

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 222, International Union of Operating Engineers, Local No. 3, AFL-CIO, and United Brotherhood of Carpenters and Joiners of America, Local No. 184, AFL-CIO [Utah Sand and Gravel Products Corp.] and Weyher Construction Co., Inc., Okland Construction Co., Inc., and Mark B. Garff, Ryberg & Garff Construction Co., A Joint Venture. *Case No. 27-CC-119. August 4, 1964*

DECISION AND ORDER

On February 26, 1964, Trial Examiner James R. Hemingway issued his Decision in the above-entitled proceeding, finding that the Respondents International Union of Operating Engineers, Local No. 3, AFL-CIO, herein called Operating Engineers, and the United Brotherhood of Carpenters and Joiners of America, Local No. 184, AFL-CIO, herein called Carpenters, had engaged in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. The Trial Examiner also found that the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 222, herein called the Teamsters, had not engaged in certain alleged unfair labor practices alleged in the complaint and dismissed the allegations in regard thereto. Thereafter, the Charging Party and the Respondents Operating Engineers and Carpenters filed exceptions to the Trial Examiner's Decision and supporting briefs.

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 Fanning and Jenkins].

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 Trial Examiner's Decision, the exceptions, the briefs, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the following modifications.¹

¹ The record shows, contrary to the finding of the Trial Examiner, that the Charging Party contends that the Teamsters and Operating Engineers had conspired or engaged in a joint venture to effect a work stoppage and the Trial Examiner's Decision is hereby corrected in regard thereto. However, the record does not support a finding that such a conspiracy in fact existed.

As to whether Carter, an alleged picket, was an agent of the Teamsters, we find it unnecessary to resolve this issue since we find that by his conduct on July 22, 1963, he neither induced nor encouraged employees to cease working in violation of the Act.

While the Trial Examiner found that a business agent of the Operating Engineers induced and encouraged Johnson and Garner not to work on July 22, 1963, in violation of Section 8(b) (4) (i) (B), he did not, in his concluding findings, allude to conduct by an Operating Engineers' business agent vis-a-vis Barnes, Zimmer, Cude, Foster, and Bennett

The Trial Examiner found that the Carpenters had induced and encouraged employees of the Joint Venture to engage in a refusal in the course of their employment to perform services in violation of Section 8(b)(4)(i)(B) on the basis of the conduct of its Assistant Business Agent Gilman on July 19, 1963. The record shows that, on that day, three Utah Sand and Gravel transit-mix trucks arrived at the Joint Venture project, the first at 9:30 a.m., the second at 10:30 a.m., and the third at 10:40 a.m. Each truck was accompanied by one or two automobiles containing Teamsters pickets. The picketing was done on the street at a point nearest the truck, and the picket signs bore the legend that the Teamsters was on strike against Utah Sand and Gravel.

Within the compound adjoining the Joint Venture construction office and within sight of the picketing, eight carpenters were working. Upon the appearance of the pickets with the first trucks, all the carpenters in the compound stopped working and formed a group, talking among themselves. Following a telephone call from an employee who had left the premises to go home, Assistant Business Agent Gilman of the Carpenters arrived at the site. One of the carpenters asked him if there was a strike and if they could work. Gilman replied that there was definitely a picket line and it was up to the men to decide whether or not to work. It appears that at this point most of the carpenters picked up their tools and left, and it also appears that two carpenters followed Gilman to question him further.² When Gilman reached a point outside the compound, in front of the construction office, a carpenter who had followed him asked: "Don, what will the union do if we work behind the picket line?" The Trial Examiner found that Gilman credibly replied: "I don't know what in the hell they will do. It is not for me to decide. As far as I am concerned they will do nothing." The carpenters did not return to work that day.

On the basis of Gilman's responses to the above two employees, the Trial Examiner found that Gilman was indirectly suggesting the action to be followed by the employees and thereby had induced and encouraged employees not to work with an object of forcing the Joint Venture to cease doing business with Utah Sand and Gravel in violation of Section 8(b)(4)(i)(B) of the Act. We do not agree. We are of the opinion that Gilman's remarks could not reasonably be

that same day. However, because no exceptions were found to the Trial Examiner's failure to make findings here, we do not pass upon the question of whether by this conduct, the Operating Engineers further violated Section 8(b)(4)(ii)(B).

The request of the Operating Engineers for oral argument is hereby denied, as the record and briefs adequately present the issues and the positions of the parties.

² Carpenters who were not working in the compound continued to work without interruption until the whole job shut down a few hours later because of a decision of the State inspector. It is not clear whether some of the carpenters returned to work in the compound after this incident.

interpreted as inducing or encouraging the carpenters to leave the worksite or to discontinue working. To read into Gilman's remarks a hidden meaning such as found by the Trial Examiner, we feel, is to be unduly introspective and is not warranted by the nature of the remarks or the circumstances under which they were made.³ As we do not find Gilman's conduct violative of Section 8(b)(4)(i)(B) of the Act, we shall dismiss the complaint as to the Carpenters.

CONCLUSIONS OF LAW

In view of our findings above, paragraphs 4 and 7 of the Conclusions of Law as found by the Trial Examiner are deleted and the following paragraphs substituted:

4. By inducing and encouraging employees of the Joint Venture and Jarman to engage in a strike or a refusal in the course of their employment to perform services, with an object of forcing or requiring the Joint Venture to cease using concrete of, or to cease doing business with, Utah Sand and Gravel Products Corp., the Operating Engineers has engaged in unfair labor practices within the meaning of Section 8(b)(4)(i)(B) of the Act.

7. Teamsters and Carpenters have not engaged in unfair labor practices as alleged in the complaint.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the Board orders that the International Union of Operating Engineers, Local No. 3, AFL-CIO, its officers, agents, representatives, successors, and assigns, shall:

1. Cease and desist from:

(a) Engaging in, or inducing or encouraging any individual employed by the Joint Venture, by any member thereof, by Jarman, or by any other person engaged in commerce or in an industry affecting commerce within the meaning of the Act and within its territorial jurisdiction, 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 services where an object thereof is forcing or requiring the Joint Venture, any member thereof, Jarman, or any other person to cease using, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person.

³ See *Local Union No. 741, United Association of Journeymen, etc. (Keith Riggs Plumbing and Heating Contractor)*, 137 NLRB 1125, 1138-1139, 1142; *International Brotherhood of Electrical Workers, Local 313, AFL-CIO (James Julian, Inc.)*, 147 NLRB 137.

(b) Threatening, coercing, or restraining the Joint Venture, any member thereof, Jarman, or any other person engaged in commerce or in an industry affecting commerce within its territorial jurisdiction, where an object thereof is forcing or requiring the Joint Venture, any member thereof, Jarman, or any other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person.

2. Take the following affirmative action which we find will effectuate the purposes of the Act:

(a) Post at its business offices and meeting halls, copies of the attached notice marked "Appendix A."⁴ Copies of said notice, to be furnished by the Regional Director for Region 27, shall, after being duly signed by an authorized representative, be posted by the Respondent immediately upon receipt thereof, and be maintained for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to its members are customarily posted. Reasonable steps shall be taken to insure that such notices are not altered, defaced, or covered by any other material.

(b) Sign and mail sufficient copies of the said notice to the Regional Director for Region 27 for posting by the Joint Venture, by the respective members thereof, and by Jarman, they being willing, at all locations where notices by said employers to their respective employees are customarily posted.

(c) Notify the Regional Director for Region 27, in writing, within 10 days from the date of this Decision and Order, what steps it has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint, insofar as it alleges unfair labor practices by the Teamsters and Carpenters be, and it hereby is, dismissed.

⁴In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "a Decision and Order" the words "a Decree of the United States Court of Appeals, Enforcing an Order."

APPENDIX

NOTICE TO ALL MEMBERS OF INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL No. 3, AFL-CIO

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

WE WILL NOT engage in, or induce, or encourage any individual employed by Weyher Construction Co., Inc., by Okland Construction Co., Inc., or by Mark B. Garff, Ryberg & Garff Construction Co., either jointly or severally, or by Charles P. Jarman, Steel

Erector, or by any other person within our jurisdictional territory who is engaged in commerce or in an industry affecting commerce within the meaning of the National Labor Relations Act, as amended, to engage in a strike or refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, materials, articles, or commodities, or to perform any services where an object thereof is to force or require any such employer or person to cease doing business with Utah Sand and Gravel Products Corp., or with any other person.

WE WILL NOT threaten, coerce, or restrain Weyher Construction Co., Inc., Okland Construction Co., Inc., and Mark B. Garff, Ryberg & Garff Construction Co. jointly or severally, or Charles P. Jarman, Steel Erector, or any person engaged in commerce or in an industry affecting commerce within our jurisdictional territory where an object thereof is forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, or manufacturer, or to cease doing business with any other person.

INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL No. 3, AFL-CIO,

Labor Organization.

