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Local Union No. 1827, United Brotherhood of Carpenters and Joiners of America and United Parcel Service, Inc.

Local Union No. 1506, United Brotherhood of Carpenters and Joiners of America and Eliason & Knuth of Arizona, Inc. and Associated General Contractors of America San Diego Chapter, Inc. and Today's IV, Inc. d/b/a Westin Bonaventure Hotel And Suites

Local Union No. 209, United Brotherhood of Carpenters and Joiners of America and King's Hawaiian Retail, Inc., d/b/a King's Hawaiian Restaurant And Bakery

Mountain West Regional Council of Carpenters and Eliason & Knuth of Denver, Inc. Cases 28–CC–933, 28–CC–934, 28–CC–935, 28–CC–939, 28–CC–937 (Formerly 21–CC–3307), 28–CC–938 (Formerly 21–CC–3312), 28–CC–942 (Formerly 31–CC–2103), and 28–CC–945 (Formerly 27–CC–873)

August 11, 2011

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS BECKER,
PEARCE, AND HAYES

This case again raises the question of whether the Respondent Unions violated Section 8(b)(4)(ii)(B) of the Act by displaying large, stationary banners at the business locations of various secondary employers. The judge found that all of the banners constituted picketing, that the Respondents acted with an unlawful secondary object, and that the banner displays therefore violated Section 8(b)(4)(ii)(B).¹

¹ On May 9, 2003, Administrative Law Judge Lana H. Parke issued the attached decision. The General Counsel and the Respondents filed exceptions and supporting briefs. Charging Party Associated General Contractors filed exceptions. Charging Parties Eliason & Knuth of Arizona and Eliason & Knuth of Denver jointly filed cross-exceptions and a supporting brief. Answering briefs were filed by the Respondents; the General Counsel; and Charging Parties Associated General Contractors, Eliason & Knuth of Arizona, Eliason & Knuth of Denver, and United Parcel Service. Respondents Local 1827, Local 1506, and Local 209 filed reply briefs to the General Counsel's and the Charging Parties' answering briefs.

Associated Builders and Contractors, Inc. filed an amicus brief supporting the General Counsel and the Charging Parties. Respondent Mountain West Regional Council of Carpenters filed an answering brief.

We reverse the judge and dismiss the complaint. Consistent with our recent decisions in *Carpenters Local 1506 (Eliason & Knuth of Arizona)*, 355 NLRB No. 159 (2010); *Carpenters Local 1506 (Marriott Warner Center Woodland Hills)*, 355 NLRB No. 219 (2010); and *Southwest Regional Council of Carpenters (New Star General Contractors)*, 356 NLRB No. 88 (2011), and for the reasons stated below, we find that the banner displays did not constitute picketing or otherwise “threaten, coerce, or restrain” the secondary employers within the meaning of Section 8(b)(4)(ii)(B).²

In *Eliason*, supra, we concluded that a union's display of large stationary banners that proclaimed a “labor dispute” and sought to “shame” the secondary employers (or, at one location, urged the public not to patronize the

AFL–CIO and AFL–CIO Building and Construction Trades Department jointly filed an amicus brief supporting the Respondents. The General Counsel and Charging Parties Associated General Contractors, Eliason & Knuth of Arizona, and Eliason & Knuth of Denver filed answering briefs.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.

Charging Parties Eliason & Knuth of Arizona and Eliason & Knuth of Denver requested oral argument. That request is denied, as the record, exceptions, and briefs adequately present the issues and the positions of the parties and amici.

In light of our dismissal of the complaint, we need not address Charging Party Associated General Contractors' remedial exceptions, and we deny as moot its motion to expedite review.

² We therefore do not reach the judge's finding that the activity had a proscribed objective, but assume that to be the case for purposes of our analysis as we have done in the prior cases.

The complaint does not allege that the banners at three locations—Sycuan Casino, Viejas Casino, and Invitrogen—constituted picketing, apparently because the banners were located at considerable distances from the secondary employers' premises. In fact, the General Counsel specifically disclaimed such an argument in his posthearing brief, referring to those three sites as “nonpicketing locations” and stating that the banners there were false and misleading, and therefore coercive, “even though [they] do not rise to the level of picketing.” The General Counsel's theory was that those three banners were unlawful only because their proclamation of a “labor dispute” fraudulently misrepresented to the public that the union had a primary labor dispute with the secondary employers. We rejected that argument in *Eliason*, supra, slip op. at 15, and we reject it here for the same reasons. In light of the General Counsel's disclaimer of a picketing theory, the judge clearly went beyond the General Counsel's theory of the case in finding that the banner displays at those three locations constituted picketing. See *Paul Mueller Co.*, 332 NLRB 1350 (2000) (judge improperly found a violation on a theory expressly disclaimed by the General Counsel). In any event, even if the General Counsel had alleged that those banner displays constituted picketing, we would reject that argument for the reasons stated in *Eliason*, supra.

In addition to alleging that the banner displays at the UPS sites were unlawful, as discussed below, the complaint alleges that Respondent Local 1827 violated Sec. 8(b)(4)(ii)(B) on three occasions prior to the banner displays by threatening to picket UPS. There are no exceptions to the judge's failure to find those violations.

secondary's business) did not violate Section 8(b)(4)(ii)(B). We find that the vast majority of the banner displays in this case were, for all relevant purposes, the same as the conduct found lawful in *Eliason* and, for the reasons discussed in that case, were not unlawful. We address below the few aspects of this case that differ from the facts in *Eliason*: the language on the banners displayed at State Farm Insurance Company, which did not proclaim a "labor dispute" but labeled State Farm a "greedy corporate citizen"; secondary employer and customer responses to the banners' messages; and the positioning of some banners close to the secondaries' driveway entrances and, at two locations, away from the gates designated for the primary employer's use. For the reasons stated below, none of these factual distinctions warrant a finding that the banner displays were unlawful.

I. THE STATE FARM BANNERS WERE NOT COERCIVE AND WERE PROTECTED BY THE FIRST AMENDMENT

We begin our discussion with the banners addressed to State Farm, not because they present a harder case than the banners at issue in *Eliason*, but because the allegation that the peaceful display of these banners was unlawful demonstrates the capaciousness of the General Counsel's theory, its inconsistency with the protection of labor protest embodied in Section 7 of the Act as well as the First Amendment, and its lack of foundation in the plain terms and evident purpose of Section 8(b)(4)(ii)(B).

In September 2002, Respondent Mountain West Regional Council of Carpenters displayed banners at four locations near State Farm facilities in Denver and Greeley, Colorado. The Carpenters were engaged in a labor dispute with Eliason & Knuth of Denver, Inc. (E&K) over the Carpenters' contention that E&K failed to pay wages and benefits that met area standards. E&K was a subcontractor on an office construction project being completed for State Farm in Greeley.

Three of the banners were displayed in downtown Denver near buildings in which State Farm maintained offices; the fourth was displayed in Greeley near the construction project. The Denver banners were located on public sidewalks 24 to 100 feet from the building entrances. Two banners were displayed in Greeley, both on public property at the intersection of a two-lane highway and the road leading to the State Farm parking lot and buildings. The banners were located about 40 feet from the road leading to the parking lot, 510 feet from the parking lot entrance, and about 750 feet from the building under construction and the construction entrance.

All of the banners read: "State Farm Insurance, a Greedy Corporate Citizen." Unlike the banners in *Eli-*

ason, none of the State Farm banners contained the words "labor dispute." As in *Eliason*, the banner holders carried handbills, which they made available to passersby, describing the Carpenters' contention that E&K's wages and benefits failed to meet area standards and explaining why, in the Union's view, State Farm's use of E&K on its project made State Farm "a Greedy Corporate Citizen." It is undisputed that the banner holders limited their additional activity to offering handbills to the public and thanking those who took them, and that the banner displays did not block the ingress or egress of any person. As stated above, we reverse the judge's finding that the banner displays constituted picketing and were unlawful under Section 8(b)(4)(ii)(B).

Neither the form, the location, or the message of the State Farm banners rendered their display proscribed by the Act, for the reasons explained in *Eliason*. Indeed, a union's display of banners on a public sidewalk protesting substandard wages, together with its distribution of flyers explaining the relationship of the employer named on the banners and the employer paying the allegedly substandard wages, is at the core of the "concerted activities for the purpose of . . . mutual aid or protection" insulated by Section 7. The First Amendment protection also due the State Farm banners becomes clear when one imagines the identical banner language accompanied by handbills stating, for example, that State Farm used a contractor that engaged in racial discrimination or polluted the air. In such a case, there would be no doubt that the banners were protected by the First Amendment. The only difference here is that the handbills were distributed by a labor union and cited State Farm's use of a contractor that paid substandard wages as the basis for calling the company "greedy." As we stated in *Eliason*, "we decline to place labor organizations' speech into such a special and disfavored category." *Id.*, slip op. at 9. Rather, we believe the words of the Supreme Court in *Thornhill v. Alabama*, 310 U.S. 88 (1940), are no less true today than in 1940: "In the circumstances of our times, the dissemination of information concerning the facts of a labor dispute must be regarded as within the area of free discussion that is guaranteed by the Constitution." 310 U.S. at 102. For that reason, not only does our prior decision in *Eliason* require us to conclude that the banner displays did not violate Section 8(b)(4)(ii)(B), but our duty to avoid construing the Act, if possible, to avoid raising serious constitutional questions compels the same outcome. See *Eliason*, *supra*, slip op. at 11–12 (discussing *Edward J. DeBartolo Corp. v. Florida Gulf Coast Building Trades Council*, 485 U.S. 568 (1988),

and *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979)).³

In short, at the State Farm locations, the Union engaged in a noncoercive⁴ display of banners bearing a protected message. Accordingly, we find that the State Farm banners did not “threaten, coerce, or restrain” under Section 8(b)(4)(ii)(B).

II. CONSUMER RESPONSES TO THE BANNERS’ MESSAGES

In determining that the remaining banners in the present case were not coercive within the meaning of Section 8(b)(4)(ii), we have considered the evidence that one secondary employer (Anthony’s Fish Grotto) and customers of two other secondaries (UPS and Hyatt) threatened to take or actually took action in response to the banners’ messages. Specifically, the Teamsters Union sent a letter to the Hyatt Islandia (where two “Shame on Hyatt/Labor Dispute” banners were displayed) canceling its reservations at one of the Hyatt hotels for an upcoming Teamsters convention and stating that “the Union cannot conduct a meeting at a facility being picketed by another labor organization.” At the UPS south building, where a banner was displayed, a UPS employee testified that one individual—a “regular customer” who shipped large boxes of insulation—refused to send a shipment through UPS because of the banner display. The customer told the UPS employee, “I can’t use you guys because I can’t cross this picket line . . . it’s the millwrights that are out there, and I’m a millwright, and I can’t cross”⁵ Finally, about a month after the banner display at

³ In fact, the First Amendment concern here is even more pressing than in *Eliason*. In *Eliason*, the General Counsel contended that the use of the words “labor dispute” on the banners was false and fraudulent, resulting in the forfeiture of any First Amendment protection, because it would lead passersby to believe that the union had a primary dispute with the named employer. We rejected that argument for reasons fully explained in the decision. *Eliason*, supra, slip op. at 15. Here, the State Farm banners did not contain the words “labor dispute,” and, in fact, are not even alleged in the complaint to be false or misleading. Indeed, the message on the banners, “State Farm Insurance, a Greedy Corporate Citizen,” is a statement of opinion that does not imply an assertion of objective fact. As such, it cannot be proven false and thus cannot be disseminated with actual malice so as to lose constitutional protection under *Linn v. Plant Guards Local 114*, 383 U.S. 53 (1966). See *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 18–21 (1990).

The dissent cites to dicta in *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982), to suggest that regulation of speech by labor organizations urging a consumer boycott raises no First Amendment concerns, but *DeBartolo* holds directly to the contrary.

⁴ As in *Eliason*, supra, our dissenting colleague repeatedly attaches the adjectives “confrontational” and “coercive” to all the peaceful banner displays without adequately explaining how each such display confronted or coerced anyone.

⁵ There is no allegation or evidence that the individual was acting as an employee and, thus, was engaged in a strike or any other form of activity falling under Sec. 8(b)(4)(i), nor was there any allegation that Sec. 8(b)(4)(i) was violated in this case. The witness characterized the

Anthony’s Fish Grotto began, an executive of Anthony’s wrote to Brady, the primary employer. The letter referred to the Union’s “picketing” and stated, “If this type of activity continues, I’ll find it nearly impossible to select Brady for future Anthony’s projects.”

The General Counsel and allied parties and amici make two related arguments based on the above evidence: that prospective customers viewed the banner displays as picketing, and that the banners were “effective” and had the same “negative economic impact” as picketing. Both arguments fail to establish that the banner displays were coercive.

First, the determination of whether conduct constitutes picketing is made by examining the characteristics of the conduct itself, not the label assigned to it by consumers, even if one of those consumers is a large labor organization and another is a union member. The banners here, like those in *Eliason*, did not constitute picketing because they lacked the “element of confrontation [that] has long been central to our conception of picketing for purposes of the Act’s prohibition.” *Eliason*, supra, slip op. at 6. That two consumers and one secondary employer characterized the activity as picketing does not change that essential fact. As we recently reaffirmed in *Sheet Metal Workers Local 15 (Brandon Regional Medical Center)*, 356 NLRB No. 162 (2011), even when agents of the union engaged in the activity themselves characterize it as “picketing,” “the ‘mere utterance of that word’ in circumstances, as here, which show that the Union’s conduct was bereft of any confrontational element, ‘cannot transform’ what is not picketing ‘into picketing.’” *Teamsters Local 688 (Levitz Furniture)*, 205 NLRB 1131, 1133 (1973) (rejecting, as proof of picketing, union handbillers’ statements to a company official that they were picketing).” *Brandon*, supra, 356 NLRB No. 162, slip op. at 3.

Nevertheless, the fact that one of the consumers that called the activity picketing was a large labor organization and another was a union member deserves further comment. In *New Star*, supra, 356 NLRB No. 88, slip op. at 3 fn. 5, we stated, “picketing at a reserve gate conveys a well-established message asking secondary employees to cease work.” But it is clear from the facts of this case, as well as from the 10 cases involving similar

individual as “a regular customer.” Because the General Counsel bore the burden of proof here and UPS could readily have identified the shipper if it was other than the individual, we must assume that the individual was acting as a consumer of UPS’s services, exercising his freedom to withhold business from UPS in sympathy with the Unions. The only question before us is whether the banners somehow coerced him to do so.

protest activity we have decided in the last year,⁶ that whatever they may have called the banner displays, unions and their members did not understand them to be picketing. In these 11 cases we have decided, involving a total of 89 banner displays at diverse locations ranging from restaurants to construction sites, no evidence has been offered that *any* employee responded to any banner by ceasing work. Notably in this case itself, although the Teamsters Union withheld its patronage as a consumer from a Hyatt hotel, at UPS, where the Teamsters represent drivers and other employees nationwide,⁷ the Unions displayed banners at two buildings that are part of UPS's parcel-distribution facility in Las Vegas for over 1 month,⁸ including at a gate reserved for UPS employees, yet no Teamsters-represented driver or other employee responded to the banners by ceasing work. Some unions and union members may be loose in their terminology, but when it comes to the serious and potentially highly consequential act of withholding their labor, they appear to well understand the difference between a picket line and a stationary banner which we articulated in *Eliason* and apply again today.

Second, an employer's fear that a banner's message will lead its customers to take action does not render the banner display coercive. That is true even if the message on the banner makes customers feel guilty for patronizing the secondary or otherwise concerned about the secondary's business practices, and even if the message ultimately leads customers to decide to withdraw their business, so long as those actions result only from the message on the banner. As stated in *Eliason*, supra, "the peaceful, stationary holding of banners announcing a labor dispute, even if such conduct is intended to and does in fact cause consumers freely to choose not to pa-

tronize the secondary employer," does not constitute coercion. *Eliason*, slip op. at 10 fn. 30. See also *Edward J. DeBartolo Corp. v. Florida Gulf Coast Building Trades Council*, 485 U.S. 568, 580 (1988) ("The loss of customers because they read a handbill urging them not to patronize a business, and not because they are intimidated by a line of picketers, is the result of mere persuasion, and the neutral who reacts is doing no more than what its customers honestly want it to do.").⁹ Furthermore, the fact that the consumers taking action here were unions or union members—the Teamsters Union, which canceled its reservation at the Hyatt Islandia, and the UPS customer, who declined to ship a package—is irrelevant, because they were acting as consumers, not as unions directing their members not to work or as employees withholding their labor. Finally, a secondary employer, Anthony's Fish Grotto, indicated that it might cease doing business with the primary employer. But, even if a secondary actually did sever its relationship with the primary, so long as such actions are the result of publicity aimed at consumers rather than the coercion of consumers or the secondary itself they would not result in a violation of Section 8(b)(4)(ii).¹⁰

III. NEITHER THE POSITIONING OF BANNERS NOR THE CONDUCT OF HANDBILLERS RENDERED THE BANNER DISPLAYS COERCIVE

We turn now to the few distinctions between the positioning of the banners and the conduct of the accompanying handbillers here compared to in *Eliason*, supra. The *Eliason* banners were placed between 15 and 1,050 feet from the nearest entrance to the secondaries' establishments. *Eliason*, slip op. at 2. In the present case, the banners at several locations were placed less than 15 feet from the secondaries' driveway entrances (but more than 15 feet from the building entrances).¹¹ In addition, the

⁶ *Eliason*, supra; *Carpenters Locals 184 and 1498 (Grayhawk Development, Inc.)*, 355 NLRB No. 188 (2010); *Carpenters Local 1506 (AGC San Diego Chapter)*, 355 NLRB No. 191 (2010); *Southwest Regional Council of Carpenters (Carignan Construction)*, 355 NLRB No. 216 (2010); *Marriott*, supra; *New Star*, supra; *Southwest Regional Council of Carpenters (Richie's)*, 355 NLRB No. 227 (2010); *Southwest Regional Council of Carpenters (Held Properties)*, 356 NLRB No. 11 (2010) (*Held Properties I*); *Southwest Regional Council of Carpenters (Held Properties)*, 356 NLRB No. 16 (2010) (*Held Properties II*); *Mid-Atlantic Regional Council of Carpenters (Starkey Construction Co.)*, 356 NLRB No. 19 (2010).

⁷ See Hoover's In-Depth Company Records, January 26, 2011, International Brotherhood of Teamsters (available at 2011 WLNR 1570636) (noting that more than 200,000 of the Teamsters' members are employees of UPS); Bloomberg, *UPS Agreement With Teamsters Allows Pension Shift (Update 5)*, October 1, 2007, available at www.bloomberg.com/apps/news?pid=newsarchive&sid=aNaEBuFymjhg&refer=us (noting that the Teamsters' agreement with UPS covers 240,000 drivers, clerks and package sorters).

⁸ The banners were displayed 5 days per week, 4 hours a day at one building and less frequently at the other, for a period of 5 to 6 weeks.

⁹ The dissent finds it significant that "[t]he bannering in this case had the same impact on several targeted neutrals as traditional picketing," i.e., it caused customers to voluntarily choose not to do business with them. But the same can be said of handbilling, which is clearly protected by *DeBartolo*.

¹⁰ The dissent describes these consumers' voluntary decision as "refusals to cross a line," but here there was no line to cross as definitively found by the judge.

¹¹ Specifically, the banner at the Artisan Lofts condominium project was between 7 and 25 feet from the driveway entrance to the project's parking lot. The banners at the United Parcel Service south and north buildings were, respectively, 40 feet from the customer counter and "next to" a customer parking garage; in both cases, the banners appear from photographs in the record to be within a few feet of the driveways leading into UPS's premises. At King's Hawaiian Restaurant and Bakery, the banner was described as being "next to" the driveway into the restaurant's parking lot; again, although the record does not specify the exact distance, the banner appears to be close to the driveway in photographic exhibits.

banner at Anthony's Fish Grotto was positioned on a sidewalk about 20 feet from the restaurant's entrance, but only 8 feet from its outdoor dining area. As stated in *Marriott*, supra, in which we found that banners 10 feet or less from the entrance were not unlawful, "we are unwilling to draw an arbitrary line at some distance from the entrance to a secondary's premises and hold that stepping over that line somehow transforms peaceful, expressive activity into coercion in the absence of some further evidence of coercion." 355 NLRB No. 219, slip op. at 2.¹² There is no such evidence of coercion here.¹³

At the UPS banner sites, although the individuals distributing handbills appear to have been more mobile than those in *Eliason*, their movements do not supply the element of coercion required under *Marriott*. At the UPS south building, the individuals holding the handbills stood on a curb beside the driveway entrance to the facility. When a vehicle approached, the handbillers sometimes stepped off the curb toward the driver's side of the vehicle and used a circular hand motion to request the driver to roll down his or her window. A witness also testified that he saw individuals who were not holding the banner "create a half-moon type of walk path, perhaps in front of or around an oncoming vehicle" while trying to deliver a handbill.¹⁴ Similarly, at the UPS north building, the handbillers would step off the curb and

walk up to the driver's side of vehicles turning into the facility in order to offer handbills to the drivers. The judge specifically found, however, that none of the Respondents' agents patrolled or blocked ingress or egress at any site and that none of the handbilling was, in itself, unlawful conduct, but instead constituted "nonpicketing communications." There are no exceptions to those findings. In light of these specific, unexcepted-to findings and the General Counsel's failure to argue that the movement of the handbillers at this location distinguished the conduct there from the conduct elsewhere, we find that the handbillers' movements did not transform the banner displays into picketing or otherwise render them coercive. The handbilling alone was undisputedly lawful, and the banner displays alone were lawful under *Eliason* and *Marriott*. Nothing in the record or the law suggests that these two activities in combination were more than the sum of their lawful parts.

A witness also testified that the banner holders at King's Hawaiian stood close to the driveway leading into the parking lot, making it difficult for customers to turn into the driveway and to see oncoming traffic when exiting the driveway. Again, however, there are no exceptions to the judge's specific finding that none of the Respondents' agents blocked ingress or egress at any site.

At two sites, the UPS south building and the Artisan Lofts project, a reserved gate system was in place, and the Unions did not confine their banner displays to the reserved primary gate.¹⁵ Charging Party Eliason & Knuth excepts to the judge's failure to find that the Artisan Lofts banner displays were unlawful because they were not confined to the primary gate. As to both locations, however, the General Counsel, who controls the theory of the case, relies on the failure to honor the gate system only as evidence of secondary object.¹⁶ Here,

¹² The dissent cites the Supreme Court's decisions upholding State laws and State court injunctions restricting protest activities immediately surrounding patients entering medical clinics as well as the clinic entrances as grounds for the Board to engage in similar line drawing here. See *Hill v. Colorado*, 530 U.S. 703, 728–729 (2000) (rejecting a First Amendment challenge to a state statute applied to ban protestors from coming within 8 feet of individuals approaching a clinic entrance; emphasizing the "particularly vulnerable physical and emotional conditions" of such individuals); *Madsen v. Women's Health Center*, 512 U.S. 753, 758 (1994) (upholding a 36-foot buffer zone around a clinic, where as many as 400 protestors would congregate in the clinic's driveways, surround clinic patients, and engage in loud demonstrations, producing "deleterious physical effects" on patients). These laws and court order were based on evidence that protestors impeded access to the clinics, would yell and thrust signs showing pictures of bloody fetuses in the faces of patients, and accuse the patients of "killing your baby." *Hill*, 530 U.S. at 709–710; *Madsen*, 512 U.S. at 758–759. Such mass gatherings directly targeting a particularly vulnerable type of consumer—patients, rather than, as here, secondary employers—and posing a genuine risk to the health and safety of those patients are hardly analogous to the peaceful display of a banner, accompanied by a few handbillers, requesting that the public not eat at a particular restaurant. We thus rest on our conclusion that simply moving a banner closer to a driveway or entrance does not somehow render it coercive.

