, the banner activity here was preceded by picketing. While I would find the banner activity unlawful even in the absence of picketing, the occurrence of picketing soon before or after banner activity serves to underscore the common coercive aspects of the two activities.

Dated, Washington, D.C. October 27, 2010

Brian E. Hayes, Member

NATIONAL LABOR RELATIONS BOARD

*Katherine B. Mankin, Esq.*, for the General Counsel.

*Gerald V. Selvo, Esq. (DeCarlo, Connor & Selvo)*, of Los Angeles, California, for the Respondents.

*Nathan A. Goldstein, Esq. (Goldstein, Kennedy & Petito)*, of Los Angeles, California, for Held Properties, Inc.

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DECISION

STATEMENT OF THE CASE

BURTON LITVACK, Administrative Law Judge. Held Properties, Inc. (Held), filed the original and amended unfair labor practice charges in Case 31–CC–2115 on September 10 and 18, 2003, respectively, and the original and amended unfair labor practice charges in Case 31–CC–2117 were filed by The Laser Institute for Dermatology & European Skin Care (Laser Institute), on September 11 and 18, 2003, respectively. Based upon investigations of the above unfair labor practice charges on September 23, 2003, the Regional Director for Region 31 of the National Labor Relations Board (the Board), issued a consolidated complaint, alleging that Southwest Regional Council of Carpenters (Respondent Regional Council), and Carpenters Local Union No. 1506, United Brotherhood of Carpenters and Joiners of America (Respondent Local 1506) and together called Respondents, engaged in, and are engaging in, an unfair labor practice within the meaning of Section 8(b)(4)(ii)(B) of the National Labor Relations Act (the Act). Each Respondent filed an answer, denying the commission of the alleged unfair labor practice. Pursuant to a notice of hearing, a trial was held before the above-named administrative law judge on November 3, 2003,<sup>1</sup> in Los Angeles, California. At the trial, all parties were afforded the right to call witnesses, to cross-examine witnesses, to offer into the record all relevant documentary evidence, to argue legal positions orally, and to file posthearing briefs. The latter documents were filed by counsel for the General Counsel, counsel for Held, and counsel for Respondents, and each brief has been closely examined. Accordingly, based upon the entire record herein, including the posthearing briefs and my observation of the testimonial demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

At all times material herein, Held, with an office and primary place of business located in Los Angeles, California, has been engaged in business as a property management real estate brokerage and a licensed contractor. During the 12-month period

immediately preceding the issuance of the consolidated complaint, in connection with its above-described business operations, Held purchased and received goods and products, valued in excess of \$50,000, directly from suppliers located outside the State of California. Respondents admit that Held is, and has been at all times material herein, an employer engaged in commerce or in an industry affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

At all times material herein, Laser Institute, which has an office and principle place of business, located at 2021 Santa Monica Boulevard, Santa Monica, California, has been engaged in the business of providing a spectrum of services for skin care and beauty. In connection with its business operations, during the 12-month period immediately preceding issuance of the consolidated complaint, Laser Institute purchased and received goods and products, valued in excess of \$50,000, directly from suppliers located outside the State of California. Respondents admit that, at all times material herein, Laser Institute has been an employer engaged in commerce or in an industry affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATIONS

Respondent Regional Council and Respondent Local 1506 each admits that, at all times material herein, it has been a labor organization within the meaning of Section 2(5) of the Act.

III. THE ISSUES

The consolidated complaint alleges that, since in or about February 2003, Held has been engaged as a general contractor to perform expansion/construction work at an office suite located in an office building at 2021 Santa Monica Boulevard in Santa Monica, California, which is owned by Medical Associates, d/b/a Medical Centre of Santa Monica (Medical Associates); that the lessee of the above office suite in the building located at 2021 Santa Monica Boulevard, is Laser Institute; that, in connection with the construction work, Held contracted with Gingerich Construction to perform drywall services in the office suite; that, at all times material herein, Respondents have been engaged in a primary labor dispute with Gingerich Construction; that, at no material time herein, have Respondents been engaged in a primary labor dispute with Held, Laser Institute, or Medical Associates; and that, from September 8, 2003 through, at least, September 23, 2003, Respondents engaged in conduct, violative of Section 8(b)(4)(ii)(B) of the Act, by, in furtherance of their labor dispute with Gingerich Construction, displaying a banner at the building located at 2021 Santa Monica Boulevard, which states: “LABOR DISPUTE” and “SHAME ON LASER INSTITUTE FOR DERMATOLOGY & EUROPEAN SKIN CARE.” The consolidated complaint further alleges that the displaying of the above banner constituted signal picketing and that, in the above-described circumstances, the language of the banner constituted fraudulent, unprotected speech. Respondents deny the commission of the alleged unfair labor practice and contend that displaying the banner did not constitute picketing and that the wording of the banner was privileged by the first amendment to the Constitution of the United States.

<sup>1</sup> Unless otherwise stated, all events herein occurred during 2003.

