

Local Union No. 741, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO [Keith Riggs Plumbing and Heating Contractor] and Independent Contractors Association

Local Union No. 596, Brotherhood of Painters, Decorators, and Paperhangers of America, AFL-CIO; Local Union No. 857, United Brotherhood of Carpenters and Joiners of America, AFL-CIO and Independent Contractors Association. *Cases Nos. 28-CP-4 (formerly 21-CP-7) and 28-CC-77 (formerly 21-CC-353). June 29, 1962*

DECISION AND ORDER

On June 13, 1960, Trial Examiner William E. Spencer issued his Intermediate Report in this proceeding, as amended by an addendum thereto, finding that Carpenters had engaged and were engaging in unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the Intermediate Report attached hereto. Thereafter, Carpenters and the General Counsel filed exceptions to the Intermediate Report and supporting briefs.

The Board has reviewed the rulings made by 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 findings, conclusions, and recommendations of the Trial Examiner with the following modifications.

1. We agree with the Trial Examiner's finding that Respondent did not violate Section 8(b) (7) (C) of the Act.

Section 8(b) (7) (C) makes unlawful picketing which continues for more than 30 days without the filing of a representation petition where an object of such picketing is to require an employer to "recognize or bargain" with a labor organization or to require the employees "to select such labor organization as their collective bargaining representative." Not all picketing which continues for more than 30 days without the filing of a petition runs afoul of this section of the Act. Accordingly, in every case where the General Counsel alleges that a respondent labor organization has engaged in unlawful 8(b) (7) (C) picketing it is his burden to prove not only the fact of the picketing, but also that it had an objective proscribed by the statute, i.e., it was for organization, recognition, or bargaining. Not every demand by a union implies one of these objectives.

A labor union normally seeks to organize the unorganized and to negotiate collective-bargaining contracts with employers; but it also

assigned extra runs, introduced Monty to Frank Valletta, the Company's secretary, as *the* extra driver who "has been covering the runs." For a few months Covey called Monty at home as needed; but he then told Monty to be on deck to cover the run rather than wait to be called.

Whether, using the various terms employed by Monty, he was the "extra driver," the "regular extra driver," or the "only extra driver" on the Albany-Boston run, the fact is that he had been designated to be and was assigned to the first available extra run. There is no direct testimony of a statement allegedly made by Frank Valletta to the effect that Monty was to be the one and only extra man on that run and that he wanted no other extra drivers driving his trucks. But as we shall see, Nicholas Valletta, the Company's vice president and Frank's brother, apparently had knowledge of such a statement, or believed that Frank had made it, and expressed his determination to back it up.

Two other extra drivers, Russell and Whinnery, worked for Valletta in Albany, pulling extra trips "in back of" Monty; i.e., Monty took the first available extra truck and one of the other two took the second when more than one extra man was needed. This continued until the fall of 1960, when Whinnery and Russell started to go out on runs ahead of Monty. Whereas the latter had previously gone on 1 to 5 trips per week (he totaled approximately 80 trips in 1960), he averaged less than 1 per week in December and little more in November, Whinnery and Russell getting the runs ahead of him. Monty finally stopped going to the terminal in January 1961.

These facts stand out, whatever few other runs there were or calls by the Union for Monty to take a run elsewhere. Nor is the situation altered by the fact that Russell or other drivers had occasionally pulled trips for Valletta before Monty came on the scene. Whatever the earlier history, Monty had been assigned priority over other extra drivers by this Employer, and the issue is whether the Union unlawfully caused the Employer to discriminate against him by withholding assignments. (We have noted that the case was tried without reference to a share-the-work plan. Nor is there evidence of a lawful employer-union agreement which might support any such plan or other preferential hiring criteria.) While as counsel for the Union brought out, it was Covey not Frank or Nicholas Valletta who told Russell that he was in back of Monty on assignments, Covey was at that point repeating the Vallettas' instructions; and it was also counsel for the Union who brought out that it was Covey's duty to make assignments for the Company; so that Covey's recognition of Monty's priority was the Vallettas'.

I credit Monty's testimony. He did not claim to be a regular driver, and with one unspecified exception received no union benefits which are not generally given to extra drivers. Except for such minor variance as whether another extra driver said or merely may have said that he had elsewhere received holiday and vacation pay, Monty stood up under rigorous cross-examination. Whatever involvements were injected concerning union benefits and Monty's very occasional employment elsewhere (apparently at Covey's suggestion or request), Monty was the "regular extra driver" for the Company and was available as such until the Union caused a change.

About the end of 1960 Nicholas Valletta told Covey to give Monty assignments ahead of Russell and Whinnery, and gave Covey 2 weeks to straighten out Monty's complaints in this respect, telling Covey that he had to back up what his brother Frank had said. When Monty continued thereafter to complain, Valletta warned Covey that he would eliminate a run out of Albany. The Company's attitude with respect to Monty was thus again made clear so that if, as a result of further discussions with union representatives, the Company did not continue to insist on Monty's preference in employment, the Union's unlawful causation was quite as clear. (It stands uncontradicted that at the union office its business agent, Smith, Covey, and Whinnery in turn attempted to persuade Nicholas Valletta that Monty was a troublemaker and no good.)

Valletta's warning to Covey prompted Smith to call, and Valletta now told Smith that Frank Valletta had promised *the* extra work to Monty. Nicholas then apparently wrote a note to Covey and spoke to him on the telephone. Valletta was an honest witness, but he was easily led and his recollection was uncertain. Just what he told Covey can be reconstructed only with difficulty as he gave several versions. He first told us that he had directed Covey to give Monty extra work, then immediately restated it as having told Covey to give Monty *the* extra work. It was obvious that the distinction escaped Valletta as he testified. He later testified that all of the extra work could not be given to Monty; accepting counsel's characterization, he testified that he told Covey to give him "some" extra work. Valletta finally had it that he told Covey to give Monty some of the extra work "to keep him going"; but Monty "was looking to become a regular man."

Riggs at the premises where Riggs was engaged as plumbing subcontractor with signs reading:

Keith Riggs Plb. unfair to Plumbers Local 741
Sub-standard wages & Working Conditions

On the occasions of the picketing Respondent also distributed to Riggs' employees and other persons approaching the picket line copies of the letter referred to above which had been sent to Riggs. About February 1, 1960, at a meeting of managerial and union representatives where the picketing was discussed, the business agent of Respondent said that Respondent's sole interest was that Riggs pay the prevailing wage scale for plumbers in the area.

If words have any meaning, then the foregoing evidence indicates that Respondent was not seeking to negotiate with Riggs. Moreover, it did not have to negotiate to achieve its objective—establishment of standard wage and working conditions. These had already been set in contracts with unionized employers. All that Respondent had to do was to furnish information as to these standards to Riggs. This it did in its letters.

Our dissenting colleagues point to no evidence which would indicate that Respondent was insincere in its statements that it was not seeking to negotiate with Riggs. They merely assert, as they have elsewhere,³ that picketing to compel a change in wages and working conditions "necessarily" is for the purpose of recognition and bargaining. This is stated as virtually a proposition of law. There is no judicial or legislative support for any such proposition. If Congress had intended to ban all picketing after 30 days, which is substantially what the dissenting view would accomplish, it could have achieved that objective in straightforward and simple language. We hold, therefore, as did the Trial Examiner, that the picketing on the evidence in this case did not have for an object recognition or bargaining.

