International Brotherhood of Electrical Workers Local 332, AFL-CIO[1] ***and*** **Lockheed Missiles and Space Company, Inc.**

Santa Clara and San Benito Counties Building and Construction Trades Council *and* Lockheed Missiles and Space Company, Inc. Cases 32-CC-82-2 and 32-CC-82-3

April 2, 1979

DECISION AND ORDER

BY MEMBERS PENELLO, MURPHY, AND TRUESDALE

On December 5, 1978, Administrative Law Judge Richard D. Taplitz issued the attached Decision in this proceeding. Thereafter, Respondent, Santa Clara and San Benito Counties Building and Construction Trades Council, filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Santa Clara and San Benito Counties Building and Construction Trades Council, its officers, agents, and representatives, shall take the action set forth in the said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

[1] Subsequent to the hearing in this matter, upon unopposed motion by the General Counsel, the Administrative Law Judge dismissed the charges against International Brotherhood of Electrical Workers Local 332, AFL-CIO.

APPENDIX

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

WE WILL NOT picket the Sunnyvale, California, facility of Lockheed Missiles and Space Company, Inc., at places other than a gate reserved for Supreme Equipment Systems, Inc., when we have a dispute with Supreme Equipment Systems, Inc.

WE WILL NOT induce or encourage any individual employed by Lockheed Missiles and Space Company, Inc., or any other person engaged in commerce, or in an industry affecting commerce, to engage in a strike or a refusal in the course of employment to perform services, where an object thereof is to force or require Lockheed Missiles and Space Company, Inc., or any other person, to cease doing business with Supreme Equipment Systems, Inc.

WE WILL NOT threaten, coerce, or restrain Lockheed Missiles and Space Company, Inc., or any other person engaged in commerce, or in an industry affecting commerce, where an object thereof is to force or require Lockheed Missiles and Space Company, Inc., or any other person, to cease doing business with Supreme Equipment Systems, Inc.

SANTA CLARA AND SAN BENITO COUNTIES BUILDING AND CONSTRUCTION TRADES COUNCIL

DECISION

STATEMENT OF THE CASE

RICHARD D. TAPLITZ, Administrative Law Judge: These consolidated cases were heard before me at San Jose, California, on July 10, 1978. Charges in Case 32-CC-82-1 against International Association of Bridge, Structural and Ornamental, Reinforced Iron Workers and Riggers, Local Union No. 377 (herein called the Iron Workers); in Case 32-CC-82-2 against International Brotherhood of Electrical Workers Local 332, AFL-CIO (herein called the IBEW); in Case 32-CC-82-3 against Santa Clara and San Benito Counties Building and Construction Trades Council (herein called the Council or Respondent); and in Case 32-CC-82-4 against International Association of Sheet Metal Workers Local 309 (herein called the Sheet Metal Workers) were filed on April 5, 1978, by Lockheed Missiles and Space Company, Inc. (herein called Lockheed). On April 26, 1978, an order consolidating cases and a complaint issued alleging that the Iron Workers, the IBEW, the Council, and the Sheet Metal Workers violated Section 8(b)(4)(i) and (ii)(B) of the National Labor Relations Act, as amended. On June 27, 1978, the Regional Director for Region 32 issued an order severing Case 32-CC-82-1 (Iron Workers) and Case 32-CC-82-4 (Sheet Metal Workers) from this proceeding on the ground that the Iron Workers and the Sheet Metal Workers had entered into a settlement agreement. On the same date an amended order consolidating cases, complaint, and notice of hearing issued in Cases 32-CC-82-2 and 32-CC-82-3 alleging that the IBEW and the Council violated Section 8(b)(4)(i) and (ii)(B) of the Act.

In his post-trial brief, counsel for the General Counsel moves to dismiss those portions of the complaint that refer to the IBEW, stating that General Counsel no longer maintains that the IBEW engaged in the activity attributed to it in Case 32-CC-82-2. No opposition to that motion has been heard, and the motion is hereby granted. The only issue now to be decided is whether Council violated Section 8(b)(4)(i) and (ii)(B) of the Act.

Issues

The primary issues are:

1. Whether the Council was responsible for picketing that occurred at Lockheed's Sunnyvale, California, facility in April 1978.
2. Whether a reserved gate established by Lockheed for the employees, suppliers, and contractors of Supreme Equipment Systems, Inc. (herein called Supreme) was ineffective because employees of Supreme used other gates.
3. Whether the Council, by picketing away from the reserved gate, unlawfully enmeshed neutral secondary employer Lockheed in a dispute that Council had with primary employer Supreme, in violation of Section 8(b)(4)(i) and (ii)(B) of the Act.