## IV. THE ALLEGED UNFAIR LABOR PRACTICE

*A. The Facts<sup>2</sup>*

Santa Monica Boulevard, a portion of which runs through Santa Monica, California, is a major Los Angeles area east-west thoroughfare, which is subject to heavy vehicular traffic in both directions, and St. John's Hospital is located near the intersection of 21st Street and Santa Monica Boulevard in Santa Monica on the northside of Santa Monica Boulevard. Directly to the west of the hospital and adjacent to it is the office building, located at 2021 Santa Monica Boulevard (the 2021 building), which is owned by Medical Associates; to the west of the 2021 building and separated by a plaza area, in which are two planted areas, is another office building, the address of which is 2001 Santa Monica Boulevard; and separate parking structures are located behind the 2021 building and the office building at 2001 Santa Monica Boulevard. There are three entrances to the 2021 building—a front entrance off the public sidewalk on Santa Monica Boulevard, an entrance from the plaza, which leads into the lobby area, and an entrance to the second floor of the building from the parking garage. Directly across Santa Monica Boulevard from the 2021 building is a public parking lot.

Held manages the 2021 building and enforces all lease agreements for Medical Associates, and there are between 30 and 50 tenants, presumably either all doctors or others offering medical services, in the building. Dr. Ava Shamban, who has a medical degree and is a board-certified dermatologist, is the lessee of a suite of offices located on the sixth floor of the 2021 building, does business under the name, The Laser Institute For Dermatology & European Skin Care, and is engaged in providing a "spectrum" of services for skin care and beauty. All clients, visitors, and suppliers of Laser Institute must enter the 2021 building through the lobby and take the elevator to the sixth floor.<sup>3</sup> Pursuant to a lease expansion agreement between Laser Institute and Medical Associates, in or about February, acting as a general contractor, Held commenced performance of an expansion/construction project at the Laser Institute's office suite (the jobsite). The purpose of this project was to increase the square footage of the existing office space of Laser Institute's office suite. In connection with the expansion project, Held contracted with various subcontractors, including Gingerich Construction, to perform construction work; the latter's contract concerned the performance of drywall services for the expansion project.<sup>4</sup> Gingerich Construction's employees worked at the jobsite from August until October 15, and their normal hours of work were from midnight through 10 a.m.<sup>5</sup>

<sup>2</sup> The facts herein are based upon stipulations of the parties and uncontroverted testimony. In this circumstance and, inasmuch as neither appeared to be inherently incredible, I credit and rely upon the testimony of Robert Held and Dr. Ava Shamban.

<sup>3</sup> There is no direct entrance from the parking garage to the sixth floor of the 2021 building.

<sup>4</sup> Held, Laser Institute, Medical Associates, and Gingerich are persons engaged in commerce or in industries affecting commerce within the meaning of Sec. 8(b)(4) of the Act.

<sup>5</sup> There is no evidence that Respondents ever attempted to ascertain the working hours for Gingerich Construction's employees.

Neither Held nor Laser Institute employs individuals working as carpenters.

While Respondent Regional Council denied such a dispute, Respondent Local 1506<sup>6</sup> admitted that it has been engaged in a primary labor dispute with Gingerich Construction. In this regard, early in the morning on September 3, Robert Held, the president of Held, received a telephone call, informing him that there was picketing activity at the 2021 building. He immediately drove to the 2021 building, and, arriving at approximately 10, Held observed "40 plus or minus people picketing counterclockwise on the [plaza], making a lot of noises and disturbances. Creating a distraction for the patients and staff." The individuals were marching in the plaza area "between the two buildings and in front of both entrances" to the 2021 building, and they were carrying placards, which read, "GINGERICH—UNFAIR to CARPENTERS UNION 1506—NOT PAYING AREA STANDARD WAGES AND FRINGE BENEFITS" and yelling "Gingerich is a rat." Inasmuch as the picketing appeared to be disrupting the traffic flow into the entrances to the 2021 building, Held telephoned the police, and police officers eventually arrived at the site of the picketing. Twenty minutes later, Held met with one of the pickets, Rick Whittey, and a police officer. Whittey<sup>7</sup> handed Held a business card, which read, "Rick Whittey, Business Representative—Southwest Regional Council of Carpenters, United Brotherhood of Carpenters & Joiners of America," and Held asked him ". . . why he was picketing. . . . He told me that he wanted for me to quit doing business with Gingerich and start doing business with only union contractors, union carpenters. . . . I told him that I used both union and non-union and I pick the lowest [sic] qualified contractor." Also, as a police officer had gone up to Laser Institute's offices and confirmed that Gingerich Construction's employees were no longer working that day, Held asked Whittey why he was picketing, ". . . and he said that he needed proof that they were not there. I told him that [Gingerich Construction's employees] usually worked from midnight until about 10:00 in the morning." During cross-examination, Held admitted not confirming his statement to Whittey with a letter and recalled Whittey using the term, area standards, during their conversation. On the latter point, Held recalled Whittey saying that "he thought that Gingerich was not paying the same wages that a union was."

<sup>6</sup> The parties stipulated that Respondent Local 1506 does not negotiate its own collective-bargaining agreements and that all collective-bargaining agreements, which are binding upon affiliates of Respondent Regional Council, including Respondent Local 1506, are negotiated by Respondent Regional Council itself. Nevertheless, there is no record evidence to suggest that Respondents are anything but separate entities.

<sup>7</sup> The parties stipulated that Whittey is a business representative employed by Respondent Regional Council; that, with respect to the banner, Whittey worked as an agent of Respondent Local 1506 but did not occupy any of the offices in Local 1506; that, while working as an agent for Respondent Local 1506, Whittey's full salary was paid by Respondent Regional Council; and that, when performing work for Respondent Local 1506, the latter did not reimburse Respondent Regional Council for Whittey's time.