¹³ The fact that some banners, although positioned facing the street, were placed on the "inside" edge of the sidewalk (with the sidewalk between the banner and the street) does not distinguish the conduct at issue here from that found lawful in *Eliason*, supra. See *Carpenters Local 1506 (AGC)*, 355 NLRB No. 191 (2010).

¹⁴ The witness did not indicate the duration of this form of ambulatory activity.

¹⁵ At the Artisan Lofts project, after the banner displays began, the general contractor marked one gate as reserved solely for employees and suppliers of Eliason & Knuth (the primary employer), and another gate for all other employees and suppliers, and notified Local 1506 of the gate system. Respondent Local 1506 displayed its banner about 200 feet from the primary gate, 30–55 feet from the neutral gate, and 110 feet from Artisan Homes' sales office, which was next door to the construction site.

At the UPS south building, before the banner displays had begun, UPS established three separate gates marked, respectively, "Reserved Gate . . . Corsair" (the primary employer), "UPS Gate," and "Neutral Gate." A diagram in the record depicts the banner display as being closer to the primary gate than to the UPS gate and a UPS representative testified that the banner was displayed about 80 feet from the primary gate, but the judge found that the banner was displayed "at the 'UPS Gate,'" and there are no exceptions to that finding.

¹⁶ See *Smoke House Restaurant*, 347 NLRB 192, 195 (2006) (the General Counsel controls the theory of the case, and the charging party cannot enlarge upon or change that theory), *enfd.* 325 Fed. Appx. 577 (9th Cir. 2009).

because the Respondents' banner displays did not threaten, coerce, or restrain the secondary employers, we need not decide whether the Respondents' conduct had an unlawful secondary object. See *Eliason*, supra, slip op. at 4 fn. 12. In any event, the cases cited by the Charging Party involved the application of *Sailors Union (Moore Dry Dock)*, 92 NLRB 547, 549 (1950). The *Moore Dry Dock* test is used to determine whether picketing at a common situs (i.e., a worksite occupied by the employees of both primary and secondary employers) has an unlawful secondary object. As discussed in *Eliason*, we reject the contention that the display of a stationary banner is picketing. *Moore Dry Dock* is therefore inapplicable. See *New Star*, supra, 356 NLRB No. 88, slip op. at 3, 6 fn. 15. Accordingly, the Respondents' failure to confine their banner displays to the reserved primary gates did not render the noncoercive displays unlawful.¹⁷

Conclusion

In sum, we conclude, consistent with our prior decisions¹⁸ and those of the only court of appeals that has

¹⁷ The General Counsel makes a general argument that all of the banner displays in the present case constituted "signal picketing," which the Board has defined as "activity short of picketing through which a union intentionally, if implicitly, directs members not to work at the targeted premises." *Eliason*, supra, slip op. at 9. As the Board explained in *Eliason*, signal picketing involves union employees communicating with each other, not with the public, and the typical signal picketing case includes an allegation that the union violated Sec. 8(b)(4)(i)(B), which prohibits inducing or encouraging employees of a neutral employer to refuse to work. *Id.*, slip op. at 9–10. Here, as in *Eliason*, the General Counsel does not allege that any of the banners violated Sec. 8(b)(4)(i)(B), and nothing about the banner displays themselves or any extrinsic evidence indicates employees of secondary employers would reasonably have understood them to be a signal to cease work. See also *Brandon*, supra, 356 NLRB No. 162, slip op. at 4–5.

As noted above, Local 1506 did not confine its picketing at the Artisan Lofts project to the gate reserved for the primary employer. It is unclear from the record whether the Artisan Lofts construction site was open to the general public, but the absence of such evidence does not indicate that the banner was intended or would reasonably have been understood as a signal to employees to cease work. The banner faced a busy multilane street described in the General Counsel's brief as a "major artery" to and from downtown Phoenix. Furthermore, the banner was positioned near a driveway that served not only the Artisan construction project but Artisan's sales office next door. For those reasons as well as the reasons fully set forth in *New Star*, supra, 356 NLRB No. 88, slip op. at 3–4, we would not find the banner display at the Artisan Lofts project an unlawful signal to secondary employees to cease work even if the complaint had contained an allegation under Sec. 8(b)(4)(i).

¹⁸ The dissent posits that the decision in *Eliason* "overrul[ed] sub silentio decades of precedent," yet every precedent pointed to by the dissent in that case was addressed by the majority and the dissent here points to nothing further.

considered the issue and four separate district courts,¹⁹ that the General Counsel has not demonstrated that the Unions' peaceful, stationary banner displays violated Section 8(b)(4)(ii)(B).²⁰ We therefore dismiss the complaint.

ORDER

The complaint is dismissed.

Dated, Washington, D.C. August 11, 2011

Wilma B. Liebman, Chairman

Craig Becker, Member

Mark Gaston Pearce, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER HAYES, dissenting.

This is the final Board decision in a series of union banner cases that originated with complaints issued in 2003 and 2004. The banner here is fundamentally the same as the conduct at issue in *Carpenters Local 1506 (Eliason & Knuth of Arizona)*, 355 NLRB No. 159 (2010). As in that lead decision, addressing the issue of banner's legality for the first time, my colleagues give free license to unions to engage in this activity to promote secondary consumer boycotts of neutral employers. Indeed, their opinion here highlights the extent to which they will permit unions to involve neutrals in a dispute with nonunion contractors. In my view, this approach to banner impermissibly undercuts the prophylactic purpose of Section 8(b)(4)(ii)(B) of the Act as enacted by Congress and as interpreted by the Supreme Court.

For the reasons fully set forth in the joint dissent in *Eliason*, supra, I would find that the banner conduct here also violated Section 8(b)(4)(ii)(B). The predomi-

¹⁹ *Overstreet v. Carpenters Local 1506*, 409 F.3d 1199 (9th Cir. 2005), affg. *Overstreet v. Carpenters Local 1506*, 2003 WL 23845186, U.S. Dist. Lexis 19854 (S.D. Cal. 2003); *Gold v. Mid-Atlantic Regional Council of Carpenters*, 407 F.Supp.2d 719 (D. Md. 2005); *Benson v. Carpenters Locals 184 & 1498*, 337 F.Supp.2d 1275 (D. Utah 2004); *Kohn v. Southwest Regional Council of Carpenters*, 289 F.Supp.2d 1155 (C.D. Cal. 2003).

²⁰ We decide only that a violation was not proven in this case. Contrary to the dissent's contention, we do not hold that the display of banners is lawful "no matter what impact it has on consumers . . . and no matter what amount of non-obstructive ambulation by other union agents attends it." Facts suggesting coercion of consumers or ambulation creating a confrontation might make this a different case. But we choose to address those facts if and when they arise.

nant element of such bannering is confrontational conduct, rather than persuasive speech, designed to promote a total boycott of the neutral employers' businesses, and thereby to further an objective of forcing those employers to cease doing business with the primary employers in a labor dispute.¹ This bannering activity is the "confrontational equivalent of picketing," and thus the precise evil Congress sought to outlaw through Section 8(b)(4)(ii)(B). Consequently, the proscription of such conduct raises no Constitutional concerns.

This case confirms that bannering presents precisely the dangers Congress sought to prevent when it enacted Section 8(b)(4). Union agents displayed large stationary banners at the premises of numerous neutral employers in Las Vegas, Phoenix, Los Angeles, San Diego, and Denver. Although much of this conduct purported to be a protest of nonunion contractors' alleged failure to pay area standards wages, in reality the Respondents' true object was to coerce the neutral employers to cease doing business with contractors unless and until those contractors agreed to recognize the unions.

The bannering at issue in this case was in several instances more confrontational than the conduct at issue in *Eliason*, but the majority finds it lawful all the same. In *Eliason*, the majority found the banners were not coercive in part because the union agents holding them were stationary. Overruling sub silentio decades of precedent, they determined that picketing could be established only by proof that union agents both carried "picket signs" and engaged in "persistent patrolling." Here, union agents held banners targeted at neutral UPS while other union agents engaged in patrolling by walking back and forth in front of a vehicle entrance used by customers in a "half-moon" pattern and stepping into the drive entrance as cars entered to induce customers to accept a flyer.² This combined conduct was confrontational pick-

¹ I note that the majority has yet to acknowledge in any case that union bannering activity has the "cease doing business" objective proscribed by Sec. 8(b)(4)(ii)(B), even where that objective is patently obvious.

The General Counsel does not allege that bannering at the Sycuan Casino, Viejas Casino, and Invitrogen locations was picketing, and argues that the conduct there was coercive solely on the basis that the banners falsely claimed that the neutrals had a labor dispute with the unions. Indeed, on brief he concedes that the conduct at issue at these locations, which took place some distance from the neutral facilities, was "nonconfrontational." While the making of false claims about the existence of a primary labor dispute heightens the coercive impact of confrontational bannering at the premises of a neutral employer, as explained in the joint dissent in *Eliason*, I would not find that the false claims made here, standing alone, are sufficient without more to establish a violation of Sec. 8(b)(4)(ii)(B).

² Other union agents engaged in similar conduct at the premises of other neutral employers. At the King's Hawaiian location, union agents positioned themselves at the edge of the vehicle entrance to the restaur-

ing in any commonly understood sense of those terms, yet the majority finds it lawful on the basis that the banner holders did not themselves walk back and forth or step into traffic while holding the banners. Unlike my colleagues, I cannot ascribe to Congress the intent to have 8(b)(4) liability turn on such distinctions any more than Congress could have intended to immunize secondary activity merely because the participants did not attach their signs to sticks.³

The bannering in this case had the same impact on several targeted neutrals as traditional picketing, and there is affirmative evidence that it was recognized as such by people who ought to know. In one instance, the Teamsters Union refused to patronize neutral Hyatt Islandia and cancelled a 5-day convention at that hotel citing Respondent Local 1506's bannering which "established a picket line" and stating that "[t]he Union cannot conduct a meeting at a facility being picketed by another labor organization." In another instance, a regular UPS customer told a UPS employee that "I can't use you guys because I can't cross this picket line . . . it's the millwrights that are out there, and I'm a millwright, and I can't cross . . ."

As in *Brandon Regional Hospital*,⁴ the majority reasons that a union and a union member literally did not mean what they said, that they could not have meant "picketing" as a legal term of art, and that the misspoken and misunderstood reference is of no relevance in determining whether bannering is coercive. While I readily agree with my colleagues that the label affixed to dis-

rant in a manner that impeded customers entering and leaving the parking lot and led to customer complaints. Banners were also positioned especially close to driveway entrances at the UPS and Artisan Lofts facilities. These facts further support a finding that the conduct at issue was confrontational for the reasons stated in the dissent in *Eliason*, though they are not necessary to a finding that the conduct was unlawful.

³ The majority suggests that the General Counsel is foreclosed from relying on this conduct as evidence that the bannering was unlawful because he did not specifically argue that the union agents' movements distinguished the bannering at UPS from the other bannering in this case. Of course, the judge found that all of the contested bannering was picketing and coercive, and the General Counsel specifically cited the conduct described above in his brief in support of the judge's decision. It would have required clairvoyance on the General Counsel's part to have known, prior to *Eliason*, that he needed to assert that the movement by the union agents somehow set this particular bannering apart. See, e.g., *Lumber & Sawmill Workers Local 2797 (Stoltze Land & Lumber)*, 156 NLRB 388, 394 (1965) (patrolling not essential to establish that conduct is picketing; what is required is posting of union agents at the approach to a place of business to accomplish union's purpose of keeping customers or employees away). Accordingly, I disagree with the majority's implication that the General Counsel has waived this argument.

⁴ *Sheet Metal Workers Local 15 (Brandon Regional Medical Center)*, 356 NLRB No. 162, slip op. at 3 (2011).

puted conduct is not *determinative* of its legality, I can discern no valid principle for dismissing it out of hand.⁵ I am certainly not persuaded by the majority's reasoning that such characterizations by union *customers* of a neutral employer are meaningless because there has been no evidence in any of the bannering cases that union *employees* of the neutral have withheld their services, which the majority presumes they would have done if the bannering were picketing. I do not suggest that such evidence did or did not exist for any particular case, but I would not draw an evidentiary presumption from its absence because there could be any number of reasons why union supporters would continue to work for the neutral employer, including the possibility that the union itself urged them to do so.

The majority also dismisses the foregoing evidence as proof of the coercive nature of bannering. Again, it may not be dispositive, but it is relevant. As the Supreme Court has repeatedly instructed, the nature of the response to union conduct is precisely what distinguishes lawful persuasion from the conduct Section 8(b)(4) proscribes. See *NLRB v. Retail Store Employees Local 1001 (Safeco)*, 447 U.S. 607, 619 (1980) (Justice Stevens, concurring) (statutory ban affects union conduct that "calls for an automatic response to a signal, rather than a reasoned response to an idea."); *DeBartolo Corp. v. Florida Gulf Coast Building Trades Council*, 485 U.S. 568, 580 (1988) (loss of business because customers "are intimidated by a line of picketers" is coercive); *Hughes v. Superior Court*, 339 U.S. 460, 465 (1950) (picket line exerts influences and produces consequences different from other modes of communication); *Bakery Drivers v. Wohl*, 315 U.S. 769, 776–777 (1942) (Justice Douglas, concurring) (picketing induces "action of one kind or another, quite irrespective of the ideas which are being disseminated"). As shown, the bannering at the UPS and Hyatt Islandia locations provoked customer refusals to

cross a line, the same response to conduct rather than speech that occurs with traditional picketing. The majority's refusal to give this evidence any weight cannot be reconciled with the principles stated above.

Further narrowing the scope of Section 8(b)(4), the majority finds banners displayed outside the premises of neutral State Farm "protected" because they called State Farm a "Greedy Corporate Citizen" and did not contain the words "labor dispute."⁶ My colleagues posit that the same accusation, if wielded in support of a charge that State Farm used a contractor that was guilty of racial discrimination or pollution, would be protected by the First Amendment and call for similar immunity from regulation here. They are thrice mistaken.

First, Congress has treated secondary boycotts by labor organizations differently from public individual rights, social, and political protests because they *are* different, both in their tendency to coerce and their impact on commerce. The Supreme Court has plainly upheld the distinctions thus drawn. In *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 912 (1982), the Court concluded that a boycott of businesses that refused to serve African-Americans was protected by the First Amendment even though a similar boycott on the part of a union as part of a labor dispute could be proscribed. In so holding, the Court recognized that regulation of such conduct on the part of unions "may have an incidental effect on rights of speech and association," but found the impact justified "as part of Congress' striking of the delicate balance between union freedom of expression and the ability of neutral employers, employees, and consumers to remain free from coerced participation in industrial strife."⁷

Second, as stated above, the restrictive focus of Section 8(b)(4)(ii)(B) is on the coercive conduct element, not on the expressive speech element of union activity. In this respect, I have in *Eliason* and subsequent cases maintained that my colleagues' crabbed view of what constitutes coercive conduct, limiting it to the ambulatory carriage of picket signs, cannot be reconciled with

⁵ In denying any probative value to this evidence, my colleagues rely on *Teamsters Local 688 (Levitz Furniture)*, 205 NLRB 1131 (1973). In *Levitz*, union agents distributed handbills without any accompanying signs or banners to persons entering a facility. On these facts, and after carefully determining that the conduct was not intended to and did not operate as a "signal to induce action by those to whom the signal is given," the Board stated that a union agent's statement in the course of the handbilling that he was engaged in "informational picketing," "in circumstances that show no 'signal' was intended thereby, cannot transform mere handbilling into picketing." Unlike *Levitz*, in this case the Union's overall conduct went beyond mere handbilling, plainly was intended as a signal to customers to avoid the neutral employer's site, and just as plainly had the desired effect. Moreover, the Board did not hold in *Levitz* that the union agent's characterization of his own conduct was irrelevant but instead determined that it was outweighed by the other contrary evidence present in that case. Here, that is not the case.

⁶ Any suggestion that the bannering at State Farm did not have the secondary object proscribed by Sec. 8(b)(4) is simply untenable. The majority concedes that the handbills accompanying the banners "cited State Farm's use of a contractor that paid substandard wages as the basis for calling the company 'greedy.'" While the Respondent Union accused the contractor in question of not paying area standard wages, the majority provides no support for any finding that this accusation was accurate. Moreover, in language not acknowledged by the majority, the handbills' call for State Farm to use "responsible contractors when building their facilities" plainly is a demand that it sever its relationship with the nonunion contractor it selected.

⁷ I do not suggest that *Claiborne* stands for permitting any limitation of union speech. Obviously, *DeBartolo* holds that the limitation of speech in peaceful leafleting would raise First Amendment concerns. However, the *DeBartolo* Court did not overrule *Clairborne*

longstanding Board precedent and the statutory scheme Congress has established.

Third, my colleagues' reliance on First Amendment jurisprudence in nonlabor public protest cases apparently goes only so far. In the present case, the banner at the site of neutral employer Anthony's Fish Grotto was a mere 8 feet from the outdoor dining area. In many other instances here, in *Eliason*, and in subsequent cases, banners were stationed 15 feet or less from the neutral employer's building or driveway entrance. Still, the majority declines "to draw an arbitrary line at some distance from the entrance to a secondary's premises and hold that stepping over that line somehow transforms peaceful, expressive activity into coercion in the absence of some further evidence of coercion." In marked contrast, the Supreme Court has had no such difficulty in holding that governments may draw such lines between those engaged in protected, nonlabor First Amendment protests and the target of their protests.⁸

"Manifestly, the Board, as the administrative agency charged with the enforcement of the Act, cannot assess the wisdom of, or rewrite or engraft exceptions upon, legislation which represents the considered judgment of Congress on a matter of serious and controversial public policy." *Carpenters District Council of Kansas City (Wadsworth Building Co.)*, 81 NLRB 802, 806 (1949), *enfd.* 184 F.2d 60 (10th Cir. 1950), *cert. denied* 341 U.S. 947 (1951). Although he bitterly opposed the Taft-Hartley Amendments which added Section 8(b)(4) to the Act, former Board Chairman Herzog properly acknowledged in *Wadsworth* that by this amendment "Congress was attempting to deal a death blow to secondary boycotts, whether for economic or for other objectives, and desired to use all the power at its command to eliminate them from the American industrial scene." *Id.* at 821.

More than 60 years later, the Board majority views Section 8(b)(4) quite differently. In a series of banner cases beginning with *Eliason* and culminating in today's decision, the majority has read Section 8(b)(4) as a narrow proscription. In sum, my colleagues hold that peaceful stationary banner to promote a consumer boycott at a neutral employer's site is not coercive no matter how close it is to the employer's customers, a driveway en-

trance, or the entrance to its facility, no matter what impact it actually has on customers, no matter what term union agents (who know a thing or two about picketing) use to describe the activity, and no matter what amount of nonobstructive ambulation by other union agents attends it.⁹ My colleagues act in good faith, and with limited judicial support from 10(j) litigation, but their decisions nevertheless resurrect the coercive secondary boycott as a permissible tactic in labor disputes. It now remains for the courts or Congress to reverse this course. For this one last time then, I respectfully dissent.

Dated, Washington, D.C. August 11, 2011

Brian E. Hayes,

Member

NATIONAL LABOR RELATIONS BOARD

David A. Kelly, Atty., for the General Counsel.

Gerald V. Selvo, Atty., of Los Angeles, California, for Respondents: Local Union No. 1827, United Brotherhood of Carpenters and Joiners of America, Local Union No. 1506, United Brotherhood of Carpenters and Joiners of America, and Local Union No. 209, United Brotherhood of Carpenters and Joiners of America.

Richard Rosenblatt, Atty., of Englewood, Colorado, for Respondent Mountain West Regional Council of Carpenters.

Robert B. Rosenstein, Atty., of Temecula, California, for Charging Party, Hawaiian Retail, Inc.

Jack L. Schultz and William A. Harding, Attys., of Lincoln, Nebraska, for Charging Party, Eliason & Knuth of Arizona, Inc.

Stephen J. Schultz, Atty., of San Diego, California, for Charging Party, Associated General Contractors of America.

Robert H. Murphy, Atty., of San Diego, California, for Westin Bonaventure.

Jon E. Pettibone, Atty., of Phoenix, Arizona, for Charging Party, United Parcel Service, Inc.

Lisa van Krieken, Atty. (Folger, Levin & Kahn), for Scott Vandenberg, general manager of the Hyatt Regency Islandia.

Bryan Vess, Atty., of San Diego, California, for Manchester Resorts Corporation, LP

DECISION

STATEMENT OF THE CASE

LANA H. PARKE, Administrative Law Judge. This case was tried in Las Vegas, Nevada, on January 13 through 17, and 21,

⁸ See, e.g., *Hill v. Colorado*, 530 U.S. 703 (2000) (upholding State law prohibiting persons from knowingly approaching within 8 feet of individual who was within 100 feet of health care facility entrance, for purposes of displaying sign, engaging in oral protest, education, counseling or passing leaflets or handbills, unless individual consented to that approach), and *Madsen v. Women's Health Center*, 512 U.S. 753, 768-769 (1994) (upholding state injunction creating protest-free buffer zone within 36 feet of abortion clinic's property line). Contrary to the majority, I do not view the holding in either case as limited to the application of the law/injunction in the particular factual circumstances.

⁹ The majority disclaims this broad characterization, stating that there simply has been no evidence of coercion of consumers or confrontation in any of the banner cases we have decided. Obviously, they and I fundamentally disagree as to the evidence sufficient to prove coercion or confrontation. Further, their opinions in this and other banner cases give no indication what evidence would suffice with respect to peaceful nonambulatory banner.

