(c) Mail to the said Regional Director a sufficient number of copies of said signed notice to enable the employers, if they so desire, to post them at their places of business where notices to employees are customarily posted.

(d) Notify the said Regional Director in writing within 20 days regarding the steps that have been taken to comply herewith.[26]

[26] In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for Region 19, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith."

APPENDIX

NOTICE TO ALL MEMBERS OF GLASS WORKERS UNION LOCAL NO. 1220 AND UNITED GLASS WORKERS LOCAL NO. 188 AFFILIATED WITH BROTHERHOOD OF PAINTERS, DECORATORS AND PAPER HANGERS OF AMERICA, AFL–CIO

Pursuant to the Recommended Order of a Trial Examiner 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, if requested to do so by Industrial Conference Board, sign and execute the agreement reached on December 22, 1965, by and between said Industrial Conference Board and Local No. 1220 with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment for the following unit:

All journeymen glassworkers and apprentice glassworkers engaged in handling, cutting, beveling, drilling, and setting glass, including installing metal, wood, or plastic members in store fronts, metal doors, and frames, who are employed by B & B Glass Company, Glass Sales and Service, Inc., Milgard Glass Company, and Tacoma Glass Company, all located in Tacoma, Washington.

GLASS WORKERS UNION LOCAL NO. 1220 AFFILIATED WITH BROTHERHOOD OF PAINTERS, DECORATORS AND PAPER HANGERS OF AMERICA, AFL–CIO,
Labor Organization.

Dated_____ By_____
(Representative) (Title)

UNITED GLASS WORKERS LOCAL NO. 188 AFFILIATED WITH BROTHERHOOD OF PAINTERS, DECORATORS AND PAPER HANGERS OF AMERICA, AFL–CIO,
Labor Organization.

Dated_____ By_____
(Representative) (Title)

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

If members have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 327 Logan Building, 500 Union Street, Seattle, Washington 98101, Telephone 583–4532.

Nassau and Suffolk Building Construction Trades Council, AFL–CIO; Local 138, International Union of Operating Engineers, AFL–CIO; Local 1205, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America *and* Theresa Garden Apartments, Inc.; Saxon Arms Construction Corp. *Cases 29–CC–38, 38–2, 29–CP–22, and 22–2. December 16, 1966*

DECISION AND ORDER

On June 6, 1966, Trial Examiner Thomas A. Ricci issued his Decision in the above-entitled proceeding, finding that the Respondent

Local Unions 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 Decision. He also found that the Respondent Trades Council had not engaged in any unfair labor practice and recommended dismissal of the complaint as to the Trades Council. Thereafter, the Trades Council, Local 1205 of the Teamsters Union, and the General Counsel filed exceptions to the Decision and supporting briefs.

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

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

[The Board adopted the Trial Examiner's Recommended Order.]

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

This is essentially a picketing case, in which several unions are accused of having picketed with a secondary and therefore illegal motive in violation of Section 8(b)(4) of the Act, and/or for purposes of recognition but nevertheless in violation of Section 8(b)(7) of the statute. The Government's first step after investigating the charges was to petition the Federal District Court for an immediate restraining order to stop the picketing. On that petition testimony was taken in the United States District Court for the Eastern District of New York on January 17, 18, 20, and 21, 1966, before Judge Jacob Mishler.

With the preliminary matter disposed of, the complaint, as finally amended, came to hearing on due notice before Trial Examiner Thomas A. Ricci on March 8, 1966, at Brooklyn, New York. The charges were filed in the names of Theresa Garden Apartments, Inc., herein called Theresa, and Saxon Arms Construction Corp., herein called Saxon, or the Charging Parties, and the complaint now names as Respondents Nassau and Suffolk Building Construction Trades Council, AFL-CIO, herein called the Council, Local 138, International Union of Operating Engineers, AFL-CIO, herein called Local 138, and Local 1205, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called Local 1205. All parties appeared at the hearing and were afforded full opportunity to participate.

After agreeing upon the formal documents—pleadings, prehearing motions and related papers, rulings and replies—the parties stipulated that the merits of the complaint be adjudicated in this proceeding upon the basis of the testimony and exhibits offered and received before the District Court in the injunction proceeding in January. For this purpose the District Court official transcript of testimony and exhibits were received in evidence here. Thereafter all three Respondents and the General Counsel filed briefs with me, all of which have been considered.

I had no opportunity to observe the witnesses; from my study of all the exhibits, and from my appraisal of the probative value of all of the oral testimony given by all of the witnesses, I make the following:

FINDINGS OF FACT

A. *The issues presented*

Of the major substantive allegations of the complaint, only one created no issue, and that one is that the named Respondents are in fact unions. Accordingly, I find that Nassau and Suffolk Building Construction Trades Council, AFL–CIO, Local 138, International Union of Operating Engineers, AFL–CIO, and Local 1205, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, are all three labor organizations within the meaning of Section 2(5) of the Act.

The real issues to be decided are: (1) Ought the Board to exercise its jurisdiction in this case in view of the nature and extent of the proof of interstate commerce carried on by the employers involved? (2) Has it been proved that either Operating Engineers Local 138 or IBT Local 1205, committed unfair labor practices? and (3) Is there sufficient evidence to support the broad allegation that the Construction Trades Council was responsible for the illegal conduct, if it in fact took place?

The burden of proof resting upon the General Counsel in the injunction proceeding was to show there was "reasonable cause to believe" these questions could be answered affirmatively. The test here, at least so far as allegations of improper conduct are concerned, is different; before it can be found any unfair labor practices were committed, or that any particular labor organization was responsible for the conduct, the assertion must be warranted by a preponderance of the substantial evidence on the record as a whole. The question of sufficiency of proof is particularly significant with respect to the allegation of wrongdoing charged to the Council. Fifty-six construction trades union locals have combined to constitute the Council, under regular rules of the AFL–CIO International Unions or Federations. Each of the member locals has designated one or more of its business agents as "delegates" to the Council, which in turn, pursuant to its own bylaws and regulations, is governed by duly elected officers, of which there are six. Local 138, one of the Respondents, is a member of the Council; IBT Local 1205, also a Respondent, is not. The picketing, inducement of employees, and coercion of employers reflected in the testimony appears as the conduct of representatives or agents of Local 138 and Local 1205, as well as of a number of other locals affiliated with the Council. There is no evidence that any officer of the Council said or did anything about what happened. The theory of complaint as to the Council's responsibility is one of inference, an argument that from the total activities of so many agents of so many local unions that are associated with the Council, it follows that the Council, as an entity apart, was necessarily a party to all that took place.