The dissenting members would also find that an object of the picketing was organizational, relying on the testimony of employee Farr that at two meetings in his home 2 weeks prior to the picketing, representatives of Respondent solicited him to join Respondent, and on evidence that some present and former Riggs' employees made application to join Respondent after the start of the picketing.

Preliminarily, it should be noted that Farr's testimony as to solicitation was denied by Respondent's witnesses. There is therefore an important issue of credibility which was not resolved by the Trial Examiner because the evidence had been submitted to him on stipulation and he had not had the opportunity of observing the witnesses.

Accordingly, on this state of the record, a finding is not justified

³ *Houston Building and Construction Trades Council (Claude Everett Construction Company), supra.*

that Respondent's representatives did in fact solicit Farr to join the Union.

Moreover, the testimony is clear, as Farr himself admitted, that Respondent's representatives sought out Farr in order to obtain wage data from him: the representatives unsuccessfully offered him \$20 for his paycheck stub. This testimony tends to corroborate the Respondent's claim that its true objective was conformity to wage standards.

Even assuming, *arguendo*, that on the occasion of these visits to Farr the union representatives did mention the advantages of joining the Union, such incidents several weeks before the picketing started involving a single Riggs' employee are not sufficient to negative Respondent's repeated statements to the Employer and his employees that the picketing of the Riggs' jobsite was designed only to protect the wages and other standards.

As against the prior, isolated, and controverted incidents cited in the dissenting opinion, we find more persuasive the fact that the interviews with Farr are the only true evidence brought forward by the General Counsel to prove an organizational objective, although the dispute with Riggs extended over several months and Riggs had in its employ 35 plumbers.

Nor does the fact that several Riggs' employees joined Respondent after the picketing began prove an organizational objective in the picketing. Neither the picket signs nor the propaganda material issued at the picket line urged employees of Riggs to sign up with Respondent. There is not the slightest evidence that Respondent solicited these employees to join. Not every result of an action can be denominated an intended result, even where a person might anticipate some such action.⁴ So far as the evidence shows, Respondent would have withdrawn its pickets if Riggs had met its demand for the payment of union wages and benefits to employees even if not a single Riggs' employe had indicated interest in joining the Union. The fact that some Riggs' employees for reasons of their own decided to join the Union after the picketing began is an attendant circumstance, perhaps a by-product; it does not prove such joining an object of the picketing in the statutory sense.

On the basis of all the evidence, we are not satisfied that an object of Respondent's picketing was organization, recognition, or bargaining. Accordingly, we find that the General Counsel has not proved that Respondent violated Section 8(b) (7) (C) of the Act.

2. For the reasons stated by the Trial Examiner, we agree with his findings that Respondent Carpenters violated Section 8(b) (4) (B)

⁴ Cf. *Local 357, International Brotherhood of Teamsters, etc. (Los Angeles-Seattle Motor Express) v. N.L.R.B.*, 365 U.S. 667

with respect to the Kennedy incident, but did not violate that section of the Act with respect to the happenings at Cheney's operation. We also agree with the Trial Examiner that the violation of Section 8(b) (4) (B) by Respondent Painters is too isolated to warrant the issuance of an order.

3. Respondent Carpenters has excepted to the breadth of the Trial Examiner's recommended order which requires the Carpenters to cease and desist from encouraging employees of Kennedy, "or any other employer," to strike where an object thereof is to cause Rincon, "or any other employer," to cease doing business with Riggs. Respondent Carpenters would delete the quoted phrase "or any other employer" from the order. We believe that the Trial Examiner's order is proper and necessary to effectuate the policy of the Act. The walkout at Kennedy's did not reflect a dispute with that employer, but was a result of a generalized union policy of not working where a picket line is established at a project. We believe that it may reasonably be anticipated that the Carpenters may engage in a similar conduct against other neutral employers in like situations. We find therefore that the order as drafted is an appropriate exercise of the Board's remedial powers.⁵

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 Carpenters, its officers, agents, representatives, successors, and assigns, shall:

1. Cease and desist from inducing or encouraging any individual employed by Kennedy, or any other employer, to strike, where an object thereof is to cause Rincon, or any other employer, to cease doing business with Riggs.

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

⁵ *International Brotherhood of Electrical Workers, Local 501, et al. (Samuel Langer) v. N.L.R.B.*, 341 U.S. 694; *N.L.R.B. v. Local 810, Steel, Metals, Alloys, etc. (Fem Can Corp., et al.)*, 299 F. 2d 636 (C.A. 2)

Member Fanning perceives no warrant for the breadth of the remedial order fashioned in this case. The order enjoins the Carpenters from inducing or encouraging employees of Kennedy, "or any other employer," to strike, where an object is to cause Rincon, "or any other employer," to cease doing business with Riggs. The facts in this case do not suggest any "generalized scheme" or "proclivity" on the part of the Carpenters to cause "any other" neutral employer to refrain from doing business with Riggs. Only carpenters employed by Kennedy were induced to walk off the job, and even this cessation of work lasted for but a limited period of time. Accordingly, Member Fanning would limit the scope of the order in this case by deleting the phrase "any other employer." See his dissenting opinion in *United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local No 469, et al. (W. D. Don Thomas Construction Company)*, 130 NLRB 1289, 1291, enfd. as mod 300 F. 2d 649 (C.A. 9).

(a) Post at its business offices in the affected area, copies of the notice attached to the Intermediate Report marked "Appendix."⁶ Copies of said notice, to be furnished by the Regional Director for the Twenty-eighth Region, shall, after being duly signed by the Respondent, be posted by the Respondent immediately upon receipt thereof, and be maintained for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by said Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for the Twenty-eighth Region, in writing, within 10 days from the date of this Order, what steps have been taken to comply herewith.

MEMBERS RODGERS and LEEDOM, dissenting in part:

The majority's dismissal of the complaint against the Respondent Plumbers is based on their holding that this Respondent's picketing was not for an object proscribed by Section 8(b)(7)(C) of the Act. We disagree.

It is undisputed that Respondent Plumbers picketed the construction site where plumbing contractor Riggs' employees were at work with signs reading: "Riggs unfair to Plumbers, substandard wages and working conditions." Without more, Respondent's picketing with these signs clearly establishes, in our view, that an object and purpose thereof was to force Riggs to recognize and bargain with the Respondent as the representative of Riggs' employees. As was stated in the dissenting opinion which we issued in *Houston Building and Construction Trades Council (Claude Everett Construction Company)*, 136 NLRB 321, and as was recognized by the Board in the original *Calumet Contractors* case, 130 NLRB 78, the picketing of an employer to compel a change in wages and working conditions of its employees necessarily is picketing for the purpose and object of recognition and bargaining. Our colleagues' position on so-called area standards picketing does not, as we stated in the former case, "withstand scrutiny in the light of industrial realities." Thus, our colleagues fail to take into consideration the extent to which Respondent Plumbers' standards are applicable to this company's operations, the complications attendant upon changing a wage pattern, or the many factors that determine the pattern. It is no answer for our colleagues

⁶ The notice is amended to substitute "A Decision and Order" for "The Recommendations of a Trial Examiner," and to add at the end:

"Employees may communicate directly with the Board's Regional Office, 1015 Tijeras Street, NW., Albuquerque, New Mexico, Telephone Number, 243-3536, if they have any questions concerning this notice or compliance with its provisions"

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."

to say that the Union "did not have to negotiate to achieve its objective—establishment of standard wage and working conditions." We think it obvious that any effort on the company's part to adjust the wages and working conditions of its employees would necessarily call for recognizing and negotiating with the Plumbers Union. Otherwise, one must adopt the view, implicit in our colleagues' position, that area standards and working conditions are not negotiable and must be accepted on a take-it-or-leave-it basis where the union chooses to picket for them. This we are unwilling to accept.