Dated _____ By _____
(Representative) (Title)

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

Employees may communicate directly with the Board's Regional Office, 609 Railway Exchange Building, 17th and Champa Streets, Denver, Colorado, Telephone No. Keystone 4-4151, Extension 513, if they have any question concerning this notice or compliance with its provisions.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

On July 23, 1963, a charge was filed by Weyher Construction Co., Inc., Okland Construction Co., Inc., and Mark B. Garff, Ryberg & Garff Construction Co. (herein collectively called the Joint Venture), and Charles P. Jarman, Steel Erector (herein called Jarman), against International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 222, International Union of Operating Engineers, Local No. 3, AFL-CIO, and United Brotherhood of Carpenters and Joiners of America, Local No. 184, AFL-CIO (herein jointly called Respondents but severally called Teamsters, Operating Engineers, or Carpenters) alleging that the Respondents had engaged in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(B) of the National Labor Relations Act, as amended, 29 U.S.C., Section 151, *et seq.*, herein called the Act. On July 26, 1963, an amended charge was filed by the members of the Joint Venture, without Jarman, but otherwise the substance of the charge was the same. Upon such amended charge a complaint was issued on August 28, 1963.

In substance, the complaint alleged that each of the Respondents had, by certain acts, induced and encouraged individuals employed by the Joint Venture to engage in a strike and refusal to perform services during the periods when a supplier of concrete was making deliveries to the Joint Venture at a certain highway viaduct construction project; that Operating Engineers had also induced and encouraged individuals employed by Jarman to engage in a strike or refusal to perform services for their employer during such periods; and that Operating Engineers and Carpenters had, by certain acts, threatened the Joint Venture with work stoppages and/or picketing for the purpose of forcing or requiring the Joint Venture to cease using, handling, or otherwise dealing in the products of, and to cease doing business with, the said supplier of concrete. Each of the Respondents duly filed an answer in which, in substance, they denied the unfair labor practices alleged in the complaint.

Pursuant to notice, a hearing was held in Salt Lake City, Utah, between October 1 and 10, 1963, before Trial Examiner James R. Hemingway. At the opening of the hearing, certain motions were made which resulted in minor amendments to the answer of the Teamsters and to the complaint. Each of the parties was represented by counsel and all participated in the hearing. At the conclusion of the hearing each of the Respondents made a motion to dismiss the complaint. Ruling thereon was reserved. I now grant the motion of Teamsters and deny the respective motions of Carpenters and Operating Engineers for the reasons hereinafter set forth. At the request of the parties a time was fixed for the filing of briefs with the Trial Examiner and such time was later extended. Within the extended period, a brief was filed by each of the five parties.

From my observation of the witnesses and upon the entire record in the case, I make the following:

FINDINGS OF FACT

I. FACTS OF COMMERCE

In early 1963, Weyher Construction Co., Inc., Okland Construction Co., Inc., and Mark B. Garff, Ryberg & Garff Construction Co. combined as a Joint Venture (herein called the Joint Venture) for the construction of an overpass for an interstate highway in Salt Lake City, where that highway crosses the Denver and Rio Grande Railroad tracks and a railroad yard. The total cost of the construction project was \$2,500,000. The Joint Venture is an employer, and its construction work was in progress during all times material herein. In the course of its construction work, the Joint Venture purchased lumber and steel piling of a total value of \$82,000, which lumber and steel piling were shipped to it from points outside the State of Utah.

Charles P. Jarman, Steel Erector (herein called Jarman), is an employer engaged as a contractor in the building and construction industry in the State of Utah. In the work on the aforesaid highway overpass construction project, the Joint Venture used Jarman's services in the installation of reinforcing steel. Jarman was actually a subcontractor for Western Rolling Mill of Tempe, Arizona, on the installation of reinforcing steel on the project. For use on the Joint Venture's construction job, Jarman leased to the Joint Venture certain manned equipment. The employees on such equipment were paid by Jarman. Jarman is, and at all times material herein has been, an employer engaged in commerce or in an industry affecting commerce among the several States.¹

II. THE LABOR ORGANIZATIONS INVOLVED

Teamsters is a labor organization representing certain employees of Utah Sand and Gravel Products Corp. (herein called Utah Sand and Gravel, a supplier of transit-mixed concrete to the Joint Venture for use on the aforesaid highway project), with whom, at all times material herein, Teamsters had a labor dispute. Teamsters did not represent employees of the Joint Venture and had no legitimate labor dispute with the Joint Venture.

Operating Engineers is a labor organization representing certain employees in the employ of Jarman and in the service of the Joint Venture during the times material hereto. It had at such time no dispute with Jarman and, except as herein found, it had no dispute with the Joint Venture.

Carpenters is a labor organization representing certain employees of the Joint Venture. At no time material hereto did Carpenters have a labor dispute with the Joint Venture or with Jarman.

¹ *International Union of Operating Engineers, Local 571 (Layne-Western Company)*, 133 NLRB 208.

III. THE UNFAIR LABOR PRACTICES

A: *Chronological history of events*

1. The labor dispute and the picketing by Teamsters

In late spring and summer of 1963, Teamsters and Operating Engineers were negotiating contracts with various employers. Although, in the past, Utah Sand and Gravel had engaged with said unions in joint negotiations along with other employers in similar business, in 1963 it was negotiating separately with Operating Engineers and Teamsters. Early in July 1963, Teamsters struck Utah Sand and Gravel, and for a time, Utah Sand and Gravel was closed completely. When, during the month of July 1963, Utah Sand and Gravel commenced operating again, Teamsters assigned pickets to accompany transit-mix cement trucks of Utah Sand and Gravel. The pickets, in automobiles, would accompany the truck to the place of delivery, then get out of their cars, produce picket signs with a legend stating that Teamsters was on strike at Utah Sand and Gravel, and picket near, or as near as possible, to the truck during the time it was making its delivery. When the truck had completed its delivery and departed, the pickets likewise would depart. It was testified that when the pickets arrived, one of them would rush to a telephone and that a short time later one or more Teamsters' or Operating Engineers' business agents would appear. This testimony was in general terms. It does not appear likely to me that the pickets arriving with each truck would do this, when they were arriving in series. It is more likely that only a picket arriving with the first truck of the day would do this. Furthermore, it does not seem likely that a telephone call for a business agent would be made when one was already present, as was the case on July 19.

Deliveries of cement to the Joint Venture highway construction job had been interrupted by the strike and closing down of Utah Sand and Gravel, but when Utah Sand and Gravel started to operate, during the Teamsters strike, without union drivers, deliveries of concrete by Utah Sand and Gravel to the Joint Venture project were resumed on July 19, 1963. Operating Engineers, at this time, although expecting to reach a contract with Utah Sand and Gravel, had not yet signed one. Because Teamsters and Operating Engineers were both interested in getting contracts with Utah Sand and Gravel, Operating Engineers cooperated with Teamsters, as hereinafter related, but was not, at this time, engaged in any actual picketing at the Joint Venture project.

2. Events of July 19, 1963

Work was being performed on the highway overpass project of the Joint Venture on the morning of July 19, 1963, and a delivery of transit-mix concrete from Utah Sand and Gravel was expected during the day.² The Joint Venture was headed by Robert Weyher, whose company was the sponsoring contractor, by Mark Garff, of the firm containing his name, and by Jack Okland of the firm bearing his name.

Early on the morning of July 19, the State inspector, having heard of an interruption in a concrete pour on another job where pickets had appeared with transit-mix trucks of Utah Sand and Gravel, asked Superintendent Wallace McPhie to pour only one column at a time.³ To learn whether or not the pour would be interrupted by the appearance of pickets, McPhie (and perhaps also Weyher) spoke with the crane operator, Raymond Barnes, a member of the Operating Engineers, and an employee of Jarman, whose crane was leased to the Joint Venture, telling Barnes that there had been trouble elsewhere with delivery of Utah Sand and Gravel con-

² Although there were other companies that delivered concrete in transit-mix trucks, Utah Sand and Gravel was the largest in the area. On July 16, 17, and 18, the Joint Venture had ordered from Gibbons and Reed, another supplier of concrete, 125 yards of cement to be delivered over a 5-hour period. However, the evidence indicated that Gibbons and Reed, because of the heavy orders resulting from the strike at Utah Sand and Gravel, were pressed to keep up deliveries to all customers and had delivered only 31 yards of concrete to the Joint Venture over a 6½-hour period. This was inadequate for requirements of the Joint Venture job and so the Joint Venture ordered concrete from Utah Sand and Gravel when the latter decided to continue operations with nonunion help.

³ Because a fast pour in one column could cause a bulge, it had been the custom to pour several columns at the same time; however, the State inspector did not wish to take a chance on cold joints in the event that deliveries of cement were interrupted by the picketing, so he required that the columns be poured one at a time.

crete and asking him what he intended to do about operating the crane during the delivery of the concrete if pickets should appear. Barnes told McPhie that he would operate the crane unless advised by his business agent not to do so.⁴

Three Utah Sand and Gravel transit-mix trucks arrived at the Joint Venture project that morning, the first at 9:30, the second at 10:30, and the third at 10:40 a.m. Each truck was accompanied by one or two automobiles containing Teamster pickets. As soon as the truck turned into the Joint Venture area, the pickets jumped out of their cars with picket signs and commenced to picket. At first they attempted to picket alongside the truck. However, after Weyher had asked them not to come on railroad property but to picket the street, the pickets thereafter remained on the street, at a point nearest the truck when carrying their signs. The signs bore a legend that the Teamsters were on strike at Utah Sand and Gravel.

In a compound adjoining the Joint Venture construction office, about eight carpenters were working. These were employees of the Joint Venture and were members of the Carpenters or an affiliated local. Other carpenters worked at various other locations about the project as much as a city block away from the compound. These, too, were members of Carpenters or of an affiliated local.