The parties stipulated that, commencing 5 days later, on September 8, and continuing until October 15, from approximately 9 a.m. until 3 p.m. on each Monday through Friday during this time period, Respondent Local 1506 displayed a banner on the public sidewalk on the northside of Santa Monica Boulevard between 20th Street and 21st Street in Santa Monica. The banner, which was approximately 20 feet by 4 feet in size, was erected each day directly in front of the plaza area between the building at 2001 Santa Monica Boulevard and the 2021 building. At this location, the banner was in front of the plaza entrance to the 2021 building and 50 feet from the front door entrance, and Respondents admit that the placement of the banner was selected so as to maximize exposure to the general public, including passing pedestrians, clients, patients, vendors, and motorists.<sup>8</sup> As it had no base or “feet,” each day, at least three bearers, who were either employed by or were members of Respondent Local 1506, were necessary in order to hold the banner erect, and, except for staggered break periods, these three individuals performed their display functions throughout the entire day. Once the banner was erected at the beginning of each day, it was not moved, and it remained stationary until taken down. There is no record evidence that Rick Whittey or any individual, employed by Respondent Regional Council, ever was in the vicinity of, or participated in, the displaying of the banner.

The banner itself was white and on it were the words “LABOR DISPUTE” in black two-foot capital letters and “SHAME ON LASER INSTITUTE FOR DERMATOLOGY” in red two-foot capital letters. Also, the banner bearers distributed handbills to pedestrians, who passed by the banner. The handbills, one white and one teal in color, depict a rat gnawing through an American flag and read, in part, as follows:

A rat is a contractor that does not pay all of its employees prevailing wage, including either providing or making payments for health care and pension benefits. . . .

**Held Properties, Inc.** has contracted with **Gingerich Construction** to do tenant improvements for The Laser Institute For Dermatology. . . . **Gingerich Construction** is self-performing the drywall and acoustical work. **Gingerich Construction** does not meet area labor standards for that work—they do not pay prevailing wages to all of their employees doing that work, including fully paying for family health care and pension.

Carpenters Local 1506 objects to substandard employers like **Gingerich Construction** working in the community. . . .

Carpenters Local 1506 believes that **The Laser Institute for Dermatology** has an obligation to the community to see that contractors who perform work on buildings they occupy meet area labor standards. They should not be allowed to insulate themselves behind “independent” contractors. For this reason, Local 1506 has a labor dispute with all of these companies.<sup>9</sup>

<sup>8</sup> As St. John’s Hospital is located adjacent to the 2021 building, this area is a particularly heavy vehicular and pedestrian traffic area.

<sup>9</sup> The only difference between the two handbills is in the second paragraph. Thus, on one handbill, the paragraph begins “[Laser Insti-

Dr. Shamban experienced consternation and some humiliation because of the wording on the banner and the picture and language of the handbills. “The effect of this banner on my practice has been a besmirching of my reputation. I have nothing to be ashamed of which is something that I had to repeat on may [sic] occasions to my patients, to people who saw it on the street, to employees of the hospital, to enumerable people who called on the telephone. . . . I am a well-known figure in the community and people were extremely concerned that I was abusing my employees in some way.”

#### B. Legal Analysis

At the outset, while Respondent Regional Council specifically disclaimed amenability, Respondent Local 1506 admitted that it was responsible for the displaying of the above-described banner at the 2021 building from September 8 through October 15. The amended complaint alleges that Respondents together acted in violation of Section 8(b)(4)(ii)(B) of the Act by displaying the banner, and, in her posthearing brief, counsel for the General Counsel avouches an agency theory for Respondent Regional Council’s liability. In this regard, I note that Respondents are separate and distinct labor organizations within the meaning of Section 2(5) of the Act and that a labor organization is not automatically responsible for the actions of its affiliate. *Carbon Fuel Co. v. United Mine Workers*, 444 U.S. 212 (1979). Nevertheless, in 1947, Congress specifically amended the Act, in part, to make both unions and employers subject to the common law rules of agency, “. . . and the Board has a clear statutory mandate to apply the ordinary law of agency to its proceedings.” *Mine Workers District 2*, 334 NLRB 677, 684 (2001); *California Saw & Knife Works*, 320 NLRB 224, 250 (1995). Counsel for the General Counsel relies upon the following facts for her assertion that Respondent Regional Council was, and remains, responsible for Respondent Local 1506’s displaying of the banner—that Respondents admit Rick Whittey, employed by Respondent Regional Council, was on loan to Respondent Local 1506 and was present at the picketing on September 3, that Whittey held himself out as the person in charge of said picketing, and that Respondent Local 1506 was not required to reimburse Respondent Regional Council for Whittey’s time. However, while Respondent Regional Council negotiates collective-bargaining agreements on behalf of Respondent Local 1506 and while it may be true that, under the Act, agency principles must be construed expansively when dealing with issues of responsibility for acts and conduct, there is no record evidence that Whittey, acting on behalf of Respondent Regional Council, actually planned or assisted Respondent Local 1506 in its act of displaying the banner at issue herein, and there is no record evidence that he or any other paid employee of Respondent Regional Council controlled, or was present during, the displaying of the banner. Further, the placards, held aloft by the pickets on September 3, and the handbills, distributed by the banner bearers, mention only Respondent Local 1506 as having a labor dispute with **Gingerich Con-**

**struction** has contracted with **Gingerich Construction** . . . ,” and, on the other handbill, the paragraph begins “[Held] has contracted with **Gingerich Construction**.”

