

Local 87, Service Employees International Union, AFL-CIO and Pacific Telephone and Telegraph Company and Thomas King and Lawrence Stay, a Partnership d/b/a Stay-King Maintenance Company. Cases 20-CC-2565, 20-CB-5859, and 20-CP-831

31 March 1986

DECISION AND ORDER

BY MEMBERS DENNIS, JOHANSEN, AND
BABSON

On 1 March 1985 Administrative Law Judge Maurice M. Miller issued the attached decision. The General Counsel filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,¹ and conclusions and to adopt the recommended Order as modified.

The judge found, and we agree, that the Respondent violated Section 8(b)(4)(i) and (ii)(B) of the Act by picketing all entrances to Pacific Telephone and Telegraph Company's Third Street facility despite the existence of entrances reserved for the primary employer and by failing clearly to identify on its picket signs the primary employer with whom the Respondent had the labor dispute. The judge further found, and we agree, that the Respondent's picketing did not constitute a violation of Section 8(b)(7)(C) of the Act.²

¹ In describing the various complaints consolidated in this case, the judge recited the contents of the underlying unfair labor practice charges even though several of the allegations contained in those charges were not included in the complaints as issued. We note, however, that all matters ultimately alleged as violations of the Act in the consolidated complaint were addressed and ruled upon by the judge.

² We agree with the judge that the Respondent violated Sec. 8(b)(4)(i) and (ii)(B) of the Act by attempting to force Pacific Telephone to cease doing business with Stay-King. Under the circumstances here, we find that chants by the pickets and statements in union leaflets to the effect that union members who previously worked at Pacific Telephone's Third Street facility desired to work there again, and the Union's belated area standards picketing, are insufficient evidence of a recognitional objective in violation of Sec. 8(b)(7)(C) of the Act. We find dispositive of this issue the lack of any evidence that the Respondent sought at any time to force or require Stay-King to recognize or bargain with it as the representative of its employees, sign a contract, or fire its work force and hire union members. We further find no evidence that the Respondent sought by any means to persuade Stay-King's employees to accept the Union as their representative. Accordingly, in the absence of any indication that the Respondent or its members at any time sought employment by Stay-King, we find no evidence to support, and no merit in, the General Counsel's argument that the Union's demand for the mass reinstatement of the former employees would necessarily establish the Union's majority status among Stay-King employees. On the contrary, we conclude that the Respondent's only objective in picketing Pacific Telephone's Third Street facility was to force Pacific Telephone to terminate the services of Stay-King.

We adopt the judge's conclusion that the Respondent violated Section 8(b)(1)(A) of the Act on 6 April 1983 by the conduct of its member and picket Rash in intimidating Stay-King employee Hobbs by threatening, "We're going to get you."³ Further, we adopt the judge's finding that the Respondent violated Section 8(b)(1)(A) of the Act on 6 April 1983 by the conduct of its picket and union member Braga in striking Stay-King employee Shields with a picket sign.⁴ The General Counsel contends that the judge erred in failing to require the Respondent to make Shields whole for any medical expenses or loss of wages he may have suffered as a result of the picket line misconduct. We find no merit in the General Counsel's contentions.⁵ However, we otherwise agree with the General Counsel that the judge failed to provide a complete and appropriate remedy for the Respondent's violations of Section 8(b)(1)(A) of the Act and we shall therefore modify the recommended Order and notice to reflect the conclusions reached in this decision.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Local 87, Service Employees International Union, AFL-CIO, San Francisco, California, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Cease and desist from

(a) Engaging in or inducing or encouraging any individual employed by Pacific Telephone and Telegraph Company, any successor thereto, or any other person engaged in commerce or in any indus-

³ We find merit in the General Counsel's request that the conclusions of law be amended to include a reference to the threat directed at Hobbs. We hereby correct the judge's inadvertent error in omitting such a provision.

⁴ In the absence of exceptions, we adopt the judge's rulings with respect to additional allegations that the Respondent violated Sec. 8(b)(1)(A) of the Act.

⁵ Regarding the General Counsel's request for medical expenses, we adhere to longstanding Board law which provides that medical expenses are better sought through private remedies traditionally used for the recovery of such damages. The use of traditional remedies places employees before tribunals which have more experience and are better equipped than the Board to measure the impact of tortious conduct. *Union Nacional de Trabajadores (Catalytic Industrial)*, 219 NLRB 414 (1975). Concerning the General Counsel's request for backpay, Member Dennis and Member Babson deny that request for the reasons set forth in *Operating Engineers Local 513 (Long Construction)*, 145 NLRB 554 (1963). In *Long Construction*, the Board, citing the availability of private remedies traditionally used to process tort claims, noted that the lack of a Board order awarding backpay to employees unable to work because of injuries resulting from a union's unlawful conduct would not leave employees without redress against those responsible for their injuries. Member Johansen finds a backpay award inappropriate in view of the absence of record evidence showing that the injury Shields suffered as a result of the Respondent's picket line misconduct rendered him unable to work.

try affecting commerce to engage in a strike or refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to refuse to perform any other services, where an object thereof is to force or require Pacific Telephone and Telegraph Company, or any other person, to cease using, handling, or otherwise dealing in the products or services made available by Stay-King Maintenance Company, or to cease doing business with that business enterprise.

(b) Threatening, coercing, or restraining Pacific Telephone and Telegraph Company, or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is to force or require Pacific Telephone and Telegraph Company or any other person to cease using, handling, or otherwise dealing in the products or services made available by Stay-King Maintenance Company, or to cease doing business with that business enterprise.

(c) Restraining and coercing employees of Stay-King Maintenance Company in their right not to join or support any strike by threatening to cause harm to the employees of that Employer, by inflicting bodily injury upon those employees, by spitting upon those employees, or in any like or related manner restraining or coercing those employees in the exercise of their rights under Section 7 of the Act.

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

(a) Post at its business office and meeting hall copies of the attached notice marked "Appendix."⁶ Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Deliver to the Regional Director signed copies of the notice in sufficient number for posting by the employers involved in this case should these employers be willing to post the notice at all locations where notices to their employees are customarily posted.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

TO ALL EMPLOYEES OF: PACIFIC TELEPHONE AND TELEGRAPH COMPANY OR ANY EMPLOYER SUCCESSOR THERETO

TO ALL EMPLOYEES OF: STAY-KING MAINTENANCE COMPANY

TO ALL MEMBERS OF: LOCAL 87, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT, nor will our officers, business representatives, business agents, or anyone acting for us, whatever his or her title may be, engage in or induce or encourage any individual employed by Pacific Telephone and Telegraph Company, or any other person engaged in commerce or business activities which affect 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 refuse to perform any other services, where an object thereof is to force or require the above-named employer, or any other person engaged in commerce or in an industry affecting commerce, to cease using, selling, handling, transporting, or otherwise dealing in the products of, or cease doing business with, Stay-King Maintenance Company.