Within the compound, upon the appearance of the pickets, Kendell Fisher, the sawman for the Joint Venture, and an active and long-time member of the Carpenters, cut off the power that ran his saw. Foreman Joseph Bordelon, also a long-time member of the Carpenters, then indicated that he was quitting. Bordelon pulled the cord plug on an electric drill, disconnecting it and causing another carpenter, Delbert Chadwick, who was using the drill, to cease working.⁵ No contention was made that Bordelon was acting as an agent for the Carpenters in this respect, and a suspicion that Fisher was a steward was unsupported by evidence. Chadwick testified credibly that Bordelon told him, "This is it. There's a strike on." All the carpenters in the compound stopped working and commenced to mill about, talking among themselves as to what to do. Some had doubt as to whether or not they would be subject to discipline or penalty by the Carpenters if they continued to work.⁶

When Superintendent McPhie noticed the carpenters gathered in the compound and not working, he went there and spoke with them, telling them that the pickets constituted a secondary boycott, that it was just a picket line against the truck and not against the Joint Venture. He asked Bordelon not to stop his men but to keep on working until the Carpenters' business agent came. He also suggested that Bordelon telephone the business agent. Bordelon left to make a telephone call. Some of the carpenters may have returned to work, but Fisher left the premises completely and did not return that day. Others just stood about in the compound waiting for the business agent.

From a telephone in his home, Fisher telephoned the Carpenters' hall and told Assistant Business Agent Don Gilman of the trouble at Joint Venture project.⁷ Following Fisher's telephone call, Gilman got in his car and drove to the site of the work, arriving there about 10:30 a.m.

McPhie met Gilman as he arrived on the site and walked to the compound with him but left him with the employees there before Gilman spoke to any of them.

⁴This finding is based on McPhie's testimony. Barnes testified that he told McPhie he would pour concrete from any trucks of Utah Sand and Gravel "as long as they were union." However, I find that this testimony referred to a subsequent conversation held between McPhie and Barnes after Barnes had been given instructions by a business agent and not to the one herein related.

⁵Chadwick testified that the bit he was using in his drill belonged to Bordelon. Since Bordelon had already indicated that he was quitting, he apparently was demanding a return of his bit so that he could leave.

⁶Okland, one of the Joint Venture members, testified that Fisher told the men they were subject to a \$150 fine if they worked behind a picket line, but his testimony was obviously hearsay since Okland was not at the project until later that day. Actually, the Carpenters' constitution provided for disciplinary action against members only for crossing a picket line of the Carpenters. Apparently, the carpenters in the compound did not all know this.

⁷Bordelon had already telephoned, but had merely left a message because no business agent was there when he called. The secretary told Gilman when he came in about 10 a.m. that a call had come from the "Weyher job." Weyher's name apparently was used because he was the sponsoring contractor.

McPhe then went to Garff to let him know that the business agent of the Carpenters was there. As Gilman entered the compound, the carpenters gathered around him and he spoke briefly with them before Garff came up. It is not entirely clear as to what or how much Gilman said in the presence of the carpenters after McPhe left and before Garff arrived and how much he said after he was in the presence of Garff. The witnesses were in considerable conflict as to exactly what Gilman did say. In attempting to reconstruct this incident, I have taken into account that there was a great deal of confusion, with more than one man attempting to talk at the same time, and I have taken into consideration the fact that the extensive discussions both then and later, which included considerable hearsay in the retelling of incidents, could have affected the memory of the witnesses and caused their memories to blend hearsay with fact. It is also apparent that the entire group did not remain together during the entire time that Gilman was present, especially after he left the compound and talked with one or two outside. When Gilman first came, one of the carpenters asked him if there was a strike and if they could work. Gilman said that there was definitely a picket line (no one quoted him as saying that there was no strike). I judge that the carpenters were seeking information as to the nature of the picketing to determine whether or not it was the type which, traditionally, other unions respected. With regard to whether or not they could work, Gilman said that it was up to them to decide whether or not to work.

At this point, Garff entered the compound and asked the men what was going on and what they were going to do. One of them remarked that they were going to talk to the business agent. Garff told the men that they would either have to work or go home, as he was not going to pay them to stand around. Gilman and Garff walked out of the compound. A couple of the carpenters followed Gilman to question him further. The evidence is not clear as to how many remained to speak with Gilman, but from the failure of the carpenters who testified to remember anything more, I judge that most of them remained in the compound, picked up their tools and left. Carpenters who were not working in the compound continued to work without interruption until the whole job shut down that noon.

When Gilman had reached a point outside the compound, in front of the construction office, Ivan Goodrich, a member of an affiliate of the Carpenters, and a permit man on the job, who was one of those who had followed Gilman, asked Gilman, according to the latter, "Don, what will the union do if we work behind the picket line?" Gilman testified that he replied: "I don't know what in the hell they will do. It is not for me to decide. As far as I am concerned they will do nothing." The testimony of Goodrich and of Ted Sparks, another permit man who had followed Gilman out of the compound, was that they had asked Gilman if they should work, that his reply was they could if they wanted to, that they had then asked if "the union" would fine them if they worked,⁸ and that Gilman had replied, "Try it" or "Try us."⁹ It appeared to me that Goodrich and Sparks were blending the conversation which took place inside the compound with that which took place outside and I am of the impression that they might have been commingling what they heard in the compound from other carpenters with what they heard Gilman say. Gilman impressed me as a sincere and honest witness. I accept his version of the conversation. Gilman left the premises following his reply to Goodrich and Sparks. The carpenters in the compound discontinued working. Those working elsewhere on the project did not stop that day.¹⁰

⁸ Goodrich testified that he asked Gilman, "How much are you going to fine us if we are wrong?" that Gilman answered, "You are putting me on the spot," that Sparks asked "Would [or could] you fine us?" and that Gilman then answered, "Try it" or "Try us." Sparks' testimony, parts of which were seemingly fragmentary, was similar in part

⁹ Garff gave still another version of this colloquy, but since he was, at the time, some 8 feet away, and may not have heard clearly, I am inclined to believe that he was not in a position to quote Gilman accurately. This is not intended to be a reflection upon the honesty of Garff as a witness.

¹⁰ From this, the Charging Party reasons that, even without proof of Gilman's actual words, it is inferable that Gilman influenced the carpenters in the compound to stop working. There was no evidence that the carpenters at other locations on the project were aware of the presence of pickets. One, who was asked, testified that he was down in a deep hole working and did not see the pickets. There is, therefore, no reason to inter that carpenters elsewhere on the project would have continued to work if they had been aware of the presence of the pickets.

About noon that Friday, because of a dispute over the way in which concrete should be poured in the columns, brought about because of the uncertainties of deliveries in the face of picketing, the State inspector pulled his men off the job. This required that the work stop. The Joint Venture therefore sent all of its employees home.

Sometime during the morning of July 19, 1963,¹¹ Lake Austin, a business agent for the Operating Engineers, accompanied by an unidentified business agent of the Teamsters, spoke with Weyher, whose firm was the sponsoring contractor and who was chief executive officer of the Joint Venture. According to Weyher (Austin and the Teamsters representative did not testify), Austin, in the presence of Garff and the Teamsters representative, asked Weyher's permission to go on the construction site to speak with the crane operator, who, at the time, was assisting with the concrete pour from the picketed truck. Weyher told Austin that the Joint Venture had been requested by the railroad not to permit union activity on the railroad property and he could not, therefore, give the permission requested. Austin then asked Weyher to step across the street with him to a point where they could converse in private. Weyher did as requested. Austin then asked Weyher if he (or the Joint Venture) "would not cooperate with them" (Operating Engineers and Teamsters) and agree not to take any Utah Sand and Gravel concrete for a couple of days because "if you will hold out for a couple of days . . . we can break the back of Utah Sand and we will have all of this settled and we will all be able to go back to work." Weyher declined to cancel orders for concrete. Austin then requested permission to use the telephone at the job office and Weyher granted it.¹² While Austin was using the telephone, Weyher testified, the man identified by Weyher as a Teamsters business agent, whose name he testified he had forgotten, asked Weyher to cooperate, using substantially the same words as those used by Austin.

Later that morning, Austin, speaking again to Weyher, commented (as quoted by Weyher) with respect to the crane operator: "I can't understand that man working over there behind that Teamster picket. This is contrary to what they ought to do."¹³

3. The events of July 22, 1963

The Joint Venture resumed work on Monday morning, July 22, and early that day, John Bonner, a business agent for the Carpenters, was at the job office to speak with Superintendent McPhie. In the course of their conversation concerning the routine to be followed in hiring men under the terms of a contract recently concluded by the Carpenters with Associated General Contractors, Bonner and McPhie entered the compound where the carpenters were working. Following a discussion concerning the propriety of the hiring of certain carpenters working there, Bonner and McPhie left the compound and returned to the job office, at which point Oakland entered the conversation and remarked that the Teamsters' picketing of concrete trucks was a secondary boycott. Bonner commented that a legal decision had approved ambulatory picketing. About this time Weyher approached. He testified that he asked Bonner a question and received from Bonner a reply. The evidence is conflicting as to precisely what was said. On direct examination Weyher testified that he asked Bonner if he were instructing the men to leave and that Bonner had replied that he was not instructing them to do anything but was advising them that it was improper for a union man to work behind a picket line. On cross-examination Weyher testified that he asked Bonner "if he was instructing the men to leave," and that Bonner had said that the men were not supposed to work behind a picket line. According to the last testimony, it does not appear that Bonner said that he had given the men any instruction. Oakland testified that Weyher had asked Bonner what he had told his men about crossing a picket line when the

¹¹ From the testimony of Weyher and Garff, the only witnesses to testify to the incidents about to be related, it is difficult to determine the exact time of day when the events took place, but on all the evidence I conclude and find that one conversation took place soon after the picketing commenced and that another one occurred somewhat later but before 11:40 a.m.

