

**Pacific Northwest District Council of Carpenters, a/w
United Brotherhood of Carpenters and Joiners
of America and DWA Trade Show and Exposition
Services.** Cases 36–CC–1016–1 and 36–CC–
1017–1

August 18, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND WALSH

On February 4, 2003, Administrative Law Judge Clifford H. Anderson issued the attached decision.¹ The issue in this case is whether the Respondent Union violated Section 8(b)(4)(ii)(B) of the Act by engaging in secondary picketing at a common situs. Despite finding that the Respondent's intent in choosing the language of the picket signs was benign, the judge found a violation based on the foreseeable effect of the signs, which was sufficient to establish that the Respondent acted with the unlawful object of forcing neutral employers operating at the site to cease doing business with the Charging Party Employer.

The Board has considered the decision and record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.

I.

The case proceeded on a stipulated record. The relevant facts are as follows:

The Charging Party, DWA Trade Show and Exposition Services, provides trade show services, such as erecting and dismantling trade show exhibits. The Charging Party's clients, the Oregon Dental Association and Sysco Food Services, were scheduled to hold trade shows at the Oregon Convention Center (Convention Center) in April 2002.² The Respondent Union, Pacific Northwest District Council of Carpenters, represented employees for several trade show contractors who worked at the Convention Center. The Charging Party was a not a signatory to a labor agreement with the Respondent.

On April 10, the Charging Party began setting up exhibits for the Oregon Dental Association's Dental Show (Dental Show) at the Convention Center. Several other shows, which the Charging Party did not service, were

¹ The Respondent filed exceptions and a supporting brief. The General Counsel and the Charging Party filed answering briefs. The Respondent filed a reply brief.

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

² All dates hereafter are in 2002.

simultaneously being held at the Convention Center. The Convention Center has several public entrances from public streets and sidewalks that may be accessed by persons attending any of the Convention Center's events. None of the public entrances is reserved for any particular show or event.

On April 11, the Respondent picketed outside the public entrances to the Convention Center. The picketers carried signs stating:

**ATTENTION
DENTAL SHOW**

DWA

**DOES NOT PAY
AREA STANDARD
WAGES & BENEFITS**

**PACIFIC NORTHWEST
REGIONAL COUNCIL
OF CARPENTERS**

The picketers also carried signs without the "Attention Dental Show" language. The record indicates that organizers for the Respondent, who were aware that other events were occurring at the Convention Center at the time of the Dental Show, placed the name of the Dental Show on the picket signs to avoid confusion over whether the message on the signs applied to events that did not involve the Charging Party.

On April 14, the Charging Party began setting up the Sysco Food Services Show (Sysco Food Show) at the Convention Center. The Sysco Food Show was scheduled for April 14–16. Several other events were occurring at the Convention Center during that time, and there were no public entrances reserved specifically for the Sysco Food Show. On April 16, the Respondent picketed the public entrances to the Convention Center. The picket signs stated:

**ATTENTION
SYSCO FOOD SHOW**

DWA

**DOES NOT PAY
AREA STANDARD
WAGES &
BENEFITS**

**PACIFIC NORTHWEST
REGIONAL COUNCIL
OF CARPENTERS**

Several picketers carried signs without the "Attention Sysco Food Show" language. As with the Dental Show, the Respondent's organizers added the name of the show to the

signs because they believed it would avoid confusion as to which contractor at the Convention Center was involved in the dispute.³

The complaint alleged that on April 11 and 16, the Respondent improperly picketed at the Convention Center and in so doing threatened, coerced, or restrained persons engaged in commerce or in an industry affecting commerce who were not engaged in any primary labor dispute with the Respondent. The complaint further alleged that the Respondent's object in picketing was to force or require such neutral parties to cease doing business with the Charging Party, and that the Respondent's actions violated Section 8(b)(4)(ii)(B) and Section 2(6) and (7) of the Act.

II.

The judge found the violations as alleged. He agreed with the General Counsel and the Charging Party that the Respondent's picketing, at the "common situs" of the Convention Center, was unlawful under *Sailors Union of the Pacific (Moore Dry Dock)*, 92 NLRB 547, 549 (1950) (*Moore Dry Dock*), because that picketing failed to "disclose[] clearly that the dispute [was] only with the primary employer." Specifically, the judge found that because the picket signs did not state that the Respondent's dispute was solely with the Charging Party, and did refer to the neutral Dental Show and Sysco Food Show, those signs evinced a secondary object.

