

stantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

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

#### CONCLUSIONS OF LAW

1. Walton Manufacturing Company is an employer within the meaning of Section 2(2) of the Act.

2. By promulgating a rule prohibiting employees from soliciting membership in any organization on company property, and by imposing upon employees, as a condition of employment, a requirement that collective bargaining must proceed on the basis of a labor organization to be sponsored, formed, or assisted by the Company, the Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed by Section 7 of the Act, and has thereby committed unfair labor practices within the meaning of Section 8(a)(1) of the Act.

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

[Recommendations omitted from publication.]

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**Local 35, United Association of Journeymen & Apprentices of the Plumbing & Pipe Fitting Industry of the U.S. & Canada, AFL-CIO and Richard E. Buettner.** *Case No. 14-CC-133.*  
*February 18, 1960*

#### DECISION AND ORDER

On October 6, 1959, Trial Examiner C. W. Whittemore issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and is engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, Respondent filed exceptions to the Intermediate Report and a supporting brief.

Pursuant to Section 3(b) of the Act, the Board has delegated its power in connection with this proceeding to a three-member panel [Members Rodgers, Jenkins, and Fanning].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the Respondent's exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

#### THE REMEDY

Respondent excepts to the Trial Examiner's recommended order as too broad in that it directs the Respondent to cease and desist from inducement of work stoppages not only by the employees of Buettner, the secondary employer directly involved, but also by the employees

of "any employer." We see no merit in the exception. The record shows that the Respondent's business representatives, Justi and Graham, in claiming the disputed work for their members, stated to Hunter that the work of laying water mains in the St. Louis area is within the exclusive jurisdiction of their union. A similar claim to the exclusive jurisdiction over the laying of water mains was also made in 1956 by a sister local of Respondent.<sup>1</sup> In view of the Respondent's continued claim to the exclusive jurisdiction over the laying of water mains in the St. Louis area and the danger that in enforcing this claim in the future Respondent will resort to the commission of similar violations with respect to other employers in the area, we shall in accordance with the recommended order direct Respondent to cease and desist from engaging in the commission of similar violations.<sup>2</sup>

### ORDER

Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondent Union, Local 35, United Association of Journeymen & Apprentices of the Plumbing & Pipe Fitting Industry of the U.S. & Canada, AFL-CIO, and its officers, agents, successors, and assigns shall:

1. Cease and desist from inducing or encouraging the employees of Richard E. Buettner, or the employees of any other employer, except Delbert Hunter, to engage in a strike or a concerted refusal in the course of their employment, to perform services for their employer, where an object thereof is to force or require Richard Buettner or any other employer, or person to cease doing business with Delbert Hunter or with any other employer.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Post at its business office in St. Louis, Missouri, copies of the notice attached hereto marked "Appendix."<sup>3</sup> Copies of said notice, to be furnished by the Regional Director for the Fourteenth Region, shall, after being duly signed by a representative of the Respondent, be posted by said Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to its members are cus-

<sup>1</sup> *Local 562, Building and Construction, etc., affiliated with United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO (St. Louis County Water Company)*, 116 NLRB 1111.

<sup>2</sup> *Local 926, International Union of Operating Engineers et al. (Armco Drainage and Metal Products, Inc.)*, 120 NLRB 188; *United Brotherhood of Carpenters, et al. (Wendnagel & Company)*, 119 NLRB 1444; See also *Local 660, International Brotherhood of Electrical Workers, et al. (Traffic Safety, Inc.)*, 125 NLRB 537.

<sup>3</sup> In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

tomarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for the Fourteenth Region, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith.

## APPENDIX

### NOTICE TO ALL MEMBERS OF LOCAL 35, UNITED ASSOCIATION OF JOURNEYMEN & APPRENTICES OF THE PLUMBING & PIPE FITTING INDUSTRY OF THE U.S. & CANADA, AFL-CIO

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify you that:

WE WILL NOT engage in, or induce or encourage the employees of Richard E. Buettner or the employees of any other employer, except Delbert Hunter, to engage in a strike or a concerted refusal, in the course of their employment, to perform services for their employer where an object is to force or require Richard E. Buettner or any other employer or person to cease doing business with Delbert Hunter, or with any other employer.

LOCAL 35, UNITED ASSOCIATION OF JOURNEYMEN & APPRENTICES OF THE PLUMBING & PIPE FITTING INDUSTRY OF THE U.S. & CANADA, AFL-CIO,

*Labor Organization.*

Dated----- By-----  
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

## INTERMEDIATE REPORT

### STATEMENT OF THE CASE

Charges having been filed and served, a complaint and notice of hearing thereon having been issued and served by the General Counsel of the National Labor Relations Board, and an answer having been filed by the above-named Respondent Union, a hearing involving allegations of unfair labor practices in violation of Section 8(b)(4)(A) of the National Labor Relations Act, as amended (61 Stat. 136), was held in St. Louis, Missouri, on August 20, 1959, before the duly designated Trial Examiner.

