

Local 917, International Brotherhood of Teamsters, AFL-CIO¹ and Morris Bailey, Sholom Drizen, Ruben Schron Fruchthandler Brothers Enterprises and Joshua Safrin, a partnership d/b/a Industry City Associates and Bush Realty Associates and K & D Development Corp., a partnership and d/b/a Bush Realty Associates.
Cases 29-CB-7557, 29-CC-992, and 29-CC-994

July 20, 1992

DECISION AND ORDER

MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

On April 2, 1991, Administrative Law Judge James F. Morton issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,² and conclusions³ as modified below and to adopt the recommended Order.

¹The name of the Respondent has been changed to reflect the new official name of the International Union.

²The 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), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In sec. II.C, par. 2, of the judge's decision, the judge incorrectly states that the "Respondent," rather than "Industry," rejected the February 1990 demand for a successors-and-assigns clause. We correct this error.

³We agree with the judge that the Respondent violated Sec. 8(b)(4)(i) and (ii)(B) by picketing the Bush Terminal "back buildings" in July 1990. Contrary to the Respondent's argument that it was engaged in lawful handbilling under *Edward J. DeBartolo v. Florida Coast Building Trades Council*, 485 U.S. 568 (1988), we find that its July 1990 conduct constituted unlawful picketing for the purpose of inducing employees to cease working for tenants of, and suppliers to, the back buildings. Thus, the Respondent's representatives wore poster-size placards and patrolled the back-building area. The fact that the placards contained legends that might otherwise be protected under *DeBartolo* is no defense where, as here, the Respondent's conduct constitutes picketing. *Service Employees Local 399 (Delta Air Lines)*, 293 NLRB 602, 603 (1989) (handbilling lawful only when unaccompanied by violence, picketing, patrolling, or work stoppage). See also *Hospital Employees District 1199 (United Hospitals of Newark)*, 232 NLRB 443 (1977).

We also agree with the judge that about March 1990 the Respondent violated Sec. 8(b)(4)(ii)(B) by threatening Anthony Esposito, a supervisor for Bush Realty tenant, Interdynamics. *Carpenters Local 316 (Thornhill Construction)*, 283 NLRB 81, 84 (1987). Thus, on one occasion, after Esposito directed a supplier's truck through the picket line to Interdynamics' loading dock, the Respondent's picket told the driver, in Esposito's presence, that "you have no problems because you don't work here, but [Esposito] does." A picket then stated that if any other trucks backed in, they would be broken up.

The Respondent excepts to the judge's finding that its February 13, 1990 picketing of Industry City Associates (Industry) breached the requirements of Section 8(d) and violated Section 8(b)(3). Although the Respondent admits that its February 13 picketing was in support of a demand that Industry agree to a successors-and-assigns clause, it disputes the judge's finding that Section 8(d) applies.⁴ The Respondent argues that its demand for a successors-and-assigns clause was part of effects bargaining over the back-building sale,⁵ and was not in connection with the negotiation of a collective-bargaining agreement. Alternatively, the Respondent contends that the judge erred in finding that it waived its right to demand bargaining for a successors-and-assigns provision. We reject these arguments and find for the reasons set out below that the Respondent's conduct on February 13 violated Section 8(b)(3).

Initially, even assuming that the Respondent's February 1990 demand for effects bargaining was timely—an issue we need not decide—we find that its successors-and-assigns proposal exceeded the scope of "effects bargaining" and sought to alter the terms of its 1989–1992 collective-bargaining agreement with Industry. The Respondent essentially acknowledged this fact by telling Industry on February 7, 1990, that it wanted a successors-and-assigns clause to prevent the problems caused by the 1987 sale from recurring.

Thus, the issue here is whether the Respondent was privileged to insist that Industry modify the 1989–1992 contract to include a successors-and-assigns clause. It is well settled that seeking to bind "successors and assigns" is a mandatory subject of bargaining.⁶ It is equally well established that a party to a collective-bargaining agreement may lawfully require midterm negotiation over mandatory subjects not "contained in" the

On a second occasion, when Esposito assisted another supplier into Interdynamics' loading dock, a picket told Esposito that he would "kick [his] butt."