The judge credited the picketers' testimony that the references to the Dental Show and Sysco Food Show were placed on the picket signs "in order to avoid confusion," and characterized this testimony as demonstrating a "benign intention in wording the signs as they did." However, he found that the language on the signs did not have the effect intended by the Respondent, and that the language increased the possibility that the neutrals could become enmeshed in the dispute. Thus, despite finding that the Respondent's intent was benign, the judge determined that the Respondent should have known that the language on the signs could reasonably be interpreted as enmeshing the neutrals.

The Respondent Union excepts, arguing that it met the standards established by the Board in *Moore Dry Dock* and that it is therefore entitled to a presumption that its conduct was lawful. The Respondent specifically excepts to the judge's assertion that the Respondent's intent in picketing should be inferred from the foreseeable consequences of its conduct, i.e., the picket sign language used. The Respondent observes that the judge expressly

³ The Respondent did not picket at delivery entrances used for loading and unloading exhibits for the Dental Show or the Sysco Food Show.

credited evidence that it designed its picket signs to avoid confusion and not to enmesh neutrals. It argues, in turn, that its conduct should be evaluated based on the judge's finding as to its actual intent. Based on that finding, the Respondent argues that its picketing cannot be found unlawful, even were it shown to have had a secondary effect, which is not established here.

For the following reasons, we find merit in the Respondent's exceptions, reverse the judge, and dismiss the complaint.

III.

To establish a violation of Section 8(b)(4)(ii)(B) with respect to common situs picketing, the General Counsel must establish that the Respondent's actions had the secondary object of causing neutral parties to cease doing business with the Charging Party.⁴ The Respondent's intent, not the effect of the picketing, is determinative. *NLRB v. International Rice Milling Co.*, 341 U.S. 665, 672 (1951). As discussed above, the judge found that the Respondent's intent was benign.⁵ That finding of lawful intent precludes the finding of a violation of Section 8(b)(4)(ii)(B), regardless of what the effect of the picketing actually was, even if that effect was reasonably foreseeable. See *NLRB v. Teamsters Local 968*, 225 F.2d 205, 209–211 (5th Cir. 1955) (The "sole statutory test of unlawfulness [is] the end or objective sought"; where "the Board's own evidence" shows that the "concerted activity was solely for the lawful object of picketing only" the primary employer, a violation of the Act cannot be found, and "any adverse effect upon secondary, neutral employees must necessarily be viewed as incidental to the lawful exercise of [a] statutory right."), cert. denied 350 U.S. 914 (1955).

In light of the judge's specific findings regarding the Respondent's intent, we find that *Moore Dry Dock*, which provides an evidentiary aid for determining whether a union's picketing has an unlawful object, is inapplicable here. See *Teamsters Local 315 (Santa Fe)*, 306 NLRB 616, 625 (1992), enf. 20 F.3d 1017 (9th Cir. 1994) (*Moore Dry Dock* "simply establishes an evidentiary aid for the Board to determine the object of picket-

⁴ Sec. 8(b)(4)(ii)(B) makes it unlawful for a union to: threaten, coerce, or restrain any person engaged in commerce . . . where . . . an object thereof is forcing or requiring any person . . . to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees . . . *Provided*, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing.

⁵ The parties have not excepted to the judge's findings regarding the Respondent's benign intent.

ing, where the other evidence is equivocal” (internal quotations and citation omitted)). Under *Moore Dry Dock*, a rebuttable presumption that the object of picketing at a common situs is lawful arises if a union can show that it has complied with the following criteria: (1) the picketing was limited to times when the situs of the dispute was located on secondary premises; (2) the primary employer was engaged at its normal business at the situs; (3) the picketing took place reasonably close to the situs; and (4) the picketing clearly disclosed that the dispute was only with the primary employer. *Moore Dry Dock*, 92 NLRB at 149. Here, where it is clear from the credited evidence that the picketing had no unlawful object, it is unnecessary to apply those criteria and presumptions.

But even assuming that *Moore Dry Dock* is applicable in these circumstances, we find that an analysis of the evidence under its principles does not demonstrate an unlawful object on the part of the Respondent. The parties have conceded that the first three *Moore Dry Dock* criteria are satisfied; therefore the only relevant inquiry is whether, under the fourth criterion, the Respondent’s picket signs clearly disclosed that the picketers’ dispute was only with the Charging Party. Contrary to the judge and our dissenting colleague, we do not find that the picket signs demonstrate an intent to create confusion as to which employer the Respondent intended to target with its picketing.

