

**International Brotherhood of Electrical Workers,
Local No. 970 and Interlox America**

**United Association of Plumbers and Pipefitters,
Local No. 82 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO and Interlox America.** Cases 36-CC-908 and 36-CC-909

January 21, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

Upon charges filed by Interlox America (Interlox) on November 26, 1990,¹ against International Brotherhood of Electrical Workers, Local No. 970 (Local 970) and on November 29 against United Association of Plumbers and Pipefitters, Local No. 82 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO (Local 82, or, collectively with Local 970, the Respondents), the General Counsel of the National Labor Relations Board issued an order consolidating cases and a consolidated complaint and notice of hearing on December 13.

The complaint alleges that the Respondents violated Section 8(b)(4)(i) and (ii)(B) of the Act on November 26 and 27 by picketing at the entrance to the access road leading to the instant common construction site, in disregard of a validly established system of reserved primary and neutral gates on the site and in an appeal to employees of neutral employers Interlox and Marvin Cole General Contractor, Inc. (Marvin Cole).

On March 14, 1991, the General Counsel, Interlox, and the Respondents filed a factual stipulation, in which they waived a hearing and the issuance of a decision by an administrative law judge, and submitted the case directly to the Board for findings of fact, conclusions of law, and a decision. The parties also agreed that the charges, the consolidated complaint, the answer to the complaint,² and the factual stipulation would constitute the sole and complete record for purposes of adjudicating the unfair labor practice charges.

On April 17, 1991, the Board issued an order approving the stipulations, granting the motion and transferring the proceeding to the Board. Thereafter, the General Counsel, Interlox, and the Respondents filed briefs.

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

¹All dates are 1990 unless stated otherwise.

²Although the parties refer in their stipulation to an answer to the complaint, there is no answer in the record before us.

On the basis of the stipulated facts and the principles of law discussed below, we find that the Respondents have violated the Act as alleged.

On the entire record and the briefs, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all times material, Interlox has been owned jointly by Soltex Peroxygen, Inc. and LaPorte Peroxygen Inc., copartners doing business as and trading under the name of Interlox America, with offices and place of business in Longview, Washington, where it is engaged in the business of peroxide production.

During the 12-month period preceding the issuance of the complaint, which period is representative of all times material, Interlox, in the course and conduct of its business operations, (1) had gross sales of goods and services valued in excess of \$500,000; (2) sold and shipped goods or provided services valued in excess of \$50,000 from its facilities within the State of Washington to customers outside that State, or to customers within that State, which customers were themselves engaged in interstate commerce by other than indirect means; and (3) purchased and caused to be transferred and delivered to its facilities within the State of Washington goods and materials valued in excess of \$50,000 directly from sources outside that State, or from suppliers within that State which in turn obtained such goods and materials directly from sources outside that State.

Marvin Cole is a State of Washington corporation, with offices and place of business in Longview, Washington, where it is engaged in the business of general construction. During the 12-month period preceding the issuance of the complaint, which period is representative of all times material, Marvin Cole, in the course and conduct of its business operations, (1) had gross sales of goods and services valued in excess of \$500,000 and (2) purchased and caused to be transferred and delivered to its facilities within the State of Washington goods and materials valued in excess of \$50,000 directly from sources outside that State, or from suppliers within that State which in turn obtained the goods and materials directly from sources outside that State.

We find that Interlox and Marvin Cole are, and have been at all times material, employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

We also find that Respondent Local 970 and Respondent Local 82 are, and have been at all times material, labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Stipulated Facts*

Interox owns and operates an industrial facility manufacturing hydrogen peroxide located in Longview, Washington. This facility is located about 100 yards north of Industrial Way (which runs east-west), approximately one half mile west of the intersection of Industrial Way and Washington Way (which runs north-south). Both Industrial Way and Washington Way are major arterial streets.

Interox contracted with The Industrial Company (TIC), TIC's wholly owned subsidiary Associated Industrial Constructors, Inc. (AICI), Marvin Cole, and other building contractors to construct a plant expansion on the east side of Interox's facility. National Industrial Constructors, Inc. (NIC) was Interox's construction manager on the project.

During the time period involved in this case, the Respondents were engaged in a labor dispute with TIC and AICI and were not engaged in labor disputes with Interox or Marvin Cole.