WE WILL NOT threaten, coerce, or restrain Pacific Telephone and Telegraph Company, or any other employers engaged in commerce or in an industry affecting commerce, where an object thereof is to force or require employers or any other persons engaged in commerce to cease using, sell-

⁶ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board"

ing, handling, transporting, or otherwise dealing in the products of, or cease doing business with, Stay-King Maintenance Company.

WE WILL NOT threaten to cause harm to employees of Stay-King Maintenance Company.

WE WILL NOT inflict bodily injury upon employees of Stay-King Maintenance Company.

WE WILL NOT spit upon employees of Stay-King Maintenance Company.

WE WILL NOT in any like or related manner restrain or coerce employees of Stay-King Maintenance Company in the exercise of the rights guaranteed them by Section 7 of the Act.

LOCAL 87, SERVICE EMPLOYEES
INTERNATIONAL UNION, AFL-CIO

Michael Belo, for the General Counsel.

Stewart Weinberg, Esq. (Van Bourg, Weinberg, Roger & Rosenfeld), of San Francisco, California, for the Respondent Union.

Diane Bieneman, Esq., for Pacific Telephone and Telegraph Co.

Thomas W. King for Stay-King Maintenance.

DECISION

STATEMENT OF THE CASE

MAURICE M. MILLER, Administrative Law Judge. On a charge filed on April 4, 1983, by Pacific Telephone and Telegraph Company (Complainant), which was duly served, the General Counsel of the National Labor Relations Board caused a complaint and notice of hearing, dated April 19, 1983, to be issued and served on Local 87, Service Employees International Union, AFL-CIO (Respondent). Respondent was charged with the commission of unfair labor practices within the meaning of Section 8(b)(4)(B) of the National Labor Relations Act.

Specifically, the General Counsel charged, that despite the fact that a reserved contractor's entrance for employees of Complainant's contractors had been established, and despite repeated advice communicated to Respondent Union, beginning on March 31, 1983, regarding the status and location of the reserved gate, and the name of the contractor for whom it was being reserved, Respondent Union's pickets—during picketing which commenced on April 1 thereafter—did not restrict their activity to that location, but instead continued to circle Complainant Employer's building and post themselves at all entrances reserved for Pacific Bell's employees and various other neutrals. The General Counsel charges, further, that Respondent Union's representatives refused to correct the picket signs they carried, which indicated a dispute with merely "Company X." Such activities, the General Counsel charged, impeded the ingress of employees of neutral employers, thereby disrupting their work, and violating Section 8(b)(4)(B) of the Act.

Within its answer, duly filed, Respondent Union conceded certain factual allegations in the General Counsel's

complaint, but denied the commission of unfair labor practices.

Subsequently, pursuant to the filing of a charge on May 5, 1983, by Thomas King and Lawrence Stay, A Partnership d/b/a Stay-King Maintenance Company (Co-Complainant), which charge was duly served, the General Counsel of the National Labor Relations Board caused a complaint and notice of hearing, dated June 6, 1983, to be issued and served on Local 87, Service Employees International Union, AFL-CIO (Respondent or Respondent Union). Respondent was charged with the commission of unfair labor practices within the meaning of Section 8(b)(1)(A) and (7)(C) of the National Labor Relations Act.

Specifically, the General Counsel charged that Respondent Union had violated Section 8(b)(1)(A) of the Act by restraining and coercing Co-Complainant's employees, in the exercise of their rights under Section 7 of the Act, through mass picketing, assault, battery, threats of bodily harm, intimidation, and surveillance at picket lines which Respondent maintained. Further, the General Counsel charged that an object of Respondent's fatal picketing was to force or require Co-Complainant to recognize Respondent as the collective-bargaining representative of its employees. Alternatively, the General Counsel charged Respondent with trying to force or require Co-Complainant Stay-King's employees to accept or select Respondent as their bargaining representative, without a petition for recognition as their representative having been filed under Section 9(c) of the Act within a reasonable period of time. The General Counsel charged that Respondent's course of conduct vis-a-vis Stay-King's employees thus violated Section 8(b)(7)(C) of the statute.

Within its answer, duly filed, Respondent Union conceded certain factual allegations in the General Counsel's complaint, but denied the commission of unfair labor practices.

Subsequently, following the filing of a further charge on May 9, 1983, by Thomas King and Lawrence Stay, A Partnership d/b/a Stay-King Maintenance Company, and duly served, the General Counsel caused a complaint and notice of hearing, dated June 17, 1983, to be issued and served on Local 87, Service Employees International Union, AFL-CIO. Respondent was charged with the commission of unfair labor practices within the meaning of Section 8(b)(1)(A) of the National Labor Relations Act.

Specifically, the General Counsel charged that Respondent Union had violated Section 8(b)(1)(A) of the Act by restraining and coercing Co-Complainant's employees in the exercise of their rights under Section 7 of the Act by Respondent's conduct in maintaining mass picketing; and by assaults, battery, and making threats of bodily harm, by intimidation; and by surveillance at those picket lines which Respondent maintained.

Within its answer, duly filed, Respondent Union conceded certain factual allegations in the General Counsel's complaint, but denied the commission of unfair labor practices.

On June 17, 1983, an order consolidating the above-mentioned cases issued. A hearing with respect to these matters was conducted before me on June 30, July 1, and July 11, 1984, in San Francisco, California. The General Counsel, Respondent, and Pacific Telephone and Telegraph Company were represented by counsel. All parties were afforded a full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence with respect to pertinent matters. Since the hearing's close, briefs have been received from the General Counsel's representative and Respondent's counsel. These briefs have been duly considered.

On the record made herein, testimonial and documentary evidence received, and my observation of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

Complainant Employer Pacific Telephone, a California corporation with an office and place of business located at 370 Third Street and at 85 Second Street, San Francisco, California, has been throughout the period with which this case is concerned, and remains—albeit with a recent change in corporate name—a public utility engaged in the furnishing of telephone and telegraph communication services. During the calendar year preceding the issuance of the complaint, Pacific Telephone, in the course and conduct of its operations, derived gross revenues in excess of \$100,000. During the same period of time, Complainant Employer purchased and received at its San Francisco, California facility products, goods, and materials valued in excess of \$2500 which originated from points outside the State of California.

At all times material, Co-Complainant Stay-King Maintenance Company has been a partnership, with its headquarters located in Concord, California, where it is engaged in providing janitorial services, including, inter alia, services at Complainant's Third Street facility.