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

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

Findings of Fact

I. THE BUSINESS OF THE EMPLOYERS

Supreme, a corporation licensed by California, is engaged in the installation of a stock retrieval system at the premises of Lockheed at Sunnyvale, California. Supreme has shipped materials and equipment valued in excess of $50,000 from its New York headquarters to the installation site at Lockheed's premises in Sunnyvale, California. Lockheed, a California corporation, with an office and principal place of business in Sunnyvale, California, is engaged in aerospace and national defense manufacturing and research and development services. During the past year Lockheed purchased and received goods valued in excess of $50,000 directly from suppliers located outside California. Lockheed and Supreme are employers, and each is an employer, engaged in commerce and in operations affecting commerce within the meaning of Sections 2(2), (6), and (7) and 8(b)(4) of the Act.

II. LABOR ORGANIZATION

The Council is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Sequence of Events*

Lockheed operates a large aerospace and national defense manufacturing and research and development facility at Sunnyvale, California. The dispute in this case relates to the installation of an automated stock retrieval system at Lockheed's building 182. The system is designed to retrieve parts from storage and to accumulate them in an area for assembly. The equipment was purchased from Supreme in Brooklyn, New York, pursuant to armed services procurement regulations. Supreme manufactured it in New York, dismantled it, and shipped it to Lockheed's Sunnyvale location, where Supreme was to reassemble and install it. It was a turnkey operation under which Supreme was solely responsible for the complete installation of the unit in building 182. Supreme brought two of its own employees from New York and hired other local employees to augment its work force for the assembly of the equipment. None of Supreme's employees was represented by any of the unions involved in this proceeding.

In late March 1978 Lockheed's manager of general procurement, William L. Gervais, called Iron Workers Business Representative Raymond F. Fenton on the telephone to discuss the Supreme contract. Gervais told Fenton that Lockheed's contract with Supreme was Navy funded and was a turnkey operation under which Supreme had the entire responsibility for design, fabrication, and installation. He asked Fenton whether Fenton had any questions regarding the contract. Fenton replied that Iron Workers Assistant Business Representative John Neese had been at the installation and understood the situation.

On March 28, 1978, Neese called Lockheed's senior labor relations specialist, Bruce Powell, on the telephone. Powell told Neese about the work that Supreme was doing. Neese asked to see the work, and a meeting was scheduled for the following day. The next day, Neese came to the installation, and Powell took him to building 182, where Supreme was doing the work. Neese asked Supreme's foreman, Pelio, if the people on the job were union members. Pelio replied that he did not believe they were. Neese then spoke to some ironworkers who were working on another project near the Supreme project. He told those ironworkers to keep their eyes open and that there might be pickets out there in the next hour or so. Powell asked Neese about the possibility of picketing, and Neese replied that he felt the work should be performed by members of the Iron Workers. Powell said that when situations like that had arisen in the past, Lockheed had set up a gate for picketing and that Lockheed would have contract personnel enter and leave through that gate. Neese did not respond to that, but said that he would have to go to the Council for a strike sanction. Powell asked Neese to keep in touch with him and said that, if there were to be picketing, they would try to follow the same arrangement they had with other unions in the past. Neese said that he would call.

On March 31, 1978, Neese, together with Sheet Metal Workers Representative Phil Rogers, came to the plant and spoke to Powell. Neese told Powell that the work belonged to either the Iron Workers or the Sheet Metal Workers.

Rogers asked to see the installation, and Powell refused the request. Rogers then complained about Powell's refusal to live up to a prior agreement that the Council had to the effect that Lockheed would cooperate with them in this kind of situation. Powell asked them their intentions and whether they had strike sanction from the Council. Neese replied that they did not have strike sanction yet, but that they were meeting soon. Neese also said that they would try to get strike sanction and would probably picket. Powell then said that Lockheed would set up a gate for the picketing at gate 153-2 (herein referred to as gate A), which is on the west side of the intersection of Fifth Avenue and "E" Street.[1] Gate A is the closest gate to the western side of building 182, where the installation was being made. Neese replied that the gate was unacceptable because the pickets would have to go on company property to get to that gate. Powell told the union representatives that Lockheed would allow the pickets to come onto company property for that purpose. Neese replied that it was unacceptable and that they would probably post their pickets in the street along Mathilda Avenue. Mathilda Avenue is a public street on the east side of building 181. Building 181 is connected on its western side to building 182, where the installation was being made. Both buildings, 181 and 182, are enclosed by walls, and people inside the buildings could not see pickets on the street. Powell told the union representatives that picketing on Mathilda would not be necessary because Lockheed would cooperate with them, and there was a lot of traffic on Mathilda.