struction and claiming responsibility for the picketing and displaying of the banner. The Board has recently held that an agency relationship, between labor organizations, arises only where one labor organization “has the right to control” the conduct of its asserted agent, the other labor organization, regarding the matters “entrusted to [it].” *Overnite Transportation Co. (Dayton, Ohio Terminal)*, 334 NLRB 1074, 1078 (2001). Herein, there is no record evidence that Respondent Regional Council specifically loaned its employee Whittey to Respondent Local 1506 in order for him to plan or assist in the displaying of the banner or that Respondent Regional Council controlled, advocated, instigated, supported, condoned, or was aware of Respondent Local 1506’s acts and conduct. In short, I do not believe that the mere fact Whittey continued to be paid by Respondent Regional Council during his work as Respondent Local 1506’s agent is sufficient to make Respondent Local 1506 the agent of Respondent Regional Council for the displaying of the instant banner.<sup>10</sup> Accordingly, as to whether the displaying of the banner may have been violative of Section 8(b)(4)(ii)(B) of the Act, I shall recommend that the consolidated complainant be dismissed as to Respondent Regional Council.

Turning to the alleged unfair labor practice herein, a violation of Section 8(b)(4)(ii)(B) of the Act, said provision of the Act reads as follows:

Sec. 8(b) It shall be an unfair labor practice for a labor organization or its agents. . . .

(4)(ii) To threaten, coerce, or restrain any person engaged in commerce or in a business affecting commerce where . . . an object thereof is. . . .

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the product of any other producer, processor, or manufacturer, or to cease doing business with any other person. . . . *Provided*, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing. . . .

*Provided Further*, That for the purpose of this paragraph (4) only, nothing contained in such paragraph shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public . . . of . . . a primary labor dispute. . . .

As the Supreme Court has explained, the above-quoted provision of the Act reflects “the dual congressional objectives of preserving the right of labor organizations to bring pressure to bear upon offending employers in primary labor disputes and of shielding unoffending employers and others from pressure in controversies not their own.” *NLRB v. Denver Building & Constr. Trades Council*, 341 U.S. 675, 692 (1951). Thus, while Section 8(b)(4)(ii)(B) of the Act leaves unfettered a labor or-

ganization’s traditional right to engage in direct action against an employer, with which it is engaged in a primary labor dispute, the provision’s more “narrowly focused” purpose is to “restrict the area of industrial conflict insofar as this could be achieved by prohibiting the most obvious, wide-spread, and . . . dangerous practice of unions to widen that conflict” and coerce neutral employers not concerned with the primary labor dispute. *Carpenters Los Angeles County District Council Local 1976 v. NLRB*, 357 U.S. 93, 100 (1958). There are essentially two elements necessary to establish a violation of Section 8(b)(4)(ii)(B) of the Act. First, a labor organization must engage in conduct, which threatens, coerces, or restrains any person. Second, an object of the foregoing conduct must be to force or require any person to cease dealing with or doing business with any other person. *Electrical Workers Local 761 v. NLRB*, 366 U.S. 667, 673 (1961); *Food & Commercial Workers Local 1776 (Carpenters Health Fund)*, 334 NLRB 507, 507 (2001); *Service Employees Local 87 (Trinity Maintenance)*, 312 NLRB 715, 742–743 (1993). In the latter regard, it is not necessary that such be the “sole object” of the alleged unlawful conduct. *Denver Building Trades Council*, supra at 689. Further, it is no less a violation of Section 8(b)(4)(B) of the Act for a labor organization to disrupt the business of an unoffending neutral employer, which has no business relationship with the primary employer, in the hope that said neutral will be pressured into interceding in a labor dispute between the labor organization and the primary employer. *Iron Workers Local 272 (Miller & Solomon)*, 195 NLRB 1063 (1972); *Los Angeles Newspaper Guild Local 69 (Hearst Corp.)*, 185 NLRB 303, 322 (1970).

Clearly, the classic form of conduct, which restrains or coerces employers within the meaning of Section 8(b)(4)(ii), involves picketing, a type of action, which “may induce action of one kind or another irrespective of the nature of the ideas which are being disseminated,”<sup>11</sup> with individuals patrolling at the entrances to a jobsite or a business while carrying placards, attached to sticks. *Painters District Council No. 9 (We’re Associates)*, 329 NLRB 140 (1999); *Teamsters Local 315 (Atchison, Topeka & Santa Fe Railway Co.)*, 306 NLRB 616 (1992). In contrast, the instant matters concern the erection and stationary displaying of a banner, by Respondent Local 1506, on the sidewalk in front of the entrances to an office building in which a suite of offices, the jobsite, was located. While conceding that the latter’s conduct herein may not have constituted “traditional picketing,” counsel for the General Counsel notes that Section 8(b)(4)(ii)(B) proscribes “. . . all conduct where it was the union’s intent to coerce, threaten, or restrain third parties to cease doing business with a neutral employer . . .” and argues that Respondent Local 1506 engaged in two different types of 8(b)(4)(ii) proscribed acts and conduct herein—signal picketing, which is activity “short of a true [traditional] picket line” but which acts as a signal to neutrals that sympathetic action is desired, and the use of “fraudulent language,” designed to deceive the public into believing it had a primary labor dispute with Laser Institute, on its banner. Having considered coun-

<sup>10</sup> I have considered the fact that Whittey’s business card identified him as a business agent of Respondent Regional Council. However, this fact may be susceptible of many interpretations and is not itself sufficient to establish an agency relationship between Respondents for the picketing or displaying of the banner.