¹² According to Garff, he left the conversation at this point to go over to speak with Carpenters Business Agent Gilman and the carpenters in the compound.

¹³ This conversation presumably took place before the State inspector took his men off the job and the Joint Venture had to close down operations. The crane operator, who was an employee of Jarman, continued to work for Jarman that afternoon, but presumably no pickets were present while he was doing so.

ready-mix trucks were there and that Bonner had answered, "I just told them if it was me I wouldn't work behind a picket line." McPhie, in his testimony, omitted reference to Weyher's presence and testified that Okland asked Bonner some questions and "we got to referring about this strike and Mr. Bonner made the statement that he would not work behind those picket lines and he would not request his men to do it." According to this testimony, likewise, Bonner did not say that he had instructed the men to do anything or even told them his own feeling in the matter. Bonner himself testified at length concerning his conversation with McPhie and Okland. He acknowledged that Weyher came up to the group during the conversation, but he denied Weyher's testimony with respect to what he allegedly had told the carpenters that it was improper for a union man to work behind a picket line—and he denied that he had stated that he would not work behind a picket line and would not expect his men to do so. On the evidence, it is apparent that Bonner, accompanied by McPhie, had no opportunity to give the carpenters any instructions or advice while he was on the job that morning, and I conclude that he did not do so. Under the circumstances, it seems improbable that Bonner would have made a statement that he had instructed or advised his men not to work while the pickets were present, and I find that he did not do so. It is obvious that memories were not too sharp about this conversation.¹⁴ But even if Bonner had said (not in the presence of any rank-and-file employee) that he would not work behind a picket line and would not expect his men to do so, I should find this no violation of the Act. It is, therefore, unnecessary to resolve the credibility issue any further than I have.

Bonner quoted himself as saying, just after the aforementioned reference to the picketing and the legality of it, that "if the dissension on this job wasn't smoothed over or some of the dissension cut out that there was going to be innocent parties hurt." Bonner testified that he told Okland that he was not referring to him. Bonner explained his reference to "dissension" as referring to an incident involving McPhie and a carpenter discharged by McPhie. The carpenter had reported to Bonner that McPhie had struck him. Bonner had not heard that McPhie had discharged that carpenter for coming on the job drunk. Apparently, both the General Counsel and the Charging Party accepted Bonner's explanation of his allusion to dissension, for neither contended in his brief that Bonner was referring to anything else, and I accept Bonner's explanation.

At 11:30 a.m. that Monday, the first of 10 deliveries of concrete was made by Utah Sand and Gravel trucks. As each truck arrived, pickets would arrive simultaneously and would begin picketing and continue as long as the truck remained. One truck was delivering its load of concrete at Jarman's crane. After a few buckets of concrete had been poured by use of this crane, Stan Garber, a business agent for the Operating Engineers, went to the crane without having sought permission to speak with the operator, climbed up on it, and had a conversation with Raymond Barnes, the operator of the crane. According to Barnes, Garber said, "Ray, we are having trouble with Utah Sand and Gravel. We have got to honor those picket lines. The best thing we can do is shut the machine off." Garber handed his business card to Barnes. Thereupon Barnes gave his oiler, Jerry Zimmerman, the signal to shut down. Zimmerman shut off the motor on the truck portion of the crane. Garff, standing nearby, asked Garber if he was there to shut the job down. Garber answered that he had given instructions to the crane operator to cease work and get off the job. Before Barnes could shut off the motor that operated the boom, Garff climbed up on the crane and told Barnes not to shut the motor off, as the crane was under lease to the Joint Venture. Then Garff asked Barnes if he was going to finish his pour. Barnes replied that he was through. Garff asked on whose orders. Barnes pointed to Garber and handed Garff the card which Garber had given him. Barnes then picked up his lunch box, climbed down, and left with his oiler, Zimmerman. Garff took the seat off the crane so that no one else could occupy it and remained there until a supervisor, familiar with the operation of the crane, could be called off another construction job to operate the crane. By

¹⁴ It appeared to me at the hearing that Weyher's memory was in a state of some confusion. So much had transpired during the latter part of July, some of which Weyher had seen or heard firsthand, some of which he had learned by reports or hearsay, that I believe all the impressions on his mind tended to become confused, so that it was difficult or impossible for him, in attempting to recall, to isolate his firsthand experiences or to recall them accurately. I have scrutinized his testimony carefully and have, therefore, relied on his testimony only when, in the light of all the evidence, it appeared to be consistent with all the facts.

using this supervisor, the Joint Venture was able to finish the pour of concrete delivered by the 10 trucks, but not until the last transit-mix truck finished its delivery at 4:35 p.m.¹⁵

After Barnes left the crane, he went to Jarman's office on the grounds and shortly after 12 o'clock, while Barnes was eating his lunch, Business Agent Austin (who had, on July 19, requested Weyher to discontinue taking Utah Sand and Gravel concrete) approached Barnes and told him substantially the same thing that Garber had just told him—that when the Utah Sand and Gravel trucks were on the job, he should shut his machine down, and when they left he should return to work. Austin similarly instructed Zimmerman and other Operating Engineers, including Bernard Cude, a forklift operator for the Joint Venture, and Burl Foster, a "cat operator." According to Cude, while he was on the job just before noon, Austin, in the street, gave Cude the "high sign." Cude thereupon shut his machine down and went over to Austin. There Austin instructed Cude and Foster. Following Austin's instruction to Cude and Foster, Weyher sought to get these employees to work by telling them that the attorney for the Joint Venture had told him that the picketing constituted a secondary boycott. However, Cude and Foster said that they had been instructed by their business agent not to work as long as there were pickets around, whether or not the pickets were those of the Operating Engineers, and thereafter they did not do so.

Royal Johnson, a piledriver operator and a member of Operating Engineers, was on the afternoon shift. At the end of his lunch period, 4:30 p.m., on July 22, Johnson and his oiler, Robert Garner, also a member of the Operating Engineers, returned to start working. At this moment, Austin went to Joseph Shepherd, the pile butt supervisor for the Joint Venture, and told Shepherd that he would have to pull the operator and oiler off the crane while they were pouring concrete. Johnson and Garner thereupon went out into the street to speak with Austin, and Austin told them not to work while pickets were present.¹⁶ Before Austin so instructed them, Johnson and Garner had worked even when pickets were present, but thereafter they ceased working whenever such pickets were there. Because the last truck left about 4:35 p.m. and because the pickets usually left at the same time, Johnson and Garner apparently were off the job at this time for about 5 minutes.

During the middle of the day on July 22, while pickets were picketing the trucks of Utah Sand and Gravel, a number of carpenters were sitting under a tree, waiting for the pickets to leave.¹⁷ Carpenters' Business Agent Bonner approached them and told them to "stick around" and be available for work when the pickets left. He testified that he gave them such instructions to keep them from going home, as Fisher had done the previous Friday.

With the arrival of one of the Utah Sand and Gravel trucks that day, an automobile containing two men pulled into the street at the west end of the project. This street was closed to traffic, but it was passable. Two men jumped out of this automobile, one with a picket sign. The other, a man later identified as one Carter, crossed the street toward the construction work and approached an A-frame truck where a labor foreman, Douglas Phillips, and a laborer, Adolph Padilla, were working. The A-frame truck was at a point about 30 to 50 feet from the street. Carter exchanged words with Padilla. Neither Carter nor Padilla testified, and there is no evidence of precisely what was said. Phillips, who testified, said that because of the noise of the motor, all he could hear Carter say was, ". . . they have all pulled off." While Carter was still standing there, Weyher approached and told Carter to leave and picket by the truck. According to Weyher, Carter replied that he could do anything he wanted to "and he objected to scabs working behind

¹⁵ Although some of the carpenters testified that they returned to work after the last truck left, those on the day shift would have had to work overtime to continue after 4:35 p.m., so I question the accuracy of the memory of certain of the witnesses about this.

¹⁶ Johnson's testimony made it appear that he was seeking counsel from Austin. Because the evidence as a whole makes it clear that Austin was taking upon himself the responsibility of governing the conduct of members of his organization, I do not give weight to Johnson's testimony about seeking counsel, particularly since the words indicating that Johnson was seeking counsel were virtually put in Johnson's mouth by counsel for the Operating Engineers.

¹⁷ Some of them testified that they were eating their lunch. From this I cannot assume that the time was their normal lunch period of 12 to 12:30 p.m. The men had left work at 11:30 a.m. when the trucks began arriving and did not return to work until the last one had left. They testified that they returned to work when the trucks left at "about 2:00 p.m." However, the last truck did not leave until 4:35 p.m.

the picket." When Carter refused to leave, Weyher seized him and sought to push him back. A scuffle ensued, but workmen separated Weyher and Carter. Weyher testified that Carter carried a picket sign but other witnesses testified that he did not carry one. I find that he did not carry one.