The complaint alleges, Respondent does not deny, and I find that Complainant Pacific Telephone is now and has been at all times material an employer within the meaning of Section 2(2), engaged in commerce and business activities affecting commerce within the meaning of Section 2(6) and (7) of the Act.

The complaint further alleges that Co-Complainant Stay-King Maintenance is now and has been at all times material an employer within the meaning of Section 2(2), engaged in commerce and business activities affecting commerce within the meaning of Section 2(6) and (7) of the Act. Respondent, while denying the jurisdictional claim, offers no evidence to the contrary. I find, therefore, that Co-Complainant Stay-King Maintenance is an employer within the meaning of Section 2(2) of the Act engaged in commerce and business activities affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Respondent Local 87, Service Employees International Union, AFL-CIO is now and has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act, which admits employees of janitorial service business enterprises to membership.

II. UNFAIR LABOR PRACTICES ALLEGED

A. Issues

Three primary violations of the statute have been alleged in the General Counsel's consolidated complaint.

First, the General Counsel contends that Respondent Union violated Section 8(b)(4)(B) of the Act by failing to restrict its picketing to certain reserved contractors' entrances at Complainant's Third Street facility, and by its failure to properly designate, on its picket signs, the specific entity against which its picketing was directed. The General Counsel asserts that Respondent's picketing of Complainant's Third Street facility commencing on April 1, 1983, had as its object forcing Complainant Pacific Telephone to cease doing business with Co-Complainant Stay-King Maintenance, and that Respondent's picketing of Complainant Pacific Telephone's Second Street facility on April 7, 8, and 11 was with the object of forcing Complainant Pacific Telephone to cease doing business with Stay-King Maintenance and/or Price Janitorial Service, Inc., the janitorial service contractor at the latter location.

Second, the General Counsel contends, based on a charge filed by Co-Complainant Stay-King Maintenance, that Respondent violated Section 8(b)(7)(C) of the Act by picketing Stay-King with the object of forcing Stay-King to recognize Respondent as the exclusive representative of Stay-King's employees, or forcing Stay-King's employees to accept Respondent as their representative.

Subsumed within this complaint are further allegations of picket line violence and threats of violence violative of Section 8(b)(1)(A).

Third, the General Counsel contends that Respondent, acting through various pickets, violated Section 8(b)(1)(A) of the Act by blocking employee access to Complainant's Third Street facility, threatening nonstriking employees with bodily harm; spitting at them; and inflicting bodily injury on certain designated nonstriking workers, employees of Stay-King specifically.

B. Facts

1. Complainant's business

Pacific Telephone, functioning as a public utility engaged in the furnishing of telephone and telegraph services, has office buildings located at 370 Third Street and at 85 Second Street in San Francisco. At all times material Complainant contracted with independent janitorial service contractors for the day-to-day maintenance of its facilities located at 370 Third Street and 85 Second Street.

Complainant's Third Street facility occupied a small city block, bounded by public thoroughfares on all four sides. The building's main entrance is on Third Street; the rear entrance, where most deliveries are taken, is bounded by a smaller, less trafficked street, Lapu Lapu. The south side of the building is bordered by Harrison Street, and the remaining side of the building by another, less traveled thoroughfare.

In addition to the main entrance on Third Street, there are entrances at the rear of the building—on Lapu Lapu

Street—which include delivery ramps designated to accommodate delivery vehicles. There are more entrances on Harrison Street, where Complainant established a reserved contractor's gate for the employees and suppliers of Co-Complainant Stay-King Maintenance. The building cannot be entered, on the Harrison Street side, from ground level; those wishing to enter had to cross the sidewalk and descend to a lower, below-ground level, using an outside stairway which ran parallel to the sidewalk, and which was separated therefrom by a 3-foot iron fence, open only at the stairway entrance.

2. Co-Complainant's business

Stay-King Maintenance is a partnership which contracts to provide janitorial and maintenance services for various businesses throughout northern California. Shortly before the period with which these cases are concerned, it contracted with Pacific Telephone to provide such services for Complainant's Third Street facility.

Price Janitorial Service, Inc. (not a party to this action), similarly contracts with various businesses to provide janitorial services; throughout the period with which we are concerned, it had such a contract with Pacific Telephone to provide janitorial services for Complainant's Second Street facility.

3. Collective-bargaining history

Neither Complainant Pacific Bell nor Co-Complainant Stay-King has had a collective-bargaining relationship with Respondent Local 87. At all times relevant Pacific Bell's employees have been represented by another union; Stay-King's employees have not been represented.

Throughout the period with which these cases are concerned, however, Local 87 has represented employees of I.S.S. Prudential, the janitorial service with which Pacific Bell had contracted to perform services at its 375 Third Street facility, prior to negotiating its current service contract with Stay-King, which became effective April 1, 1983.

4. Evidence pertaining primarily to the 8(b)(4) allegation

On March 31 1983, Complainant Pacific Bell's staff manager for labor relations, Bruce Murray, became aware of Respondent Union's intention to picket Complainant's Third Street facility at 7 a.m. the following morning, April 1.

Murray telephoned Respondent Union's president, Wray Jacobs, on March 31, sometime during the afternoon, and informed him that Pacific Bell would have a reserved contractor's entrance on the Harrison Street side of the firm's building, for the use of its newly engaged janitorial service's employees.

The record reflects a dispute whether or not Murray had further informed Jacobs, in this phone conversation, regarding the name of Complainant's new janitorial service. Complainant alleges that Murray had done so; Respondent Union's president denies that he was so informed. The credibility issue thus presented need not be resolved, however, because Respondent's picket signs may or may not already have been made up at that time

with "Company X" shown as the new janitorial service's designation. Both Respondent Union and Complainant agree that Local 87's leadership was aware of the name of the janitorial service at least by the following morning, April 1.

Both Murray and Jacobs arrived early at Pacific Bell's facility, on the morning of April 1. At 7:30 a.m., Murray handed Jacobs a letter informing him that a reserved gate had been established at the building's Harrison Street entrance for the use of Stay-King employees. Later that morning, Murray voiced his concern to both Jacobs and to Richard Leong, one of Respondent's business agents, that Respondent's picket signs were "defective" in that the designation lettered thereon, "Company X," did not properly identify the entity against which they were picketing; namely, the janitorial contractor. Jacobs told Murray that this was because he had not known the name of the janitorial contractor when Respondent Union's signs were prepared and that he would make efforts to fix the signs.