Over and above the fact that Respondent Plumbers so-called area standards picketing, in and of itself, evidences a recognition and bargaining object and purpose, there is other evidence here that establishes the proscribed object and purpose. The record shows that in January 1960, shortly before the picketing began, the Plumbers business agent, Vaughn, visited the home of one Farr, who was an employee of Riggs. Vaughn discussed with Farr the advantages of joining Respondent Union. Two days later, the Plumbers business manager, Cantrell, in the company of another union member, visited Farr at Farr's home. He, too, discussed with Farr the advantage of membership in the Plumbers Union. Cantrell offered to take Farr into the Union as an apprentice. The Plumbers picketing began on January 25. Thereafter, present or former Riggs' employees made application to join the Plumbers Union. In our view, the two approaches made by the Plumbers representatives to Farr to interest him in the Union, as well as the success achieved by the Plumbers in enrolling certain of Riggs' employees in its ranks after the picketing began, amply demonstrate the proscribed organizational object and purpose of this Respondent picketing.

For the foregoing reasons, we would find that Respondent Plumbers, by its recognition and organizational picketing, violated Section 8(b) (7) (C) of the Act.

We also disagree with our colleagues' holding that Respondent Carpenters did not unlawfully induce and encourage Cheney's employees to strike in violation of Section 8(b) (4) (B). The evidence on this issue establishes that: On February 11, Cheney's two carpenter-hangers observed the Plumbers picket line and decided to telephone Carpenters business agent, Orr. Employee Howdeshell spoke to Orr, told him of the picket line, and asked whether he and the other hanger could work as they needed the money. Orr's reply was that the employees would have to make up their minds for themselves. Howdeshell asked this question two or three times; Orr made the same reply each time. Failing to obtain Orr's approval to work behind the picket line, the two hangers left the job. The issue here is whether Orr's conduct amounts to inducement and encouragement of these employees to walk off the job. We think it clear that it did. It is undisputed

that the two hangers were fearful of being fined by the Carpenters if they worked behind the picket line, and it was this fear that prompted the call to Orr. They were obviously seeking permission from Orr to continue working; and Orr so understood the purpose of the call. Orr's equivocal response each time Howdeshell asked about working was certainly calculated to leave the impression that union discipline would result if the hangers remained on the job. Orr thus unlawfully induced and encouraged the two Cheney hangers, and we would find that Respondent Carpenters thereby violated Section 8(b)(4)(B) as alleged.

Finally, we do not agree with the majority's holding that although Respondent Painters violated Section 8(b)(4)(B), no remedial order is warranted in this respect. The violation committed by this Respondent was the action of a Painters business agent calling the attention of tapers employed by Cheney to the picketing, cojoined with his statement, "Well, I can't tell you to go home, but we usually don't work behind picket lines." In view of the fact that the business agent's statement was not limited to the instant picketing, and as a work stoppage—albeit of short duration—did result, we believe that a cease-and-desist order is appropriate.

ADDENDUM

Prior to reading notices of the Board's decision in *Stan-Jay Auto Parts and Accessories Corporation*, 127 NLRB 958 which have just now come to my attention, I had not thought that the second proviso to Section 8(b)(7)(C) raised an issue in this case with respect to Respondent Plumbers' alleged violation of that section of the Act. The matter was not argued before me and I had not supposed that a proviso would be construed as defining an unfair labor practice independently of the proscription it qualified, but be that as it may, in my opinion the second proviso here in question does not fit the facts of this case, for the object of Respondent Plumbers' picketing was not to advise the public that the picketed employer did not "employ members of, or have a contract with" Respondent Plumbers, but that the picketed employer was operating under substandard wages and working conditions. Obviously, these are not identical objects for the employer could have met the union standards without employing members of, or having a contract with, Respondent Plumbers. I see no reason, therefore, in the light of the Board's decision, to change or modify my recommended dismissal of the complaint with respect to Respondent Plumbers.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

This proceeding was heard before Trial Examiner William E. Spencer at Tucson, Arizona, on April 11, 1960.

The issues litigated were whether Local Union No. 741, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO, herein called the Union or the Respondent Plumbers, violated Section 8(b)(7)(C) of the National Labor Relations Act, as amended (61 Stat. 136), herein called the Act, by its picketing of a plumbing subcontractor in Tucson, Arizona, on January 25, 1960, and various dates thereafter; and whether Local Union No. 596, Brotherhood of Painters, Decorators, and Paperhangers of America, AFL-CIO, herein called the Union or Respondent Painters, and Local Union No. 857, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, herein called the Union or Respondent Carpenters, respectively violated Section 8(b)(4)(B) of the Act, by prohibited acts of inducement in connection with the Respondent Plumbers' picketing.

At the hearing it was stipulated that a transcript of proceedings in a United States District Court involving the alleged violations by the aforementioned Respondents, be incorporated in the record of this proceeding, and this was done with the accompanying caveat by the Trial Examiner that he would not attempt to resolve issues of credibility, if any, raised in the proceeding before the district judge and involving witnesses not appearing before the Trial Examiner. A further stipulation of fact supplementing the above-mentioned record was entered by counsel at the hearing herein. Oral argument was waived and the General Counsel and the Respondents, respectively, filed briefs with the Trial Examiner on or before May 16, 1960.

Upon the aforesaid stipulated record and transcript, and upon consideration of the briefs of the parties, the Trial Examiner makes the following:

FINDINGS AND CONCLUSIONS

I. THE BUSINESS OF THE EMPLOYERS

During the calendar year 1959, Keith Riggs Plumbing and Heating Contractor, herein called Riggs, a plumbing contractor with a place of business at Mesa, Arizona, in the conduct of its operations purchased and received materials and supplies valued in excess of \$50,000 from Arizona suppliers who, in turn, received said materials and supplies directly from points outside Arizona.

Rincon Builders & Developers, Inc., herein called Rincon, a general contractor on a residential construction project at or near Tucson, Arizona, subcontracted construction work on the project to various subcontractors, among them Riggs, for certain plumbing work; Kennedy Construction Company, herein called Kennedy, for carpentry work; Cheney Drywall Company, herein called Cheney, for drywall work; and Russett Heating & Cooling, Inc., herein called Russett, for installation of heating and cooling systems. Rincon, Kennedy, Cheney, and Russett, respectively, have places of business in Arizona; each annually receives materials and supplies originating outside Arizona valued in excess of \$50,000.

Riggs, Rincon, Kennedy, Cheney, and Russett each is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

Respondents Plumbers, Painters, and Carpenters are, each of them, labor organizations within the meaning of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The facts with respect to alleged violations of Section 8(b)(7)(C)*

The Respondent Plumbers has a bargaining agreement with employers engaged in residential construction who employ if not a majority at least a very substantial number of employees engaged in the plumbing industry in the Arizona counties in which lies the Respondent's jurisdiction. This agreement establishes, *inter alia*, certain minimum wage scales for journeymen plumbers doing residential construction work.

In November 1959, Riggs commenced work as a plumbing subcontractor on a residential construction job known as the Flair Homes project, near Tucson, Arizona, within Respondent's jurisdiction. The general contractor on the job was Rincon. Riggs, who employed about 35 plumbers, was unorganized.