As to whether or not the Board's jurisdictional standards have been met, the level of proof required may be otherwise, but that matter is of no moment here because there is direct, sufficient proof that the volume of business of employers immediately affected by the picketing and inducement or coercion alleged more than meets the necessary requirements.

B. *Jurisdiction of the Board*

The underlying dispute which gave rise to this proceeding was between a man named Albert Villani, who, through a number of corporate arrangements, is engaged in the construction business and in 1965 was building two groups of apartment houses in Long Island, New York, on the one hand, and several construction trade and teamster locals on the other. Villani operates nonunion. One of the building projects, started in March, is in the name of Saxon Arms Construction Corp.; the other was begun in September, in the name of Theresa Garden Apartments Inc. Villani and his wife, sole owners of the stock of these two corporations as well as officers and directors of both, operate the two as a single integrated business with about 100 employees used interchangeably between the two building sites. There was one general manager, Mike Cortes, and one superintendent, Salvatore Russano, in direct charge of both jobs.

As an adjunct part of his business, Villani also owns a warehouse facility located at 12 Wisconsin Court, also in Long Island. Apparently, for one reason or another,

he also finds it expedient to utilize other corporate setups for collateral aspects of his construction work. Majestic Modular Co., E.Q. Equipment Corp., and Kalma Construction Co., are additional companies he uses.

At the time of the picketing and other union conduct under examination here, in the fall of 1965, Villani was buying ready-mixed concrete from Able Ready Mixed, Inc., herein called Able. There was union pressure brought upon Able to interrupt its deliveries to the Theresa and the Saxon projects; in consequence Villani bought the stock, or at least a controlling interest in the Able Company, and called his new holding, or delivery operation of ready-mixed concrete, Crusher Concrete Co.

During the year 1965 a considerable amount of materials and supplies were purchased for the Theresa and the Saxon buildings directly from out-of-State sources and delivered—much of it in Villani's own trucks—from points in New Jersey straight to the two projects. Original invoices received in evidence show purchases of $32,923 worth of plumbing supplies and fixtures from South Amboy, New Jersey. Tile in the amount of $2,500, as evidenced by a single statement, came from a supplier in Camden, New Jersey. There are also in evidence copies of sales delivery slips for lumber purchased from National Milling Co., of Pennsauken, New Jersey; these total $19,157. A major portion of the briefs of all three Respondents, as well as of the entire 4-day hearing in the District Court, is devoted to an attack upon the sufficiency of evidence concerning this direct inflow of goods to the construction projects. The Respondents argue that the complaint must be dismissed on jurisdictional grounds because there is no competent evidence that at least $50,000 of supplies or products were delivered to the two building projects during 1965 from out of State.

As to the materials brought from South Amboy and Camden, New Jersey, totaling about $35,500, there is no question as to the sufficiency of the proof. Villani and his job superintendent testified that they were unable to locate the original delivery slips of the lumber totaling almost $20,000, purchased from Pennsauken, New Jersey. Because these records had been misplaced, the construction company requested National Milling Company, in New Jersey, to furnish it with duplicate copies of those records. The copies of delivery records, with amounts of lumber and sheet-rock, together with price totals, received in evidence, were prepared while the injunction hearing was going on, by National Milling and sent to Brooklyn for that purpose. The reliability of those documents as evidence of out-of-State deliveries in fact made, is strengthened by the testimony of Mike Cortes, the general manager, whose duty it is to approve payments for all deliveries of supplies and materials at the construction sites. He testified unequivocally that all the material indicated by those delivery slips in fact went into the two buildings in question, that all payments were approved by him in the normal course of his duties, and that he knew for a fact all of this material had been delivered to these sites from New Jersey. Moreover, a search of the builder's offices did reveal two original delivery slips; one is for $984 dated November 30, 1965, and the other for $2,282, dated October 22. These delivery slips, originals in the hands of the builder, dovetail precisely with two of the group of copies made by National Milling later. Considering the size of the two projects—a total cost of $1,400,000—a certain looseness in the method of doing business—many of these bills were paid by a finance company whose checks apparently were not immediately available to the builder itself—plus evidence of deliveries being made to the warehouse location instead of the jobsite in order to avoid the very stoppages incidental to the picketing that was going on, I think all of the foregoing, fairly appraised, suffices for a finding, which I make, that at these two jobsites together the builder received materials valued in excess of $50,000 during the year 1965 directly from out-of-State sources. On this basis, pursuant to Board precedent, its jurisdictional standards have been met, and the case is properly before the Board now.

There is further completely adequate basis for exercising jurisdiction here entirely apart from all the foregoing. This is a secondary boycott case, in which the Board looks to the interstate aspects of the business of the secondary as well as the primary employers for measurement of its jurisdictional standards.[1] And the question is determined by the allegations of the complaint, as distinguished from what determinations or factual findings final appraisal of the evidence of illegal conduct may or may not warrant. In their efforts to compel Villani's construction corporations to

[1] *Madison Building and Construction Trades Council, William Arnold, et al (H & K Lathing Co.)*, 134 NLRB 517.

use union employees, the Respondents are charged with having brought pressure upon South Shore Builders Supply Co., a supplier of building supplies, upon Andrew Carlson and Sons, Inc., producers and distributors of precast underground drainage facilities, and upon other secondary employers doing business with Theresa and Saxon.

Harold Rubin, manager of South Shore Builders, testified directly, and I find no reason for not crediting him, that in 1965 his company grossed over half a million dollars in lumber sales, and that all its lumber, valued in excess of $50,000, came to it from out-of-State sources. Henry Carlson, president of Andrew Carlson and Sons, Inc., also testified directly and credibly that during 1965 his company grossed over $8 million in sales, and purchased directly from out-of-State sources steel valued at about $50,000 and cement worth about $100,000. As alleged in the complaint, and as found below, union agents threatened South Shore with picketing if it did not discontinue shipments to Theresa and Saxon, and when that company refused, in fact picketed the South Shore premises. Also alleged and as proved, union agents induced employees of Andrew Carlson not to work at the Carlson yards, for the purpose of compelling Carlson to stop doing business with Theresa and Saxon. In each of these situations, according to the complaint, the union activity was integrated with and sympathetic with the picketing of the construction sites themselves.