<sup>11</sup> *Teamsters Local 802 v. Wohl*, 315 U.S. 769, 776 (1942) (Douglas, J. concurring).

sel's arguments and those of counsel for Held, I find neither theory particularly convictive or compelling. With regard to the General Counsel's signal picketing theory, I believe that counsel has misunderstood and misapplied this Board concept. At the outset, rather than individuals patrolling at entrances to a jobsite with placards, what is termed "signal picketing" usually involves more subtle activity—for example, the stationing of union business agents some distance away from, but not at, the neutrals' entrance to a jobsite or the placing of placards near such an entrance, positioned so that anyone approaching is able to read the printed message. *Iron Workers Pacific NW Council (Hoffman Constr.)*, 292 NLRB 562, 571–572 (1989); *Laborers Local 389 (Calcon Construction)*, 287 NLRB 570, 571–572 (1987); *Operating Engineers Local 12 (Hensel Phelps Construction Co.)*, 284 NLRB 246, 248 (1987); *Teamsters Local 182 (Woodward Motors)*, 135 NLRB 851, 851 fn. 1, 857 (1962). While it is true that the United States Court of Appeals for the Ninth Circuit has broadly defined the message of such activity as a signal to "neutrals" for desired sympathetic action,<sup>12</sup> the Board defines the message of signal picketing, in 8(b)(4)(i) terms, as conduct intended ". . . as a signal to induce action by those to whom the signal is given." *Teamsters Local 688 (Levitt Furniture Co. of Missouri)*, 205 NLRB 1131, 1133 (1973). Moreover, in *Laborers Local 389*, supra at 574, the Board found that picket signs, which had been stuck in or lying on the ground near a neutrals' gate, were ". . . designed . . . to induce employees of subcontractors and other secondary employers who were unionized to withhold their labor from the site;" in *Iron Workers NW Council*, supra at 583, the Board noted that the effect of men gathered around a picket sign near a neutrals' entrance "constituted a signal to the "employees" of secondary and neutral employers to withhold their services; and, likewise, in *Plumbers Local 274 (Stokely-VanCamp, Inc.)*, 267 NLRB 1111, 1114 (1983), the Board noted that retired members, who were patrolling the sides of a street near an entrance for neutral employers, acted as a signal to the employees of the neutrals not to enter into the jobsite and work.<sup>13</sup> What is clear from the foregoing is that signal picketing is, in reality, conduct, which "induces or encourages" craft employees not to cross a picket line and perform services for their respective employers on jobsites—put another way, Section 8(b)(4)(i) proscribed conduct. While signal picketing may also arise to the level of Section 8(b)(4)(ii) conduct, it does so only derivatively as the "inevitable consequence of successfully inducing or encouraging employees of secondary employers to refuse to perform their work tasks. . . . *Food & Commercial Workers Local 1776*, supra at 509, fn. 8; *Teamsters Local 315*, supra at 631. In my view, the foregoing establishes that conduct, which is described as signal picketing, does not directly threaten, coerce, or restrain persons engaged in commerce or in industries affecting commerce within the meaning of Section 8(b)(4)(ii).

<sup>12</sup> *Iron Workers Local 433 (R.F. Erectors) v. NLRB*, 598 F.2d 1154, 1158 fn. 6 (9th Cir. 1979).

<sup>13</sup> In *Iron Workers Local 433 (R.F. Erectors)*, 233 NLRB 283, 287 (1977), the Board decision underlying the above-cited Ninth Circuit decision, the Board noted that the intended effect of the actions of the respondent's agents was to signal to the employees of the neutral employers not to enter onto the jobsite.

Accordingly, as Respondent Local 1506's intent, by displaying its banner on the public sidewalk in front of the 2021 building's plaza area, was to maximize its exposure to the general public, including passing pedestrians, patients, clients, vendors, and motorists and as the General Counsel alleged this as constituting only Section 8(b)(4)(ii) violative conduct, counsel's signal picketing theory is without merit.

Turning to the General Counsel's second theory for establishing the threatening and coercive nature of Respondent Local 1506's display of the banner, that the language of the banner was fraudulent and designed to deceive the general public, counsel for the General Counsel argues that the banner failed to name the primary employer, with whom the labor organization was engaged in a labor dispute, Gingerich Construction, and that ". . . it proclaimed the existence of a labor dispute and painted the named neutral as deserving "shame" from the community due to the dispute." In short, counsel argues, "the natural and foreseeable [impression] the public would draw from [Respondent local 1506's] language was that [it] had a primary labor dispute with [Laser Institute]. The conclusion, as a result, is that the public was being called upon to boycott [Laser Institute]." Contrary to counsel, I do not believe the language on the banner was, in fact, false. In this regard the language of the banner proclaims the existence of a labor dispute between Respondent Local 1506 and Laser Institute and describes the latter in disparaging terms. As to the existence of a labor dispute, while Respondent Local 1506 admitted it had a primary labor dispute with Gingerich Construction, the latter's work was being performed for the benefit of Laser Institute, and it might convincingly be argued that Dr. Shamban possessed some degree of sway over the selection of the drywall subcontractor, which was performing the drywall work on her suite of offices and that she was unsympathetic to the terms and conditions of employment under which the Gingerich Construction employees worked. Moreover, the handbills, which were distributed by the banner bearers, explained the labor dispute in detail. Section 2(9) of the Act defines a "labor dispute" as including ". . . any controversy concerning terms, tenure, or conditions of employment . . . regardless of whether the disputants stand in the proximate relation of employer and employee," and the almost identical provision of the Norris-LaGuardia Act, 29 U.S.C. 113(c) has been interpreted as covering "secondary" employers. *Smith's Management Corp. v. Electrical Workers Local Union No. 357*, 737 F.2d 788 (9th Cir. 1984).<sup>14</sup> In this regard, I believe that few, if any, members of the general public, who passed by the banner, were cognizant of the Act's definition of a labor dispute or, if such had been the wording of the banner, would have understood the distinction between a primary and a secondary labor dispute. As to the banner's deprecating language regarding Laser Institute, I think the general public understood that labor disputes are often heated and in-