4. Events of July 23 and 25¹⁸

Six concrete deliveries were made by trucks of Utah Sand and Gravel between 12:30 and 3:55 p.m. on July 23. At a time when cement trucks and pickets were present that afternoon, James Bennett, a laborer for the Joint Venture (but who was a member of an affiliated local of Operating Engineers), was running a boom truck. Business Agent Austin of the Operating Engineers went to Bennett and told him that he would have to get off the truck—that he had enough trouble. Bennett went to Superintendent McPhie and told him that "that man," indicating Austin, had told him to get off the truck. McPhie thereupon went to Austin and asked if he had told Bennett to get off the truck. Austin replied that he had. McPhie told Austin that it was necessary to use the truck to lower steel cages into the shells where concrete was going to be poured because it was too dangerous for the men to do it by themselves, and he requested Austin to put an operator on the truck. Austin, as quoted by McPhie, replied that under no circumstances would he put an operator on that piece of equipment as long as Utah Sand and Gravel trucks were there. McPhie commented that the picketing was illegal. Austin told McPhie that he had instructions from the San Francisco office of the Operating Engineers not to have men operate any piece of equipment as long as Utah Sand and Gravel was on the job [i.e., construction site] and to back the Teamsters all the way. As a result of Austin's action, Superintendent McPhie himself had to operate the boom truck while concrete was being delivered.

On July 25 production proceeded without interruption until about 5 o'clock, in the middle of the afternoon shift, at which time the first transit-mix truck arrived. The employees on the project quit working when the pickets appeared. Soon thereafter, the Joint Venture dismissed its employees for the rest of the day because it was expected that trucks would be there during the rest of the shift,¹⁹ so it was not expected that the employees would work anyway. No evidence was offered concerning the use of men who would assist with the pour that evening, but presumably if help was needed, the Joint Venture used supervisors or employees not subject to union influence. According to Superintendent McPhie no columns were poured between July 23 and 26; only pilings, on which no crane was needed, were poured.

5. Events of July 26 and thereafter

Negotiations between Operating Engineers and A.G.C., deferred from late June because contracts with other labor organizations had prior expiration dates, were resumed on the afternoon of July 25.²⁰ That evening, after adjournment of the negotiation meeting, the Operating Engineers, according to Paul Edgecombe, its international president, instructed its business agents to take its latest contract proposal to certain contractor members of A.G.C. for signature and to picket them if they did not sign. Since only Weyher was picketed the next day, I doubt that instructions were given at that time to treat others than the Joint Venture the same way. There were enough business agents to carry out such instructions in full had they been given, but admittedly no one else was picketed by Operating Engineers until days later. Edgecombe testified that this picketing was to be done only with "contractors who had key jobs who would bring pressure upon the [A.G.C.] Negotiating Committee. . . ." It is noteworthy that none of the members of the A.G.C. negotiating committee (most of whom were contractors) was included in such instructions. While I do not question Edgecombe's testimony as to the instructions

¹⁸ July 24 was a legal holiday in Utah and no work was done that day at the project.

¹⁹ Eighteen truckloads of concrete were delivered by Utah Sand and Gravel between 5 and 8.45 p.m. on July 25.

²⁰ Operating Engineers contended that meanwhile there was an understanding with A.G.C. that the expired contract would be continued until a new one was negotiated. This contention was not supported by the evidence. I find that there was no understanding that all terms of the expired contract would be given effect. Customary practices, including rates of pay and contributions to the health and welfare funds of various unions, continued to be paid as before contract expiration, but the Operating Engineers, itself, did not regard all provisions to be in effect—particularly not the "no-strike clause" of the expired contract.

given insofar as they pertain to the Joint Venture, I do not credit his testimony concerning the generality of these instructions. The business agents receiving these instructions included Merl Bowman (who "works out of Oregon"),²¹ Lake Austin, Vance Abbott, Stan Garber, and Jay Neeley.

On the morning of July 26, Weyher was on the highway project when he received notice from his company's office that Bowman was there to see him. Weyher arranged to have Bowman meet him at the construction site, and he was in the office of the Joint Venture talking with Okland when Bowman arrived. Weyher stepped outside to speak with Bowman, who had with him a man whose identity Weyher did not recall. Bowman handed Weyher a form of contract and asked him to sign it for his company, saying that, if the terms of the contract with A G C should, when negotiated, differ from the one Weyher was asked to sign, then the terms would be changed to conform to the A G C contract. Neither Garff nor Okland, the other members of the Joint Venture, were presented with similar contracts. Weyher told Bowman that he could not sign, because his company had given its bargaining rights to A G C, who were then in negotiations, and that he could not sign a separate contract until they had given up bargaining on a joint basis. Bowman told Weyher that he was sorry that Weyher would not sign and that he had been instructed to tell him that if he did not sign, there would be pickets on the Joint Venture job by noon. Weyher asked Okland to step out of the office and Okland did so. Weyher explained to Okland that the Operating Engineers was asking him to sign a separate contract and that he had told Bowman that he could not legally or morally sign it, but that the Operating Engineers "are going to strike us" if it was not signed. Okland said, "We can't sign it." Bowman said that he had been asked only to get Weyher to sign—not Okland.²² During both the morning and afternoon of July 26, Operating Engineers was in bargaining sessions with A G C. At noon on July 26, Bowman reappeared at the Joint Venture project and again asked Weyher to sign. Weyher again refused to do so. Bowman, according to Weyher, said that pickets would be there by 2 p m.

Weyher testified that, before the Operating Engineers' pickets arrived, he again spoke with Bowman and then with Business Agent Neeley, who arrived about the same time. On direct examination, Weyher quoted Bowman as saying on this occasion, "We wouldn't have interfered with you fellows if we had known that you were using Gibbons and Reed's concrete." Later in his testimony, Weyher explained, "We had concrete scheduled from Gibbons and Reed. Mr Bowman appeared and threatened to have pickets on the [job] by noon, and we [management] discussed whether or not it was advisable to pour concrete on that day if the job was in fact going to be picketed, and inasmuch as we were afraid of [losing] some more structure because of getting it half finished and not having an operator we decided not to take any concrete. That's the way it turned out, so we canceled our order with Gibbons and Reed, and later that afternoon when the—I believe it was that afternoon—Operating Engineers said, 'Well, if we had known it was Gibbons and Reed's concrete we wouldn't have picketed.'" Weyher also testified that, between the time of his conversation with Bowman and the time that the picketing by Operating Engineers started, he had a conversation with Business Agent Neeley in which he asked Neeley why Operating Engineers was putting on pickets. He testified that Neeley answered "Well, there are two reasons. One reason is that we want you to sign this separate agreement with the Operating Engineers, and the second reason is that one way or the other we are going to break the back of Utah Sand and Gravel and get this Utah Sand Gravel stopped from coming onto this job." Neither Neeley nor Bowman was called as a witness and no reason for failure to call them was given. I could, therefore, credit Weyher's undenied testimony. However, although I infer from all the evidence that Operating Engineers' primary reason for picketing the Joint Venture was not to get a separate contract from Weyher but was to increase pressure on the Joint Venture (known to the Respondents, apparently, as "The Weyher job") to discontinue taking concrete from Utah Sand and Gravel, I find it difficult to believe that Weyher had the conversation with Bowman on that day at all, and uncertainty as to the occurrence of this conversation leads me to doubt that the one with Neeley occurred at that time.²³ Weyher's testimony

²¹ Bowman's name is sometimes spelled "Boman" in the record.

²² Bowman did not testify. The above findings are based on the testimony of Weyher and Okland.

²³ It is possible that conversations such as these took place later in July or early August, but, on the testimony, there is no basis for finding that this was a fact.

appeared confused in respect to these conversations. Furthermore, his testimony that he and his joint venturers had discussed whether or not it was advisable to pour concrete on that day if the job was, in fact, going to be picketed and that they had decided not to take "any concrete," because they would not have an operator and they were afraid of losing more structures by getting them half poured does not square with the facts, for despite the Operating Engineers' pickets on July 26, the Joint Venture did receive delivery of six truckloads of concrete from Utah Sand and Gravel between 1 and 5:25 p.m. So far as appears, no attempt was made to cancel the order from Utah Sand and Gravel. If the Joint Venture had ordered concrete from Gibbons and Reed for delivery that day, there would be no reason for canceling that order while still accepting Utah Sand and Gravel concrete in the face of the picketing. It is more likely that the Joint Venture members discussed the practicality of operating the following week by taking concrete from other suppliers than Utah Sand and Gravel and decided against it because of the uncertainty of getting an adequate supply of concrete from the smaller suppliers.

Although I do not find that Bowman or Neeley made the statements last quoted, I find ample support for the inference that a desire for a separate contract from Weyher was not the primary object of the picketing by Operating Engineers but that the primary object was to compel the Joint Venture to discontinue taking its supply of concrete from Utah Sand and Gravel. This object was evident from the incident on July 19, when Austin asked Weyher to help by not taking Utah Sand and Gravel concrete and from events during the following week when business agents of Operating Engineers departed from any appearance of neutrality and openly required employees of the Joint Venture to discontinue operating their machines. The request for a separate contract from Weyher, without a request for similar contracts from other members of A.G.C. at the same time (or at all, so far as appears²⁴) and without putting any separate pressure on members of the A.G.C. contract negotiating committee members, most of whom were building contractors, has all the appearances of pretense. A separate contract from Weyher does not, of itself, appear to have been important enough a reason for picketing him and putting members of Operating Engineers out of a job with the Joint Venture when negotiations with A.G.C. had only just begun. Although I find it unnecessary to decide primary motivation, I find that a more logical reason for the demand for a separate contract from Weyher was to lay the foundation for primary, as distinguished from secondary, action and thus avoid possible legal consequences of secondary boycotting. It is, of course, possible that Weyher was selected as the object of picketing because of his physical contact with a man who came with a picket, if he was not a picket himself.²⁵

Operating Engineers, as threatened by Bowman, did post pickets on the Joint Venture viaduct job on the afternoon of July 26. The picket signs stated that Operating Engineers were on strike against Weyher Construction Company. Pickets with the same type of signs were also posted on another job (Kennecott Building), on which the Garff and Okland firms were the general contractor and Weyher was a subcontractor. After July 26 the Joint Venture closed down completely until A.G.C. and Operating Engineers reached agreement early on August 2. Operating Engineers, on that day, removed the pickets, and the Joint Venture resumed construction, but the Joint Venture did not order any more concrete from Utah Sand and Gravel until after that company had reached agreement with Teamsters and Operating Engineers on August 7. I make no finding as to whether or not the pickets would have been removed if the Joint Venture had used Utah Sand and Gravel concrete between August 2 and 7, 1963.