⁴Sec. 8(d) provides, in pertinent part, that:

[W]here there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof.

and (4) continues in full force and effect, without resorting to strike or lockout, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later.

⁵The Respondent contends that it did not learn of the 1987 back-building sale until January 30, 1990, when Bush Realty denied its elevator operators access to the back buildings. The judge found that the Respondent learned of the sale in about April 1988.

⁶See, e.g., *Conoco, Inc.*, 287 NLRB 548, 559 (1987).

agreement.⁷ Where, however, that party has acquiesced during negotiations in the exclusion of a mandatory subject by effectively “agreeing to disagree” on this issue, and the subject is not incorporated in the contract, it thereafter cannot require midterm bargaining on that subject. See *Robertshaw Controls Co. v. NLRB*, 386 F.2d 377, 389 fn. 10 (4th Cir. 1967) (where the parties have discussed a mandatory subject during negotiations, but it is not contained in the final contract, there is no duty to bargain because “there is an implicit agreement to disagree on the subject”).

As found by the judge, the Respondent sought to obtain “successors and assigns” protection from Industry three times before February 1990. The Respondent initially proposed a successors-and-assigns clause during the 1987 contract negotiations. Industry rejected this proposal and it was not included in the July 1987–July 1988 agreement. After the Respondent learned of the back-building sale, it inserted a preamble in the 1988–1989 contract extending the agreement to elevator operators throughout the complex.⁸ Industry objected to the preamble, saying it included buildings it did not own. Industry then modified the preamble by limiting it to elevator operators and laborers “employed by Industry” at the listed building. This modification was incorporated in the 1988–1989 contract. Finally, during 1989 bargaining, the Respondent proposed—and Industry rejected—a successors-and-assigns provision.

In sum, the bargaining history shows that the Respondent repeatedly proposed successors-and-assigns provisions—including during negotiations for the 1989–1992 contract—yet agreed to contracts excluding this provision. We find that, by doing so, the Respondent acquiesced in the exclusion of this clause from the 1989–1992 contract, and could not insist on the provision’s inclusion during the contract’s term. See *Robertshaw Controls Co. v. NLRB*, supra. Accordingly, by thereafter demanding during the term of that contract that Industry bargain over a successors-and-assigns proposal, and by its conduct in support of this demand,⁹ the Respondent has breached the requirements of Section 8(d), in violation of Section 8(b)(3). See generally *Electrical Workers IBEW Local 3 (Bur-*

roughs Corp.), 281 NLRB 1099 (1986), enfd. 828 F.2d 936 (2d Cir. 1987).

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Local 917, International Brotherhood of Teamsters, AFL–CIO, Brooklyn, New York, its officers, agents, and representatives, shall take the action set forth in the Order.

David S. Cohen, Esq., for the General Counsel.
Irving T. Bush, Esq. (Miller & Bush), of New York, New York, for Local 917.

DECISION

STATEMENT OF THE CASE

JAMES F. MORTON, Administrative Law Judge. The General Counsel contends, in these cases which had been consolidated for hearing, that Local 917, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO (the Respondent), has engaged in unfair labor practices within the meaning of Section 8(b)(3) and Section 8(b)(4)(i) and (ii)(B) of the National Labor Relations Act (the Act). More particularly, Respondent is alleged to have engaged in a strike aimed at forcing partners doing business as Industry City Associates (Industry City), to agree to a modification of their collective-bargaining agreement notwithstanding that the Respondent had not, prior thereto, complied with the requirements of Section 8(d) of the Act. Respondent is also alleged to have, by picketing, strikes, and threats, put secondary boycott pressures on Industry City, and on commercial tenants, in furtherance of its labor dispute with a partnership doing business as Bush Realty Associates (Bush Realty).

Respondent asserts in essence that its strike and picketing were in protest of conduct by Industry City and by Bush Realty which was tantamount to unfair labor practices on their part. Specifically, it asserts that Industry City failed to disclose timely the sale of certain buildings to Bush Realty in which employees it represents were employed or to bargain as to the effects of the sale on those employees, and also that Bush Realty has refused to offer employment to those employees when it purchased those buildings. Respecting the alleged unlawful involvement of tenants in the picketing, Respondent argues that the picketing in fact did not impact on them.

