

**International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO and N. E. Carlson Construction, Inc. Case 32-CC-1271**

March 27, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

Exceptions filed to the judge's decision in this case<sup>1</sup> present the question, inter alia, whether the Respondent has engaged in unfair labor practices warranting the issuance of broad cease-and-desist remedial order.

The Board has considered the exceptions in light of the record and briefs and has decided to affirm the judge's rulings, findings,<sup>2</sup> and conclusions as modified,<sup>3</sup> and to substitute an Order including broad cease-and-desist language.

AMENDED REMEDY

Both the General Counsel and the Charging Party have excepted to the judge's failure to include in his recommended Order cease-and-desist language broadly enjoining the Respondent from engaging in future secondary activity proscribed by Section 8(b)(4)(B) of the Act. In *Hickmott Foods*, 242 NLRB 1357 (1979), the Board held that a broad remedial "order is warranted only when a respondent is shown to have a proclivity

<sup>1</sup>On September 26, 1990, Administrative Law Judge Michael D. Stevenson issued the attached decision. The General Counsel, the Charging Party, and the Respondent filed exceptions, the General Counsel and the Respondent filed supporting briefs, and the General Counsel and the Charging Party filed answering briefs.

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

<sup>2</sup>The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

<sup>3</sup>We agree with the judge that the Respondent's business agent Trujillo violated Sec. 8(b)(4)(B) by August 29, 1989 threats to picket all three construction jobsite gates in order to enmesh neutral employers and their employees and by his September 1, 1989 statements seeking to induce an employee of a neutral employer not to cross a picket line. Contrary to the judge, we find that the Respondent did timely raise Sec. 10(b) as an affirmative defense when the General Counsel moved at the hearing to amend the complaint to add allegations pertaining to Trujillo. We find no merit in such a defense, however. The amended complaint allegations are closely related to allegations in the original timely filed charge because they involve the same class of violation, arise from the same factual circumstances or sequence of events, and entail the same or similar defenses. See *Redd-I, Inc.*, 290 NLRB 1115 (1988).

We further agree with the judge that picketer Scott violated Sec. 8(b)(4)(B) by threatening, in Trujillo's presence, to assault the job superintendent of a neutral employer if he attempted to cross a picket line on August 30. In finding that Scott acted as the Respondent's agent, we do not rely on Trujillo's failure to remove Scott from the picket line immediately.

Finally, we find it unnecessary to pass on allegations that the Respondent also violated Sec. 8(b)(4)(B) through individual picketer's acts of blocking neutral employee Tucker from driving through a jobsite gate, striking and slightly damaging Tucker's truck, and threatening to assault neutral employee Wisecarver. Any violations found would be cumulative and would not affect our remedy.

to violate the Act or has engaged in such egregious or widespread misconduct as to demonstrate a general disregard for . . . fundamental statutory rights." The Board has applied the Hickmott standard in tailoring remedial order language to protect the rights of neutral employees and employers to be free from secondary activity proscribed by Section 8(b)(4)(B). E.g., *Iron Workers Pacific Northwest Council (Hoffman Construction)*, 292 NLRB 562 (1989). A determination of the need for a broad order in each case turns on the nature and extent of violations committed by the respondent.

The Respondent's unlawful conduct in this case represents the second time in the period of slightly more than a year that it has picketed a construction jobsite in violation of Section 8(b)(4)(i) and (ii)(B). In *Iron Workers Local 378 (McDevitt & Street)*, 298 NLRB 955 (1990), the Board affirmed the judge's finding that the Respondent unlawfully sought to enmesh neutral employees and employers in a primary dispute by picketing, during a period from August 24 to September 23, 1988, at gates reserved for use by neutrals or at times when the primary employer was not present at the jobsite. The business agent who directed the Respondent's picketing in *McDevitt & Street* was Ray Trujillo. Trujillo's activity included the statement, in response to a question whether he had received notice that the primary employer would not be at the jobsite on a certain date, that he would picket whether or not the primary was there.<sup>4</sup>

The present case involves further unlawful conduct at yet another construction site. The result is that even more employers have been subjected to the Respondent's misconduct. In the instant case, Respondent has violated Section 8(b)(4)(i) and (ii)(B) by picketing a neutral gate on September 23-24 and on October 4-5, 1989. Furthermore, Business Agent Trujillo was again the central figure in directing the Respondent's picketing. In this instance, his involvement included independent violations of Section 8(b)(4)(B). On August 29, he threatened to picket all construction site gates pursuant to an express desire to have the greatest impact on the manufacturing operations of neutral employer Bishop-Wisecarver Corporation, which owned the jobsite property and had contracted for the construction of a warehouse there. On September 1, he sought to induce Jonathan Erickson, a Bishop-Wisecarver employer and steward for the Steelworkers local which represents that company's shop employees, to breach a contractual no-strike obligation by refusing to cross the Respondent's picket line to work for his neutral employer.

In sum, about 1 year after engaging in unlawful conduct, Respondent has repeated its unlawful conduct at

<sup>4</sup>The judge in *McDevitt & Street* did not evaluate this statement as an independent unlawful threat.

yet another site and involving still more employer targets. In these circumstances we find that a narrow order, confined to the instant employers, would not sufficiently deter further misconduct. We further find that the Respondent's violations in this case, considered against the background of similar events in *McDevitt & Street* and giving particular emphasis to the behavior of the Respondent's business agent Trujillo, are so egregious as to manifest a general disregard for the rights of neutral employees and employers. This unlawful conduct convinces us that, without proper restraint, the Respondent is likely to engage in similar conduct in the future against employers other than those involved here.<sup>5</sup> Accordingly, a broad remedial order is appropriate.

#### ORDER

The Respondent, Iron Workers Union Local No. 378, International Association of Bridge, Structural, and Ornamental Iron Workers, AFL-CIO, its officers, agents, and representatives, shall

1. Cease and desist from

(a) In any manner inducing or encouraging employees of Bishop-Wisecarver Corporation, N. E. Carlson Construction, Inc., or any other person engaged in commerce or in an industry affecting commerce, to refuse in the course of their employment to perform any services where an object thereof is to force or require Bishop-Wisecarver Corporation, N. E. Carlson Construction, Inc., or any other person to cease doing business with R & S Erection of Mountain View, California, with each other, or with any other person.