All parties were represented at the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence pertinent to the issues. Opportunity for oral argument was waived. Briefs have been received from General Counsel and the Respondent. Ruling upon the Respondent's motion to dismiss the complaint, reserved at the conclusion of the hearing, is disposed of by the following findings, conclusions, and recommendations.

In lieu of presenting certain testimony before the Trial Examiner by calling certain witnesses, the parties stipulated that the transcript of record in Case No.

14-CD-86, made on August 5, 1959, before Hearing Officer William G. Haynes, be incorporated by reference and made a part of the record in the instant proceedings.

Upon the entire record thus made, and from his observation of witnesses appearing before him, the Trial Examiner makes the following:

## FINDINGS OF FACT

### I. THE BUSINESS OF DELBERT HUNTER

From August 1958 to August 1959, Delbert Hunter, as an individual, has been engaged as a general contractor at Eureka, Missouri, in the construction of the municipal water system of that city. In performance of such construction and during the aforesaid period Hunter has purchased materials, consisting of pipe and other products, valued at more than \$70,000, which have been shipped to him in the State of Missouri from points outside the State of Missouri.

Hunter is engaged in commerce within the meaning of the Act.

### II. THE RESPONDENT LABOR ORGANIZATION

Local 35, United Association of Journeymen & Apprentices of the Plumbing & Pipe Fitting Industry of the U.S. & Canada, AFL-CIO, is a labor organization within the meaning of the Act.

### III. THE UNFAIR LABOR PRACTICES

#### A. *Setting and issues*

The chief issues herein involved arose after Delbert Hunter subcontracted to Richard E. Buettner, in November 1958, a portion of the construction work covered by the general contract which Hunter had, the preceding August, received from the city of Eureka. Before the execution of this subcontract between Hunter and Buettner there developed between Hunter and the Respondent Union a labor dispute, the nature of which is briefly described below. From this subcontractual relationship stems one of the chief issues: whether, as General Counsel contends, Buettner is a neutral or secondary employer or, as counsel for the Respondent urges, Buettner's role is that of an allied primary employer. It is this issue which will first be considered since, in the event merit is found in the Respondent's position, there exists no foundation for a claim of secondary picketing.<sup>1</sup>

If the Respondent's contention on this point is found to be without merit, there remains the issue as to whether or not picketing and other conduct by agents of the Respondent at the construction site encouraged or induced Buettner's employees to cease work, an object of such concerted refusals being to require Buettner to cease doing business with Hunter.

#### B. *The question of a secondary employer*

More accurately stated, perhaps, the question is whether or not Buettner was in fact an allied, primary employer. As General Counsel points out in his brief, the point is raised by the Respondent in its defense, and the burden of proving it remained upon the Respondent. In short, the Respondent would have it found that Hunter, the general contractor with whom it had a primary dispute, fully planned and intended to perform the work finally subcontracted to Buettner and only entered into the subcontract as a "subterfuge to attempt to get around" the labor dispute. "This work," the Respondent's counsel claims, "was struck work at the time that Mr. Buettner came into the picture and . . . the provisions applicable (to) or the prohibitions against the secondary activity would not be applicable to the job for that reason." (To support the principle thus invoked, in his brief counsel for the Respondent cites *N.L.R.B. v. Business Machine and Office Appliance Mechanics, et al., Local 459 I.U.E., et al. (Royal Typewriter Co.)*, 228 F. 2d 553 (C.A. 2), cert. denied 351 U.S. 96.

In substance, and in order of their occurrence, the pertinent events and facts are as follows.

As his venture in this field of construction, sometime prior to August 7, 1958, Hunter submitted his bid as general contractor for the construction of a waterworks system in Eureka. And before submitting his own bid, according to Hunter, he

<sup>1</sup> Although there is some evidence in the record that other subcontractors besides Buettner performed work for Hunter on the jobsite, the complaint alleges only that, by picketing and other conduct, the Respondent Union "encouraged and induced or attempted to induce the employees of Buettner" to engage in concerted refusals to perform work.

sought bids from several subcontractors for certain phases of the work, and material prices from various suppliers, in order to know "where I was going." It is clear, however, that before entering into his contract with the city of Eureka, which took place on August 7, Hunter sought no bid from Buettner for any portion of the work, nor did Buettner submit one.

