(c) Notify the Regional Director for Region 7, in writing, within 20 days from the date of the receipt of this Decision, what steps he has taken to comply herewith.[4]

[4] 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 Respondent has taken to comply herewith."

APPENDIX

NOTICE TO ALL EMPLOYEES

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 our employees that:

I WILL NOT threaten my employees with reprisal because of their membership in or activity on behalf of General Teamsters Union, Local No. 406, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Ind., or institute any unilateral changes in wages or any other working conditions without previously notifying or consulting with the above labor organization.

I WILL, upon request, bargain collectively with the above-named labor organization as the exclusive bargaining representative of all employees in the following unit with respect to rates of pay, wages, hours of employment, and other conditions of employment, and, if understandings are reached, embody such understandings in a signed agreement. The bargaining unit is:

All truckdrivers, warehousemen, and mechanics employed at the Respondent's Grand Rapids, Michigan, place of business, but excluding office clerical employees, guards, and supervisors as defined in the Act.

I WILL, upon request, supply pertinent data to the above-named Union to substantiate my plea of financial inability to grant an increase in wage or other economic benefits.

All my employees are free to become, remain, or refrain from becoming or remaining, members of any labor organization.

MARTIN E. WRIGHT, A SOLE PROPRIETOR,
D/B/A WEST SIDE TRANSFER CO.,
Employer.

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 employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 500 Book Building, 1249 Washington Boulevard, Detroit, Michigan 48226, Telephone 226-3200.

Local 25, International Brotherhood of Electrical Workers, AFL-CIO *and* New York Telephone Company

Local 25, International Brotherhood of Electrical Workers, AFL-CIO *and* New York Telephone Company and Communication Workers of America, AFL-CIO, and Its Local 1104. *Cases 29-CC-5 (formerly 2-CC-845), 29-CD-2 (formerly 2-CD-301), -2 (formerly 2-CD-301-2), -3 (formerly 2-CD-301-3), and 29-CD-4 (formerly 2-CD-303). January 9, 1967*

DECISION AND ORDER

On April 19, 1966, Trial Examiner Paul Bisgyer issued his Decision in the above-entitled proceeding, finding that the Respondent

had engaged 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 further found that the Respondent had not engaged in certain other unfair labor practices alleged in the complaint and recommended that they be dismissed. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision and a supporting brief.

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 Brown, Jenkins, and Zagoria].

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 brief, and the entire record in the 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 CASES

On September 24, 1964, Case 29–CC–5 was heard by the late Trial Examiner Reeves R. Hilton in New York, New York, on complaint of the General Counsel [1] and the answer of Local 25, International Brotherhood of Electrical Workers, AFL–CIO, herein called the Respondent or Local 25.[2] In substance, the complaint alleges that the Respondent, in furtherance of its labor dispute with New York Telephone Company, herein called Telco, over the assignment of certain telephone installation work at six construction projects,[3] engaged in secondary boycott activities prohibited by Section 8(a)(4)(i) and (ii)(B) of the National Labor Relations Act, as amended. In its answer, the Respondent denies, among other things, the commission of any unfair labor practices. Because of Trial Examiner Hilton's death, and pursuant to Section 5 of the Administrative Procedure Act and Sections 102.36 and

[1] The original charge in Case 29–CC–5 was filed on January 10, 1964, and a copy was served on the Respondent by registered mail on or about the same day. On January 16, 1964, an amended charge was filed and a copy was similarly served on the Respondent on or about the following June 8

[2] In Case 29–CC–5, the parties stipulated that the formal record shall consist of the transcript of testimony and exhibits introduced in the hearing conducted pursuant to Section 10(k) of the National Labor Relations Act, as amended, in Cases 29–CD–2, 29–CD–2–2, 29–CD–2–3, and 29–CD–4, and the transcript of testimony and exhibits introduced in the hearing before United States District Court Judge Jacob Mishler in connection with a petition for an injunction under Section 10(l) of the Act in *Ivan C. McLeod* v. *Local 25, International Brotherhood of Electrical Workers, AFL–CIO,* 64 Civ. 674. The stipulation provides that the testimony and exhibits shall be "subject to the same objections as to materiality, relevance, and competency, or other grounds as were made at the said 10(k) hearing and 10(l) trial and shall be subject to rulings thereon by the Trial Examiner with appropriate exceptions by the party whose objection has been overruled."

[3] These projects are Massapequa firehouse; Baldwin Junior High School; Sears, Roebuck warehouse; Kings Grant Motor Inn; Troiano Truck terminal; and Long Beach City Hall.

102.37 of the Board's Rules and Regulations, Series 8, as amended, Trial Examiner Paul Bisgyer was duly designated to perform all the duties and exercise all the powers in connection with the disposition of the issues in this case. Although, prior thereto the parties were afforded an opportunity for a rehearing *de novo,* they waived this right. At the hearing before Trial Examiner Hilton, the Respondent moved to dismiss the complaint in Case 29–CC–5 on the ground that the alleged unfair labor practices were the subject of, and precluded by, the pendency of the Section 10(k) and Section 8(b)(4)(D) proceedings, mentioned below. For the reasons later discussed, I deny this motion.

On August 31, 1965, the General Counsel issued a consolidated complaint in Cases 29–CD–2, 29–CD–2–2, 29–CD–2–3, and 29–CD–4,[4] alleging that on May 20, 1965, following proceedings held pursuant to Section 10(k) of the Act, the Board issued its Decisions and Determination of Dispute (152 NLRB 723) wherein the Board determined that employees of Telco, currently represented by Communication Workers of America, AFL–CIO, herein called, jointly with its Local 1104, CWA, were entitled to perform certain described telephone installation work and that the Respondent was not permitted by means proscribed by Section 8(b)(4)(D) of the Act to force or require Telco to assign the work in question to electricians who were currently represented by the Respondent. The complaint further alleges that the Respondent has continuously refused to comply with the Board's Decision and Determination of Dispute and that therefore its conduct at 10 construction jobsites,[5] which was designed to secure the assignment of the disputed work to employees it represented, violated Section 8(b)(4)(i) and (ii)(D) of the Act. The Respondent, in its answer, admits its refusal to comply with the Board's determination but denies engaging in any unfair labor practices.

On December 6, 1965, I, who was also designated the Trial Examiner in the above CD case, granted the General Counsel's unopposed motion to consolidate these cases with Case 29–CC–5. On the same day, a hearing on the issues presented by the pleadings in the CD cases was held before me in Brooklyn, New York.[6]

At the close of the hearings before Trial Examiner Hilton and me, the parties were given an opportunity to argue their positions orally and to file briefs. Thereafter, briefs were received from all parties.

Upon the entire record, including the transcripts of testimony and exhibits introduced in the Board and court proceedings conducted pursuant to Section 10(k) and (l) of the Act, as previously described, and with due consideration being given to the arguments advanced by the parties, I make the following:

FINDINGS AND CONCLUSIONS

I. THE BUSINESS OF THE COMPANIES INVOLVED

Telco, a New York corporation, with its principal office and place of business in New York City, is engaged in the business of providing local and long distance communications and related services as part of a nationwide telephone system. During the year 1963, which is a period representative of its annual operations generally, Telco derived gross revenues in excess of $1 million for communications services performed between points within the State of New York to points in other States.

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[4] This consolidated complaint is based on charges filed by Telco, copies of which were served on the Respondent by registered mail, as follows: In Case 29–CD–2, filed May 15, 1964, served May 18, 1964; in Case 29–CD–2–2, filed June 1, 1964, served the next day; in Case 29–CD–2–3, filed June 1, 1964, served the next day; and in Case 29–CD–4, filed June 4, 1964, also served the following day.

[5] In addition to the six construction projects named in footnote 3, *supra,* these sites involved the building of a new wing to the Nassau Hospital, a Sears, Roebuck department store, a plant owned by Instant Whip Co., and a laboratory of Endo Laboratories, Inc. The complaint also alleged another jobsite involving the erection of an Americana Foods store but no evidence was presented with respect to this project.

[6] With respect to such issues, the parties entered into a stipulation incorporating into the record the transcripts of testimony and exhibits described in footnote 2, *supra,* subject to the same conditions.

The parties stipulated, and I find, that Telco and the following entities are engaged in commerce and in industries affecting commerce within the meaning of Section 2(1), (6), and (7) and 8(b)(4) of the Act:

DiFazio Electric Co., Inc.
Herkob & Co., Inc.
Budin Electric Co. (Budin Contracting Co., Inc.)
Pappo Brothers, Inc.
Kassay Brothers, Inc.
Geeco Electrical Construction Corp.
Furst Electric Co., Inc.
Port Chester Electrical Corp.
Armand Holding Corporation
Pinnella, Lewin and Hess Construction Company
Kosmos Construction Corp. (described as Komas Construction Corp. in Case 29-CC-5)
Uman-Parente Corporation
Sears, Roebuck & Company
Endo Laboratories, Inc.
Instant Whip Co.

II. THE LABOR ORGANIZATIONS INVOLVED

It is undisputed that the Respondent and CWA are labor organizations within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Introduction; questions presented*

The instant cases arise out of a jurisdictional dispute between the Respondent and CWA over the performance of certain work preliminary to the installation of telephones. Following a hearing held pursuant to Section 10(k) of the Act[7] in the CD cases, a Board panel on May 20, 1965, issued its Decision and Determination of Dispute in which it awarded the disputed work[8] to employees of Telco represented by CWA and held that the Respondent was "not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require . . . [Telco] to assign the . . . [said] work to electricians" represented by the Respondent. Thereafter, on the Respondent's motion, the full Board reconsidered the matter and on August 16, 1965, affirmed the panel's award. Concededly, the Respondent has continually refused to comply with the Board's determination, although Telco's work assignment to its own employees was not in contravention of "an order or certification of the Board determining the bargaining representative for employees performing such work."[9] Since I am bound by the Board's award, the only issue to be resolved by me on this aspect of the case is whether the Respondent is responsible for the actual and threatened work stoppages at the various jobsites to compel Telco to contract out the disputed work to independent electrical contractors employing electricians who were members of, or represented by, the Respondent, as related below. In Case 29-CC-5, the additional question to be decided is whether this conduct at six of the jobsites also violated the secondary boycott prohibitions of Section 8(b)(4)(B) of the Act.