2003, as to Respondents Local Union 1827, United Brotherhood of Carpenters and Joiners of America; Local Union 1506, United Brotherhood of Carpenters and Joiners of America; Local Union 209, United Brotherhood of Carpenters and Joiners of America (Respondent Local 1827, Respondent Local 1506, Respondent Local 209, respectively and Respondent Locals, collectively), and by stipulation of facts submitted March 5, 2003, as to Respondent Mountain West Regional Council of Carpenters (Respondent Mountain West Carpenters; all respondents being referred to collectively as Respondent Unions.).¹ Pursuant to charges filed by United Parcel Service, Inc. (UPS) against Respondent Local 1827; Eliason & Knuth of Arizona, Inc. (E&K, AZ), Associated General Contractors of America San Diego Chapter, Inc. (San Diego AGC), and Today's IV, Inc. d/b/a Westin Bonaventure Hotel and Suites (Westin Bonaventure) against Respondent Local 1506; King's Hawaiian Retail, Inc. d/b/a King's Hawaiian Restaurant and Bakery (King's Hawaiian) against Respondent Local 209; and Eliason & Knuth of Denver, Inc. (E&K, Denver) against Respondent Mountain West Carpenters, the Regional Director for Region 28 of the National Labor Relations Board (the Board) issued an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing (the first complaint) on November 19. On November 29, the Regional Director for Region 28 amended the first complaint.² Pursuant to charges filed by E&K, Denver, the Regional Director for Region 27 of the Board issued a complaint and notice of hearing (the second complaint) on January 3, 2003. By order dated January 24, 2003, I granted the General Counsel's motion to consolidate the second complaint with the first complaint. The first complaint alleges that Respondents Local 1827, Local 1506, and Local 209 have violated Section 8(b)(4)(ii)(B) of the National Labor Relations Act (the Act). The second complaint alleges that Respondent Mountain West Carpenters has violated Section 8(b)(4)(ii)(B) of the Act.

Issues

1. Did Respondent Local Union 1827 threaten, coerce, or restrain persons engaged in commerce or industries affecting commerce in violation of Section 8(b)(4)(ii)(B) of the Act by displaying banners (bannering) directed at neutral employers at secondary sites in Las Vegas, Nevada, in furtherance of its labor dispute with Corsair Conveyor Corporation (Corsair)?

2. Did Respondent Local Union 1506 threaten, coerce, or restrain persons engaged in commerce or industries affecting commerce in violation of Section 8(b)(4)(ii)(B) of the Act by

¹ All dates are in 2002, unless otherwise indicated.

² The Amendments affected par. 9 (and subparagraphs) of the first complaint. Respondents Local 1827, Local 1506, and Local 209 denied the amended allegations at the hearing. At the hearing, the General Counsel amended the first complaint by adding the name of Doug McCarron (McCarron), general president of the United Brotherhood of Carpenters and Joiners of America as an agent of Respondent Local 1506, and corrected certain information in par. 5(c). Respondent Local 1506 admitted the title but denied the agency of McCarron. Respondents Local 1827, Local 1506, and Local 209 also amended their answer at the hearing, admitting the allegations of par. 2, 5(a)(1) through (3), (b)(1), (c)(1), (c)(3)[a] and [b], (c)(4) and (5), (d)(1), and (e)(1) of the first complaint.

bannering directed at neutral employers at secondary sites in Arizona and California in furtherance of its labor disputes with E&K, AZ, Brady Company/San Diego, Inc. (Brady), and Precision Hotel Interiors (Precision)?

3. Did Respondent Local Union 209 threaten, coerce, or restrain persons engaged in commerce or industries affecting commerce in violation of Section 8(b)(4)(ii)(B) of the Act by bannering directed at a neutral employer at a secondary site in Torrance, California, in furtherance of its dispute with Cuthers Construction (Cuthers)?

4. Did Respondent Mountain West Carpenters threaten, coerce, or restrain persons engaged in commerce or industries affecting commerce in violation of Section 8(b)(4)(ii)(B) of the Act by bannering directed at neutral employers at secondary sites in Colorado, in furtherance of its dispute with E&K, Denver?

5. Is the General Counsel estopped from alleging that Respondent Unions' conduct violates Section 8(b)(4)(ii)(B) of the Act because of the issuance of United Brotherhood of Carpenters (Best Interiors), 1997 WL 7314444 (Advice Memo March 13, 1997) and Rocky Mountain Regional Conference of Carpenters (Standard Drywall), 2000 WL 1741630 (Advice Memo April 3, 2000)?

On the entire record and after considering the briefs filed by the General Counsel, Charging Parties E&K, AZ, E&K, Denver, UPS, and AGC, Respondent Locals, and Respondent Mountain West Carpenters, I make the following

FINDINGS OF FACT

I. JURISDICTION

The following corporations have, at all times material, been engaged in the following businesses under the following commercial circumstances during the representative 12-month or other period noted:

UPS	interstate transportation and delivery of parcels	12-month period ending August 30	derived gross revenues in excess of \$50,000 from transportation of parcels in interstate commerce
E&K, AZ	contractor installing drywall, metal studs, and interior finishes in commercial and residential construction projects at various jobsites in Arizona	12-month period ending September 4	purchased and received at job-sites in Arizona, goods valued in excess of \$50,000 directly from points outside the State of Arizona

Brady	contractor providing carpentry services for commercial construction projects	12-month period ending October 3, 2001	purchased and received at California jobsites goods valued in excess of \$50,000 directly from points outside the State of California
Westin Bonaventure	operation of hotel properties	12-month period ending July 18	derived gross revenues in excess of \$500,000 and purchased and received at its California facility goods valued in excess of \$5,000 directly from points outside the State of California
King's Hawaiian	operation of a restaurant	12-month period ending May 2	derived gross revenues in excess of \$500,000 and purchased and received at its Torrance, California facility goods valued in excess of \$5,000 directly from other enterprises located within the State of California, each of which had received the goods directly from points outside the State of California
E&K, Denver	contractor installing drywall, metal studs, and interior finishes in commercial and residential construction projects at various jobsites in Colorado	Annually	purchased and received at jobsites in Colorado, goods, materials, and services valued in excess of \$50,000 directly from points outside the State of Colorado

Respondent Locals admit, and I find, that UPS, E&K, AZ, Brady, Westin Bonaventure, and King's Hawaiian have each, at all relevant times, been persons or employers engaged in commerce within the meaning of Sections 2(1), (2), (6), and (7) and

8(b)(4) of the Act and that Respondent Locals are labor organizations within the meaning of Section 2(5) of the Act.³

Respondent Mountain West Carpenters admits, and I find, that E&K, Denver has, at all relevant times, been a person or employer engaged in commerce within the meaning of Sections 2(1), (2), (6), and (7) and 8(b)(4) of the Act and that Respondent Mountain West Carpenters is a labor organization within the meaning of Section 2(5) of the Act. Respondent Mountain West Carpenters stipulates, and I find, that the following entities, engaged in the following businesses, have each, at all relevant times, been persons or employers engaged in commerce within the meaning of Sections 2(1), (2), (6), and (7) and 8(b)(4) of the Act: State Farm Mutual Insurance Company and State Farm Fire and Casualty Company (State Farm) engaged in the sale of insurance and related products; the University of Colorado (UC), a public institution of higher learning with a UC Health Science Center located in Denver, Colorado; Legacy Partners Real Estate Development, Legacy Residential, and Legacy Residential Construction Company (collectively, Legacy) engaged in the development, construction, and management of real property.

II. ALLEGED UNFAIR LABOR PRACTICES

The complaint alleges that in furtherance of the following labor disputes existing among Respondent Unions and the employers named below, Respondent Unions engaged in secondary activity at various locations in Arizona, California, Colorado, and Nevada in violation of Section 8(b)(4)(ii)(B) of the Act:

Respondent Union	Primary Employer
Respondent Local 1827	Corsair (Las Vegas, Nevada)
Respondent Local 1506	E&K, AZ (Phoenix, Arizona) Brady (San Diego, California) Precision (Los Angeles, California)
Respondent Local 209	Cuthers (Torrance, California)
Respondent Mountain West Carpenters	E&K, Denver (Denver, Colorado)

Respondent Locals and the General Counsel stipulated that Respondent Locals conducted the banner activity described below in reliance on the Board's Division of Advice memorandum in United Brotherhood of Carpenters and Joiners of America, Carpenters Local Union No. 1506 (Best Interiors), Case 21-CC-3234.

³ Where not otherwise noted, the findings herein are based on the pleadings, the stipulations of counsel, and/or unchallenged credible evidence.

In the course of Respondents' bannering activity described below, none of Respondents' agents carried or displayed traditional picket signs,⁴ patrolled,⁵ blocked ingress or egress to any site, or made any threats to employees or customers at any site.

A. Conduct of Respondent Local 1827

1. The labor dispute between Respondent Local 1827 and Corsair

UPS maintains parcel-distribution facilities at 335 East Arby Road (south building) and 740 North Martin Luther King Boulevard (north building), Las Vegas, Nevada. The facilities are 12 to 14 miles apart and include service to the general public. Respondent Local Union 1827 has not, at any material time, been engaged in a labor dispute with UPS. In connection with a south building expansion project, UPS contracted with Corsair, a construction company specializing in the installation of conveyor systems, to install a conveyor system at the south building commencing about August 22.⁶ Corsair performed no work at the North Building during any relevant period. At all times relevant, UPS maintained several entrances at the south building marked, respectively, "Reserved gate Corsair . . .,"⁷ "UPS gate," and "Neutral gate." The UPS gate was located about 80 feet from the Reserved gate.

By email dated August 27, Kessler notified UPS, in part, as follows:

[The UPS South Building Project] is a real slap in the face of our members and their families. With the economy here in Vegas trying to rebound after the downturn of September 11th we can not sit by and watch UPS bring in an unlicensed out of state contractor paying far below area standards and using a large out of state work force . . . we will be doing large display banners at many of your sites throughout the Vegas valley. We fully intend to inform the working men and women of Southern Nevada about the way in which UPS chooses to do business here in the area.

2. The UPS south building project

a. The UPS banners and handbills

Beginning August 29, Respondent Local 1827 established and maintained banners at the "UPS gate" of the south building facing Arby Road and at the north building at the UPS entrance facing Bonanza Street, both heavily traveled roads. No banner

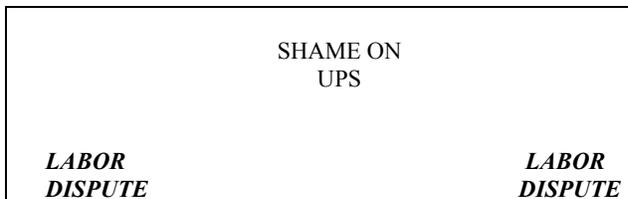
⁴ Traditional picketing involves individuals patrolling while carrying placards attached to sticks. *Mine Workers District 2 (Jeddo Coal Co.)*, 334 NLRB 677 (2001).

⁵ Justice Black described "patrolling" as encompassing "standing or marching back and forth or round and round . . . generally adjacent to someone else's premises . . ." *NLRB v. Fruit & Vegetable Packers & Warehousemen Local 760 (Tree Fruits)*, 377 U.S. 58, 77 (1964) (concurring opinion).

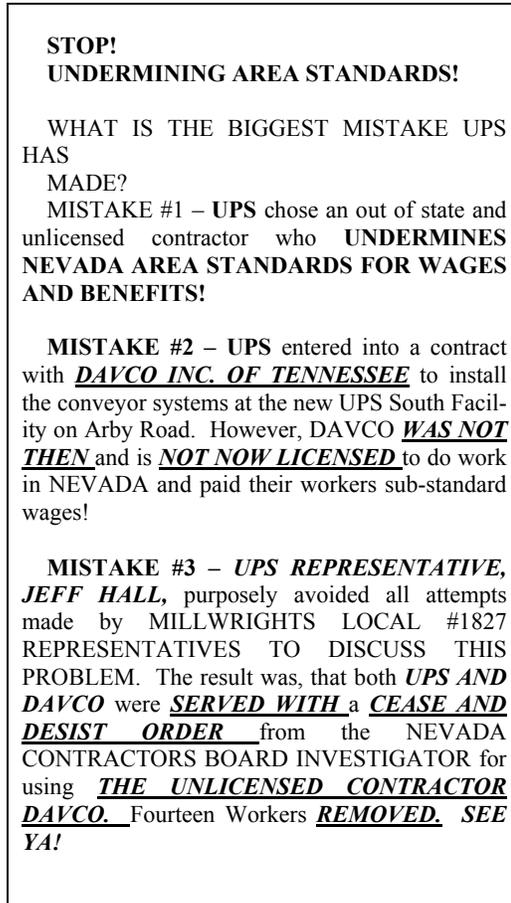
⁶ UPS had originally contracted with a company named DAVCO to install the conveyor system. UPS replaced DAVCO with Corsair because DAVCO was not Nevada-licensed.

⁷ Corsair's name was added to the Reserved Gate sign on August 22, and UPS so notified Respondent Local 1827 by telegram. No one contends that this reserved gate was not validly established and maintained.

was established at the south building entrance reserved for Corsair. The Union conducted the bannering Monday through Friday, 9:30 a.m. to 12:30 p.m. at the south building but less frequently at the north building. The banners measured approximately 15 by 4 feet. In the bottom corner of each banner the words "LABOR DISPUTE" appeared in gold ovals on a brown background, easily discernible from the street, and larger gold letters spanning the breadth of the banner identified the targeted company, the entire banner appearing essentially as follows:



Individuals maintaining the banners passed out two different handbills. One handbill featured a drawing of a UPS delivery truck with "SHAME ON UPS *LABOR*" written on its side, requested the public to contact the UPS, and otherwise read as follows:



MISTAKE #4 – UPS REPRESENTATIVE, JEFF HALL, still didn't want to have any discussions with MILLWRIGHTS LOCAL #1827 Representatives. UPS chose **CORSAIR CONVEYOR, who pays their workers 50%+ less than the area standards for** [sic]

**ASK UPS:
WHO DO THEY DISCOUNT WORKERS WAGES BUT NOT PRICES?**

TELL UPS NO MORE MISTAKES!

We are not urging any worker to refuse to work nor are we urging any suppliers to refuse to deliver goods.

The other handbill featured a drawing of a race car with the UPS logo on its hood and read:

ups

RACING TO PROMOTE
BELOW AREA STANDARD WAGES
CONSTRUCTION AND MAINTENANCE
PROJECTS

IF – UPS IS WILLING TO SPEND BIG \$\$\$ FOR:

- TOP OF THE LINE **EQUIPMENT**
- TOP OF THE LINE **DRIVERS**
- TOP OF THE LINE **BENEFITS**

WHY? – WOULD UPS CHOOSE TO HIRE A CONTRACTOR WHO IS UNLICENSED OR PAY BELOW AREA STANDARD WAGES AND BENEFITS.

IF – THEY'RE WILLING TO DISCOUNT WORKERS WAGES IN OUR COMMUNITY, THEN USE THE COUPON BELOW AND ASK FOR YOUR CONSUMER DISCOUNT!

TO Ups
United Parcel Service:

I DESERVE A 50% DISCOUNT

If the contractors you hire to do your installation work pay their employees 50% less for wages and benefits than the area standards in our community, then as a resident of Southern Nevada and a consumer;

I DESERVE A 50% DISCOUNT ON THE RATES YOU CHARGE ME!

Millwrights Local #1827

b. Communications with UPS

On August 29, Robert Lee Newell (Newell), UPS security representative, spoke to Charles Kessler (Kessler), business representative/financial secretary of Respondent Local 1827, at the south building banner. Newell asked Kessler why the Union was there. Kessler said, "We're tired of UPS doing this, hiring nonunion employees." According to Newell, Kessler said Local 1827 planned to start picketing the entire Desert Mountain district and that future picketing would include Mailboxes Et Cetera, retail shipping outlets for UPS. Kessler denied saying that Respondent Local 1827 would "picket" UPS. Although I found Newell to be a credible witness, I credit Kessler as to the "picket" statement. I note that the banner campaign was carefully planned, that Kessler's prebanning emails to UPS spoke in terms of consumer information and "banning activity." Although Newell clearly considered the activity to constitute picketing, I find it unlikely that Kessler would have termed it so.⁸

On the same day, Newell told James Sala (Sala), director of organizing for Respondent Local 1827, that the "picketing" should be conducted at the construction gate. Sala said, "We're not picketing. We are handing out handbills." Sala told Newell the Union would be there as long as they felt necessary to deliver the message to the consumers.⁹

In early September after the establishment of the banner, Kessler sent two union members to the jobsite to solicit employment from Corsair. The members reported to him that Corsair offered them \$14 an hour for 50 hours work per week, terms substantially less than the wage rate prevailing under the current Carpenters master agreement. Later, a Corsair employee told Kessler that all Corsair employees were nonunion.

By email dated September 19, Kessler informed UPS, in part, as follows:

[In the next few weeks] . . . we are taking our message all over the valley . . . to Mail Boxes etc. and . . . Postnet centers. We are also putting together a letter to over 500 companies, contractors, and vendors and other friends of labor in Southern Nevada letting them know what UPS is doing at your South Facility . . . [I]t is very unfortunate that this type of action must take place, we have always been a part of your work force here in Las Vegas when UPS has expanded. But make no mistake we will not sit by and watch UPS undermine the area standards. We will do everything we can to have our message heard for as long as it takes . . . again I ask if we can sit down and meet with your people and see if there is something we can do.

⁸ UPS employee Rick Gallegos also thought the activity was a picket line, and some UPS customers at the south building asked, "Why are these guys picketing?"

⁹ Sala admitted that his account of this conversation set forth in an affidavit given to the Board during investigation of the charges did not include any mention of delivering a message to consumers. Nevertheless, I found Sala to be a credible witness, and I accept his testimony.

B. Conduct of Respondent Local 1506

At all times material hereto, Respondent Local 1506 has been engaged in labor disputes with E&K, AZ, Brady, and Precision.¹⁰

1. Labor dispute between Respondent Local 1506 and E&K, AZ

At relevant times, Alan Cahill (Cahill) served as the director of special projects for the Southwest Regional Council of Carpenters, State of Arizona (Council). Beginning in 2001, he and his staff conducted an investigation of E&K, AZ through employee interviews, internet research, and inquiry of other contractors and union agents. Based on the investigation, the Council concluded that E&K, AZ did not pay prevailing wages and/or benefits to its employees.

On January 7, representatives of Respondent Local 1506, Cahill and Cris Westmoreland, met with Todd Bennett (Bennett), president of E&K, AZ. The two representatives explained the benefits of entering into a Carpenters Union labor agreement. Bennett said that E&K, AZ was not interested.

By letters dated August 28, Respondent Local 1506 sent notices of its labor dispute with E&K, AZ to Griffin and Double AA Builders (Double AA), stating that E&K, AZ did not pay area standard wages and health care, and asking that the companies not allow E&K, AZ to perform work on any projects.¹¹ The letters to Griffin and Double AA further stated, *inter alia*:

We want you to be aware that our lawful, but aggressive public information campaign against [E&K, AZ] encompasses all parties associated with projects where [E&K, AZ] are employed. That campaign includes highly visible banner displays and distribution of handbills at the jobsite and premises of property owners, developers, general contractors, and other firms involved with projects where [E&K, AZ] are employed. We certainly prefer to work cooperatively with all involved parties rather than to have an adversarial relationship with them . . . [Not allowing E&K, AZ to work on your projects] will provide the greatest protection against your firm becoming publicly involved in this dispute. . . .

Thereafter, in furtherance of its dispute with E&K, AZ, Respondent Local 1506 established banners at numerous locations in Arizona including those described below. On about September 4, after the bannering at E&K, AZ jobsites commenced, Bennett telephoned Cahill to request a meeting. Cahill faxed a letter dated September 4, to Bennett set forth in pertinent part:

You and I have spoken and scheduled a meeting to discuss labor relations matters. Before we meet I would like to establish for the record, that neither I nor anyone else acting on behalf of the Carpenters Union, has asked that you enter into any Collective Bargaining Agreement with the Union, or that you recognize the Union as the Collective Bargaining representative of any of your employees. . . . The Carpenters Union does not seek representation of your employees, and the purpose of any meetings that we may have is not to seek or pursue that objective.

2. The Artisan Homes Lofts Project

a. The contractual relationships

Artisan Homes, Inc. (Artisan Homes), real estate developer, engaged Westpac Communities, Inc. (Westpac) as general contractor for construction of condominiums in Phoenix, Arizona, known as “The Lofts on Central” (the Lofts Project). Westpac subcontracted, *inter alios*, with E&K, AZ to perform drywall and interior painting services at the project commencing September 23.

b. The Artisan Homes banner and handbills

Beginning mid-August, Respondent Local 1506 established and maintained a banner at the Lofts Project facing Central Avenue, a location adjacent to the main office of Artisan Homes. A portable framework of PVC pipe supported the banner. The banner measured approximately 15 by 4 feet. In each upper corner of the banner the words “LABOR DISPUTE” appeared in black letters, easily discernible from the street, and larger red letters spanning the breadth of the banner identified the targeted company, the entire banner appearing essentially as follows:



Individuals maintaining the banner passed out handbills. The handbills featured a large drawing of a rat gnawing on an American flag, requested the public to contact the company and urge adherence to area labor standards, and otherwise read:

¹⁰ Precision is a California corporation engaged in the construction industry as a general contractor specializing in hotel renovations.

¹¹ Respondent Local 1506 directed similar letters to other contractors. A business document of Respondent Local 1506 entitled “Owners & Contractors” who received letter regarding [E&K, AZ] lists 73-recipient companies, including Griffin and Double AA.

**SHAME ON
ARTISAN HOMES!
FOR DESECRATION
OF THE AMERICAN WAY OF LIFE**

A rat is a contractor that does not pay all of its employees standard wages, including either providing or making payments for health care. Employees who work for a rate contractor are also rats.

Westpac Construction has been hired by **Artisan Homes** to construct their new lofts. . . Westpac has contracted with [**E&K, AZ**] to do the drywall work on that project. [**E&K, AZ**] does not meet area labor standards for that work. It does not pay area standard wages to all its carpenter-craft employees, including payments for family health care.

Carpenters Local 1506 objects to substandard employers like [**E&K, AZ**] working in the community. In our opinion the community ends up paying the tab for employee health care and low wages tend to lower general community standards, thereby encouraging crime and other social ills. Carpenters Local 1506 believes that **Artisan Homes** has an obligation to the community to see that contractors who perform work on buildings they construct, own, occupy or lease, meet area labor standards. They should not be allowed to insulate themselves behind “independent” contractors.

* * *

WE ARE NOT URGING ANY WORKER TO REFUSE TO WORK
NOR ARE WE URGING ANY SUPPLIER TO REFUSE TO DELIVER
GOODS.

When the bannering began, Eric C. Brown (Brown), president of Artisan Homes, telephoned Cahill and pointed out that Artisan Homes was not the builder on the job. Cahill said, “You’re the developer, it’s your property, you’re responsible for this.”¹² In a later conversation with Cahill at the banner location, Brown told Cahill, “If you’re telling me that you want me to change things, you’ve never given me any kind of information on what the area standard wages are.” Cahill said, “Well, maybe I’ll just give you a call.” After that, Brown never heard from any representative of the Union.

¹² While Brown and Cahill were in fundamental agreement as to the substance of their conversations, Brown’s testimony differed somewhat from Cahill’s account on this point. Brown testified, essentially, that Cahill told him if he did not use E&K, AZ, the problem would go away. As to this aspect of the conversation, I credit Cahill.