Although Complainant had set aside a reserved entrance for the employees of Stay-King on Harrison Street, Respondent's pickets picketed all entrances to the Third Street facility on April 1, and continued to picket all such entrances carrying signs which read "Company X UNFAIR" until May 6 when a Federal court injunction proscribing Respondent Union's allegedly improper picketing was obtained. Thereafter, union picketing was confined to Pacific Bell's Harrison Street entrance; also, the picket signs were finally changed to designate "Stay-King" as the subject of the picketing.

While a witness, Murray testified—credibly within my view—that around 10:30 a.m., on April 1, he witnessed two deliveries being made at the rear of the Third Street facility through the building's Lapu Lapu Street delivery entrance. He reported that he observed "a number of pickets walking very slowly across the entrance from Lapu Lapu Street," and that he witnessed a truck parked on Lapu Lapu Street, and what appeared to be large boxes of xerox paper which were being unloaded, put onto a dolly, and wheeled down a ramp to Complainant's loading dock. Later that day he likewise observed a truck from C.F.S. Continental, whom he "thought" to be a supplier of Saga Foods (which operates Pacific Bell's building cafeteria), likewise parked on Lapu Lapu Street unloading supplies. Murray testified—without contradiction or dispute—that trucks making such deliveries normally back down the building's ramp and unload supplies at Pacific Bell's loading dock.

When Murray complained to Jacobs that pickets were blocking deliveries, Jacobs summoned Respondent Union's picket captain from the rear of the building—so the record shows—and told him, in no uncertain terms, that they were not to block deliveries to the entrance, and that, should they continue to do so, he would pull the pickets.

Three additional incidents, involving blocked pickups or deliveries, have been testified to by David Holloway, Pacific Bell's house supervisor.

Holloway reported—credibly—that, during the week of April 11-15, as he parked his car and came into work,

he saw a Consolidated Fibers truck parked on the street behind Complainant's building and observed Respondent Union's picket Michael Rash, and three other individuals he did not know, talking to the driver. Shortly thereafter, following his building entry, so Holloway testified, the driver came in and reported that he had been threatened by Michael Rash and had been told by Rash that "the only way he was going to get his truck in there was to run him [Rash] down." The driver declared that he didn't know what to do. Holloway testified that he allowed the driver to call his boss; the driver then said that he would make his scheduled pickup (of goods to be recycled). However, after once again being confronted by Rash, the driver returned to Holloway and said, "I can't run this guy over," and again called his boss. With matters in this posture, Holloway spoke with the driver's superior. It was agreed, so Holloway testified, that Consolidated Fibers' driver would not make any pickup that day, but would return the next morning at 5 a.m., before the pickets arrived, in order to make the pickup. According to Holloway, that was done.

Two days later, so Holloway credibly testified, he observed a Franciscan Moving Company truck, which had been scheduled to make an internal company move, likewise turned away by Respondent's picket.

The third incident occurred on Friday of that week. Holloway testified that Sagan Moving Company employees (who were moving some of Complainant's furniture within Complainant's building) walked off the job leaving only their supervisor to complete the required move. Holloway's testimony, within my view, merits credence.

5. Evidence pertaining primarily to the 8(b)(7) allegation

Co-Complainant Stay-King Maintenance charges that Respondent's picketing had a recognitional objective. The firm cites, as evidence of this, repeated chants by Respondent Union's pickets calling for their janitorial service jobs back, plus various references by pickets to the jobs being "theirs." Consistently therewith, the General Counsel proffered for the record several union flyers characterizing Stay-King as nonunion, and alleging that Co-Complainant's status as a nonunion contractor was "undercutting" union wage levels. In this connection, the record warrants a determination—which I make—that, during a conversation with Murray, Respondent Union's president stated, "If Stay-King had contacted the Union prior to taking it [Pacific Bell's janitorial service contract] over, we wouldn't have had a problem because they would have signed the [Union] contract and maintained our work force." However, Respondent Union herein denies any recognitional objective, and claims—now—that it had so informed Co-Complainant verbally and by letter. It is undisputed that any agent authorized to speak for Respondent Union ever talked with or wrote to any Stay-King representative, seeking recognition.

Section 465(a) of the California Public Utilities Code introduced into evidence provides, *inter alia*, that a public utility, whenever it does not use its own employees to perform janitorial work, must require its contrac-

tor to pay "prevailing wages" for such work as determined by the director of the State Department of Industrial Relations. Respondent Union maintains, herein, that Co-Complainant was in violation of the PUC Code because it was paying less than prevailing wages; the Union had hired a private investigator to determine what wages and benefits were being paid by Stay-King for janitorial work at Pacific Bell's facility. And the picketing with which these cases are concerned directed against Stay-King was—so Respondent Union's witnesses contend—for the purpose of seeing that the PUC Code provision regarding the payment of prevailing wages was being complied with.

Respondent Union's president, Jacobs, testified credibly and without contradiction that he had been contacted by other unionized janitorial service contractors, who had expressed to him their concern "about our ability to maintain [the] prevailing wage." He noted that, "it's a real problem for us and for the contractors, because they are required to bid the manning and the wage rates we have in our contract." In this connection, further, Pacific Bell's witness David Holloway testified that Stay-King's bid for the firm's janitorial work had been considerably lower than the next lower bid, and lower than the bid level which Pacific Bell had projected. He reported, further, that Pacific Bell's building manager, Anita Shotwell, had offered Stay-King an opportunity "to bow out gracefully" if they felt they might not be able to do the work at their bid price. Stay-King had, however, declined; they had accepted Pacific Bell's proffered contract at the price which they had originally bid.

6. Evidence pertaining to incidents of picket line threats and violence

a. Threats

Stay-King Owner, Lawrence King, and Stay-King employee Benjamin Domealog each testified that various threats were made against them on April 1, their first day in Complainant's service.

Domealog reported that as the Stay-King employees were exiting the van (which was to be used daily to bring them to work), he heard a voice behind him say, "Come on, I'm waiting for you," and when he turned around he saw someone whom he later came to know as Wray Jacobs, Respondent Union's president.

King testified that, during a brief exchange with Jacobs on the date noted, the latter said to him, "I'm going to kill you and put you in the dirt." To which [King] responded—so he reported—that, "If you raise your hands above your waist, you're going to kiss dirt." King testified further that the pickets were yelling profanities and also yelled, "We're going to kill you scabs; scabs go home."

Again, King testified that on April 4, Respondent Secretary-Treasurer Eric Hall used a bullhorn to shout, "We'll kill the scabs." The picketers—so King reported—were shouting profanities, "yelling they were going to kill us." In his testimony Hall, however, denied ever having said, "kill the scabs."

