

4. On August 6, 1959, and at all times material thereafter, the Union was, and now is, the representative of a majority of the Respondent's employees in the appropriate unit described above for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on March 15, 1960, and at all times thereafter, to bargain collectively with the Union as the exclusive representative of all its employees in the above-described appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the foregoing conduct, Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

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

[Recommendations omitted from publication.]

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**United Association of Journeymen and Apprentices of the  
Plumbing and Pipefitting Industry of the United States and  
Canada, Local 575, AFL-CIO and Boulder Master Plumbers  
Association. Case No. 27-CC-62. August 29, 1961**

**DECISION AND ORDER**

On January 3, 1961, Trial Examiner Wallace E. Royster issued his Intermediate Report in the above-entitled proceeding, dismissing the complaint in its entirety, as set forth in the Intermediate Report attached hereto. Thereafter, the General Counsel, the Respondent, and the Charging Party filed exceptions to the Intermediate Report and briefs in support thereof.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman McCulloch and Members Rodgers and Leedom].

The Board has reviewed the rulings of the Trial Examiner at the hearing, and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the evidentiary findings but not the conclusions or recommendations of the Trial Examiner, as indicated below.

The relevant evidentiary facts established by the record and found by the Trial Examiner show that on July 19, 1960, the Respondent, unable to reach agreement with the Association, began a strike. In support of this strike, Respondent placed pickets at various jobsites where employees of Association members and also of certain building contractors or subcontractors were working; the picket signs were so worded as not to indicate with whom the Respondent had its dispute. The picketing effectively caused work stoppages of secondary employ-

ees by inducing them to refuse to cross the picket lines. We find that the Respondent by its picketing induced and encouraged individuals employed by these contractors and subcontractors to refuse to perform services, and that the picketing also coerced and restrained the contractors and subcontractors to cease doing business with members of the Association.

The Trial Examiner, although finding that the Board had jurisdiction over the Association and its members, dismissed the complaint, based on the theory that the contractors and subcontractors were not shown to be engaged in commerce or in an industry affecting commerce. However, as the Board held in *S. M. Kisner and Sons*,<sup>1</sup> the language of Section 8(b)(4) is to be construed so as to fulfill the manifest congressional purpose to give the widest coverage to secondary boycott provisions. The Board went on to say:

It is clear, and we find, that the building and construction industry is an "industry" within the meaning of Section 8(b)(4). We take administrative notice of the fact that the building and construction industry causes the flow of large quantities of goods across State lines and it therefore affects commerce.

In view of the picketing we find that the Respondent violated Section 8(b)(4)(i)(B) by inducing and encouraging individuals employed by persons engaged in an industry affecting commerce for an objective proscribed under the Act, and has coerced and restrained secondary persons within the meaning of Section 8(b)(4)(ii)(B) of the Act.

#### ORDER

Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 575, AFL-CIO, its agents, officers, representatives, successors, and assigns, shall:

1. Cease and desist from (i) engaging in, or inducing or encouraging any individual employed by Black Construction Company, Craftsmen Construction Company, Rice Construction Company, Edward Tamminga Construction Company, and Wells Construction Company, herein called the Companies, or any other person engaged in commerce or in an industry affecting commerce, to engage in a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any service, or (ii) coercing, or restraining the Companies, or such other person, where in either

<sup>1</sup> 131 NLRB 1196.

case an object thereof is to force or require said Companies, or such other person, to cease doing business with Boulder Master Plumbers Association or its members.

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

(a) Post at the Respondent Union's business offices and meeting halls, copies of the notice attached hereto marked "Appendix."<sup>2</sup> Copies of said notice, to be furnished by the Regional Director for the Twenty-seventh Region, shall, after being duly signed by an authorized representative of the Respondent Union, be posted by the Respondent Union immediately upon receipt thereof, and be maintained for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken to insure that the notices are not altered, defaced, or covered by any other material.

(b) Sign and mail sufficient copies of said notice to the Regional Director for the Twenty-seventh Region, for posting, the Companies and Boulder Master Plumbers Association willing, at all locations where notices to their respective employees are customarily posted.