On occasions beginning in January 1960, the Respondent picketed Riggs at the premises where Riggs was engaged as a subcontractor to Rincon. Respondent's picket sign read:

Keith Riggs Plb.
unfair
to
Plumbers
Local 741
Sub-standard wages
&
Working Conditions

Respondent restricted its picketing to such times as Riggs' employees were on the job and though, according to Respondent's brief a charge of secondary boycott was filed against it, there is no contention made here of a violation of the secondary boycott provisions of the Act by Respondent Plumbers. The allegation is that by its picketing of Riggs the Respondent violated Section 8(b)(7)(C) of the Act, which

provides that it is an unfair labor practice for a labor organization to picket any employer where an object of the picketing is "forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective bargaining representative, unless such labor organization is currently certified as the representative of such employees (c) where such picketing has been conducted without a petition under section 9(c) being filed within a reasonable period of time not to exceed thirty days from the commencement of such picketing."

Admittedly the Respondent is not currently certified as representative of Riggs' employees and admittedly the picketing was conducted without a petition under Section 9(c) being filed within a reasonable period of time. The issue is thus narrowed to a finding on whether the picketing had as an object forcing or requiring Riggs to recognize and bargain with the Respondent, or forcing or requiring Riggs' employees to accept or select the Respondent as their bargaining representative. As the General Counsel states in his brief, it is enough if it is shown that the picketing had a proscribed object as one of its objects. The General Counsel contends that he has proved a proscribed object. The Respondent's defense is that its picketing was for informational purposes in connection with substandard wages and working conditions maintained by Riggs on the Rincon job, and that its sole object was to require Riggs to pay the Plumbers' wage scale prevailing under its contracts with employers in the area. The Respondent makes no contention that the proviso to Section 8(b)(7)(C) operates in its favor.

Incidents preceding, leading to, and occurring in connection with the picketing, insofar as they affect the issue with respect to Respondent Plumbers, follow.

In the late summer of 1959, the Respondent ascertained through a former member then employed by Riggs at a construction job at Mesa and Sierra Vista, Arizona, and by a personal interview through one of its agents with Riggs' employees on the job, the wages being paid by Riggs to certain classifications of employees, or employees who were performing work equivalent to that performed by journeymen or apprentices under union contracts.

By letter dated October 1, 1959, the Respondent advised Riggs that wages and conditions of employment maintained by Riggs were "substantially" below those established in that area for similar type of work performed by other companies engaged in the same type of operation; informed Riggs of wages and working conditions prevailing under union contracts, and coupled this with the suggestion that if Riggs desired more specific information in the matter it would be furnished him on request; and further advised Riggs:

As a matter of simple economics it is clear that we cannot maintain our present standards or improve them as long as there are employees in our industry who are receiving substantially less than that prevailing in the industry.

Therefore, unless you are willing to meet the standards prevailing in the area in the treatment of your employees, we have no choice but to publicize the fact that such employees are working for wages which are less than, and under conditions which are inferior to those prevailing in the industry, and that such situation jeopardizes the maintenance of our standards.

We desire to make it perfectly clear that in writing to you we are not suggesting in any way that you coerce or interfere with your employees in their right to join a Union or not to join a Union. That choice, either way, is theirs alone. Nor are we requesting you to negotiate with us. We are merely advising you of the situation. If we do not hear from you within five days after receipt of this letter, we shall assume that you have decided not to meet these standards.

On December 2, 1959, not having had a reply to its October 1 letter, the Respondent sent a second, identical letter to Riggs. It had some 50 to 100 mimeographed copies made of the letter. Again Riggs did not reply. Riggs had meanwhile become engaged on the Rincon or Flair Homes job as a plumbing subcontractor.

On or about January 11, 1960, Respondent's business agent, William J. Vaughn, and 2 days later Respondent's business manager, W. Joe Cantrell, visited the home of one of Riggs' employees on the Rincon job, one James Gordon Farr, and attempted to obtain from the latter his paycheck stub. Farr was offered some \$20 for the stub but refused to relinquish it. Cantrell testified, however, that he learned from Farr that his pay was \$2.50 or \$2.65 an hour; Riggs himself testified that it was \$2.65 an hour. Farr's testimony tends to deny that he gave either of these agents of the Respondent his wage scale, and there is further conflict in the testimony of Farr and the two union officers as to whether the latter solicited him to join the

Union. Admittedly, there was some discussion of the advantages of the Union's apprenticeship system. According to Farr, Vaughn told him that if he could get Farr's payroll check "they could make Mr. Riggs pay more money to his employees." Farr further testified that Vaughn told him if he came into the Union he would be offered journeyman status, whereas Cantrell offered him apprenticeship status. Concerning his response to these offers, Farr testified, "I was satisfied with Keith Riggs, if I wouldn't have been I would have gone to the union or someplace else." On Vaughn's interrogation concerning his paycheck stub, Farr testified on cross-examination:

Q. Now, Mr. Vaughn asked you about your payroll stub, did he not?

A. Yes.

Q. That was the first topic of the conversation, is that right?

A. Yes, sir, that was what he came for.

On or about January 25, 1960, and on several occasions thereafter when Riggs' employees were engaged on the job, Respondent Plumbers picketed Riggs, and thereafter distributed to Riggs' employees and other persons approaching the picket line mimeographed copies of the letter sent to Riggs dated December 2. The text of the picket sign and of the December 2 letter have been given above. As a result of the picketing a number of employees employed by subcontractors on the Rincon project left their jobs, and other employees refused to cross the picket line for delivery of materials to contractors or subcontractors on the job. The picketing ceased sometime in March pending the outcome of injunction proceedings brought by the General Counsel against the Respondent. This, of course, nowise affects the issue.

On or about February 1, in a conversation between managerial and union representatives interested in the Rincon job, when the legality of Respondent's picketing of Riggs was discussed, Cantrell, business agent of Respondent Plumbers, stated with respect to the picketing, that the only thing the Respondent was interested in was that Riggs pay the prevailing wage scale for plumbers in the area. This statement of objectives was not qualified in any way.

Since the picketing began about January 25, some seven present or former employees of Riggs have made application to join the Union, and of these some were employed by Riggs at the time the application was made.

The foregoing are all the incidents directly relating to the picketing of Riggs relied upon by the General Counsel to show an unlawful object, but he also relies upon a parallel course of action taken by the Respondent with respect to another plumbing contractor, J. F. Giddings, whose operations were also in Tucson.

In June 1959, Cantrell talked to Giddings at the latter's place of business and told him that his wage scale was below union standards and, in effect, demanded that he pay the prevailing wage. It was Cantrell's undisputed testimony that he told Giddings in this conversation that the unionization of his employees was not the Union's concern in the matter; that all the Union was interested in was a "fair wage scale." Giddings asked to be allowed to complete, without interference by the Union, present construction commitments and apparently Cantrell agreed to this. On September 2, the Respondent sent Giddings a letter with text identical to the Riggs letters. On September 7, Giddings replied, reminding the Union that it had agreed to allow him to complete outstanding commitments without interference. Sometime thereafter, the Union picketed Giddings for 1 day. The text of its picket sign was the same as that used in the picketing of Riggs, and distribution was made of the September 2 letter. Weeks after the 1-day picketing, at the instigation of a third party, Cantrell met with Giddings. In response to Giddings' questions, Cantrell explained to him the wage scale, benefits, working conditions, etc., prevailing under union contracts. At a time subsequent to this conversation, without intervening picketing or any overt action by the Respondent disclosed by this record, Giddings signed the industrywide agreement under which he recognized Respondent Plumbers as the sole bargaining representative of his employees and committed himself to requisition his employees from the Union's hiring hall. The agreement is stamped December 30, 1959, but the exact date of its execution is not thereby or in any other manner established.