On September 19, Westpac established a valid reserved gate at the at the back of the Lofts Project for employees and suppliers of E&K, AZ. Respondent Local 1506 continued to display the banner at the front of the project facing Central Avenue, a distance approximately 250 feet from the reserved gate until October 18.¹³

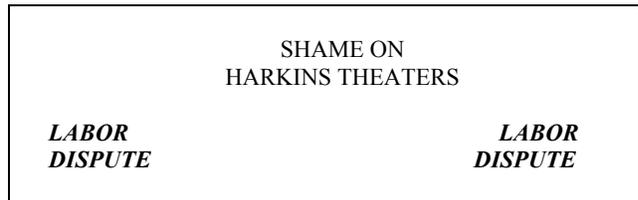
3. The Harkins Project

a. *The contractual relationships*

Harkins Amusement Enterprises, Inc. (Harkins) engaged Double AA as general contractor for construction of a movie theater in Avondale, Arizona, a town west of Phoenix (the Harkins Project). Double AA subcontracted, inter alios, with E&K, AZ to perform drywall, metal stud, and finishing services at the project, which E&K, AZ completed in November.

b. *The Harkins banners and handbills*

Beginning September 4, 10, and 18, respectively, Respondent Local 1506 established and maintained banners at a Harkins theater on 19th Avenue in Phoenix, Arizona (Christown Theatre), located approximately 30 miles from the Harkins project, at North Valley Theatre on Bell Road in Phoenix, and at the Harkins Theater corporate offices located on McDonald Road in Scottsdale, Arizona. E&K, AZ neither performed work nor was scheduled to perform work at the Harkins theaters in Phoenix or at the Harkins corporate offices in Scottsdale. The approximately 15-by-4-foot banners, supported by portable frameworks of PVC pipe, faced busy multilane streets. In each upper corner the words “LABOR DISPUTE” appeared in easily-discernible black letters, and larger red letters spanning the breadth of the banners identified the targeted company, the entire banner appearing essentially as follows:



Handbills distributed at the bannering site featured a large drawing of a rat gnawing on an American flag, asked the public to urge the company to adhere to area labor standards, and otherwise read:

¹³ The General Counsel and Respondent Locals stipulated that banner displays continued at all locations as described herein until October 18. Other evidence suggests that the date may be an approximate one, but exactitude is not material on that point.

**SHAME ON
HARKINS THEATERS!**
FOR DESECRATION
OF THE AMERICAN WAY OF LIFE

A rat is a contractor that does not pay all of its employees standard wages, including either providing or making payments for health care. Employees who work for a rat contractor are also rats.

[Double AA] has been hired by **Harkins Theaters** to construct their new theatres located at 99th Ave. and McDowell Rd., in Avondale. **Double AA** has contracted with [E&K, AZ] to do the drywall work on that project. [E&K, AZ] does not meet area labor standards for that work. It does not pay area standard wages to all its carpenter-craft employees, including payments for family health care.

Carpenters Local 1506 objects to substandard employers like [E&K, AZ] working in the community. In our opinion the community ends up paying the tab for employee health care and low wages tend to lower general community standards, thereby encouraging crime and other social ills. Carpenters Local 1506 believes that **Harkins Theaters** has an obligation to the community to see that contractors who perform work on buildings they construct, own, occupy or lease, meet area labor standards. They should not be allowed to insulate themselves behind "independent" contractors.

* * *

On September 10, at the Harkins corporate office location, Michael Ostwinkle (Ostwinkle), production manager of E&K, AZ spoke to Cahill by telephone and asked for a meeting to discuss the allegations on the handbills. Cahill refused. Ostwinkle also spoke to Eddie Kasprzycki (Kasprzycki), special representative of the Southwest Regional Council of Carpenters who stood at the banner. When Ostwinkle asked him if the banners would go away if E&K, AZ paid its employees \$20.17 an hour, Kasprzycki said, "I don't know, maybe if you'd just join the union maybe this whole thing would go away."

News reports of the above activity described it as picketing. Because of the bannering and handbilling, Harkins Theaters suggested to Double AA that it replace E&K, AZ on the projects.

4. The Vanguard Health Systems West Valley
Hospital Project

a. The contractual relationships

Vanguard Health Systems, Inc. (Vanguard), which operates hospitals in the Phoenix area, engaged Dunn Southeast d/b/a R. J. Griffin and Company (R. J. Griffin) as the general contractor for the construction of a hospital in Goodyear, Arizona (West Valley Hospital). R. J. Griffin subcontracted with E&K, AZ, inter alios, to perform construction services at the project commencing September 1.

b. The Vanguard banners and handbills

Beginning September 4, Respondent Local 1506 established and maintained banners facing busy multilane streets at Phoenix Memorial Hospital and Phoenix Baptist Hospital both located in Phoenix, Arizona, and Arrowhead Community Hospital located in Glendale, Arizona. Respondent Local 1506 established no banner at the West Valley Hospital Project. E&K, AZ neither performed work nor was scheduled to perform work at Phoenix Memorial Hospital, Phoenix Baptist Hospital, or Arrowhead Community Hospital. A portable framework of PVC pipe supported the banners at each location. The banners measured approximately 15 by 4 feet. In each upper corner of the banners the words "LABOR DISPUTE" appeared in black letters, easily-discernible from the street, and larger red letters spanning the breadth of the banners identified the targeted company, the entire banner appearing essentially as follows:

SHAME ON VANGUARD HEALTH SYSTEMS	
LABOR DISPUTE	LABOR DISPUTE

Handbills distributed at Phoenix Memorial Hospital, Phoenix Baptist Hospital, and Arrowhead Community Hospital were identical. They featured a large drawing of a rat gnawing on an American flag, requested the public to contact the company and urge adherence to area labor standards, and otherwise read:

**SHAME ON
VANGUARD HEALTH SYSTEMS!**
FOR DESECRATION
OF THE AMERICAN WAY OF LIFE

A rat is a contractor that does not pay all of its employees standard wages, including either providing or making payments for health care. Employees who work for a rate contractor are also rats.

R J Griffin & Company has been hired by **VANGUARD HEALTH SYSTEMS** to construct their new facility, the **West Valley Hospital**, in Goodyear, Arizona. **[E&K, AZ]** has been hired by R J Griffin to do the metal stud drywall work on that project. **[E&K, AZ]** does not meet area labor standards for that work. It does not pay area standard wages to all its carpenter-craft employees, including payments for family health care.

Carpenters Local 1506 objects to substandard employers like **[E&K, AZ]** working in the community. In our opinion the community ends up paying the tab for employee health care and low wages tend to lower general community standards, thereby encouraging crime and other social ills. Carpenters Local 1506 believes that **Vanguard Health Systems** has an obligation to the community to see that contractors who perform work on buildings they construct, own, occupy or lease, meet area labor standards. They should not be allowed to insulate themselves behind "independent" contractors.

* * *

5. Labor dispute between Respondent Local 1506 and Brady

Brady is a nonunion contractor doing construction work in the San Diego area. In 1997 or 1998 Mike Magallenes, Respondent Local 1506 business representative, contacted Scott Brady and asked him to enter into collective-bargaining negotiations with Local 1506 on behalf of Brady. Nothing came of the request.

During 2000/2001, and prior to the start of bannering, Thornhill and his staff conducted an investigation of Brady's wages and benefits by questioning Brady employees. Based on the information thus obtained, Respondent Local 1506 concluded that Brady did not pay prevailing wages and/or benefits to its employees. A summer 2000 carpenters union newsletter printed a purported Brady paycheck statement and stated, essentially, that only a union contract could protect carpenters' wages and benefits.

By letters dated as set forth to the following construction companies, Respondent Local 1506 informed them that the Union had an "area standards" dispute with Brady and intended

"lawfully [to] protest and demonstrate against [Brady at] any of your jobsites employing [Brady]," asking that the companies not contract with Brady until Brady met area standards:

<i>Date</i>	<i>Company</i>
October 2, 2000	Roel
October 5, 2000	C & S Doctor Inc.
May 9, 2001	Reno Contracting, Inc. (Reno), Bilbro, and Blake Construction Co.

By letters dated July 18, 2001, and December 13, 2002, respectively, Respondent Local 1506 informed Clark and CYMER and other area contractors that the Union had an "area standards" dispute with Brady and asked the companies not to allow Brady to perform any work on any project unless Brady met area labor standards for all of its carpentry craft work, stating further:

We want you to be aware that our lawful but aggressive public information campaign against [Brady] encompasses all parties associated with projects where [Brady] is employed. That campaign includes highly visible banner displays and distribution of handbills at the jobsite and premises of property owners, developers, general contractors, and other firms involved with projects where [Brady] is employed. We certainly prefer to work cooperatively with all involved parties rather than to have an adversarial relationship with them.¹⁴

In connection with its dispute with Brady, over the last 2-1/2 years, Respondent Local 1506 bannered at 50 to 60 properties in a manner similar to the activity detailed below. The bannering stopped in 2002 for a period of about 3 months from February to about May 29, during which hiatus Scott Brady met with Douglas McCarron (McCarron), general president of the United Brotherhood of Carpenters and Joiners of America and brother of Respondent Local 1506's president, at a restaurant in La Mesa, California. In the course of that meeting, McCarron asked Scott Brady to consider collective bargaining negotiations with Respondent Local 1506. Scott Brady asked how that would benefit Brady. McCarron explained the Union's wage and benefit package. Scott Brady said that the package was equal to what the Company currently paid and that neither he nor his employees would benefit from it. McCarron said that the Company could have the benefit of peace and protection: peace being an absence of bannering and picketing, an absence of letters, an absence of union agents going to jobsites to talk to Brady employees, and protection being the Union's effort to attack any nonunion competitors just as Brady was then being attacked. Scott Brady did not agree to negotiate.

Respondent Local 1506 denies that McCarron acted as its agent in this conversation. Although no specific evidence other than McCarron's position with the Union was adduced to show agency, I conclude that McCarron acted as Respondent Local 1506's agent in making the negotiation pitch. The Board noted in *Longshoremen ILA (Coastal Stevedoring Co.)* that, "when applied to labor relations . . . agency principles must be

¹⁴ Although the wording of the two letters to Clark and CYMER differed slightly, inasmuch the meaning is identical, I have included only one version.

broadly construed in light of the legislative policies embedded in the Act.”¹⁵ The Board applies the common law principles of agency when determining whether apparent authority is created: (1) there must be some manifestation by the principal to a third party, and (2) the third party must believe that the extent of the authority granted to the agent encompasses the contemplated activity. *Pratt Towers, Inc.*, 338 NLRB 61, 72 (2002). At the time of the conversation, McCarron served as the general president of the United Brotherhood of Carpenters and Joiners of America, the organization with which Respondent Locals, including Respondent Local 1506, are affiliated. That affiliation is set forth by the terms of the master labor agreement to which Respondent Local 1506 is a party, as is the United Brotherhood of Carpenters and Joiners of America. McCarron’s position as president of the presumably governing body of Respondent Local 1506 constitutes a manifestation that he possesses authority to act for affiliates of that governing body, and Scott Brady accepted that authority in discussing possible collective bargaining with Respondent Local 1506. Accordingly, Mr. McCarron’s request that Scott Brady negotiate with Respondent Local 1506 may be considered as evidence of Respondent Local 1506’s intent and purpose.

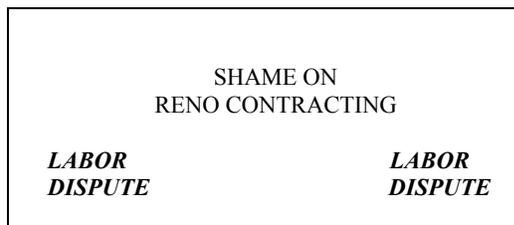
6. Project at Reno offices on Frazee Road,
San Diego

a. The contractual relationships

Brady performed construction work for Reno at its offices located on Frazee Road in San Diego, California, beginning in early 2000 and completing the work in about December 2000.

b. The Reno banner and handbilling

During the entire construction period and continuing (except for the hiatus mentioned above) until October 18, Respondent Local 1506 bannered at the Reno offices. A portable framework of PVC pipe supported the approximately 15-by-4-foot banner. In each upper corner of the banner the words “LABOR DISPUTE” appeared in black letters, easily discernible from the busy Frazee Road, and larger red letters spanning the breadth of the banners identified the targeted company, the entire banner appearing essentially as follows:



Individuals maintaining the banner passed out handbills. The handbills featured a large drawing of a rat gnawing on an American flag, requested the public to contact the respective

¹⁵ 313 NLRB 412, 415 (1933), remanded 56 F.3d 205 (D.C. Cir. 1995), stating further at 417, “Courts have concluded that under the NLRA, agency principles must be expansively construed, including when questions of union responsibility are presented.” [Citations omitted.]

company and urge adherence to area labor standards, and otherwise read as follows:

**SHAME ON
RENO CONTRACTING**
For Desecration
of the American Way of Life

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

Shame on **Reno Contracting** for contributing to erosion of area standards for San Diego carpenter craft workers. **Reno Contracting** is the general contractor on a building to be occupied by **Inuit** [sic]. **Reno** has subcontracted carpentry work to [**Brady**]. [**Brady**] does not meet area labor standards, including providing or paying for health care and pension for all of its carpenter craft employees.

Carpenters Local 1506 objects to substandard employers like [**Brady**] working in the community because the community ends up paying the tab for employee health care and because low wages tend to lower general community standards, thereby encouraging crime and other social ills.

Carpenters Local 1506 believes that **Reno Contracting** has an obligation to the community to see that area labor standards are met when doing construction work on their projects. They should not be allowed to insulate themselves behind “independent” contractors.

* * *

WE ARE NOT URGING ANY WORKER TO REFUSE TO WORK NOR ARE WE URGING ANY SUPPLIER TO REFUSE TO DELIVER GOODS.

7. The Valley Center Project

a. The contractual relationships

Kilroy Realty Corporation (Kilroy Realty), Prentiss Properties Acquisition Partners, LP (Prentiss), and Peregrine Systems, Inc. (Peregrine) engaged Reno as the general contractor for new construction and tenancy improvement work at office buildings located on Valley Center Drive in San Diego, California (Valley Center Project). Morrison & Foerster, law office, was a tenant at the property. Reno subcontracted, inter alios, with Brady to perform construction services at the project commencing in December 1999.

b. The Prentiss Properties, Peregrine, Morrison & Foerster, and Kilroy Realty banners and handbills

During the time Brady performed construction work at the Valley Center project, and for about 6 months after Brady com-

pleted work, Respondent Local 1506 established and maintained four banners there. A portable framework of PVC pipe supported each banner, which measured approximately 15 by 4 feet. In each upper corner of the banners the words “LABOR DISPUTE” appeared in black letters, easily-discernible from the street, and larger red letters spanning the breadth of the banners identified the targeted company, each banner appearing essentially as follows:

SHAME ON
KILROY REALTY

LABOR ***LABOR***
DISPUTE ***DISPUTE***

SHAME ON
MORRISON & FOERSTER

LABOR ***LABOR***
DISPUTE ***DISPUTE***

SHAME ON
PEREGRINE

LABOR ***LABOR***
DISPUTE ***DISPUTE***

SHAME ON
PRENTISS PROPERTIES¹⁶

LABOR ***LABOR***
DISPUTE ***DISPUTE***

The banners faced streets of moderate to heavy traffic. Individuals maintaining the banners passed out handbills. The handbills were identical except for wording specifically identifying each company named above and jobsite information, if applicable. Respectively, the handbills bore the name of only one targeted company.¹⁷ Each requested the public to contact

¹⁶ No Prentiss Properties banner photograph was introduced. However, Scott Brady described the banner as being identical to the other three banners at this project except for the name Prentiss Properties. Although the transcript spells this company’s name “Prentice,” it appears from the pleadings and other documents that the correct spelling is “Prentiss.”

¹⁷ In the following, for convenience the company names are grouped together and jobsite information is omitted.

the respective company and urge adherence to area labor standards, and otherwise read as follows:

SHAME ON
[Prentiss Properties, Peregrine,
Morrison & Foerster, or Kilroy Realty]
For Desecration of the American
Way of Life

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

Shame on **[Prentiss Properties, Peregrine, Morrison & Foerster, or Kilroy Realty]** for contributing to erosion of area standards for San Diego carpenter craft workers. Carpenters Local 1506 has a labor dispute with **[Brady]** a subcontractor hired to perform [construction work at various projects.] **[Brady]** does not meet area labor standards, including providing or paying for health care and pension to all its employees.

Carpenters Local 1506 objects to substandard employers like **[Brady]** working in the community because the community ends up paying the tab for employee health care and because low wages tend to lower general community standards, thereby encouraging crime and other social ills.

Carpenters Local 1506 believes that **[Prentiss Properties, Peregrine, Morrison & Foerster, or Kilroy Realty]** has an obligation to the community to see that area labor standards are met when doing construction work [at their facilities]. They should not be allowed to insulate themselves behind “independent” contractors.

* * *

WE ARE NOT URGING ANY WORKER TO REFUSE TO WORK NOR ARE WE URGING ANY SUPPLIER TO REFUSE TO DELIVER GOODS.

8. The Diversa Project

a. *The contractual relationships*

Diversa Corporation (Diversa) engaged Reno as the general contractor for tenancy improvement work at a property located on Directors Place in San Diego, California (Diversa Project). Reno subcontracted, inter alios, with Brady to perform construction services at the project commencing in about November 2000. Brady finished work there in April 2001.

b. The Diversa banner and handbills

Beginning in late 2000, and continuing for 9 to 10 months after Brady had concluded work there, Respondent Local 1506 established and maintained a banner at the end of a Freeway 805 off ramp adjacent to the side street, Director's Place. A portable framework of PVC pipe supported the banner, which measured approximately 15 by 4 feet. In each upper corner of the banner the words "LABOR DISPUTE" appeared in black letters, easily discernible from the street. Larger red letters identified the targeted company as follows:

SHAME ON DIVERSA	
LABOR DISPUTE	LABOR DISPUTE

The handbills featured a large drawing of a rat gnawing on an American flag, asked the public to contact the company and urge adherence to area labor standards, and otherwise read:

<p>SHAME ON DIVERSA For Desecration of the American Way of Life</p> <p>A rat is a contractor that does not pay all of its employees standard wages, including either providing or making payments for health care and pension benefits.</p> <p>Shame on Diversa for contributing to erosion of area standards for San Diego carpenter craft workers. Carpenters Local 1506 has a labor dispute with [Brady] that was a subcontractor on the Diversa project. [Brady] does not meet area labor standards, including providing or paying for health care and pension to all its employees.</p> <p>Carpenters Local 1506 objects to substandard wage employers like [Brady] working in the community because the community ends up paying the tab for employee health care and because low wages tend to lower general community standards, thereby encouraging crime and other social ills.</p> <p>Carpenters Local 1506 believes that Diversa has an obligation to the community to see that area labor standards are met when doing construction work at their offices. They should not be allowed to insulate themselves behind "independent" contractors.</p> <p style="text-align: center;">* * *</p> <p>WE ARE NOT URGING ANY WORKER TO REFUSE TO WORK NOR ARE WE URGING ANY SUPPLIER TO REFUSE TO DELIVER GOODS.</p>
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9. The Sempra Project

a. The contractual relationships

Sempra Energy (Sempra) engaged Roel as the general contractor for tenancy improvement work at a property located on the heavily traveled Ash Street in San Diego, California (Sempra Project). Roel subcontracted, inter alios, with Brady to perform stud framing and drywall finishing construction services at the project commencing in 2000. Brady concluded that work in December 2000.

b. The Sempra banner and handbills

Beginning October 2, 2000, and continuing for about a year after Brady had concluded work there, Respondent Local 1506 established and maintained a banner at the Sempra property. A portable framework of PVC pipe supported the approximately 15-by-4-foot banner. In each upper corner of the banner the words "LABOR DISPUTE" appeared in black letters, easily discernible from the street, and larger red letters spanning the breadth of the banners identified the targeted company, the entire banner appearing essentially as follows:

SHAME ON SEMPRA ENERGY	
LABOR DISPUTE	LABOR DISPUTE

Individuals maintaining the banner passed out handbills. The handbills featured a large drawing of a rat gnawing on an American flag, requested the public to contact the company and urge adherence to area labor standards, and otherwise read:

**SHAME ON
SEMPRA ENERGY**
For Desecration
of the American Way of Life

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

Shame on **Sempre Energy** for contributing to erosion of area standards for San Diego carpenter craft workers. Carpenters Local 1506 has a labor dispute with [**Brady**], a subcontractor on the **Sempre Energy** project. [**Brady**] does not meet area labor standards, including providing or paying for health care and pension to all its employees.

Carpenters Local 1506 objects to substandard wage employers like [**Brady**] working in the community because the community ends up paying the tab for employee health care and because low wages tend to lower general community standards, thereby encouraging crime and other social ills.

Carpenters Local 1506 believes that Sempra Energy has an obligation to the community to see that area labor standards are met when doing construction work at their offices. They should not be allowed to insulate themselves behind “independent” contractors.

* * *

WE ARE NOT URGING ANY WORKER TO REFUSE TO WORK NOR ARE WE URGING ANY SUPPLIER TO REFUSE TO DELIVER GOODS.

10. The Sycuan Casino Project

a. The contractual relationships

The Sycuan Band of the Kumeyaay Nation, a federally recognized American Indian tribe, contracted with Brady to perform construction services in connection with a new casino located on Dehesa Road in the East County area of San Diego on tribal land. Brady commenced the work in about July 2000 and concluded it in November 2001.

b. The Sycuan Casino banner and handbills

While Brady performed the above-described work, and continuing for about two months thereafter, Respondent Local 1506 bannered on a road leading to the above property. A portable framework of PVC pipe supported the approximately 15-by-4-foot banner. In each upper corner of the banner the words “LABOR DISPUTE” appeared in black letters, and lar-

ger red letters identified the targeted company, the banner appearing essentially as follows:

SHAME ON
SYCUAN CASINO

LABOR DISPUTE **LABOR DISPUTE**

Handbills distributed at the banner site featured a large drawing of a rat gnawing on an American flag, requested the public to contact the company and urge adherence to area labor standards, and otherwise read:

**SHAME ON
Sycuan Casino**
For Desecration of the American
Way of Life

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

Shame on **Sycuan Casino** for contributing to erosion of area standards for San Diego carpenter craft workers. Carpenters Local 1506 has a labor dispute with [**Brady**], a subcontractor on the **Sycuan Casino** project. [**Brady**] does not meet area labor standards, including providing or paying for health care and pension to all its employees.

Carpenters Local 1506 objects to substandard wage employers like [**Brady**] working in the community because the community ends up paying the tab for employee health care and because low wages tend to lower general community standards, thereby encouraging crime and other social ills.

Carpenters Local 1506 believes that **Sycuan Casino** has an obligation to the community to see that area labor standards are met when doing construction work at their facilities. They should not be allowed to insulate themselves behind “independent” contractors.

* * *

WE ARE NOT URGING ANY WORKER TO REFUSE TO WORK NOR ARE WE URGING ANY SUPPLIER TO REFUSE TO DELIVER GOODS.