(c) Notify the Regional Director for the Twenty-seventh Region, in writing, within 10 days from the date of this Decision and Order, what steps the Respondent has taken to comply herewith.

<sup>2</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."

## APPENDIX

**NOTICE TO ALL MEMBERS OF UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 575, AFL-CIO; AND TO ALL EMPLOYEES OF BLACK CONSTRUCTION COMPANY, CRAFTSMEN CONSTRUCTION COMPANY, RICE CONSTRUCTION COMPANY, EDWARD TAMMINGA CONSTRUCTION COMPANY, WELLS CONSTRUCTION COMPANY, AND MEMBERS OF BOULDER MASTER PLUMBERS ASSOCIATION**

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, as amended, we hereby give notice that:

WE WILL NOT induce or encourage any individual employed by Black Construction Company, Craftsmen Construction Company, Rice Construction Company, Edward Tamminga Construction Company, Wells Construction Company, or any other person engaged in commerce or in an industry affecting commerce, to engage in a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work

on any goods, articles, materials, or commodities, to perform any services, or to coerce or restrain the Companies or any other person, where an object thereof is forcing or requiring the Companies or any other persons, to cease doing business with Boulder Master Plumbers Association, or any of its members.

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 575, 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 AND RECOMMENDED ORDER

STATEMENT OF THE CASE

Upon a charge filed by Boulder Master Plumbers Association, Boulder, Colorado, herein called the Association, the General Counsel of the National Labor Relations Board issued his complaint against United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 575, AFL-CIO, herein called the Respondent, alleging that the Respondent in furtherance of a dispute with members of the Association had engaged in picketing at various points in such a fashion as to violate Section 8(b)(4)(i) and (ii)(B) of the National Labor Relations Act, as amended, 61 Stat. 136, 73 Stat. 519, herein called the Act. It is alleged that the violations complained of occurred in commerce or in businesses affecting commerce within the meaning of Section 2(6) and (7) of the Act.

A hearing on the complaint was held before Wallace E. Royster, the duly designated Trial Examiner, in Boulder, Colorado, on October 18, 1960, with all parties represented.

Upon the entire record in the case,<sup>1</sup> I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE ASSOCIATION MEMBERS

The Association is an organization composed of a number of employers engaged in the plumbing and pipefitting industry in and near Boulder, Colorado. At all times material Silver Plumbing & Heating Company, herein called Silver; Carlson Plumbing & Heating Company, herein called Carlson; City Plumbing & Heating Company, herein called City; Conradson's Plumbing & Heating Company, herein called Conradson's; Rayback Plumbing & Heating Company, herein called Rayback; and Alpine Plumbing & Heating Company, herein called Alpine, have been members of the Association. In 1959 the named Association members purchased goods and materials to a value in excess of \$50,000 which originated at points outside the State of Colorado. The Respondent admits and I find that the Association and each of its members are engaged in commerce or in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

The Respondent, admittedly a labor organization within the meaning of Section 2(5) of the Act, on July 19, 1960, unable to reach agreement with members of the Associ-

<sup>1</sup> All testimony was taken in the United States District Court for the District of Colorado on October 10 and 11, 1960, in Civil Action No. 6882. The transcript of that proceeding is in this record by stipulation of the parties.

ation in respect to the terms of a collective-bargaining contract, began a strike. In furtherance of and in support of its strike against Association members the Respondent on July 21 posted pickets at various construction sites in and near Boulder, Colorado, where members of the Respondent had been employed or where need for their services was reasonably to be anticipated. The evidence establishes and I find that the pickets carried signs reading:

Plumbers  
& Pipe Fitters  
ON STRIKE  
Local Union 575  
AFL-CIO

Pickets were posted at several places, among them, buildings being erected by Black Construction Company, herein called Black; by Craftsmen Construction Company, herein called Craftsmen; by Rice Construction Company, herein called Rice; by Edward Tamminga Construction Company, herein called Tamminga; and by Wells Construction Company, herein called Wells. Black, Craftsmen, Rice, Tamminga, and Wells are general contractors. With the appearance of the pickets at these construction sites employees of the general contractors and of subcontractors left their employment.