B. *The evidence*[10]

At the outset, it is noted that the activities in question at the various construction projects, discussed below, involve stewards, foremen, and electricians employed by

[7] Insofar as pertinent, Section 10(k) provides that "[w]henever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph 4(D) of Section 8(b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen . . . ."

[8] Specifically, the disputed work consists of the following:

(1) Installing and fastening devices and structures designed to hold and support telephone equipment.

(2) Pulling telephone cables and wires into and within buildings and structures, and attaching them to interior walls

(3) Installing and fastening terminal boxes where cables are connected onto interior walls.

[9] Section 8(b)(4)(D), by its terms, is not applicable to a situation where the employer's work assignment violates a Board order or certification of bargaining representative.

[10] With certain exceptions separately noted below, the evidence is substantially uncontroverted. However, in making my findings, I have avoided relying upon hearsay or objectionable testimony adduced in the 10(k) and 10(l) proceedings which, in my opinion, lacks probative value.

electrical subcontractors performing the electrical work needed on these jobs. At the time of these events, the electrical subcontractors were signatories to a collective-bargaining agreement between the Respondent, as the representative of the electricians, and Nassau & Suffolk Chapter of the National Electrical Contractors Association, Inc., representing the employers.

1. Endo construction project

In September 1963,[11] Edwin Hoffman, a Telco supervising construction foreman, arrived with a Telco crew at this site in Garden City, Long Island, to place cables and terminals required for the installation of telephone service in a building being erected for Endo Laboratories, Inc., herein called Endo. On the first floor level of the building Hoffman was approached by a man named Friend, who introduced himself as foreman of the electrical contractor, Port Chester Electrical Corp., herein called Port. Friend asked Hoffman why Telco employees were installing the cable and whether there was some way that this work could be contracted out to avoid difficulty on the job. When Hoffman expressed his intention of continuing with this work without using an electrical contractor, Friend replied that he hoped that he could hold on to his electricians. For 2 or 3 days Telco employees remained at their jobs until Elwood Hughes, Endo's field representative, requested Hoffman to leave the job "to avoid any labor problems." After confirming Hughes' request with Hughes' superior, Serchuck, Hoffman removed his men from the job.

In late September or early October 1963, Telco employees returned to the jobsite. However, Serchuck again directed Hoffman to leave the job. At that time, Hoffman observed 10 to 12 employees carrying "electrical pouches" congregate around "the shanties." After speaking to Hughes, who insisted that he leave, Hoffman departed with his crew. The following December 20, Telco again dispatched Hoffman and his crew to the jobsite where, with Hughes' permission, they resumed placing cable. Shortly thereafter, Hoffman, in Hughes' presence, observed electricians in the nearby area pick up their tools and walk to the "shanty." Hughes then left Hoffman, returning 15 or 20 minutes later to inform him to leave in order to prevent a work stoppage by electricians. Hoffman complied with this request and his assignment was completed by an electrical contractor who was party to the above-mentioned collective-bargaining agreement with the Respondent.

2. Massapequa firehouse project

On October 27, 1963, Telco assigned Line Foreman Martin LaGrego and several linemen to place feeder cable, terminals, and inside cable in a new firehouse then being built in Massapequa, Long Island. Shortly thereafter, Gross, a representative of the firm of architects in charge of construction operations, directed LaGrego to leave the job with his crew for the asserted reason that the electricians employed by the electrical subcontractor, Budin Electric Co., herein called Budin, would otherwise walk out. LaGrego refused to do so until he was ordered by his superior, Robert H. Rae, with whom Gross had also communicated.

On either the same day or January 29, 1964,[12] Melvin Rosner, Budin's foreman, observed the Telco crew enter the building. He promptly went to each of the three electricians who were working under his supervision on different floors and informed them that there were Telco employees on the job. According to Rosner, he conveyed this information to his men because he felt it was his "obligation to do so." Each electrician responded that he would leave the job if Telco employees undertook to perform work he considered belonged to electricians. Rosner then told them that, if they wanted to leave, to collect the contractor's tools and material and put them away, even though there was still much electrical work to be done. However, Rosner also asked the men to remain at the site until he called Budin to ascertain what could be done about the situation created by the presence of Telco's employees. The electricians agreed and waited around. Rosner, thereupon, made the telephone call to Budin who stated that he would see what he could do.

[11] Since the charge in Case 29–CD–2 was filed on May 15, 1964, and a copy was served on May 18, 1964, the events occurring prior to November 18, 1963, are considered solely as background evidence in conformity with the 6-month limitation period prescribed in Section 10(b) of the Act.

[12] The record is not quite clear whether the events described above occurred on October 27, 1963, as Melvin Rosner testified, or whether they were part of the events of the following January 29. For purposes of my ultimate determination, the precise date is inconsequential.

Following this call, Rosner telephoned Mark Costello, one of the Respondent's business representatives. Although not a member of the Respondent, Rosner, as he testified, worked under its jurisdiction pursuant to a revocable registration card issued to him by that organization.[13] In that conversation, Rosner informed Costello that Telco employees were working at the firehouse site and that the electricians had left their jobs. Costello then advised Rosner that, in accordance with usual procedures, he would register a complaint with Telco but that Rosner should not expect to hear from him anymore. He also requested Rosner to remain on the job, which Rosner did in order to maintain temporary light and power needed by the other trades. However, Costello did not instruct Rosner to order the men back to work, even though this stoppage was unauthorized and it was the practice for the Respondent in cases of unauthorized work stoppages to try to get the men to return to their jobs. At the 10(1) hearing, Costello furnished the reason for his failure to issue such instructions that he viewed the work stoppage as the individual act of the electricians.[14] As he had advised Rosner he would do, Costello communicated with Telco, claiming that the work should be performed by an independent electrical contractor employing members of, or electricians represented by, the Respondent. An hour after the electricians walked off their jobs, they returned to work when the Telco employees departed.

On January 29, 1964, a Telco crew under the supervision of Robert C. Lander again showed up at the firehouse site to resume pulling cable and to perform other telephone services. On his arrival, Lander conferred with the chief representative of the fire department, O'Brien, and the architect's representative, Gross. Also participating in these discussion was Budin's foreman, Rosner. Lander informed O'Brien that he was prepared to resume the telephone installation work. O'Brien approved the idea, although Gross expressed grave apprehension that electricians would walk off the job and delay the completion of the building. At this point, Rosner declared that he was "sick and tired of this bickering," and that he did not care who did the work but that he wished this problem would be straightened out, adding, in substance, that "I have never pulled telephone cable in my life, but we have men in our local who do this work. If the telephone men go to work, we will have to leave the job." After making this statement, Rosner left the group to use the telephone and returned. Gross, who had also made a call in the meantime, stated that his superior had no objection if the fire department preferred that Telco proceed with its work. This elicited Rosner's remark that "[i]n that case, we will have to leave the job." This ended the conversation.

It appears that during the foregoing exchange of views Rosner had telephoned Costello and advised him that he was leaving the job because of the presence of Telco employees. Although Cosetllo suggested that he remain, Rosner declined to do so. Costello also stated that he would again complain to Telco about the work assignment. In a subsequent telephone call to his employer, Budin, Rosner similarly conveyed his intention to leave his job because of his disinclination to work at the same site with the Telco crew. Budin's efforts to persuade Rosner to remain were futile. At the 10(1) hearing, Rosner explained that he took this action because he felt that the Telco employees were doing electricians' work.

Following the above events, Rosner approached the three electricians and told them to pick up their tools because "we're leaving," which they did.[15] Telco employ-

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[13] It appears that at the time Budin hired Rosner 3 years previously, Budin arranged with the Respondent for the issuance of a revocable registration card to Rosner. However, this card does not entitle Rosner to a member's right to vote on union matters and, in fact, he has never attended union meetings. On the other hand, as a foreman, he is represented by the Respondent and his terms and conditions of employment are covered in the collective-bargaining agreement between the Respondent and the electrical contractors previously mentioned

[14] The findings concerning Rosner's report to Costello are based on their combined testimony.

[15] This finding is based on Lander's testimony. According to Rosner, there were no electricians on the job at the time of the January 29, 1964, events other than himself and a helper who left the job with him. From my analysis of Lander's and Rosner's entire testimony and the fact that Lander was not assigned to the firehouse job on October 27, 1963, it is very likely that the three electricians who Rosner testified worked under him on October 27 actually worked on January 29. In any event, whether or not Rosner's testimony is the more accurate, it will not affect the ultimate determination regarding the Respondent's liability for the alleged unfair labor practices herein.

ees, however, continued with their work, completing the placement of cable by Monday morning, February 3, 1964. At that time, the electricians returned to their jobs.

3. Baldwin Junior High School project

On November 7, 1963, Telco Line Foreman LaGrego and his crew reported at this project to install feeder cable and terminals in a new school building being erected. After working that day and part of the next morning, Telco removed them at the request of Dunn, the superintendent of buildings for the Baldwin School District. Dunn's asserted reason for the request was that the electricians had walked off the job. No evidence, however, was adduced that a walkoff had actually taken place.