If the entire record showed nothing more concerning interstate commerce than the business carried on by South Shore Builders and Andrew Carlson, exercise of the Board's jurisdiction would be warranted here.

C. *The activities of business agents*

With the sole exception of Edmund Bovarski, business agent of Respondent Local 1205, who was called as a defense witness by his local union, no other union representative or agent appeared at the hearing to contradict any of the testimony given by the General Counsel's witnesses relating to the activities of spokesman for a number of local unions. The following facts set out immediately below, therefore, rest upon uncontradicted, candidly given and fully credited testimony of employees and management representatives of various employers.

1. Strike at Able Ready Mixed, Inc., and pressure upon it not to deliver to the Theresa and Saxon building projects.

At the very start of September, George Becker, business agent of Teamsters Local 282, affiliated with the Respondent Council, called Able's approximately six ready-mix truckdrivers on strike. Able recognized no union, and was making deliveries to Theresa and Saxon. Some drivers quit, some did not and continued delivery to the two projects. As early as September 3 Becker told James Share, secretary of Able, he had "better not" deliver to Theresa or Saxon for it would make it "harder on myself when I want to settle because I am going against the trade Council and all the trades that are on strike there."

A few weeks later, after picketing had started at the Theresa and Saxon building sites, and when Able's drivers were nevertheless making deliveries across the picket line, Share, sitting in his automobile near the jobsite, was approached by James Duffy, business agent of Respondent Local 138, Whitey Bovarski, president of Respondent Local 1205, and one Burns, business agent of the Carpenters, also affiliates of the Council. They asked Share not to make deliveries "to this job because they are on strike," and one of them—Share was not sure which—added "don't I know that all the trades are on strike?"

Share also testified that in December Villani, owner of Theresa and Saxon, bought the shares of the Able Company "due to the Union."

2. Picketing of the Theresa and Saxon jobsites

On September 3 Business Agent Becker went to Mike Cortes, general manager of Theresa and Saxon, and said he wanted Cortes not to purchase concrete from Able because "Able was on strike." Cortes answered he was nonunion and Able was nonunion, and so long as Able continued deliveries he would continue to buy the concrete. Becker then told Cortes "if you don't stop taking concrete from Able Ready-Mix, I will go to the trade Council and I will have this job bottled up."

On September 9 Business Agent Duffy appeared at the Theresa site accompanied by six or seven other persons. His companions stood across the street when Duffy

approached Cortes and said "I would like to talk with you . . . about having the job go union with the trade Council"; Duffy pointed across the street to where his associates were gathered, and asked if Cortes was interested in "making a deal." Cortes answered he had been nonunion a number of years and would so remain, and told Duffy to go away. Duffy then said: "Well, if we can't get together I will have pickets on this job and all the members of the trade Council will picket and that no supplies would come on the job and no subcontractors or anything." Cortes testified that in the group across the street he recognized George Babcock and Chauncey Bartow, both business agents of the Carpenters Local, and delegates from the Plumbers and Laborers locals whom he only knew by "face" but not by name.

That same day, in the afternoon, four pickets appeared; 2 weeks later two pickets started patrolling the Saxon project three-quarters of a mile down the road. The picketing continued, usually with only two men at a time at each location, around the clock, until interrupted by the Federal court injunction in the beginning of February 1966. They patrolled, at each location, the entrance to the premises used by all employees and delivery trucks. The signs they carried read as follows.

TO THE PUBLIC
THIS EMPLOYER
DOES NOT EMPLOY
MEMBERS of or
HAVE A CONTRACT
WITH AFL–CIO

The signs never changed until about January 1, when the injunction petition was filed in court; the words "Saxon Arms" were then added to the picket signs in crayon.

3. Effective inducement of employees of neutral employers not to work

Interstate Contractors, Inc., sells sheet rock and dry wall to the construction trade; it had a contract to deliver $14,000 of such materials to the two jobs. Michael Petrulli, president of Interstate, testified that his employees are represented by the Carpenters and the Painters of the AFL–CIO Locals, that in September they made regular deliveries to Theresa and Saxon, and that thereafter his employees refused to make further such deliveries.

John Fogarty is an installer employed by the New York Telephone Company; he is also shop steward for Local 1108, which represents the telephone company employees. He arrived at the Saxon project on September 23 to work, saw the two pickets, and was told by one of them "the Building Trades Council was behind this, they were . . . had authorized this." He refused to cross the picket line and did not work. Fogarty returned again to work here as assigned on September 27, again saw the pickets, and again refused to work. This time a picket told him "they were from the plumbers Local." Fogarty told his men not to work across the pickets' line, and thereafter all telephone work was performed on Saturdays by supervisory personnel of the telephone company. Thomas Clemens, also a telephone company installer, said he too quit work at the Theresa project because of the picketing.

Giannone Services is a trucking company which sells sand and gravel for construction. Some of its employees are members of IBT Local 282, and the Company also has a contract with Respondent Local 138 covering its engineers. On September 19, John Giannone arrived at the Saxon project with four or five of his trucks to make deliveries. Becker, business agent of 282, was there and told him "you can't haul here no more because we've got a picket line here." Giannone ignored him. Duffy, of Local 138, then approached and said "Don't haul here no more because they don't belong to the Union." Giannone completed his deliveries but never again crossed the picket line. Shortly thereafter Saxon Corporation wrote to Giannone asking that he deliver more fill; Giannone telephoned Duffy to ask for permission to make at least one more delivery, Duffy said no, and Giannone never delivered the goods.

4. Union appeals for secondary assistance away from the primary status

Andrew Carlson and Sons, Inc., the manufacturer of precast underground drainage equipment, has a contract with Respondent Local 138, one with Laborers Local 1298, and another with an Independent Truck Drivers Union. Its employees refused to load trucks with material to be delivered to the Theresa and Saxon jobs, and

when Henry Carlson, the president, asked William Betz, a laborer and Local 1298 shop steward, whether Carmine Genova of Local 1298 had directed him not to load such trucks, Betz answered: "indirectly, yes."

From the witness stand Betz related how on or about October 1, 1965, Carmine Genova, Laborers Local 1298 business agent, had visited him at the Carlson premises and "briefed me on the situation in Bay Shore . . . there was a picket line outside of this particular Bay Shore job . . . he briefed me as to what was going on." Betz added that "a delegate . . . leaves it up to the shop steward to make his own decision." Genova told Betz the pickets involved "several locals." Betz also quoted the business agent as telling him that an engineer would inform me what trucks would be coming to be loaded for the Bay Shore job. After Genova left, Betz talked to his men—the other Carlson employees—and instructed them not to load the trucks. They have not done so since.