Not long after the general contract was let to Hunter, and before he had begun any excavation or construction, he was approached by two business representatives of Local 35, Louis Justi and Russell Graham. They requested and he declined to hire Local 35 members to lay pipes for the construction job. While the point is of no materiality to this case, it appears that there was a difference of opinion between Hunter and the union officials as to whether or not the Union had "jurisdiction" over the laying of the particular type of pipe which was to be used.

Hunter began work with some seven employees in October, operating certain excavation machinery and laying pipe. The Respondent Union set up no picket line at this time.

On some undetermined day early in November, Business Representatives Justi and Graham again approached Hunter. This time they were accompanied by two persons whom they demanded that Hunter hire. Justi said that if they were not hired the job would be picketed. Hunter refused to hire them, and the next day the job was picketed by the same two individuals. From October 1958 until June 4, 1959, these pickets appeared at various points along what appears to have been about a 10-mile front. (The parties stipulated that about 10 miles of pipe were laid in the installation of this water system.)

Sometime in the latter part of October or early November 1958, Contractor R. E. Buettner learned from one of his subcontractors that Hunter would probably need someone to construct and install a concrete water reservoir. Buettner thereupon approached Hunter, submitted a bid after being shown the plans, the bid was accepted, and a subcontract dated November 6 was signed by the parties on November 11, 1958. And in the latter part of November Buettner's employees began construction of the reservoir.

While the chronology of the events described above, pertinent to the development of the primary dispute with Hunter and the letting of a subcontract for part of the work to Buettner appears to raise a degree of suspicion favorable to the Respondent's contention that Buettner merely took over work which was covered by Hunter's general contract and which he intended to perform had no dispute arisen with Local 35, in the opinion of the Trial Examiner the Respondent itself dissipated such suspicion by introducing through witnesses Hunter and Buettner other evidence which not only fails to support but rebuts the inference sought by the Respondent. Examples of such evidence follow:

1. Counsel for the Respondent called Hunter as a witness. Having elicited the fact that the prime contract was entered into by Hunter with Eureka on August 5, counsel asked:

At the time you entered into that agreement was it your intention to construct the water reservoir by your own employees?

The answer was "No, sir." Further pursuing the subject, the same counsel elicited from Hunter's testimony to the effect that even before he submitted his bid to the city, his bonding company urged him not to undertake the construction of the tank, because it was specialized work with which he was unfamiliar. Hunter further testified that although he did not seek subcontract bids for this particular work from Buettner, he did from other experienced contractors—one of whom was recommended by the bonding company. Also from his testimony it appears that although he accepted none of these subcontract bids, the figures obtained were used by him in submitting his own bid for the general contract.

2. Having elicited from Hunter the fact that long before Buettner came into the picture Hunter himself had entered into an agreement with a concrete supplier for concrete to be used in the tank construction, the same counsel further drew from Hunter the reasonable explanation that he did so in order to protect the price quotation which he had used in submitting his bid to the city. Counsel also received a flat "No, sir," from Hunter when he asked if, at the time he entered the agreement to purchase this concrete, "it was your intention to construct the tank yourself?"

3. In cross-examination of Hunter during the preceding hearing on August 5, 1959, there occurred the following colloquy between counsel for the Respondent and the witness:

Q. Did your decision or efforts to subcontract part of the work to Mr. Buettner have any connection with the actual or potential labor dispute?

A. No, sir.

4. Counsel for the Respondent also established through his questions of Buettner that when he was negotiating with Hunter for the subcontract the latter did not mention any labor dispute and that he was unaware of any picketing until after he had begun construction work pursuant to the subcontract.

The foregoing points established by the Respondent itself, clearly militate against a reasonable inference that Buettner and Hunter were "allied" employers. Two further points, in the opinion of the Trial Examiner, make it plain that the inference sought by the Respondent would be unreasonable:

1. At no time did the union representatives, or the pickets placed by the Union, demand of Buettner that he hire members of Local 34. And by none of their conduct directed at Buettner's employees, described in the next section, did union representatives or pickets indicate that they considered Buettner to be assuming any of Hunter's work or responsibilities on the construction job.

2. The evidence permits no finding as to precedent or past history, from which it might be inferred that because he had erected tanks before Hunter expected and planned to construct this one, and would have had the labor dispute not arise. On the contrary, Hunter's testimony is undisputed that because of his inexperience in such construction, the bonding company had urged him not to engage in it, even before he submitted his bid as general contractor.

In short, the Trial Examiner concludes and finds that the Respondent has failed to meet its burden of proof. The evidence will not support a finding that Buettner and Hunter were "allied" employers.