In the area immediately adjacent to the east side of the plant expansion construction site, Interox established a laydown area and a parking lot for the use of suppliers, employees, agents, and visitors of contractors. The only possible access to this laydown area and plant expansion construction site is a privately owned road (the construction access road) leading from Washington Way west to the construction site. There is a single entrance off of Washington Way to the construction access road, just north of the intersection of Washington Way and Industrial Way. The construction access road (including the Washington Way entrance to the road) is leased by Interox from Weyerhaeuser Corporation. Weyerhaeuser owns the parcel of land between the Interox plant and Washington Way, and thus owns the land north and south of the construction access road. Weyerhaeuser has leased part of this property to North Pacific Paper Company (NORPAC). Weyerhaeuser and NORPAC have refused to lease to Interox any property other than the construction access road. Interox could not feasibly or lawfully create an additional access road or a two gate system (neutral and primary) on Washington Way itself.

Industrial Way is a four lane limited access road running east-west along the south boundary of the Interox facility and plant expansion construction site. The posted speed limit on Industrial Way in the vicinity is 45 miles per hour. There is no access for vehicles or pedestrians from Industrial Way to the laydown area and plant expansion site, because a water filled ditch, a railroad line, a marshy area, and a fence separate the road from the construction site.

The distance from the start of the construction access road on Washington Way to the fence on the east

side of the construction site, where separate entrances described later in this decision have been established by Interox for neutral and primary employers, is between three-tenths and four-tenths of a mile.

On November 21, the Respondents picketed at the Washington Way entrance to the construction access road.³ At that time, a sign posted near that entrance advised that all property behind the sign was Interox's private property, that only authorized and invited visitors were permitted to proceed past the sign, that there was no trespassing allowed, and that violators would be prosecuted.

After November 21 and before November 26, both Respondents received letters dated November 21 from Interox advising them, *inter alia*, that Interox had leased the construction access road and that under the terms of that lease (a copy of which was attached to these November 21 letters), Interox had the exclusive right and authority to control entry onto and use of the construction access road and to exercise all private property ownership rights over it. The letters further stated:

Interox and N.I.C. have set up a "three gate" system on the interior of this property. Each of which is clearly marked on the attached map as to authorized use. One gate (Gate #6) is reserved for the exclusive use of the employees, suppliers and visitors of neutral companies (such as union companies). The second gate (Gate #7) is reserved for the exclusive use of the employees, suppliers and visitors of primary, picketable companies (usually nonunion companies, such as T.I.C., against which your union is currently picketing). The third gate (Gate #8) is reserved for deliveries of materials and supplies purchased by Interox America and delivered to Interox America, and like Gate #6, is a neutral employer entrance.

Interox has taken appropriate steps to make sure that only persons authorized to use the respective gates do in fact enter or exit those gates.

Interox hereby invites your union to enter onto its private property, as shown by the yellow colored area on the enclosed map, along the access road to the area immediately in front of the primary gate (Gate #7) used by T.I.C. and A.I.C.I., which is clearly marked, and to picket immediately in front of that gate. This will allow the union full legal access to its target primary company, at the closest point to the construction project allowed by Interox without trespass. Interox will not prosecute any trespass claim against the union or its agents for entry along the access road leading from Washington Way to the

³The November 21 picketing is not alleged to be in violation of the Act.

area immediately in front of the primary employer gate, and within 20 feet on either side of such gate. Interox considers your union and its agents as its business invitees along the access road and up to the point of the primary employer gate as described above.

In light of this position of Interox, any union picketing on Washington Way, or along the access road from Washington Way to the primary employer gate, or at the neutral employer gates, would necessarily involve neutral employers, and would therefore be a violation of federal secondary boycott laws. If the union refuses to confine its picketing to the location as outlined in this letter, Interox reserves all legal rights to take appropriate action, including but not limited to an unfair labor practice charge before the National Labor Relations Board and accompanying injunction proceedings, and/or a lawsuit for damages under Section 303 of the National Labor Relations Act.

These November 21 letters were the first formal written notice the Respondents received of the existence of a reserved gate system at the construction site, and of Interox's invitation to the Respondents to enter onto the construction access road and to picket as Interox's business invitees on Interox private property.

