

ganda for what it is, the voters are helpless to exercise good sense in appraising it.<sup>12</sup> That is the situation herein even though the forgery and fraud was accomplished by unknown persons. The conduct of distributing to employees shortly before the polls opened fraudulent leaflets which appeared to be authentic and which could not be effectively neutralized lowered the standards of campaigning to a level so as to impair the free and informed atmosphere requisite to an untrammelled expression of choice by the employees and thereby to preclude a fair and free election. Accordingly, we adopt the Regional Director's conclusion and recommendation, and shall set aside the election in this case and order that a new election be held.

[The Board set aside the election held on March 21, 1957.]

[Text of Direction of Second Election omitted from publication.]

<sup>12</sup> *United Aircraft Corporation, supra*, at p 105, footnote 9

**International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; Merchandise Drivers Local 641, IBT; Local 506, IBT, Its Acting President Walter Adams, Its Business Agent James Snyder, and Its International Trustee Rocco F. DePerno<sup>1</sup> and Ruffalo's Trucking Service, Inc.**

**International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America; Its International Vice-President Thomas L. Hickey; and General Warehousemen's Local 852, IBT and Ruffalo's Trucking Service, Inc.**

**Local 707, Highway and Local Motor Freight Drivers, Dockmen and Helpers, International Brotherhood of Teamsters and Ruffalo's Trucking Service, Inc.**

**International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers; Local 506, IBT, Its Acting President Walter Adams, Its Business Agent James Snyder, and Its International Trustee Rocco F. DePerno and Ruffalo's Trucking Service, Inc. Cases Nos. 22-CC-2, 22-CC-3, 22-CB-3, and 22-CB-6 (formerly 2-CC-379, 2-CC-384, 2-CB-1720, and 2-CB-1763) (post 3-CB-367). January 10, 1958**

## DECISION AND ORDER

On February 8, 1957, Trial Examiner A. Bruce Hunt issued his Intermediate Report in the above-entitled proceedings, finding that

<sup>1</sup> The Board having been notified by the AFL-CIO that it deems the Teamsters' certificate of affiliation revoked by convention action, the identification of the Respondent Unions is hereby amended.

all the Respondents except Hickey had engaged in certain unfair labor practices, and recommending that they be required to cease and desist therefrom and to take certain affirmative action, as set forth in the Intermediate Report, a copy of which is attached hereto. The Trial Examiner further found that the Respondents other than Local 707 had not engaged in certain other unfair labor practices, and recommended that the complaint be dismissed with respect to such allegations. Thereafter, the General Counsel, the Charging Party, herein called Ruffalo, and the Respondents noted below<sup>2</sup> filed exceptions and supporting briefs. Ruffalo's request for oral argument is hereby denied, since the record, including the exceptions and briefs, adequately presents the issues and the positions of the parties.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Rodgers, Bean, and Jenkins].

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in these cases, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, except as modified herein.<sup>3</sup>

The General Counsel and Ruffalo except to the Trial Examiner's finding that the Teamsters, Local 506, Adams, and DePerno did not violate Section 8 (b) (1) (A) by authorizing picketing at Ruffalo's place of business, after Local 506 had lost a decertification election, with an object of compelling Ruffalo to recognize Local 506 as the statutory representative of Ruffalo's employees. They also except to his rejection of the contention that the conduct violative of Section 8 (b) (4) (A) and (B) of the Act, for which all the Respondents except Local 707 and Hickey are answerable, also violated Section 8 (b) (1) (A) under the circumstances of this case. We find merit in these exceptions.

As set forth in greater detail in the Intermediate Report, on January 19, 1956, the Board conducted a decertification election among Ruffalo's employees which Local 506 lost by an overwhelming margin. Thereafter Respondent DePerno, whom Respondent Teamsters had appointed trustee of Local 506, and Respondent Adams, whom DePerno had appointed acting president of Local 506, author-

<sup>2</sup> The International Brotherhood of Teamsters, herein called the Teamsters; Local 506; Adams; Snyder; and DePerno.