<sup>14</sup> I recognize that, for purposes of Sec. 8(b)(4)(B), it is erroneous to conclude ". . . that neutrals must be totally disengaged from a labor dispute. That is not the law." *Service Employees Local 525 (General Maintenance Co.)*, 329 NLRB 638, 640 (1999). However, at this point, I am only concerned with the truth or falsity of Respondent Local 1506's language on the banner.

voke distortions and imprecatory language. *Linn v. Plant Guard Workers of America*, 383 U.S. 53, 58 (1974). Moreover, I note that counsel for the General Counsel elicited testimony from Dr. Shamban, describing her consternation and embarrassment caused by the language of the banner. However, as appeals leading to “embarrassment and persuasion” of a neutral are permissible (*NLRB v. Business Machine & Office Appliance Mechanics Conference Board (Royal Typewriter Co.)*, 228 F.2d 553, 560 (2d Cir. 1955), cert denied 351 U.S. 962 (1956)), a statement that a neutral engaged in shameful acts and conduct appears to be likewise acceptable.<sup>15</sup> Accordingly, I do not believe that the language of the banner constituted coercion or restraint within the meaning of Section 8(b)(4)(ii).

Notwithstanding my conclusions that the theories of counsel for the General Counsel are without merit, I believe that Respondent Local 1506 did, in fact, engage in Section 8(b)(4)(ii) proscribed conduct as, in the instant circumstances, the displaying of the banner constituted picketing or, at least, a form of picketing. Thus, notwithstanding the above-described classic description of picketing, patrolling alone, patrolling combined with the carrying of placards attached to sticks, or confrontation do not appear to be essential elements for a finding of picketing. Rather, the Board has traditionally held that “. . . the important feature of picketing appears to be the posting by a labor organization . . . of individuals at the approach to a place of business to accomplish a purpose which advances the cause of the union, such as keeping employees away from work or keeping customers away from the employer’s business.” *Service Employees Local 87*, supra at 743; *Laborers Local 389*, supra at 573; *Lumber & Sawmill Workers Local Union No. 2797 (Stoltze Land & Lumber Co.)*, 156 NLRB 388, 394 (1965).<sup>16</sup> Herein, Respondent Local 1506’s banner bearers erected and displayed their banner directly in front of the 2021 building’s plaza, where the only building entrance leading to its lobby is located, and a mere 50 feet from the sidewalk entrance to the building, and the location of the banner was close to the location of the picketing activity on September 3. Further, viewing the record evidence in a light most favorable to Respondent Local 1506, assuming arguendo the latter stationed its banner at the above location in order to advance its cause of publicizing a

labor dispute with Laser Institute, the location of the activity nevertheless mandates a conclusion that Respondent Local 1506’s acts and conduct fall within the Board’s broad parameters for the act of picketing, and I so find.

In defense, counsel for Respondent Local 1506 argues that the Board’s definition of picketing incorrectly emphasizes its object and should take into account the nature of the activity and, on this point, canonically asserts that patrolling with picket signs and confrontation must be present for a labor organization’s conduct to be considered picketing. At the outset, as counsel assuredly recognizes, I am bound by Board law and, accordingly, must adhere to the Board’s definition of picketing, and, while noting counsel’s contention, I do not believe that one may reasonably contend that an individual, who is passively carrying a placard and standing in a stationary manner at an entrance to a jobsite, is not engaged in picketing. Contrary to counsel’s determinate view of picketing, the Board’s definition is purposefully broad, designed to encompass conduct seemingly not fitting within the classic notion of picketing, including the longstanding concept of signal picketing, which, as stated above, sometimes involves the mere placement of a picket sign near an entrance to a jobsite. Further, requiring patrolling with picket signs would mean that conduct, which is not classic picketing but which, the Board has concluded, oversteps the bounds of propriety and goes beyond persuasion so as to become “coercive to a very substantial degree,”<sup>17</sup> would no longer be proscribed by Section 8(b)(4)(ii). On this point, in *Mine Workers District 29 (New Beckley Mining Corp.)*, 304 NLRB 71, 72 (1991), which involved an estimated crowd of between 50 and 140 persons gathered in the parking lot and surrounding areas of a motel in the early morning hours, notwithstanding the absence of patrolling or picket signs, the Board found the “mass activity” to be a form of picketing proscribed by Section 8(b)(4)(ii). Counsel for Respondents’ narrow view of picketing would eviscerate the coercive nature of such lesser forms of picketing. Moreover, the Board has never required intrusive or imperious behavior to be elements of picketing. In this regard, in *Service Employees Local 254 (Womens & Infants Hospital)*, 324 NLRB 743, 749 (1997), a labor organization argued that, individuals, who were wearing signs and carrying placards and who were peacefully standing at parking lot entrances and pedestrian entrances to a college campus and distributing handbills, were not engaged in picketing. Notwithstanding the lack of evidence of confrontational behavior, the Board adopted an administrative law judge’s conclusion that picketing had occurred as “the carrying and/or wearing of signs and placards place[d] respondent’s activities beyond the mere dissemination of ideas.” Next, counsel compares the erection and displaying of the banner to handbilling, which under *DeBartolo*, supra, unaccompanied by picketing, does not itself constitute picketing, and characterizes it as a “disciplined, passive, and direct display of information,” a “pure speech” activity entitled to full First Amendment protection. However, I agree with counsel for the General Counsel that Respondent Local 1506’s banner was more akin to a picket

<sup>15</sup> I am cognizant that *Royal Typewriter* predates the 1959 amendments to the Act; however, I have found no Board or court decision overruling its continued viability.