Gunning, business agent of Local 138, spoke to John Clary, a crane operator employed by Carlson, sometime during September. Clary, who alone testified about what went on between him and his business agent, equivocated from time to time in his story, but the following is directly part of his testimony. Gunning told him the Saxon Arms job was being done nonunion; Gunning said this to him before the trucks arrived to pick up supplies for Saxon; Clary refused to load those trucks despite instructions from his superiors; and he refused to do this work because of the labor dispute. At Saxon Arms, Gunning also told Clary to keep him advised, and in consequence, Clary later reported that Carlson management had loaded trucks for Saxon, and Gunning answered "he could do nothing about that."

With this Clary's own testimony, I think it clear the business agent told the member not to work on any trucks destined for the Saxon project and that the reason why Clary in fact refused to work and instructed other members of that union not to do so was because of Gunning's instructions. Clary's insertion into his story, at one point, that he told Gunning, during one of these conversations, that he and other engineers had talked the matter over and decided not to load the trucks for Saxon, and that the business agent answered "it was appreciated," cannot detract from the direct finding, which I make, that the business agent induced a work stoppage by his members at this location. Gunning was not called as a witness.

5. Secondary picketing at the premises of a neutral employer

South Shore Builders Supply Co. had a contract to deliver $3,000 worth of lumber to the Saxon and the Theresa projects. This Company had a collective-bargaining agreement in effect with Teamsters Local 522. In October Respondent Local IBT 1205 picketed the South Shore place of business for a 2-week period. Harold Rubin, the company manager, recalled only that the pickets carried two signs and that "one stated the carpenters union or council, and the other the teamster union."

Rubin testified that on September 28 three men came to his office—Chauncey Bartow, business agent of the Suffolk County District Council of Carpenters, Whitey Bovarski, identified on this record both as president Respondent Local 1205 and as secretary-treasurer of Teamsters Local 505, and a third person whom Rubin did not know. The men inquired whether Rubin was selling materials to Theresa or Saxon; he answered he was not. They then asked him not to sell to either of those companies and left. On a Saturday shortly thereafter, the same three again visited Rubin's office and accused him of having "sold the man material." Now Rubin explained that what with 200 customers he did not know to whom he had sold, and again denied knowledge of such sales. This time the men told him they "knew how to take care" of him and went away. They were back again the following Monday to tell him "there would be a picket line the next day" because he had sold materials to Theresa and Saxon. The picketing started shortly thereafter.

With this picketing, Rubin stopped all deliveries to Theresa and Saxon. To what extent the picketing of the Bay Shore premises interfered with other work there, the record does not show. After the picketing started, Rubin communicated with Teamsters Local 522, the bargaining agent of his employees, and because, as he testified, "one union called off the other," the pickets were eventually removed.

To offset this direct testimony of secondary object in the picketing, Local 1205 called as a witness Edmund Bovarski, its business agent, who said it was he who, together with Business Agent Bartow of the Carpenters and sometimes Whitey Bovarski and one Salvio, also of Local 1205, went to the South Shore Company three or four times. He admitted he had established the picket line but denied having said anything about Theresa or Saxon when he spoke with Rubin. In view

of Bovarski's total testimony, I do not credit his denial; Local 1205 was during this very period also picketing Villani's warehouse facilities at 12 Wisconsin Court, an operation which functioned as an integral part of his total construction work.

During these various visits by the several business agents to South Shore, and while the picketing was going on, a demand for recognition was expressed. Rubin said it was Bartow who asked to represent Carpenters, and the Company does use lumber handlers; Bartow did not appear as a witness to contradict this testimony, which I credit. Bovarski testified he demanded bargaining rights instead; he also said Bartow talked during these visits but that there was no mention of Carpenters and that he did not know why Bartow was there. In reply to repeated questions of what Bartow was doing there, Bovarski's answers were evasive to the point of incoherence. He also said flatly that throughout these events—from the start of the picketing to the date of the injunction hearing in January—he had never spoken to any of the South Shore employees at all. In complete reversal, he later testified: "I signed the members up that worked for South Shore Builders Supply and after I signed them up I wanted to take the men in with me to sit down as a negotiating committee and when I arrived one morning there they no longer wanted to represent them."

6. Local 1205 picketing for recognition at 12 Wisconsin Court

On about October 19, 1965, Respondent Local 1205 established a picket line in front of the warehouse facilities Villani operates at 12 Wisconsin Court. The picketing continued without interruption from then to the start of February 1966, when it ceased in consequence of the court injunction. The pickets carried signs reading: "Employees of this Establishment are Non-Union Local 1205—International Brotherhood of Teamsters." After the Government's petition for an injunction had been filed in January the words "Majestic Signs" were for the first time added to the picket sign.

Analysis and Conclusions

Responsibility of Respondents Local 138 and Local 1205; Illegal Objectives; Violations of Section 8(b)(4)(B) and (7)(C)

Only two local unions are named Respondents in the complaint: Local 138 of the Operating Engineers and Local 1205 Teamsters. It must be noted that the picket signs carried at the two construction sites bore the legend only "AFL–CIO" as the picketing labor organization, and did not in themselves identify any particular union more precisely. The picketing at 12 Wisconsin Court was admittedly by and in the name of Local 1205, as was also the picketing of the South Shore Builders Supply Company. Business agents of several other identified local unions joined in activities incidental to the picketing at the two construction sites. In the light of the posture of the eventual pleadings, limited to only two local union respondents, participation in the events by these other union agents must therefore be considered only to the extent that the resultant general appearance of things warrants, or does not warrant, an inference that the total picture proves responsibility of the Suffolk and Nassau Building Trades Council, AFL–CIO, as also alleged in the complaint. For the moment, the liability of Local 138 and Local 1205 as entities apart from the Council must be considered.

I find that, regardless of what other local unions may have also authorized the picketing at the Theresa and Saxon projects, Respondent Local 138 was responsible for it, and that, among other objects, its purpose was to force or require the two contracting corporations to recognize and bargain with Local 138 for their employees, and to force or require employees of those companies to accept Local 138 as their collective-bargaining representative. The first word that there would be any picketing came when early in the morning of September 9, Local 138 Business Agent Duffy appeared at the Theresa project and told General Manager Cortes he wanted the job to "go union with the Trade Council." Cortes said flatly he would remain nonunion and Duffy immediately promised he would "have pickets on the job." True to Duffy's threat the pickets appeared after lunch. Later that month Duffy was present at the picket line, in the company of two business agents of other local union, when James Share, of Able Ready Mixed, Inc., arrived; the group told Share not to make deliveries here because of the "strike." Jack Gunning, also a Local 138 business agent, went to the Carlson Company place of business and told his shop steward there that the Saxon Arms project was nonunion, and prevailed upon him not to load for that destination.