11. The Viejas Casino Project

a. The contractual relationships

Brady performed construction work at the Viejas Casino owned by the Viejas Band of the Kumeyaay Nation. Brady's work on the project, a mall and casino expansion located off Willow Road in the Alpine area of San Diego East County, commenced in about June 1999. Brady concluded the work in June 2001.

b. The Viejas Casino banner and handbills

While Brady performed the above-described work, and continuing until November 2001, after Brady had concluded work at the project, Respondent Local 1506 bannered at a dirt road leading to the Viejas property. A portable framework of PVC pipe supported the approximately 15-by-4-foot banner. In each upper corner the words "LABOR DISPUTE" appeared in black letters. Larger red letters identified the targeted company and appeared essentially as follows:

SHAME ON VIEJAS CASINO	
LABOR DISPUTE	LABOR DISPUTE

Handbills distributed at the site featured a large drawing of a rat gnawing on an American flag, requested the public to contact the company and urge adherence to area labor standards, and otherwise read:

<p>SHAME ON VIEJAS CASINO For Desecration of the American Way of Life</p> <p>A rat is a contractor that does not pay all of its employees standard wages, including either providing or making payments for health care and pension benefits.</p> <p>Shame on Viejas Casino for contributing to erosion of area standards for San Diego carpenter craft workers. Carpenters Local 1506 has a labor dispute with [Brady] that is a subcontractor on the Viejas Casino project. [Brady] does not meet area labor standards, including providing or paying for health care and pension to all its employees.</p>
--

<p>Carpenters Local 1506 objects to substandard wage employers like [Brady] working in the community because the community ends up paying the tab for employee health care and because low wages tend to lower general community standards, thereby encouraging crime and other social ills.</p> <p>Carpenters Local 1506 believes that Viejas Casino has an obligation to the community to see that area labor standards are met when doing construction work at their facilities. They should not be allowed to insulate themselves behind "independent" contractors.</p> <p style="text-align: center;">* * *</p> <p>WE ARE NOT URGING ANY WORKER TO REFUSE TO WORK NOR ARE WE URGING ANY SUPPLIER TO REFUSE TO DELIVER GOODS.</p>

12. The Invitrogen Project

a. The contractual relationships

Invitrogen Corporation (Invitrogen) engaged Reno as the general contractor for a construction project in Carlsbad, California (Invitrogen Project). Under subcontract with Reno, Brady performed work at the project from July or August 2001 to July or August 2002.

b. The Invitrogen banner and handbills

During the period Brady worked at the Invitrogen Project, Respondent Local 1506 established and maintained a banner about 3 miles from the Invitrogen Project facing College Boulevard at the intersection of Palmo Airport Road and College Boulevard, which generally has to passed to reach the project. A portable framework of PVC pipe supported the approximately 15-by-4-foot banner. The words "LABOR DISPUTE" appeared in black letters on both ends of the banner. Larger red letters in the middle of the banner identified the targeted company, appearing essentially as follows:

CAN YOU TRUST INVITROGEN?	
LABOR DISPUTE	LABOR DISPUTE

The handbills relative to the Invitrogen Project featured a large drawing of a rat gnawing on an American flag, requested the public to contact the company and urge adherence to area labor standards, and otherwise read:

**SHAME ON
INVITROGEN**
For Desecration of the American
Way of Life

CAN YOU TRUST INVITROGEN TO DO
THE RIGHT THING? WE CAN'T

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

Shame on **Invitrogen** for contributing to erosion of area standards for San Diego carpenter craft workers. Carpenters Local 1506 has a labor dispute with [**Brady**] that is a subcontractor for Reno Contracting on the **Invitrogen** projects. [**Brady**] does not meet area labor standards, including providing or paying for health care and pension to all of its employees.

Carpenters Local 1506 objects to substandard wage employers like [**Brady**] working in the community because the community ends up paying the tab for employee health care and because low wages tend to lower general community standards, thereby encouraging crime and other social ills.

Carpenters Local 1506 believes that **Invitrogen** has an obligation to the community to see that area labor standards are met for construction work at their offices. They should not be allowed to insulate themselves behind "independent" contractors.

* * *

we are not urging any worker to refuse to work nor are we urging any supplier to refuse to deliver goods.

13. Anthony's Express Kearney Mesa Project

a. The contractual relationships

Anthony's Fish Grotto of La Mesa (Anthony's) engaged Hawkins Construction, Inc. (Hawkins) as the general contractor for construction work at Anthony's Express located on Clairemont Mesa Boulevard in Kearney Mesa, California (Anthony's Express Kearney Mesa Project). Hawkins subcontracted, inter alios, with Brady to perform construction services at the project commencing in spring 2001.

b. The Anthony's Fish Grotto banner

During the period Brady worked at Anthony's Express Kearney Mesa Project, Respondent Local 1506, in June 2001, established and sporadically maintained a banner at Anthony's

Seafood Grotto restaurants on Harbor Boulevard in the Embarcadero area of San Diego (the main restaurant), a location about 10 miles from the Anthony's Express Kearney Mesa Project, and distributed handbills.¹⁸ During the period of bannering, Brady only performed construction work for Anthony's at Anthony's Express in Kearney Mesa. A portable framework of PVC pipe supported the banner at the main restaurant near the Star of India, a widely visited tourist attraction. The banner measured approximately 15 by 4 feet. The words "LABOR DISPUTE" appeared in black letters in the upper corners of the banner. Larger red letters spanning the breadth of the banner identified the targeted company, the entire banner appearing essentially as follows:

DON'T EAT AT ANTHONY'S FISH GROTTTO	
LABOR DISPUTE	LABOR DISPUTE

By letter dated July 25, 2001, Craig Ghio, Anthony's executive informed Scott Brady, in part, as follows:

... despite my respect and admiration for your family, company and quality of work, the picketing is a headache I just don't need. If this type of activity continues, I'll find it nearly impossible to select Brady for future Anthony's projects.

I hope you'll understand my position, who frames, drywalls and tapes our projects is incidental to our core business. My responsibility is to the continued success of Anthony's Fish Grotto's and that includes avoiding negative publicity.

14. The Sun Microsystems Project

a. The contractual relationships

Sundt Construction, Inc. (Sundt) served as the general contractor for construction of two Sun Microsystems buildings on property located at Town Center Drive and Eastgate Mall in San Diego, California (Sun Microsystems Project). Sundt subcontracted, inter alios, with Brady to perform construction services at the project. Brady performed the work from July 1999 to December 2000.

b. The Sun Microsystems banner

During the period Brady worked at the Sun Microsystems Project, Respondent Local 1506 bannered there.¹⁹ Supported by a portable framework of PVC pipe, the banner measured approximately 15 by 4 feet. The words "LABOR DISPUTE"

¹⁸ No handbill from this site was placed into evidence.

¹⁹ The evidence does not establish whether Respondent Local 1506 bannered at that location during the entire period of Brady's work.

appeared in black letters in the upper corners of the banner. Larger red letters identified the targeted company as follows:

SHAME ON
SUN MICROSYSTEMS

LABOR DISPUTE **LABOR DISPUTE**

15. The Grossmont Hospital Project

a. The contractual relationships

Grossmont Hospital Corporation engaged Sundt as the general contractor for a building addition at a property located on Grossmont Center Drive in La Mesa, California (Grossmont Hospital Project). Sundt subcontracted with Brady, inter alios, to perform construction services at the project. Brady commenced the work in August 2001 and had not yet completed it at the time of the hearing.

b. The Grossmont Hospital banner and handbills

Beginning in August 2001, Respondent Local 1506 bannered at the Grossmont Hospital Project until bannering ceased generally on October 18. A portable framework of PVC pipe supported the banner. The words "LABOR DISPUTE" appeared in black letters in the upper corners of the banner. Larger red letters identified the targeted company essentially as follows:

SHAME ON
GROSSMONT HOSPITAL

LABOR DISPUTE **LABOR DISPUTE**

Handbills featured a large drawing of a rat gnawing on an American flag, asked the public to urge the company to adhere to area labor standards, and otherwise read:

**SHAME ON
GROSSMONT
HOSPITAL**
For Desecration of the American
Way of Life

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

Shame on **Grossmont Hospital** for contributing to erosion of area standards for San Diego carpenter craft workers. Carpenters Local 1506 has a labor dispute with **[Brady]** that is a subcontractor on the **Grossmont Hospital** project for Sundt General Contr. **[Brady]** does not meet area labor standards, including providing or paying for health care and pension to all of its employees.

Carpenters Local 1506 objects to substandard wage employers like **[Brady]** working in the community because the community ends up paying the tab for employee health care and because low wages tend to lower general community standards, thereby encouraging crime and other social ills.

Carpenters Local 1506 believes that **Grossmont Hospital** has an obligation to the community to see that area labor standards are met when doing construction work at their offices. They should not be allowed to insulate themselves behind "independent" contractors.

* * *

WE ARE NOT URGING ANY WORKER TO REFUSE TO WORK
NOR ARE WE URGING ANY SUPPLIER TO REFUSE TO DELIVER
GOODS.

16. The Sharp Memorial Project

a. The contractual relationships

Sharp Memorial Hospital (Sharp Memorial) engaged Nielsen Dillingham Builders (Dillingham) as the general contractor for construction of a new building at a property located on Frost Street in San Diego, California (Sharp Memorial Project). Dillingham subcontracted with Brady, *inter alios*, to perform construction services at the project. Brady commenced work in Spring 2001 and had not yet completed the work as of the hearing.

b. The Sharp Hospital banner and handbills

During the period Brady worked at the Sharp Memorial Project, Respondent Local 1506 established and maintained a banner there 2 to 5 days a week from 9 a.m. to 3 p.m. A portable framework of PVC pipe supported the approximately 15-by-4-foot banner. The words "LABOR DISPUTE" appeared in black letters in the upper corners of the banner. Larger red letters identified the targeted company, the entire banner appearing essentially as follows:

SHAME ON
SHARP HOSPITAL

LABOR DISPUTE **LABOR DISPUTE**

Handbills distributed at the Sharp Memorial Project were identical to those distributed at Grossmont Hospital except that the names of the general contractor and the hospital were those

relevant to the Sharp Memorial jobsite: Dillingham and Sharp Memorial.

17. The Grand Hyatt Project

a. The contractual relationships

Manchester Resorts, LP (Manchester Resorts) owns the Manchester Grand Hyatt Hotel (Grand Hyatt) located on One Market Plaza in San Diego, California. Manchester Resorts also has a minority (10-percent) interest in the San Diego Convention Marriott (Marriott) in downtown San Diego. Doug Manchester is chairman of the board directors, Manchester Resorts. Hyatt Hotels Corporation, a management company, operates the Grand Hyatt.

Hyatt Hotels Corporation also operates the Hyatt Regency Islandia (Hyatt Islandia), a resort hotel on Quivira Road in San Diego, California, about 15 miles from the Grand Hyatt. The Hyatt Islandia is owned by Islandia Associates, a Los Angeles-based limited partnership. Islandia Associates has no ownership interest in the Grand Hyatt.

Commencing spring of 2001, Clark Construction, Inc. (Clark) served as general contractor for the construction of a new tower for the Grand Hyatt (Grand Hyatt Project). Clark subcontracted with Brady, inter alios, to perform construction services at the Grand Hyatt Project. Brady performed no work at the Hyatt Islandia or the Marriott. During the relevant period, Respondent Local 1506 had a labor dispute with Brady. Respondent Local 1506 had no labor dispute with Manchester Resorts, Hyatt Hotels Corporation, Islandia Associates, or Hyatt Islandia.

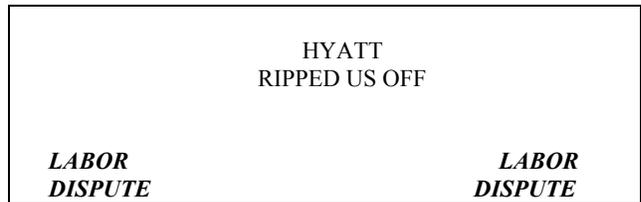
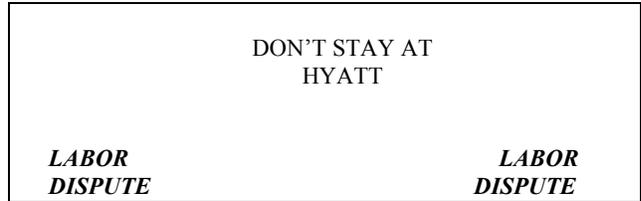
b. The Hyatt and Doug Manchester banners and handbills

In August 2001, Respondent Local 1506 established and maintained the following banners: (1) two banners at the Grand Hyatt displayed Monday through Friday, approximately 8:30 a.m. to 3:30 p.m. and sometimes on Saturday, both facing the busy, multilane Harbor Drive, (2) two banners, respectively, at West Mission Bay Drive, the Hyatt Islandia’s main entrance road, and at its front driveway.

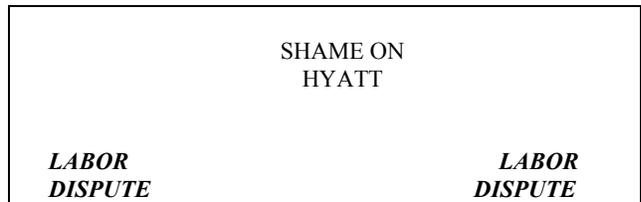
In September 2001, Respondent Local 1506 established and maintained a banner at the Marriott facing Harbor Drive. The banner was displayed at least several times a week, approximately 8:30 a.m. to 3:30 p.m. and sometimes on Saturday.

Portable frameworks of PVC pipe supported the above-described banners. Each banner measured approximately 15 by 4 feet. At the Grand Hyatt, the words “LABOR DISPUTE” appeared in the bottom corners of one of banners and in the

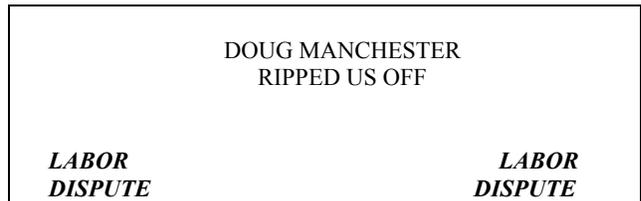
upper corners of the other. Larger letters spanning the breadth of each banner identified the targeted company, the banners appearing, respectively, as follows:



At the Hyatt Islandia, similar banners identified the targeted company as follows:



At the Marriott, a similar banner identified the targeted company as follows:



Grand Hyatt and Hyatt Islandia handbills featured a large drawing of a rat gnawing on an American flag, requested the public to contact the company and urge adherence to area labor standards, and otherwise read:²⁰

²⁰ Minor variations in the wording of the handbills are not noted here.

**SHAME ON
HYATT**
For Desecration
Of The American Way Of Life

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

Shame on **Hyatt** for contributing to erosion of area standards for San Diego carpenter craft workers. Carpenters Local 1506 has a labor dispute with **[Brady]** a subcontractor on the **Hyatt** project, located at One Market Place, San Diego. **[Brady]** does not meet area labor standards, including providing or paying for health care and pension...

Carpenters Local 1506 objects to substandard wage employers like **[Brady]** working in the community because the community ends up paying the tab for employee health care and because low wages tend to lower general community standards, thereby encouraging crime and other social ills.

Carpenters Local 1506 believes that **the Hyatt** has an obligation to the community to see that area labor standards are met when doing construction work at their hotels. They should not be allowed to insulate themselves behind "independent" contractors.

* * *

WE ARE NOT URGING ANY WORKER TO
REFUSE TO WORK NOR ARE WE URGING ANY
SUPPLIER TO REFUSE TO DELIVER GOODS.

The Marriott handbills featured a large drawing of a rat gnawing on an American flag, asked the public to urge the company to adhere to area labor standards, and otherwise read:

**SHAME ON
DOUG MANCHESTER**
For Desecration
Of The American Way Of Life

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

Shame on **Doug Manchester** for contributing to erosion of area standards for San Diego carpenter craft workers. Doug Manchester has effective control of the Hyatt Hotel located at One Market Place, San Diego. He also has effective control of the Marriott Hotel next to the Hyatt. Carpenters Local 1506 has a labor dispute with **[Brady]** that is a sub contractor on a construction project at the **Hyatt**. **[Brady]** does not meet area labor standards, including providing for or paying for health care and pension ...

Carpenters Local 1506 objects to substandard wage employers like **[Brady]** working in the community because the community ends up paying the tab for employee health care and because low wages tend to lower general community standards, thereby encouraging crime and other social ills.

Carpenters Local 1506 believes that **Doug Manchester** has an obligation to the community to see that area labor standards are met for construction work at Hotels he controls. He should not be allowed to insulate themselves behind "independent" contractors and corporations.

* * *

WE ARE NOT URGING ANY WORKER TO
REFUSE TO WORK NOR ARE WE URGING ANY
SUPPLIER TO REFUSE TO DELIVER GOODS.

In mid-September, Randy Thornhill (Thornhill), Respondent Local 1506's director of special operations, telephoned Perry Dealy (Dealy), Manchester's vice president of operations. Thornhill told Dealy that he could help solve Manchester's problem regarding the banners in front of the Grand Hyatt and the Marriott. He said that if Manchester replaced Brady with a union contractor, the Union would pick up any cost difference,

and the banners would go away immediately. Dealy said that Brady worked for Clark not Manchester and that Thornhill should call Clark directly.²¹

As a consequence of the bannering at the Hyatt Islandia, by letter dated September 10, the International Brotherhood of Teamsters (Teamsters) canceled reservations with the Hyatt Islandia for a convention scheduled for September 9 through 13, stating in part, “We learned . . . that Carpenters Local Union 1506 established a picket line in front of the [Hyatt Islandia]. The Union cannot conduct a meeting at a facility being picketed by another labor organization.”

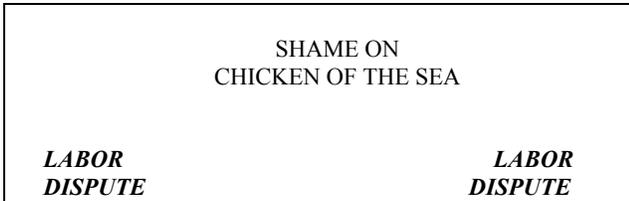
18. The Chicken of the Sea Project

a. *The contractual relationships*

Tri Union Seafoods, LLC, d/b/a Chicken of the Sea (Chicken of the Sea) engaged Prevost Construction, Inc. (Prevost) as the general contractor to construct office space at a property located at Scranton Road and Mira Mesa Boulevard in San Diego, California (Chicken of the Sea Project). Prevost sub-contracted, inter alios, with Brady to perform construction services at the project. Brady performed the work from April to October.

b. *The Chicken of the Sea banner and handbills*

Beginning in May, Respondent Local 1506 established and maintained a banner at the Chicken of the Sea Project facing Mira Mesa Boulevard. Portable frameworks of PVC pipe supported the banner. The banner measured approximately 15 by 4 feet and appeared essentially as follows:



The handbills featured a large drawing of a rat gnawing on an American flag, asked the public to contact the company and urge adherence to area labor standards, and otherwise read:

²¹ Although Thornhill denied telling Dealy that if a union contractor replaced Brady the dispute would go away, I cannot credit his denial. Dealy gave his testimony clearly and sincerely while Thornhill was somewhat vague about the conversation. Thornhill admitted telling Dealy the Union “had contractors that could work on [the Grand Hyatt] project with no out-of-costs to [Manchester],” which is nearly corroborative of Dealy’s account. Accordingly, I accept Dealy’s testimony.

**SHAME ON
CHICKEN OF THE SEA**
For Desecration
Of The American Way Of Life
CAN YOU TRUST CHICKEN OF THE SEA
TO DO THE RIGHT THING? WE CAN'T

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

Shame on **chicken of the Sea** for contributing to erosion of area standards for San Diego carpenter craft workers. Carpenters Local 1506 has a labor dispute with [Brady] that is a sub contractor for Prevost Const. on the **Chicken of the Sea** project. [Brady] does not meet area labor standards, including providing for or paying for health care and pension to all of its employees.

Carpenters Local 1506 objects to substandard wage employers like [Brady] working in the community because the community ends up paying the tab for employee health care and because low wages tend to lower general community standards, thereby encouraging crime and other social ills.

Carpenters Local 1506 believes that **Chicken of the Sea** has an obligation to the community to see that area labor standards are met when doing construction work at their new office. They should not be allowed to insulate themselves behind “independent” contractors.
* * *

WE ARE NOT URGING ANY WORKER TO REFUSE TO WORK NOR ARE WE URGING ANY SUPPLIER TO REFUSE TO DELIVER GOODS.

19. The Westin Bonaventure Project

a. *The contractual relationships*

Westin Bonaventure engaged Precision as the general contractor to renovate approximately 400 guest rooms at the Westin Bonaventure Hotel on South Figueroa Street in Los Angeles, California (Bonaventure Project), from February through June.

Representatives of Respondent Local 1506 questioned some of Precision’s employees about their wages and benefits. From their responses, Respondent Local 1506 concluded that Precision was not paying its employees the prevailing standard of wages and benefits.

b. The Westin Bonaventure banners and handbills

Beginning sometime in March through the first week of September, after Precision had completed its work, Respondent Local 1506 bannered at two street corners near the Westin Bonaventure Hotel: Flower Street and Fifth Street and Flower Street and Figueroa Street in downtown Los Angeles, California. The bannering occurred 5 days a week between the hours of 10 a.m. to 2 p.m. Measuring approximately 15 by 4 feet, the banners, easily discernible from the street, with black and red lettering, appeared essentially as follows:

SHAME ON THE WESTIN BONAVENTURE	
LABOR DISPUTE	LABOR DISPUTE

One type of handbill passed out at the Westin Bonaventure featured a large drawing of a rat gnawing on an American flag, the other a sinister figure manipulating a marionette. Both handbills requested the public to contact the company and urge adherence to area labor standards, and otherwise read:

SHAME ON THE WESTIN BONAVENTURE For Desecration of the American Way of Life
<p>A rat is a contractor that does not pay all of its employees prevailing wages, including either providing or making payments for health care and pension benefits. Employees who work for a rate contractor are also rats.</p> <p>The Westin Bonaventure has contracted with Precision Hotel Interiors to do the remodel work on several floors in Los Angeles. Precision Hotel Interiors does not meet area labor standards for that work – it does not pay prevailing wage to all its carpenter-craft employees, including payments for health care and pension.</p> <p>Carpenters Local 1506 objects to substandard wage employers like Precision Hotel Interiors working in the community. In our opinion the community ends up paying the tab for employee health care and the low wages paid tend to lower general community standards, thereby encouraging crime and other social ills.</p> <p>Carpenters Local 1506 believes that The Westin Bonaventure has an obligation to the community to see that contractors who per-</p>

form work on their building 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 these companies. * * * WE ARE NOT URGING ANY WORKER TO REFUSE TO WORK NOR ARE WE URGING ANY SUPPLIER TO REFUSE TO DELIVER GOODS.

By letter dated March 28, addressed to Martin Dahlquist, financial secretary of Respondent Local 1506, Brian Fitzgerald, general manager of the Westin Bonaventure, requested that the Union stop “picketing and leafleting” Westin Bonaventure in furtherance of its dispute with Precision.

By letter dated June 28, counsel for Westin Bonaventure notified Respondent Local 1506 that Precision had concluded its work at the hotel and was no longer present at the hotel.

Respondent Local 1506 did not respond. The bannering at Westin Bonaventure continued.