<sup>16</sup> Counsel for Respondent Local 1506 argues that this definition is “no longer good law” as handbilling, which, the Supreme Court, in *Edward J. DeBartolo Corp. v. Florida Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568 (1988), found, does not threaten, coerce, or restrain within the meaning of Section 8(b)(4)(ii), falls within it and as it makes the object of the conduct an element of the definition and disregards the first amendment to the Constitution—an error of law. I am not sure I understand counsel’s latter assertion. He cited no authority in support, and his First Amendment argument assumes that the Board was defining unlawful picketing. In any event, a union’s cause or purpose for picketing does not have to involve the First Amendment. As to his *DeBartolo* argument, it is true that the Board’s definition of picketing seemingly incorporates handbilling and that the Supreme Court differentiated between handbilling and picketing. However, considering handbilling as an exception does not, in my view, vitiate the validity of the Board’s definition.

<sup>17</sup> *Service Employees Local 399 (William J. Burns International Detective Agency)*, 136 NLRB 431, 437 (1962).



sign than a handbill in that its display was sentimentally more dramatic. On this point, Respondent Local 1506's 20-foot wide and four-foot high banner dwarfed the size of a leaflet, and its two-foot high message was obviously designed to more rapidly catch the attention of pedestrians and motorists, who passed by, than the lengthy message on the handbill, which the banner bearers distributed. In fact, as in *Service Employees Local 254*, supra, one may reasonably argue that, given its size, the banner itself was far more significant to Respondent Local 1506's objectives than the idea, which the words on the banner conveyed. Further, while one may, of course, avoid the message of a handbill by not choosing to accept it; there could be no such choice with the obtrusive message on the banner displayed by Respondent Local 1506. Accordingly, for the above reasons, I believe that Respondent Local 1506's arguments are without merit and that the latter's displaying of its banner constituted picketing in another guise.<sup>18</sup>

Having concluded that Respondent Local 1506 engaged in picketing, I must next determine whether an object of its acts and conduct was to force Held, Laser Institute, or any other person to cease doing business with Gingerich Construction. At the outset, in cases involving picketing, allegedly violative of Section 8(b)(4)(B) of the Act, an office building, such as the 2021 building, has been classified, by the Board as a common situs ((*Service Employees Local 87*, supra; *Building Service Employees Local 254 (Lechmere Sales)*, 173 NLRB 280 (1968)), and, based upon its admission and the handbills, which were distributed to pedestrians by the banner bearers, Respondent Local 1506's primary labor dispute was with Gingerich Construction. Clearly, then, for purposes of this section of the Act, Held, Laser Institute, and every other tenant of the 2021 building were neutral, secondary employers with regard to Respondent Local 1506's primary labor dispute with Gingerich Construction. However, the Board and courts have held that, "... picketing at the premises of a neutral, secondary employer ... is not per se a violation of the Act." *Food & Commercial Workers Local 1776*, supra at 508–509. Thus, a union's secondary picketing of retail stores, which is confined to persuading customers to cease buying the product of the primary employer, does not violate Section 8(b)(4)(II)(B) of the Act. *NLRB v. Fruit & Vegetable Packers Local 760*, supra.<sup>19</sup> "The test for determining whether such picketing is lawful is the objective of the secondary activity, as gleaned from the surrounding circumstances." *Food & Commercial Workers Local 1776*, supra at 509. Further, the substitution of violent coercion in place of peaceful persuasion, such as herein involved, would not itself remove the acts and conduct from the proscription of Section

<sup>18</sup> My finding is wholly dependent upon the Board's definition of picketing and the fact matrix herein, and I express no opinion or make any finding regarding the display of the banner in any other location or at any other distance from the 2021 building entrances.

<sup>19</sup> Likewise, in *Carpenters District Council of Detroit (Douglas Co.)*, 322 NLRB 612, 612 (1996), the union's jobsite picketing was "engaged in solely for the lawful purpose of protesting [the primary's] failure to meet area standards." As the picket signs correctly identified the primary and as there was no evidence of a secondary object, the Board found that the picketing did not violate Sec. 8(b)(4)(B) of the Act.