A three gate system on the plant expansion construction site, as described in the above November 21 letters to the Respondents, was established and maintained in effect by Interox at all material times.⁴

The message on the signs on gates 6 (neutral employers), 7 (primary employers), and 8 (suppliers) were the same, and read as follows:

NIC-INTEROX PROJECT
EXCLUSIVE USE SIGN
GATE 6
[or 7, or 8, as appropriate]
THIS GATE RESERVED FOR
THE SOLE & EXCLUSIVE USE OF
THE BELOW-LISTED CONTRACTORS,
THEIR EMPLOYEES, SUPPLIERS,
VISITORS & MATERIALMEN.
ALL OTHER COMPANIES & THEIR
EMPLOYEES OR VISITORS
MUST USE THEIR DESIGNATED GATES
ONLY

[Companies listed on the sign at gate 6.]

⁴The location of the gates is shown on the map in App. A (Jt. Exh. 1).

Marvin Cole
Reidel International

[Companies listed on the sign at gate 7.]
NIC
TIC
AICI

[No companies were listed on the sign at gate 8.]

The distance between gates 6 and 7 is approximately 200 feet. The distance between gates 7 and 8 is approximately 100 feet. There are no obstructions to visibility between the gates.

At material times, another sign at gate 6 said, "Receiving gates 7 and 8," and showed a black arrow pointing toward gates 7 and 8. Also, a sign located at the interior end of the construction access road, where it opens onto the construction site, about 200 feet east of gate 6, said, "Attention—please use appropriate gates."

The distance from Industrial Way at a point directly south of gate 7 to gate 7 itself is approximately 400 to 500 feet. Had the Respondents picketed adjacent to gate 7, passers-by in vehicles on Industrial Way could have seen persons near gate 7 engaging in picketing, but could not have read any of the text on the picket signs. Such picketing would not have been visible to traffic or pedestrians on Washington Way.

On November 26, starting at approximately 6 a.m., agents of Local 970 again picketed at the Washington Way entrance to the construction access road. By this date, the "private property" sign at that location had been removed, and was not replaced at any material time. Also by November 26, Local 970 agents had reviewed the November 21 letter from Interox and had no reason to question Interox's assertions in the third paragraph excerpted above.

Also on November 26, a lunch meeting was held between Ed Rheume, business manager of Local 970, several officials of other local construction unions (not including Jack Duran, business agent of Local 82), and Interox and NIC officials. The topic of discussion was the picketing. Ed Rheume on behalf of Local 970 took the position that a union could not lawfully be compelled under any circumstances to picket on private property, whether invited or not by the authorized owner or lessee.

Picketing by Local 970 at the Washington Way entrance to the construction access road continued on November 27. On both November 26 and November 27 Local 970's picket signs read as follows:

The Industrial Company
DOES NOT HAVE
CONTRACT WITH
L.U. 970
IBEW
SANCTIONED
PICKET

LONGVIEW A.F.L.–C.I.O.
KELSO

On November 27, agents of Local 82 also picketed at the Washington Way entrance to the construction access road. By this time, Local 82 agents had reviewed the November 21 letter from Interlox and had no reason to question Interlox's assertions in the third paragraph excerpted above.

Local 82's picket signs read as follows:

The Industrial Company
DOES NOT HAVE
CONTRACT WITH
UA
LOCAL 82
SANCTIONED PICKET

LONGVIEW A.F.L.–C.I.O.
KELSO

The employees of Marvin Cole did not come to work on November 26 and 27 because of these picket lines.⁵

The Respondents did not engage in any picketing at any location against any company involved in the Interlox plant expansion at any material time after November 27.

B. *Stipulated Issues*

The parties stipulated that the legal issues to be resolved in this case are:

1. Whether, under the facts presented, the Respondents had a right to picket under the Act and/or the First Amendment at the Washington Way entrance to the construction access road.

2. Whether Interlox's invitation to picket on private property, as communicated in its November 21 letters, infringed on any union right to station neutral gate observers at gates 6 and 8, and/or to picket at gates 6 and 8 in the event the neutrality of those gates was impaired, and therefore justified the Respondents' pick-

⁵The parties stipulated to the following facts: that Marvin Cole is a construction contractor operating under labor contracts with various craft unions which allow Marvin Cole employees to refuse to cross a picket line; that the Respondents were aware of the unionized status of Marvin Cole prior to engaging in the picketing at the Interlox plant expansion construction project; and that at no time material did either Respondent have any labor dispute, issue, or grievance with Marvin Cole that would have justified picketing against that company.

eting at the Washington Way entrance to the construction access road.

3. Whether the signs posted at gates 6, 7, and 8 complied with applicable standards under the Act for a legally cognizable reserved gate system.