Sometime between March 31 and April 3, 1978, the Iron Workers sought and obtained from the Council sanction to picket Supreme. The Iron Workers is a member of the Council. The Council has authority to withhold sanction for jurisdictional disputes or wildcat picketing, but a member of the Council can picket without the Council's sanction. The Iron Workers began picketing on April 3 and continued to picket through April 13, 1978.[2] The picket signs stated that the picketing was Council-sanctioned, AFL-CIO picketing and that the dispute was with Supreme. On the first day of the picketing some of the signs did not contain any reference to the Iron Workers, but on April 4 the signs were corrected to designate the Iron Workers. Picketing took place at four different locations on Mathilda Avenue.[3]

On April 3, 1978, Lockheed's assistant manager of labor relations, Cal Cook, saw the picketing on Mathilda Avenue. He called Council Executive Secretary Eugene Withrow[4] to discuss the matter. Lockheed's standard operating procedure is to call the Council when there is a problem with the crafts.[5] Cook said that there were pickets on the street, that he had not heard from him, and that it seemed to be contrary to their past practice. Withrow replied that he was not fully aware of what was going on, but that he would check into it and call back. Cook then said that Lockheed was disturbed and would like to get the pickets off the street by that afternoon. Withrow replied that he did not see how that could happen that afternoon, but that he would meet with Cook the following morning. Cook then asked how they would go about getting the pickets off the street, and Withrow replied that one sure way was for Lockheed to stop the work. Cook said that he could not do that because it was a Navy-funded job.

On April 3, 1978, Lockheed posted a sign on gate A which said, "This gate is reserved for employees of Supreme Equipment." That night, Lockheed changed the sign by adding the phrase "and its suppliers and contractors."[6] Assistant Manager of Labor Relations Cook notified Lockheed security officers as well as Supreme that gate A had been reserved for the exclusive use of Supreme and its suppliers and subcontractors. The physical configuration of Lockheed's facility made it relatively easy for the Lockheed security force to see to it that Supreme and its suppliers and subcontractors only used the reserved gate. Building 182 is located within a security corridor on Lockheed's premises.[7] There are approximately 15 entrances to that corridor, and the entire area is surrounded by either building walls or fences. The entrances are either closed or manned by security officers. All people entering the security area must wear indentification badges, and the identities of Supreme's employees, suppliers, and contractors can be easily ascertained.

At 10 a.m. on April 4, 1978, Union Representatives Withrow of the Council, Rogers of the Sheet Metal Workers, Fenton of the Iron Workers, Baxter of the IBEW, and Gadano of another union met in the plant with Lockheed's assistant manager of labor relations, Cook, senior labor relations specialist, Powell, and manager of general procurement, Gervais. Cook asked the union representatives what it would take to get the pickets off the street, and Withrow replied, "You could stop the work." Fenton then said, "Of course, we know we can't ask you to do that." Cook described gate A and asked whether the union representatives would use it. He also told them that if they would not agree to use gate A, there was another gate that could be used for the same purpose. None of the union representatives responded. Cook suggested that they inspect the gates. Baxter, Fenton, and Rogers then accompanied Cook and Powell on a tour of the gates. They visited gate A and then visited gate 150 (referred to as gate F)[8] which was the alternate gate suggested by Cook. Gate F is located on the

[1] That gate is referred to, on G.C. Exh. 5, which is a map of Lockheed's facility, as gate A.

[2] Iron Workers Business Representative Fenton admitted in his testimony that the Iron Workers was responsible for the picketing.

[3] Those locations are marked on plant map, G.C. Exh. 5, as B, C, D, and E.

[4] Counsel admits and I find that Withrow is an agent of the Council.