C. Conduct of Respondent Local 209

1. The dispute between Respondent Local 209 and Cuthers

Saul C. Perez (Perez), business representative of Respondent Local 209, has, over the last 2 years, talked to seven to ten individuals he believed to be Cuthers’ employees about their wages and benefits. Some of the individuals complained about low wages and one said he had no health insurance coverage. From this information, Respondent Local 209 concluded that Cuthers was not meeting prevailing standards in employee wages and benefits.

2. The King’s Hawaiian Project

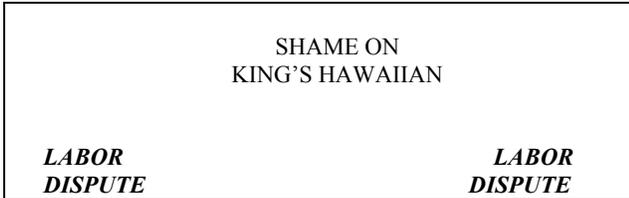
a. The contractual relationships

Taira Harbor Gateway, LLC, a wholly-owned subsidiary of Taira Real Estate Holdings, a real estate investment partnership (Taira) engaged Thermal CM Service (Thermal) as the general contractor for construction of building at a property located in Harbor Gateway in Los Angeles, California (King’s Hawaiian Project). The anticipated tenant of the building was King’s Hawaiian Bakery West, Incorporated, a manufacturing business separate and distinct from King’s Hawaiian Restaurant. Thermal subcontracted, inter alios, with Cuthers to perform concrete construction services at the project commencing in 2000. At all times relevant hereto, Respondent Local 209 has been engaged in a labor dispute with Cuthers but not with King’s Hawaiian, Taira, or Thermal.

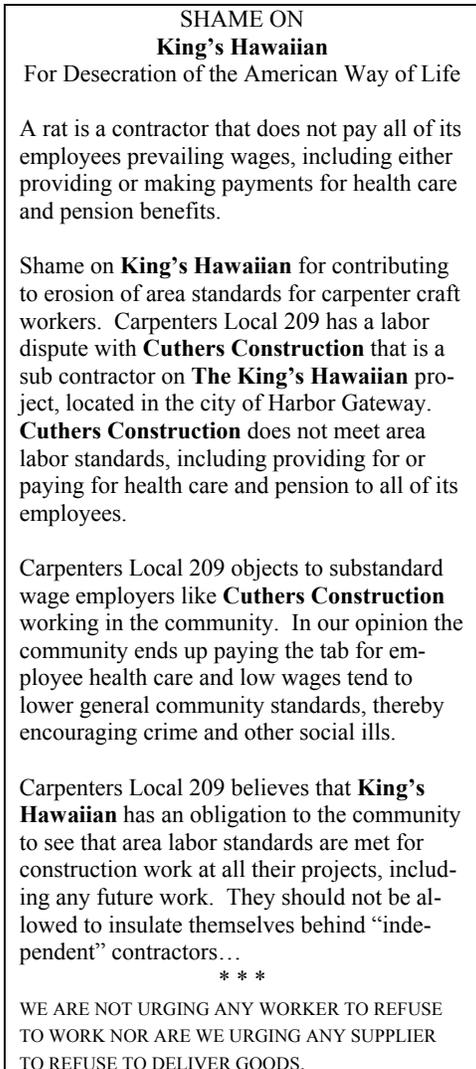
b. The King’s Hawaiian banner and handbill

Beginning May 1 through the first week of September, Respondent Local 209 bannered in front of King’s Hawaiian Restaurant and Bakery facing Sepulveda Boulevard, Torrance, California, a six-lane, fast-traffic thoroughfare. The banner was present at that location Monday through Friday, 9 a.m. to 3:30 p.m. Neither Cuthers nor any other entity performed construction work there during the bannering. The banner, supported

by a portable framework of PVC pipe, measured approximately 15 by 4 feet. In each corner the words "LABOR DISPUTE" appeared in black letters, easily discernible from the street. Larger red letters identified the targeted company essentially as follows:



Handbills distributed by Respondent Local 209 featured a large drawing of a rat gnawing on an American flag, asked the public to contact the company and urge adherence to area labor standards, and otherwise read:



On the first day of the bannering, King’s Hawaiian’s president, Mark Taira (Taira) spoke to a banner holder who told him the activity had nothing to do with King’s Hawaiian. Two days later, Taira complained to the same banner holder that the sign was misleading because it implied that King’s Hawaiian had a labor dispute. The banner holder said such was intended. There is no evidence that the banner holder had any authority, implied or actual, to speak for Respondent Local 209, and I do not consider this testimony as bearing on Respondent Local 209’s intent or purpose.

D. Conduct of Respondent Mountain West Carpenters

1. Respondent Mountain West Carpenters’ labor dispute with E&K, Denver

At all relevant times, Respondent Mountain West Carpenters has been engaged in a labor dispute with E&K, Denver. At relevant times, State Farm, CU, and Legacy contracted with general construction contractors to perform work on respective construction projects. The general contractors, in turn, subcontracted with E&K, Denver to perform construction work on the projects. Respondent Mountain West Carpenters was not recognized or certified as the collective-bargaining representative of any employees employed by State Farm, CU, and Legacy, had neither demanded such recognition nor sought to organize such employees, and had no independent dispute with State Farm or its agents, CU or any of its subdivisions (including University of Colorado Health Sciences Center), or Legacy.

Shortly before any of the bannering described below took place, Respondent Mountain West Carpenters sent a form letter to various construction contractors, property owners, and other persons, including State Farm, CU, and Legacy, which informed them that Respondent Mountain West Carpenters had an ongoing labor dispute with E&K, Denver “because they do not meet area labor standards and they do not pay area standard wages to all carpentry craft employees, including providing or paying for family health care.” The letter further read, in pertinent part, as follows:

... [W] are asking that you use your managerial discretion to not allow [E&K, Denver] to perform any work on any of your projects unless and until it generally meets area labor standards for all of its carpentry craft work.

... We want you to be aware that our lawful, but aggressive public information campaign against [E&K, Denver] encompasses all parties associated with projects where [E&K, Denver] is employed. That campaign includes highly visible banner displays and distribution of handbills at the jobsite and premises of property owners, developers, general contractors, and other firms involved with projects where [E&K, Denver] is employed. We certainly prefer to work cooperatively with all involved parties rather than to have an adversarial relationship with them

In engaging in the conduct described below, Respondent Mountain West Carpenters relied on *United Brotherhood of Carpenters (Best Interiors)*, 1997 WL 7314444 (Advice Memo March 13, 1997) and *Rocky Mountain Regional Conference of*

*Carpenters*²² (*Standard Drywall*), 2000 WL 1741630 (Advice Memo April 3, 2000).

2. State Farm locations

a. *The contractual relationships*

State Farm engaged Holder Construction Company (Holder) as the general contractor to construct office space at a property located in Greeley, Colorado (Greeley State Farm Project). Holder subcontracted, inter alios, with E&K, Denver to perform construction services at the project.

b. *The State Farm banners and handbills*

At the locations, times, and dates set forth below, Respondent Mountain West Carpenters established and maintained banners directed at State Farm:

Locations	Dates and Times
At or near a State Farm facility at the intersection of U.S. Highway 34 Business and Promontory in Greeley (State Farm Greeley site).	September 6, from approximately 9:00 a.m. to 1:00 p.m.
	September 9 and 10, and October 25, from approximately 8:30 a.m. to 1:30 p.m.
At the corner of 3 rd Street and University Avenue ²³ in Denver at an office building in which State Farm has an office (State Farm University Avenue site.)	September 10, from approximately 8:30 a.m. to 1:30 p.m.
On Market Street in Denver at an office building in which State Farm has offices (State Farm Market Street site.)	September 17, from approximately 8:30 a.m. to 2:00 p.m.
On Stout Street in Denver at an office building in which State Farm has an office (State Farm Stout Street site.)	September 26, from approximately 8:00 a.m. to 2:00 p.m.

Portable frameworks of PVC pipe supported the banners, which measured approximately 3 by 10 feet. Eleven-inch red letters spanning the breadth of the banners identified the targeted company, the banner appearing essentially as follows:

STATE FARM INSURANCE
A GREEDY CORPORATE CITIZEN

On September 6, handbills distributed,²⁴ at the bannering site read, in pertinent part:

**Like A Greedy Corporate Neighbor
State Farm is There!**

(From [website] statefarm.com)

“State Farm’s mission is to help people manage the risks of everyday life, recover from the unexpected and realize their dreams.”

Then why does State Farm employ contractors such as [E&K, Denver] to build their offices, a company that does not pay their employees a living wage that is the Area Standard or offer all of their employees benefits like health insurance and retirement with dignity.

“We are people who make it our business to be like a good neighbor.”

If State Farm is a good neighbor why do they support the corporate greed that plagues America by having their corporate facilities built by a company that brings down wages and forces working families into poverty.

Tell State Farm to be a Good Neighbor. Tell them to use responsible contractors when building their facilities.

Do Not Let State Farm and Other Irresponsible Corporate Citizens Destroy Our American Way of Life!

On September 9 and 10, handbills distributed at the bannering site read, in pertinent part:

²⁴ The parties’ stipulation of facts refers to the handbills as having been “distributed” and “available for distribution.” I have assumed that all of the handbills described below were actually distributed at one or more of the sites.

²² Rocky Mountain Council of Carpenters was predecessor to Respondent Mountain West Carpenters.

²³ The stipulation inadvertently refers to both University Avenue and University Street.

How much more will State Farm Demand from America’s Working Families?!

**“State Farm Mutual Insurance Co., which provides automobile insurance to one in four Coloradoans, will raise its rates an average of 10 percent on Oct. 1.”
(Denver Post, 09-05-02)**

State Farm raises your insurance rates and profits off of working families by employing contractors such as [E&K, Denver] to build their corporate offices in Greeley CO. [E&K, Denver] is a company that does not pay their employees a living wage that is the Area Standard or offer all of their employees benefits like affordable health insurance and retirement with dignity.

Tell State Farm to be a good neighbor and stop the corporate greed that plagues America by having their corporate facilities built by a company that brings down wages and forces working families into poverty.

**Tell State Farm to be a Good Neighbor, and use responsible contractors when building their facilities and stop increasing their profits off the backs of America’s Working Families.
Do Not Let State Farm and Other Irresponsible Corporate Citizens Destroy Our American Way of Life!**

Handbills distributed at the banner site on October 25 featured a cartoon drawing of a personnel department employee speaking to a frightened-looking applicant. The caption read, “We pay a non-living wage. If you’re dead, it should just about cover your expenses.” The rest of the handbill read, in pertinent part:

**Like A Greedy Corporate Neighbor
State Farm is There**

(From [website] statefarm.com)

“State Farm’s mission is to help people manage the risks of everyday life, recover from the unexpected and realize their dreams.”

Why does State Farm employ contractors such as [E&K, Denver] to build their offices, a company that does not pay their employees a living wage that is the “Area Standard” or offer all of their employees benefits like health insurance and retirement with dignity.

“We are people who make it our business to be like a good neighbor.”

If State Farm is a good neighbor why do they support the corporate greed that plagues America
by having their corporate facilities built by a company that brings down wages and forces working families into poverty.

Tell State Farm to be a Good Neighbor. Tell them to use responsible contractors when building their facilities.

Do Not Let State Farm and Other Irresponsible Corporate Citizens Destroy Our American Way of Life!

Neither the handbillers nor the banner bearers at any of the above sites blocked the ingress or egress of any person. The handbillers limited their activities to offering handbills to the public and thanking those who took them.

3. CU Health Sciences Research Center 1

a. The contractual relationships

CU engaged Hensel-Phelps Construction Company (Hensel-Phelps) as the general contractor for a construction project located at the former Fitzsimmons Air Force base in Aurora, Colorado (CU Research Center Project). Hensel-Phelps subcontracted, inter alios, with E&K, Denver to perform construction services at the project.

b. The CU banner and handbills

At the location, times, and date set forth below, Respondent Mountain West Carpenters established and maintained a banner directed at CU:

Location	Date and Times
At the intersection of Colorado Boulevard and 8 th Avenue in Denver near a CU facility, Skaggs Pharmacy Building (Skaggs site), six miles from the CU Research Center Project	September 13, from approximately 8:00 a.m. to 2:00 p.m.

Portable frameworks of PVC pipe supported the banner, which measured approximately 4 by 12 feet. In either upper corner of the banner, 5-inch words read: LABOR DISPUTE. Larger letters spanning the breadth of the banner identified the targeted company appearing essentially as follows:

SHAME ON U.C. HEALTH SCIENCES CENTER	
LABOR DISPUTE	LABOR DISPUTE

In connection with the above banner, handbills were distributed that read, in pertinent part:

CU IN THE CITY
University Health Sciences Center Is Bad Medicine For Our Community!
The Mission of the Health Sciences Center is to promote Community Services through sharing the Universities expertise and knowledge to enhance the broader community.
Then Why do they support Contractors who bring down our community standards?
The Health Sciences Center is bringing down our Community Standards by having its facilities built by [E&K, Denver]. [E&K, Denver] does not pay their employees a living wage that is the Area Standard or offer all of their employees benefits like affordable health insurance and retirement with dignity.

No one connected with the handbilling or banner at the Skaggs site blocked the ingress or egress of any person. The handbillers limited their activities to offering handbills to the public and thanking those who took them.

4. Legacy Ballpark Lofts Project

a. The contractual relationships

Legacy engaged J. E. Dunn Construction Company (J. E. Dunn) as the general contractor for a construction project located at Blake and Broadway Streets in Denver (Ballpark Lofts Project). J. E. Dunn subcontracted, inter alios, with E&K, Denver to perform construction services at the project.

b. The Legacy banner and handbills

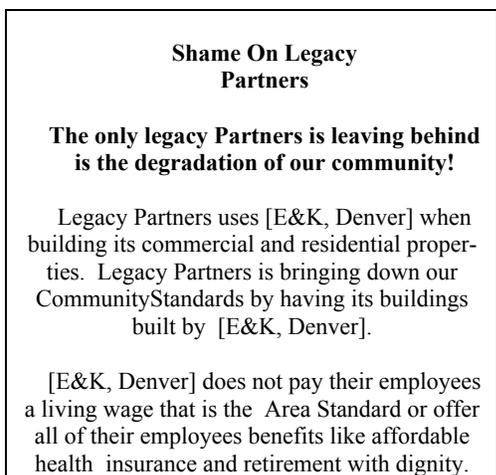
At the location, times, and date set forth below, Respondent Mountain West Carpenters established and maintained a banner directed at Legacy:

Location	Date and Times
At the intersection of Cherry and Exposition Streets in Denver near a building where Legacy maintains an office and place of business (Cherry Street site)	September 19, from approximately 8:30 a.m. to 2:00 p.m.

Portable frameworks of PVC pipe supported the banner, which measured approximately 4 by 12 feet. In either upper corner of the banner the words LABOR DISPUTE were written. Larger red letters spanning the breadth of the banner read identified the targeted company, the entire banner appearing essentially as follows:



Handbills distributed at the Cherry Street site on September 19 featured a cartoon drawing of a personnel department employee speaking to a frightened-looking applicant. The caption read, "We pay a non-living wage. If you're dead, it should just about cover your expenses." The rest of the handbill read, in pertinent part:



No one connected with the handbilling or bannering at the Cherry Street site blocked the ingress or egress of any person. The handbillers limited their activities to offering handbills to the public and thanking those who took them.

III. DISCUSSION

A. Positions of the Parties

The General Counsel and the Charging Parties assert that Respondent Unions violated Section 8(b)(4)(ii)(B) by (1) engaging in unlawful secondary picketing and (2) employing "fraudulent language" on the banners "so as to mislead the public into believing Respondents had a primary labor dispute with the neutrals named on the banners." As to the first contention, counsel for the General Counsel argues that the bannering is picketing "plain and simple," inasmuch as the banners were posted near entrances to neutral employers' facilities, at locations highly visible to people seeking to do business with the neutrals, were overseen by union representatives, and as the bannering was accompanied by the "confrontational" conduct of distributing handbills pejorative of the neutral employer. As to the second contention, counsel for the General Counsel argues that the banners, nearly all of which bore the words "labor dispute," failed to identify the primary employer and falsely implied that neutral employers were involved in labor disputes with one of Respondent Unions. The banners directed their appeals to people doing business with neutral employers. Since the conduct was directed at neutral companies and since it was picketing, it is proscribed by Section 8(b)(4) and unprotected by the First Amendment.

Respondent Locals initially assert the special defense that the General Counsel is estopped from alleging its conduct to have violated the Act because, in engaging in the conduct, they relied on various memoranda from the General Counsel's Division of Advice dealing with bannering conduct. Respondent Mountain West Carpenters, while conceding that advice memoranda do not constitute precedent, argues that the memoranda support its position that the bannering herein does not constitute conduct that violates the Act.

Respondent Unions argue that bannering is not tantamount to picketing but, as asserted by Respondent Locals, is "nonpicketing, pure speech activities" falling within the protection elucidated in *Edward J. DeBartolo Corp. v. Florida Gulf Coast Building Trades Council (DeBartolo II)*, 485 U.S. 568 (1988). In that case, the Supreme Court held that a union lawfully distributed handbills at a mall asking customers of neutral mall stores not to patronize the neutral stores until the mall owner promised that all construction done at the mall would be done with contractors who pay fair wages and fringe benefits. Since the union in *DeBartolo II* peacefully distributed handbills without any accompanying picketing or patrolling, it did not violate 8(b)(4). Respondent Unions argue that they distributed handbills at each location where bannering took place setting forth the facts of their disputes with primary employers who were not paying area standard wages and benefits and clearly explaining the exact relationship of all parties to the dispute. They point out that the constitution guarantees unions the right to publicize their disputes in a manner that does not constitute unlawful restraint or coercion, and the truth or falsity of such publicity is not material to the present issues. Moreover, Respondent Unions argue that they had legitimate labor disputes with the employers or persons targeted by their banners. They maintain, essentially, that the definition of labor dispute in Section 2(9) of

the Act is broad enough to encompass their disputes with the neutrals.²⁵

Respondent Unions maintain that the bannering cannot be coercive conduct as the unions engaged in no confrontational activity at any of the sites. Individuals in charge of the banners did not chant, yell, or call out to anyone, engage in any violence, march or patrol, physically block the ingress or egress of any person, or cause any work stoppage, cessation of deliveries or interruption of business. Since the General Counsel has failed to show that non-confrontational bannering at secondary employer sites constitutes the confrontational conduct required to show coercion, the bannering was not picketing. Asserting that the terms “patrol” and “confrontation” most commonly “describe . . . characteristics that distinguish picketing from non-picketing conduct,” Respondent Locals argue that as no patrolling or confrontation beyond that necessary to deliver the message or “speech” was connected with the bannering, it cannot constitute picketing. Respondent Unions accordingly assert that bannering is entitled to the same protection afforded to handbilling by *DeBartolo II*.

In a somewhat alternate argument, Respondent Locals contend that the “Board’s definitions of picketing, restraint and coercion are invalid.” Respondent Locals maintain that what distinguishes picketing from “nonpicketing activity is “the nature of the conduct at issue. It is not and cannot be the object of that conduct.” Therefore, any definition that makes the object of conduct an element of the definition disregards the First Amendment and constitutes “an error of law.” I find it unnecessary to address further Respondent Locals’ argument as to this point. I am obliged to follow Board decisions; the Union must address the Board regarding the validity of its definitions.

In their brief, Respondent Locals reassert their objection to a so-called relaxation of the rules of evidence during the hearing prompted by Respondent Locals’ failure timely to produce subpoenaed documents. Respondent Locals have neither specified the evidence received under such relaxation to which they object nor stated in what way such evidence may have prejudiced them. Therefore, I overrule Respondent Locals’ renewed objection.

B. Analysis

1. Equitable estoppel

The Board has recognized certain elements of equitable estoppel: “(1) lack of knowledge and the means to obtain knowledge of the true facts; (2) good-faith reliance on the misleading conduct of the party to be estopped; and (3) detriment or prejudice from such reliance.” *Intermountain Rural Electric Assn.*, 309 NLRB 1189 fn. 7 (1992). “[T]he key is that the estopped party, by its actions, has obtained a benefit.” *Red Coats, Inc.*, 328 NLRB 205, 207 (1999). The above elements clearly do not exist so as to estop the General Counsel from prosecuting al-

²⁵ Sec. 2(9) of the Act states, “The term ‘labor dispute’ includes any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.”

leged violations of the Act regardless of what former positions the General Counsel may have taken. Further, as counsel for the General Counsel points out, policy considerations dictate against estopping the General Counsel from prosecuting unfair labor practices. See *K&E Bus Lines, Inc.*, 255 NLRB 1022, 1028 (1981). While I reject Respondent Locals’ equitable estoppel defense, I have considered the opinions and case law set forth in the General Counsel’s advice memoranda cited by Respondent Unions.

2. Application of 8(b)(4)(B)

The provisions of 8(b)(4)(ii)(B) of the Act applicable to this case state that 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 an industry affecting commerce, where in either case an object thereof is—

....

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 159 of this title: *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 purposes 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, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution.

The above provisions are intended to shield neutrals from labor disputes that are not their own. They express “the dual congressional objectives of preserving the right of labor organizations to bring pressure to bear on offending employers in primary labor disputes and of shielding unoffending employers and others from pressures in controversies not their own.” *NLRB v. Denver Building Trades Council*, 341 U.S. 675, 692 (1951). Their purpose is to “restrict the area of industrial conflict insofar as this could be achieved by prohibiting the most obvious, widespread, and . . . dangerous practice of unions to widen that conflict” and coerce employers unconcerned with the primary dispute. *Carpenters Los Angeles County District Council Local 1976 v. NLRB*, 357 U.S. 93, 100 (1958). For

employers or persons to be unconcerned with the primary dispute does not mean “neutrals must be totally disengaged from a labor dispute to retain their neutrality. [footnote omitted]. That is not the law.” *Service Employees Local 525, AFL–CIO*, 329 NLRB 638, 640 (1999). Thus, Respondent Unions’ argument that the definition of labor dispute in Section 2(9) of the Act is broad enough to encompass its disputes with the neutrals impermissibly stretches the definition. The only “labor dispute” that Respondent Unions had with the neutrals was their objection to the neutrals doing business with a primary employer or with another neutral company doing business with a primary employer.

As stated by the Board, “. . . two elements [are] 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. Further, [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.” *Food & Commercial Workers Local 1776 (Carpenters Health & Welfare Fund)*, 334 NLRB 507, 507 (2001). Respondent Unions’ conduct must be measured against those two elements.