<sup>3</sup> The Trial Examiner found that Local 707 violated Section 8 (b) (1) (A) by threatening reprisals against 2 employees because they were Ruffalo employees and 1 was not a union member, and that Local 641 and Local 852 violated Section 8 (b) (4) (A) and (B) by inducing and encouraging employees of secondary employers not to unload freight from Ruffalo's trucks. No exceptions having been filed to these conclusions, we adopt them *pro forma*.

ized picketing in front of Ruffalo's place of business, by an unidentified man who was not a Ruffalo employee, with signs which on their face urged Ruffalo's employees to join Local 506.<sup>4</sup> However, Adams informed Ruffalo's president and several of its drivers that the picketing would continue until Ruffalo signed a contract with Local 506. Because of this dispute between Local 506 and Ruffalo, agents of all the Respondent Unions except Local 707, including Respondents Adams and Snyder, induced and encouraged employees of neutral employers not to unload Ruffalo's trucks. Before the election Local 506 filed a statement with the Board that it did not represent a majority of Ruffalo's employees, and there is no claim that it has ever represented a majority of such employees since that time.

Under these circumstances we find, for the reasons stated in *Drivers, Chauffeurs, and Helpers Local 639, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, AFL-CIO (Curtis Brothers, Inc.)*, 119 NLRB 232, that by authorizing picketing for recognition of Local 506 as the exclusive bargaining representative when it did not represent a majority of Ruffalo's employees, Local 506, the Teamsters, Adams, and DePerno violated Section 8 (b) (1) (A) of the Act.<sup>5</sup> Similarly, because the secondary-boycott activity violative of Section 8 (b) (4) (A) and (B), for which all the Respondents except Local 707 and Hickey are answerable, had as an object the exertion of economic pressure on Ruffalo to compel it to recognize Local 506 notwithstanding its rejection by Ruffalo's employees, we find that such secondary activity violated Section 8 (b) (1) (A) as well.<sup>6</sup>

#### ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that:

1. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; Merchandise Drivers Local 641, IBT; Local 506, IBT; Walter Adams; Rocco F. DePerno; James Snyder; and their officers, representatives, agents, successors, and assigns; shall:

a. Cease and desist from:

(1) Restraining or coercing employees of Ruffalo's Trucking Service, Inc., in the exercise of the rights guaranteed in Section 7 of the Act.

<sup>4</sup> So far as the record shows, however, the picketing did not persuade any of Ruffalo's employees to join Local 506.

<sup>5</sup> Member Jenkins concurs in the result for the reasons set forth in his concurring opinion in *Curtis Brothers, Inc.*, 119 NLRB 232.

<sup>6</sup> *Curtis Brothers, Inc.*, *supra*; *International Association of Machinists, Lodge 942, AFL-CIO (Alloy Manufacturing Company)*, 119 NLRB 307.

(2) Engaging in, or inducing and encouraging employees of Safeway Stores, Inc., or any employer (other than Ruffalo's Trucking Service, Inc.) to engage in, a strike or concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is (A) to force or require any employer or other person to cease doing business with Ruffalo's Trucking Service, Inc., or (B) to force or require Ruffalo's Trucking Service, Inc., to recognize or bargain with Local 506, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, unless Local 506 shall be certified by the Board as such representative.

b. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(1) Post in conspicuous places in their business offices, meeting halls, and all places where notices to members of Respondent labor organizations are customarily posted, copies of the notice attached hereto marked "Appendix A"; except that the Respondent International shall not be required to post such notices outside the territorial jurisdiction of the Respondent Locals.<sup>7</sup> Copies of said notice, to be furnished by the Regional Director for the Twenty-second Region, shall, after being duly signed by official representatives of the Respondent labor organizations named in paragraph numbered 1, above, and by the individual Respondents named in paragraph numbered 1, above, be posted by said Respondents immediately upon receipt thereof and be maintained by them for sixty (60) consecutive days thereafter. Reasonable steps shall be taken by said Respondents to insure that said notices are not altered, defaced, or covered by any other material.

(2) Mail signed copies of the notice attached hereto marked "Appendix A" to the Regional Director for the Twenty-second Region for posting, Ruffalo's Trucking Service, Inc., willing, at all locations where notices to Ruffalo's employees are customarily posted; and for posting, Safeway Stores, Inc., willing, at all locations where notices to Safeway's warehouse employees within the territorial jurisdiction of the Respondent Locals named in paragraph numbered 1, above, are customarily posted. Copies of said notice, to be furnished by the Regional Director for the Twenty-second Region, shall, after being duly signed by authorized representatives of the Respondent labor organizations named in paragraph numbered 1, above, and by the individual Respondents named in paragraph numbered 1, above, be forthwith returned to the Regional Director for such posting.