B. Conclusions with respect to alleged 8(b)(7)(C) violations

There are several theories or doctrines which might be applied to the facts of this case. There is the *per se* theory based on the assumption that all picketing of an unorganized employer by a labor organization which would accept him as a signatory to a bargaining agreement, has as an object recognition and bargaining rights. It is somewhat akin to the present Board's early *per se* doctrine of inducement as

applied to ambulatory picketing, a doctrine which has never, to my knowledge, been approved in the courts and which may, or may not, have been abandoned by the Board.¹

There is also the doctrine, relied on in part by the General Counsel, that if picketing seeks to obtain results normally resolved through the process of collective bargaining, *ipso facto* it has as an object recognition and collective bargaining.²

If either of these doctrines is to control there is no need to look further here for there can be no doubt that the Respondent Union would have welcomed recognition and a contract with Riggs, and that the substandard wages and working conditions the Union sought to publicize with its picketing were matters germane to collective bargaining and, were the Respondent the bargaining representative of Riggs' employees, would constitute subject matter for negotiations between Riggs and the Respondent. At the same time it must be observed that the application of such doctrines would mean, in practical terms, that it would be impossible for a labor organization lawfully to publicize substandard wages and working conditions through picketing, except perhaps, to the limited extent granted in the proviso to Section 8(b)(7)(C).³

There is still another theory or doctrine advanced by Archibald Cox, long eminent in the field of industrial relations, that while there may be a "presumption," based on experience, that recognition is an objective of any picketing of an unorganized shop, the presumption can be dissipated by proof "that the labor conditions of which the union complains present such an immediate and substantial threat to existing union standards in other shops, through the force of competition, as to support a finding that the union has a genuine interest in compelling the improvement of the labor conditions or eliminating the competition even though it does not become the collective bargaining agent."⁴

None of the aforementioned theories purports to distinguish between immediate and ultimate objectives, engages in hair-splitting distinctions between the meaning of "object" and "purpose," or depends on legislative history for its validity. All of them, to a greater or lesser degree, would substitute experience⁵ for evidence, as in Cox's assumption of a presumption.

I incline to the view that the only presumption we can properly invoke is that the picketing was for a lawful purpose, a presumption which is consonant, I believe, with the soundest and most honored tenets of American jurisprudence, and that the Gen-

¹ See *Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local 386, et al (California Association of Employers)*, 120 NLRB 1161, footnote 6, in which the Board finds it "unnecessary" to consider evidence on the nature of the picketing which the Trial Examiner found material to the issue of inducement. Cf. *Truck Operators League of Oregon*, 122 NLRB 25, 28, in which the Board while declaring that its *per se* doctrine applies, considers precisely the same kind of evidence the Trial Examiner had found material to the issue of inducement in the *California Association* case and on the basis of such consideration concludes there was no inducement!

² Cases cited by the General Counsel on the point: *Petrie's, an Operating Division of Red Robin Stores, Inc.*, 108 NLRB 1318; *Francis Plating Co.*, 109 NLRB 35; *Haskell C. Carter, et al, d/b/a Carter Manufacturing Company*, 120 NLRB 1609. *Witwer Grocer Company (Cedar Rapids Warehouse and I O A. Foods Division)*, 111 NLRB 936; *Brotherhood of Painters, Decorators, and Paper Hangers of America, Local No. 365, AFL-CIO (Southern Florida Hotel and Motel Association (Seville Hotel, Carillon Hotel))*, 126 NLRB 683; *District Lodge No 24, International Association of Machinists, AFL-CIO (Industrial Chrome Plating Co)*, 121 NLRB 1298, 1300; *Auto Trades Council of Seattle, et al (West Seattle Dodge, Inc.)*, 125 NLRB 729. *H A Rider & Sons*, 120 NLRB 1577.

³ The proviso reads as follows: "Provided further, That nothing in this subparagraph (C) shall be construed to prohibit any picketing or other publicity for the purpose of truthfully advising the public (including consumers) that an employer does not employ members of, or have a contract with, a labor organization, unless an effect of such picketing is to induce any individual employed by any other person in the course of his employment, not to pick up, deliver or transport any goods or not to perform any services"

⁴ Law and the National Labor Policy, Monograph Series, Institute of Industrial Relations, University of California, Los Angeles, California

⁵ I.e., "expertise," that quality of know-all in a given field which magically invests the administrative judge from the moment he takes the oath, regardless of prior experience, a quality that is unpredictable, fickle, and diverse, for what is firmly established by expertise today may be dismissed tomorrow as having no firmer foundation than conjecture or mere suspicion; itself of the nature of an irrefutable presumption it begets irrefutable presumptions, a term which lost much of its lustre in the declining days of the New Deal and has since yielded ground to more commonplace expressions such as "specialized knowledge" or just plain "experience," substitutions which appear to satisfy those remonstrants of excess bureaucratization under an earlier regime

eral Counsel must therefore prove the unlawful object by evidence extrinsic to the mere occurrence of the picketing. To the extent that we would rely on experience, we should take cognizance of the fact that it is a primary objective of any labor organization to obtain and maintain for the employees it represents a high standard of wages and working conditions, and that when it has achieved such standards through collective bargaining in substantial segments of a competitive industry its position in maintaining those standards is constantly and fundamentally threatened if unorganized shops in the same competitive industry operate and continue to operate under wages and working conditions substantially below those standards. The logic of this proposition would be cognizable to anyone, in or out of the industrial field, and therefore does not depend on any particular form of experience or expertise. It follows that there are at least two courses open to a labor organization which finds itself in this situation, and proposes to do something about it. It may seek to organize the unorganized, and picket for that purpose, or it may seek, through the publicizing device of picketing, to force the unorganized shops to meet the standards it has achieved through organization, and thus to eliminate them as competitive factors. There is no more reason, based on experience, to presume, because of the naked fact of the picketing itself, an unlawful object than there is to presume a lawful one, and therefore the assumption that one acts in a lawful manner until the contrary is proved must prevail. Accordingly, we look at the evidence, extrinsic to the picketing itself, to see if the General Counsel has discharged his burden of proof.

In its initial contact with Riggs, in late August or September, the Respondent learned through interviews with Riggs' employees that the wage scale paid Riggs' employees was substantially below that paid employees performing the same or equivalent work under union contracts in the area.⁶ There is not one scintilla of evidence that the Respondent, in gathering this information, was undertaking to organize Riggs' employees other than the fact that the union agent engaged in gathering this data was charged with organizational duties. The fact remains that he did not undertake to organize Riggs' employees, and that the gathering of wage data without an immediate organizational objective was not inconsistent with his status as a union agent.

On the basis of wage data thus obtained from Riggs' employees, the Respondent dispatched its October 1 letter to Riggs. There is no evidence, extrinsic to the letter itself, that the Union was employing this letter as a means of forcing or requiring Riggs to recognize and bargain with it, or of forcing or requiring Riggs' employees to accept or designate the Respondent as their bargaining representative. Having received no reply to its October 1 letter, the Respondent sent a second identical letter to Riggs on December 2. Again, there is no evidence extrinsic to the letter itself, of recognitional objectives.