Finally, three other Stay-King employees testified to threats made against them. Jeffery Hobbs reported that on April 6 a large black man with a cast on his arm (describing Bill Rash, a member of Respondent Union), pointed at him and Mark Shields, a Stay-King employee, and Dave Holloway, Pacific Bell's house service supervisor, and said, "We're going to get you."

John Connell recalled that sometime in late April, as he was exiting Stay-King's van to go into work, a picketer (unnamed) addressed him saying, "We know where you live, and we're going to get you."

Similarly, Keith Copas testified that on April 27 a picketer said to him, "We know where you live. We know where you live."

With the exception of the threats purportedly made by Hall, Jacobs, and Rash, none of the threats were attributed to anyone specifically identifiable. Hall, however, specifically denied making the statements attributed to him; Bill Rash was not called to testify.

b. Spitting

Two Stay-King employees and Dave Holloway, house service supervisor for Pacific Telephone, testified to incidents of spitting by picketers.

In this connection, Holloway reported that on April 1 he observed "people that were picketing on the pavement [which bordered Complainant's facility] were spitting at the Stay-King people."

Stay-King's employee Domealog declared—while a witness—that "the spitting occurred prior to us getting out of the van. They would spit at the van. And crossing the sidewalk—but I personally was not spit on until I was going down the stairs." Domealog added that "One or two people would spit at times. At other times it seemed like everyone was spitting. But that was just the way it seemed—but there was I would say about five or six people who were always spitting."

Another Stay-King employee, Jeffery Hobbs, corroborated this testimony regarding repeated incidents of spitting by picketers at Stay-King employees as they exited the van and walked into the building.

c. Physical violence

Three incidents of physical violence, involving Stay-King employees, have been charged herein.

The first two incidents were alleged to have occurred on April 6. Pacific Bell's employee David Holloway testified—credibly within my view—concerning the first incident. He reported that he witnessed a man strike Stay-King employee Mark Shields twice with a picket sign. Holloway declared that he had recognized the man who struck Shields because the man had previously worked as a janitor in Complainant's Third Street building which Holloway supervised. He identified the man as Jose Braga, a member of Respondent Union. Although Holloway—while a witness—described Braga as having a mustache, and the police report filed on the day of the alleged assault showed Braga without a mustache, the rest of Holloway's description was essentially consistent with the description found in the police report.

The second incident reported as having occurred on April 6 involved Jeffery Hobbs, a Stay-King worker,

who was walking immediately in front of Shields as he descended the Harrison Street staircase to enter the building. Hobbs testified in a rather confused manner concerning the circumstances which he said surrounded his being struck with a picket sign. However, Holloway, who reported that he had observed the janitors disembarking from the van and going downstairs for "approximately two or three minutes" before he saw Shields struck, did not observe Hobbs being swung at twice and hit once, as Hobbs testified. This, despite the fact that Hobbs was reportedly immediately in front of Shields while they were both descending the stairs. Although the police reportedly witnessed no violence affecting Hobbs, he testified that there were always police standing between him and the picketers as he crossed the Harrison Street sidewalk from the van and descended the staircase into the building. Hobbs conceded, however, that he had not seen who struck him. He testified, merely, that he observed police taking a man into custody later that day, whom he also described as having a mustache. Hobbs testified that Wray Jacobs was speaking through a bullhorn that day when—so Jacobs presently claims—he was not present. These several discrepancies, between Hobbs' proffered recollection, and some testimony provided by others have, within my view, rendered the Stay-King employees' witness-chair report questionable. His version of what transpired will be considered further. For the present, no findings consistent with his claim that he was physically assaulted should, within my view, be considered warranted.

The last incident occurred on May 2 and was testified to by John Connell. Connell stated that an older Caucasian man with whitish gray hair kicked him on the back of his leg as he left the safety of the van and started to descend the stairs into Respondent's facility.

Connell's testimony, noted, was corroborated by Keith Copas, a Stay-King maintenance employee, who testified that he observed a man of the same description repeatedly kicking Connell on the back of the leg. The man, however, was not holding a picket sign; Copas observed that he was "dressed very shabbily" and that "he was yelling." Copas added that "he was — we thought he was crazy is what I thought."

C. Discussion

1. The 8(b)(4) charge

It is now well established that the provisions of Section 8(b)(4)(i) and (ii)(B) of the Act reflect "the dual Congressional objectives of preserving the right of labor organizations to bring pressure to bear on offending employers in primary labor disputes and of shielding unoffending employers and others from pressures in controversies not their own." *NLRB v. Denver Building Trades Council*, 341 U.S. 675, 692 (1951).

In common situs situations, where two or more employers are engaged in normal business operations at the same situs, as in the instant case, the Board has recognized and relied on certain evidentiary guidelines in determining the true object of the picketing. These standards are set forth in *Sailors Union of the Pacific (Moore*

Dry Dock, 92 NLRB 547, 549 (1950). Four conditions were enunciated therein as guidelines to determinations with respect to whether picketing the premises of a nominally secondary employer may be considered primary:

The picketing is strictly limited to times when the *situs of the dispute is located on the secondary employer's premises*; (b) *at the time of the picketing the primary employer is engaged in its normal business at the situs*; (c) *the picketing is limited to places reasonably close to the location of the situs*; and (d) *the picketing must disclose clearly that the dispute is with the primary employer*.

In the instant case, it is alleged that Respondent failed to meet the third and fourth elements of the test noted. Specifically, the General Counsel's representative contends that (1) Respondent failed to limit its picketing to the properly designated reserved gate, and (2) Respondent did not clearly identify the primary employer with whom it had the dispute.

Failure to comply with these standards does not, of course establish a *per se* violation; it does, however, create a "strong though rebuttable presumption that the picketing had an unlawful secondary purpose." *Electrical Workers Local 332 IBEW (W.S.B. Electric)*, 269 NLRB 417 (1984). Such a presumption may properly be considered applicable here.

a. Picket signs

In the instant case it is undisputed that from April 1 to May 6 Respondent's picket signs failed to disclose the name of the employer against whom its picketing was directed; this, despite repeated requests, proffered by Complainant, that it do so. Respondent's prepared signs, which mention only "Company X" were undeniably ambiguous regarding the employer being picketed; credible testimony reveals that certain suppliers of Complainant were misled on several occasions into believing that Complainant, a neutral, was the object of the picketing. This resulted in some deliveries being delayed or turned away, and caused other aspects of Complainant's business to be disrupted and/or delayed.

Respondent claims not to have known the name of the janitorial contractor (the primary employer) with whom Complainant had contracted when it made up its picket signs; further, Respondent contends, that the waterproofing compound with which the signs were treated made it difficult to alter the signs when it later learned the name of the primary employer.