<sup>7</sup> In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

(3) Notify the Regional Director for the Twenty-second Region in writing, within ten (10) days from the date of this Order, as to the steps said Respondents have taken to comply herewith.

2. General Warehousemen's Local 852, IBT, and its officers, representatives, agents, successors, and assigns, shall:

a. Cease and desist from:

(1) Restraining or coercing employees of Ruffalo's Trucking Service, Inc., in the exercise of the rights guaranteed in Section 7 of the Act.

(2) Engaging in, or inducing and encouraging employees of John Sexton & Co. or any employer (other than Ruffalo's Trucking Service, Inc.) to engage in, a strike or concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is (A) to force or require any employer or other person to cease doing business with Ruffalo's Trucking Service, Inc., or (B) to force or require Ruffalo's Trucking Service, Inc., to recognize or bargain with Local 506, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, unless Local 506 shall be certified by the Board as such representative.

b. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(1) Post in conspicuous places in its business offices, meeting halls, and all places where notices to its members are customarily posted, copies of the notice attached hereto marked "Appendix B."<sup>8</sup> Copies of said notice, to be furnished by the Regional Director for the Twenty-second Region, shall, after being duly signed by official representatives of Local 852, be posted by the said Respondent immediately upon receipt thereof and be maintained by it for sixty (60) consecutive days thereafter. Reasonable steps shall be taken by said Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(2) Mail signed copies of the notice attached hereto marked "Appendix B" to the Regional Director for the Twenty-second Region for posting, Ruffalo's Trucking Service, Inc., willing, at all locations where notices to Ruffalo's employees are customarily posted; and for posting, John Sexton & Co., willing, at all locations where notices to such company's employees within the territorial jurisdiction of Local 852 are customarily posted. Copies of said notice, to be furnished by the Regional Director for the Twenty-second Region, shall, after being duly signed by authorized representatives of Local 852, be forthwith returned to the Regional Director for such posting.

<sup>8</sup> See footnote 7, *supra*.

(3) Notify the Regional Director for the Twenty-second Region in writing, within ten (10) days from the date of this Order, as to the steps the said Respondent has taken to comply herewith.

3. Local 707, Highway and Local Motor Freight Drivers, Dockmen and Helpers, International Brotherhood of Teamsters, shall:

a. Cease and desist from restraining or coercing employees of Ruffalo's Trucking Service, Inc., in the exercise of the rights guaranteed in Section 7 of the Act.

b. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(1) Post in conspicuous places in its business offices, meeting halls, and all places where notices to members of Local 707 are customarily posted, copies of the notice attached hereto marked "Appendix C."<sup>9</sup> Copies of said notice, to be furnished by the Regional Director for the Twenty-second Region, shall, after being duly signed by official representatives of said Respondent, be posted by said Respondent immediately upon receipt thereof and be maintained by them for sixty (60) consecutive days thereafter. Reasonable steps shall be taken by said Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(2) Mail signed copies of the notice attached hereto marked "Appendix C" to the Regional Director for the Twenty-second Region for posting, Ruffalo's Trucking Service, Inc., willing, at all locations where notices to Ruffalo's employees are customarily posted. Copies of said notice, to be furnished by the Regional Director for the Twenty-second Region, shall, after being duly signed by authorized representatives of Local 707, be forthwith returned to the Regional Director for such posting.

(3) Notify the Regional Director for the Twenty-second Region in writing, within ten (10) days from the date of this Order, as to the steps the said Respondent has taken to comply therewith.

IT IS FURTHER ORDERED that the complaint in Case No. 22-CC-3 be, and it hereby is, dismissed insofar as it alleges that Respondent Thomas L. Hickey has violated the Act.

<sup>9</sup> See footnote 7, *supra*.

## APPENDIX A

NOTICE TO ALL OUR OFFICERS, AGENTS, REPRESENTATIVES, AND MEMBERS,  
AND TO ALL EMPLOYEES OF RUFFALO'S TRUCKING SERVICE, INC., AND  
SAFEWAY STORES, INC.

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify you that:

WE WILL NOT restrain or coerce the employees of Ruffalo's Trucking Service, Inc., in the exercise of the rights guaranteed

in Section 7 of the Act, including the right to refrain from engaging in any or all of the activities guaranteed thereunder.