C. *Contentions of the Parties*

The General Counsel and Interlox contend that Interlox established and maintained a lawful system of reserved gates; that it notified the Respondents of the existence, designations, and locations of the gates; that the language and directions on the gate signs were clear and unambiguous; and that the integrity of the reserved gate system was not violated. Thus they contend that the Respondents' failure to picket at the reserved primary gate, and their picketing instead at the Washington Way entrance to the construction access road, which was the only possible entrance through which all entrants onto the site, primary and neutral alike, necessarily had to pass, raised the presumption that the Respondents were picketing with an intent to enmesh neutral employees in the Respondents' dispute with primary employers.

The Respondents contend that their picketing at the Washington Way entrance to the construction access road was lawful because picketing at the interior reserved primary gate effectively prohibited the Respondents from reaching the public with their "no contract" picketing message. Thus, the Respondents contend that their refusal to picket at the reserved primary gate is of no particular significance by itself, and that under the unique circumstances presented here, picketing at the Washington Way entrance was reasonably close to the situs of the dispute.

The Respondents also contend (1) that Interlox's "limited invitation, coupled with its threat to bring trespass charges, impermissibly restricted the Respondents' right to station neutral gate observers and to picket at the neutral gate in the event the reserved gate system became polluted," and (2) that the reserved gate signs were ambiguous, invalidating the reserved gate system.

D. *Analysis and Conclusions*

1. *Applicable principles*

In this case, we confront the recurring problem of determining the lawfulness of picketing at a common situs, i.e., one which is jointly occupied by several employers, some of whom (primary employers) are at the time engaged in labor disputes with a union, while others of whom (secondary employers) are not. In the case at hand, the Respondents' picketing at the Washington Way entrance to the construction access road is

alleged to have been in violation of Section 8(b)(4)(i) and (ii)(B) of the Act.⁶

In *Denver Building Trades Council v. NLRB*, 341 U.S. 675, 692 (1951), the Supreme Court pointed out that in cases involving the lawfulness of picketing at common sites, the Board is required to give effect to 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.

In seeking to accommodate these sometimes conflicting objectives, the Board, with judicial approval, has established the following guidelines to aid in determining whether picketing at a common situs is lawful primary picketing or unlawful picketing with a proscribed secondary object:

[P]icketing of the premises of a secondary employer is primary if it meets the following conditions: (a) The picketing is strictly limited to times when the situs of 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 discloses clearly that the dispute is with the primary employer.⁷

In developing and applying these standards, the controlling consideration has been to require that the picketing be conducted so as to minimize its impact on neutral employees insofar as this can be done without substantial impairment of the effectiveness of the picketing in reaching the primary employees.⁸

The controlling factor is not the effect of the picketing, but its object—or more precisely, whether it has a proscribed secondary object.⁹ If the *Moore Dry Dock* picketing standards are complied with, the picketing is presumed to be lawful, and any incidental impact on

the employees of neutral employers at the common situs will not render the picketing unlawful.¹⁰ On the other hand, although failure to comply with any of the *Moore Dry Dock* standards does not constitute a per se violation of the Act, the failure does create a rebuttable presumption that the picketing had an unlawful secondary purpose.¹¹

In order to preserve the right of neutral employers to avoid becoming enmeshed in labor disputes involving primary employers at a common situs, the Supreme Court has approved the so-called reserved gate system as a means of isolating or localizing the situs of a primary dispute on a common situs.¹² Under a reserved gate system, one entrance, or gate (the primary gate) onto the common situs is reserved for the exclusive use of the primary employers, their employees, suppliers, etc., and other gates (neutral gates) are reserved for the use of neutral employers, their employees, suppliers, etc. Under a reserved gate system, primary employers are usually expressly forbidden to use the neutral gates. If the integrity of a reserved gate system has been maintained, and the primary employers or their employees or suppliers have not used or attempted to use one of the neutral gates, then picketing of the primary employer must be confined to the area reasonably close to the reserved primary gate, and cannot be conducted at the neutral gates. If picketing is not confined to an area reasonably close to the reserved primary gate, then the union is presumed to be pursuing an unlawful secondary objective.¹³

The territorial limits of permissible picketing at or reasonably close to a reserved primary gate must ultimately be decided on a case-by-case basis, taking into account all the relevant circumstances.¹⁴ However, the underlying rule—that the involvement of neutral employers in primary disputes not their own be kept to an absolute minimum—remains constant. Thus, “a heavy burden [is placed] on the picketing union to convince the trier of fact that the picketing was conducted in a manner least likely to encourage secondary effects.”¹⁵

⁶Sec. 8(b)(4)(i) and (ii)(B) states in pertinent part that 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 . . . to engage in, a strike . . . or (ii) to threaten, coerce, or restrain any person . . . where in either case an object thereof is:

. . . .
(B) forcing or requiring any person . . . to cease doing business with any other person . . . *Provided*, That nothing contained in this clause (B) shall be construed to make unlawful, any . . . primary picketing

⁷*Sailors Union (Moore Dry Dock)*, 92 NLRB 547, 549 (1950).