On the morning of January 10, 1964, Telco Construction Foreman Rae, LaGrego, and his crew returned to the jobsite. While the crew was in the process of placing cable, George Doan, the foreman of the electrical contractor, Kassay Brothers, Inc., herein called Kassay, addressed LaGrego with the remark "At it again?" LaGrego responded affirmatively and declared that he intended to continue with that work. Doan, thereupon, went upstairs.

About this time, Roland Hautsch, the Respondent's shop steward for Kassay's electricians,[16] learned from several of the electricians that Telco employees were working there. Although the electricians also informed him of their intention to leave for this reason and Hautsch was aware of the no-strike clause in the Respondent's contract with their employer,[17] Hautsch made no effort to dissuade them and they walked out. Hautsch, however, stayed behind and notified Foreman Doan of the walkout because, as he testified, Doan was "in charge of the job" for the electrical contractor. Thereupon, Hautsch, accompanied by Doan, telephoned the Respondent and reported to someone at the union office that Telco employees were on the job and that the electricians had walked off the job.[18] The only response that Hautsch received was that "they would make a note of it." However, neither the business manager nor any other representative of the Respondent appeared at the job to adjust the difficulties, as the contract between the Respondent and Kassay provided.

Because of the electricians' walkout, Dunn asked Telco to withdraw its employees. Telco complied with this request and hired an electrical contractor who finished the controversial work without incident. In the meantime, after the departure of the Telco employees, the electricians resumed their work.[19]

4. Sears warehouse project

On the morning of December 30, 1963, Telco's line foreman, Frank R. Eames, appeared with his crew of four linemen at the Sears warehouse project in Farmingdale, Long Island, to place feeder cable. Performing electrical work at that time on the site were some 10 electrician members of the Respondent employed by Herkob & Co., Inc., herein called Herkob. Shortly after the Telco crew began installing cable, an electrician called the attention of Frederick R. Smith, the Respondent's shop steward for the electricians, to the presence of Telco employees. Smith, thereupon, approached Eames and asked him whether he was placing cable. Upon receiving an affirmative answer, Smith stated that he would have to notify

[16] I find that he is the same person as the individual referred to in the record as Ronald Hautsch or Ronnie. Hautsch regarded himself as the Respondent's representative on the job.

[17] Paragraph 77 of the contract reads:

> In the event any controversy is not adjusted between the Employer and the steward, electricians on such jobs shall continue working and the steward shall notify the business manager of the Union who shall proceed to the job and use his best efforts to adjust any difficulties

Hautsch also testified that he was aware of article X, section 2 of the Respondent's by-laws which imposes upon the shop steward the duty "[t]o see that no trade or workmen encroach upon the jurisdiction of" the Respondent.

[18] Hautsch testified that he reported this incident to the Respondent in compliance with article X, section 3 of the Respondent's by-laws which provides that "Stewards shall in no case cause a stoppage of work or remove men from the job. In case of any trouble on a job or at a shop, Stewards shall immediately notify the Business Manager"

[19] The foregoing findings are based on the combined testimony of Rae, LaGrego, and Hautsch.

the Respondent.[20] Smith then left and called Business Representative Mark Costello and apprised him that Telco was performing the disputed work. Costello replied that he would submit the complaint to Telco, which was "the extent of the action that the Union could take at that time." Costello gave Smith no instructions or advice, adding that "this is all I can say." Following this call, Smith returned to Eames, informed him of his conversation with Costello, and quoted Costello as saying that the telephone work could be done with a composite crew of Telco employees and electricians and that Costello would visit the jobsite to see Eames.[21] Eames, however, never did receive such a visit and Telco employees proceeded with their work.

Smith, with his foreman's consent, then assembled the electricians, explained that he had reported the Telco situation to Costello and that Costello indicated that he would register the complaint with Telco. In the ensuing discussion, the electricians expressed their decision to leave their jobs because Telco employees were doing work that belonged to them. However, Smith made no effort to deter them from walking out, although he was aware that unauthorized work stoppages were forbidden by the IBEW constitution.[22] Smith's reason for his inaction was that the electricians had acted on their own volition. Upon learning of the electricians contemplated walkout, the electrical foreman persuaded them to remain so that they could speak to the "contractor." Thereafter, the foreman returned and reported to the electricians that "the contractor" advised him that the Telco employees were going to leave the jobsite. This actually occurred when, at the request of a Sears representative, Telco removed its crew. About a week or so later, an electrical contractor to whom Telco had subcontracted the disputed work, completed the job with electricians represented by the Respondent, without any further opposition on the part of Herkob's electricians.

5. Kings Grant Motor Inn project

On December 30, 1963, Telco dispatched Construction Foreman Edwin Hoffman and a crew to this project in Plainview, Long Island, to install feeder and house cable and terminals for a motor inn that Pinnella, Lewin and Hess Construction Company, as general contractor, was building for Armand Holding Corporation. Marden, the building superintendent for the owner, referred Hoffman to an electrician named "Bill," to be shown the location of certain conduits and terminal boxes. Apparently, "Bill" was the acting foreman for the electrical contractor, DiFazio Electric Co., Inc., herein called DiFazio, while the regular foreman was on vacation,[23] although the record is not too clear whether other electricians were also working at the site at the time of the events herein.

About an hour after "Bill" pointed out the location of the conduits and terminal boxes, "Bill" asked Hoffman whether he was going to use Local 25 electricians to pull cable. Hoffman answered that he did not intend to and that it was work Telco employees would do. Some 40 minutes later "Bill" returned, announcing that if Telco employees continued to place cable, his "Local would pull . . . [him] off the job," evidently referring to the Respondent.[24] Hoffman, unmoved, repeated his intention to have Telco employees continue to do that work.

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[20] Smith testified that it was his practice to call the Respondent if Telco employees were performing work in contravention of the Division of Work guide. As discussed in the Board's Decision and Determination of Dispute (152 NLRB 723), this guide was utilized by Telco and the Respondent prior to the events herein, to designate telephone work which Telco employees were permitted to perform; telephone work that had to be subcontracted to independent electrical contractors who would assign the work to electricians represented by the Respondent; and telephone work to be performed by both groups jointly. Smith also described his duties, as steward, to see "that there were no violations of the contract, to help solve grievances, [and] to bring it to the attention of the Local any discrepancies in the operation of the contract between electricians and other trades."

[21] The findings concerning this conversation between Eames and Smith are based on the former's testimony which was uncontradicted and which I therefore credit.

[22] Article XVII, section 13, provides, in relevant part, that no local union "shall cause or allow a stoppage of work in any controversy of a general nature before obtaining consent of the" international president.

[23] This is based upon the testimony of Armand Pinnella, a principal stockholder of the owner of the project and a partner in the construction firm building the motor inn. Pinnella, however, knew this individual "Bill" only by his surname, Moore.

[24] This is reasonably indicated by the fact that "Bill's" employer, DiFazio, was a party to a collective-bargaining agreement with the Respondent. The Respondent did not offer contrary testimony.

Shortly thereafter Marden summoned Hoffman to the second floor where Hoffman met Armand Pinnella, a principal stockholder of the owner of the project and a member of the general contracting firm, and "Bill." While there is a variance in the details of the ensuing conversation, it is fairly clear that "Bill" took the adamant position that his union would not permit him to work on the project if Telco employees continued to perform the controversial work. However, it also seems that "Bill" indicated that he had not yet communicated with his union. The upshot of these discussions was that Pinnella requested Hoffman to leave the job with his crew. Telco complied with this request and employed an electrical contractor who finished the job about a week later.

6. Troiano trucking terminal project

On December 13, 1963, Telco first began installing feeder and house cable on this site where Kosmos Construction Corp., herein called Kosmos, as owner and builder, was constructing a truck terminal. Because of some technical problem, work was not resumed until January 3, 1964. On that morning, Telco Acting Foreman Richard F. Lamb and two linemen started when they were observed by two electricians who were employed at the site by DiFazio, the electrical contractor. The electricians promptly notified their foreman, Dominick Della Rocca, of their displeasure of being on the same project with Telco employees who were doing work that belonged to them and stated that they would walk out if Telco employees persisted in pulling cable. Della Rocca, who testified that he "work[s] on a temporary permit out of the jurisdiction of Local 25," [25] replied that he would verify their complaint. Upon ascertaining that Telco employees were pulling cable, Della Rocca telephoned Costello at the Respondent's office and reported the situation. In reply, Costello stated that he could do nothing except to complain to Telco. Costello gave Della Rocca no instructions but told him to call back later in the afternoon. Following this conversation, Della Rocca told Kosmos' building superintendent, Squatieri, that he and his men would not work on the job but would leave if Telco persisted in doing electricians' work. However, Della Rocca did not communicate these intentions to his employer, DiFazio. Probably thereafter, Della Rocca also protested to Telco Acting Foreman Lamb that Telco employees were doing work that properly belonged to Local 25 electricians and warned that the electricians would walk off the job if Telco employees continued working. Lamb, however, expressed his determination to remain, unless otherwise instructed by the builder. At that point, Squatieri joined the conversation. Declaring that he needed electrical work more than telephone service, Squatieri stated that the Telco crew would have to leave. When Telco employees complied with the request, the electricians, who had been preparing in the meantime to walk out, resumed their work. At some undisclosed date, Telco employees returned and completed the installation of cable.

7. Instant Whip plant project

On May 12, 1964, Telco Service Foreman Morris J. Slavin and two installers appeared at this jobsite to run inside telephone wiring cables in a new plant that was under construction for Instant Whip Co. in Farmingdale, Long Island. Before starting work, their presence became known to the two electricians employed on the job by the electrical contractor, Furst Electric Co., Inc., herein called Furst. The electricians promptly conveyed this information to Winslow Sobering, their foreman, who was also a member of the Respondent and covered by his union's collective-bargaining agreement with Furst.[26] Thereupon, Sobering protested to Walter Barker, assistant manager of Instant Whip Co., that the work Telco employees were about to do was "our work. We had been doing this work for years."