3. The conduct of Respondent Unions

In examining the first element necessary to establish a violation of Section 8(b)(4)(B) of the Act, it is helpful to categorize the conduct of Respondent Unions. Respondent Unions engaged in the same types of activity, i.e., bannering and handbillings, albeit with variations in sites and employers or persons targeted. Disposing of the latter activity first, there are no complaint allegations regarding the handbilling, and no party contends that any of the handbilling herein was, in itself, unlawful conduct. Rather, it is conceded that all handbilling constituted nonpicketing communications, which activity is not a violation of the Act. *DeBartolo II*, supra, wherein the Supreme Court recognized the constitutional and statutory protection of handbill messages that “press the benefits of unionism to the community and the dangers of inadequate wages to the economy and the standard of living of the populace.” *Id.* at 576. While evidence of investigation into the comparative labor costs of the primaries is somewhat sketchy, Respondent Unions appear to have had a reasonable belief that the primaries did not meet area standards. No party introduced evidence contradicting that belief. See *Carpenters District Council of Detroit (Douglas Co.)*, 322 NLRB 612 fn. 2 (1996). Therefore, like those in *DeBartolo II*, the instant handbills truthfully detailed the existence of labor disputes with the primaries and urged handbill recipients to follow a “wholly legal course of action.” *Ibid.* That the handbills may have been caustic or insulting is immaterial. See *Service Employees Local 399 (Delta Air Lines)*, 293 NLRB 602 (1989).

The bannering is a different proposition. Counsel for the General Counsel concedes that traditional picketing involving individuals patrolling while carrying placards attached to sticks did not occur but argues, nonetheless, that Respondent Unions’ activity was picketing. Certainly, the bannering has significant features akin to picketing: a visual message comprehensible at a glance and notice of a labor dispute. The fact that the banners were essentially fixed and not utilized in patrolling does not

materially affect the function of the banner as a visually dramatic notice that the Respondent Unions had labor disputes with named business entities.²⁶ Patrolling with or without placards is not essential to a finding of picketing; the essential feature is placement of individuals at workplace entrances. *Service Employees Local 87 (Trinity Maintenance)*, 312 NLRB 715, 743 (1993); *Laborers Local 389 (Calcon Construction Co.)*, 287 NLRB 570, 573 (1987).

Respondent Mountain West Carpenters argues that its banners were not maintained “at entrances” of any neutral employer, standing instead between 24 and 750 feet away. However, none of Respondent Unions claims that the banners were not positioned so as to be easily visible to any customers, suppliers, or visitors to the neutral employers or that they were not situated so as to target specific employers or persons. Activity short of a traditional picket line that signals neutrals that “sympathetic action on their part is desired by the union” is regarded as “signal picketing.” *Electrical Workers Local 98 (Telephone Man, Inc.)*, 327 NLRB 593 fn. 3 (1999); *Operating Engineers Local 12 (Hensel Phelps)*, 284 NLRB 246, 248 fn. 3 (1987). See also *Mine Workers Local 1329 (Alpine Construction)*, 276 NLRB 415 (1985) (placing of banners on a fence post and stake was picketing).²⁷

Respondent Unions also argue that the bannering cannot be considered picketing because no “confrontational” activity occurred at any of the bannering sites. However, confrontation in the sense of assertive or aggressive behavior is not a necessary element of picketing. The union in *Service Employees Local 254 (Women & Infants Hospital)*,²⁸ contended that its carrying and wearing of signs while distributing leaflets was not picketing. There is no evidence that any “confrontational” behavior took place or that the carrying and wearing of signs was other than peaceful and unemphatic. Without considering the style of the picketing, the Board adopted the administrative law judge’s rejection of the union’s argument and found a violation of Section 8(b)(4)(ii)(B) of the Act “based on [the] direct evidence of a prohibited secondary objective [i.e., forcing the neutral hospital to cease doing business with the primary].” Accordingly, guided by the Board’s definitions, I conclude that the bannering herein constituted picketing.²⁹

²⁶ See *Mine Workers District 29 (New Beckley Mining Corp.)*, 304 NLRB 71, 72 (1991), *enfd.* 977 F.2d 1470 (D.C. Cir. 1992), where the Board stated that “activity . . . related to and in furtherance of [a] labor dispute” was an element “usually found in picketing.”

²⁷ Understandably, some customers and employees of the neutrals viewed the bannering as picketing. Also, Anthony’s canceled work with Brady because of the “picketing,” and the Teamsters Union canceled a convention booking at the Islandia Hyatt because they declined to cross a “picket line.”

²⁸ 324 NLRB 743 (1997).

²⁹ In his posthearing brief, counsel for the General Counsel states that Respondent Local 1506’s banner displays in connection with the Sycuan Casino, Viejas Casino, and Invitrogen projects “do not rise to the level of picketing.” Counsel does not explain his reasoning, but presumably makes the distinction based on the distance between the bannering sites and the projects. However, since the bannering was conducted at locations where customers, suppliers, and visitors must necessarily pass to reach the projects, the distance is insignificant as regards the bannering impact on neutral persons. Therefore, I find the

Identifying Respondent Unions' bannerings as picketing removes the conduct from the purview of *DeBartolo II*, which dealt with peaceful distribution of handbills "without any accompanying picketing or patrolling." 485 U.S. at 571. The Court described picketing as "a mixture of conduct and communication" with the conduct ingredient "the most persuasive deterrent to . . . persons about to enter a business establishment."³⁰ The Court noted that the "absence of picketing in the [*DeBartolo II*] case distinguishes it from *Typographical Union 37 v. NLRB*, 401 F.2d 952 (1968), enfg. 167 NLRB 1030 (1967), wherein the Board determined that handbilling as part of a consumer picketing campaign violated Section 8(b)(4)(ii)(B). The Board has also accepted the distinction, observing in *Service Employees Local 525 (General Maintenance Co.)*, supra at fn 18, "[T]he Court in *DeBartolo* expressly distinguished the peaceful handbilling present in that case—which it found to be 'expressive' and lawful—from activity such as 'violence, picketing, or patrolling' (485 U.S. at 577) which it found to be a combination of conduct and communication more likely to be found coercive under the Act."

Attaching the label "picketing" to the bannerings is not, however, dispositive of the question of lawfulness. Picketing is not a necessary element of a secondary boycott. The language of 8(b)(4) does not define "threaten, coerce or restrain" in terms of specific conduct and does not mention picketing. The Court in *DeBartolo II* cautioned against giving "a broad sweep," to the words "threats, coercion, or restraints . . . [which] are nonspecific, indeed vague."³¹ The Board has specifically rejected the concept that "all picketing at a secondary site, no matter what the circumstances, is inherently coercive [i.e.] the union picketed . . . a neutral employer, and therefore the union restrained or coerced a neutral employer in violation of Section 8(b)(4)(B)." *Carpenters Health & Welfare Fund*, supra, at 509 (citations omitted). Rather, the Board said, "The issue of whether picketing is coercive must be determined on a case-by-case basis," *Id.* at 507. Since "[p]icketing at the premises of a neutral, secondary employer . . . is not per se a violation of the Act . . . [t]he test for determining whether such picketing is lawful is the objective of the secondary activity, as gleaned from the surrounding circumstances." *Id.* at 509. The lawfulness of a union's conduct is based on the intent behind the picketing rather than the effect of the picketing. See *International Rice Milling Co. v. NLRB*, 341 U.S. 665, 672 (1951) ("The substitution of violent coercion in place of peaceful persuasion would not in itself bring the complained-of conduct into conflict with 8(b)(4). It is the object of union encouragement that is proscribed by that section, rather than the means adopted to make it felt."). In *Carpenters Health & Welfare*

Fund, supra at 509, the Board approvingly cited the reasoning of the U.S. Court of Appeals for the District of Columbia Circuit, "The question . . . is: Did the Union intend a more direct effect on [the neutral]? The statute makes the 'object thereof' the critical factor." *Seafarers Union v. NLRB*, 265 F.2d 585, 591 (D.C. Cir. 1959). See also *Carpenters District Council of Detroit (Douglas Co.)*, supra at 612, where jobsite picketing "engaged in solely for the lawful purpose of protesting [the primary's] failure to meet area standards," and which correctly identified both the purpose and the primary, did not have a "proscribed secondary object directed at [the neutral]" and thus did not violate Section 8(b)(4)(B). For the Board, "It is well settled that picketing (or other coercive conduct) violates Section 8(b)(4) if the object of it is to exert improper influence on a neutral party [citations omitted]." *Mine Workers District 29 (New Beckley Mining Corp.)*, supra at 73.

In sum, the Act in pertinent part requires a cease-doing-business object as a footing for a violation of Section 8(b)(4)(B). The objective need not be "the sole object" of the conduct. *Denver Building Trades Council*, supra at 689. It is sufficient that a labor organization seeks to enmesh neutral employers in its dispute with a primary employer in the hope the neutral employers will use their influence with the primary employers to resolve the labor dispute in the union's favor. *Service Employees Local 525 (General Maintenance Co.)*, supra at 641. It is crucial, therefore, to determine what the objects were of Respondent Unions' bannerings. If Respondent Unions' bannerings objective was solely to require primary employers to conform to prevailing area standards, a matter with which unions are understandably and legitimately concerned, no unlawful object was present. However, labor organizations may not threaten, coerce, and restrain persons covered by the Act under the pretext of protecting or advancing area labor standards. The determination of Respondent Unions' object is essentially one of evidence. Bearing in mind that the "inquiry must be based on the intent, rather than on the effects of the union's conduct [and that] the union's intent is measured as much by the necessary and foreseeable consequences of its conduct as by its stated objective," the "totality of circumstances" of Respondent Unions' bannerings must be reviewed to determine whether the conduct was threatening, coercive, or restraining within the meaning of Section 8(b)(4)(B) of the Act.³²

Although the bannerings that took place herein was clearly a coordinated effort among separate organizations affiliated with the United Brotherhood of Carpenters and Joiners of America, the circumstances as to each individual respondent differ. I have, therefore, examined the circumstances separately.

a. Respondent Local 1827

In August, UPS contracted with nonunion construction company Corsair. At all times relevant, Respondent Local 1827 was engaged in a dispute with Corsair but had no dispute with UPS. Shortly after Corsair commenced work, Respondent Local 1827 emailed UPS, stating that the Corsair contract was

bannerings in connection with the Sycuan, Viejas, and Invitrogen projects to constitute picketing. Reliance on *NLRB v. Fruit Packers Local 760 (Tree Fruits)*, 377 U.S. 58 (1964), or *NLRB v. Retail Clerks Local 1001 (Safeco)*, 447 U.S. 607 (1980), is misplaced as those cases involve consumer picketing of struck products, an issue not present here. See *Laborers Local 332 (C.D.G.)*, 305 NLRB 298 (1991).

³⁰ 485 U.S. at 580, quoting from the concurring opinion in *NLRB v. Retail Store Employees*, 447 U.S. 607, 619 (1980).

³¹ 485 U.S. at 578, quoting from *NLRB v. Drivers*, 362 U.S. 274, 290 (1960).

³² *Mine Workers District 29 (New Beckley Mining Corp.)*, supra at 73 (citations omitted). See also *Carpenters Health & Welfare Fund*, supra,

“a real slap in the face of . . . members. . . .” that the Union could not sit by during an “. . . economy . . . downturn” while “a contractor paying . . . below area standards and using a large out of state work force. . . .” performed the work, and that a banner display would result. Although the email mentioned Corsair’s failure to meet area standards—presumably wages and benefits—the thrust of the message was that work had been given to a contractor that did not employ Respondent Local 1827’s members. The union styled the contract award as a slap in the face of “members,” and placed its objection to subarea standard wages on the same level as the use of an out-of-State work force, a consideration unrelated to area standards.

Two days after sending the email, Respondent Local 1827 established banners at the UPS north building where Corsair performed no work and at the UPS south building at entrances from which Corsair was barred and which Corsair did not use. Although accompanying handbills correctly identified the Union’s dispute with Corsair and legitimately solicited customer pressure of UPS, the banners themselves identified only UPS as the targeted employer. Moreover, the handbilling appears to have been incidental to Respondent Locals’ bannering. In its posthearing brief, counsel for Respondent Locals stated that for the most part, individuals accompanying the banners, “did not actively seek to distribute handbills but did so only if someone approached and asked for one.” It appears that the banners and not the handbills were the focal points of the Union’s activity. The conjunction of “SHAME ON UPS” and “LABOR DISPUTE” on the banners, without any limiting language, could only have conveyed the message that Respondent Local 1827 had a primary labor dispute with UPS and evidences secondary intent.³³ In fact, union representative, Mr. Kessler, affirmed just that when he told Newell, “We’re tired of UPS doing this, hiring non-union employees.”

After a few weeks of bannering, Respondent Local 1827 sent another email to UPS, promising to expand its “message” and expressing regret that such action must take place since “we have always been a part of your work force here in Las Vegas when UPS has expanded. . . .” Again, the clear implication was that Respondent Local 1827 mainly objected to UPS’ use of a nonunion contractor rather than to reduced area standards. The only way in which UPS could resolve Respondent Local 1827’s grievances as expressed in both emails and in Kessler’s statement to Newell would be for UPS to replace Corsair with a union-signatory contractor. The circumstances surrounding Respondent Local 1827’s bannering—its centering its activity at locations identified with UPS rather than Corsair, its banner identification of UPS as focus of its labor dispute, and its related communications to UPS—all demonstrate that the main object of the bannering was to force the neutral UPS to cease doing business with the primary Corsair.

³³ In this, as in all other bannering, I have not considered the truth or falsity of the banner wording but only whether the message evinces an intent to enmesh a neutral employer or person in a dispute not its own. Signs misleading viewers as to the nature of the dispute may reveal a secondary aim. See *Service Employees Local 87 (Trinity Maintenance)*, 312 NLRB at 754 (1993).

b. Respondent Local 1506

In January, Respondent Local 1506 representatives sought to interest E&K, AZ in signing a labor agreement. After E&K, AZ’s refusal and at all times relevant, Respondent Local 1506 was engaged in a dispute with E&K, AZ but had no dispute with Griffin, Double AA, Artisan Homes, Harkins, Westpac, or Vanguard Health Systems. In August, Respondent Local 1506 sent letters to numerous contractors and businesses regarding the asserted failure of E&K, AZ to meet area standards. The Union advised the companies to avoid a projected “aggressive public information campaign against E&K, AZ” by refusing to use or do business with E&K, AZ. As the letters stated, “. . . [Not allowing E&K, AZ to work on your projects] will provide the greatest protection against your firm becoming publicly involved in this dispute.” Respondent Local 1506 did not suggest any method whereby A&K, AZ might satisfy the union that it met area standards on jobsites within the union’s jurisdiction. It did not propose anything short of precluding A&K, AZ’s presence on a jobsite to provide “the greatest protection.”

Thereafter, when Respondent Local 1506 established banners at the following sites, it named only the following neutrals although the disputes admittedly involved only E&K, AZ.

<i>Neutral name on banner</i>	<i>Primary</i>	<i>Banner Site</i>
Artisan Homes	E&K, AZ	Artisan Homes Lofts Project
Harkins	E&K, AZ	Christown Theater (primary not present) North Valley Theater (primary not present) Harkins main offices (primary not present)
Vanguard Health Systems	E&K, AZ	Phoenix Memorial Hosp (primary not present) Phoenix Baptist Hosp (primary not present) Arrowhead Community Hosp (primary not present)

Brown of Artisan Homes complained to union representative, Cahill, that the union had never given him information on what the area standard wages were. Cahill’s response that maybe he would give Brown a call, followed by inaction, suggests that raising area standards on the Artisan Homes Lofts Project was not of paramount concern, leaving a reasonable inference that some other object was. The remaining object could only have been the removal of E&K, AZ from the job, which was to be accomplished by pressure on Artisan Homes to put pressure on its general contractor, Westpac, to cease doing business with E&K, AZ. Such an inference is strengthened by

Respondent Local 1506's refusal to move its banner to the gate reserved for the primary when the gate was established on September 19. In that same month, Cahill refused to meet with E&K, AZ representative to discuss the handbill allegations, again suggesting that Respondent Local 1506's purpose was something more than resolving subarea standards.

Although the accompanying handbills at each of the banner sites correctly identified the union's dispute with E&K, AZ and legitimately solicited customer pressure of the neutral, the banners themselves identified only the neutrals as the targeted employers. The conjunction of "SHAME ON [NEUTRAL PERSON]" and "LABOR DISPUTE" on the banners could only have conveyed the message that Respondent Local 1506 had labor disputes with the neutrals and evidences secondary intent. Further, the circumstances surrounding Respondent Local 1506's banner—its centering its activities at locations identified with neutral companies rather than with A&K, AZ,³⁴ its banner identification of neutral companies as primary to its labor disputes, its related communications to the neutrals, and its refusal to discuss area standards—all demonstrate that the main object of the banner was to force neutral companies to cease doing business with the primary, E&K, AZ.

During 2000 through 2003, Respondent Local 1506 admittedly had no dispute with Reno, Kilroy Realty, Morrison & Foerster, Peregrine, Prentiss, Diversa, Roel, Sempra, Sycuan Casino, Viejas Casino, Invitrogen, Anthony's, Hawkins, Sun Microsystems, Sundt, Grossmont Hospital, Sharp Hospital, Dillingham, Manchester Resorts, Doug Manchester, Grand Hyatt, Marriott, Hyatt Hotels Corporation, Hyatt Islandia, Clark, Chicken of the Sea, Prevost, or Westin Bonaventure. During that time, Respondent Local 1506 notified various construction companies that it had an area standards dispute with Brady. After giving notification of its dispute with Brady, Respondent Local 1506 established banners at the following sites, naming only the following neutrals, although the disputes admittedly involved only Brady:

<i>Neutral name on banner</i>	<i>Primary</i>	<i>Banner Site</i>
Reno Contracting	Brady	Reno offices
Kilroy Realty		
Morrison & Foerster	Brady	Valley Center Project
Peregrine		
Prentiss Properties		
Diversa	Brady	Adjacent to the Diversa Project
Sempra	Brady	Sempra Project
Sycuan Casino	Brady	Road leading to Sycuan Casino project
Viejas Casino	Brady	Road leading to Viejas Casino Project

³⁴ Picketing when the primary employer's employees are not present is evidence of a secondary object. *Service Employees Local 87 (Trinity Maintenance)*, supra at 747, and cases cited therein.

Invitrogen	Brady	Three miles from the Invitrogen Project (Primary not present)
Anthony's Fish Grotto	Brady	Anthony's restaurant on Harbor (primary not present)
Sun Microsystems	Brady	Sun Microsystems Project
Grossmont Hospita	lBrady	Grossmont Hospital Project
Sharp Hospital	Brady	Sharp Hospital Project
Hyatt	Brady	Grand Hyatt
Hyatt	Brady	Hyatt Islandia (primary not present)
Doug Manchester	Brady	Marriott (primary not present)
Chicken of the Sea	Brady	Chicken of the Sea Project

Respondent Local 1506 made clear its object in the Brady-related banner in early 2002 when McCarron met with Scott Brady and asked him to consider collective-bargaining negotiations with the Carpenters, as a contract with the union would bring relief from the banner. Even without McCarron's bargaining solicitation, Respondent Local 1506 left little doubt as to what its objective was by Thornhill's communication to Dealy during the Grand Hyatt-related banner that if Manchester replaced Brady with a union contractor the banners would immediately go away. The inescapable inference to be drawn from Thornhill and Dealy's exchange is that Respondent Local 1506 was doing more than trying to promote area standards; it was pressuring the neutral Manchester to pressure the neutral Clark to cease doing business with the primary Brady. That inference is only reinforced by Respondent Local 1506's involvement of Hyatt Islandia, a company wholly unassociated with the dispute, and by its continued banner at the Valley Center Project, the Diversa project, the Sempra project, the Sycuan Casino project, and the Viejas Casino project after Brady had concluded its work and left the jobsites.

Although the handbills at each of the banner sites named above correctly identified the union's dispute with the primary, Brady, and legitimately solicited customer pressure of the neutrals, the banners themselves identified only the neutrals as the targeted employers. The conjunction of "SHAME ON [NEUTRAL PERSON]" and "LABOR DISPUTE" on the banners could only have conveyed the message that Respondent Local 1506 had labor disputes with the neutrals and evidences secondary intent. Further, the circumstances surrounding Respondent Local 1506's banner—its activity at neutral locations rather than where the primary was performing work, its banner identification of neutrals as primary to its labor disputes, and its communications to neutrals—all demonstrate that the

main object of the bannering was, through either direct or indirect pressure, to compel neutrals employers or persons to cease doing business with Brady.

In 2002, Respondent Local 1506 had no dispute with the Westin Bonaventure. Nevertheless it established banners at two street corners near the hotel, naming only the neutral Westin Bonaventure although the dispute admittedly involved just the primary, Precision.

Although Westin Bonaventure requested by letter that Respondent Local 1506 stop “picketing and leafleting” and later informed the union that Precision had concluded its work at the hotel and was no longer present, Respondent Local 1506 made no response and continued bannering. Although the handbills at Westin Bonaventure correctly identified the Union’s dispute with the primary, Precision, and legitimately solicited customer pressure of Westin Bonaventure, the banners themselves identified only Westin Bonaventure as the targeted employer. The conjunction of “SHAME ON WESTIN BONAVENTURE” and “LABOR DISPUTE” on the banners could only have conveyed the message that Respondent Local 1506’s labor dispute was with Westin Bonaventure and evidences secondary intent. That, as well as Respondent Local 1506’s continued bannering of Westin Bonaventure after Precision had concluded its work and left the jobsite, demonstrates that the main object of the bannering was to compel Westin Bonaventure to cease doing business with Precision.

c. Respondent Local 209

Respondent Local 209 had a dispute with Cuthers but not with Taira, Thermal, or King’s Hawaiian. Respondent Local 209 did not banner at the jobsite where Cuthers performed work for Thermal but bannered at King’s Hawaiian Restaurant and Bakery.

The handbills at King’s Hawaiian Restaurant and Bakery correctly identified Cuthers as the company with whom Respondent Local 209 had a dispute, but the banner identified only King’s Hawaiian as the targeted employer. The conjunction of “SHAME ON KING’S HAWAIIAN and “LABOR DISPUTE” on the banners could only have conveyed the message that Respondent Local 209 had a labor dispute with that neutral company and evidences secondary intent.

d. Respondent Mountain West Carpenters

At all times relevant, Respondent Mountain West Carpenters was engaged in a labor dispute with E&K, Denver but had no dispute with State Farm, Holder, CU, Hensel-Phelps, Legacy, or J. E. Dunn. Respondent Mountain West Carpenters informed various neutral companies and persons of its dispute, stating the basis as E&K, Denver’s failure to meet area labor standards and requesting the neutrals to exercise managerial discretion to prevent E&K, Denver from performing work on any of their projects “unless and until it generally meets area labor standards for all of its carpentry craft work.” In that notification and in the accompanying announcement that a publicity campaign of bannering and handbilling would ensue, Respondent Mountain West Carpenters was only exercising its lawful right to inform others of its intention to protect area labor standards. Similarly, handbills distributed at each banner-

ing site correctly and lawfully described Respondent Mountain West Carpenters’ dispute with E&K, Denver. If that were the extent of the union’s conduct, there would be little reason for supposing that Respondent Mountain West Carpenters had any cease-doing-business objective in its campaign against E&K, Denver. Conduct “aimed at forcing an employer, which in fact pays substandard wages, to conform to area standards . . . is lawful unless there is independent evidence to controvert the Union’s overt representations of its objective.” *Journeyman Local 741 (Keith Riggs Plumbing & Heating Contractor)*, 137 NLRB 1125, 1126 (1962). The banners displayed by Respondent Mountain West Carpenters at each of the bannering sites provide just such independent evidence.