The picket signs clearly stated that the Charging Party, which is the primary employer in the dispute, does not pay area standard wages. The signs did not include any criticism of the neutral parties, the Charging Party’s clients. Indeed, the picket signs did not even contain the names of the neutral parties; the signs referred only to the “Dental Show” and the “Sysco Food Show,” not the Oregon Dental Association or Sysco Food Services. Further, the position of the word “Attention” in relation to “Dental Show” and “Sysco Show” makes it clear, when the message is read in context, that the Respondent did not have a dispute with the neutrals. Contrary to the judge and the dissent, then, we find no ambiguity in the message conveyed by the signs.

This case is distinguishable from those where the Board has found the fourth *Moore Dry Dock* criterion to have been violated. For example, in *Service Employees Local 87 (Pacific Telephone)*, 279 NLRB 168, 174–175 (1986), and *Service Employees Local 32B-32J*, 250 NLRB 240, 244–245, 247–248 (1980), the Board found that the fourth criterion was not met because the picket signs failed to identify the primary target at all. See also *Laborers Local 389 (Calcon Construction)*, 287 NLRB 570, 573–574 (1987). Here, in contrast, the picket signs expressly named the primary target of the picketing.

Our dissenting colleague maintains that an inference of a secondary object can be drawn from the picket signs because the Respondent did not specifically state that it had no dispute with the Dental Show or the Sysco Food Show. In support of his position, our colleague relies on *Electrical Workers Local 302 (ICR Electric)*, 272 NLRB 920 (1984), in which the Board held that an express disclaimer of an intent to target neutral employers on the union’s picket signs satisfied the fourth *Moore Dry Dock* criterion. Unlike our colleague, we do not read that case as establishing a *requirement* that picket signs include an express disclaimer in order to meet the fourth *Moore Dry Dock* criterion.

We find that, in these circumstances, the General Counsel has not demonstrated that the Respondent’s picketing had a secondary object. Accordingly, we reverse the judge and dismiss the complaint.

ORDER

The complaint is dismissed in its entirety.

CHAIRMAN BATTISTA, dissenting.

Contrary to my colleagues, I agree with the judge that the Respondent violated Section 8(b)(4)(ii)(B) of the Act. Under Section 8(b)(4)(ii)(B) of the Act, a union is prohibited from putting pressure on employers with whom it has no dispute (neutral or secondary employers), in order to coerce them to cease doing business with an employer with whom it does have a dispute (primary employer). By placing the names of neutral employers at the top of its picket signs without any disclaimer, the Respondent indicated its object to enmesh those neutrals in its dispute with the Charging Party.

Traditionally, where primary and neutral employers conduct business at a common situs, the Board looks to four factors to determine whether the picketing has an unlawful secondary object:

- (1) that picketing be limited to times when the situs of dispute was located on the secondary premises, (2) that the primary employer be engaged in his normal business at the situs, (3) that the picketing take place reasonably close to the situs, and (4) that the picketing clearly disclose that the dispute was only with the primary employer.

Electrical Workers Local 761 v. NLRB, 366 U.S. 667, 677 (1961) (summary of criteria first established in *Sailors Union of the Pacific (Moore Dry Dock Co.)*, 92 NLRB 547 (1950) (“*Moore Dry Dock*”).

The Respondent prominently displayed the neutral employers’ names on its picket signs. My colleagues nonetheless argue that the *Moore Dry Dock* analysis is inapplicable because, they say, the evidence here estab-

lishes that the Respondent's intent was lawful. Specifically, the majority argues that the judge found that the Respondent had a "benign intent" in placing the neutral employers' names on the picket signs, precluding a finding of an unlawful object. My colleagues overstate the judge's finding.

The judge credited testimony that the picketers included the neutral parties' names on the picket signs in order to avoid public confusion between the shows of the Charging Party's clients and other shows. However, the Charging Party is the only primary employer. The Charging Party's clients and the other shows are neutrals. Thus, the testimony upon which the majority so heavily relies establishes only that the Respondent sought to differentiate between one set of neutrals and another set of neutrals. It is difficult to see how this effort precludes a finding of a secondary object. Accordingly, contrary to the majority, analysis of the Respondent's object pursuant to *Moore Dry Dock* is appropriate.