[25] Della Rocca is not a member of the Respondent but was issued a "Revocable Journeyman Registration Card" by that organization. Although he apparently is not entitled to attend union meetings, like Foreman Rosner, he is nevertheless represented by the Respondent for bargaining purposes and enjoys various benefits provided for in his employer's contract with the Respondent.

[26] Sobering testified that for a number of years he has been on a list of qualified foremen maintained by the Respondent. He further testified that, when Furst asked the Respondent for an individual qualified to serve as foreman, he was sent by the Respondent and, after being interviewed by Furst's superintendent, John Borschard, he was hired. It appears that for the past 11 years, Sobering worked principally as a foreman for different contractors, although he also worked at times as a journeyman electrician.

According to Sobering, he also probably told Barker that Telco could not pull wires but could hook up phones, if wires were pulled by a Local 25 contractor. Sobering also discussed the matter with Furst's superintendent, John Broschard. Thereafter, he brought the situation to the attention of Respondent's Business Representative Costello who, as was his ostensible custom, simply assured Sobering that he would make a formal complaint to Telco. Costello, thereupon, called Telco and registered his objection to the assignment of the work in question to Telco's own employees instead of using contract labor. Sobering did not report his conversation with Costello to his electricians.

Not long thereafter, he met Barker again and repeated his claim that the work Telco employees planned on performing was "ours" and warned that, if they remained on the job, the electricians would go home sick. Despite this threatened walkout, Barker told Slavin that he was willing to take a chance to have him proceed with the telephone work. However, after speaking to Sobering again and before Slavin and his men could enter the building, Barker changed his mind and asked Slavin to defer doing his work until Instant Whip took over the building after its completion. Slavin was agreeable to the proposition and he and his crew packed up and left. Barker then advised Sobering of Telco's departure and the electricians remained.[27] Telco completed the job with its own employees during the week of July 11, 1964.

8. Nassau Hospital project

Telco undertook to install a PBX system in a new wing of the hospital which was being added to the existing facilities in Mineola, Long Island. As in other instances previously indicated, both the Respondent and the CWA laid conflicting claim to such work as the placement of feeder and house cable and the erection of ironwork.

In February 1964, the general contractor called a meeting to coordinate the construction activities. Among others in attendance, were Andrew Pantino, Telco's service supervisor, Christopher Pfund, the foreman of the electrical contractor, Geeco Electrical Construction Corp., herein called Geeco, Lester O. Wuerfl, its president, and Joseph J. Hines, associate executive director of Nassau Hospital. In reply to Pantino's inquiry, the general contractor estimated that the telephone room would be ready for the installation of telephone equipment about April 15. A question was then raised as to who would perform the disputed work. Pantino explained that Telco intended to use its own employees. Pfund, a member of the Respondent, expressed opposition, insisting that electricians had historically been assigned this work and that this practice should prevail. It is quite obvious that Pfund, although in charge of the electrical work for Geeco, was not claiming the disputed work for Geeco's electricians, but rather for other electricians represented by the Respondent.[28]

Notwithstanding its prior determination, to use its own employees, Telco, at the Hospital's behest,[29] changed the assignment on April 24, 1964, and subcontracted the disputed work to Bond Electric Company, which employed Local 25 electricians. After 1 day's work on April 28, Telco canceled this arrangement because CWA, which represented its employees, threatened Telco with a general strike at its Nassau facilities in protest to this assignment to contract labor. As a result, telephone work at the jobsite was suspended until May 11.

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[27] Sobering testified that, as a foreman, he considered it his duty to keep electricians on the job.

[28] As on other jobsites where foremen were active participants in the incidents, as previously and later discussed, the Respondent had not designated a shop steward on this job Foreman Pfund testified that, although article X, section 2 of the Respondent's bylaws requires the shop steward to "see that no trade or workmen encroach upon the jurisdiction of" the Respondent, as a Local 25 member he considered that a similar duty rested on him, too.

[29] According to the uncontroverted testimony of Associate Executive Director Hines, which I credit, the hospital had similar trouble with respect to the contemplated installation of data process machines, it had planned on leasing from IBM. According to Hines, at a meeting on April 16, 1964, of hospital officials, an unidentified representative of the Respondent, and Pfund, the Respondent's representative stated that, if Local 25 permitted IBM employees to hook up this equipment, it would jeopardize the electricians' claim to the disputed telephone work at the hospital. As a result of this protest, IBM withdrew its equipment.

On the latter date, Telco installers replaced contract labor. While two Telco men were engaged in their work, Foreman Pfund asked them if they had union cards.[30] One Telco man produced his card. Exhibiting his own card, Pfund declared that the Telco employees were doing work customarily performed by Local 25 electricians. Telco employees, nevertheless, proceeded with their job and Pfund left. According to Pfund, he might have subsequently mentioned this incident to one or two electricians. Pfund also called Costello on the telephone and told him that Telco employees were on the job, that he challenged their right to do the work in question, but that they ignored his protest. Here, too, Costello replied that he would file a formal complaint with Telco. In answer to Pfund's inquiry as to how he would know whether Costello's complaint to Telco produced results, Costello stated that he would become aware of it if Telco employees left the job. Costello, however, ostensibly offered no other advice or instructions. Since the Telco crew remained working, the six Geeco electricians walked off their jobs about a half or 1 hour later. There is no evidence that Pfund attempted to dissuade them from taking this action.[31] Pfund, nevertheless, remained behind. It appears that Costello called Telco the same morning and registered his complaint. The next day, May 12, Telco advised Costello that it intended to adhere to its decision to use its own employees.

On May 12, Telco installers resumed their work, as did the electricians. However, about 10 a.m., all the electricians reported to Foreman Pfund that they were sick and left the job. At the request of the hospital, Telco removed its crew at the end of the day and the electricians returned the next morning. On May 14, Telco reassigned the disputed work to Bond Electric Company's electricians. As a consequence, CWA called a general walkout of Telco employees. This, in turn, caused Telco shortly before noon to cancel its arrangement with Bond Electric Company.

On Friday, May 15, Telco employees returned to work. Pfund promptly reported their presence to Costello and the electricians reacted by again walking off their jobs "sick" before noon. Pfund, however, remained on the job. The electricians' walkout prompted the hospital to request Telco to withdraw its employees, which Telco did. This time no telephone work was performed at the jobsite until July 1, 1964, when, following the issuance of a temporary restraining order by a United States District Court against the Respondent on June 30, Telco employees resumed working, without further incident.

9. Sears Roebuck store

Sears placed an order with Telco for the installation of a 701 PBX and dial equipment system in a store that it was constructing in Hicksville, Long Island. Working on this job were some 35 electrician-members of the Respondent who were employed by an electrical contractor, Herkob & Co., Inc., herein called Herkob. On May 12, 1964, a Telco service foreman, Ralph E. Graeve, and a crew of two began erecting the ironwork for the PBX. That day Ernest J. Bourscheid, Telco's supervisor of contract labor, received a telephone call from Costello, protesting the use of Telco employees to perform the disputed work. After investigating the complaint, Bourscheid notified Costello that Telco intended to continue using its own employees at this site. In the meantime, Telco employees proceeded with their work without interruption until May 15. However, during this period Peter Truss, the Respondent's shop steward for Herkob's electricians, complained to Jacob Kluepfel, the superintendent of the general contractor, Uman-Parente Corporation, that Telco was performing work that Local 25 electricians normally did.[32] Kluepfel advised Truss that he could do nothing about it since Sears had directly contracted with Telco for the installation of telephone service.

On the morning of May 15, some 30 out of 35 electricians walked off the job. It appears that the foreman, subforeman, and probably another electrician who "usually" took care of furnishing temporary electricity were among those who stayed on the job. According to Truss, a few electricians told him that they were

[30] According to Pfund, a shop steward for electricians, among other things, customarily checks the cards of employees of other contractors who come on the job Pfund also testified that he doesn't "usually check all the contractors that come on the job"

[31] Pfund testified that neither the International constitution nor the Respondent's bylaws prevented the electricians from walking off their jobs as individuals

[32] There is conflicting testimony given by Kluepfel and Truss as to whether Truss also stated, in substance, that Herkob's electricians would walk off the job if Telco employees persisted in doing the controversial work. Not having had the benefit of observing the witnesses, I make no determination whether this statement was also actually made

leaving because they were sick. Truss reported the walkout to Costello who purportedly offered him no advice or suggestion with respect to handling the situation. As a result of this walkout, Sears instructed Telco not to return until further notice.

On May 18, Kluepfel communicated with the Respondent. Because neither Business Manager Kraker nor Costello was in, he left word with an unidentified person who answered the telephone that Telco employees were no longer working at the Sears store jobsite and that he wanted the Respondent to get the electricians back to work. This individual advised Kluepfel that the Respondent had no control over the electricians whether to work or not but that he would make a note of the situation and convey the message to any electrician who called. The next day the electricians were back at work.