⁸See, e.g., *Retail Clerks Local 1017 (Crystal Palace)*, 116 NLRB 856 (1956), enf. 249 F.2d 591 (9th Cir. 1957).

⁹*Electrical Workers IBEW Local 761 (General Electric) v. NLRB*, 366 U.S. 667, 672–674 (1961); *Electrical Workers IBEW Local 501 (C. W. Pond) v. NLRB*, 756 F.2d 888 (D.C. Cir. 1985).

¹⁰See, e.g., *Crystal Palace Market*, supra.

¹¹See, e.g., *Iron Workers Local 433 (United Steel)*, 293 NLRB 621, 622 (1989), and cases cited therein.

¹²*Electrical Workers Local 761 (General Electric) v. NLRB*, supra.

¹³See, e.g., *Plumbers Local 398 (Robbins Plumbing)*, 261 NLRB 482, 486 (1982), and cases cited therein.

¹⁴Our focus in the instant case is whether the Respondents' picketing conformed to the third *Moore Dry Dock* standard, i.e., whether the Respondents' picketing was reasonably close to the location of the situs of the primary dispute. The General Counsel concedes that there is no dispute that the Respondents' picketing conformed to the other three *Moore Dry Dock* standards.

¹⁵*Iron Workers Local 433 (Robert E. McKee, Inc.) v. NLRB*, 598 F.2d 1154, 1159 (9th Cir. 1979), enf. in pertinent part 233 NLRB 283 (1977), quoting *Ramey Construction Co. v. Painters Local 544*, 472 F.2d 1127, 1131 (5th Cir. 1973).

2. Unusual determinative facts

As previously noted, the stipulated facts of this case are unique: First, the only possible access to the construction site is down a one-third-of-a-mile long road off of a major arterial street, Washington Way. Second, Interlox could not feasibly or lawfully create either an additional access road or an additional reserved gate system on Washington Way. Third, picketing activity at the established reserved primary gate on the construction site would not have been visible to vehicular traffic or pedestrians on Washington Way, and although the *act* of picketing itself would have been visible to vehicular traffic on Industrial Way, about 400–500 feet away, the *messages* on the picket signs would not have been readable at that distance. Thus, the Washington Way entrance, which of necessity was used by all primary and neutral employers, their employees, and their suppliers, was also the only entrance to the construction site at which the Respondents’ “no contract” picket sign messages could be read by the passing public.

3. Discussion

The Respondents assert that although “no contract” picketing like they were engaged in here has a recognition and bargaining object, aimed at the primary employer(s), that picketing also has a public component and is protected by the second proviso to Section 8(b)(7)(C) of the Act.¹⁶ Thus, the Respondents contend

¹⁶ Sec. 8(b)(7)(C) provides in pertinent part that:

It shall be an unfair labor practice for a labor organization or its agents—

(7) to picket . . . any employer where an object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees

(C) where such picketing has been conducted without [a representation petition being filed within 30 days from the start of the picketing] . . . *Provided further*, That nothing in this subparagraph (C) shall be construed to prohibit any picketing . . . for the purpose of truthfully advising the public (including consumers) that an employer does not . . . have a contract with, a labor organization, *unless an effect of such picketing is to induce any individual employed by any other person in the course of his employment, not to pick up, deliver or transport any goods or not to perform any services* [second emphasis added].

Nothing in this paragraph (7) shall be construed to permit any act which would otherwise be an unfair labor practice under this section 8(b).

The parties have stipulated that the picketing at the Washington Way entrance to the construction access road by Local 970 on November 26 and 27, and by Local 82 on November 27, had precisely the above-proscribed effect of inducing the employees of neutral employer Marvin Cole not to perform any services on the Interlox job on those dates. Implicitly acknowledging this, the Respondents argue that it is irrelevant whether the picketing actually complied with Section 8(b)(7)(C)—no violation of that section was alleged here—and that that section is significant to this case because it underscores the

that picketing at the Washington Way entrance to the construction access road was legitimized by the fact that picketing there was as close to the location of the primary dispute as the Respondents could reasonably place their pickets while still effectively communicating their dispute to the passing public. In sum, the Respondents argue that no unlawful object can be deduced from a union’s refusal to picket at a location which totally denies it the opportunity to reach one of its target groups with its message.