Also contrary to the majority, I find that the Respondent's picketing failed the fourth *Moore Dry Dock* criterion. As discussed by the majority, under the fourth *Moore Dry Dock* criterion, a union must ensure that its picketing clearly discloses that its dispute is only with the primary employer. By prominently including the names of the Charging Party's clients (neutrals) on its picket signs, the Respondent created confusion as to the target of its picketing.¹ The Respondent thereby failed to clearly ensure that the public would understand that its dispute was only with the Charging Party. See *West Kentucky Building Trades Council (Daniel Constr. Co.)*, 192 NLRB 272, 276 (1971) (picket signs that create confusion as to the target of the dispute fail the fourth *Moore Dry Dock* criterion).

As the Board explained in *Plumbers Local 519 (H. L. Robertson & Associates)*, 171 NLRB 251, 259 (1968), enfd. 416 F.2d 1120 (D.C. Cir. 1969), when a union loses the presumption of a lawful object that accompanies its compliance with the *Moore Dry Dock* standards, the union is presumed to intend the foreseeable secondary consequences of its actions. See also *Service Employees Local 525 (General Maintenance Co.)*, 329 NLRB 638 (1999), enfd. 52 Fed. Appx. 357 (9th Cir. 1999); *Mine Workers Local 29 (New Beckley Mining)*, 304 NLRB 71, 73 (1991), enfd. 977 F.2d 1470 (D.C. Cir. 1992). The Respondent has failed to rebut that presumption of unlawful intent. I agree with the judge that the Respon-

¹ Contrary to the majority, I do not find persuasive that the picket signs named the shows, and not the actual corporate names, of the Charging Party's clients. The differences between the names of the shows and the corporate names are slight, and this technical distinction would not be meaningful to the general public.

dent should have foreseen that by actually naming the neutral parties, without including any language expressly excluding them from its dispute with the Charging Party, there would be confusion as to the target of the picketing.

The cases support the proposition that picketing is unlawful if it fails to clearly disclose that the dispute is only with the primary employer. See, e.g., *Service Employees Local 87 (Pacific Telephone)*, 279 NLRB 168 (1986); *Service Employees Local 32B-32J*, 250 NLRB 240 (1980). Concededly, in the instant case, the picket signs mention the primary employer. However, the signs do not clearly indicate that the dispute is *only* with the primary employer. To the contrary, the picket signs name the neutral employer, and they fail to state that there is no dispute with the neutral employer.

My colleagues say that a disclaimer is not a requirement for a lawful picket sign. I would agree that where a picket sign does not name a neutral, it is unnecessary to state that there is no dispute with that neutral, even though the neutral is on the site. However, where, as here, the neutral employer *is* named, and there is no "disclaimer" language to indicate that there is no dispute with that named neutral, an inference of secondary object can be drawn.²

As noted above, it is axiomatic that a person is deemed to intend the foreseeable consequences of its actions. Where, as here, a union places the name of a neutral at the top of a picket sign, and uses the phrase "attention" with reference thereto, it is reasonably foreseeable that at least some members of the public would associate the neutral with the labor dispute.

My colleagues say that the position of the word "Attention" in relation to the naming of the neutral parties makes clear that the Respondent did not have a dispute with the neutrals. However, the very juxtaposition of "Attention" and the names of the neutrals clearly shows that the message is aimed at the patrons of the neutrals. Thus, the record supports the inference that the Respondent intended the foreseeable consequences of its conduct—confusion as to whether the Dental and Sysco Food Shows were the target of its dispute. Therefore, I agree with the judge that the Respondent violated Section 8(b)(4)(ii)(B) of the Act.

² Compare *Electrical Workers Local 302 (ICR Electric)*, 272 NLRB 920 (1984) (union demonstrated that it lacked a secondary object by expressly stating that its dispute did not involve any employer other than the primary).

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 spondent.
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Jernstedt Wilson), of Portland, Oregon, for the Charging
 Party.

DECISION

STATEMENT OF THE CASE

CLIFFORD H. ANDERSON, Administrative Law Judge. I heard the above-captioned case in trial in Portland, Oregon, on October 16, 2002, pursuant to a consolidated complaint and notice of hearing issued by the Regional Director for Region 19 of the National Labor Relations Board on July 16, 2002. The complaint in relevant part¹ is based on charges filed by DWA Trade Show and Exhibition Services (the Charging Party), against Pacific Northwest Regional Council of Carpenters, affiliated with the United Brotherhood of Carpenters and Joiners of America (the Respondent), in Case 36-CC-1016-1 on May 28, 2002, and in Case 36-CC-1017-1 on December 5, 2002.