On May 27, Sears communications manager, Warren Kromroy, its construction manager, Gettys, and a representative of the general contractor, Saul Uman, met with Telco representatives regarding the resumption of telephone work in the store. However, no decision could be reached because of the work assignment controversy. Later in the day, Kromroy, Gettys, and Uman went to the Respondent's headquarters where they conferred with Kraker and Costello concerning the possibilities for having the telephone work resumed. This led to a discussion of the Division of Work guide, which Kraker or Costello produced and asserted governed the type of work Telco could perform with its own employees and the type of work it was required to do through independent electrical contractors who employed electricians the Respondent represented. Either Kraker or Costello explained that at one time the Respondent had given copies of the guide to its members who were familiar with the distribution of work between Telco employees and contract labor and would therefore be aware of Telco's violation if it undertook to do contract labor work with its own employees. At some point, a union representative indicated that the Respondent had no control over its members' decision to leave a job over "these matters." In answer to a question by the general contractor or a Sears' representative as to whether there was some way whereby telephone work could be resumed, either Kraker or Costello stated that, if a letter were obtained from Telco to the effect that Telco would restrict its employees to the performance of noncontroversial phases of telephone work, then the Respondent saw no reason why Telco employees and electricians could not work together on the job. Kromroy, however, expressed doubt whether such a letter could be secured. During the discussions, the Respondent's representatives were also specifically asked whether Telco employees could proceed with the installation of the dial system and either Kraker or Costello answered that it was impossible because certain aspects of this work involved contract labor. Nothing productive resulted from this meeting.[33]

On July 1, Telco employees resumed their installation work. On July 7, Herkob's electricians again reported sick and left the job. The next day, no telephone work was performed. Thereafter, at Sears' suggestion, Telco returned to perform only noncontroversial work with the understanding that the work in dispute would be suspended. The electricians, thereupon, came back to their job. On July 15, following the execution of a stipulation between the Board and the Respondent,[34] Telco undertook to do the disputed work as well.

10. Long Beach City Hall project

In January 1964, a Telco crew arrived at this site where a new building was being constructed for the city of Long Beach. Having learned of their presence from one

[33] The foregoing account of the meeting is based on Kromroy's uncontradicted testimony. There is a conflict in testimony, which I do not resolve, as to whether Kraker or Costello also made the statement on this occasion that if Local 25 men saw Telco employees perform work belonging to contract labor, Local 25 men would have to leave the job.

[34] On July 10, 1964, the Respondent and the Board entered into a stipulation, approved by a judge of the United States District Court for the Eastern District of New York on July 13, whereby the Respondent agreed, without prejudice to its rights, to refrain from engaging in conduct to force the assignment of the disputed work to employees who are members of, or represented by, the Respondent, until final disposition of the unfair labor practice charges pending before the Board

of his electricians, Wilhelm Rusch, a Local 25 member and the foreman of the electrical contractor, Pappo Brothers, Inc., herein called Pappo, approached the Telco foreman, claiming that the work Telco employees were performing was "always our work" and belonged to Local 25 electricians.[35] Unconvinced, the Telco foreman proceeded with his assignment. This attitude prompted Rusch to complain to the architect's Resident Engineer Bowers and to threaten to leave the job because, as Rusch testified, "This was our job, and I think we should keep it."

Rusch also notified his electricians of the Telco situation and told them to decide for themselves whether they wanted to remain on the job with the Telco crew. Since, according to Rusch's testimony, the electricians felt the same way as he did, they all stopped working and packed up. This action was reported to the Respondent. Thereafter, Telco employees left the project and Pappo's electricians resumed working.

No telephone work was attempted until June 3, 1964. About 10 in the morning, Bernard W. Hope, a Telco service foreman, arrived at the jobsite to supervise the delivery of telephone equipment. While the truckmen were unloading, Rusch asked one of them for his union card. After being shown a Teamsters' card, Rusch questioned Hope whether he was using any Local 25 men on the job, and asked about the type of equipment being delivered and the individuals who were going to do the telephone work, which consisted of erecting iron forms, installing shelves and switchboards, and running cable. Hope answered that no Local 25 men were assigned to this job and that Telco planned to use its own employees. Rusch voiced his disapproval, asserting that it was Local 25's work. When Hope indicated that he was going to proceed with unloading the equipment, Rusch warned that he "would pull the switch and his electricians would walk off the job." Hope, thereupon, turned to Allen, the architect's resident engineer, and Evans, the coordinator for the city of Long Beach, both of whom were present and to whom Rusch's announcement was also directed, and inquired whether they wanted him to continue with the delivery. Allen and Evans replied that they would consult their superiors. In the meantime, Rusch reported these developments to Business Representative Costello who made no effort to dissuade him from leaving. Thereafter, Allen requested Hope to remove the equipment, which Hope did upon receiving confirmatory orders from Telco.

On or about July 14, following the court's approval of the stipulation mentioned above, Hope made arrangements with City Manager Vogel for Telco to proceed with the telephone installation work. The next morning, while telephone equipment was being unloaded from the truck, Rusch, in the presence of Hope, the architect's Resident Engineer Levitz, and Coordinator Evans, approached the truckmen and, as on the prior occasion, asked them for their union cards.[36] When one of the truckmen exhibited a Teamsters' card, Rusch declared that it was not "good" and that "Local 25 men will have to do the moving." Hope then asked Levitz and Evans for advice and they suggested that he continue with the delivery. This elicited Rusch's response that he would "cut off the power and my electricians will leave the job." However, Rusch assured Levitz and Evans that he would give them 15 minutes of electricity required to complete the testing of certain air conditioners which was then in progress and thus avoid unnecessary damage to these units.

Rusch then informed his electricians that Telco was back on the job. The electricians' reaction was to stop work and await developments. In the meantime, Rusch cut off the power but maintained temporary light for the hallways and dark places. About this time, Rusch also reported the electricians' stoppage to Costello who simply replied that he would make a note of it. Rusch then advised his employer Pappo of the situation.

Early in the afternoon, Levitz, Evans, Hope, and Pappo discussed the work stoppage. Pappo was asked whether he could restore the power and he answered in the negative because it was the electrical foreman's function. In reply to another inquiry as to whether he had communicated with the Respondent, Pappo stated that he had and was told that the electricians did not have the right to leave the job. Thereupon,

[35] Rusch testified that the work in question was the type to which Local 25 electricians were entitled under the Division of Work guide.

[36] As indicated previously, a shop steward usually performs this function. However, no shop steward was designated by the Respondent for this job

Levitz retorted that it was Pappo's responsibility to get the electricians back on the job. Pappo then asked Hope if he had a copy of the stipulation he had mentioned so that he could exhibit it to his men. Hope answered that he did not but that there was one in Telco's office. About this point, the architect's electrical engineer, Burns, asked Rusch [37] to call the Respondent to inquire about the stipulation. Rusch refused, saying that the Union would notify him of any change, insisting that the electricians were entitled under the Division of Work guide to the disputed work Telco had undertaken to do, and declining to answer any further questions. Following these discussions, Hope received orders from Telco to return the equipment to the warehouse and left the jobsite.

11. The Respondent's jurisdictional claim to the disputed telephone work; its response to the actual and threatened work stoppages

There is no question that it was the presence of Telco employees on the various jobsites to perform the preliminary telephone work which the electricians claimed was historically theirs that provoked the incidents related above. As more fully discussed in the Board's Decision and Determination of Dispute (152 NLRB 719), this claim is based upon a Division of Work guide and various agreements which the Board held were not controlling. The Respondent's Business Manager Kraker, who is its top paid official and in charge of its daily activities, admitted that the controversial work fell within the IBEW's jurisdiction and that, under the IBEW constitution, the Respondent and its business manager were duty bound to protect its jurisdiction against encroachment.[38] Indeed, Kraker testified, this obligation to safeguard the Respondent's jurisdiction attaches "absolutely" to all members to the extent that they are required to report an improper assignment of their claimed work to their steward [39] and, if one had not been appointed, then to report it directly to the Respondent. In accordance with prevailing practice, it was Business Representative Costello's specific function to receive complaints involving telephone work and promptly to forward them to a designated Telco official who, after investigation, conveyed Telco's decision to him. Kraker and Costello insisted at the hearings that receipt of Telco's decision ended the matter insofar as the Respondent was concerned, even though Telco's actions were adverse to its position. Costello also testified that it was not customary for him to apprise members of Telco's decision.

Kraker and Costello categorically denied that they induced, encouraged, or directed members to engage in work stoppages or other conduct in protest of Telco's work assignments to its own employees. On the other hand, they conceded that no disciplinary action was ever taken against any of these individuals, even though the IBEW's constitution and the Respondent's bylaws, under pain of penalty, expressly prohibit members from "creating or attempting to create dissatisfaction or dissension among any of the members"; from participating "in any gathering or meeting whatsoever for the purpose of advocating . . . unauthorized work stoppages or strikes"; or from "[c]ausing a stoppage of work because of any alleged grievance or dispute," without the Local Union's consent.[40] While acknowledging that the work

[37] It appears that Burns and Rusch had joined the group in the meantime.

[38] Article XV, section 4 of the IBEW constitution provides:

> When a . . . [Local Union] does not—in the judgment of the . . . [International president]—organize or protect the jurisdiction or territory awarded it, then its charter may be suspended or revoked by the . . . [International President].

Article XIX, section 8 states:

> The business manager shall be held responsible to the . . . [Local Union] and to the . . . [International president] . . . for protecting the jurisdiction of the I.B.E.W. . . .

[39] Article X, section 2 of the Respondent's bylaw defines the steward's duties to include the obligation "[t]o see that no trade or workmen encroach upon the jurisdiction" of the Respondent.

[40] Article XXVII, section 2 of the IBEW constitution provides:

> Any member may be penalized for committing any one or more of the following offenses:
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> * * * * * * *

stoppages or threats to walk off the jobs were unauthorized, the reason offered by Kraker and Costello for not disciplining the participants was that these persons acted individually out of private conviction, and not concertedly, and that therefore the provisions of the constitution and bylaws were inapplicable. Moreover, Costello testified that the no-strike clause in the Respondent's collective-bargaining agreement with the electrical contractors [41] did not bar the work stoppages at the jobsites where they occurred because they did not involve a controversy with a party to the contract but with Telco which was a stranger to that agreement. In addition, Costello explained, the electricians were simply exercising individual rights when they walked off their jobs because of their displeasure that others were performing work rightfully belonging to them.