Although there was conflicting testimony on whether or not Respondent knew the name of the primary employer prior to April 1, it was undisputed that Respondent was aware of the name of the primary employer at least by early morning of April 1, the first day of the picketing.

Nevertheless, despite repeated requests by Complainant asking Respondent, on April 1, and on numerous occasions thereafter, to alter the signs, and to have them reflect the name of the primary employer, Respondent failed to do so for over 1 month.

This Board has consistently required that picket signs clearly identify the employer being picketed. *Service Employees Local 32B-32J*, 250 NLRB 240 (1980); *Service Employees Local 32B-32J (Dalton Schools)*, 248 NLRB 1067 (1980). Respondent's admitted failure to clearly identify the primary employer on its picket signs cannot properly be considered effectively countered by Respondent's argument asserting the difficulty of altering waterproofed signs. Respondent had an affirmative obligation to clearly identify the primary employer and to minimize the harm caused to neutral employers. It failed to do so.

b. Reserved gate

The Board and the courts have also recognized the right of employers at a common situs to designate a gate reserved for the exclusive use of the employees and suppliers of the primary employer. Where such gates are adequately designated and maintained, the union must confine its picketing to the gate reserved for the primary employer. *Electrical Workers Local 761 IBEW v. NLRB*, 366 U.S. 667 (1961); *Broadcast Employees Local 31 (CBS, Inc.)*, 237 NLRB 1370 (1978); *Service Employees Local 32B-32J*, 250 NLRB 240 (1980). Picketing not confined to some area reasonably close to such a reserve gate has been held to constitute evidence of unlawful secondary objectives. *Electrical Workers Local 332 IBEW (W.S.B. Electric)*, 269 NLRB 417 (1982).

In the instant case, Complainant established a separate gate on the Harrison Street side of the building for the exclusive use of the primary employer, his employees, and suppliers, and so informed Respondent in writing on April 1. Despite the creation of a reserve gate, Respondent admittedly picketed all entrances to Complainant's Third Street facility for over 1 month, from April 1 to May 6.

Respondent asserts, however, that the gates reserved for use by Complainant's neutral employees were "tainted" by the following incidents:

1. On April 1 Lawrence Stay, co-owner of the primary employer, exited and reentered the building, through a gate reserved for neutral employees, to observe the picket activity.

2. A supplier of the primary employer made a delivery on April 4 using an entrance reserved for neutrals. Complainant has admitted that it had, initially, neglected to add the words "and its suppliers" to the sign designating the gate reserved for the primary employer, and that this was not done until April 5 or 6.

3. Sometime during the week of April 4 two Stay-King employees initially entered the building through the Third Street [neutral] gate, when—according to Complainant's testimony—they were "intercepted" and sent back out to reenter by the Harrison Street (reserved) entrance.

4. On April 27 Thomas King, co-owner of the primary employer, entered the building along with his lawyer, through a gate reserved for neutral employees, to meet with Complainant's management representatives.

5. It was a regular practice of employees of the primary employer to exit through Complainant's neutral

gate located on Third Street to clean the facility's patio and sidewalk area; they would, then, reenter Complainant's building. These working excursions took place during Stay-King's regular working hours.

With the exception of the last matter noted, all the above-cited incidents, which were admitted by Complainant, were unrelated, isolated occurrences which Complainant sought to correct quickly and permanently. "[I]solated occurrences" which do not establish a pattern of destruction of the reserved gate system do not justify picketing at a neutral gate. *Electrical Workers Local 332 IBEW (W.S.B. Electric)*, 269 NLRB 417, citing *Plumbers Local 48 (Calvert Contractors)*, 249 NLRB 1183 fn. 2 (1980). As the Board held in *Operating Engineers Local 18 (Dodge-Ireland)*, 236 NLRB 199 fn. 1 (1978):

[T]he evidence shows that the primary and neutral employers took every reasonable precaution to assure the integrity of the reserve gate system, and the few instances of misuse of a neutral gate by suppliers of the primary employer were not sufficient to justify Respondent's picketing of the neutral gates.

Such is the case here.

With respect to the two incidents which involved the co-owners of the primary employer, neither incident could be characterized as constituting the "normal business" of the primary employer, and, as such, would not breach the integrity of the reserved gate. *Service Employees Local 254 (Janitronic)*, 271 NLRB 750 fn. 7 (1983).

The other two instances cited constitute, at most, a de minimis breach of the reserved gate system, which does not justify Respondent's picketing of neutral gates.

The last alleged breach of the reserved gate system cited by Respondent may be characterized—justifiably within my view—as unique. Employees of the primary employer were required, by their firm's contract with Complainant, to clean the patio and sidewalk area in front of the firm's building, which bordered Third Street. Employees assigned to this task routinely exited and reentered the building through the Third Street entrance in performance of those duties.

Respondent argues that this practice breached the integrity of the reserved gate. With matters in this posture, Respondent contends that it thereby became free to picket all entrances to Complainant's building.

Where reserved gates are improperly established to interfere with the union's right to convey its message by lawful picketing directed to the primary employer, his employees, suppliers, and the general public, picketing is not restricted to such reserved gates. *Electrical Workers IBEW Local 453 (Southern Sun)*, 237 NLRB 829 (1978), affd. sub nom. *Southern Sun Elec. Co. v. NLRB*, 620 F.2d 170 (8th Cir. 1980); *Electrical Workers Local 441, IBEW (Jones & Jones)*, 158 NLRB 549 (1966).

Such is not the case here. Respondent had ample opportunity to convey its message daily to employees and suppliers of the primary employer at gates reserved for that purpose.

Moreover, the General Counsel aptly points out that: Respondent's rights, under Section 8(b)(4), to apply pressure to offending employers must be balanced by its obli-

gation to shield neutral employers from the effects of such economic pressure. Respondent's picketing of all entrances to Complainant's building after numerous requests by Complainant to restrict its picketing, combined with Respondent's reluctance to designate on its picket signs whom the dispute was with, are all indicia not only that Respondent failed to meet its obligation to avoid enmeshing Complainant in its dispute with the primary employer, but that Respondent's true motive was to blur the line between pressure brought against the primary employer and effects of that pressure on Complainant.

2. The 8(b)(7)(c) charge

The General Counsel argues that Respondent's picketing had a recognitional objective in violation of Section 8(b)(7)(C) of the Act.

That section of the statute prohibits a labor organization from picketing an employer for recognitional or organizational objectives when the union is not currently certified by the Board as the collective-bargaining representative of that employer's employees, and when such picketing has been conducted without a recognition petition being filed within a reasonable period of time not to exceed 30 days.