The complaint, as amended, alleges, and the answer denies, that on or about April 11 and 16, 2002, the Respondent improperly picketed at the Oregon Convention Center in Portland, Oregon, and in so doing threatened, coerced, or restrained persons engaged in commerce or in an industry affecting commerce who were not engaged in any primary labor dispute with the Respondent. The complaint further alleges that an object of the Respondent's conduct was to force or require these persons and other persons to cease handling or otherwise dealing in the products of, and to cease doing business (directly or indirectly) with the Charging Party. Finally, the complaint alleges that the Respondent, in undertaking the actions described, violated Section 8(b)(4)(ii)(B) and Section 2(6) and (7) of the National Labor Relations Act (the Act). The Respondent denies that it has violated the Act.

FINDINGS OF FACT

On the entire record herein, including helpful briefs from the Respondent, the Charging Party, and the General Counsel, I make the following findings of fact.²

I. JURISDICTION

The Charging Party is a State of Oregon corporation, with office and place of business in Portland, Oregon, where it is engaged in the business of the setup and takedown of trade shows and exhibitions in the States of Oregon and Washington.

¹ Cases 36-CE-37 and 36-CE-38 were part of the consolidated complaint, but were severed before hearing based on a settlement and are not a part of this proceeding.

² As a result of the pleadings and the substantial joint stipulations of counsel at the trial, there were few disputes of fact. Where not otherwise noted, the findings herein are based on the pleadings and the stipulations. The record contains no substantive evidence other than the formal papers and the stipulation of the parties with its associated exhibits. The remainder of the record essentially comprises the receipt into evidence of those documents and the setting of a posthearing briefing schedule.

The Charging Party in the 12-month period preceding the issuance of the complaint, a representative period, in the course and conduct of its business operations, sold and shipped goods or provided services from its facilities within the State of Oregon, to customers outside the State, or sold and shipped goods or provided services to customers within the State, which customers were themselves engaged in interstate commerce by other than indirect means of a total value in excess of \$50,000.

Based on the above, the pleadings establish and I find the Charging Party is and has been at all times material, a person and an employer engaged in commerce within the meaning of Section 2(1), (2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

The pleadings establish, there is no dispute, and I find the Respondent is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Stipulated Facts*³

The Respondent is signatory to labor agreements with several contractors that erect and dismantle trade shows at various facilities including the Oregon Convention Center in Portland, Oregon. The Charging Party also performs work in that market. The Charging Party is signatory to a labor agreement with District Council No. 5, UPAT (Painters Union), but is not signatory to an agreement with the Respondent. Trade show contractors, including the Charging Party and Respondent signatory contractors, erect and dismantle common features such as entranceways, registration areas, signage, information kiosks, aisle carpeting, and handle miscellaneous service requirements during the event itself.⁴

The Charging Party was contracted to provide work for at least two shows at the Oregon Convention Center in April 2002.⁵ One was sponsored by the Oregon Dental Association (Dental Show). Work setting up the Dental Show commenced on April 10. The show was open on April 11, 12, and 13, and was dismantled on April 13. Another show contracted to the Charging Party was sponsored by SYSCO Food Services of Portland (SYSCO Food Show). Work setting up the SYSCO Food Show occurred on April 14 and 15. The show was open on April 16 and dismantled on April 17.

The Oregon Convention Center has several public entrances from public streets and sidewalks. All public entrances may be accessed by persons attending any show, seminar or other

³ The language appearing in the stipulated facts section of this decision is taken essentially verbatim from the written stipulation of the parties. The stipulation recites that the stipulation and the formal papers will comprise the entire record. The stipulation further provides the parties reserved the right to object on brief to the relevance of any of the stipulated facts.

⁴ The Respondent asserts that the Charging Party's employee total wages and benefit package is substandard to that provided by the Respondent's contracts and has conducted an area standards campaign advertising that belief. The Charging Party disputes that assertion. The accuracy of both parties' assertions regarding the Charging Party is not at issue in this proceeding.

⁵ All dates hereinafter occurred in 2002 unless otherwise noted.

event, i.e., particular entrances are not reserved for particular events.

More than one function may occur at the Oregon Convention Center on a particular day. If called to testify, an official of the Oregon Convention Center would testify that on April 11, the show of the National Forum for Black Administrators was being dismantled by the Charging Party. Jackson Dawson Communications, Inc., sponsored an event, the WVDO Crystal Awards group had a committee meeting, and the Dental Show occurred. He would further testify that on April 16, Kaiser Permanente sponsored a seminar and the SYSCO Food Show was held.