According to the testimony of Kraker and Costello, while they deliberately refrained from advising their members as to what measures to take in response to Telco's assignment of the disputed work to its own employees, Kraker did apprise them at union meetings of the status of legal proceedings that had been instituted by Telco and probably read to them the terms of temporary restraining orders issued by different judges of the United States District Court for the Eastern District of New York. By letters dated June 30 and July 23, 1964, sent to members employed by the electrical contractors on the various jobsites involved in the present proceedings, Kraker informed them that temporary restraining orders had been issued against the Respondent, that the Respondent had disclaimed responsibility for the work stoppages, and in the language of the July 23 letter, that in order "to avoid any situation which could jeopardize its position during these proceedings . . . directs you to continue to work on all job sites where the disputed work is at issue."

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(8) Creating or attempting to create dissatisfaction or dissention among any of the members . . . of the I B.E.W

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(15) Attending or participation in any gathering or meeting whatsoever for the purpose of advocating . . . unauthorized work stoppages or strikes or other violations of the laws and rules of the I.B.E.W. or its . . . [Local Union].

* * * * * * *

(19) Causing a stoppage of work because of any alleged grievance or dispute without having consent of the . . . [Local Union] or its proper officers

* * * * * * *

Any member convicted of any one or more of the above-named offenses may be assessed or suspended, or both, or expelled

Article XVII, section 13 of the I.B.E.W. constitution also imposes on the Local Union the obligation not to

cause or allow a stoppage of work in any controversy of a general nature before obtaining consent of the . . . [International president]. The . . [International president], or his representative, has the power at any time to enter any situation or controversy involving a . . . [Local Union] or any of its members, and the decision of the . . . [International president], direct or through his representative, shall be accepted by the . . . [Local Union] and its officers, subject to appeal . . . ."

Article XIV, section 1 of Respondent's bylaws provides:

Any member violating any part of the IBEW Constitution—any part of these bylaws—or any approved agreements or working rules of this Local Union, shall be dealt with by the Executive Board (sitting as the Trial Board) as stated in the IBEW Constitution and in these bylaws Where no penalty is stated, the Executive Board (Trial Board) shall administer such discipline as it deems proper.

Article X, section 3 of the bylaws also states:

Stewards shall in no case cause a stoppage of work or remove men from the job. In case of any trouble on a job or at a shop, Stewards shall immediately notify the Business Manager.

[41] Paragraph 77(C) of this agreement provides, as follows:

In the event any controversy is not adjusted between the Employer and the steward, electricians on such jobs shall continue working and the steward shall notify the Business Manager of the Union, who shall proceed to the job and use his best efforts to adjust any difficulties.

C. *Concluding findings*

1. With respect to the alleged violation of Section 8(b)(4)(i) and (ii)(D) of the Act[42]

As noted above, the Respondent concededly has refused to accept the Board's work award to Telco's employees represented by CWA. Since the merits of the award are not open to review by the Trial Examiner in this proceeding[43] and since it is admitted that Telco's assignment was not in contravention of any Board "order or certification determining the bargaining representative for employees performing such work," the sole question remaining to be resolved is the Respondent's responsibility for the actual or threatened work stoppages at the 10 construction sites involved herein. Undeniably these activities had as their objective forcing Telco to reassign the disputed telephone work from its own employees to electrical subcontractors employing electricians who were members of, or represented by, the Respondent.

In essence, it is the position of the General Counsel and Telco that the widespread and persistent character of the work stoppages and threatened walkouts and the similarity of the pattern of events at each jobsite warrant the inference that such conduct was authorized and instigated by the Respondent in furtherance of its jurisdictional claim and that therefore the Respondent violated Section 8(b)(4)(i) and (ii)(D) of the Act. The Respondent, on the other hand, while acknowledging adherence to its jurisdictional claim to the disputed work on the basis of the Division of Work agreements and guide and the past practice thereunder (which the Board in the 10(k) proceeding held were not controlling), strenuously insists that it at all times refrained from resorting to prohibited means to enforce its demands. It unequivocally disavows any responsibility for the activities in question, arguing that the record is devoid of any evidence that it ever issued any institutions, orders, advice, or otherwise authorized or ratified such conduct. On the contrary, the Respondent urges, the incidents reflect, not concerted action under its sponsorship, but rather the spontaneous, individual, and personal decisions of the participants.

It is true that there is no direct evidence that the Respondent's Business Manager Kraker or its Business Representative Costello or any other official explicitly ordered or authorized the work stoppages or threats. Certainly, this is not determinative of the question of responsibility and, by no means, rules out circumstantial evidence, if substantial and reliable, upon which to predicate a finding. It is not beyond experience that involvement in an activity may take various tacit and subtle forms and be as effective as forthright intervention in achieving unlawful or improper objectives.[44]

From my careful evaluation of the record, I am led to the inescapable conclusion that, while studiously avoiding overt participation in the work stoppages and threats, the Respondent is nevertheless answerable for the incidents involved herein. That the Respondent has historically claimed jurisdiction over the disputed work in the Nassau and part of the Suffolk County area is conceded. As indicated above, this jurisdiction the Respondent and its Business Manager Kraker were required by the IBEW constitution to protect against encroachment. Undoubtedly, to prevent

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[42] Section 8(b)(4), insofar as relevant, makes it an unfair labor practice for a labor organization or its agents

> . . . (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to . . . perform any service; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is:
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> * * * * * * *
>
> (D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work:

[43] *Chicago Typographical Union No. 16, AFL–CIO (Central Typesetting and Electroplating Co.)*, 138 NLRB 231.

[44] *United States* v. *International Union, United Mine Workers of America*, 77 F.Supp. 563, 566 (D C.D.C.).

impairment of its trade jurisdiction, the Respondent has kept jobsites under close watch to make sure that the work it claimed for its members was not performed by others. Accordingly, it has been its settled practice to require stewards, upon whom the bylaws expressly impose the obligation to "see that no trade or workmen encroach upon the jurisdiction" of the Respondent, and members, whether employed as foremen[45] or journeymen electricians on a jobsite, to report to it the performance of any disputed work by Telco employees. On the basis of such reports, the Respondent has customarily registered its complaint with Telco.

Viewed against this background of established jurisdictional policy, the Respondent's liability for the work stoppages and threats becomes apparent. At least with respect to the incidents at the Baldwin Junior High School, and the Sears warehouse and store jobsites where stewards were designated by the Respondent to represent its interests, there can be little doubt that the stewards' conduct is imputable to the Respondent. Without recounting the facts detailed in the preceding section, it is significant that no steward ever attempted to dissuade the electricians employed by neutral electrical contractors and represented by the Respondent from walking off their jobs in protest to Telco's use of its own employees to perform the disputed work, or tried to secure the electricians' return to work while Telco employees continued with their assignment. Such ostensible indifference could only be interpreted as tacit approval of the electricians' acts, not only by the stewards, but also by the Respondent's officials who were kept well informed of developments at the projects. This inference is strengthened by the fact that, although the Respondent asserts that the stoppages and walkouts were unauthorized, it took no measures to discipline its members, as the IBEW constitution and the Respondent's bylaws contemplate. As previously discussed, the constitution and bylaws specifically forbid a member, under pain of penalty, to engage in, cause, or advocate unauthorized work stoppages because of any dispute. Indeed, unauthorized work stoppages presumably compromised the Respondent's standing with its parent organization since the constitution also prohibits the Respondent itself from "caus[ing] or allow[ing] a stoppage of work in any controversy of a general nature before obtaining consent of the . . . [International President]." Nevertheless, the Respondent made no effort to terminate such purported recalcitrance while Telco employees remained at work at the jobsite or warned any member against a repetition of the offense.

Also rather revealing is the apparent lack of concern of the Respondent and the stewards for enforcing the ban on interruptions of work contained in the Respondent's collective-bargaining contract with the electrical contractors. The only logical explanation for this attitude is that the Respondent and the stewards tacitly approved and encouraged the electricians' conduct as an effective way of preserving the Respondent's trade jurisdiction, despite the fact that it interfered with the completion of electrical work undertaken by the electrical contractors who were total strangers to the jurisdictional dispute and powerless to resolve it. The Respondent's assertion that the contract ban was not applicable to the dispute here involved because the ban refers only to controversies with electrical contractor-parties to the agreement[46] and not to the Respondent's dispute with Telco, a nonparty, I find, is more ingenious than candid.[47] It strains one's credulity to believe that the Respondent would interpret the contract as sanctioning work interruptions against an innocent contracting party with whom it was not involved in any controversy, unless it relied on such interruptions as pressure tactics to force Telco to capitulate to its jurisdictional claim to the disputed work. By the same token, I find it inconceivable that, had not the Respondent authorized, directed or encouraged, expressly or tacitly, the work stoppages, it would not have disciplined its members for violating its bylaws for engaging in work stoppages in breach of approved agreements. Experience demonstrates that it is not usual for a labor organization which maintains harmonious relations with its contracting employers—as apparently is the case

[45] As indicated previously, there are also instances where electrical foremen have also communicated with the Respondent concerning assertedly improper work assignments, although their membership in the Respondent was not shown.

[46] See footnote 41, *supra*.

[47] Such a position cannot be reconciled with the basic principles underlying the Respondent's collective-bargaining agreement with the electrical contractors that "[p]rogress in industry demands a mutuality of confidence between the Employer and the Union. All will benefit by continuous peace and by adjusting any differences by rational, commonsense methods" (paragraph 4 of the agreement). It would seem that the absence of any differences warrants all the more the maintenance of harmonious relations between the parties.

with the electrical contractors herein—to countenance any disruption of the employers' operations by their employees unless, as indicated, such disruption serves its own purpose.