Section 8(b)(7)(C), however, permits certain types of picketing for the purpose of truthfully advising the public that an employer does not employ members of or have a contract with a labor organization, and, likewise, for the purpose of informing the public that "area standards" affecting wages and benefits paid to other employees in similar jobs in the area were not being observed by the employer being picketed.

Respondent asserts that the Co-Complainant janitorial company has failed to comply with standards governing the payment of wages and benefits mandated by the State Public Utilities Code, and that Respondent's picketing, as well as other courses of action it pursued before the State Public Utilities Commission, was to compel Pacific Bell to maintain janitorial service contracts in compliance with those PUC provisions. The General Counsel claims that Respondent's stated aims are pretextual and that the true purpose of Respondent's picketing was recognitional. However, no evidence of the usual indicia tending to show a recognitional objective has been presented. No allegations have been made that the Co-Complainant janitorial company, was ever approached by Respondent—by letter, phone call, or in person—to recognize Respondent, bargain with Respondent, or for any purpose whatsoever. Neither Respondent's picket signs nor leaflets were alleged to be directed either to employees seeking to persuade them to join the Union or to Co-Complainant to recognize the Union. Leaflets presented in evidence appeared to be directed solely to the public. Neither was there any indication that Respondent's picketing would cease conditioned on any action by Co-Complainant janitorial contractor.

The only factual assertions made by the General Counsel to support his allegation were (1) references to chanting by Respondent Union's pickets, declaring that they wanted their jobs back, and leaflets urging union members to "help us show that non-union companies will

not take away our jobs," plus (2) a single statement made by Respondent's president to a representative of the Complainant Pacific Bell that—had the janitorial company contacted Respondent prior to assuming the contract for janitorial services—there would not have been a problem "because they would have signed a contract and maintained our work force." Respondent's speculations regarding what might have occurred prior to Respondent's initiation of picketing, expressed to someone not a party to that dispute, does not alone constitute evidence of Respondent's present desire to organize or represent Co-Complainant's employees.

Rather, Union President Jacobs' statement to Complainant Pacific Bell's representative, as well as the pickets' chants and leaflets, are more indicative of Respondent's true motive in picketing Pacific Bell's Third Street facility—that is to dissuade Pacific Bell from contracting with Co-Complainant janitorial service—a purpose proscribed by Section 8(b)(4) of the Act.

And while these and other facts presented at trial have led me to so find a violation of Section 8(b)(4) of the Act by Respondent, I find no evidence submitted sufficient to find any support for the General Counsel's claim that Respondent sought to be recognized by Co-Complainant in violation of Section 8(b)(7) of the Act. I therefore dismiss this part of the complaint.

3. The 8(b)(1) allegations of picket line threats and violence

The General Counsel charges Respondent with a variety of violations involving threats of violence, spitting, and a number of incidents of actual physical violence directed at Co-Complainant's employees by Respondent's pickets.

For starters, Respondent denies that such acts occurred. Therefore, the basic issues presented in this portion of the General Counsel's complaint are questions of fact and credibility, rather than questions of law.

Three incidents of physical violence were alleged by the General Counsel, two alleged to have occurred about April 6, the third on May 2.

Two of Co-Complainant's employees, John Connell and Keith Copas, testified credibly that on May 2 Connell was kicked on the back of his leg by an elderly Caucasian man with whitish gray hair "dressed very shabbily." Respondent does not challenge this allegation, but points out that no effort was made by the General Counsel to link the man to Respondent Union, and that no witness testified to seeing that person on the picket line before or since the incident. In addition, there was no testimony that the man was carrying a picket sign or could in any other way be linked to the Union.

Copas' further testimony that the man "was yelling and he was—we thought he was crazy, is what I thought," is supportive of Respondent's contention that the man was "merely a local crackpot engaged in some arcane activity of his own"

Although it is well settled that when a union establishes a picket line, the union is responsible for the actions of its pickets, *Ironworkers Local 455 (Stovis Multi-Ton)*, 243 NLRB 340, 343 (1979); *Plumbers Local 195 (McCormick-Young)*, 233 NLRB 1087 (1977); a union is

not responsible for the actions of mere passersby who have no connection whatsoever to the union. The evidence presented in the instant case leads me to find that such is the case here and that the Union bears no responsibility for the actions of this unidentified individual. Accordingly, I find Respondent did not violate Section 8(b)(1)(A) of the Act.

The incidents alleged to have occurred on April 6 stand in contrast to the May 2 incident, in that they purportedly describe a specifically identified union member who allegedly struck two of Co-Complainant's employees with a picket sign. Here, Respondent Union would clearly be held responsible for the actions of one of its pickets. The only questions remaining are those of credibility.

Pacific Bell's employee David Holloway testified, credibly and accurately, that he witnessed Co-Complainant's employee Mark Shields being struck with a picket sign wielded by one of Respondent's pickets.

Holloway testified that he recognized the man who struck Shields because he was someone who had previously worked in the Pacific Bell building as a janitor. Holloway's description of the man, who he identified as Jose Braga, was consistent, in most respects, with the description in the police report filed that day regarding this incident.

Respondent challenges Holloway's veracity, citing as proof Holloway's testimony during the hearing that Braga had a mustache, in contrast to the description of Braga in the police report (also offered in evidence), which characterized Shields' assailant as having neither a beard or mustache.

This single discrepancy, however, hardly seems dispositive in light of the very precise and credible testimony offered by Holloway coupled with the fact that—with the exception of the mustache reference—Holloway's description of Braga was entirely consistent with that in the police report.

Additionally, should a determination be considered warranted that the individual who struck Shields with the picket sign was not Jose Braga, the fact that the individual was on the sidewalk picketing with others among Respondent's pickets and was in possession of a picket sign is sufficient indicia that the man was one of Respondent's pickets, and that, as such, Respondent was responsible for his actions. The exact identity of the individual picket need not be established. *Boilermakers Local 696 (Kargard Co.)*, 196 NLRB 645 (1972); *Service Employees Local 50 (Our Lady Nursing Home)*, 208 NLRB 117 (1974); *Health Care Employees District 1199 (Francis Servier Home)*, 245 NLRB 800 (1979). I find, therefore, that by Respondent's picket's action with respect to Stay-King's Mark Shields, particularly, Respondent violated Section 8(b)(1)(A) of the Act.