On April 11, the Respondent picketed outside the Oregon Convention Center for about 4 hours. Several picketers held signs stating:⁶

**ATTENTION
DENTAL SHOW**

DWA

**DOES NOT PAY
AREA STANDARD
WAGES & BENEFITS**

**PACIFIC NORTHWEST
REGIONAL COUNCIL
OF CARPENTERS**

Some other picketers held identical signs, save that the words "Attention Dental Show" did not appear on the signs. The reverse of at least one picket sign stated:

ATTENTION

DENTAL SHOW

PARTICIPANTS

**THE PACIFIC NORTHWEST
REGIONAL COUNCIL
OF CARPENTERS**

On April 16, the Respondent again picketed outside the Oregon Convention Center for about 8 hours. Several picketers held signs stating:

**ATTENTION
SYSCO SHOW**

DWA

**DOES NOT PAY
AREA STANDARD
WAGES & BENEFITS**

**PACIFIC NORTHWEST
REGIONAL COUNCIL
OF CARPENTERS**

Some other picketers held identical signs except that the words "Attention SYSCO Show" did not appear on the signs.

⁶ Font proportion and bolding in this and all subsequent quotation of picket sign language appear as stipulated by the parties.

On April 11 and 16, the Respondent's picketing occurred outside the various public entrances to the Oregon Convention Center. The Respondent did not picket at delivery entrances used for the loading and unloading of exhibit-related materials for the Dental or SYSCO Shows. The Respondent did not handbill on either April 11 or 16.

The Respondent has no dispute with the Oregon Convention Center, the Oregon Dental Association, SYSCO Food Services of Portland, Oregon, or other users of the Oregon Convention Center on April 11 or 16.

If called to testify, union organizers Ben Embree and/or Sheri Raven would state that the Union placed the name of the show (Dental Show, SYSCO Show) on the picket signs in their belief that patrons visit the Oregon Convention Center to patronize events other than those set up and dismantled by the Charging Party, that the Respondent did not want to have its message apply to Oregon Convention Center events not hiring a trade show contractor or using a different trade show contractor, and that in order to avoid confusion, the Respondent placed the name of the show (Dental Show, SYSCO Show) on the sign along with the identification of the Charging Party.

If called to testify, Kristine Bowen, the senior director of marketing for SYSCO Food Services of Portland, Inc., would state that SYSCO is a distributor of food, supplies and equipment to customers throughout Oregon and Southwest Washington. SYSCO has an annual trade show. The Carpenter's Union has picketed at SYSCO's annual trade shows in 2001 and 2002. During that time, the Carpenter's Union sent SYSCO three letters threatening to take action at SYSCO's food shows if it continued to contract with the Charging Party to set up and decorate its show. SYSCO understood these letters as a direct threat to picket SYSCO and enmesh it in its dispute with the Charging Party.

B. Analysis and Conclusions

1. The issue narrowed

The complaint alleges the Respondent's April 11 and 16 picketing violated Section 8(b)(4)(ii)(B) of the Act. That section provides:

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

(4)(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 using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9: Provided, that nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

The Act thus prohibits forcing or requiring neutrals—persons not involved in any primary dispute with the labor organization involved—to cease handling or dealing in the products of or to cease doing business with the primary employer. While the secondary picketing prohibitions of the Act are perhaps dense and complex, all parties agree that the issue herein turn on a traditional analysis of picketing in a setting and situation where multiple employers and employees and visitors are involved: a common situs. Such common situs picketing has long been considered in light of the teachings and enumerated tests of the fountainhead case, *Sailors Union of the Pacific (Moore Dry Dock)*, 92 NLRB 547, 549 (1950).

In that case the Board held that common situs picketing is presumptively legal if each of four criteria are met:

- (1) The picketing is strictly limited to times when the primary employer's employees are on site;
- (2) The primary employer is engaged in its normal business at the site;
- (3) The picketing is limited to places reasonably close to where the primary employees are working, and
- (4) The picketing disclosed clearly that the dispute is only with the primary employer.

The parties further agree that the instant case turns on the proper application of the fourth *Moore Drydock* rule requiring common situs picketing to clearly disclose that the dispute is only with the primary employer, the Charging Party on the facts of this case. Indeed the General Counsel specifically asserts that the Respondent's complied with the first three rules. It is appropriate then to turn to the argument respecting *Moore Drydock* rule 4 as set forth above.