Before the picketing began on or about January 25, 1960, union agents on two occasions visited the home of a single Riggs' employee, Farr, and attempted to obtain wage data from him. The General Counsel construes these visits as establishing an organizational objective. He bases this contention on Farr's testimony that the Union's agents solicited his membership and that the Union's apprenticeship program was discussed. Farr's testimony that his membership was solicited was denied, as was his testimony that his wages were not inquired into on the second visit, and I shall not undertake to determine the issue of credibility on a stipulated record where I had no opportunity to observe the witnesses. I note, however, that Farr's own testimony, if accepted, indicates that the Union's offer of membership contemplated the severance of his employment with Riggs. Thus, he testified with respect to his response to the Union's offers, "I was satisfied with Keith Riggs, if I wouldn't have been I would have gone to the union or someplace else." It further appears from all the testimony that the union agents' primary and basic objective in seeking out Farr was to obtain wage data and that this was well understood by Farr as demonstrated by his testimony on cross-examination, "that was what he [Vaughn] came for." Farr's further testimony that Vaughn told him that by obtaining Farr's payroll check stub the Union "could make Mr. Riggs pay more money to his employees," again demonstrates the true objective of these visits.

⁶This was established to the Respondent's satisfaction and to mine. The record was somewhat confused by a comparison of journeymen and apprentice employees, and the comparative wages paid in each classification. The fact is that if an employee classified as an apprentice by the Respondent was performing work for Riggs which normally would be assigned to a journeyman plumber but received only apprentice wages, this would constitute just as much a threat to the Union's wage standards as if he were actually a journeyman according to union standards.

On consideration of this entire line of testimony, I think it would palpably be straining to reach what one considered a socially desirable objective, to infer from these two interviews with a single Riggs' employee, that the Respondent, in its picketing which followed these interviews by some 2 weeks, had a recognitional objective. The only reasonable inference which I believe can be drawn from the interviews is that the Respondent was following up on the survey it had made earlier of Riggs' wage scale, in order to ascertain, firsthand, if substandard wages were being paid by Riggs on the Rincon project. This might be construed as an excess of caution, for having obtained all the wage data it sought in its August or September investigation of the Riggs' scale, and having received no reply to either its October 1 or its December 2 letter, the Respondent would naturally and reasonably assume that Riggs had not raised his scale to that prevailing under union contracts, but I doubt that an excess of caution, should it be viewed as that, compels our censure; rather, I think the severely restrictive construction and application this Board has made of the boycott provisions of the Act—all in good faith, of course—invite what otherwise might be regarded as an excess of caution.⁷

We come now to an examination of the two Riggs letters and the picket sign. To the extent that he considers that the letters and the sign support his theory of an unlawful object, the General Counsel would have them regarded as acceptable evidence; to the extent that they do not support his theory he would have them regarded as self-serving and therefore of no probative value. There is nothing in the identical letters which is inconsistent with the Respondent's position that it sought not recognition and bargaining but a correction of substandard wage and working conditions; there is a good deal in them which is inconsistent with the General Counsel's theory of an unlawful object. The letters informed Riggs of wages and working conditions prevailing under union contracts and offered to furnish more specific information on request. It may be argued that implicitly this was a bid for recognition. But if the Union was honest in demanding that Riggs meet the wage standards set under union contracts, and this was its purpose in writing the letters, how could it expect compliance with its demands unless it informed Riggs of the specific nature of the standards that were required of him? The omission of this information would be far more damaging to the Union's position than its inclusion. And while the General Counsel would discard as self-serving the Respondent's explicit disavowal of recognition aims, were such disavowals omitted would he not be quick to seize on the omission as proof of an unlawful objective? What, we might ask, is a labor organization, which wishes to publicize substandard conditions existing in competing shops, to do to clarify its position and to remove the suspicion of an unlawful objective, if everything it says to negative an unlawful objective is to be shrugged as self-serving. Assuming, however, that the Union's disclaimers of unlawful objectives have some value in ascertaining the true object of its picketing, such disclaimers, the General Counsel argues, are inconsistent with Respondent's actual conduct of its picketing. In what way inconsistent?

The General Counsel appears to attach significance to the fact that the Respondent had the Riggs letters mimeographed and distributed among Riggs' employees and others who approached the picket line. But unless the text of the letters bore evidence of an unlawful objective, their distribution was obviously harmless, no matter in what quantity and to whom they were distributed. The Respondent was not estopped from rallying the support of Riggs' employees as well as the general public for its campaign to require Riggs to pay the union scale of wages. I think it is clear that if the Respondent's picketing objective was exactly what it says it was, the distribution of the letters was a natural and reasonable extension of that objective, and, furthermore, if, as argued in Respondent's brief, a charge of secondary boycott was pending against Respondent at the time of the distribution, the said distribution was obviously required to dispell any possible uncertainty as to the primary nature of its picketing.

Finally, we have the General Counsel's reliance on the Giddings incident and the fact that several persons, some of them employees or former employees of Riggs, joined the Union on various dates subsequent to the commencement of the picketing. With respect to the latter, if the Union's publicizing of Riggs' substandard wages and working conditions was the least bit effective it would follow as a natural consequence that Riggs' employees, or some of them, might be persuaded thereby to affiliate with the Union. This would not, in my opinion, be proof that an object of the Union's picketing was to "force or require" such affiliation. No more is the Union's letter to Giddings and 1-day picketing of Giddings proof that its object was to force or require Giddings to sign a union contract, though as a consequence of the letter and the

⁷ I.e., the *per se* theory of ambulatory picketing, the *Curtis* doctrine, etc.

picketing which followed Giddings may have been persuaded to do just that. The fact is that this record is barren of any evidence that the Union, in its letter to and picketing of Giddings, made any representations whatever to Giddings that it desired and sought recognition and a contract; such evidence as there is to the contrary. Cantrell's testimony that he told Giddings that the Union's sole interest in Giddings' operations was that he raise his wage scale to the standards prevailing in union contracts, was undisputed and, taking into account the full spectrum of industrial realities, not intrinsically unbelievable. The contract actually followed a meeting, instituted by a third party in Giddings' behalf, weeks after the 1-day picketing had ceased, and it was pursuant to Giddings' interrogation that Cantrell revealed the specific conditions prevailing under a union contract. Apparently, the General Counsel would equate results with object and because a certain result followed a certain course of action and was a consequence of it, would have it declared the object of the said action. In other words, if in avoiding collision with a speeding car I yield too much roadway and go over a cliff, my object was suicide. I think even an accomplished Freudian would be aghast at such a declaration of principle. As to the "foreseeable results" theory, it was no more foreseeable that recognition would follow as a result of the picketing than that Riggs, under the pressure of adverse publicity and threat of economic loss, would raise his wage scale to the required standard.

No doubt the argument can be made that only by recognizing the Union and executing a contract with it could Riggs have satisfied the Union's demand. That, as indicated above, is something that is susceptible to proof and we have no proof of it. Had Riggs complied with the Union's demands and raised his wage scale to the level where it was comparable to the scale paid under union contracts, and the picketing still continued, that would constitute evidence from which inferences of an unlawful object might well be drawn. I think we cannot draw the inferences without evidence to support them.⁸

On the evidence I must find, and do, that the General Counsel has not discharged his burden of proof and, accordingly, shall recommend dismissal of the complaint with respect to Respondent Plumbers.⁹

C. Allegations of 8(b)(4)(B) violations with respect to Respondent Painters

The complaint with respect to Respondent Painters involves a work stoppage by three employees of Cheney of an hour's duration, or a fraction of an hour more or less. This stoppage occurred on February 1, 1960, a day when Respondent Plumbers was picketing Riggs. Cheney, a subcontractor on the Rincon project, employed hangers and tapers. The tapers were represented by Respondent Painters, the hangers by Respondent Carpenters. Gordon Cheney, one of the three tapers involved in the work stoppage, was a brother to Bruce Cheney, the subcontractor.