I heard this case on several days in August 1990 and on January 8, 1991. On the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the General Counsel and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION AND LABOR ORGANIZATION STATUS

Both Industry city and Bush Realty own buildings in which they lease space to commercial tenants. In their respective operations annually, both meet the Board’s standard for asserting jurisdiction. Also, the pleadings establish that

⁷*Auto Workers Local 547 (Milwaukee Spring) v. NLRB*, 765 F.2d 175, 179 (D.C. Cir. 1985).

⁸Specifically, the preamble provided that:

Industry City Associates (Bailey Enterprises), and Local 917 I.B.T. have agreed to extend the existing Collective Bargaining Agreement covering elevator operators and laborers at Buildings #1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 19, 20, 22, 23, and 26 for one year with the following changes.

(Buildings 22, 23, and 26 were the “back buildings” which Industry sold to Bush in 1987).

⁹The Respondent did not except to the judge’s finding that, while not literally a “strike,” the Respondent’s picketing was within the “clear import” of the proscriptions of Sec. 8(d)(4).

Respondent is a labor organization as defined in Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background

For many years, Respondent has represented elevator operators who have worked in all but one of the 16 industrial loft buildings located in an area in Brooklyn, New York, known as Bush Terminal. In 1986, Industry City purchased the entire complex there. Industry City recognized Respondent as the bargaining representative of the elevator operators in those 15 buildings and assumed the collective-bargaining agreement covering them, effective then until July 13, 1987.

In August 1987, Respondent and Industry City began negotiations for a renewal contract. Also in that month, Industry City sold 4 of the 16 buildings to Bush Realty but continued to provide elevator and other services to those buildings on a fee basis. Those four buildings are known as the back buildings and were numbered as buildings 22, 23, 24, and 26. Building 24 has been occupied by a tenant which provided its own elevator service and is not involved in this case. As to buildings 22, 23, and 26, the nine elevator operators employed in them were part of the unit for which Respondent bargained with Industry City. Respondent was not informed then by Industry City that buildings 22, 23, and 26 had been sold to Bush Realty but rumors of prospective sales of Industry City buildings prompted the demand, discussed next.

During the negotiations beginning August 1987, Respondent proposed a successors-and-assigns clause. Its representative Walter Cahill sent Industry City a written demand dated September 27, 1987. That demand was rejected by Industry City. Respondent and Industry City reached an agreement on December 1, 1987, for a 1-year continuance of the agreement referred to above and which had expired on July 13, 1987. It did not contain a successors-and-assigns clause. The contract extension was ratified by the bargaining unit employees.

In March or April 1988, Bush Realty informed Industry City that it wanted to replace Industry City's elevator operators in its buildings 22, 23, and 26, because they cost too much and that it would hire its own elevator operators.

In April 1988, one of Industry City's management officials, Cornelius Kilbane, telephoned Respondent's business agent, Cahill, to inform him of Bush Realty's intention to hire its own elevator operators to replace those unit employees furnished by Industry City to buildings 22, 23, and 26. Kilbane also informed Cahill that Industry City would reassign any replaced elevator operators to its own buildings at the terminal, i.e., buildings 1-10, 19, and 20. Cahill told Kilbane the Respondent would not let Bush Terminal replace the elevator operators at buildings 22, 23, and 26. Respondent's president, John Burke, called Kilbane later to tell him that Respondent did not want to lose those jobs in the back buildings. Kilbane informed both Cahill and Burke that Industry City did not own the back buildings and could not force Bush Realty to keep its (Industry City's) elevator operators there. Burke stated that, if his men are not in those buildings, there would be a strike.

Kilbane then called Bush Realty. Bush Realty reached an understanding with Kilbane that Industry City would continue to provide elevator service to the back buildings until

June 30, 1988, to afford Industry City time to solve Burke's stated concerns.

Industry City officials met with Burke and Cahill on June 14, 1988, at a hotel in New York City. There, Kilbane and also Morris Bailey, Industry City's managing partner, explained to them the arrangement Industry City had with Bush Realty and sought to dissuade them from calling a strike. Burke stated that he believed that the partners of Bush Realty were related to the partners in Industry City and that they were taking this step as the first towards breaking up the unit represented by Respondent. He rejected Industry City's offer to put any replaced elevator operators to work at its own buildings and the assurances by Industry City that no unit employee would be laid off.