That recognition as well as employee organization was among Local 138's purposes is clear; there was no Board certification outstanding, no representation petition was filed, and the picketing continued without interruption for several months, well beyond the 30-day period mentioned in the statute. I find that by picketing the Theresa and Saxon jobsites Respondent Local 138 violated Section 8(b)(7)(C) of the Act.[2]

I also find that an object of the picketing by Local 138 at the construction sites was to induce and encourage employees of neutral employers to cease work, and thereby interrupt the business carried on between Theresa and Saxon and other employers. To start with, this was a common situs situation. There were independent contractors, or other employers, carrying on their usual business at these locations. The picket sign did not identify the particular employer which was in dispute with the picketing union. The fact that the words "Saxon Arms" were added to the signs 4 months later, after the injunction petition was served, in no way alters this critical fact. The appeal for employee cooperation by work refusal was not limited to those of the primary employer, and therefore Local 138 cannot escape the finding that it was as much a strike call to workmen of neutral employers as of Theresa and Saxon.[3] Employees of both the New York Telephone Company and of Interstate Contractors refused to work because of the picketing. There were also direct appeals from or near the picket line by Local 138 agents as well as by their companions to neutral employers and their employees not to enter upon the premises. Thus, Business Agent Duffy was with other union agents when James Share, of the Able Company, was told at the picket line not to make deliveries. Duffy also told Giannone, at the very picket line, not to make any more deliveries to these projects; Giannone acceded.

That there was a secondary and therefore prohibited object in the picketing is also persuasively indicated by Local 138's resort to direct appeals away from the picketed premises to cut off the builder's business dealings with his suppliers. Business Agent Gunning's directions to his shop steward, Clary, at Andrew Carlson and Sons, passed on through the steward to other Local 138 members employed there, not to load trucks destined for Theresa and Saxon, constituted a straight inducement of employees to strike in sympathetic support of the picket line. I find that by Gunning's inducement of Clary, and other members of his union, who were employed by Andrew Carlson, Local 138 violated Section 8(b)(4)(i)(B) of the Act.

I find that by picketing the Theresa and Saxon building projects Respondent Local 138 violated Section 8(b)(4)(B) of the Act, and by its agent's appeals to Giannone and Share, Local 138 further violated Section 8(b)(4)(ii)(B).

The fact Respondent Local 1205 authorized the picketing of the warehouse operations at 12 Wisconsin Court, supporting aspects of the construction projects, is conceded. The General Counsel expressly stated at the hearing he does not contend this activity was violative of the secondary boycott provisions of Section 8(b)(4) of the Act. He does contend that the picketing violated Section 8(b)(7)(C). Here again the picketing union held no Board certification as bargaining agent of any employees conceivably employed at this location, the picketing continued from October through early January, and no representation petition of any kind was filed with the Board. It is also conceded by Local 1205 that its purpose was to organize employees.

The sole defense to the complaint allegation that by this conduct Local 1205 violated Section 8(b)(7)(C) rests on the assertion that the Union was seeking to organize employees other than those associated with the Theresa and Saxon companies, or who through some corporate name or other were employed by Villani in connection with the erection of the two apartment house developments. At the hearing Bovarski, the Local 1205 business agent, said his purpose in picketing was to organize the employees of a company called "Majestic Modular Cabinet Company"; in its brief Local 1205 says the pickets were aimed at the "Majestic

[2] The fact that Local 1205 was engaged in like picketing at the Wisconsin Court warehouse of the same companies seeking recognition for employees at that location, that a Local 1205 business agent was once seen at the Theresa site picket line, and that another of its business agents made appeals for secondary assistance at the premises of a neutral employer, do not suffice to prove the further pinpointed allegation that Local 1205 also authorized the picket lines at the two construction sites

[3] *Moore Dry Dock Company (Sailors' Union of the Pacific, AFL)*, 92 NLRB 547, *N L R.B.* v *Service Trade Chauffeurs, Salesmen & Helpers*, 191 F.2d 65 (C A. 2).

Cabinet Co."; for 2½ months the picket signs named no company at all, and when one was added in January it read "Majestic signs." This affirmative defense, so to speak, even assuming, contrary to the evidence, that it were based on fact, might well require an unfair labor practice finding against Local 1205 nonetheless, for its picketing would still have been organizational in purpose, without a Board certification, and longer than the statutory 30-day period without the filing of a representation petition. But I do not reach that question, for I do not credit Bovarski's testimony that he was attempting to organize another company's employees, and the record as a whole amply supports a finding that his real purpose was to force into his union whatever employees the Theresa and Saxon companies had occasion to send to this warehouse. Indeed, it is only the fact it was not shown any other group of employees worked here at the time that precludes a finding of secondary objective in violation of Section 8(b)(4)(B) also.

There is no definitive testimony that during the picketing here in question there were workmen present at the Wisconsin Court location other than persons employed by Villani for warehouse purposes, or by Theresa and Saxon to transport building materials. There came a time, during the events, when Villani diverted deliveries destined for the building projects to this warehouse instead for the very purpose of avoiding the difficulty which the construction site picketing was causing.

Reference, by the witnesses, to these various trade names or companies using the word "Majestic" in their title, resulted from the fact that over the years the building at 12 Wisconsin Court was from time to time occupied in part by such companies. There remained affixed to the building a number of signs reading, among others, "Majestic Modular," "Majestic Signs," "Island Paving." One was simply added to the Local 1205 picket sign in January. Bovarski selected another and spoke of it at the hearing as the employer of the persons he sought to represent. Cross-examined as to details, he evaded or equivocated continuously. He said he started the entire activity because of a name he saw on a sign on the building. He then said he had seen two employees of such a company, on a truck one day, but could not recall when. He avoided answering whether he had seen these before the picketing started. He then added he had never obtained any signed authorization cards from such employees; indeed he had not spoken to any of them—ever. He never even inquired about the identity of the person who might be the employer of such people. I do not credit Bovarski.