We find the Respondents’ argument in this regard to be unpersuasive under the unusual facts in this case.

If the Respondents had picketed at the reserved primary gate, *both* Congressional objectives of (1) preserving the right of labor organizations to bring pressure on employers in primary labor disputes and of (2) shielding neutral employers from pressures in controversies not their own would have been satisfied. But by picketing at the entrance to the construction access road, the Respondents have totally defeated the second of those objectives.

Under the unusual circumstances here, where the only entrance to the construction site at which the Respondents’ message arguably could be communicated to the public was also the only entrance at which employees and suppliers of neutral employers could not avoid being confronted by that picketing, the Respondents’ interest in communicating its message to the passing public must yield to the attainment of the Congressional objective of shielding neutral employers and their employees from enmeshment in the Respondents’ dispute with primary employers. This is particularly so in this case, where (1) there is no showing that the reserved gate system at the construction site was unreasonable, or established in bad faith, and (2) where both Congressional objectives could have been accommodated if the Respondents had picketed at the reserved primary gate on the construction site itself.

Thus, the Respondents’ inability to communicate its “no contract” picketing message to the passing public from the reserved primary gate on the construction site itself is not evidence that the reserved gate system is invalid, and does not legitimize the Respondents’ picketing at the entrance to the construction access road. Where, as here, separate gates are designated and legitimately maintained, a union must confine its picketing activities to the primary gate and avoid implicating neutrals by picketing at neutral gates.¹⁷ And this principle applies with particular force in this case, where the Respondents’ picketing away from the primary gate was conducted beyond the adjacent neutral gates, off of the construction site altogether, approximately a

Respondents’ legitimate interest in communicating its “no contract” message to the public.

¹⁷ *Electrical Workers IBEW Local 332 (Lockheed Missiles)*, 241 NLRB 674, 679 (1979).

third of a mile away from the location of the situs of the primary dispute.¹⁸

Arguably picketing away from the primary gate may be lawful where compliance with the reserved gate system would substantially impair the effectiveness of the picketing in reaching the employees of the primary employer and its suppliers or the general public.¹⁹ It is clear that in the instant case, compliance by the Respondents with the instant reserved gate system would not have had any negative impact on the effectiveness of such picketing in reaching the employees of the primary employers and their suppliers. However, in the instant case, the location of the reserved primary gate *does* completely eliminate the possibility that picketing at that gate will be effectively visible to the public. As noted, there is no evidence that Interlox set up the reserved gate system in order to inhibit the Respondent's ability to communicate its message. Rather, the geographical limitations detailed earlier in this decision greatly restricted the options available in erecting the gate system.²⁰ Optimally, a reserved gate system will provide some means of communication with all a union's legitimate target audiences. Nevertheless, on the particular facts of this case, we find that the dual Congressional objectives of preserving the right of labor organizations to bring pressure to bear on employers in primary labor disputes and of shielding neutral employers and others from pressures in controversies not their own are more nearly attained by barring the Respondents from picketing at the Washington Way entrance than they would be if we allowed such picketing to occur.

¹⁸ See *id.*

¹⁹ As a general rule, a reserved primary gate on a public road is not improperly established simply because there is little traffic by the general public at that gate. *Electrical Workers IBEW Local 501 (C. W. Pond Electric)*, 269 NLRB 274 (1984), *enf. denied* and remanded for factual resolution 756 F.2d 888 (D.C. Cir. 1985). See, e.g., *Carpenters Local 33 (CB Construction)*, 289 NLRB 528, 529 (1988), *enfd.* 873 F.2d 316 (D.C. Cir. 1989); *Carpenters Local 354 (Sharp & Tatro)*, 268 NLRB 382 (1983). In such cases, the Board has found that even though communication of the picketing message to the public was limited by the location of reserved primary gate, alternative picketing at neutral gates was unlawful. See, e.g., *Carpenters Local 33 (CB Construction)*, *supra*; *Electrical Workers IBEW Local 501 (C. W. Pond)*, *supra*; *Carpenters Local 354 (Sharp & Tatro)*, *supra*; *Electrical Workers IBEW Local 323 (Renel Construction)*, 264 NLRB 623 (1982); *Electrical Workers IBEW Local 903 (Hinton Commercial)*, 230 NLRB 1017 (1977), *enfd.* 574 F.2d 1302 (5th Cir. 1978). The Board previously has not reached the issue of picketing at a neutral gate if the location of the primary gate completely eliminated the possibility of communicating with the general public. But see *Electrical Workers IBEW Local 453 (Southern Sun)*, 237 NLRB 829 (1978) (picketing away from primary gate found to be lawful where reserved gate system was "improperly established" and would have unjustly impaired the effectiveness of the picketing to reach the primary, its suppliers, and the general public).