Burke testified that, at the June 14 meeting, Bailey referred to a Bush Realty principal as "one of his partners." I do not credit that testimony as it is most unlikely that Bailey would have volunteered such a comment when he was endeavoring to persuade Respondent not to engage in a strike. Further, as noted in General Counsel's brief, Cahill did not corroborate Burke's testimony thereon and Burke, in a related court proceeding, gave testimony inconsistent with his account before me.

Industry City continued to furnish elevator operators to the back buildings while it was negotiating with Respondent for another renewal contract. Those negotiations took place beginning in July 1988. Agreement was reached in December 1988. It was signed in January 1989, effective from July 14, 1988, to July 13, 1989. That agreement also did not contain a successors-or-assigns clause.

In June 1989, Respondent proposed a 3-year contract. In October 1989, Industry City and Respondent agreed to submit certain unresolved issues, wages, benefits and other specified subjects to binding arbitration. They did not submit Respondent's proposed "successors-and-assigns" clause; Industry City had rejected that proposal completely.

On November 16, 1989, the arbitrator issued his award which set out a 3-year renewal contract, effective from July 14, 1989, to July 14, 1992.

It appears that, while those negotiations were going on, Industry City was experiencing difficulty in collecting moneys owed it by Bush Realty. On January 16, 1990, Kilbane wrote Bush Realty to "once again" press for payment of \$500,000 past due and threatened to cut all services, including electric power, to the back buildings unless prompt payment was made. When his effort proved unsuccessful, Industry City wrote Bush Realty on January 25, 1990, advising that as of January 29, 1990, "labor and elevator service" would no longer be provided.

On the morning of January 29, Industry City cut off electrical service to the back buildings and did not send any elevator operators there. It relented several hours later on receiving word from Bush Realty that it would sue for damages. The elevator operators reported to the back buildings that day. In the afternoon, Bush Realty sent a letter to Industry City in which it noted it had already paid \$275,000 as a good-faith response to the January 16 dunning letter and in which it also stated that it intended to hold Industry City liable for damages for having cut off the electricity. The letter further stated that, as Bush Realty could not rely on Industry City to furnish elevator services, it was retaining another company to do that work; it informed Industry City

that its elevator operators would no longer be permitted in the back buildings.

On January 30, 1990, Bush Realty refused to allow Industry City's elevator operators into its buildings. When Respondent's steward reported this development that morning to Dennis Hovanec, Industry City's director of operations, he was told that Industry City was willing to assign those operators to work in its own building. Respondent's steward replied that he would call Respondent's president, John Burke, for guidance.

B. Alleged Unlawful Threats, Strike, and Picketing

Later on January 30, Burke met with Industry City's chief executive officer, Isaac Kugel. Kugel whose testimony I credit, offered to assign the elevator operators affected by Bush Realty's actions, to work in Industry City's buildings. Kugel told Burke that Industry City does not own the back buildings. Burke replied that Kugel was playing a game with him. Burke told Kugel that, if those employees were not returned to the back buildings, Respondent would shut down the entire complex.

Burke's testimony is not at material variance with Kugel's account. Burke acknowledged that he "might have" and "probably" did tell Industry City that he would call a strike of all the unit employees if the operators were not put back to work at the back buildings.

Respondent argues that it has a primary dispute with Industry City based on Industry City's failure to disclose its sale in 1988 of the back buildings and its failure to negotiate the effects of such sale then or since. That contention lacks merit and is an obvious afterthought as Industry City had, as related above, previously discussed those matters at length with Respondent.

Respondent's president testified, Respondent's brief to me stated, and the placards its pickets carried in July 1990 (as related below)—all make clear that Respondent's labor dispute was with Bush Realty. It is also clear from Board precedent that Respondent's primary dispute was with Bush Realty. See *Teamsters Local 25 (Boston Deliveries)*, 282 NLRB 910 (1987). The threat by Respondent's president to strike the entire complex thus unlawfully enmeshed Industry City in that dispute and Respondent thereby has violated Section 8(b)(4)(ii)(B) of the Act. *Ironworkers Local 433 (United Steel)*, 280 NLRB 1325 (1986).