2. Arguments of the parties

The General Counsel argues that the Respondent failed to meet the fourth criterion in that the picket signs used did not clearly identify that the Respondent's dispute was with, and only with, the Charging Party. Thus, the Government argues that the picket signs not only utilized the same size lettering to display the letters "DWA" and the names of the stipulated neutrals "Dental Show" and "SYSCO," but also put "Attention Dental Show" and "Attention SYSCO Show" on the top of the picket signs. The General Counsel argues that this presentation was very likely to create the impression among the people attending the shows and the employees of companies other than the Charging Party that the Respondent has a dispute with the Dental Show and SYSCO and "turn away." (General Counsel's posthearing brief at 3.) The General Counsel argues further that the Respondent's signs are violative of the Act because they do not state that the Respondent's dispute was only with the Charging Party.

The Charging Party emphasizes that the *Moore Drydock* fourth requirement is designed to avoid embroiling neutrals by requiring open disclosure of the primary employer's name on the picket sign and that any vague or ambiguous language will be found unlawful citing *Daniel Construction Co.*, 192 NLRB 272 (1971). The Charging Party argues that the fact that the Respondent put neutral person's names on the picket signs created confusion and ambiguity that is inconsistent with

Moore Drydock rule 4 and which clearly evinces a violation of Section 8(b)(4)(ii)(B) of the Act.

The Respondent emphasizes the "unusually narrow" theory of the General Counsel's case, which turns "solely on the lettering appearing on the signs." (Respondent's posthearing brief at 7.) The Respondent notes that the language on the picket signs drawing the picket sign readers' "attention" to the Dental and SYSCO shows was added by union agents to avoid confusion and that the Respondent did not want to have its picket sign message apply to Oregon Convention Center events not hiring a trade show contractor or using a different trade show contractor than the Charging Party, and, for that reason put the names of the shows: "Dental Show" and "SYSCO Show" on the picket signs. Counsel for the Respondent argues that such actions follow the Board's suggestion that unions should insulate neutrals from the effects of primary picketing at common sites.

The Union's concern makes good sense: patrons alerted by the "Attention" would know which part of the situs involved the labor dispute and which did not. Those concerned about such matters therefore would not have to guess, or inquire whether the primary was working on the event they were patronizing. By providing an alert, the Union thought it could not be accused of trying to enmesh all functions at the Convention Center or the Center itself. And by taking the trouble it did, the Union has learned the age-old lesson that no good deed goes unpunished. (R. Br. at 8.)

The General Counsel concedes that "intent rather than the effect of the Union's conduct forms the basis for an inquiry into the lawfulness of the conduct, citing *NLRB v. International Rice Milling Co.*, 341 U.S. 665 (1951). Counsel argues however that intent in this sense is measured as much by the necessary and foreseeable consequences of its conduct as by its stated object citing, *Longshoreman ILA Local 799 (Allied International)*, 257 NLRB 1075 (1981). Counsel argues that placing the names of the Dental Show and SYSCO—neutral persons on the picket signs—had the necessary and foreseeable consequence of creating confusion respecting the identity of the party or parties against whom the picketing was directed. This confusion was exacerbated and made for likely by the absence of any language on the picket signs indicating that the Respondent had no dispute with any other employer than the Charging Party. The General Counsel concludes: "[T]his confusion and enmeshing of neutrals was exactly what [the] Respondent intended and was the necessary and foreseeable consequence of its action." (GC Br. at 4.)

The Charging Party argues that the Respondent's claim that the Charging Party does not meet area standards is incorrect and improper. Further, it argues that the Respondent's letters to SYSCO show the Union's objective was to embroil SYSCO in its dispute with the Charging Party. The Respondent meets the Charging Party's argument in two ways. First it notes that the General Counsel's complaint and theory of a violation are narrow and did not include the evidence and arguments relied on by the Charging Party here. The Respondent correctly asserts that a complaint and its theory of a violation may not be expanded by a Charging Party. Second, the Respondent argues that the letters relied on by the Charging Party are, as to two of the three, directed to 2001 events that were not litigated at the

hearing and, the third letter sent in 2002, simply describes the Respondent's possible "lawful but aggressive public information campaign."