With few exceptions, all plumbers employed by members of the Association joined in the strike and refused to perform services for their respective employers. Each member of the Association against whom the strike was directed maintained a place of business in or near Boulder where its employees regularly reported in the morning before going to the construction project to work and where such employees regularly came at the close of the day to return trucks and other equipment.

Frank Buchanan, an attorney representing Craftsmen, testified that because of the picketing of the Craftsmen project he called upon Harry Files, a representative of the Respondent, in an attempt to have the picket removed. According to Buchanan, Files said that the picket was there in order to induce other men to leave the job and that the picket would be removed if Craftsmen would engage another plumbing contractor or induce Alpine who had been chosen to do the plumbing work to sign a contract with the Respondent.

Lucian Rice testified that Rayback was the plumbing contractor on the construction in which he was engaged and that a picket was placed by the Respondent at this job on July 21. According to Rice no plumbing work was being performed at the time the picket appeared and none had been done for several weeks. Rice testified credibly and without contradiction that he spoke by telephone to LaMont Does, a representative of the Respondent, about the picketing explaining that no plumbing work was being done and complaining that other workmen would not cross the picket line. Does agreed to remove the picket temporarily so that Rice could have some rental equipment taken away from the construction site. Rice complained that the Respondent was trying to force Rice to "fight your battles." Does agreed that this was so. In September 1960, according to the credited and uncontradicted testimony of Rice, he met with a group of union representatives, among them Files, to discuss the problems raised by Respondent's strike. A representative of some other union urged Rice not to take bids from members of the Association who had not signed the contract with the Respondent. Files, although present, did not disassociate himself from this suggestion.

Philip Logan, a foreman in the employ of Tamminga, testified that the Respondent placed a picket at the construction project where Tamminga was the general contractor on July 21. With the appearance of the picket, according to Logan's credited and uncontradicted testimony, most of the workmen in other crafts left. Logan complained to the picket, Harry Barber, Respondent's president, that Barber had no right to picket as no plumbers were working there.

Verlyn Gardner, an officer of Black, testified that on July 21 Respondent placed a picket at one of Black's construction jobs and the following day at another. Picketing at the second job resulted in all employees leaving their employment. According to Gardner's credited and uncontradicted testimony no plumbers were working at the construction site first picketed. On July 22, Gardner spoke to Does in an attempt to have the pickets removed. Does answered, according to Gardner's credited and uncontradicted testimony, that the Respondent was picketing in order to gain bargaining power and that by the picketing hoped to bring pressure on members of the Association to sign a contract acceptable to the Respondent.

Harry Files, Respondent's business agent, testified that he had a conversation with Buchanan about the picketing, agreed that he had suggested that Buchanan attempt

to persuade Alpine to sign a contract with the Respondent, but denied suggesting that Craftsmen cease doing business with Alpine or replace Alpine with another plumbing contractor.

It is the theory of the complaint that the Respondent induced and encouraged employees of the general contractors and of subcontractors other than Association members to refuse to perform services for their several employers with an object of forcing or requiring those employers to cease doing business with members of the Association. A further aspect of the complaint is that by the picketing of the various construction projects the Respondent threatened, coerced, and restrained the several general contractors and subcontractors with an object of forcing or requiring the general contractors and subcontractors to cease doing business with members of the Association.

The credited testimony of Buchanan concerning his conversation with Files; of Rice concerning his conversation with Does and the statement of desire that the general contractors not do business with Association members made in the presence of Files in September 1960; and the fact that the picket signs were so worded as not to indicate with whom the Respondent had its dispute convinces me and I find that the Respondent induced and encouraged individuals to refuse to perform services for the general contractors and subcontractors and that the picketing constituted threats, coercions, and restraints upon the general contractors and the subcontractors and that in each case it was Respondent's object to force or require the contractors and subcontractors to cease doing business with members of the Association. Because the evidence concerning the purposes of the picketing is clear and substantially uncontroverted it is unnecessary to decide whether the Respondent could adequately have publicized its dispute with Association members by limiting its picketing to the offices or yards of such members.<sup>2</sup>