²⁴ Only two other contractors were identified as having been picketed later on but before August 2, when Operating Engineers reached agreement with A.G.C. on the terms of a contract. There was hearsay evidence that the firm of Talboe and Harlin was picketed late in July, and it was stipulated that picketing of Tiago Construction Company by Operating Engineers began on August 1 and ended on August 2 when the A.G.C. contract negotiations were completed. I make no finding as to the reason for such picketing. There was no evidence that either Tiago or Talboe and Harlin was asked to sign a separate contract.

²⁵ Carpenters Business Agent Bonner quoted Operating Engineers Business Agent Austin, in response to Bonner's question concerning the reason for the presence of a policeman at the site of the project on July 22, as saying that Weyher had just "worked over" a Teamsters picket.

B. Conclusions

1. Regarding activities of Teamsters

The General Counsel does not contend that the ambulatory picketing by the Teamsters of transit-mix trucks of Utah Sand and Gravel was in violation of the Act. The Charging Party does argue that because employees driving concrete trucks of Utah Sand and Gravel moved in and out of that company's permanent location several times a day, there was no reason to engage in ambulatory picketing. This argument is based on the doctrine of the *Washington Coca Cola* decision.²⁶ Had that decision remained unmodified, the Charging Party's argument might have prevailed.²⁷ However, the rigid rule of that decision has been rejected by court decisions and has been modified by the Board itself.²⁸ As the Board stated in the *Brown Transport* case:²⁹

We recognize that the *Moore Dry Dock* standards "are not to be applied on an indiscriminate 'per se' basis" [citing *Plausche Electric*], and that mere outward compliance with such standards may not be used as a shield where independent proof exists that the picketing was actually aimed at achieving unlawful secondary objectives over and beyond such incidental effects as might normally be a concomitant of legitimate primary picketing.

Independent proof of unlawful secondary objectives is not always easy to produce. A mere suspicion that the primary object of the picketing is to affect the relations between the primary employer and secondary or neutral employers is certainly not enough. True, the Teamsters knew that the trucks of Utah Sand and Gravel were carrying concrete to the Joint Venture and knew that the Joint Venture employed members of various unions, albeit not Teamsters members. I do not doubt but that the Teamsters was aware of the fact that it is a widely held tenet in union circles that it is "not right" to work behind a picket line of another union, and I do not doubt but that Teamsters might have counted on this in picketing the trucks of Utah Sand and Gravel while they were unloading at the Joint Venture project. But if so, this is an expectation that probably exists in any ambulatory picketing case. Decisional law has not gone so far as to view the hope of a picketing union that employees of secondary employers will cease working as establishing its primary objective so as to convert what is otherwise lawful picketing into unlawful picketing. The independent evidence of the object of the picketing must be more than this.

In the instant case, the independent proof relied on by the General Counsel and the Charging Party to establish the Teamsters' object in picketing consists of two minor incidents concerning which a credibility question exists. In each case, the independent evidence depends on the credibility of Weyher's testimony. The first is Weyher's testimony that an unidentified business agent of the Teamsters, at the beginning of the ambulatory picketing, accompanying the Operating Engineers business agent, requested Weyher to cooperate by not taking Utah Sand and Gravel concrete. The second was Weyher's testimony concerning the activities of Carter, the alleged Teamsters picket. With regard to the first, the Charging Party argues that this request, made as it was while picketing of the trucks was in progress, constituted an implied threat to continue such activity unless the Joint Venture agreed not to take Utah Sand and Gravel concrete. I find no threat in this request. Naturally, if the Joint Venture discontinued taking concrete from Utah Sand and Gravel, the picketing would cease because the picketing was done only while Utah Sand and Gravel trucks were present. The fact that picketing of the trucks would continue if the Joint Venture continued to buy Utah Sand and Gravel concrete was not threatened in any event. The request alone, then, would not be a viola-

²⁶ *Brewery and Beverage Drivers and Workers, Local No. 67, etc (Washington Coca Cola Bottling Works, Inc.)*, 107 NLRB 299, enfd. 220 F 2d 380 (C.A.D.C.).

²⁷ This argument was aimed at the Teamsters' ambulatory picketing away from Utah Sand and Gravel's place of business and not at the location of the picketing in the street rather than around the truck. Since the pickets were requested by the Joint Venture not to come on railroad property, the pickets were unable to picket any closer to the trucks than they did. There is no contention that the picketing in the street took the picketing outside the scope of permissible common situs picketing. See *Sailors' Union of the Pacific, AFL (Moore Dry Dock Company)*, 92 NLRB 547.

²⁸ *International Brotherhood of Electrical Workers, Local Union 861, et al (Plausche Electric, Inc.)*, 135 NLRB 250; and see court decisions therein cited.

²⁹ *Truck Drivers and Helpers Local Union No. 728, I.B.T. (Brown Transport Corp.)*, 144 NLRB 590.

tion of the Act;³⁰ the picketing alone was not a violation of the Act;³¹ and no reason is shown why they should be transmuted into a violation of the Act when combined, certainly not in the absence of other independent evidence, such as that the picketing was arranged by the Teamsters to operate as an automatic signal for work stoppages by employees of neutral employers. Not only is there no evidence that such a signal was arranged but most of the employees failed to react initially as though a signal had been given.

The second incident relied on to show a violation of Section 8(b)(4)(i)(B)³² of the Act, according to the General Counsel, is apparently to be found in the fact that Carter, allegedly a Teamsters picket, had failed to picket near the concrete truck but had gone out of his way to speak with a laborer, Padilla. More specifically, the General Counsel, in his brief, contends that the "scuffle between Weyher and Carter, taking place, as it did, in the presence of not only Padilla but other employees employed by the Joint Venture, induced and encouraged these employees in violation of Section 8(b)(4)(i)(B) of the Act." I am unable to concur with either contention. In the first place, if Carter were conceded to be an agent of the Teamsters, the evidence is still insufficient to prove that Carter induced or encouraged Padilla to engage in a strike or to refuse to perform services. The only statement Carter was proved to have made was, ". . . they have all pulled off." Even if "they," in this phrase, were taken to mean "employees," the reference could have been to employees of another employer. Neither Carter nor Padilla was called as a witness. It not only was not established why Carter went to speak with Padilla but, for all that appears, Carter could have been personally acquainted with Padilla and could have been merely discussing strike conditions at Utah Sand and Gravel or any other topic. The only evidence suggesting that Carter was speaking about the Teamsters picketing and was attempting to induce Padilla to cease working was Weyher's testimony that Carter said he objected to scab labor working behind the picket line. Because no one else heard this, apparently, and because I am chary of relying on it, I find that Carter did not make this statement. Except for hearsay evidence, unreliable at best, it was not proved that Carter was a Teamsters agent. The evidence is altogether too weak to warrant the finding that Carter sought to influence Padilla.

The contention of the General Counsel that Carter induced or encouraged any employees by his conduct in getting into a scuffle with Weyher is farfetched. Carter was not, at the time, attempting to coerce Weyher. In fact, Weyher was the first to use his hands. I am not passing on the propriety of Carter's conduct. I find only that an unfair labor practice by the Teamsters cannot be based thereon.

On the evidence, I am not convinced that Carter was even proved to be an agent of Teamsters. His agency is supposed, apparently, to be inferred from the fact that Carter got out of the same automobile as a Teamsters picket (for I have found that Carter did not, himself, carry a picket sign) and the fact that usually two pickets arrived in each car which accompanied a Utah Sand and Gravel truck, but I find this to be too insubstantial to prove agency.

No contention was made that the Teamsters and Operating Engineers had conspired or engaged in a joint venture to effect a work stoppage at the Joint Venture project.³³ As the case was presented, the conduct of each union is to be considered separately. Hence, I find it unnecessary to consider whether or not business agents for the Operating Engineers could be considered to have been acting as agents of the Teamsters as well as of their own organization. On the entire record, I conclude and find that the General Counsel has not proved a violation of the Act on the part of the Teamsters.

³⁰ *Local 3, International Brotherhood of Electrical Workers, AFL-CIO (New Power Wire and Electric Corp. et al)*, 144 NLRB 1089; *Local 282, International Brotherhood of Teamsters, etc (J. J. White Ready Mix Concrete Corp)*, 141 NLRB 424; *Henry V. Rabouin, d/b/a Conway's Express v. N.L.R.B.*, 195 F 2d 906 (C.A. 2) Delivery of transit-mix concrete is not on-site work by a subcontractor. *International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 294 (Island Dock Lumber, Inc)*, 145 NLRB 484.