The banners displayed by Respondent Mountain West Carpenters identified only the neutrals as the union’s targets. Except for the State Farm banner, the banners included the words “LABOR DISPUTE.” The conjunction of “LABOR DISPUTE” with the names of neutral employers or persons could only have conveyed the message that Respondent Mountain West Carpenters had labor disputes with the named neutrals and evidences secondary intent. Further, Respondent Mountain West Carpenters established banners targeting the neutrals at locations far from the sites where the primary, A&K, Denver, was working. The wording on the banners and the positioning of the banners at locations where only the neutrals were present evidence an intent to enmesh neutral employers or persons in the union’s dispute with the primary employer.³⁵ Respondent Mountain West Carpenters’ conduct demonstrates that the main object of its bannering was, through either direct or indirect pressure, to compel neutrals to cease doing business with the primary, E&K, Denver.

e. Respondent Unions

Considering the circumstances of Respondent Unions’ bannering overall, as set forth above, I find that notwithstanding the use of banners in place of traditional picket signs, the bannering conduct constituted picketing. I further conclude that Respondent Unions’ intents and purposes in bannering were secondary. I base my conclusion, in the cases relating to Respondent Locals, on the statements and communications made prior to and contemporaneous with the bannering, and in all the cases on the circumstances of the bannering itself. The only message the banners could reasonably have conveyed to viewers, including customers, suppliers, and visitors of the targeted employers or persons, was that Respondent Unions had primary labor disputes with the neutrals named on the banners. It does not matter that inferences drawn by those who viewed the banners might be inaccurate as to the target and nature of the dispute. Respondent Unions must have foreseen that misconceptions would be the consequence of their bannering, and their failure to guard against, indeed their fostering of, such misconceptions further evidences secondary intent. The explanatory

³⁵ This analysis holds true as to Respondent Mountain West Carpenters’ bannering of State Farm. Although that banner did not include the words “labor dispute,” the State Farm bannering was part and parcel of Respondent Mountain West’s overall plan of attack against E&K, Denver, the circumstances of which are sufficient to show Respondent’s secondary intent.

handbills do not vitiate the impact of the banners. Banners were placed “to provide the greatest visibility to passing traffic and the general public,” few of whom, presumably, would take a handbill. Further, Respondent Locals, “did not actively seek to distribute handbills but did so only if someone approached and asked for one.” Given the placement of the banners facing busy streets and Respondent Unions’ constrained distribution of the handbills, it is reasonable to conclude that most banner viewers did not, and were not intended to, read the handbills. It seems clear that the bannering, with its secondary message, was not merely incidental to the lawful handbilling; rather, the handbilling was incidental to the secondary message, the implicit purpose of which was to enmesh neutrals in primary disputes. The evidence, therefore, establishes that in each instance of bannering, Respondent Unions had the intent and purpose of causing the targeted neutral employers or persons so much discomfiture through customer, supplier, or visitor complaints, inquiries, criticism, or withheld business that the neutral employers or persons would either cease doing business with the primary employers or influence other neutral employers or persons to cease doing business with the primary employers. Accordingly, I find that Respondent Unions’ above-described bannering conduct with its unlawful objects, in each instance, violates Section 8(b)(4)(ii)(B) of the Act.

CONCLUSIONS OF LAW

1. Respondent Unions are each a labor organization within the meaning of Section 2(5) of the Act.

2. Corsair, E&K, AZ, Brady, Precision, Cuthers, and E&K, Denver are persons and/or employers engaged in commerce or in an industry affecting commerce within the meaning of Sections 2(1), (2), (6), and (7) and 8(b)(4) of the Act.

3. UPS, Westin Bonaventure, King’s Hawaiian, Tiara, Thermal, Artisan Homes, Double AA, R. J. Griffin, Harkins, Vanguard, Westpac, Anthony’s, Clark, Diversa, Grossmont, Hawkins, Grand Hyatt, Hyatt Islandia, Marriott, Invitrogen, Kilroy, Manchester, Doug Manchester, Morrison & Foerster, Dillingham, Peregrine, Prentiss, Prevost, Reno, Roel, Sempra, Sharp, Sun Microsystems, Sundt, Chicken of the Sea, Sycuan Band, Sycuan Casino, Viejas Band, Viejas Casino, State Farm, Holder, UC, Hensel-Phelps, Legacy, and J. E. Dunn are persons and/or employers engaged in commerce or in an industry affecting commerce within the meaning of Sections 2(1), (2), (6), and (7) and 8(b)(4) of the Act.

4. Respondent Local 1827, by picketing the north building and South Building of UPS in Las Vegas, Nevada, from August 29, 2002, until approximately October 18, 2002, with banners that did not identify Corsair as the primary disputant, at times and places when and where no employees of Corsair were working, and with the intent and purpose of enmeshing UPS in its dispute with Corsair, engaged in conduct that violated Section 8(b)(4)(ii)(B) of the Act.

5. Respondent Local 1506, by picketing at the Lofts Project in Phoenix, Arizona, from mid-August 2002 until approximately October 18, 2002, with a banner that did not identify E&K, AZ as the primary disputant and with the intent and purpose of enmeshing Artisan Homes and Westpac in its dispute

with E&K, AZ, engaged in conduct that violated Section 8(b)(4)(ii)(B) of the Act.

6. Respondent Local 1506, by picketing at the Christown Theatre and the North Valley Theatre in Phoenix, Arizona and the Harkins Theater corporate offices in Scottsdale, Arizona beginning September 4, 10, and 18, 2002, respectively, until approximately October 18, 2002, with banners that did not identify E&K, AZ as the primary disputant, at times and places when and where no employees of E&K, AZ were working and with the intent and purpose of enmeshing Harkins and Double AA in its dispute with E&K, AZ, engaged in conduct that violated Section 8(b)(4)(ii)(B) of the Act.

7. Respondent Local 1506, by picketing at the Phoenix Memorial Hospital, Phoenix Baptist Hospital in Phoenix, Arizona, and the Arrowhead Community Hospital in Glendale, Arizona, from September 4, 2002, until approximately October 18, 2002, with banners that did not identify E&K, AZ as the primary disputant, at times and places when and where no employees of E&K, AZ were working, and with the intent and purpose of enmeshing Vanguard Health Systems and R. J. Griffin in its dispute with E&K, AZ, engaged in conduct that violated Section 8(b)(4)(ii)(B) of the Act.

8. Respondent Local 1506, by picketing at the Reno offices in San Diego, California, beginning early 2000 and continuing throughout 2001 and 2002 with banners that did not identify Brady as the primary disputant, at times and places when and where no employees of Brady were working, and with the intent and purpose of enmeshing Reno in its dispute with Brady, engaged in conduct that violated Section 8(b)(4)(ii)(B) of the Act.

9. Respondent Local 1506, by picketing at the Valley Center Project in San Diego, California, beginning in about 2000 with banners that did not identify Brady as the primary disputant, at times and places when and where no employees of Brady were working, and with the intent and purpose of enmeshing Kilroy Realty, Prentiss, Peregrine, Morrison & Foerster, and Reno in its dispute with Brady, engaged in conduct that violated Section 8(b)(4)(ii)(B) of the Act.

10. Respondent Local 1506, by picketing near the Diversa Project beginning in late 2000 and continuing until about early 2002 with banners that did not identify Brady as the primary disputant, at times and places when and where no employees of Brady were working, and with the intent and purpose of enmeshing Diversa and Reno in its dispute with Brady, engaged in conduct that violated Section 8(b)(4)(ii)(B) of the Act.

11. Respondent Local 1506, by picketing at the Sempra Project beginning October 2, 2000, and continuing until about December 2001 with banners that did not identify Brady as the primary disputant, at times and places when and where no employees of Brady were working, and with the intent and purpose of enmeshing Sempra and Roel in its dispute with Brady, engaged in conduct that violated Section 8(b)(4)(ii)(B) of the Act.

12. Respondent Local 1506, by picketing on the road leading to the Sycuan Casino Project beginning in about July 2000 and continuing until about January 2002 with banners that did not identify Brady as the primary disputant, at times when no employees of Brady were working at the project, and with the

intent and purpose of enmeshing the Sycuan Band of the Kumeyaay Nation in its dispute with Brady, engaged in conduct that violated Section 8(b)(4)(ii)(B) of the Act.

13. Respondent Local 1506, by picketing on the road leading to the Viejas Casino Project beginning in about June 1999 and continuing until November 2001 with banners that did not identify Brady as the primary disputant, at times when no employees of Brady were working at the project, and with the intent and purpose of enmeshing the Viejas Band of the Kumeyaay Nation in its dispute with Brady, engaged in conduct that violated Section 8(b)(4)(ii)(B) of the Act.

14. Respondent Local 1506, by picketing at an intersection significant to reaching the Invitrogen Project from about July or August 2001 until about July or August 2002 with banners that did not identify Brady as the primary disputant, at times when no employees of Brady were working at the project, and with the intent and purpose of enmeshing the Invitrogen and Reno in its dispute with Brady, engaged in conduct that violated Section 8(b)(4)(ii)(B) of the Act.

15. Respondent Local 1506, by picketing sporadically at Anthony's main restaurant during June and July 2001 with banners that did not identify Brady as the primary disputant, at times and places when and where no employees of Brady were working, and with the intent and purpose of enmeshing Anthony's and Hawkins in its dispute with Brady, engaged in conduct that violated Section 8(b)(4)(ii)(B) of the Act.

16. Respondent Local 1506, by picketing at the Sun Microsystems Project sometime between July 1999 and December 2000 with banners that did not identify Brady as the primary disputant and with the intent and purpose of enmeshing Sun Microsystems and Sundt in its dispute with Brady, engaged in conduct that violated Section 8(b)(4)(ii)(B) of the Act.

17. Respondent Local 1506, by picketing at the Grossmont Hospital Project beginning August 2001 and continuing until about October 18, 2002, with banners that did not identify Brady as the primary disputant and with the intent and purpose of enmeshing Grossmont Hospital Corporation and Sundt in its dispute with Brady, engaged in conduct that violated Section 8(b)(4)(ii)(B) of the Act.

18. Respondent Local 1506, by picketing at the Sharp Memorial Project beginning in spring of 2001 and continuing until about October 18, 2001, with banners that did not identify Brady as the primary disputant and with the intent and purpose of enmeshing Sharp Memorial and Dillingham in its dispute with Brady, engaged in conduct that violated Section 8(b)(4)(ii)(B) of the Act.

19. Respondent Local 1506, by picketing at the Grand Hyatt and the Hyatt Islandia beginning August 2001, and at the Marriott beginning September 2001, with banners that did not identify Brady as the primary disputant, at times and places when and where no employees of Brady were working, and with the intent and purpose of enmeshing Manchester Resorts, Doug Manchester, Grand Hyatt, Hyatt Islandia, Marriott, and Clark in its dispute with Brady, engaged in conduct that violated Section 8(b)(4)(ii)(B) of the Act.

20. Respondent Local 1506, by picketing at the Chicken of the Sea Project beginning May 2002 and continuing until about October 2002 with banners that did not identify Brady as the

primary disputant and with the intent and purpose of enmeshing Chicken of the Sea and Prevost in its dispute with Brady, engaged in conduct that violated Section 8(b)(4)(ii)(B) of the Act.

21. Respondent Local 1506, by picketing at the Westin Bonaventure beginning March 2002 and continuing through the first week of September 2002 with banners that did not identify Precision as the primary disputant, at times and places when and where no employees of Precision were working, and with the intent and purpose of enmeshing Westin Bonaventure in its dispute with Precision, engaged in conduct that violated Section 8(b)(4)(ii)(B) of the Act.

22. Respondent Local 209, by picketing at the King's Hawaiian Restaurant and Bakery beginning May 1, 2002, and continuing through the first week of September 2002, with banners that did not identify Cuthers as the primary disputant, at times and places when and where no employees of Cuthers were working, and with the intent and purpose of enmeshing Taira, Thermal, and King's Hawaiian Restaurant and Bakery in its dispute with Cuthers, engaged in conduct that violated Section 8(b)(4)(ii)(B) of the Act.

23. Respondent Mountain West Carpenters, by picketing State Farm at the State Farm Greeley site on September 6, 9, and 10, 2002, at the State Farm University Avenue site on September 10, 2002, at the State Farm Market Street site on September 17, 2002, and at the State Farm Stout Street site on September 26, 2002, with banners that did not identify E&K, Denver as the primary disputant, at times and places when and where no employees of E&K, Denver were working, and with the intent and purpose of enmeshing State Farm and Holder in its dispute with E&K, Denver, engaged in conduct that violated Section 8(b)(4)(ii)(B) of the Act.

24. Respondent Mountain West Carpenters, by picketing CU Health Sciences Center at the Skaggs site, 6 miles from the CU Research Center Project on September 13, 2002, with banners that did not identify E&K, Denver as the primary disputant, at times and places when and where no employees of E&K, Denver were working, and with the intent and purpose of enmeshing CU and Hensel-Phelps in its dispute with E&K, Denver, engaged in conduct that violated Section 8(b)(4)(ii)(B) of the Act.

25. Respondent Mountain West Carpenters, by picketing Legacy at the Cherry Street site, near Legacy offices, on September 19, 2002, with banners that did not identify E&K, Denver as the primary disputant, at times and places when and where no employees of E&K, Denver were working, and with the intent and purpose of enmeshing Legacy and J. E. Dunn in its dispute with E&K, Denver, engaged in conduct that violated Section 8(b)(4)(ii)(B) of the Act.

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

REMEDY

Having found that Respondent Unions have engaged in certain unfair labor practices, I find that each must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended³⁶

ORDER

1. Respondent Local 1827, its officers, agents, and representatives, shall cease and desist from

Picketing or by any like or related conduct threatening, coercing, or restraining UPS or any other person engaged in commerce or in an industry affecting commerce where objects thereof are to force or require UPS or any other person to cease doing business with Corsair.

2. Respondent Local 1506, its officers, agents, and representatives, shall cease and desist from

(a) Picketing or by any similar or related conduct threatening, coercing, or restraining Artisan Homes, Harkins, Vanguard Health Systems, or any other person engaged in commerce or in an industry affecting commerce where objects thereof are to force or require Artisan Homes, Harkins, Vanguard Health Systems or any other person to cease doing business with E&K, AZ, or any other person, or to force or require Artisan Homes, Harkins, Vanguard Health Systems or any other person to pressure or cease doing business with Westpac, Double AA, R. J. Griffin, or any other person in order to force or require said latter persons or any other person to cease doing business with E&K, AZ, or any other person.

(b) Picketing or by any like or related conduct threatening, coercing, or restraining Reno, Kilroy Realty, Prentiss, Peregrine, Morrison & Foerster, Diversa, Sempra, Sycuan Band, Viejas Band, Invitrogen, Anthony's, Sun Microsystems, Grossmont Hospital Corporation, Sharp Memorial, Manchester Resorts, Doug Manchester, Grand Hyatt, Hyatt Islandia, Marriott, and Chicken of the Sea, or any other person engaged in commerce or in an industry affecting commerce where objects thereof are to force or require Reno, Kilroy Realty, Prentiss, Peregrine, Morrison & Foerster, Diversa, Sempra, Sycuan Band, Viejas Band, Invitrogen, Anthony's, Sun Microsystems, Grossmont Hospital Corporation, Sharp Memorial, Manchester Resorts, Doug Manchester, Grand Hyatt, Hyatt Islandia, Marriott, and Chicken of the Sea, or any other person to pressure or cease doing business with R. J. Griffin, Reno, Roel, Hawkins, Sundt, Dillingham, Clark, or Prevost in order to force or require said latter persons or any other person to cease doing business with Brady or any other person.

(c) Picketing or by any like or related conduct threatening, coercing, or restraining Westin Bonaventure or any other person engaged in commerce or in an industry affecting commerce

where objects thereof are to force or require Westin Bonaventure or any other person to cease doing business with Precision.

3. Respondent Local 209, its officers, agents, and representatives, shall cease and desist from

Picketing or by any like or related conduct threatening, coercing, or restraining King's Hawaiian Restaurant and Bakery, or any other person engaged in commerce, or in an industry affecting commerce where objects thereof are to force or require King's Hawaiian Restaurant and Bakery, or any other person to cease doing business with Cuthers or to force or require or King's Hawaiian Restaurant and Bakery or any other person to pressure or cease doing business with Thermal, Taira, or any other person in order to force or require said latter persons or any other person to cease doing business with Cuthers or any other person.

4. Respondent Mountain West Carpenters, its officers, agents, and representatives, shall cease and desist from

Picketing or by any like or related conduct threatening, coercing, or restraining State Farm, CU, or Legacy, or any other person engaged in commerce or in an industry affecting commerce where objects thereof are to force or require State Farm, CU, or Legacy, or any other person to cease doing business with E&K, Denver, or to force or require State Farm, CU, or Legacy, or any other person to pressure or cease doing business with Holder, Hensel-Phelps, J. E. Dunn, or any other person in order to force or require said latter persons or any other person to cease doing business with E&K, Denver or any other person.

5. Respondent Unions shall each take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, each Respondent Union shall post at its Union offices copies of the pertinent attached notice marked, respectively, "Appendices A, B, C, and D."³⁷ Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by each Respondent Union's authorized representative, shall be posted by each Respondent Union 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 each Respondent Union 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, any Respondent Union has gone out of business or closed its offices, the Respondent Union shall duplicate and mail, at its own expense, a copy of the notice to all current members and former members of the Respondent Union at any time since the Respondent Union commenced its unlawful picketing described above.

(b) Sign and return to the Regional Director sufficient copies of the notice for posting by the pertinent employers and persons named above if willing, at all places where notices to employees are customarily posted.

³⁶ 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.

³⁷ 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."

(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 Respondent Union has taken to comply.

Dated, at San Francisco, CA: May 9, 2003

APPENDIX A (RESPONDENT LOCAL 1827)

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.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain on your behalf with your employer
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT do anything that interferes with these rights. More particularly,

WE WILL NOT by picketing or by any similar or related conduct, threaten, coerce, or restrain the following neutral entity:

United Parcel Service (UPS)

or any other person engaged in commerce or in an industry affecting commerce where an object thereof is to force or require UPS or any other person to cease doing business with Corsair Conveyor Corporation or any other person.

LOCAL UNION NO. 1827, UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS OF AMERICA

APPENDIX B (RESPONDENT LOCAL 1506)

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.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain on your behalf with your employer
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT do anything that interferes with these rights. More particularly,

WE WILL NOT by picketing or by any similar or related conduct, threaten, coerce, or restrain the following neutral entities:

Artisan Homes, Inc., Harkins Amusement Enterprises, Inc., Vanguard Health Systems, Inc.,

or any other person engaged in commerce or in an industry affecting commerce where objects thereof are to force or require any of the above employers or persons or any other person to cease doing business with Eliason & Knuth, AZ, or any other person, or to force or require any of the above employers or persons or any other person to pressure or cease doing business with Westpac Communities, Inc., Double AA Builders, Inc., Dunn Southeast d/b/a R.J. Griffin and Company, or any other person in order to force or require said latter persons or any other person to stop doing business with Eliason & Knuth, AZ or any other person.

WE WILL NOT by picketing or by any similar or related conduct, threaten, coerce, or restrain the following neutral entities:

Reno Contracting, Inc., Kilroy Realty Corporation, Prentiss Properties Acquisition Partners, LP, Peregrine Systems, Inc., Morrison & Foerster, LLP, Diversa Corporation, Sempra Energy, Sycuan Band, Viejas Band, Invitrogen Corporation, Anthony's Fish Grotto of La Mesa, Sun Microsystems International, Inc., Grossmont Hospital Corporation, Sharp Memorial, Manchester Resorts, LP, Doug Manchester, Hyatt Hotels Corporation, Manchester Grand Hyatt Hotel, Islandia Associates (Hyatt Islandia Hotel), San Diego Convention Marriott, Tri-Union Seafoods, LLC d/b/a Chicken of the Sea (herein San Diego neutrals)

or any other person engaged in commerce or in an industry affecting commerce where objects thereof are to force or require any of the above San Diego neutrals or any other person to cease doing business with Brady Company/San Diego, Inc., or any other person, or to force or require any of the above employers or persons or any other person to pressure or cease doing business with Dunn Southeast d/b/a R. J. Griffin and Company, Reno Contracting, Inc., Roel Construction, Inc., Hawkins Construction, Inc., Sundt Construction, Inc., Nielsen Dillingham Builders, Inc., Clark Construction Group, Inc., or Prevost Construction, Inc., or any other person in order to force or require said latter persons or any other person to stop doing business with Brady Company/San Diego, Inc., or any other person.

WE WILL NOT by picketing or by any similar or related conduct, threaten, coerce, or restrain

Today's IV, Inc., d/b/a Westin Bonaventure Hotel and Suites

or any other person engaged in commerce or in an industry affecting commerce where an object thereof is to force or require Today's IV, Inc., d/b/a Westin Bonaventure Hotel and Suites, or any other person to cease doing business with Precision Hotel Interiors, Inc., or any other person.

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

APPENDIX C (RESPONDENT LOCAL 209)

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.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain on your behalf with your employer
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT do anything that interferes with these rights. More particularly,

WE WILL NOT by picketing or by any similar or related conduct, threaten, coerce, or restrain the following neutral entities:

King's Hawaiian Retail, Inc. d/b/a King's Hawaiian Restaurant and Bakery,

or any other person engaged in commerce or in an industry affecting commerce where objects thereof are to force or require Kings Hawaiian Restaurant and Bakery, or any other person to cease doing business with Cuthers Construction, or any other person, or to force or require any of the above employers or persons or any other person to pressure or cease doing business with Thermal CM Service, Taira Harbor Gateway, LLC, or any other person in order to force or require the latter person, or any other person to stop doing business with Cuthers Construction or any other person.

LOCAL UNION NO. 209, UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS OF AMERICA

APPENDIX D (RESPONDENT MOUNTAIN WEST
CARPENTERS)

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.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain on your behalf with your employer
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT do anything that interferes with these rights. More particularly,

WE WILL NOT by picketing or by any similar or related conduct, threaten, coerce, or restrain the following neutral entities:

State Farm Mutual Insurance Company and State Farm Fire and Casualty Company, University of Colorado, or Legacy Partners Real Estate Development, Legacy Residential, and Legacy Residential Construction Company,

or any other person engaged in commerce or in an industry affecting commerce where objects thereof are to force or require the above-named neutral employers or persons, or any other person to cease doing business with Eliason & Knuth, Denver or to force or require State Farm Mutual Insurance Company and State Farm Fire and Casualty Company, University of Colorado, or Legacy Partners Real Estate Development, Legacy Residential, and Legacy Residential Construction Company, or any other person to pressure or cease doing business with Holder Construction Company, Hensel-Phelps Construction Company, J. E. Dunn Construction Company, or any other person in order to force or require said latter persons or any other person to cease doing business with Eliason & Knuth, Denver, or any other person.

MOUNTAIN WEST REGIONAL COUNCIL OF CARPENTERS