[5] In August 1977 Lockheed's manager of labor relations, Cahill, met with Withrow and IBEW Business Manager Baxter concerning a complaint that Lockheed was using a nonunion electrical contractor. At that meeting Cahill explained Lockheed's position with regard to a Government requirement that low bids on contracts had to be accepted from qualified employers. Withrow responded, "I believe you have made yours and the Company's position completely clear. And I must tell you that if awards are continued to be made to employers who are not represented, we have no alternative but to take all legal courses that we have access to. And it will be a great deal of harassment and additional cost to you, the Company." Withrow testified that he did not attend any such meeting and that he did not make any such a remark. Baxter corroborated Withrow's testimony. Cahill averred that Withrow was at the meeting and did make that remark. I credit Cahill.

[6] There was some confusion in the testimony concerning the date of the change. I credit the testimony of Powell to the effect that it was changed the night of April 3.

[7] The security corridor is shown on G.C. Exh. 12.

[8] This gate is designated gate F on the map of the plant, G.C. Exh. 5.

southwest corner of the security corridor, roughly 800 yards from building 182. From gate F only the top of building 182 is visible. After the inspection Withrow and some of the other union representatives met again with Cook. Cook asked them to choose one of the gates, and none of them answered. Cook asked them whether they would remove the pickets from the streets, and Fenton replied that they would continue to picket within the law. Cook asked whether that was a consensus, and there was no reply. As the meeting was concluding, Cook attempted to hand each of the union representatives a copy of a letter stating that gate F was to be a reserved gate for Supreme. The union representatives refused to accept the letter and asked that it be mailed to them. On the same day, Cook mailed the Council, IBEW, Sheet Metal Workers, and the Iron Workers the letter,[9] which read:

> We are informed that you have established a picket line in connection with a labor dispute that you have with Supreme Equipment Systems Corporation (herein referred to as "Supreme Equipment"), 170-53rd Street, Brooklyn, New York 11232.
>
> Inasmuch as Supreme Equipment is performing under a contract to Lockheed Missiles & Space Company, Inc. (LMSC), we have established a separate gate reserved for the use of Supreme Equipment only. Lockheed employees and all others will be directed to other entrances.
>
> This letter is to request that you limit picketing to the following entrance reserved for Supreme Equipment employees:
>
> "The north side of the intersection of 11th Avenue and Jagels Road."
>
> For your convenience, we have attached a Site Plan indicating in red the reserved gate.

The gate referred to in the letter was gate F. Cook also sent a telegram to the Council and the other unions, stating: "Supreme Equipment is under contract to LMSC. We have established a separate gate (150 1/2) reserved for their exclusive use. This message is to request that you limit picketing to that gate (150-1/2), located at 11th and Jagels Road as viewed this date during our tour."[10] On April 4, after the meeting, Cook had the reserved-gate sign removed from gate A and placed on gate F. Cook also notified the security officers that the reserved gate for Supreme was to be gate F and that that gate was to be used exclusively by Supreme's employees, suppliers, and subcontractors. On the same day, Cleve Howell, Lockheed's construction engineer, told Supreme's foreman, Pelio, that Pelio and all his people who worked on the project were to use gate F. Also on April 4, Lockheed's supervisor of general procurement, Hodge, told Pelio that all Supreme suppliers and all Supreme personnel were to go through gate F and that the site had been changed from gate A. Lockheed sent a letter to the same effect to Supreme's office in New York on April 4. On April 5 Hodge spoke to Supreme's vice president of sales, Castaldo, in New York and advised him to request his people to abide by the Lockheed directive to enter and exit through the appropriate gate.

The picketing continued through April 13 at various locations on Mathilda Avenue, and there was never any picketing at gate A or gate F.

On April 5, 1978, Cook sent a second telegram to the Council and other unions, which read:

> RE: YOUR LABOR DISPUTE WITH SUPREME EQUIPMENT SYSTEMS CORPORATION, 170-53RD STREET, BROOKLYN, NEW YORK 11232
>
> THIS IS TO NOTIFY YOU THAT WE HAVE DISCOVERED THAT SUPREME EQUIPMENT SYSTEMS CORPORATION EMPLOYS INDIVIDUALS FURNISHED BY TIMESAVERS. ALTHOUGH SUCH EMPLOYEES ARE UNDER THE DIRECTION AND CONTROL OF SUPREME EQUIPMENT SYSTEMS CORPORATION WHILE ON LMSC PREMISES AND HAVE BEEN INSTRUCTED TO OBSERVE THE SEPARATE GATE RESERVED FOR THE EXCLUSIVE USE OF SUPREME EQUIPMENT SYSTEMS CORPORATION, ITS EMPLOYEES, SUPPLIERS AND SUBCONTRACTORS, WE WISH TO FORMALLY NOTIFY YOU THAT SUCH PERSONS HAVE BEEN INSTRUCTED TO USE SUCH SEPARATE GATE.
>
> THE SEPARATE GATE CONTINUES TO BE 150-1/2 AND IS LOCATED AT THE NORTH SIDE OF THE INTERSECTION OF 11TH AVENUE AND JAGELS ROAD. WE EXPECT THAT YOU WILL LIMIT YOUR PICKETING TO THAT LOCATION. SUPREME EQUIPMENT IS NOTIFIED OF THE FOREGOING.