(b) In any manner threatening, coercing, or restraining Bishop-Wisecarver Corporation, N. E. Carlson Construction, Inc., or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is to force or require Bishop-Wisecarver Corporation, N. E. Carlson Construction, Inc., or any other person to cease doing business with R & S Erection of Mountain View, California, with each other, or with any other person.

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

(a) Post at its business offices and all meeting halls located in the State of California copies of the attached notice marked "Appendix."<sup>6</sup> Copies of the notice, on forms provided by the Regional Director for Region 32, 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. Rea-

sonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Furnish the Regional Director with a sufficient number of signed copies of the notice for posting by Bishop-Wisecarver Corporation and N. E. Carlson Construction, Inc., provided those employers are willing, at all places where notices to 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

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.

WE WILL NOT in any manner induce or encourage employees of Bishop-Wisecarver Corporation, N. E. Carlson Construction, Inc., or any other person engaged in commerce or in an industry affecting commerce, to refuse in the course of their employment to perform any services where an object thereof is to force or require Bishop-Wisecarver Corporation, N. E. Carlson Construction, Inc., or any other person to cease doing business with R & S Erection of Mountain View, California, with each other, or with any other person.

WE WILL NOT in any manner threaten, coerce, or restrain Bishop-Wisecarver Corporation, N. E. Carlson Construction, Inc., or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is to force or require Bishop-Wisecarver Corporation, N. E. Carlson Construction, Inc., or any other person to cease doing business with R & S Erection of Mountain View, California, with each other, or with any other person.

IRON WORKERS UNION LOCAL NO. 378,  
INTERNATIONAL ASSOCIATION OF  
BRIDGE, STRUCTURAL, AND ORNAMENTAL  
IRON WORKERS, AFL-CIO

*Sharon Chabon* and *Charles Pernal*, for the General Counsel.

*Sandra Rae Benson* and *Paul Supton* (*Van Bourg, Weinberg, Roger & Rosenfeld*), of San Francisco, California, for the Respondent.

*David Sirias* and *Mark Thierman* (*Thierman, Cook, Brown & Prager*), of San Francisco, California, for the Charging Party.

<sup>5</sup> See *Service Employees Local 77 (Thrust IV)*, 264 NLRB 628 (1982).

<sup>6</sup> 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."

## DECISION

## FINDINGS OF FACT

## STATEMENT OF THE CASE

MICHAEL D. STEVENSON, Administrative Law Judge. This case was tried before me at Oakland, California, on April 2, 3, and 10, 1990,<sup>1</sup> pursuant to an amended complaint issued by the Regional Director for the National Labor Relations Board for Region 32 on January 12, 1990, and which is based on a charge filed by N. E. Carlson Construction, Inc. (Carlson or the Charging Party) on August 31. The complaint alleges that Iron Workers Union Local No. 378, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO (Respondent) has engaged in certain violations of Section 8(b)(4)(i) and/or (ii)(B) of the National Labor Relations Act (the Act).

Issues<sup>2</sup>

Whether on one or more days, Respondent, while engaged in a labor dispute with R & S Erection, a subcontractor working on a jobsite in Pittsburg, California, picketed a properly marked gate at the jobsite, specifically designated for neutrals to the labor dispute, and whether Respondent directed threats and inducements to employees of the neutral employers for the purpose of enmeshing the neutrals in its dispute with R & S Erection, the primary employer.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Briefs, which have been carefully considered, were filed on behalf of the General Counsel, the Charging Party, and Respondent.

On the entire record of the case, and from my observation of the witnesses and their demeanor, I make the following

<sup>1</sup>All dates herein refer to 1989 unless otherwise indicated.

<sup>2</sup>During the hearing, the General Counsel amended the complaint adding certain allegations as pars. 9(c)(4) and (5) of the complaint; the General Counsel also deleted par. 9(a) of the complaint (G.C. Exh. 2; Tr. 425).

## I. THE EMPLOYER'S BUSINESS

I find that R & S Erection of Mountain View, California, is a California corporation which operates a business as a supplier and erector of metal buildings and has an office and place of business located in Mountain View, California. Respondent admits that during the past year, in the course and conduct of R & S Erection's business operations, R & S Erection performed services valued in excess of \$50,000 for customers or business enterprises located within the State of California, which customers or business enterprises themselves meet one of the Board's jurisdictional standards, other than indirect inflow or outflow standards (Tr. 28). Accordingly, I find that R & S Erection is engaged in commerce and in a business affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

## II. THE LABOR ORGANIZATION INVOLVED

Respondent admits, and I find, that it is a labor organization within the meaning of Section 2(5) of the Act.

## III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

## 1. Background (prepicketing)

At all times material to this case, Bishop-Wisecarver Corp. (B-W) owned and/or operated a facility located in Pittsburg, California. In April, B-W entered into an agreement with N. E. Carlson Construction, Inc., for Carlson to act as general contractor in the construction of a warehouse on a parcel of land adjoining the existing facility. A diagram of the entire site is contained in the record and is reproduced as follows:

**SPACING FOR A ONE-PAGE DIAGRAM**

A fence surrounds the entire site. Built approximately 12 years before the new facility was begun, the fence contains three gates, the usage of which will be explained below. Before the construction project was completed in December, a controversy developed over picketing of these gates by representatives of Respondent.

One of the subcontractors retained to perform work on the site was R & S Erection of Mountain View, Inc. (R & S). On or about August 22, R & S began its work installing the building's steel frame and siding. About five or six R & S employees were supervised by Foreman Paul Simpson, a witness for the General Counsel.

The first person to arrive at the site both before and after the picketing began was usually William Mittan,<sup>3</sup> field superintendent for Carlson and witness for the General Counsel. Arriving generally about 6 a.m., Mittan unlocked the gate now marked as gate 3 on the diagram. Before picketing began, gate 3 was marked only with a sign reading "EXIT." It measured 16 feet in width.

The gate now marked as gate 2 was located approximately 230 feet north of gate 3 and before picketing began, it was marked with a sign reading "ENTRANCE." It measured 24 feet wide. This gate was opened with an electronic device similar to a garage door opener, which Mittan did not possess. Accordingly, construction employees who arrived before 6:45 to 7 a.m. when gate 2 was usually opened, used gate 3. The B-W shop employees also used gate 3, while the B-W clerical employees used gate 2.

The gate now marked gate 1 was at the northern most corner of the site and was not used on a regular basis. It measured 16 feet wide, and was about 120 feet from gate 2.