Allegation of a second incident that day was testified to less persuasively by Co-Complainant's employee Jeffrey Hobbs. He reported in a confused, sometimes contradictory, manner that he, too, had been struck by a picket sign that day. Hobbs declared that he had descended the stairs into the building immediately ahead of Mark Shields, and yet David Holloway—who testified

that he had witnessed Co-Complainant's employees disembarking from a van and descending the stairs for "two or three minutes" before he saw Shields get struck, testified that he did not see Hobbs or anyone else assaulted. This absence of corroboration further discredits Hobbs' testimony. I find, therefore, that, in this instance, the General Counsel failed to meet the burden of proof necessary to sustain a violation of the statute.

Despite Respondent's denials, several witnesses testified, credibly, to frequent incidents of Co-Complainant's employees being spat on by Respondent's pickets as they disembarked from their van to enter the work place. Their testimony is credited; I find that Respondent violated Section 8(b)(1)(A) of the Act by the conduct of various pickets which was clearly designed to coerce and intimidate Co-Complainant's employees in their exercise of rights protected by Section 7 of the Act.

There was additional testimony—previously noted herein—that pickets had made a variety of threatening comments to Co-Complainant's employees as they crossed Respondent's picket lines.

These threats consisted of remarks such as "We know where you live," "We're going to get you," "I'm waiting for you"; and one witness, Co-Complainant Part-Owner Lawrence King testified that pickets also yelled, "We're going to kill the scabs." In an often-quoted passage in *Longview Furniture Co.*, 100 NLRB 301, 304 (1952), enfd. as modified 206 F.2d 274 (4th Cir. 1953), the Board stated:

Although the Board does not condone the use of abusive and intemperate language, it is common knowledge that in a strike where vital economic issues are at stake, striking employees resent those who cross the picket line and will express their sentiments in language not altogether suited to the pleasantries of the drawing room or even to courtesies of parliamentary disputation. Thus, we believe that to suggest that employees in the heat of picket-line animosity must trim their expression of disapproval to some point short of the utterances here in question, would be to ignore the industrial realities of speech in a workaday world and to impose a serious stricture upon employees in the exercise of their rights under the Act.

The question which arises in the instant case, therefore, is whether the pickets' language now under consideration rose to a level deserving of proscription.

King's allegation that Respondent's agent, Eric Hall, led pickets in chants of "Kill the scabs" was specifically denied by Hall and was not corroborated by other witnesses who testified that various threats were made.

I find King's credibility with respect to this charge questionable. Moreover, if, in fact, such chants were maintained by pickets, I note that none of Co-Complainant's employees considered them serious enough to mention in their own testimony. Certainly, it seems unlikely that any of Co-Complainant's employees thought that any real harm would have come to them as a result of such random chanting. The chants, I find, reflected

"animal exuberance" merely—rather than threats meant to be taken seriously.

Most of the other remarks by pickets fall into the category of comments such as "getting even," "we'll fix you," or "I'll whip your ass," which "have been interpreted by other administrative law judges, with Board approval, as being mere extravagant language, used in the course of a labor dispute to express disagreement or frustration." *W. C. McQuaide*, 220 NLRB 593, 607 (1975).

A distinction has been drawn, however, based on the perceived likelihood of the particular speaker to follow through on remarks made to employees crossing picket lines.

In *QIC Corp.*, for example, the Board upheld the administrative law judge's determination that threats made by a 5-foot 1-inch, 94-pound woman to "whip their ass" could not be regarded as "ominous" enough to prove threatening or coercive to anyone "regardless of its stridency." *QIC Corp.*, 212 NLRB 63, 70 fn. 16 (1974).

Almost identical remarks, however, made by a "substantially larger" woman "were not to be taken lightly" when considered "[i]n view of her size, and her obvious animosity." *Id.* at 71.

Although the size of the person uttering potentially threatening remarks should not be considered determinative, it is a factor that should be taken into consideration when analyzing if such remarks might be viewed as intimidating or coercive.

Jeffery Hobbs testified, credibly, that "a large black man with a cast on his arm" frequently seen on the picket line pointed at him and said, "We're going to get you." Hobbs specifically cited the size of the man as intimidating. This remark, made in the context of an arrest of one of Respondent's pickets for an act of violence, about which Hobbs testified, lend believability to Hobbs' testimony, in this instance, that he gave sufficient credence to the threat to be intimidated by it. I find, therefore, that this threat by one of Respondent's pickets did constitute a violation of Section 8(b)(1)(A) of the Act.

In contrast, Wray Jacobs' remarks to Larry King that he would "kill you and put you in the dirt," were addressed to an employer, not an employee. And judging from King's response, that if Jacobs were to "raise your hands above your waist, you're going to kiss dirt," I consider it most likely that Jacobs' remarks, though regarded as real, were not regarded as intimidating.

With matters in this posture, I find that Respondent's pickets—when they resorted to verbal abuse and purportedly threatening declarations directed to Stay-Kings workers—committed an 8(b)(1)(A) unfair labor practice limited to the single instance, involving employee Hobbs, previously noted herein.

III. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent Union and its designated representatives, set forth in section II, above, because they occurred in connection with Pacific Telephone and Telegraph Company's business operations described in section I, above, had a close, intimate, and substantial re-

lationship to trade, traffic, and commerce among the several States. They have led and, absent correction, would tend to lead, should they be continued or resumed, to labor disputes burdening and obstructing commerce, and the free flow of commerce.

In light of these findings of fact and on the entire record in this case, I make the following

CONCLUSIONS OF LAW

1. Complainant, Pacific Telephone and Telegraph Company, and Co-Complainant, Stay-King Maintenance, are employers within the meaning of Section 2(2) of the Act, engaged in commerce and business activities which affect commerce within the meaning of Section 2(6) and (7) of the Act.

2. Respondent Union, Local 87 of Service Employees International Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By picketing at all entrances to Pacific Telephone and Telegraph Company's business location at Third and Harrison Streets, San Francisco, California, with picket signs which failed to reveal the identity of the particular employer with whom it had a dispute, Respondent Union engaged in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(B) of the Act.

4. By conduct chargeable to Respondent Union's pickets, which encompassed repeated spitting at Stay-King

Maintenance's employees while they were reporting for work, daily, at Pacific Telephone and Telegraph Company's Third Street facility, together with a single instance during which one of Respondent Union's pickets hit a Stay-King Maintenance worker with a picket sign, Respondent Union committed unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

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

6. The General Counsel has not established, by any preponderance of the evidence taken in this matter, that Respondent Union's picket line at Pacific Telephone and Telegraph's Third Street, San Francisco facility was being maintained with a recognitional or organizational objective violative of Section 8(b)(7)(C) of the Act.

THE REMEDY

Because I have found that Local 87, Service Employees International Union, AFL-CIO, has engaged in, and is engaging in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(B) of the Act, I shall recommend that it be ordered to cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act.

[Recommended Order omitted from publication.]