8(b)(4)(ii)(B), for "it is the object of union [coercion] that is proscribed by that section, rather than the means adopted to make it felt." *NLRB v. International Rice Milling Co.*, 341 U.S. 665, 672 (1951). Adhering to these principles, while I believe that, by erecting and displaying its banner, Respondent Local 1506's intent may have been to protest Gingerich Construction's failure to pay the labor organization's area standard wages and fringe benefits to its employees and Laser Institute's apparent lack of interest as to whether Gingerich was, in fact, paying prevailing area standard wages and fringe benefits, Respondent Local 1506's acts and conduct clearly also had an unlawful cease doing business objective. As to this, during the incident on September 3, asked why Respondent Local 1506 was picketing at the 2021 building, Rick Whittey, acting in his capacity as an agent for the former, told Robert Held "... that he wanted ... me to quit doing business with Gingerich and start doing business with only union contractors. ...". Moreover, that Respondent Local 1506's erection and displaying of its banner, which, I believe, was a form of picketing, failed to conform to the *Moore Dry Dock*<sup>20</sup> standards for picketing at a common situs, such as the 2021 building, is further evidence of a secondary object.<sup>21</sup> In this regard, notwithstanding that Robert Held informed Whittey the Gingerich employees worked, each day, from midnight to 10 a.m.; Respondent Local 1506 erected and displayed its banner each day when no Gingerich Construction employees were working inside the Laser Institute office suite, and, of course, the banner failed to disclose that Local 1506's primary dispute was with Gingerich Construction.<sup>22</sup> In these circumstances, including Whittey's admission and the nature of Respondent Local 1506's conduct, I believe the latter's displaying of the banner at the 2021 building had a clear secondary objective—that of placing pressure upon Laser Institute and the other tenants of the 2021 building to, in turn, place pressure upon Held to force it to cease doing business with Gingerich Construction. In these circumstances, I find that Respondent Local 1506's acts and conduct were violative of Section 8(b)(4)(ii)(B) of the Act. *Service Employees Local 87*, supra.

#### CONCLUSIONS OF LAW

1. Held is, and has been at all times material herein, an employer engaged in commerce or in an industry affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

<sup>20</sup> *Sailors Union (Moore Dry Dock)*, 92 NLRB 547 (1950).

<sup>21</sup> The four criteria require that (1) the picketing be strictly limited to times when the situs of the dispute is located on the secondary employer's premises; (2) the primary employer be engaged in its normal business at the situs at the time of the picketing; (3) the picketing be limited to places reasonably close to the location of the situs; and (4) the picketing disclose clearly that the dispute is with the primary employer. If the picketing conforms to these criteria, it is presumed to be lawful primary picketing. *Oil Workers Local 1-591 (Burlington Northern Railroad)*, 325 NLRB 324, 327 fn. 11 (1998).

<sup>22</sup> Bluntly put, while the wording on the banner was not untruthful, in the circumstances of this case, the display of the banner constituted picketing. Thus, Respondent Local 1506's failure to name the primary employer on its banner evidenced a secondary object.

2. Laser Institute is, and has been at all times material herein, an employer engaged in commerce or in an industry affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. Respondent Local 1506 is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

4. Held, Laser Institute, Medical Associates, and Gingerich Construction are, and have been at all times material herein, persons engaged in commerce or in businesses affecting commerce within the meaning of Section 8(b)(4) of the Act.

5. From September 8 through and including October 15, 2003, by picketing at the 2021 building by means of a banner, which failed to identify Gingerich Construction as the employer with which it had a primary labor dispute, at times when Gingerich Construction employees were not working at the Laser Institute's suite of offices, Respondent Local 1506 engaged in said acts and conduct for an object of placing pressure upon Laser Institute and the other tenants of the 2021 building to, in turn, place pressure upon Held to force it to cease doing business with Gingerich Construction.

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

#### THE REMEDY

Having found that Respondent Local 1506 has engaged in certain unfair labor practices within the meaning of Section 8(b)(4)(ii)(B) of the Act, I shall recommend that Respondent Local 1506 be ordered to cease and desist from engaging in said acts and conduct and to take certain affirmative actions designed to effectuate the purposes and policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>23</sup>

#### ORDER

Respondent, Carpenters Local Union No. 1506, United Brotherhood of Carpenters and Joiners of America, its officers, agents, and representatives, shall

1. Cease and desist from

Picketing, or by any like or related conduct, including erecting and displaying a banner, threatening, coercing, or restraining Held, Laser Institute, Medical Associates, or any other person engaged in commerce or in an industry affecting commerce where an object of thereof is to place pressure upon Laser Institute or any other person to, in turn, place pressure upon Held to force it to cease doing business with Gingerich Construction.

2. Respondent Local 1506 shall take the following affirmative actions necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its office in Los Angeles, California copies of the attached notice

<sup>23</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

marked "Appendix."<sup>24</sup> Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by Respondent Local 1506's authorized representative, shall be posted by Respondent Local 1506 immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent Local 1506 to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent Local 1506 has gone out of business or closed the facility involved in these proceedings, it shall duplicate and mail, at its own expense, a copy of the notice to all current members and former members as of September 8, 2003.

(b) Sign and return to the Regional Director sufficient copies of the notice for posting by Held and Laser Institute, if willing, at all places where notices to employees are customarily posted.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the consolidated complaint be, and the same hereby is, dismissed insofar as it alleges that Respondent Regional Council engaged in any acts and conduct violative of the Act.

Dated, San Francisco, California April 2, 2004

#### APPENDIX

#### NOTICE TO MEMBERS

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

WE WILL NOT, by picketing or any other like or related conduct, including displaying a banner, threaten, coerce, or restrain the following neutral entities: **Held Properties, Inc. (Held) and The Laser Institute For Dermatology & European Skin Care (Laser Institute)** or any other person engaged in commerce or in an industry affecting commerce where an object thereof is to place pressure upon **Laser Institute** or any other person to, in turn, place pressure upon **Held** to force it to cease doing business with **Gingerich Construction**.

CARPENTERS LOCAL UNION NO. 1506, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

<sup>24</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."