About a week before picketing began on August 29, the jobsite was visited by Respondent's business agent, Ray Trujillo. It is part of Trujillo's job responsibilities to visit various jobsites in the bay area, to identify any subcontractors performing ironworkers' work, and finally, to ascertain the subcontractor's status as either union or nonunion. Trujillo followed this procedure in the instant case, and on discovering that R & S, a nonunion subcontractor, was performing ironwork on the jobsite, Trujillo arranged for a sanctioned picket line to be established at the jobsite. By "sanctioned" is meant, Trujillo merely notifies the Contra Costa County Building Trade Council of the picket line's location and other relevant information. The picketers are members of Respondent recruited from its hiring hall. Three persons were initially assigned to picket; later in October, a different group picketed. One picket from the second group testified at hearing as Respondent's witness. Trujillo testified he instructed his picketers to behave themselves, to avoid verbal and physical confrontations, to distribute Trujillo's business card to anyone asking for an explanation of the picket line, to tell such persons only that the picket line was "sanctioned," to refrain from blocking vehicles, to be careful of their own safety, and to picket any gate used by R & S employees.

## 2. Background (picketing)

On August 29, about 6:30 a.m., Mittan was unlocking gate 3 when he was approached by Trujillo who asked what gate the construction workers normally use. Mittan stated that

<sup>3</sup>The General Counsel's unopposed motion to correct the spelling of Mittan's name is granted.

those who came to work early, i.e., before 7 a.m. used gate 3. A short time later Mittan observed pickets at gate 3 with signs reading, "R & S Erection wages and conditions are below standards established by the iron workers." Shortly after observing the pickets, Mittan phoned Howard Patterson, a senior estimator and project manager for Carlson and witness for the General Counsel, and informed Patterson of the pickets. Patterson told Mittan that he would notify other Carlson officials of these developments, obtain signs which had previously been prepared, and arrive shortly at the jobsite to establish a "dual gate" system.

About 10 a.m., Patterson arrived at the jobsite with the signs which he immediately posted. On gate 1, was posted a sign reading:

STOP READ GATE 1. THIS GATE IS RESERVED  
FOR PERSONNEL, VISITORS, AND SUPPLIERS OF  
THE CONTRACTORS LISTED BELOW:

R & S ERECTION  
ABC ASSOCIATED BUILDERS & CONTRACTORS, INC.  
ALL OTHERS MUST USE GATE 2.

The sign measured 4 feet wide by 3 feet high. On a white background, the top letters are in red, that is, all except R & S Erection, which was printed by hand (Tr. 67-68). The same legend appears on the front and back of the sign.

The second sign of the same general description as above (except with printing only on the side facing the street) reads:

STOP READ GATE 2. THIS GATE MAY NOT BE  
USED BY PERSONNEL, VISITORS OR SUPPLIERS  
OF THE CONTRACTORS LISTED BELOW:

R & S ERECTION  
ABC [Logo]  
ALL OTHERS *must* USE THIS GATE

Gate 3 was not posted with any sign but continued to have the preexisting "EXIT" sign visible.

Once the signs were posted, Patterson then addressed the pickets in front of gate 2 and asked them to picket the proper gate. They made no reply nor did they move.

Also on August 29, Jonathan Erickson reported for work at the B-W original facility, where he was employed as a machine shop specialist. Testifying for the General Counsel, Erickson stated that he was concerned by the pickets at gates 2 and 3 because he knew the B-W production employees were represented by the United Steel Workers, Local 1440. In fact, he was that union's shop steward at the factory. At Patterson's request, Erickson first contacted Trujillo to explain the potential problem for B-W union employees who would be faced with a difficult choice of deciding whether to cross Respondent's picket line. Trujillo was noncommittal regarding any solution, but did agree to come to the site in the early afternoon. Then Erickson called Glenn Nielsen, an International staff representative for the Steel Workers. After Erickson explained the situation, Nielsen also agreed to come to the jobsite in early afternoon to meet with and to speak to Trujillo.

Arriving about 1:30 or 2 p.m., Nielsen observed two pickets at gate 2. Although Nielsen testified he observed no sign

on gate 2, and Trujillo gave similar testimony, I find that the gate was in fact posted as described above. Nielsen asked the pickets to move to gate 1, but they refused. A short time later, Trujillo arrived and the two union officials had a private conversation. During the conversation, Trujillo also refused to move the pickets saying he wanted the pickets where they had the most impact. Trujillo added that the impact he desired was to be disruptive to operations of the manufacturing facility. According to Erickson, Trujillo added that he intended to picket all three gates. This was not corroborated by Nielsen, but I credit Erickson on this point. Other witnesses testified that Trujillo made a similar statement to them on other occasions. Moreover, I find Erickson to be a credible witness because as a union member and shop steward, he was testifying against union solidarity and his own self-interest, in testifying against Trujillo. About 3:42 p.m., Patterson sent a telegram to Respondent which reads as follows:

STEELWORKERS #378  
ATTN RAY TRAJIO [SIC]  
1734 CAMPBELL  
OAKLAND CA 94607  
REFERENCE N E CARLSON CONSTRUCTION INCORPORATED  
BISHOP - WISECARVER, PITTSBURG CALIFORNIA  
DEAR SIR:

N E CARLSON CONSTRUCTION INCORPORATED HAS ESTABLISHED A TWO GATE SYSTEM AT OUR PROJECT REFERENCED ABOVE, WHICH IS LOCATED AT 2104 MARTIN WAY PITTSBURG CALIFORNIA IN COMPLIANCE WITH THE REQUIREMENTS OF THE NLRB. THIS TWO GATE SYSTEM IS EFFECTIVE 7AM WEDNESDAY AUGUST 30, 1989.

GATE NUMBER ONE WHICH IS LOCATED AT THE NORTH END OF THE CONSTRUCTION PROJECT IS FOR THE EXCLUSIVE USE OF R. AND S. ERECTION INCORPORATED, ITS EMPLOYEES, AND SUPPLIERS AND VISITORS. GATE NUMBER TWO IS FOR THE EXCLUSIVE USE OF THE EMPLOYEES, SUPPLIERS AND VISITORS OF ALL OTHER CONTRACTORS.