Finally, there is more than a faint suggestion that the Respondent was not entirely a stranger to the activities of Steward Truss [48] and the electricians on the Sears store jobsite. As previously discussed, when representatives of Sears and the general contractor conferred with the Respondent's Business Manager Kraker and Business Representative Costello to arrange for the resumption of the disputed work by Telco's employees, Kraker and Costello made it quite clear that the electricians were fully aware of the type of work Telco employees were entitled to do under the Division of Work guide and that Telco could proceed with the telephone installation job if a letter were secured from Telco, assuring that it would restrict its employees to the performance of the noncontroversial phases of telephone work.

Much the same pattern of events occurred at the other seven construction sites.[49] Peculiarly enough, no steward for the electricians employed by the electrical contractors on the respective jobs was designated by the Respondent.[50] However, as indicated in the preceding section of this Decision, the electrical foremen generally played a prominent role in protecting the Respondent's jurisdictional claim; in protesting Telco's assignment of the controversial telephone work to its own employees; in threatening representatives of Telco and other persons concerned with the completion of the particular building project involved that electricians would walk off their jobs unless Telco hired contract labor; in instigating openly or covertly the walkouts by electricians where they occurred; and in accordance with the prevailing practice, in reporting to the Respondent Telco's use of its own employees to perform the disputed work.[51] At least three or four [52] of the seven electrical foremen were members of the Respondent, while two [53] worked under the Respondent's jurisdiction, pursuant to a revocable registration card or permit issued by the Respondent. Significantly, the Respondent is the collective-bargaining representative of all the foremen whose terms and conditions of employment are prescribed in the agreement between the Respondent and the electrical contractors.[54] In these circumstances, I find that the foremen's participation in the events at the jobsites in question was, no less than the stewards', in furtherance of the Respondent's policy to prevent encroachment upon its jurisdictional preserve and to secure the disputed work for the electricians the Respondent represented. Plainly, the foremen's conduct was not in the best interest of their employers who were not the beneficiaries of such work assignments but, on the contrary, actually interfered with the proper performance of their employers' subcontracts.

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[48] Contrary to the Respondent's contention, I find that it was answerable for the stewards' conduct on the Baldwin Junior High School and Sears warehouse and store jobsites It is perfectly clear that the stewards' conduct was consistent with the performance of their duty as provided in article X, section 2 of the Respondent's bylaw "[t]o see that no trade or workmen encroach upon the jurisdiction" of the Respondent (*Local Union No. 3, International Brotherhood of Electrical Workers, AFL–CIO (Western Electric Company, Incorporated)*, 141 NLRB 888, 893). Moreover, under Section 2(13) of the Act, proof of actual authorization or subsequent ratification is not essential to hold the Respondent responsible for the stewards' acts

[49] Endo plant, Massapequa firehouse, Kings Grant Motor Inn, Troiano trucking terminal, Instant Whip plant, Nassau Hospital, and Long Beach City Hall.

[50] Apparently, for reasons best known to him, the Respondent's business manager saw fit to disregard article X, section 1 of the Respondent's bylaws which provides in pertinent part, that "[o]n all jobs or shops, stewards shall be appointed by the Business Manager. They shall work under his direction and be subject to his authority in Union matters."

[51] Except for Foreman Friend on the Endo job and the acting foreman, Moore, on the Kings Grant job, there is direct evidence that the foreman made such telephone calls.

[52] Sobering on the Instant Whip job, Pfund on the Nassau Hospital job, Rusch on the Long Beach City Hall job, and probably Moore, the acting foreman on the Kings Grant job. There is no evidence in the record, however, whether or not Foreman Friend on the Endo job was a member.

[53] Rosner on the Massapequa firehouse project and Della Rocca on the Troiano truck terminal site.

[54] Paragraph 2 of the contract specifically provides, in pertinent part, that the "parties signatory to this Agreement for the Union likewise represent that they have been duly authorized to sign this Agreement on behalf of the Union and the employees working under the terms of this Agreement, which employees shall include, but shall not be limited to, foremen, subforemen, stewards, journeymen, helpers and apprentices, all hereinafter referred to as 'electricians.' "

Lastly, the Respondent's reaction to the incidents on the jobsites involving foremen was no different than it was with respect to the incidents on the jobsites where a steward was present. In neither situation did the Respondent discipline any member for the breach of the IBEW's constitution, the Respondent's bylaws or its collective-bargaining agreement with the electrical contractors for engaging in the purportedly unauthorized work stoppages. Nor, in either case, did the Respondent seriously disassociate itself from the acts of the foremen, or members or even to deplore the disruption of harmonious contractual relations with the electrical contractors, who were not concerned in the Respondent's jurisdictional dispute with Telco.

In sum, I find that the work stoppages and threatened walkouts, in many instances successful, were but part and parcel of the Respondent's program, based as it was on the Division of Work agreements and guide and past practice thereunder, to retain jurisdiction over the disputed work. The Respondent's characterization of the conduct of the stewards, foremen, and electricians as the individual, personal acts of the participants is more beguiling than accurate. I, therefore, find that the Respondent is answerable for the incidents occurring at the 10 construction sites here involved which, I find it authorized, instigated, or adopted, if not expressly, then at least tacitly.[55]

In view of the foregoing, I conclude that the Respondent induced and encouraged the employees of electrical contractors, DiFazio, Herkob, Budin, Pappo, Kassay, Geeco, Furst, and Port to engage in work stoppages or otherwise to refuse to perform services for their respective employers, and threatened, coerced, and restrained at least these employers,[56] Sears, Armand, Pinnella, Kosmos, Uman, Instant Whip, and Telco, with an object of forcing or requiring Telco to assign the work in dispute to electricians represented by the Respondent rather than to its own employees represented by CWA. Such conduct, I find, clearly contravened the prohibitions of Section 8(b)(4)(i) and (ii) (D) of the Act.

2. With respect to the alleged violations of Section 8(b)(4)(i) and (ii)(B) of the Act

The complaint in Case 29-CC-5, is concerned with the incidents at only 6 of the 10 construction sites discussed above, namely, Massapequa firehouse, Baldwin Junior High School, Sears warehouse, Kings Grant Motor Inn, Troiano truck terminal, and Long Beach City Hall. It is alleged that the Respondent engaged at these jobsites in conduct prohibited by the secondary boycott provisions of Section 8(b)(4)(i) and (ii)(B) of the Act.[57]

I have heretofore found that the Respondent was responsible for the actual and threatened work stoppages by electricians employed by electrical contractors on the above-named jobs. That such conduct was in furtherance of the Respondent's jurisdictional dispute with Telco is not in doubt. It is equally clear that the Respondent sought to achieve a reassignment of the disputed work from Telco employees to electricians who were members of, or represented by, its organization, by applying pressure on the electrical contractors, general contractors, and owner with the ultimate object of forcing the owners who had contracted with Telco for the installation of telephone service to terminate their arrangements unless Telco ageed to use contract labor. Indeed, as a result of such pressure, Telco capitulated on many of the jobs and deferred performing its work on the others. Plainly, conduct of this type, which implicated innocent third parties in a controversy not their own, violated the prohibitions of Section 8(b)(4)(i) and (ii)(B) of the Act.[58] Moreover, I find, contrary to the Respondent's contention, that an unfair labor practice finding under this section of the Act is not precluded simply because the same conduct is also

[55] Cf. *Local 349, International Brotherhood of Electrical Workers, AFL–CIO* v. *N.L.R.B.*, 357 F.2d 579 (C A.D.C.), enfg 149 NLRB 430.

[56] It is well settled that a work stoppage against an employer necessarily restrains and coerces him within the meaning of subparagraph (ii) of Section 8(b)(4). *Local Union 825, International Brotherhood of Operating Engineers, AFL–CIO (Carleton Brothers Company)*, 131 NLRB 452, 453.

[57] Section 8(b)(4)(B) makes it an unfair labor practice for a labor organization or its agents to engage in the conduct quoted in footnote 42, *supra*, where an object is "forcing or requiring any person . . . to cease doing business with any other person . . . ."

[58] *N.L R.B.* v. *United Association of Journeymen*, 320 F.2d 250 (C A. 1), enfg. 137 NLRB 1299.

outlawed by Section 8(b)(4)(D). The Board, with court approval, has already settled this question that these provisions are not mutually exclusive.[59] In fact, applicability of this principle becomes more apparent here, where the Respondent has shown no disposition to honor the Board's jurisdictional award.[60]

Accordingly, I find that the Respondent induced and encouraged employees of electrical contractors, Budin, Kassay, Herkob, DiFazio, and Pappo to engage in work stoppages or otherwise to refuse to perform services for their respective employers and threatened, coerced, and restrained these employers, Sears, Armand, Pinnella, and Kosmos, with the object of forcing or requiring the electrical contractors to cease doing business with the general contractors on the construction projects involved and with the further object of forcing and requiring the town of Massapequa, the town of Baldwin, Sears, Armand, Kosmos, and the city of Long Beach to cease doing business with Telco, and that the Respondent thereby violated Section 8(b)(4)(i) and (ii)(B) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

V. THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Moreover, in view of the fact that the Respondent had resorted to widespread secondary boycott pressures implicating innocent parties, as found above, in order to force Telco to assign to electricians represented by it certain telephone work in the Nassau and part of Suffolk County area, which the Board has awarded to Telco's employees represented by the CWA, and in view of the further fact that the Respondent has shown no disposition to abide by this award, I believe that there is a strong likelihood that such conduct will be repeated in the future. Accordingly, I find it appropriate in order to prevent a recurrence of the unlawful conduct to recommend that the Respondent be enjoined from engaging in similar activities involving employees of other employers, or involving any person, engaged in commerce or an industry affecting commerce for the purpose of disrupting Telco's business relations with any person. Provisions for the posting of notices, which I find appropriate for effectuating the policies of the Act, are also included in the Recommended Order below.