### *C. Inducement of concerted refusals*

While the work of employees of the primary employer, Hunter, ranged over the entire water system—laying about 10 miles of pipe—that undertaken by Buettner's employees was restricted to the pouring of concrete and placing steel building forms inside the tank on top of a hill from which the mains radiated.

In the latter part of November 1958, a number of Buettner's employees, carpenters, began work at the tank site. On the first day no pickets appeared. The next day two pickets came to the point where these employees were working. They displayed their union cards and said they had come to picket the job. After a few minutes of conversation, however, they told the carpenters to continue working. The following morning, however, as Buettner's employees climbed the hill to the tank site, the two pickets walked back and forth across the access road with an open umbrella bearing the above-noted picket legend. No employees of Hunter were anywhere in the vicinity. Buettner's employees declined to cross the picket line and left the job.

In part because of weather conditions, Buettner's employees did not return to this job until sometime in February or March. On the occasion of their return two pickets again appeared and said that their "boss" had instructed them to picket "this job." Buettner's employees again left their work.

In April they went back to the site. Pickets again appeared, but this time Buettner's employees were told to continue working and pay no attention to the picketing. The following day, however, on April 24, when three of Buettner's employees were working, Business Representative Justi appeared. Evidence is uncontradicted that Justi talked to at least two of the three employees. In substance he asked them if they were union men and when they replied in the affirmative he asked if they did not know that there were pickets there. When Buettner's employees protested that they were working under a separate contract, Justi countered by declaring that the reservoir was part of the whole system and demanding that they respect the picket line. Justi finally warned them that unless they quit work he would "put a picket on." Upon this warning Buettner's employees left.

The Respondent offered no evidence to show that on any of the occasions when union pickets were in the near vicinity of or talking with Buettner's employees were there any of Hunter's employees nearby. Direct and competent evidence submitted by General Counsel establishes, and it is found, that in November 1958, when the pickets were near the tank, there were no Hunter employees at or near the reservoir site. And the testimony of Buettner makes clear that Hunter's employees had completed the installation of certain fittings at the tank site before April 24, the date when Justi appeared as described above. Other testimony shows that Hunter's one crew of employees was engaged, for most of the several months of construction, in laying pipes at various points along the 10-mile system. In any event, the Trial Examiner concludes and finds that neither on the first occasion of picketing near Buettner's employees, in November 1958, nor on the final occasion on April 24, 1959, were there Hunter employees in the vicinity.

In summary, the Trial Examiner is of the opinion that the preponderance of credible evidence sustains the allegations of the complaint. He therefore concludes and finds that by the above-described picketing at the reservoir when none of Hunter's employees were working there or nearby, but when Buettner's employees were engaged in performing work for Buettner, and by the above-described remarks of Business Representative Justi to Buettner's employees, on April 24, 1959, the Respondent Union encouraged and induced Buettner's employees to engage in concerted refusals in the course of their employment to perform any services, an object thereof being to require Buettner to cease doing business with Hunter.<sup>2</sup>

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent Union set forth in section III, above, occurring in connection with the operations of the employer described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. THE REMEDY

Having found that the Respondent Union has engaged in activities violative of Section 8(b)(4)(A) of the Act, the Trial Examiner will recommend that it cease and desist therefrom, and take certain affirmative action designed to effectuate the policies of the Act.

Upon the basis of the above findings of fact, and upon the entire record in the case, the Trial Examiner makes the following:

#### CONCLUSIONS OF LAW

1. Delbert Hunter, an employer, is engaged in commerce within the meaning of the Act.

2. Local 35, United Association of Journeymen & Apprentices of the Plumbing & Pipe Fitting Industry of the U.S. & Canada, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By inducing and encouraging employees of Richard E. Buettner, an employer, to engage in a concerted refusal in the course of their employment to perform services for said employer, with an object of requiring Buettner to cease doing business with Delbert Hunter, the Respondent Union has engaged in unfair labor practices within the meaning of Section 8(b)(4)(A) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices within the meaning of the Act.

[Recommendations omitted from publication.]

<sup>2</sup> *Ready Mixed Concrete Company*, 117 NLRB 1266.

**Nordberg-Selah Fruit, Inc., Nordberg-Westbrook Fruit, Inc. and Fruit and Vegetable Packers Union Local 760 and Lila Abhold and Tree Fruits Labor Relations Committee, Inc., Party to the Contract.** *Cases Nos. 19-CA-1567 and 19-CB-520. February 19, 1960*

#### DECISION AND ORDER

On May 8, 1959, Trial Examiner Maurice M. Miller issued his Intermediate Report in the above-consolidated proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter the Respond-