That telegram was received by the Council on the morning of April 6.

On April 7 Lockheed Representative Cook called Council Representative Withrow on the telephone. Cook tried to arrange a meeting with Withrow, and Withrow said that they were reluctant to meet because unfair labor practice charges had been filed after the last meeting. Cook said that he still wanted to settle the differences between them. Withrow replied, "Well, I'll see what I can do. We've not finished polling all the people." Later Withrow called back and told Cook that he had not been able to consummate all the prearrangements that he felt were necessary.

On April 6, 1978, Iron Workers Business Representative Fenton was on the picket line. He saw three people come out of Lockheed building 181, which is connected to building 182, where Supreme's work was being done. Building 181 is within the security corridor, just to the west of Mathilda Avenue, where the picketing was taking place. Mathilda Avenue is a public street, and there are Lockheed buildings on both sides of that street. The three people crossed the street near the pickets and went into building 561, which is outside the security corridor and just southeast of building 181 on the other side of Mathilda Avenue. Fenton recognized one of those people as an employee of Supreme. He had seen that employee working for Supreme on April 4. Shortly thereafter the three people returned from building 562 to building 181. Fenton asked the person he had recognized whether he was an employee of Supreme, and that employee said that he was. Fenton testified that was the only person he positively identified as being an employee of Supreme. However, Fenton went on to testify:

[9] The letters were identical except for the name and address of the union to which they were sent.

[10] The Iron Workers, the Sheet Metal Workers, and the IBEW received this telegram on the morning of April 5. The record is not clear as to the date of receipt by the Council.

"April 5, there were three of them. I was on the picket line myself and I personally observed these three people walking through the area that is being picketed. And the employee who came through on the 7th was also the one that came through on the 6th." However, there is no testimony in the record that Fenton could personally identify as an employee of Supreme anyone other than the one person he saw crossing the picket line on April 6 and 7. Fenton acknowledged that he had no way of knowing whether that person originally came through the reserved gate. All he could testify to was that the person went from one Lockheed building to another across the public street.

Sometime during the first week of picketing, it was reported to Cook that Supreme people had been seen leaving through some gate other than the reserved one. Cook went to the security personnel and told them that those people had to come and go through the one gate and that all security had to do was look at the badges and passes that the people had.

Fenton of the Iron Workers directed that the picketing stop on April 13, 1978. He did that on his own and did not contact the Council. The Council did not furnish any financial assistance to the Iron Workers during the picketing. Nor did the Iron Workers receive any instructions from the Council with regard to the picketing. There is no evidence that any employee of the Council acted as a picket.

B. *Analysis and Conclusions*

1. The Council's responsibility for the picketing

Iron Workers Business Representative Fenton admitted in his testimony and I find that the Iron Workers engaged in and was responsible for the picketing that took place at Lockheed's premises from April 3 through April 13, 1978. As the Council is the only respondent in this proceeding, one threshold question that must be decided is whether the Council was jointly responsible for that picketing.

The Iron Workers, as well as a number of other craft unions, is a member of the Council. It is standard operating procedure for Lockheed to call the Council when problems arise with the crafts. That procedure was followed not only with regard to the Iron Workers but also when disputes arose with other members of the Council. Thus in August 1977, when the IBEW complained that Lockheed was using a nonunion electrical contractor, the Council as well as the IBEW met with a Lockheed representative. On that occasion Eugene Withrow, the Council's executive secretary, discussed the matter with Lockheed's manager of labor relations, Cahill. When Cahill explained Lockheed's position, Withrow replied: "I believe you have made yours and the company's position completely clear. And I must tell you that if awards are continued to be made to employers who are not represented, we have no alternative but to take all legal courses that we have access to. And it will be a great deal of harassment and additional cost to you, the Company."