While the tapers were at work, at or about 11:30 a.m., some unidentified person told them there was a picket on the job. On receiving this information, the tapers, who had just finished one operation and were about to begin another, decided to take their lunch "and see what developed." While they were eating, a business agent of Respondent Painters came by and asked them if they had seen the picket sign or were aware of the picketing. He then said, "Well, I can't tell you to go home but we don't usually work behind picket lines." With this he left them.

The three tapers then decided to go to a nearby cafe and make a telephone call to Cheney in order to "find out what we were to do." Gordon Cheney made the call. There followed a meeting between Bruce Cheney and the three tapers during which Bruce Cheney told them, in effect, that they could make up their own minds whether or not to return to their jobs. They made up their minds and returned to the job. On cross-examination, Gordon Cheney testified:

⁸ While I have been unable to agree with the General Counsel's position, I appreciate and respect the forceful and cogent way in which his arguments were presented. An issue of whether, assuming the informational character of Plumbers' picketing, a violation was nevertheless established under the proviso to Section 8(b)(7)(C), was not raised nor argued before me.

⁹ For scholarly and exhaustive analysis of those portions of the Act here applicable, and their legislative history, reference is made to the Intermediate Reports of my esteemed associates, Trial Examiners George A. Downing, Thomas F. Maher, James R. Hemingway, Arthur Leff, and A. Norman Somers, as cited and summarized in *Saturn & Sedran, Inc.*, Case No. 10-CP-2; IR-99 [136 NLRB No. 44]. For divergent viewpoints, expertly developed, see Trial Examiners Ralph Winkler's report on *Charlton Press, Inc.*, Case No. 1-CP-3, IR-56 [130 NLRB 727], and John F. Funke's report on *C. A. Blinne Construction Company*, Case No. 17-CP-2, IR-91 [130 NLRB 587].

As nearly as I can recollect, and I can't tell you which one said it, someone said that we should call Bruce because he is the employer and should consult him before we go on working, perhaps against his orders. And that is why we left, in consideration for the employer.

That is the case with respect to Respondent Painters. On the basis of the single isolated statement of its business agent, we are asked to find the violation. There may be some to question why the power of the Federal Government should be invoked in a matter that is patently inconsequential, but such questions, if asked, are not properly addressed to me. The business agent's statement, under all precedents, must be construed as encouragement and inducement of Cheney employees to engage in a work stoppage, in order to cause Cheney to put pressure on Rincon to cease doing business with Riggs. Inasmuch as the picketing of Riggs was not for recognitional objectives, the inducement by Respondent Painters' agent did not have as an object the application of pressure on Rincon to cause Riggs to recognize Respondent Plumbers. The fact that the inducement had no consequences is, under the decisions, immaterial.

On these facts and conclusions a violation of Section 8(b)(4)(B) is found, but the violation with respect to Respondent Painters resting on an isolated incident which gave rise to no prejudice to anybody, the Board's formula of the isolated incident applied to many cases involving employers is found applicable here, and, accordingly, no recommendations with respect to remedy will be made.¹⁰

D. Alleged violations of Section 8(b)(4)(B) by Respondent Carpenters

The case against Carpenters involves work stoppages during periods of Plumbers picketing of Riggs, by carpenter employees of subcontractors Kennedy and Cheney, respectively. These employees were represented by Carpenters.

On January 25, the first day of the picketing, there were some 11 carpenters employed by Kennedy on the Rincon project. They left the job after working about an hour and a half. The only explanation they gave for leaving was that they were sick. We may assume that it was knowledge or observation of Plumbers picketing of Riggs that made them sick. Rincon's general superintendent, Kenneth B. Drenske, testified that before the men left the job he saw the Union's business agent, John Orr, come onto the job and talk to them. Admittedly he was some 300 yards away when he observed this and therefore, even if his testimony is credited, he could not have heard anything that was said by Orr while the latter was on the job. Orr forcefully denied that he was present on the jobsite on this occasion. Even on the cold record—which is all I have to go on—Drenske's testimony on the point was not very convincing. After the walkout occurred, Kennedy repeatedly tried to reach Orr by telephone but failed. On the following day there was no picketing and Kennedy's carpenters had sufficiently recovered from their illness to be able to work and did so.

The mere presence of Orr on the Kennedy job, assuming he was there, and his failure throughout the day to respond to Kennedy's telephone calls, cannot, I think, constitute evidence of encouragement and inducement. Assuming Orr talked to the men, he may have been discussing any one of many phases of union business, or the weather, or politics, and he may have failed to return Kennedy's telephone calls because he did not wish to discuss the work stoppage with Kennedy. I do not know of any requirement that he should. We would have here at most, suspicion, perhaps, conjecture, maybe. But inasmuch as I can give no weight to Drenske's testimony we do not have even that slight basis on which to ground an inference of union inducement.

On February 1, the second day of the picketing, six carpenters and the carpenter foreman then working for Kennedy, again walked off the job. This occurred about 2 hours after the picketing started. They gave the Kennedy superintendent the same explanation as previously, that they "were not feeling well." The carpenter foreman was Gene Tracy, a witness for the General Counsel, albeit a reluctant one; the job steward was Norbert Strassberger, who did not testify. Among his various duties, the job steward keeps a list of the names of his crew and their standing with the Union and reports all violations of working rules to the business agent; union members are not permitted to work on the job unless their duly appointed steward is present on the job. In short a union steward is a sort of bellwether of the flock, and if he signals "go" and goes, good union members on the job do likewise. Strassberger did in fact leave the Kennedy job on February 1, though he gave as his reason that he was not feeling well. The defense is that all the other carpenters on

¹⁰ There is no evidence that this single incident of inducement is so enmeshed with unfair labor practices of other unions that it loses its isolated character.

the job had already begun their work stoppage before they knew, or could have known, that Strassberger was leaving and therefore at the time Strassberger quit he had no duties as a steward for there were no men left on the job to constitute his stewardship.

It was about 1:15 that Strassberger asked Foreman Tracy if he could leave the job to make a telephone call. Permission granted, Strassberger called the Union's attorney to inquire if Carpenter members were justified in working behind the Plumbers picket line. Regardless of what the attorney told him, he reported back to Tracy that it was not settled whether the picketing was legal and he may have told Tracy that the carpenter employees were subject to fine if they worked behind the picket line. Tracy's testimony, considered on the whole, was by no means clear on the point, or any other, for that matter. Later the same day, he told Kennedy, according to Kennedy, that the Carpenters would be fined if they worked behind a picket line. This, admittedly, was long after the walkout occurred. Precisely what Strassberger said to Tracy on this occasion is not important, for he concluded by telling Tracy that he was not "feeling well" and was going home. This would be understood by any experienced trade unionist as a signal to walk off the job. The question, then, is essentially one of sequence: did Strassberger make his call and report on it to Tracy before or after the other Kennedy employees had left the jobsite?