On February 2, 1990, Respondent set up a picket line outside building 19, owned by Industry City and in which Industry City's office is located. That building also contained space leased to tenants of Industry City. The placards carried by Respondent's members, among whom was its shop steward, read: "Unfair Labor, Local 917." That picketing clearly also sought to enmesh not only Industry City but also the tenants of building 19 in Respondent's dispute with Bush Realty and thus was violative of Section 8(b)(4)(i) and (ii)(B) of the Act. See *Teamsters Local 554 (Prairie Ford)*, 253 NLRB 1 (1980).

All of Industry City's elevator operators engaged in a strike on February 5 and 6, 1990. They picketed all buildings in the complex, those owned by Industry City as well as those owned by Bush Realty. The placards they carried bore the same legends as those carried during the earlier picketing and Respondent made no effort to avoid enmeshing the tenants of those buildings in the dispute Respondent had with

Bush Realty. The unlawful object of this action was underlined by the admission of Respondent's president that Respondent would like the tenants not to do business with Bush Realty. Accordingly, I find that Respondent, by its strike and its picketing on these 2 days at Industry City buildings, violated Section 8(b)(4)(i) and (ii)(B) of the Act.

Collateral proceedings, held on February 6 in the U.S. District Court for the Eastern District of New York, resulted in Respondent's ending its strike and picketing against Industry City that day. However, Respondent continued for another month its picketing of Bush Realty, using as its pickets the individuals who had worked as elevator operators in the Bush Realty buildings prior to June 30. On February 7, the placards the pickets carried for the first time identified Bush Realty as the employer with whom Respondent had a dispute. The continued picketing of Bush Realty also unlawfully sought to enmesh its tenants, as the testimony of Respondent's president made clear.

On or about February 13, 1990, a driver declined to cross the picket line at one of the back buildings. He worked for Delta Corrugated and was there to deliver supplies to one of Bush Realty's tenants, Interdynamics Inc. The pickets declined a request by an Interdynamics supervisor to take down the picket line so that the Delta Corrugated driver could make the delivery. In light of the other evidence before me as to the object of the picketing, I find that the pickets acted in furtherance of that unlawful object and that the event was not merely incidental to otherwise lawful picketing. Accordingly, I find that Respondent thereby further violated Section 8(b)(4)(i) and (ii)(B) of the Act.

There is also clear evidence, which I credit, that on two occasions about a month later, one of Interdynamics supervisors, traffic manager Anthony Esposito, received threats from Respondent's pickets while he was at a loading dock, receiving deliveries. By those threats, Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(4)(ii)(B) of the Act. See *Carpenters Local 316 (Thornbull Construction)*, 283 NLRB 81, 84 (1987).

Picketing ceased in March and did not resume until July 1990, when Respondent picketed the back buildings for 1-1/2 days with placards reading:

LOCAL 917 IS REQUESTING THAT YOU DO NOT DO
BUSINESS WITH

(NAME OF TENANT)

OR ANY OTHER EMPLOYER LOCATED IN THESE BUILDINGS, BECAUSE BUSH REALTY CO., THE OWNER OF THESE BUILDINGS, CONTRIBUTES TO THE SUB STANDARD WAGES TO ITS ELEVATOR OPERATORS.

PAYMENT OF SUB-STANDARD WAGES NOT ONLY DIMINISHES THE WORKING PERSONS ABILITY TO PURCHASE WITH EARNED RATHER THAN BORROWED DOLLARS, BUT ALSO UNDERCUTS THE WAGE STANDARDS FOR THE ENTIRE COMMUNITY. ALL OF THE TENANTS IN THESE BUILDINGS SHOULD DEMAND COOPERATION FROM BUSH REALTY CO. FOR THE DECREASE IN PURCHASING POWER OF THESE EMPLOYEES.

WE ASK THAT YOU SUPPORT OUR PROTEST AGAINST SUB-STANDARD WAGES. PLEASE DO NOT PATRONIZE (NAME OF TENANT) OR ANY OTHER TENANT IN THESE

BUILDINGS UNLESS BUSH REALTY CO. PROMISES TO PAY FAIR WAGES TO ALL OF ITS ELEVATOR OPERATORS.

WE ARE APPEALING ONLY TO THE PUBLIC, THE CONSUMER. WE ARE NOT SEEKING TO INDUCE ANY PERSON TO CEASE WORK OR TO REFUSE TO MAKE DELIVERIES OR PICKUPS.