²⁰ Cf. *Electrical Workers IBEW Local 453 (Southern Sun)*, *supra*, in which the Board found the gate system was improperly established.

We are also not persuaded by the Respondents' other arguments in support of their contention that the instant system of reserved gates was improperly established and, therefore, that they did not have to limit their picketing to the reserved primary gate.

First, the Respondents contend that Interlox's November 21 invitation to the Respondents to picket at the reserved primary gate at the construction site itself, on Interlox's private property, implicitly prohibited the Respondents from placing nonpicketing observers at the neutral gates to ensure the continued integrity of those gates. More specifically, the Respondents assert that Interlox's express promise *not* to prosecute any claim for trespass for picketing activity within 20 feet of the primary gate constitutes an *implied threat* of a trespass action for nonpicketing observation activity away from the reserved primary gate, at the two neutral gates, 100 to 200 feet away on either side of the primary gate.

We find no such implied threat in Interlox's November 21 letter. The focus of the letter is its explanation of where the Respondents may *picket* and where they may not. The letter clearly and fully expresses Interlox's invitation to the Respondents to picket at the primary gate, and just as clearly expresses Interlox's denial of permission to the Respondents *to picket* at the neutral gates, and also expresses the intention to seek sanctions against the Respondents if their *picketing* is conducted at the neutral gates. We cannot reasonably infer from these statements that Interlox would also take legal action against nonpicketing observers at the neutral gates.

The Respondents also assert that they were prohibited by the terms of the letter from picketing at the neutral gates in the event the neutrality of those gates was breached. The letter contains no express prohibition against picketing at the neutral gates in the event they become tainted, nor do we find that any such prohibition is reasonably implied by the failure of the letter *expressly to grant* the Respondents permission to picket at the neutral gates in the event they become tainted.²¹

Finally, the Respondents assert that the reserved gate system, although superficially precise, was ambiguous because, *inter alia*, no employers were listed on the sign at neutral gate 8, and thus an employee of a primary employer or one of its suppliers could erroneously conclude that it was appropriate for him to enter the construction site through that gate, rather than through the reserved primary gate.

²¹ Thus, our holding here would not control a case involving a similar private property gate system in which the allegedly neutral gates were tainted and the picketing union reasonably feared that picketing the tainted gates would make the picketers vulnerable to arrests for trespass.

We find that the reserved gate system was not ambiguous. First, the wording on the sign at gate 8 stated that it was for the sole and exclusive use of the “below listed contractors, their employees, suppliers, visitors & materialmen,” and that all other companies must use their designated gates. In this case, nobody was listed at the bottom of the gate 8 sign. Contrary to the Respondents, we do not find that the absence of names on the gate 8 sign had the reasonable potential effect of duping a confused employee of a primary employer or supplier into believing that he was permitted to enter through neutral gate 8, even though the name of his company was not listed on it as one of those for whom that gate was reserved.

Accordingly, we find that the Respondents’ picketing at the Washington Way entrance to the construction access road violated Section 8(b)(4)(i) and (ii)(B) of the Act.

CONCLUSIONS OF LAW

1. Interox and Marvin Cole are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Respondent Locals 970 and 82 are labor organizations within the meaning of Section 2(5) of the Act.