In contrast to his complete indifference to any other group of employees, it was at this very time that Bovarski went to South Shore Builders Supply Co. to demand that it stop doing business with the Theresa and Saxon projects. Together with one Salvio, also a Local 1205 business agent, and Bartow of the Carpenters Union, he told that company he was going to picket it, literally because it had refused to heed the demand to stop making deliveries to Theresa and Saxon; and he did picket South Shore.

I find that by picketing the warehouse at 12 Wisconsin Court, where Theresa and Saxon employees, as well as other workmen collectively engaged through Villani in support of the construction work, Respondent Local 1205 violated Section 8(b)(7)(C) of the Act.

I also find that by Edmund Bovarski's threat to Manager Harold Rubin, and by its picketing of the premises of South Shore Builders Supply Co., in October of 1965 Respondent Local 1205 violated Section 8(b)(4) (i) and (ii)(B) of the Act.

The Building Trades Council as Respondent

To hold, as the complaint alleges, that the Nassau and Suffolk Building Trades Council was responsible for all of the foregoing conduct of Local 138 and Local 1205, it would have to be said that the preponderance of the substantial evidence on the record as a whole dictates the conclusion. I am of the opinion that it does not, and I shall therefore recommend dismissal of the complaint with respect to the Council.

This is the usual Building Trades Council, existing pursuant to internal regulations of the Construction Trades Department of the AFL–CIO, and carrying on its function in accordance with its own rules of procedure. Fifty-six separate local unions together constitute the Council, and from these unions, a total of 110 business agents are accredited from their own locals as representatives to the Council. There are six officers of the Council: president, vice president, secretary-treasurer, sergeant-at-arms, president-emeritus, and secretary-treasurer-emeritus. The Council also has three trustees and an executive board consisting of 14 persons. The record is silent with respect to the authority, duties, or responsibilities of

any of the officers, trustees, or executive board members. It may be assumed that the officers are agents of the Council within the meaning of the statutory phrase "labor organizations or its agents," which defines unfair labor practices chargeable to labor organizations. No authority has been cited for rule of law that persons designated trustees or executive board members, much less mere business agents delegated to the Council, *ipso facto* are agents whose activities *per se* bind the Council.

There is no evidence of participation, in any of the activities described throughout the entire record, by any of the six officers of the Council. Indeed, no reference was made to any one of them, either by name or office, by a single witness. Nor is there direct testimony, or other proof, of advance authorization of any one to act on behalf of the Council, nor ratification by that organization as such after the events. Of all of the union agents whose activities were described only one was shown to occupy a dual position, and that one is Jack Gunning, business agent of Respondent Local 138. Gunning is one of the 14 members of the Council's executive board. He is the man who instructed the Local 138 shop steward at the neutral premises of the Carlson Company not to work on materials destined for Theresa and Saxon. Gunning spoke to the man as his business agent, he limited his appeal to members of his own local, and there is not the slightest evidence that he spoke in any other capacity or that anyone formed the impression he was speaking on behalf of anyone other than his own local. Gunning's activities that day therefore cannot constitute proof of liability by the Council.[4]

The General Counsel's argument in support of the Council's responsibility is substantially twofold. He makes the direct assertion that the business agent of any constituent local, by virtue of his agency status within his own local, necessarily is also the business agent of the Council, and therefore whatever he does binds both his local and the parent organization. In this view, all the business agents—110 of them—become agents of the Council, and the entire concept of membership in a labor organization as distinguished from its officers or managers ceases to exist. The Board has rejected this broad contention.[5]

Although not clearly articulated, there is a further implicit suggestion in the General Counsel's brief that the very fact of membership in the Council by its component locals, clothes each of the separate unions somehow with an agency role on behalf of the Council. Only one (Local 138) of the 56 locals is charged with improper conduct at all; the second Respondent Local, Teamsters 1205, is not affiliated with the Council. The law seems well settled that, as between a Council and its constitutent locals, agency on the part of each to bind the other does not flow automatically.[6]

The second contention urged by the General Counsel for a finding of liability against the Council is an all-embracing argument that the widespread activities by diverse local union, plus the personal participation by about 10 of the many business agents delegated to the Council, supports an inference that in fact they were acting not only in concert which each other but also pursuant to authorization by, and as *alter ego* for, the Council itself.

In the sense that authorization by the Council may be proved indirectly by the total circumstances, this is a logical argument and merits consideration regardless of its eventual success or failure. Inquiry by such reasoning into the possibility of a hidden design conceived and mastered-minded in the inner circle of the Council invites almost a subjective reaction. Add or substract a few facts in any given total picture, enlarge or reduce one or two pertinent factors and the answer changes. At what point does suspicion become certitude? Here, 5 of the 56 local unions evidenced an intent to force Theresa and Saxon to go union. Had there been instead 35 or 40, or even a majority of the total membership of the Council, the sheer number element would be much more significant. If participation by only 5 points

---

[4] In *Building and Construction Trades Council of Tampa,* 132 NLRB 1564, one man was both business agent of a constituent local and officer of the Council. The Board said: "The contention . . . that the fact that Fritz was both agent of the Carpenters and the president of the Council involved the Council in responsibility for his actions as business agent is rejected It is clear that any person may hold office in more than one organization without binding the others by his actions on behalf of any one of them "

[5] *Oertel Brewing Company and Louisville Brewing Association,* 93 NLRB 530.

[6] *Pasco-Kennewik Building and Construction Trades Council (Cisco Construction Company),* 111 NLRB 1255.

a finger of guilt at all 56, would joint activity by 4 or 3, or even any 2 of the total group, also serve to support the overall inference?

This total picture theory, however, is also an attempt to support the complaint by oblique reliance upon evidence which does not of itself prove agency. When Business Agent Becker of Teamsters Local 282 (a Council member) was rebuffed by General Manager Cortes' insistence upon remaining nonunion, he added the threat that he would go to the "Trades Council." A few days later Business Agent Duffy, of Local 138 (another Council affiliate), tried again, and when he failed, he told Cortes "all of the members of the Trades Council will picket." In his appeal for cooperation from Able, the neutral cement mix supplier, Becker also said that Able was "going against the Trades Council." The weight to be given this sort of proof of guilt by the Council must be considered in the light of the clear legal precedent which holds that "it is, of course, well settled . . . that agency and authority cannot be proved by the hearsay statements of the alleged agent himself." *Brownell* v. *Tide Water Associated Oil Co.*, 121 F.2d 239 (C.A. 1). See, also, 4 Wigmore, *Evidence* § 1078 (3d ed.): "It may be noted that the fact of agency must of course be somehow evidenced before the alleged agent's declarations can be received as admissions; and therefore the use of the alleged agent's hearsay assertions that he is agent would for that purpose be inadmissible, as merely begging the very question."