WHENEVER YOU, YOUR MEMBERS, EMPLOYEES OF ANY SUBCONTRACTORS OR SUPPLIERS OF CONTRACTORS OTHER THAN R. AND S. ERECTION INCORPORATED VISIT THE SITE FOR ANY REASON, GATE NUMBER TWO WHICH IS LOCATED AT THE VERY CENTER OF THE PROJECT MUST BE USED. USE OF OTHER GATE IS EXPRESSLY FORBIDDEN.

PLEASE CIRCULATE THIS DEMAND TO ANY OF YOUR MEMBERS WHO MIGHT BE INVOLVED.

VERY TRULY YOURS,  
N E CARLSON CONSTRUCTION INCORPORATED  
HOWARD PATTERSON PROJECT MANAGER  
550 SALLY RIDE DR  
CONCORD CA 94520

[G.C. Exh. 4.]

On August 30, Mittan made his usual early morning arrival only to find the dual gate system signs missing. Mittan left the jobsite to notify Carlson and the police of the apparent theft. On returning to the jobsite about 6:45 a.m., he found three pickets and Trujillo at gate 3. Trujillo asked Mittan if

he intended to cross the picket line. Mittan replied that gate 3 was a clean gate and the pickets should be at gate 1. Trujillo recommended 24-hour security for the jobsite because it was a high risk area. As Mittan persisted in his intent to cross the line, a picket apparently named Scott<sup>4</sup> told Mittan they could drag him out of his pickup truck and "beat the hell" out of him, if they wanted to. After a long pause, Trujillo ordered the pickets to let Mittan through and the pickets did without further incident.

About 7:40 a.m. on August 30, a B-W employee named Lloyd Tucker, who testified for the General Counsel, attempted to drive to his job through gate 3. Because two pickets stood in front of that gate, Tucker drove in his 1964 El Camino to gate 2 where Scott and another picket were present. Apparently believing that Tucker approached the gate recklessly, Scott shouted, "You trying to run over me, mother-fucker!" Scott then took his picket sign and slammed it down on the hood of Tucker's vehicle causing minor damage. At this point, Tucker, who was alone, stopped his vehicle, grabbed a 2 foot long 2 by 4 from the open back end of his vehicle, and threatened to work Scott over, if Scott hit Tucker's vehicle a second time. Before any blows were struck, Shop Steward Erickson and another B-W employee arrived on the scene and broke up the confrontation.

Later that morning, Patterson arranged for duplicate signs to be posted of a size and type as previously described.

On August 30, Patterson caused a second telegram to be sent to Respondent. It reads as follows:

IRON WORKERS UNION 378 ATTN RAY TRAJIO [SIC]  
1734 CAMPBELL  
OAKLAND CA 94607  
RE: N.E. CARLSON CONSTRUCTION INC  
BISHOP-WISE CARVER, PITTSBURGH [SIC], CA  
DEAR SIR:

YOU WERE PREVIOUSLY ADVISED THAT, EFFECTIVE 8-29-89 DUAL GATE SYSTEM WAS ESTABLISHED, N.E. CARLSON CONSTRUCTION HAS ESTABLISHED A TWO GATE SYSTEM AT ITS CONSTRUCTION PROJECT REFERENCED ABOVE, WHICH IS LOCATED AT 2104 MARTIN WAY, PITTSBURGH [SIC], CALIFORNIA. GATE NO. 1 WHICH IS LOCATED AT THE NORTHEAST CORNER OF THE PROJECT IS RESERVED FOR THE EXCLUSIVE USE OF THE EMPLOYEES SUPPLIERS AND VISITORS OF R.S. [SIC] ERECTION INCORPORATED GATE NO. 2 WHICH IS LOCATED AT THE CENTER OF THE PROJECT IS RESERVED FOR THE EMPLOYEES, SUPPLIERS AND VISITORS OF ALL OTHER CONTRACTORS. YOUR UNION IS CURRENTLY PICKETING GATE NO. 2 IN VIOLATION OF THE LAW. THIS PICKETING IS ILLEGAL. ALL PICKETING ACTIVITY AGAINST R.S. [SIC] ERECTION INCORPORATED MUST BE LIMITED AND CONFINED TO GATE NO. 1. WE DEMAND THAT THE PICKETS IN FRONT OF GATE NO. 2 BE REMOVED IMMEDIATELY. SHOULD THIS PICKETING NOT BE LIMITED TO THE PRIMARY GATE, NO. 1, N.E. CARLSON INCORPORATED WILL PURSUE ITS LEGAL RIGHTS TO THE FULLEST EXTENT PERMITTED BY LAW THROUGH THE

<sup>4</sup>Mittan described the picket who made the statement as a tall white man with blonde hair. This description was erroneous. Scott is a 185-200 pound, 5-foot 10-inch black man with a beard, who was removed from the picket line by Trujillo after this incident and a second incident with a B-W employee named Tucker to be described below.

NATIONAL LABOR RELATIONS BOARD AND OR THE COURTS. IF YOU CLAIM ANY LEGAL JUSTIFICATION FOR YOUR ACTIONS PLEASE ADVISE BY RETURN WIRE IMMEDIATELY. VERY TRULY YOURS,  
 N.E. CARLSON CONSTRUCTION INC.  
 HOWARD PATTERSON, PROJECT MANAGER  
 550 SALLY RIDE DR  
 CONCORD CA 94520

[G.C. Exh. 6.]

On August 31, the Charging Party obtained a Temporary Restraining Order (TRO) from a Superior Court judge of Contra Costa County (R. Exh. 8). Among other stipulations, this court order limited Respondent to two pickets at each point of ingress and egress to the jobsite. Contrary to Trujillo's testimony, I find that the TRO was served on Trujillo on September 6. According to Dyson DeMara, a process server who testified, as a General Counsel rebuttal witness, he served Trujillo at his home. A second copy had been left at union headquarters on or about September 1.<sup>5</sup> Because DeMara is a neutral witness, I credit his testimony.

On September 1, Erickson had a conversation with Trujillo. About 7:40 a.m., outside of gate 3, Trujillo asked Erickson if he was the grievance man for B-W. When Erickson answered he was, Trujillo asked him, "Why are you guys crossing the picket line?" Erickson replied, "Because Nielsen had explained that under the labor agreement between B-W and the Steelworkers, unit employees must cross the picket line, or breach the contract." Then according to Erickson, Trujillo stated, "If they asked you to suck my dick, would you do it." Trujillo admitted the gist of the conversation, but denied making the final remark. Instead, Trujillo testified he asked Erickson if he did everything his boss told him to do. Trujillo added that in light of Erickson's size, he would not speak to him in the manner alleged (Tr. 477). It is true that Erickson was bigger, heavier, and younger than Trujillo. However, I find that Trujillo was undaunted by these factors, perhaps because pickets were nearby, and did make the comment described by Erickson. I find that Erickson was more credible on this point.