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

CONCLUSIONS OF LAW

1. Telco, DiFazio, Herkob, Budin, Pappo, Kassay, Geeco, Furst, Port, Sears, Armand, Pinnella, Kosmos, Uman, Endo, and Instant Whip are employers engaged in commerce or in an industry affecting commerce within the meaning of Sections 2(6) and (7) and 8(b)(4) of the Act.

2. The Respondent and CWA are labor organizations within the meaning of Section 2(5) of the Act.

3. The Respondent has continually refused to comply with the Board's Decision and Determination of Dispute (152 NLRB 723) in which the Board held that Telco employees were entitled to perform the following work in the Nassau and part of Suffolk County area in New York:

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[59] *Local 5, United Association of Journeymen (Arthur Venneri Company)*, 137 NLRB 828, 831–832, enfd. as modified 321 F 2d 366, 371 (C.A D C), cert. denied 375 U.S. 921; *Local 282, Teamsters (United States Trucking Corporation)*, 146 NLRB 956, 963, enfd 344 F.2d 649, 652 (C A. 2). There is nothing in the Board's decision in *New York Paper Cutters' & Bookbinders' Local Union No. 119 (Automatic Sealing Service, Inc.)*, 148 NLRB 1350, relied upon by the Respondent, to indicate that it was intended as a reversal of this principle Accordingly, I deny the Respondent's motion to dismiss the complaint in Case 29–CC–5 on this ground

[60] Probably, the *New York Paper Cutters'* decision, *supra*, can be distinguished on the ground that, unlike the present case, the jurisdictional dispute was effectively resolved there by the Respondent's compliance with the award.

(1) Installing and fastening devices and structures designed to hold and support telephone equipment.

(2) Pulling telephone cables and wires into and within buildings and structures and attaching them to interior walls.

(3) Installing and fastening terminal boxes where cables are connected to interior walls.

4. By inducing and encouraging the employees of electrical contractors, DiFazio, Herkob, Budin, Pappo, Kassay, Geeco, Furst, and Port to engage in work stoppages or otherwise to refuse to perform services for their respective employers and by threatening, coercing, and restraining at least these employers, Telco, Sears, Armand, Pinnella, Kosmos, Uman, and Instant Whip, with an object of forcing or requiring Telco to assign the above-described work to electricians who are members of, or represented by, the Respondent rather than to its own employees represented by the CWA, although Telco was not failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work, the Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(D) of the Act.

5. By inducing and encouraging the employees of DiFazio, Herkob, Budin, Pappo, and Kassay to engage in work stoppages or otherwise to refuse to perform services for their respective employers and by threatening, coercing, and restraining these employers, Sears, Armand, Pinnella, and Kosmos, with an object of forcing or requiring the electrical contractors to cease doing business with their general contractors, and with the further object of forcing or requiring the town of Massapequa, the town of Baldwin. Sears, Armand, Kosmos, and the city of Long Beach to cease doing business with Telco, the Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(B) of the Act.

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

7. The Respondent has not engaged in unfair labor practices at the Americana Foods store construction project, as alleged in the complaint in Case 29-CD-2.

RECOMMENDED ORDER

Upon the foregoing findings of fact and conclusions of law, and upon the entire record in the cases, I recommend that the Respondent, Local 25, International Brotherhood of Electrical Workers, AFL-CIO, Melville, Long Island, New York, its officers, representatives, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Engaging in, or inducing or encouraging any individual employed by electrical contractors, DiFazio Electric Co., Inc.; Herkob & Co., Inc.; Budin Electric Co.; Pappo Brothers, Inc.; Kassay Brothers, Inc.; Geeco Electrical Construction Corp.; Furst Electric Co. Inc.; Port Chester Electrical Corp.; or by any other person engaged in commerce or in an industry affecting commerce, to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services; or threatening, coercing, or restraining any of the aforesaid employers; New York Telephone Company; Sears, Roebuck & Company; Armand Holding Corporation; Pinnella, Lewin and Hess Construction Company; Kosmos Construction Corp.; Uman-Parente Corporation; Instant Whip Co.; or any other employer or person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is to force or require New York Telephone Company to assign the telephone work described below to be performed in the Nassau and part of Suffolk County area, within the territorial jurisdiction of Local 1104, to electricians represented by the Respondent rather than to its own employees represented by Communication Workers of America, AFL-CIO, and its Local 1104, unless New York Telephone Company is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work.

The work involved consists of:

(1) Installing and fastening devices and structures designed to hold and support telephone equipment.

(2) Pulling telephone cables and wires into and within buildings and structures, and attaching them to interior walls.

(3) Installing and fastening terminal boxes where cables are connected on to interior walls.

(b) Engaging in, or inducing or encouraging any individual employed by electrical contractors, DiFazio Electric Co., Inc.; Herkob & Co., Inc.; Kassay Brothers, Inc.; Budin Electric Co.; Pappo Brothers, Inc.; or by any other person engaged in commerce or in an industry affecting commerce, to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services; or threatening, coercing, or restraining any of the aforesaid employers; Sears, Roebuck & Company; Armand Holding Corporation; Pinnella, Lewin and Hess Construction Company; Kosmos Construction Corp.; or any other employer or person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is to force or require DiFazio Electric Co., Inc.; Herkob & Co., Inc.; Budin Electric Co.; Pappo Brothers, Inc.; and Kassay Brothers, Inc. to cease doing business with any general building contractor, or other person; or to force or require the town of Massapequa; the town of Baldwin; Sears, Roebuck & Company; Armand Holding Corporation; Kosmos Construction Corp.; the city of Long Beach; or any other person to cease doing business with New York Telephone Company.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Post in conspicuous places in the Respondent's business offices, meeting halls, and all places where notices to members are customarily posted, copies of the attached notice marked "Appendix." [61] Copies of said notice, to be furnished by the Regional Director for Region 29, after being duly signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter. 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 said notice to the Regional Director for Region 29 for posting by New York Telephone Company, and the electrical contractors named above at all locations where notices to their respective employees are customarily posted, if they are willing to do so.

(c) Notify the Regional Director for Region 29, in writing, within 20 days from the date of the receipt of this Decision, what steps the Respondent has taken to comply herewith.[62]

IT IS FURTHER RECOMMENDED that the paragraphs of the complaint in Case 29–CD–2 *et al.*, be dismissed insofar as they allege that the Respondent engaged in unfair labor practices at the Americana Foods store construction project.

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[61] In the event that this Recommended Order is adopted by the Board, the words "a Decision and Order" shall be substituted for the words "the 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."

[62] In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify said Regional Director for Region 29, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith."

APPENDIX

NOTICE TO ALL OUR MEMBERS AND ALL EMPLOYEES OF DIFAZIO ELECTRIC CO., INC.; HERKOB & CO., INC.; BUDIN ELECTRIC CO.; PAPPO BROTHERS, INC.; KASSAY BROTHERS, INC.; GEECO ELECTRICAL CONSTRUCTION CORP.; FURST ELECTRIC CO., INC.; PORT CHESTER ELECTRICAL CORP.; AND NEW YORK TELEPHONE COMPANY

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 any individual employed by electrical contractors, DiFazio Electric Co., Inc.; Herkob & Co., Inc.; Budin Electric Co.; Pappo Brothers, Inc.; Kassay Brothers, Inc.; Geeco Electrical Construction Corp.; Furst Electric Co., Inc.; Port Chester Electrical Corp.; or by any other person engaged in commerce or an industry affecting commerce, to engage in a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services; or threaten, coerce or

restrain any of the aforesaid employers; New York Telephone Company; Sears, Roebuck & Company; Armand Holding Corporation; Pinnella; Lewin and Hess Construction Company; Kosmos Construction Corp.; Uman-Parente Corporation; Instant Whip Co.; or any other employer or person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is to force or require New York Telephone Company to assign the telephone work described below to be performed in the Nassau and part of Suffolk County area, within the territorial jurisdiction of Local 1104, to electricians represented by us rather than to the New York Telephone Company's own employees represented by Communication Workers of America, AFL–CIO, and its Local 1104, unless New York Telephone Company is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work.

The work involved consists of:

(1) Installing and fastening devices and structures designed to hold and support telephone equipment.

(2) Pulling telephone cables and wires into and within buildings and structures, and attaching them to interior walls.

(3) Installing and fastening terminal boxes where cables are connected on to interior walls.

WE WILL NOT engage in, or induce or encourage any individual employed by DiFazio Electric Co., Inc.; Herkob & Co., Inc.; Budin Electric Co.; Pappo Brothers, Inc.; Kassay Brothers, Inc.; or by any other person engaged in commerce or in an industry affecting commerce, to engage in, a strike or a refusal in the course of his employment, to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services; or threaten, coerce, or restrain any of the aforesaid employers; Sears, Roebuck & Company; Armand Holding Corporation; Pinella, Lewin and Hess Construction Company; Kosmos Construction Corp.; or any other employer or person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is to force or require DiFazio Electric Co., Inc.; Herkob & Co., Inc.; Budin Electric Co., Inc.; Pappo Brothers, Inc.; and Kassay Brothers, Inc., to cease doing business with any general building contractor, or other person; or to force or require the town of Massapequa; the town of Baldwin; Sears, Roebuck & Company; Armand Holding Corporation; Kosmos Construction Corp.; the city of Long Beach; or any other person to cease doing business with New York Telephone Company.

LOCAL 25, INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS, AFL–CIO,
Employer.

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 employees 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.

Jeno Guttman *and* District 65, Retail, Wholesale and Department Store Union, AFL–CIO. *Case 2–CA–10815. January 9, 1967*

DECISION AND ORDER

On September 27, 1966, Trial Examiner Rosanna A. Blake issued her Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and