³¹ *United Plant Guard Workers of America (Houston Armored Car Company, Inc)*, 136 NLRB 110; *Truck Drivers and Helpers Local Union No 728, I.B.T. (Brown Transport Corp)*, *supra*

³² A concluding allegation in the complaint that Teamsters, by the conduct alleged in the complaint, had violated Section 8(b)(4)(i)(B), was stricken on motion of General Counsel.

³³ *Cf. Local Union No. 1, Bricklayers, Masons & Plasterers, etc. (J. Hilbert Sapp, Inc)*, 110 NLRB 1466.

2. Regarding activities of Operating Engineers

The complaint alleges violations of Section 8(b)(4)(i) and (ii)(B) by Operating Engineers. Evidence of violation of Section 8(b)(4)(i)(B) is replete. By the acts of its business agent, Garber, Operating Engineers caused crane operator Barnes to cease rendering services for his employer and the Joint Venture. Barnes is a person employed by Jarman, a neutral contractor engaged in an industry affecting commerce within the meaning of the Act, although he was serving the Joint Venture while using the crane for the purpose of pouring concrete into forms for columns. It is clear that Barnes would have continued rendering services but for Garber's direction to Barnes to shut off the crane. The fact that Garber's instruction was politely framed does not derogate from the fact that it was intended to, and did, have the effect of a direction. It clearly constituted inducement and encouragement of Barnes to withhold his services; and the object of Garber's conduct on behalf of Operating Engineers was to force or require the Joint Venture to cease using concrete sold and delivered by Utah Sand and Gravel.³⁴ The action of Garber also caused Zimmerman, Barnes' oiler, to withhold services during the period when pickets were present. Garber's instruction to Barnes was followed up by Business Agent Austin's directions to Barnes and Zimmerman to shut down the machine when the trucks came on the job. Austin similarly instructed employees Cude, Foster, Johnson, Garner, and Bennett not to work while trucks of Utah Sand and Gravel were present, and thereafter they followed his instructions.

Operating Engineers seeks to justify the conduct of its agents on the ground that the Joint Venture was an ally of Utah Sand and Gravel and that employees of the primary employer (Utah Sand and Gravel) actually worked with employees of the secondary employer (Joint Venture) as a team under the direction and control of the secondary employer. Independently of the latter point, the evidence is not sufficient to show that the Joint Venture was an ally of Utah Sand and Gravel.³⁵ The fact that an employee of the Joint Venture assisted the driver of the transit-mix truck by telling him where to place the chute and when to start or stop the flow of concrete does not make Utah Sand and Gravel an on-site subcontractor on the Joint Venture job. The Joint Venture employee in such instance, is merely designating the place and rate of delivery of concrete.³⁶ Teamsters does not contend that it was picketing the Joint Venture because of any joint work done by the truck-driver and employees of the Joint Venture, and the Operating Engineers, although having a dispute with Utah Sand and Gravel, and although respecting the Teamsters' strike and picket line there, does not allege that it was, itself, on strike there, so Operating Engineers is hardly in a position to use an argument that the Teamsters might have, but did not, advance and to say that the Joint Venture was helping to defeat its primary strike by being an ally of Utah Sand and Gravel. Before July 26, at least, Operating Engineers had no legal justification for inducing employees of the Joint Venture or of Jarman to withhold services where the object was, as I find, forcing the Joint Venture to cease using concrete of Utah Sand and Gravel. Accordingly, I find that by the aforesaid conduct of its business agents, Austin and Garber, Operating Engineers committed unfair labor practices within the meaning of Section 8(b)(4)(i)(B) of the Act.

Both by Austin's telling Shepherd, a supervisor for the Joint Venture, that he (Austin) would have to "pull" Johnson and Garner off the job while concrete was being poured from Utah Sand and Gravel trucks and by the stoppage of work actually occasioned by Austin's instructions to the aforesaid employees, Operating Engineers committed unfair labor practices within the meaning of Section 8(b)(4)(ii)(B). I also find a violation of Section 8(b)(4)(ii)(B) by Operating Engineers in Austin's reply to Superintendent McPhie's protestation and request to permit the employees to use the boom truck to assist in putting steel cages in the piling shells when Austin said that he would not put anyone on the A-frame (boom)

³⁴ *New York Mailers' Union No. 6, ITU (New York Herald Tribune, Inc., et al.)*, 136 NLRB 196; *Cuyahoga, Lake, Geauga and Ashtabula Counties Carpenters District Council, etc. (The Berti Company)*, 143 NLRB 872; *International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 294 (Island Dock Lumber, Inc.)*, *supra*.

³⁵ Ryberg, a partner and brother-in-law of Mark Garff, was a director of Utah Sand and Gravel. No other connection was shown.

³⁶ *International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 294 (Island Dock Lumber, Inc.)*, *supra*.

truck while Utah Sand and Gravel was on the job and that he had instructions from the San Francisco office of Operating Engineers not to have any man operate any piece of equipment as long as Utah Sand and Gravel was on the job.

The General Counsel argues that "the prime" object of picketing by Operating Engineers on and after July 26 was to force or require the Joint Venture to cease doing business with Utah Sand and Gravel and that it was not in furtherance of contract negotiations with A.G.C., but that, even if one object of such picketing was in furtherance of contract negotiations, the Act would be violated if another object was to force or require the Joint Venture to cease doing business with Utah Sand and Gravel. As I have found, there are substantial reasons for believing that Operating Engineers' demand that Weyher sign a separate contract was used as a specious attempt to clothe its picketing with the garb of primary action. However, in view of the fact that I find the Operating Engineers had, as one object (if not the only object) of the picketing, the forcing of the Joint Venture to cease doing business with Utah Sand and Gravel, it is unnecessary to make a finding of subterfuge. Operating Engineers had, ever since July 19, 1963, made it evident that it had sought to stop the delivery of Utah Sand and Gravel concrete to the Joint Venture, and it had taken positive and illegal steps to implement its objective. No sufficient evidence was offered to show that this objective had been abandoned. The presumption is that, an object, once shown to exist, continues to be an object in the absence of evidence tending to show at least reason to infer that it has been abandoned. Evidence of a demand that Weyher sign a contract with Operating Engineers under threat of picketing is not inconsistent with the continued objective of causing the Joint Venture to cease using concrete of, and to cease doing business with, Utah Sand and Gravel. In fact, it fortifies the evidence of Operating Engineers' efforts to stop the Joint Venture from using that concrete. I find that even after Operating Engineers made its demand that Weyher sign a contract with it and after it began picketing at the site of the Joint Venture, at least an object of the picketing was to induce the Joint Venture to cease using concrete of Utah Sand and Gravel. I find no inconsistency between this finding and the fact that Operating Engineers made this demand only of Weyher and not of the other Joint Venturers. Weyher was the sponsoring contractor. The project was commonly referred to as the Weyher job. If Weyher had capitulated, the Joint Venture would have capitulated.

Operating Engineers also adduced evidence aimed to show that striking employees of Utah Sand and Gravel were working as employees of the Joint Venture. This was done by showing that men who had been on the payroll of Utah Sand and Gravel up to the time of the strike had been dispatched by Operating Engineers to the Joint Venture for jobs. However, even if Operating Engineers had struck Utah Sand and Gravel itself, I should consider this defense an ineffective desperation measure. The evidence is wholly inadequate to show any allied relationship between the Joint Venture and Utah Sand and Gravel as a result of such hirings. The Joint Venture was not shown to have asked for employees of Utah Sand and Gravel nor even to have known that those employees had worked at Utah Sand and Gravel. Furthermore, there is no showing that such employees, even if sympathetic strikers, had any intention of exercising reemployment rights at Utah Sand and Gravel. In any event, I find that the Joint Venture was not, in hiring any of the men referred by Operating Engineers, attempting to support Utah Sand and Gravel's cause. The effect would appear to have been just the contrary. I reject this contention of Operating Engineers.

In conclusion, I find that Operating Engineers, by the conduct hereinbefore found, violated Section 8(b)(4)(i) and (ii)(B) of the Act.

3. Regarding activities of Carpenters

Carpenters is alleged in the complaint to have violated Section 8(b)(4)(i) and (ii)(B) of the Act. The alleged violation of Section 8(b)(4)(ii)(B) is based on testimony that Business Agent Bonner told Joint Venture representatives that he had instructed or advised his men not to work behind a picket line. Since I have found that Bonner did not make this statement, I find no violation by the Carpenters of Section 8(b)(4)(ii)(B) of the Act.