LOCAL 917

INTERNATIONAL BROTHERHOOD OF TEAMSTERS

This picketing patently sought to induce employees to cease working for the respective tenants and their suppliers in order to force their employers to cease doing business with Bush Realty and thereby also coerced those employees to that end. Respondent thereby violated Section 8(b)(4)(i) and (ii)(B) of the Act.

C. Alleged Bad-Faith Bargaining

The General Counsel contends that Respondent unlawfully picketed Industry City for about 4 hours on February 13, 1990, to coerce Industry City to agree to add to their collective-bargaining agreement a successors-and-assigns clause. Respondent contends that its February 7, 1990 demands for such a clause were made to protect unit jobs.

First of all, I find, based on the resumption of the picketing of Industry City on February 13, the timing thereof relative to the demand of Respondent's president on February 7 for a successors-and-assigns clause and Respondent's rejection of that demand, that the picketing was undertaken in furtherance of that demand.

General Counsel's theory is that, as the collective-bargaining agreement between Respondent and the Union does not contain a successors-and-assigns clause nor a provision allowing one party to reopen it during its term in order to require the other party to bargain on a successors-and-assigns clause, Respondent is barred now from picketing to force Industry City to agree to such a clause. In support thereof, General Counsel relies on the purpose and provisions of Section 8(d) of the Act. Respondent asserts that, as it never clearly and unmistakably waived its right to demand bargaining as to a successors-and-assigns clause, Industry City is required to honor its request to bargain thereon and, as a corollary, that Respondent has a right to put economic pressure on Industry City via picketing in furtherance of its demand. Respecting Respondent's contention, General Counsel notes that Respondent, in negotiations, had unsuccessfully sought to secure a successors-and-assigns clause. In particular, Respondent's proposals thereon were rejected by Industry City and thus did not become part of the agreement reached in 1987 to extend the contract for 1 year. Respondent made substantially the same demand, with the same result, when the contract was extended to July 1989 on agreement in December 1988. Lastly, Respondent presented Industry City with a number of demands in negotiations during the latter half of 1989, including one for a successors-and-assigns clause. Respondent and Industry City agreed to submit to arbitration the unresolved demands which were blocking agreement on a renewal contract. Industry City had again objected to the inclusion of a successors-and-assigns clause in any renewal contract and that demand was not among those submitted for arbitration. As noted above, on issuance of the

arbitration award, Respondent and Industry City signed a 3-year contract, effective until July 1992.

Section 8(d) of the Act defines the obligation to bargain collectively. It also expressly provides that the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. The 3-year contract between Respondent and Industry City makes no allowance for bargaining during its 3-year period respecting a successors-and-assigns clause. Perforce, Industry City has no obligation to respond to Respondent's demand of February 7, 1990. See *Connecticut Power Co.*, 271 NLRB 766 (1984). Respondent's reliance on *Arizona Public Service Co.*, 247 NLRB 321 (1980), is misplaced as, in that case, article XII of the agreement contained appropriate "reopener" language.

Section 8(d) provides, in defining the duty to bargain, that no party shall terminate or modify such contract during its term unless certain conditions are met—two of which Respondent may not avail itself of now and another that requires it to continue the contract in effect without striking. Respondent has not terminated or modified the contract and has not engaged in a strike. It did picket however, using the elevator operators formerly assigned to the back buildings. While the literal language of Section 8(d) does not bar picketing, the obvious aim of the picketing by Respondent on February 13 was to induce employees, who deliver to Industry City buildings, to refrain from making those deliveries. To give effect to the clear import of the provisions of Section 8(d), I find that the picketing by Respondent violated its duty to bargain collectively with Industry City as defined in Section 8(d) of the Act and that Respondent thereby committed an unfair labor practice as defined in Section 8(b)(3) of the Act.

Even were there merit to Respondent's contention that Industry City must bargain about any term or condition not contained in that current contract I would find that Industry City still would not be obligated to bargain now as to a successors-and-assigns clause as it had unquestionably rejected such a provision three times. I would thus find that Respondent, having suffered those rejections and having still signed renewal agreements, had clearly and unmistakably waived any right it might have had to seek bargaining thereon now. Cf. *Proctor Mfg. Corp.*, 131 NLRB 1166 (1961), a case Respondent cited for the general proposition but which is factually inapposite.