When the instant dispute arose between the Iron Workers and Lockheed, Withrow was again brought into the picture. On the day that the picketing began, Lockheed's assistant manager of labor relations, Cook, called Withrow on the telephone. Cook said that Lockheed wanted to get the pickets out of the street that afternoon, and Withrow replied that he did not see any way that it could happen that afternoon. When Cook asked how they could go about getting the pickets removed, Withrow replied that Lockheed could stop the work.

Prior to the commencement of picketing, the Iron Workers sought sanction from the Council for picketing, and that sanction was granted. At all times during the picketing, the Council's name was on the picket signs.

On April 4, 1978, Withrow, together with Iron Workers Business Representative Fenton and the other union representatives, met with Cook and other representatives of Lockheed. Cook asked the union representatives what it would take to get the pickets off the street, and Withrow answered, "You could stop the work." The meeting resumed later that day, and Fenton said that they would continue to picket within the law. When Cook asked whether that was the consensus, Withrow and the other union representatives remained silent.

On April 7, 1978, Cook called Withrow on the telephone and said that he still wanted to settle the differences. Withrow responded, "Well, I'll see what I can do. We've not finished polling all the people." Later Withrow called back and said that he had not been able to consummate all the prearrangements that he felt were necessary.

The facts set forth above establish that the Iron Workers and the Council coordinated their efforts in pursuit of a common venture and that they were associated in the prosecution of a common plan or enterprise. As they were engaging in a joint venture, both the Iron Workers and the Council were responsible for the picketing. See *Construction, Shipyard and General Laborers Local 1207, AFL-CIO (Alfred S. Austin Construction Company, Inc.)*, 141 NLRB 283, 294 (1963); *United Brotherhood of Carpenters and Joiners, Local Union No. 2064 (Westra Construction, Inc.)*, 75 NLRB 881, 883, fn. 7 (1969); *Yuba, Sutter & Colusa Counties Building & Construction Trades Council, AFL-CIO (James N. Wilson)*, 189 NLRB 450, 454, fn. 14 (1971); *Building and Construction Trades Council of Monterey County (White Construction Company, Inc.)*, 201 NLRB 468, 472 (1973).

2. The legality of the picketing

In *National Association of Broadcast Employees and Technicians, AFL-CIO, Local 31 (CBS, Inc.)*, 237 NLRB 1370 (1978), the Board affirmed the rulings, findings, and conclusions contained in the Decision of Administrative Law Judge Paul Bisgyer, who held:

> At the outset, it may be appropriate to review some basic principles respecting secondary boycotts. It has long been established that, despite the literal language of Section 8(b)(4)(B),[21] its prohibitions are designed to reach only secondary boycott activities by a labor organization, leaving primary action outside the scope of this provision. Indeed, when the 1959 amendments to the Act were enacted, Congress took special care to assure that primary action was not intended to fall within the ban of Section 8(b)(4)(B) by providing that

[21] Formerly numbered Sec. 8(b)(4)(A).

"nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing. . . ." To be sure, the line between secondary and primary activity is not always clear, especially in common situs situations where more than one employer are engaged in their normal business operations at the same location. Mindful of "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,"[22] the Board devised the familiar *Moore Dry Dock* guidelines,[23] approved by the courts, to aid in determining whether the union's object was primary and therefore lawful or whether it was really secondary as being calculated to enmesh neutral employers and employees in the union's dispute with the primary employer which the Act was designed to prevent. However, the Board and the courts have cautioned that the *Moore Dry Dock* standards are only guidelines not to be mechanically applied and that, while compliance might give rise to a rebuttable inference that the picketing was primary, the totality of the evidence might reveal an underlying proscribed secondary objective and overcome the presumption.[24]

In addition to the *Moore Dry Dock* standards adopted to minimize the potential for unnecessarily involving neutrals in a primary dispute of no concern to them, the Board and courts have recognized the right of employers to designate at a common site a gate specially reserved for the exclusive use of the primary employer, his employees, suppliers, and materialmen for entry and departure, and to establish other gates for use by neutral employers, employees and others having business relationships with neutral employers.[25] Where separate gates are thus designated and legitimately maintained, the union must confine its picketing activities to the primary gate and avoid implicating neutrals by picketing the gates set aside for the neutral's sole use, or else risk violating Section 8(b)(4)(B) of the Act.[26] Of course, the integrity of the neutral gate must not be compromised by its use by primary personnel or suppliers which would result in destroying its immunity from primary picketing.[27] Moreover, the establishment of the reserved primary gate must not be at a location on the site which would impair the effectiveness of picketing to reach the primary employer and employees. For, as the Board noted in one case, "The purpose of the separate gate is to permit lawful picketing that will 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.' "[28]