The question raised as to whether or not Carpenters violated Section 8(b)(4)(i)(B) of the Act is less simply answered. I have found that Carpenters' Business Agent Gilman told employees of the Joint Venture, while Teamsters pickets were picketing, that the carpenters could work if they wanted to, and that what they were inquiring about was definitely a picket line, and I have found that Gilman gave a noncommittal answer to questions as to what Carpenters would do if inquiring employee-members

continued to work or as to whether or not a fine would be imposed. Does either the statement that it was "definitely a picket line" or the evasion of the question as to what the carpenters might do if members of Carpenters or its sister locals continued to work override Gilman's initial answer that they could work if they wanted to? Before resolving this question, I find it necessary to project myself mentally as completely as possible into the position of the carpenters working in the compound. Fisher and Bordelon were members of the Carpenters for some years. They had been exposed to and absorbed the philosophy that a good union member would not work on struck work (or products thereof) and that he should not cross or work behind a picket line. So conditioned, they would not be likely to consider whether or not they, themselves, were actually working on struck work or products thereof. To them it was enough that products of a struck employer were coming on the project. Nor would they be likely to analyze the situation to determine whether or not they were actually working "behind" a picket line. In reality, only if the picketing was directed at the Joint Venture would they have been working behind a picket line, whereas if the picket line was directed at employees of Utah Sand and Gravel, as ostensibly it was, the carpenters would be working in front of, rather than behind, the picket line. Even if the Joint Venture employees were not working behind a picket line, they were, however, free as individuals, to risk their jobs and extend their sympathy to the Teamsters' cause, giving up their employment with the Joint Venture if they felt that would aid the cause of unionism.³⁷ Fisher and Bordelon made their election before the arrival of Gilman. Fisher had even left the premises. Gilman's statement did not guide the conduct of those two. Although the rest of the carpenters influenced in part by Fisher and Bordelon, had stopped working, they were apparently open to advice or guidance from Gilman. Some of the carpenters appeared to take the attitude that, if the Teamsters' picketing was an activity respecting which their own union did not disapprove, union tradition would require them to honor the picket line, while others apparently were not concerned with conforming to union etiquette but were concerned only with avoiding a penalty for nonconformance if they continued to work. It is possible to deduce from Gilman's statement, "It is definitely a picket line," that Carpenters did not disapprove of the Teamsters' activities; otherwise, Gilman would be more likely to have described the picketing as illegal or unauthorized. Was Carpenters under a legal duty to answer inquiries by saying, "We are not allowed to tell you what type of activity another union is engaged in," and thus leave the employees in their state of confusion? So long as Carpenters is merely giving information and is not suggesting the action to be followed by employees, my answer is negative. True, the information imparted might influence employees in the sense that it would give them factual knowledge upon which they, themselves, could decide what conduct to follow although they would be unable to decide without that information, but it would not necessarily influence them in the sense of giving them a feeling that their union was pressuring or even expecting them to act in a particular fashion. I do not read the word "induce," as used in the Act, as proscribing the former type of influence. There is not even a suggestion of the kind of conduct expected of them by the Carpenters in this statement as there was in cases where indications of expected conduct was voiced³⁸ Accordingly, I find that, by Gilman's statement that the picketing of the Utah Sand and Gravel trucks was "definitely a picket line," the Carpenters did not, in violation of the Act, induce or encourage any individual employed by the Joint Venture to engage in a refusal in the course of his employment to perform services.

Gilman's answer to the inquiry of what "the union" (i.e. Carpenters) would do if the employees continued to work presents more of a problem. His answer, even by his own version, was not altogether reassuring. He professed ignorance as to what the Carpenters would do. Knowing, as he must have, that under the constitution of the Carpenters, discipline could be imposed only for crossing a Carpenters' picket line, he should, if he correctly understood the question, in fairness have mentioned this. I do not believe it is an adequate defense to say that the members,

³⁷ See *N.L.R.B. v. Rockaway News Supply Company, Inc.*, 345 U.S. 71. When a union operates a hiring hall under contract, as the Carpenters did here, it is, of course, of little solace to an employer to know that he has a no-strike clause in the contract and that he has a legal right to discharge or replace his employees who engage in sympathetic strike activities.

³⁸ *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)*, 137 NLRB 1124, at 1139-1140; *Seafarer's International Union of North America, etc. (Hammermill Paper Company)*, 100 NLRB 1176. See Trial Examiner's Decision in *Northeastern Washington-Northern Idaho Building and Construction Trades Council*, Cases Nos. 19-CC-206, 19-CC-207, and 19-CC-209.

themselves, should have known what was in the constitution of the Carpenters. Had the employees known what was in the constitution, they would not have asked the question. Union members, I have found, rarely are familiar with constitutional provisions, but they expect their business agent to know all the answers. Although I have considered the possibility that Gilman understood the question to ask what unofficial action the members of the Carpenters might take (as by way of ostracism, derision, or physical abuse), rather than what official action would be taken, I do not believe he could so have understood the question. Even the last part of Gilman's answer, "As far as I'm concerned, they will do nothing," does not remove the doubt that something might be done. Under the circumstances, the inquiring carpenters could have received the impression that Gilman's answer (that they could work if they wanted to) carried with it the implication "but if you do . . . I don't know what will happen." The conclusion is inescapable that this implication would inevitably influence the employees not to work while the Teamsters pickets were present. The men who asked the question of Gilman appeared anxious to work, but, following Gilman's answer, they did not do so. Upon full consideration of the matter, I find that, by Gilman's equivocal answer, Carpenters induced employees of the Joint Venture to engage in a refusal to perform services. Was the object of this inducement to cause the Joint Venture to cease doing business with Utah Sand and Gravel? Perhaps Carpenters was not thinking in terms of objectives but was thinking only in terms of union etiquette. However, I do not subscribe to a line of reasoning which would, on the assumption that Teamsters' activities were primary and were directed only to employees of Utah Sand and Gravel, suggest that Carpenters were, by withholding their services from the Joint Venture, only supporting the Teamsters in their dispute with Utah Sand and Gravel without regard to the secondary effect on the Joint Venture. The inevitable result of the withholding of services to the Joint Venture by carpenters was, as Carpenters surely knew, to pressure the Joint Venture to cease doing business with Utah Sand and Gravel. This could not have been doubted. Regardless of what Carpenters' primary motivation may have been, I find that an object of its inducing employees of the Joint Venture to withhold their services was to cause the Joint Venture to cease using concrete of, and doing business with, Utah Sand and Gravel.

There remains for consideration only the effect of Bonner's instructions to carpenters on July 22, 1963, to "stick around and be available for work." Bonner testified that he gave these instructions because of the fact that he had learned that Fisher had, the previous Friday, gone home. I judge that he was concerned that departure of the carpenters might take on the appearance of a complete strike rather than just a refusal to work while pickets were present. Had Bonner given such instructions before the men had ceased working that day, there would be more force in the argument that he was inducing or encouraging them to refuse to perform services. On the evidence, it is difficult to fix the precise time when Bonner gave these instructions. If the carpenters were on their lunch period, Bonner's statement might have sounded more like an instruction not to return to work at the end of their lunch period until the pickets had left, whereas if they were not on their lunch hour, Bonner might have assumed that they had already stopped working of their own accord because of the presence of pickets and was merely instructing them not to withhold their services when no pickets were present.

On all the evidence, I infer that Bonner was aware of the fact that the men he was speaking with had already ceased working because of the presence of the Teamsters' pickets, and I do not interpret his instructions as intended to influence them to withhold services they were about to render. I make no further finding, therefore, that Carpenters violated the Act by these instructions of Bonner's.

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 herein involved, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and, to the extent that they have been found to be unfair labor practices, tend to lead to and have led to, labor disputes burdening and obstructing commerce and the free flow thereof.

V. THE REMEDY

I have found that the Respondent Carpenters and the Respondent Operating Engineers have engaged in unfair labor practices which require remedial action. I have found that the Carpenters have violated Section 8(b)(4)(i)(B) of the Act by the misleading answer given by Business Agent Gilman to Goodrich and Sparks.

I shall therefore recommend that Carpenters cease and desist from giving members misleading answers to the latters' inquiries concerning possible penalties that might be inflicted by Carpenters if its members or members of affiliates should decide to work behind the picket line of another union, and I shall recommend that Carpenters post the notice marked "Appendix A," [Board's Appendix substituted for Trial Examiner's Appendix], explaining members' rights. On the evidence, I do not feel that there is any danger that Carpenters, in the future, will commit unfair labor practices generally or with regard to, other employers; so I shall limit my recommended cease and desist order to the type of unfair labor practices herein found.

Since I have found that Operating Engineers have engaged in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(B), I shall recommend that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act. In my opinion, an order proscribing unlawful conduct, not only with respect to the employers herein involved but with respect to any other person within the jurisdiction of Operating Engineers, is warranted on the evidence in the case.

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

CONCLUSIONS OF LAW

1. The Joint Venture is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Jarman is engaged in an industry affecting commerce within the meaning of Section 2(6) and (7) of the Act.

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

4. By inducing and encouraging employees of the Joint Venture and Jarman to engage in a strike or a refusal in the course of their employment to perform services, with an object of forcing or requiring the Joint Venture to cease using concrete of, or to cease doing business with, Utah Sand and Gravel Products Corp., Carpenters and Operating Engineers have engaged in unfair labor practices within the meaning of Section 8(b)(4)(i)(B) of the Act.

5. By threatening, coercing, and restraining the Joint Venture and members thereof with an object of forcing or requiring the Joint Venture and members thereof to cease using concrete of, or to cease doing business with, Utah Sand and Gravel, Operating Engineers has engaged in unfair labor practices within the meaning of Section 8(b)(4)(ii)(B) of the Act.

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

7. Teamsters has not engaged in unfair labor practices within the meaning of Section 8(b)(4)(i)(B) of the Act.

[Recommended Order omitted from publication.]

Morrison Cafeterias Consolidated, Inc., and Morrison Cafeteria Company of Little Rock, Inc. and Hotel-Motel, Restaurant Employees Union, Local No. 200, Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO. *Cases Nos. 26-CA-1514 and 26-CA-1520. August 4, 1964*

DECISION AND ORDER

On April 22, 1964, Trial Examiner A. Bruce Hunt issued his Decision 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 attached Trial Examiner's