CONCLUSIONS OF LAW

1. Respondent is a labor organization as defined in Section 2(5) of the Act.

2. Industry City and Bush Realty are each an employer within the meaning of Section 2(2), (6), and (7) of the Act.

3. Respondent has engaged in unfair labor practices as defined in Section 8(b)(4)(i) by having

(a) Picketed Industry City and its tenants in building 19 on February 2, 1990, in order to force Industry City to cease doing business with Bush Realty.

(b) Engaged in a strike and picketing against Industry City and its tenants on February 5 and 6, and by picketing tenants of Bush Realty and their suppliers from February to March

5, 1990, and in July 1990 in order to force Industry City and the tenants of Bush Realty to cease doing business with Bush Realty.

4. Respondent has engaged in unfair labor practices as defined in Section 8(b)(4)(ii)(B) by having

(a) Engaged in the conduct described in paragraph 1 above.

(b) Threatened, by the statement of its president on January 30, 1990, to shut down the operations of Industry City and of all tenants thereof in order to force Industry City and the tenants of Bush Realty to cease doing business with Bush Realty.

(c) Threatened a supervisor of one of Bush Realty's tenants, Interdynamic Inc., with physical harm in order to restrain and coerce Interdynamics from doing business with Bush Realty.

5. Respondent has engaged in an unfair labor practice within the meaning of Section 8(b)(3) of the Act by having picketed Industry City on February 13, 1990, in order to compel Industry City to agree to modify the current collective-bargaining agreement between them so as to include a successors-and-assigns clause, notwithstanding Industry City's repeated rejections thereon in earlier negotiations and the provisions of the collective-bargaining agreement between Respondent and Industry City.

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

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹

ORDER

The Respondent, Local 917, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, Brooklyn, New York, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Picketing the buildings owned by a partnership d/b/a Industry City Associates (Industry City) in order to force it to cease doing business with a partnership d/b/a Bush Realty Associates (Bush Realty)

(b) Engaging in a strike against Industry City or picketing Industry City, its tenants or those of Bush Realty in order to force Industry City or Bush Realty tenants from doing business with Bush Realty.

(c) Threatening to shut down the operations of Industry City, those of its tenants or those of the tenants of Bush Realty in order to force Industry City and the Bush Realty tenants to cease doing business with Bush Realty.

(d) Threatening any supervisor of Interdynamic Inc., a tenant of Bush Realty, in order to force Interdynamic to cease doing business with Bush Realty.

(e) Failing and refusing to bargain collectively with Industry City by picketing during the term of its collective-bargaining agreement with Industry City to force Industry City to include therein a "successors-and-assigns" clause.

¹If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(f) In any like or related manner restraining or coercing employees in the exercise of their rights under Section 7 of the Act.

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

(a) Post at its offices and meeting halls copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 29, 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 employees and members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Sign and mail to the Regional Director for Region 29, sufficient copies of the notice to the Regional Director for posting by Industry City and by Bush Realty, if willing, at all places where employee notices 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.

²If 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."

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 this notice and abide by its provisions.

WE WILL NOT picket buildings owned by the partnership, d/b/a Industry City Associates (Industry City) in order to force it to cease doing business with a partnership d/b/a Bush Realty Associates (Bush Realty).

WE WILL NOT engage in a strike against Industry City or picket Industry City, or its tenants or the tenants of Bush Realty in order to force Industry City or the tenants of Bush Realty from doing business with Bush Realty.

WE WILL NOT threaten to shut down the operations of Industry City, those of its tenants or those of the tenants of Bush Realty in order to force Industry City or the tenants of Bush Realty to cease doing business with Bush Realty.

WE WILL NOT threaten any supervisor of Interdynamic Inc., in order to force Interdynamics to cease doing business with Bush Realty.

WE WILL NOT fail and refuse to bargain collectively with Industry City by picketing during the term of our current contract with it to force it to include in it a "successors-and-assigns" clause.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

LOCAL 917, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS, WAREHOUSE-
MEN AND HELPERS OF AMERICA, AFL-CIO