There are certain factors which militate to the advantage of the defense. Kennedy's employees had previously, on January 25, walked off the job because they were not feeling well because of the picketing, and there is no evidence that the job steward was in any way involved in that work stoppage. From this it may be inferred that the employees had their own ideas of what was expected of them with respect to the observance of picketing, and that it did not take a signal by the Union or any of its agents, to set off the walkout. Such an inference would be consonant with the testimony of the General Counsel's witness, Tracy, who when asked why he left the Kennedy job, replied, "Because we don't work behind the picket line, according to our Rules and Regulations it's not right for us to work behind a picket line." I also accept Tracy's testimony that the employees in question had already stopped work at the time Strassberger made his telephone call to the Union's attorney. I shall not undertake to determine the precise time at which the work stoppage occurred and when Strassberger made his call, for the testimony on the point is much too imprecise to permit such a finding. What is reasonably clear from Tracy's testimony, is that Tracy was on the job and Strassberger was on the job at the time the latter made his call for he requested permission of Tracy to leave his job in order to make the call. It may well be, as Tracy testified, that at this time the carpenters had already quit work and were packing up their tools preparatory to leaving the job, but it appears that they had not actually left the job premises when Strassberger reported back to Tracy after having made his telephone call.

Let us suppose, then, that having made his call Strassberger reported back to Tracy that he was remaining on the job: can there be any doubt that such an announcement by the job steward would have been an important factor in encouraging and inducing the carpenter employees to return to their work? It must follow that Strassberger's action in leaving the job immediately following the telephone call, was, by virtue of his position as job steward, encouragement and inducement of Kennedy employees to complete the walkout, which was already in progress at the time he made the call. The fact that lacking Strassberger's signal, as on the occasion of the January 25 picketing, they might have, and probably would have, completed their walkout on February 1, cannot serve to diminish or qualify the "inducing" element in Strassberger's action.

On the evidence I find that on February 1, 1960, the Respondent Carpenters, through its agent, Strassberger, encouraged and induced Kennedy employees to strike with an object of causing Rincon to cease doing business with Riggs, thereby violating Section 8(b)(4)(B) of the Act. I further find that it was not an object of the inducement to cause Riggs to recognize Plumbers, that not being an object of Plumbers' picketing.

It appears that Strassberger was a busy man on February 1. He also told one of Cheney's carpenter employees, on the Cheney job, that he was sick and going home and while the employee so addressed, Burke Howdeshell, testified that the expression, "I am sick, I am going home," meant to him that there was something wrong on the job, he did not succumb to the contagion of Strassberger's sickness but continued to work. It is not established that Strassberger was a union steward on the Cheney job, or had any union authority with respect to the Cheney job, and it appears from Howdeshell's testimony that while he may have known Strassberger on sight he did not know his name. There is no evidence that he knew he was

a steward on the Kennedy, or any other job. I find no evidence of union inducement in the incident.

On February 11, this same Howdeshell called Business Agent Orr, told him there was a Plumbers picket on the job, and told him: "We need the money, can we work or do we have to take off the day?" Orr replied, "I can't tell you what to do. You have to make up your mind for yourself." According to Howdeshell, he put the question to Orr two or three times in different ways and each time received the same answer. Although he had observed the picket sign he did not identify the picketing to Orr other than to state that it was a Plumbers picket. Following the conversation with Orr, Howdeshell and one other employee left the Cheney job for the rest of the day. As to why he worked on February 1 when there was picketing, but walked off the job on February 11, Howdeshell testified:

I tried to get a hold of my employer, Bruce Cheney. I don't remember whether it was before I called John Orr or afterwards, and I couldn't contact him. We thought we had better take the rest of the day off because we had heard you could get fined working behind a picket line, so we didn't know.

Admittedly, nothing was said about a fine in the conversation with Orr, nor had Howdeshell ever been fined or disciplined by the Union although he had worked on February 1 when there was picketing. It appears that on February 1, he, like Cheney's painters, returned to work after a stoppage around noon, on the assurance of Bruce Cheney that they were free to continue working if they desired to do so. It is a reasonable inference that had he been able to establish contact with his employer on February 11, no walkout would have occurred.

It is the General Counsel's position that Orr should have informed Howdeshell that Carpenters had no dispute with Cheney and that therefore there was no requirement that Cheney employees cease work because of Plumbers picketing. It is a reasonable inference that had Orr given Howdeshell such assurances the Cheney work stoppage on February 11 would not have occurred. On the other hand, Howdeshell had seen the picket sign when he called Orr and he knew, without being told, that it involved a dispute between the Plumbers and Riggs. He had not been fined or disciplined for working behind the Plumbers picket line on February 1, but assuming he was apprehensive in the matter, he still did not raise the question of fines with Orr and it is hard to see how the latter would know, intuitively, that this was troubling him. Under the Carpenters contract a member had the right, individually, to respect the picket line of a union without cause for discharge, and it was not required of Orr, I think, to instruct Howdeshell on whether or not to assert this right on February 11. It was something for Howdeshell to determine for himself and that is what Orr told him. Had Orr used this contract provision to induce or encourage Howdeshell and other Cheney employees to leave their jobs, the violation would have been clear, but Orr took an entirely neutral position in the matter. Under all the circumstances, I think it would be unduly restrictive to require more of him. Accordingly I base no findings of Section 8(b)(4)(B) violations on the Howdeshell-Orr incident.¹¹

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondents set forth in section III, above, occurring in connection with the operations of the employers set forth 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.

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

CONCLUSIONS OF LAW

1. Rincon, Riggs, Kennedy, and Cheney are, each of them, engaged in commerce within the meaning of the Act.
2. Respondents Plumbers, Painters, and Carpenters are, each of them, labor organizations within the meaning of Section 2(5) of the Act.
3. By inducing and encouraging employees of Kennedy to strike, with an object of causing Rincon through Kennedy to cease doing business with Riggs, the Respondents Painters and Carpenters, respectively, have engaged in unfair labor practices within the meaning of Section 8(b)(4)(B) of the Act.

¹¹ I am aware of authority requiring affirmative statements of union agents, under certain circumstances, in cases of secondary boycotts. The factual situations, however, are seldom precisely the same and the absence or addition of a single fact may alter the requirement. The cases cited by the General Counsel are, in my opinion, distinguishable.

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

5. Respondent Plumbers did not violate Section 8(b)(7)(C) of the Act by picketing Riggs with an object of obtaining recognition or a contract, or with an object of forcing or requiring Riggs' employees to designate Plumbers their bargaining representative.

[Recommendations omitted from publication.]

APPENDIX

NOTICE TO ALL MEMBERS OF LOCAL UNION No. 857, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO

Pursuant to the recommendations of a Trial Examiner 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 induce or encourage the employees of Kennedy Construction Company, or any other employer, not to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, where an object thereof is to force or require Kennedy, or any other employer, to cease doing business with Keith Riggs Plumbing and Heating Contractor.

LOCAL UNION No. 857, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, 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.

Whiting Milk Company and District 38, Lodge 264, International Association of Machinists, AFL-CIO, Petitioner

Whiting Milk Company and District 38, Lodge 1898, International Association of Machinists, AFL-CIO, Petitioner

Whiting Milk Company and Milk Wagon Drivers and Creamery Workers Union, Local 380, associated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. Cases Nos. 1-RC-6625, 1-RC-6626, 1-RC-6676, and 1-RC-6677. June 29, 1962

DECISION AND DIRECTION OF ELECTIONS

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, a consolidated hearing was held before M. F. Walsh, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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 Leedom and Brown].

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.