3. By picketing at the Washington Way entrance to the construction access road in furtherance of their dispute with The Industrial Company (TIC) and TIC’s wholly owned subsidiary, Associated Industrial Constructors, Inc. (AICI) with an object of forcing neutral persons, such as Marvin Cole, to cease doing business with TIC and AICI, the Respondents have engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(4)(i) and (ii)(B) and Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondents have engaged in unfair labor practices in violation of Section 8(b)(4)(i) and (ii)(B) of the Act, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

ORDER

The National Labor Relations Board orders that

A. Respondent International Brotherhood of Electrical Workers, Local No. 970, AFL–CIO, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Inducing or encouraging any individual employed by Marvin Cole, or other persons engaged in commerce or in an industry affecting commerce, to engage in a strike or refusal in the course of employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an ob-

ject thereof is to force or require Marvin Cole, or any person engaged in commerce or in an industry affecting commerce, to cease using, selling, handling, transporting, or otherwise dealing in the products of, or to cease doing business with, The Industrial Company (TIC) and its wholly owned subsidiary, Associated Industrial Constructors, Inc. (AICI).

(b) Threatening, coercing, or restraining Marvin Cole, or any other persons engaged in commerce or in an industry affecting commerce, where an object is to force or require Marvin Cole, or any other persons engaged in commerce to cease using, selling, handling, transporting, or otherwise dealing in the products of, or to cease doing business with, TIC and AICI.

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

(a) Post at its office and meeting halls copies of the attached notice marked “Appendix A.”²² Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent immediately on 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 to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Deliver to the Regional Director for Region 19 signed copies of the notice in sufficient number for posting by Marvin Cole, if 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.

B. Respondent United Association of Plumbers and Pipefitters, Local No. 82 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL–CIO, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Inducing or encouraging any individual employed by Marvin Cole, or other persons engaged in commerce or in an industry affecting commerce, to engage in a strike or refusal in the course of employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is to force or require Marvin Cole, or any person engaged in commerce or in an industry affecting commerce, to cease using, selling, handling, trans-

²²If 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.”

porting, or otherwise dealing in the products of, or to cease doing business with, The Industrial Company (TIC) and its wholly owned subsidiary, Associated Industrial Constructors, Inc. (AICI).

(b) Threatening, coercing, or restraining Marvin Cole, or any other persons engaged in commerce or in an industry affecting commerce, where an object is to force or require Marvin Cole, or any other persons engaged in commerce to cease using, selling, handling, transporting, or otherwise dealing in the products of, or to cease doing business with, TIC and AICI.

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

(a) Post at its office and meeting halls copies of the attached notice marked "Appendix B."²³ Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately on 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 to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Deliver to the Regional Director for Region 19 signed copies of the notice in sufficient number for posting by Marvin Cole, if 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 A

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, nor will our officers, business representatives, business agents, or anyone acting for us, whatever his title may be, induce or encourage any individual employed by Marvin Cole, or other persons engaged in commerce or in an industry affecting commerce, to engage in a strike or refusal in the course of employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is to force or require Marvin Cole, or any person engaged in commerce or in an industry affecting commerce, to cease using, selling, handling, transporting, or otherwise dealing in the

products of, or to cease doing business with, The Industrial Company (TIC) and its wholly owned subsidiary, Associated Industrial Constructors, Inc. (AICI).

WE WILL NOT threaten, coerce, or restrain Marvin Cole, or any other persons engaged in commerce or in an industry affecting commerce, where an object is to force or require Marvin Cole, or any other persons engaged in commerce to cease using, selling, handling, transporting, or otherwise dealing in the products of, or to cease doing business with, TIC and AICI.

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL NO. 970,
AFL-CIO

APPENDIX B

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, nor will our officers, business representatives, business agents, or anyone acting for us, whatever his title may be, induce or encourage any individual employed by Marvin Cole, or other persons engaged in commerce or in an industry affecting commerce, to engage in a strike or refusal in the course of employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is to force or require Marvin Cole, or any person engaged in commerce or in an industry affecting commerce, to cease using, selling, handling, transporting, or otherwise dealing in the products of, or to cease doing business with, The Industrial Company (TIC) and its wholly owned subsidiary, Associated Industrial Constructors, Inc. (AICI).

WE WILL NOT threaten, coerce, or restrain Marvin Cole, or any other persons engaged in commerce or in an industry affecting commerce, where an object is to force or require Marvin Cole, or any other persons engaged in commerce to cease using, selling, handling, transporting, or otherwise dealing in the products of, or to cease doing business with, TIC and AICI.

UNITED ASSOCIATION OF PLUMBERS
AND PIPEFITTERS, LOCAL NO. 82 OF THE
UNITED ASSOCIATION OF JOURNEYMEN
AND APPRENTICES OF THE PLUMBING
AND PIPE FITTING INDUSTRY OF THE
UNITED STATES AND CANADA, AFL-
CIO

²³ See fn. 22, supra.