Also on September 1, a second event material to this case occurred. Robert Wisecarver, a foreman at B-W and son of the owner, testified for the General Counsel that he had a conversation with an unidentified white picket described as standing about 6 feet tall, weighing about 200 pounds, and wearing jeans, no shirt, cowboy boots, and sunglasses. The picket asked Wisecarver where the injunction was. Wisecarver assured the picket that the injunction was on its way. To this, the picket replied, "You must be a lying sack of shit because we're still here. You don't look like you're sweating much, you must not have much to do." Wisecarver answered, "I have more than you." The conversation heated up as the picket said, "Hey little fucker, do you live around here?" After Wisecarver made no answer, the picket added, "We'll find out where you live and we'll come beat your ass." As Wisecarver began walking away, the picket said, "You look a little nervous. I'd be nervous to, if I was going to get my ass beat."

<sup>5</sup>There is evidence in the record that on September 6, still a third copy of the TRO was served on pickets at the jobsite by a Pittsburg police officer (Tr. 653).

The parties stipulated that on September 8, gate 3 was posted for the first time with a sign that read, "No construction workers or materials for this gate" (Tr. 122).

In mid-September the Union stopped picketing because according to Trujillo, pickets were being harassed by Pittsburg police and B-W employees. On or about September 21, picketing resumed after Trujillo claimed to have observed R & S employees leaving the jobsite at lunchtime through gate 3. More specifically, Trujillo testified that on September 20 around lunchtime he was conducting surveillance of the jobsite from a distance of about 1-1/2 blocks away. While using binoculars, he allegedly observed a black Pontiac Trans Am or Firebird exiting the jobsite with R & S employees inside. Hence when the picketing resumed, Trujillo ordered that gate 3 be picketed, as well as gates 1 and 2. This picketing continued through September 22.

In rebuttal, the General Counsel called a former R & S employee named Baltazar Yopez, who had worked on the Pittsburg jobsite. Yopez owned two vehicles, a white Chevy truck and a black Pontiac Trans Am. After driving to work in the black Trans Am during the first week on the job, i.e., in August, Yopez testified that he switched to the white truck as he had insurance on the latter, but not the former. Furthermore, Yopez testified he was told on more than one occasion by Simpson, his foreman, to use only the gate nearest the building being constructed (gate 1), and this is what he did. Yopez is no longer employed by R & S and I found him to be more credible than Trujillo, who prior to this time had proven by word and deed his intention to picket gates 2 and 3. Accordingly, I do not credit Trujillo's testimony regarding what he supposedly saw on September 20.

Also called as a General Counsel rebuttal witness was Lt. William Hendricks, operations commander of the Pittsburg police. Although Hendricks never met Trujillo in person, and never went to the jobsite, he spoke over the phone to Trujillo several times regarding picketing at the jobsite. At first there was confusion regarding contents of the TRO as a copy had not been immediately furnished to Hendricks. Trujillo testified that on or about September 1, Hendricks had informed him by telephone that pickets could only picket gate 2 under threat of arrest<sup>6</sup> (Tr. 486-487, 503). Hendricks categorically denied ever giving Trujillo any such order. On or about September 11, Hendricks did tell Trujillo that Hendricks understood the TRO to permit picketing at gates 1 and 2 with two pickets at each gate, but no pickets at gate 3 where the employees went in and out of the office (Tr. 621). I credit Hendricks, finding him to be completely neutral to the controversy here and professional in his demeanor. I once again do not believe Trujillo. Moreover, I find that police instructions played little or no role in Trujillo's decision where to assign his pickets. I do not believe that Trujillo moved his pickets from gate 3 to gate 2 to comply with police orders as Trujillo testified (Tr. 527). The evidence shows that at all times material to this case Trujillo picketed both gates 2 and 3. Furthermore by his own admission, when Trujillo resumed picketing on September 21, Trujillo disregarded the alleged order of Lt. Hendricks—which I have found was nonexistent—and resumed picketing at all three gates. The alleged reason for this cavalier disregard of a police order was be-

<sup>6</sup>Trujillo at first identified the police officer to whom he spoke as Lt. Ferguson or Fitzgerald (Tr. 486). Later Trujillo agreed that he spoke by phone only with Lt. Hendricks (Tr. 503).

cause Trujillo allegedly observed employees of R & S using gate 3 (Tr. 530), a justification I found above to be false.<sup>7</sup> In sum much of Trujillo's testimony appears to be contradictory and a total fabrication.

On October 4 and 5, Respondent pickets again appeared at gates 1 and 3. This time Respondent Business Agent Gerald Balmer who testified for Respondent arranged for the pickets. Like Trujillo, Balmer selected three pickets from Respondent's hiring hall. They were Wesley Bruer, another Respondent witness, and two others. Balmer told them to picket whatever gates R & S was using.

According to Bruer, sometime shortly after gate 3 was opened about 6:30 or 6:45 a.m. on October 4, while he and the other pickets were in a vacant lot across from gate 3, he observed a red truck with an R & S logo on the side, drive through gate 3, at a time when the other two gates were still locked. Inside the red truck were two men. The driver parked the truck just inside gate 3 and walked into the building, while the passenger stayed in the truck. Bruer did not know "if the passenger was using the restroom or what, he had no idea" (Tr. 576). About 30 minutes later, the passenger returned and drove the truck out of gate 3 and down to gate 1, where it parked just outside gate 1 for the rest of the day.

When Balmer arrived at the jobsite on October 4, he too observed the red truck parked just inside gate 3. Based on what he saw and was told by Bruer, Balmer permitted pickets to remain at gate 3 and posted other pickets at gate 1. The following day Balmer arrived about 6:30 a.m. and again positioned pickets both at gates 1 and 3. Balmer testified that in his opinion, gate 3 had been polluted based on what he had seen and heard the prior day. This was the first and apparently only instance of pollution of which Balmer was aware. On both days, pickets carried signs with legends previously described in these facts.