In the instant case Respondent had a primary dispute with Supreme. Lockheed was a neutral secondary employer with regard to that dispute. When Supreme's employees worked on Lockheed's property, Lockheed had the right to establish a reserved gate for Supreme's employees, suppliers, and subcontractors in an attempt to isolate Lockheed's employees from the impact of the picketing.[11] Such a gate was established, but it was not honored by Respondent.

Respondent was responsible for picketing at the Lockheed facility from April 3 to April 13, 1978. Respondent had been offered an opportunity to picket at a reserved gate close to where the Supreme employees were working. That offer was rejected because the offered situs was on company property. When Respondent refused to accept the designation of the reserved gate close to the situs, Lockheed moved the reserved gate to a more distant location. However, both the first reserved gate and the second were at entrances to the security corridor of the Lockheed facility. Respondent is in a poor position to argue that the reserved gate finally selected by Lockheed was too far from the primary employees when it rejected a proposed gate that was much closer. Lockheed had offered to allow Respondent to come onto company premises to utilize the first reserved gate. Respondent has not shown what detriment it would have suffered by accepting that offer.

By April 5, 1978, gate F had been posted as a reserved gate for Supreme and its suppliers and subcontractors. Respondent was notified[12] of the reserved gate and was requested to use it for picketing. Supreme had been notified to use that gate exclusively and to have its suppliers and contractors use it. The plant guards had been notified to enforce the reserved gate. The guards were in a position to enforce it, as all people entering the gate were required to have identification badges. However, Respondent ignored the reserved gate and picketed instead on Mathilda Avenue. In effect, Respondent, through its picketing, was

[22] *N.L.R.B.* v. *Denver Building and Construction Trades Council (Gould & Preisner)*, 341 U.S. 675, 692.

[23] *Sailors' Union of the Pacific (Moore Dry Dock), supra* [92 NLRB 547]. Under this doctrine, to support an inference of primary action, (a) the picketing must be strictly limited to times when the situs of the dispute is located on the secondary employer's premises; (b) at the time of the picketing the primary employer is engaged in his 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. Since *Moore Dry Dock*, the Board has extended these standards "to picketing at the situs of a primary employer where a secondary or netural employer is engaged. . . ." *General Teamster, Warehouse and Dairy Employees Union Local No. 126 (Ready Mixed Concrete, Inc.)*, 200 NLRB 253, fn. 5; to the same effect, *Retail Fruit and Vegetable Clerks' Union, Local 1017 (Crystal Palace Market)*, 116 NLRB 856, 859.

[24] *International Brotherhood of Electrical Workers, Local Union 861 (Plauche Electric, Inc.)*, 135 NLRB 250, 255; *Northeastern Washington-Northern Idaho Building and Construction Trades Council (Northwestern Construction of Washington, Inc.), 152 NLRB 975, 980; International Union of Operating Engineers, Local Union No. 450, AFL-CIO (Linbeck Construction Corporation)*, 219 NLRB 997, 998, affd. 550 F.2d 311 (C.A. 5).

[25] *Local 761, International Union of Electrical, Radio & Machine Workers, AFL-CIO [General Electric Company]* v. *N.L.R.B.*, 366 U.S. 667.

[26] *Ibid.*

[27] *International Union of Operating Engineers, Local Union No. 450 (Linbeck Construction), supra.*

[28] International Brotherhood of Electrical Workers, Local 640, AFL-CIO (Timber Buildings, Inc.), 176 NLRB 150, 151, quoting from *Retail Fruit & Vegetable Clerks' Union, Local 1017 (Crystal Palace Market), supra*, 859; *Nashville Building & Construction Trades Council (H. E. Collins Contracting Company, Inc.)*, 172 NLRB 1138, 1140; see also *Wire Service Guild, Local 222 (Miami Herald Publishing Company*, 218 NLRB 1234, 1236.