The jurisdiction of the Board here is clear. The members of the Association are in commerce or engaged in businesses affecting commerce. If the Respondent has engaged in an unfair labor practice the Board is empowered to issue an appropriate remedial order. However, in amending Section 8(b)(4) of the Act the Congress substituted for the words, "the employees of any employer," a clause reading, "any individual employed by any person engaged in commerce or in an industry affecting commerce." Thus an essential element to be pleaded and proved in connection with an allegation of violation of Section 8(b)(4)(i) is that the inducement or encouragement is directed to an individual whose employer is engaged in commerce or in an industry affecting commerce. Similarly in adding subsection (ii) to Section 8(b)(4) the Congress forbade a labor organization "to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce" to accomplish a forbidden objective.

I do not read the complaint clearly to allege that the general contractors or subcontractors are engaged in commerce or in an industry affecting commerce. In any event, if such an allegation is to be found, the Respondent's answer traverses it. If the General Counsel has made the necessary allegation, it has been denied. The burden then became his to establish in some fashion that the general contractors and subcontractors were persons engaged in commerce or in an industry affecting commerce. There is no evidence that any of them are in commerce. Are they "in an industry affecting commerce?" Surely construction must be so characterized. I think it permissible, though not requested to do so, to take official notice that construction causes the flow of great quantities of goods and materials across State lines but this is true of any "industry" that may be brought to mind. There is no market or beauty parlor or dry cleaning establishment or janitorial service, or farming enterprise, no matter how small or restricted in area and size of operation, which cannot accurately be described as "in an industry affecting commerce." Was it then the congressional intent that any person who is an employer be brought within the protection of Section 8(b)(4)? I find no legislative history to aid on this point. However the

<sup>2</sup> It could perhaps successfully be argued that the plumbing contractors could easily arrange for most or all of their employees to report directly to jobsites. That is where they perform their work. In such circumstances it might well be that the Respondent would be unable effectively to publicize its dispute with the Association members were it forbidden to picket where the work would be done. Cf. *Washington Coca Cola Bottling Works, Inc.*, 107 NLRB 299. Even if this were true the Respondent then would be required to word its picket signs in such a fashion as clearly to indicate that its dispute was with the Association's members and not with the general contractors or other subcontractors. See *Moore Dry Dock Co.*, 92 NLRB 547.

words "in commerce or in an industry affecting commerce" must I think, reasonably be read as limiting the reach of the Act. Had it been the design to extend to all employers or persons the protection from secondary activity on the part of unions that Section 8(b)(4) affords, the clause under scrutiny would surely have omitted any such qualifying language and would have forbidden inducement or encouragement of any individual employed by any person to engage in a strike for a prohibited objective and similarly have forbidden unions to threaten, coerce, or restrain any person to bring about a like result.

I think that it must be concluded, and I so conclude, that "an industry affecting commerce" means an enterprise or business affecting commerce. Lacking evidence that any of the general contractors or subcontractors, other than members of the Association, operate enterprises or businesses affecting commerce, I find that an essential element of the unfair labor practice alleged has not been established. I will recommend, therefore, that the complaint be dismissed.

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. The Respondent is a labor organization within the meaning of Section 2(5) of the Act.

2. Silver, Carlson, Conradson's, Rayback, and Alpine are employers engaged in commerce or in businesses affecting commerce within the meaning of Section 2(6) and (7) of the Act.

3. The evidence does not establish that the Respondent induced or encouraged any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in a strike or a refusal to perform any services or that the Respondent has threatened, coerced, or restrained any person engaged in commerce or in an industry affecting commerce, in either case, for a forbidden objective.

It is recommended that the complaint be dismissed in its entirety.

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**Royal Oak Tool & Machine Company and R O Manufacturing Company and Wendell G. Mouw, Garrett H. Mouw, and Robert J. Walls and International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, AFL-CIO, and its Local 157. Case No. 7-CA-2779. August 29, 1961**

#### DECISION AND ORDER

On January 18, 1961, Trial Examiner Lee J. Best issued his Intermediate Report in the above-entitled 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 Intermediate Report attached hereto. Thereafter, the General Counsel, the Respondents, and the Charging Party filed exceptions to the Intermediate Report, together with supporting briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Leedom, Fanning, and Brown].