These fundamental rules of evidence are equally applicable to the uncontradicted testimony of Police Sergeant Glosbrenner, that Business Agent Bartow of the Carpenters Union told him, in explaining the picket line at the Theresa project, that "The building trades union is involved." No more persuasive is the fact that a person identified in the record only as a "business agent" told a telephone company employee "the Building Trades Council was behind this," or that Business Agent Genova, of Laborers Local No. 1298, told his shop steward at the Carlson Company "all the unions" were picketing.

The total argument here rests essentially on the fact that 10 business agents were identified as active in the coordinated attempt to organize the construction operations conducted by Villani, including the two building projects in process in 1965 and his warehouse business operated in conjunction with the buildings. The business agents affiliated with the Council were Bartow, Burns, and Babcock, of the Carpenters Union; Duffy and Gunning, of Operators Engineers Local 138; Genova, of the Laborers; Becker, of Teamsters Local 282; and someone from the Plumbers Union whose name never did appear. Together these represented 5 of the 56 unions which formed the Council. In addition there were Edmund Bovarski, Whitey Bovarski, and Salvio, business agents of Teamsters Local 1205, not associated with the Council. To enmesh these last three with the Council is a flimsy extension of the General Counsel's argument indeed

There are too many Board and court decisions turning on the very point that local unions are separate entities, apart from any council or federation with which they may be affiliated or combined, to permit a holding here, as the General Counsel requests, which would virtually obliterate any distinction between the Respondent Council and its members. I view the question of responsibility chargeable to the Council as one of sufficiency of evidence, as in any unfair labor practice proceeding. No witnesses were called by the Council or by any of its member locals to refute the evidence received in support of the complaint. Suspicion apart, I am nevertheless of the opinion that the record in its entirety falls short of proving a *prima facie* against the Council.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondents Local 138 and Local 1205, set forth in section III, above, occurring in connection with the business operations of Theresa Garden Apartments, Inc., and Saxon Arms Construction Corp., have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the Respondents engaged in unfair labor practices, it will be recommended that they cease and desist therefrom, and take certain affirmative action of the type conventionally ordered in such cases to effectuate the purposes of the Act.

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

CONCLUSIONS OF LAW

1. Theresa Garden Apartments, Inc., and the Saxon Arms Construction Corp., are engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Respondents Local 138 and Local 1205 are labor organizations within the meaning of the Act.

3. By engaging in, and by inducing and encouraging individuals employed by New York Telephone Company, Interstate Contractors, Inc., and Andrew Carlson and Sons, Inc., and other persons engaged in commerce or in industries affecting commerce, to engage in, a strike or refusals to perform services, and by interfering with, restraining, or coercing, Able Company and Andrew Carlson Company, all with an object of forcing these four companies to cease doing business with Theresa and the Saxon Companies, Respondent Local 138 has engaged in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(B) of the Act.

4. By picketing or causing to be picketed, the construction site of Theresa and the Saxon Companies with an object of forcing or requiring those companies to bargain with Local 138 as the representative of their employees, although Local 138 was not certified as their bargaining agent, without a petition having been filed within 30 days of the commencement of such picketing, Respondent Local 138 has engaged in unfair labor practices within the meaning of Section 8(b)(7)(C) of the Act.

5. By picketing or causing to be picketed the warehouse premises utilized by the Theresa and the Saxon Construction Companies with an object of forcing or requiring those companies to bargain with Local 1205 as the representative of their employees, although Local 1205 was not certified as their bargaining agent, without any petition having been filed within 30 days of the commencement of such picketing, Respondent Local 1205 has engaged in unfair labor practices within the meaning of Section 8(b)(7)(C) of the Act.

6. By engaging in, or by inducing individuals employed by South Shore Builders Supply Co., and other persons engaged in commerce or in industries affecting commerce, to engage in, a strike or refusal to perform services, and by interfering with, restraining, or coercing, South Shore Building Supply Co., with an object of forcing it to cease doing business with Theresa and Saxon companies, Respondent Local 1205 has engaged in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(B) of the Act.

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

Upon the foregoing findings of fact and conclusions of law, and pursuant to Section 10(c) of the Act, I hereby issue the following:

RECOMMENDED ORDER

A. Respondent Local 138, International Union of Operating Engineers, AFL-CIO, Long Island, New York, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Engaging in, or inducing or encouraging any individual employed by New York Telephone Company, Interstate Contractors, Inc., Andrew Carlson and Sons, Inc., or any other person engaged in commerce or an industry affecting commerce, to engage in, a strike or refusal in the course of his employment to perform services, or threatening, coercing, or restraining Able Ready Mixed, Inc., Giannone Services, Andrew Carlson and Sons, Inc., or any other person engaged in commerce or an industry affecting commerce, where, in either case, an object thereof is to force or require New York Telephone Company, Interstate Contractors, Inc., Able Ready Mixed, Inc., Giannone Services, Andrew Carlson and Sons, Inc., or any other person, to cease doing business with Theresa Garden Apartments, Inc., and Saxon Arms Construction Corp.

(b) Picketing or causing to be picketed Theresa Garden Apartments, Inc., and Saxon Arms Construction Corp., where an object is forcing or requiring said companies to recognize or bargain with it as the representative of said companies, in violation of Section 8(b)(7)(C) of the Act.

2. Take the following affirmative action, which I find will effectuate the policies of the Act:

(a) Post at its business offices and meeting halls copies of the attached notice marked "Appendix A."[7] Copies of the notice, to be furnished by the Regional Director for Region 29, shall be duly signed and posted by Respondent Local 138 as soon as they are received, and they shall be kept in conspicuous places, including all locations where notices to members are customarily posted. Reasonable steps shall be taken by Respondent Local 138 to insure that the notices are not altered, defaced, or covered by any other material.

(b) Mail or deliver to the Regional Director signed copies of the notice for posting by Theresa Garden Apartments, Inc., and Saxon Arms Construction Corp., and Andrew Carlson and Sons, Inc. (if willing) in a manner corresponding to the preceding paragraph.