On October 4, about 2:13 p.m., Carlson sent to Respondent a telegram restating the existence of a dual gate system and noting that as of September 8, gate 3 had also been posted as previously described in these facts. Carlson demanded that pickets be removed from gate 3. The telegram concluded by stating "Without admitting any pollution of the gates has occurred, the dual gate system is hereby reestablished. . . . Gate 3 is not for the use of any construction workers or materials" (G.C. Exh. 7).

## B. Analysis and Conclusions

### 1. General legal principles

I begin with two recent Board decisions affirming the decisions of Administrative Law Judge Earle V. S. Robbins, who found violations in cases similar to the instant case. These cases are helpful not only because they are recent, decided in March and June 1990, but also because one of the cases involves the same Respondent as that here.<sup>8</sup> In *San Francisco Building Trades Council (Gould Electric)*, 297 NLRB 1050 (1990); and *Iron Workers Local 378 (McDevitt & Street)*, 298 NLRB 955 (1990), Judge Robbins begins her

<sup>7</sup>The parties stipulated that the TRO expired on September 18 (Tr. 533). However, that fact was not the reason that Trujillo gave at hearing for the resumption of picketing of all three gates, and he admitted he did not even know the status of the TRO when he resumed picketing on September 21 (Tr. 530).

<sup>8</sup>In fact, Trujillo played a major role in Judge Robbins' case as he does in this case.

analysis in both cases by first setting forth the applicable legal principles. I will do the same.

Section 8(b)(4)(i) and (ii), subparagraph (B) of the Act, as amended, provides, in relevant part:

Section 8(b) It shall be an unfair labor practice for a labor organization or its agents—

. . . .  
(4)(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 use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; 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—

. . . .  
(B) forcing or requiring any person . . . to cease doing business with any other person . . . .

However, a proviso to Section 8(b)(4)(B) exempts from its ambit primary picketing and a further proviso makes an exemption for "publicity, other than picketing," if the publicity is for the purpose of truthfully advising the public, including consumers and members of a labor organization, that the picketed person distributes products obtained from an employer with whom the labor organization has a primary labor dispute.

There are essentially two elements to an 8(b)(4)(i) and (ii)(B) violation. One, there must be conduct which engages in, induces, or encourages individuals to engage in, a strike or refusal to perform their employment duties or which threatens, coerces, or restrains any person. Two, the object of that conduct must be to force or require any person to cease dealing with or doing business with any other person. However, it is clear that a violation of Section 8(b)(4) cannot be based on the desire or hope of a labor organization that its picketing will influence individuals to withhold their services nor on the effect that picketing has had in that regard. *Electrical Workers Local 761 (General Electric) v. NLRB*, 366 U.S. 667, 673–674 (1961).

A determination as to a secondary object is particularly difficult where a primary employer shares a common situs with neutral employers. In such situations "picketing must be conducted so as to minimize its impact on neutral employers insofar as this can be done without substantial impairment of the effectiveness of the picketing in reaching the employees of the primary employer." *Nashville Building Trades Council (H. E. Collins Contracting)*, 172 NLRB 1138, 1140, enf'd. 425 F.2d 385 (6th Cir. 1970). It is well settled that the legality of picketing at a common situs, as in the construction industry, must be determined under the *Moore Dry Dock* standards. *Sailors Union (Moore Dry Dock)*, 92 NLRB 547 (1950); *Sacramento Area District Council of Carpenters (Malek Construction)*, 244 NLRB 890 (1979); *Nashville Building Trades Council (Markwell & Hartz, Inc.)*, 164 NLRB 280 (1967), enf'd. 387 F.2d 79 (5th Cir. 1967).

In *Moore Dry Dock*, the Board held that, in disputes involving a common situs, neither the right of the union to picket nor the right of the neutral employer to be free from

picketing is absolute. In such situations, the picketing is primary and, therefore, legal, if the following criteria are met:

(1) The picketing is strictly limited to times when the situs of the dispute is located on the secondary employer's premises.

(2) At the time of the picketing the primary employer is engaged in its normal business at the situs.

(3) The picketing is limited to places reasonably close to the location of the situs.

(4) The picketing discloses clearly that the dispute is with the primary employer.

However, the *Moore Dry Dock* standards are only guidelines not to be mechanically applied. Rather, the Board has indicated they are to be applied with common sense and with a view to "the dual congressional objectives of preserving the right of labor organizations to bring pressure to bear on primary employers and of shielding secondary employers and others from pressures in controversies not their own." *NLRB v. Denver Building Trades Council (Gould & Precision)*, 341 U.S. 675, 692 (1951); *Operating Engineers Local 450 (Linbeck Construction)*, 219 NLRB 997, 998 (1975), *affd.* 550 F.2d 311 (5th Cir. 1977). Therefore, while compliance might give rise to a rebuttal inference of primary picketing, the totality of the evidence may reveal an underlying secondary objective and overcome the presumption.

2. Did Respondent on September 21 and 22, and on October 4 and 5, in furtherance of its labor dispute with R & S unlawfully picket at gate 3 with the picket signs described in the facts portion of this decision

At page 6 of its brief, Respondent commendably concedes that on the 4 days in question, it did picket at gate 3; to this, I add my findings that Respondent's pickets carried signs with the legend as described in the facts portion of this decision.

However, Respondent denies that it violated the Act and gives various reasons which it contends support its position. Before considering these, I am constrained to find that the General Counsel has established a prima facie case. First, because Respondent picketed gate 3, not just on the days said picketing is alleged to have violated the Act, but on every day the Union picketed, there is a failure to conform with the third criteria of *Moore Dry Dock*. That is, the pickets were not reasonably close to the primary gate (gate 1) entrance. Accordingly, there is a presumption that the Union's object was unlawfully secondary. *Iron Workers Local 118 (Allen L. Bender, Inc.)*, 285 NLRB 162, 166 (1987).