[11] The work of Lockheed's employees is unrelated to the normal operations of Supreme. See *Local 761, International Union of Electrical, Radio and Machine Workers, AFL-CIO [General Electric Company]* v. *N.L.R.B.*, 366 U.S. 667 (1961).

[12] Respondent was sent a letter and two telegrams concerning the reserved gate. The second telegram was received on the morning of April 6, 1978.

reaching everyone other than Supreme and its contractors and suppliers.[13]

Lockheed did not post any of the gates other than the reserved one. However, in the unique situation involved here, where entrance to the security corridor was protected by walls, fences, and guards, the reserved gate could be fully effective without such additional signs. The lack of those signs did not invalidate the reserved gate. *National Association of Broadcast Employees and Technicians, AFL-CIO, Local 31 (CBS, Inc.)* 237 NLRB 1371 (1978).

Iron Workers Business Representative Fenton testified that he recognized one person to be an employee of Supreme and that he saw that person use a gate other than the reserved one. However, as is set forth in more detail above, Fenton was not in a position to testify as to whether or not that employee had entered Lockheed's premises through the reserved gate. That person was simply going from one part of Lockheed's facility to another, across a public street. In any event, there is no showing that the reserved gate was violated in other than a *de minimis* fashion. The instant case is similar to the situation in *Local 18, International Union of Operating Engineers, AFL-CIO (Dodge-Ireland, Inc.)*, 236 NLRB 199, fn. 1 (1978), where the Board held:

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

In conclusion, I find that by picketing from April 5 through April 13, 1978, at Lockheed locations other than the gate reserved for Supreme, Respondent enmeshed secondary employer Lockheed in its dispute with the primary employer, Supreme, in violation of Section 8(b)(4)(i) and (ii)(B) of the Act.

IV. THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I recommend that it be ordered to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

CONCLUSIONS OF LAW

1. Lockheed and Supreme are employers, and each is an employer, engaged in commerce and in operations affecting commerce within the meaning of Sections 2(2), (6), and (7) and 8(b)(4) of the Act.

2. The Council is a labor organization within the meaning of Section 2(5) of the Act.

3. By picketing at Lockheed's Sunnyvale facility from April 5 through April 13, 1978, at locations other than a gate reserved for Supreme and its suppliers and contractors, Respondent induced or encouraged individuals employed by Lockheed to engage in a strike or refusal to perform services and coerced and restrained Lockheed with an object of forcing or requiring Lockheed to cease doing business with Supreme, in violation of Section 8(b)(4)(i) and (ii)(B) of the Act.

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

Upon the basis of the above findings of fact and conclusions of law and the entire record in this case, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[14]

The Respondent, Santa Clara and San Benito Counties Building and Construction Trades Council, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Picketing the Sunnyvale, California, facility of Lockheed Missiles and Space Company, Inc., at places other than a gate reserved for Supreme Equipment Systems, Inc., when it has a dispute with Supreme Equipment Systems, Inc.

(b) Inducing or encouraging any individual employed by Lockheed Missiles and Space Company, Inc., or any other person engaged in commerce, or in an industry affecting commerce, to engage in a strike or a refusal in the course of his employment to perform services, where an object thereof is to force or require Lockheed Missiles and Space Company, Inc., or any other person, to cease doing business with Supreme Equipment Systems, Inc.

(c) Threatening, coercing, or restraining Lockheed Missiles and Space Company, Inc., or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is to force or require Lockheed Missiles and Space Company, Inc., or any other person, to cease doing business with Supreme Equipment Systems, Inc.

(c) Threatening, coercing, or restraining Lockheed Missiles and Space Company, Inc., or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is to force or require Lockheed Missiles and Space Company, Inc., or any other person, to cease doing business with Supreme Equipment Systems, Inc.

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

(a) Post at its business office and meeting halls copies of the attached notice marked "Appendix."[15] Copies of said notice, on forms provided by the Regional Director for Region 32, after being duly signed by its authorized representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days

[13] On March 29, 1978, Iron Workers Assistant Business Representative Neese told ironworkers who were working on another project near the Supreme project to keep their eyes open for pickets. That is another indication that the picketing was intended to reach employees of employers other than Supreme.

[14] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[15] In the event that 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."

thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Furnish said Regional Director with signed copies of the aforesaid notice for posting by Supreme Equipment Systems, Inc., and Lockheed Missiles and Space Company, Inc., if those companies are willing to post them.

(c) Notify the Regional Director for Region 32, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.