3. Analysis and conclusions

While the parties are correct that the primary vehicle for analysis of the instant case is *Moore Drydock* rule 4, the Board has long held that the *Moore Drydock* criteria are evidentiary standards that are not to be mechanically applied. While observance of the standards raises a presumption of legality, the ultimate question—one of fact—remains: Does the Union's conduct disclose an illegal secondary objective? *Electrical Workers Local 302 (ICR Electric)*, 272 NLRB 920 fn. 2 at 920 (1984), see *T. W. Helgesen, Inc. v. Iron Workers Local 498*, 548 F.2d 175 (7th Cir. 1977). This critical finding is to be based upon consideration of all the relevant circumstances.

Having considered the entire record, I find and conclude that the language on the Respondent's picket signs is sufficient evidence of secondary object to overcome the testimony of the drafting agents of the Respondent respecting their object in drafting the signs as they did and is also sufficient to meet the burden the General Counsel bears to establish a violation of the Act. In essence I am persuaded by the arguments of the General Counsel and, discussed more fully below, do not rely on the broader evidentiary arguments of the Charging Party.

Despite the protestations of the counsel for the Respondent that the language on the picket signs was intended by the Union to limit and focus the impact of the picketing to avoid enmeshing neutrals, I find that the signs' language simply did not do as the Respondent's drafters would have testified and rather substantially increased the risk of neutral involvement. Thus, the language of the signs supports a finding of the Respondent's secondary intention. This is so because of the inclusion of the names of neutral persons Dental Show and SYSCO Show on the signs, coupled with the Respondent's omission to include any limiting language indicating that the Respondent's dispute was only with the Charging Party and not with any other person and not with the Dental Show or with SYSCO. The ambiguities of the signs' intended target—that is the employer or person with whom the Respondent maintained a dispute—and hence the likelihood of neutral enmeshment are significant and were not reduced by the self-proclaimed cautionary acts of the picket sign drafters.

I do not specifically discredit the Respondent's organizers Ben Embree and/or Sheri Raven who would have testified to their benign intention in wording the signs as they did. Rather, I find that the Union is in at least in part the business of picketing including picketing of common situs entities such as is involved herein. As such the Respondent and its agents will be held to the standard of a reasonable labor organization picketing at a common situs. Under such a standard, the Respondent's agents should have known that the picket signs they drafted would be likely to increase the confusion possible among those who observed the picket signs at the Oregon Exhibition Center on the days in question, and therefore would have increased the likelihood that neutral parties would have been enmeshed in the Respondent's dispute with the Charging

Party. Further I am persuaded by the argument of the General Counsel set forth supra, that the necessary and foreseeable consequences of a labor organization's picketing conduct may rise to the level of intention. I specifically find such to be the case here.

In reaching this conclusion, I did not rely on the arguments of the Charging Party that the area standards position of the Respondent is bogus or that the Respondent's contacts with SYSCO support the violation alleged. Nor do I address the Respondent's opposition to that evidence. My findings on the critical fact that the Respondent, actually or constructively, intentionally enmeshed neutrals by its picketing with signs bearing the language quoted, supra, on April 11 and 16, does not rely or depend on these contested elements of the stipulation.

Based upon all the above and on the record as a whole, I find that the Respondent on April 11 and 16, 2002, picketed the Oregon Convention Center and threatened, coerced, or restrained neutrals and other persons with an objective to force or require the neutrals and other persons to cease handling or otherwise dealing in the products of, and to cease doing business (directly or indirectly) with the Charging Party. I further find that the Respondent through the described actions with the noted objective has violated Section 8(b)(4)(ii)(B) of the Act. I therefore sustain the General Counsel's complaint.

REMEDY

Having found that the Respondent violated the Act as set forth above, I shall order that it cease and desist therefrom and post remedial Board notices. Further the language on the Board notices will conform to the Board's recent decision in *Ishikawa Gasket America, Inc.*, 337 NLRB 175 (2001), that notices should be drafted in plain, straightforward, layperson language that clearly informs employees of their rights and the violations of the Act found.

CONCLUSIONS OF LAW

1. The Charging Party is, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Respondent is, and has been at all relevant times, a labor organization within the meaning of Section 2(5) of the Act.

3. By threatening, coercing, and restraining the Dental Show, the SYSCO Show, and SYSCO, and each of them, and other neutral employers or persons engaged in commerce or in an industry affecting commerce, with an objective to force or require the neutrals and other persons to cease handling or otherwise dealing in the products of, and to cease doing business (directly or indirectly) with the Charging Party, the Respondent violated Section 8(b)(4)(ii)(B) of the Act.

4. The unfair labor practices described above are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

[Recommended Order omitted from publication.]