In this case, Respondent had a primary labor dispute with R & S. There is an abundance of evidence to show that Respondent sought to enmesh in this dispute secondary employers B-W, itself bound by contract to the Steelworkers union and Carlson, with an objective of causing B-W and Carlson to cease doing business with R & S. See *Laborers Local 389 (Calcon Construction)*, 287 NLRB 570, 574 (1987). I turn now to ascertain whether Respondent has demonstrated any unusual circumstances to constitute a valid defense to the allegations. In its brief, page 6, Respondent lists several contentions for me to consider.

a. Gate 3 was never established as a gate for neutral employees

In making this argument, Respondent misapplies the focus of the Board's dual gate system cases. The central question is always whether a gate is specially reserved for the exclusive use of the primary employer, his employees, and suppliers and whether other gates are established for use by neutral employers, employees, and others having business relationships with the neutral employers. Where, separate gates are thus designated and legitimately maintained, as they were here, the Union must confine its picketing activities to the primary gate. *Iron Workers Pacific Northwest Council (Hoffman Construction)*, 292 NLRB 562 (1989). Respondent cites no cases allowing a union to picket a gate other than the primary gate at a common situs construction site. As noted above, gate 3 was posted on or about September 8 with a sign that read "No construction workers or materials for this gate." However, it is not necessary to decide whether gate 3 was thus functionally equivalent to gate 2. It need only be decided that gate 3 was not functionally equivalent to gate 1. Therefore, Respondent was not privileged to picket gate 3.

b. Mittan told Trujillo that construction workers used gate 3

The facts show that on August 29, Mittan did indeed tell Trujillo that those construction workers who came to work early, before 7 a.m., used gate 3. Again, it is not necessary to determine how many R & S employees used gate 3 as of August 29. Subsequent to the establishment of the dual gate system later in the morning of August 29, as I will find below, neither gates 2 or 3 were substantially tainted. Accordingly, this defense must fail.

c. R & S employees used gate 3 for ingress and egress to the jobsite

The record shows two alleged instances of pollution of gate 3. With respect to Trujillo's alleged observation of the black Pontiac Trans Am, I credited R & S employee Yopez who stated as of the time in question, he was not driving his black Trans Am to the jobsite. With respect to the red R & S truck using gate 3 on October 4, I found that this did occur.

For three reasons, I reject Respondent's argument that gate 3 was polluted. First, the evidence shows that Respondent, at least through the September picketing, was bound and determined to picket gate 3 because it felt this was the best way to pressure R & S. There simply was no reliance on alleged taint to justify its action, except after the fact.

Next, I find the alleged taint, by the black Trans Am—even if it did occur—and by the red R & S truck, were mere isolated occurrences which did not establish a pattern of destruction of the reserve gate system sufficient to justify resumption of picketing at gate 3. See *Iron Workers Local 378*, *supra*; *Teamsters Local 677 (J. H. Hogan)*, 299 NLRB 499 (1990).

Finally, I find that as to the red R & S truck, even if gate 3 was tainted—and I find it was not, Carlson effectively re-established the reserve gate system with proper notice to Respondent (G.C. Exh. 7). Yet, Respondent picketed gate 3 on October 5, notwithstanding the notice.

d. *Respondent's alleged compliance with police orders to justify picketing*

This issue is presented in two parts: the defense itself and a claim of estoppel based on the General Counsel's action in apparently dismissing a petition for a 10(l) petition<sup>9</sup> before a U.S. district judge (R. Exh. 4).

Both segments of the argument like the other defenses considered above are without merit. It is unnecessary to repeat my findings with respect to the testimony of Lt. Hendricks. It suffices to say that Hendricks never told Trujillo or anyone else from Respondent they were required to picket at gate 2; only that under the terms of the TRO that they could picket at gates 1 and 2, but not at gate 3. To the extent that Hendricks' instructions may have been at variance with Board law, I still see no defense to picketing gate 3.

Prior to hearing, Respondent's counsel sought permission from the General Counsel to call Board Attorney Raoul Thorbourne as Respondent's witness (R. Exhs. 1, 2). Said permission was denied (R. Exh. 9). Thereafter the affidavit of a Respondent Attorney Victor Van Bourg was received into evidence (R. Exh. 3). Another Respondent Attorney Sandra Rae Benson testified at hearing. She testified that Thorbourne told her that after investigating the representations contained within the Van Bourg affidavit, he concluded the petition for 10(l) relief should be dismissed. Now Respondent argues that just as Thorbourne allegedly relied on the Van Bourg affidavit to dismiss the 10(l) petition, I should somehow be bound to do the same. I decline to do so.

The Board has held that judicial opinions in collateral proceedings under Section 10(j) (or Section 10(l)) of the Act do not control the Board's dispositions of unfair labor practice charges. *Advertiser's Mfg. Co.*, 280 NLRB 1185, 1186 fn. 3 (1986). Accordingly, it must follow that the General Counsel's dismissal of the petition for 10(l) has no effect at all on the present case. This is so even if the contents of the dismissed petition are coextensive with the amended complaint now pending, a question which the instant record does not resolve with any degree of certainty.

In sum, I find no judicial or collateral estoppel or any effect at all on this case as a result of the dismissal of the petition for 10(l) relief. See *Teledyne Industries v. NLRB*, 938 F.2d 627 (6th Cir. 1990).

In light of the above discussion, I conclude that Respondent violated Section 8(b)(4)(i) and (ii)(B) of the Act on September 21 and 22 and on October 4 and 5 as alleged in the complaint.

3. Did Respondent threaten and/or unlawfully induce employees and a representative of neutrals

In paragraphs 9(c)(1), (2), and (3) of the amended complaint and in paragraphs 9(c)(4) and (5) of the amendment to the complaint (G.C. Exh. 2), the General Counsel alleges Respondent engaged in certain conduct in violation of the Act. I turn to consider the allegations.

<sup>9</sup>Sec. 10(l) of the Act provides district courts with the power to temporarily enjoin unfair labor practices that impinge on the public interest in the free flow of commerce (i.e., strikes and boycotts). *Aguayo v. Tomco Carburetor Co.*, 853 F.2d 744 fn. 2 (9th Cir. 1988).

a. *Paragraph 9(c)(1)*

Threat of physical assault by picket Scott against Mittan if Mittan crossed the picket line to enter the jobsite.

This incident occurred on August 30 and is recited in detail in the facts. At page 9 of its brief, Respondent concedes the incident occurred,<sup>10</sup> but then argues the incident was not the responsibility of the Union, as Scott acted contrary to the express instructions of Trujillo as to how to behave on the picket line. In *Avis Rent-A-Car Systems*, 280 NLRB 580 fn. 3 (1986), the Board stated, "When a union authorizes a picket line, 'it is required to retain control over the picketing. If a union is unwilling or unable to take the necessary steps to control its pickets, it must bear the responsibility for their misconduct.'" See also *Electrical Workers Local 6*, 286 NLRB 680, 685 fn. 3 (1987).