(c) Notify the Regional Director, in writing, within 20 days from the date of receipt of this Recommended Order, what steps have been taken to comply herewith.[8]

B. Respondent Local 1205, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Long Island, New York, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Engaging in, or inducing or encouraging any individual employed by South Shore Builders Supply Co., or any other person engaged in commerce or an industry affecting commerce to engage in, a strike or refusal in the course of his employment to perform services, or threatening, coercing, or restraining South Shore Builders Supply Co., or any other person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is to force or require South Shore Builders Co., or any other person, to cease doing business with Theresa Garden Apartments, Inc., and Saxon Arms Construction Corp.

(b) Picketing or causing to be picketed the warehouse operations of Theresa Garden Apartments, Inc., and Saxon Arms Construction Corp., where an object thereof is forcing or requiring those companies to recognize or bargain with it as the representative of those companies' employees in violation of Section 8(b)(7)(C) of the Act.

2. Take the following affirmative action, which I find will effectuate the policies of the Act:

(a) Post at its business offices and meeting halls copies of the attached notice marked "Appendix B."[9] Copies of the notice, to be furnished by the Regional Director for Region 29, shall be duly signed by and posted by Respondent Local 1205 as soon as they are received and they shall be kept in conspicuous places, including all locations where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent Local 1205 to insure that the notices are not altered, defaced, or covered by any other material.

(b) Mail or deliver to the Regional Director signed copies of the notice for posting by Theresa Garden Apartments, Inc., Saxon Arms Construction Corp., and South Shore Builders Supply Co., in a manner corresponding to the preceding paragraph.

(c) Notify the Regional Director, in writing, within 20 days from the date of this Recommended Order, what steps Local 1205 has taken to comply herewith.[10]

---

[7] In the event that the Board adopts this Recommended Order, the words "a Decision and Order" will replace "the Recommended Order of a Trial Examiner." In the further event that the Board's Order is enforced by a decree of a United States Court of Appeals, the words shall be, "a Decree of the United States Court of Appeals Enforcing an Order."

[8] Should the case go to Board Order, the written notification shall be given within 10 days from the Order. Should it go to court decree, it will be 10 days from the decree.

[9] In the event that this Recommended Order is adopted by the Board, the words "a Decision and Order" shall be substituted for the words "a Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order is enforced by a decree of a United States Court of Appeals, the words "a Decree of the United States Court of Appeals Enforcing an Order" shall be substituted for the words "a Decision and Order."

[10] In the event that this Recommended Order is adopted by the Board this provision shall be modified to read: "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps the Respondents have taken to comply herewith."

C. IT IS HEREBY FURTHER ORDERED that the complaint be dismissed insofar as it alleges the commission of unfair labor practices by Nassau and Suffolk Building Construction and Trades Council, AFL–CIO.

APPENDIX A

NOTICE TO ALL MEMBERS OF LOCAL 138, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL–CIO

Pursuant to the Recommended Order of a Trial Examiner 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 individuals employed by New York Telephone Company, Interstate Contractors Inc., Andrew Carlson and Sons, Inc., or any employer other than Theresa Garden Apartments, Inc., and Saxon Arms Construction Corp., to engage in, a strike or refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or interfere with, restrain, or coerce, Able Ready Mixed, Inc., Andrew Carlson and Sons, Inc., where an object thereof is to force or require any of these companies to cease doing business with Theresa Garden Apartments, Inc., or Saxon Arms Construction Corp.

WE WILL NOT picket or cause to be picketed Theresa Garden Apartments, Inc., or Saxon Arms Construction Corp., where an object thereof is forcing or requiring those employers to recognize or bargain with us as the representative of their employees in violation of Section 8(b)(7)(C) of the Act.

LOCAL 138, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL–CIO,

Labor Organization.

Dated_____ By_____
(Representative) (Title)

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

If members have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 16 Court Street, Fourth Floor, Brooklyn, New York 11201, Telephone 596–5386.

APPENDIX B

NOTICE TO ALL MEMBERS OF LOCAL 1205, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

Pursuant to the Recommended Order of a Trial Examiner 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 individuals employed by South Shore Builders Supply Co. or any employer other than Theresa Garden Apartments, Inc., or Saxon Arms Construction Corp., to engage in, a strike or refusal in the course of their employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials or commodities, or interfere with, restrain, or coerce South Shore Builders Supply Co., where an object thereof is to force or require that company to cease doing business with Theresa Garden Apartments, Inc., or Saxon Arms Construction Corp.

WE WILL NOT picket or cause to be picketed the premises of Theresa Garden Apartments, Inc., or of Saxon Arms Construction Corp. at 12 Wisconsin Court, Bar Shore, Long Island, New York, where an object thereof is forcing or requiring those companies to recognize or bargain with us as the representative of their employees in violation of Section 8(b)(7)(C) of the Act.

LOCAL 1205, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Labor Organization.

Dated_____ By_____
(Representative) (Title)

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

If members have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 16 Court Street, Fourth Floor, Brooklyn, New York 11201, Telephone 596-5386.

Fruehauf Trailer Company *and* Local 509, International Union of United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO, Charging Party [1] *and* International Union, Allied Industrial Workers of America, AFL-CIO; and Local No. 976, affiliated with International Union, Allied Industrial Workers of America, AFL-CIO, Parties in Interest.[2]

Case 21-CA-5571. December 16, 1966

DECISION AND ORDER

On February 9, 1966, Trial Examiner Louis S. Penfield issued his Decision in this proceeding, finding that Respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. He also found that Respondent had not engaged in certain other unfair labor practices alleged in the complaint, as amended, and recommended dismissal of those allegations. Thereafter, exceptions and supporting briefs were filed by the Respondent, Charging Party, Parties in Interest, and General Counsel, and answering briefs were filed by the Respondent and Charging Party.

The National Labor Relations Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and briefs, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the following modification.

We agree with the Trial Examiner that the Respondent (1) did not unlawfully refuse to bargain with UAW;[3] (2) did not unlawfully assist AIW in connection with its Bandini acquisition; and (3) did not unlawfully discriminate against individual employees by failing or refusing to employ them. The Trial Examiner found that Respondent: (1) violated Section 8(a)(2) by extending AIW's Slauson contract to cover Respondent's employees at Fullerton; (2) violated Section 8(a)(3) by applying the union-security clause of

---

[1] Herein UAW.

[2] Herein AIW.

[3] However, unlike the Trial Examiner (see footnote 14 of his Decision), we do not consider the timing of the UAW's filing of its initial charge in this case significant.