I note that Scott apparently was not removed from the picket line until after a second incident with Tucker on the following day. Even if Respondent could present a convincing argument that Scott had acted outside the scope of his agency as defined by Trujillo, when Trujillo failed to take immediate action to remove Scott from the picket line after the threat to Mittan, Respondent effectively condoned Scott's behavior. This constitutes still another reason why Respondent is responsible for Scott's threat.

Having found that Respondent was responsible for Scott's threat or inducement to Mittan, to cease working for Carlson, a neutral employer which in turn would cause Carlson to cease doing business with R & S, see *Carpenters Local 316 (Thornhill Construction)*, 283 NLRB 81 (1987), I conclude that Respondent has violated Section 8(b)(4)(i)(B) of the Act as alleged.

b. *Paragraph 9(c)(2)—Blocking of Tucker's truck at gate 3 and Scott striking Tucker's vehicle on August 30*

Again Respondent first admits this incident occurred. Then Respondent argues that because Tucker was at least partially responsible for the incident and because Scott acted in violation of his instructions, Respondent is not responsible.

I reject Respondent's argument for the same rationale given in section 3(a) above. Furthermore, I find no evidence that Tucker was partially responsible for the incident—Scott never testified and Trujillo was not present at the time—and even if he were partially responsible, no cases are cited to show that this would constitute a legal defense.

I find that Respondent violated Section 8(b)(4)(i)(B) as alleged, both in blocking Tucker's vehicle and in damaging it. See *Electrical Workers Local Union 211 (U.S. Capital Telecommunications)*, 279 NLRB 874, 875 (1986).

c. *Paragraph 9(c)(3)—Threat on September 1 to assault Robert Wisecarver*

Respondent does not deny this incident, but makes the curious statement that the incident was never related to the Union, and the Union was not present when it occurred. To the contrary, Respondent was present when its agents committed the act in question. See *Iron Workers Local 377 (M.S.B., Inc.)*, 299 NLRB 680 (1990). For the same reasons

<sup>10</sup>Respondent identifies the offending picket as someone name Strubbe. So far as I can ascertain the picket's identity, his name is Scott.

specified above, I find that Respondent violated Section 8(b)(4)(i)(B).

d. *Paragraph 9(c)(4)*

Statements of Trujillo on August 29 to Erickson, Nielsen, and Patterson that Trujillo intended to picket wherever he felt like it, and including all three gates.

If the pickets are agents of Respondent as the cited Board cases hold, so too is Trujillo, Respondent's business agent with plenary responsibilities as admitted during hearing (Tr. 29).

Respondent complains that the two final allegations are barred by the doctrine of collateral estoppel and by Section 10(b) of the Act. The former argument has been disposed of elsewhere in this decision and the latter argument, an affirmative defense, does not appear to have been raised before. Respondent cannot raise an affirmative defense for the first time in its brief and therefore I decline to consider it. See *Petoskey Geriatric Village*, 295 NLRB 800, 802 fn. 8 (1989).

On the merits of the allegation, Respondent states (Br. 11) that when Trujillo spoke to Mittan the gates had not been properly posted. However, the incident in question occurred in the early afternoon of August 29 after the gates had been posted and I have found in the facts that Trujillo did make the statements in question.

I agree with the General Counsel that Trujillo's threats to picket all three gates violated Section 8(b)(4)(i) and (ii)(B) of the Act and I so find. *Iron Workers Local 118 (Allen L. Bender, Inc.)*, supra, 285 NLRB at 166.

e. *Paragraph 9(c)(5)—Trujillo's remark to Erickson on September 1 asking him why he was crossing the picket line*

In the facts, I have related the exchange between Erickson and Trujillo ending in a vulgarity which need not be repeated here. The General Counsel contends (Br. 20) that this remark to Erickson could reasonably be understood by the employees as a signal or request to engage in a work stoppage against their own employer. I agree.

In *Los Angeles Building Trades Council (Sierra South Development)*, 215 NLRB 288 (1974), the Board discussed the concept of unlawful inducement or encouragement as found in Section 8(b)(4)(i)(B). At page 290 of its decision, the Board cited *Electrical Workers Local 501 (Samuel Langer) v. NLRB*, 341 U.S. 694 (1951), for the proposition that

The words "induce or encourage" are broad enough to include in them every form of influence and persuasion.

The Board went on to state that it has repeatedly found unlawful any statements of union agents made directly to employees of secondary employers if such statements would reasonably be understood by the employees as a signal or re-

quest to engage in a work stoppage against their own employer (ib.).

By this standard, I find that Trujillo's statement to Erickson either as I found was made, or as Trujillo testified, violated Section 8(b)(4)(i)(B) in that Erickson was an employee of a neutral and Trujillo's statement was indeed a signal or request to Erickson to engage in a work stoppage against B-W.

CONCLUSIONS OF LAW

1. R & S Erection of Mountain View, California, is an employer engaged in commerce or in an industry affecting commerce within the meaning of Section 2(1), (2), (6), and (7) and Section 8(b)(4)(i) and (ii)(B) of the Act.

2. N. E. Carlson Construction, Inc., is an employer engaged in commerce or in an industry affecting commerce within the meaning of Section 2(1), (6), and (7) and Section 8(b)(4)(i) and (ii)(B) of the Act.

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

4. By picketing at gates reserved for neutrals at the Pittsburg, California construction jobsite, Respondent has violated Section 8(b)(4)(i) and (ii)(B) of the Act.

5. By picketing a gate at the Pittsburg, California jobsite which was not reasonably close to the primary gate, Respondent has violated Section 8(b)(4)(i) and (ii)(B) of the Act.

6. Respondent violated Section 8(b)(4)(i) and (ii)(B) of the Act by engaging in the following conduct:

(a) By threatening an employee of a neutral employer with physical violence if he crossed the picket line at a neutral gate.

(b) By blocking the vehicle of an employee of a neutral employer and striking and damaging said employee's vehicle as he attempted to enter the jobsite through a neutral gate.

(c) By threatening to assault an employee of a neutral employer for the purpose of encouraging him to discontinue working for the neutral employer.

(d) By threatening and stating to employees of neutral employers that Respondent would picket all gates to the jobsite including gates reserved for secondary employers.

(e) By signalling or requesting employees of secondary employers to engage in a work stoppage against their employer.

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

THE REMEDY

Having found that Respondent has violated 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 such affirmative action as will effectuate the purposes of the Act. [Recommended Order omitted from publication.]