WE WILL NOT engage in, or induce or encourage the employees of Safeway Stores, Inc., or any employer (other than Ruffalo's Trucking Service, Inc.) to engage in, a strike or concerted refusal in the course of their employment to manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services where an object thereof is (A) forcing or requiring any employer or other person to cease doing business with Ruffalo's Trucking Service, Inc., or (B) forcing or requiring Ruffalo's Trucking Service, Inc., to recognize or bargain with Local 506, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, unless Local 506 shall be certified by the Board as such representative.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,  
CHAUFFEURS, WAREHOUSEMEN AND HELPERS  
OF AMERICA,

*Labor Organization.*

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

MERCHANDISE DRIVERS LOCAL 641, IBT,  
*Labor Organization.*

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

LOCAL 506, IBT.

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

WALTER ADAMS, *Acting President, Local 506.*

Dated \_\_\_\_\_ By \_\_\_\_\_  
(WALTER ADAMS)

ROCCO F. DEPERNO, *Trustee, Local 506.*

Dated \_\_\_\_\_ By \_\_\_\_\_  
(ROCCO F. DEPERNO)

JAMES SNYDER, *Business Agent, Local 506.*

Dated \_\_\_\_\_ By \_\_\_\_\_  
(JAMES SNYDER)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

## APPENDIX B

NOTICE TO ALL OUR OFFICERS, AGENTS, REPRESENTATIVES AND MEMBERS  
AND TO ALL EMPLOYEES OF RUFFALO'S TRUCKING SERVICE, INC., AND  
JOHN SEXTON & Co.

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, you are notified that:

WE WILL NOT restrain or coerce the employees of Ruffalo's Trucking Service, Inc., in the exercise of the rights guaranteed in Section 7 of the Act, including the right to refrain from engaging in any or all of the activities guaranteed thereunder.

WE WILL NOT engage in, or induce or encourage the employees of John Sexton & Co. or any employer (other than Ruffalo's Trucking Service, Inc.) to engage in, a strike or concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services where an object thereof is (a) to force or require any employer or other person to cease doing business with Ruffalo's Trucking Service, Inc., or (b) to force or require Ruffalo's Trucking Service, Inc., to recognize or bargain with Local 506, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, unless Local 506 shall be certified by the Board as such representative.

GENERAL WAREHOUSEMEN'S LOCAL 852, IBT,  
*Labor Organization.*

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

## APPENDIX C

NOTICE TO ALL OUR OFFICERS, AGENTS, REPRESENTATIVES AND MEMBERS  
AND TO ALL EMPLOYEES OF RUFFALO'S TRUCKING SERVICE, INC.

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, you are notified that:

WE WILL NOT threaten employees of Ruffalo's Trucking Service, Inc., with bodily harm or other reprisal or in any other manner

restrain or coerce employees of Ruffalo's Trucking Service, Inc., in the exercise of their rights to engage in, or to refrain from engaging in, any or all of the concerted activities guaranteed in section 7 of the Act.

LOCAL 707, HIGHWAY AND LOCAL MOTOR  
FREIGHT DRIVERS, DOCKMEN AND HELPERS,  
I. B. T.,

*Labor Organization.*

Dated----- By-----  
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

Upon charges duly filed, complaints alleging unfair labor practices in violation of the National Labor Relations Act, 61 Stat. 136, herein called the Act, were issued and served by the General Counsel along with an order consolidating the cases and notice of hearing thereon. Answers were filed by the Respondents which are: International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, herein called the Teamsters; its affiliates, Local 506; Merchandise Drivers Local 641, General Warehousemen's Local 852, and Local 707, Highway and Local Motor Freight Drivers, Dockmen and Helpers, herein respectively called Local 506, Local 641, Local 852, and Local 707; and individuals named Walter Adams, James Snyder, Rocco F. DePerno, and Thomas L. Hickey. A hearing was held upon due notice at New York, New York, on various dates between October 9 and 24, 1956, inclusive, before the duly designated Trial Examiner. The allegations of the complaints, denied by the answers, in substance are that: (1) During February 1956 and thereafter, the Teamsters, Local 506, Adams, Snyder, and DePerno caused pickets to patrol at the premises of Ruffalo's Trucking Service, Inc., herein called Ruffalo, in Newark, New York, for the purpose of forcing Ruffalo to recognize Local 506 as the exclusive representative of certain of Ruffalo's employees and to enter into a collective labor agreement with Local 506 notwithstanding the fact that Local 506 was not the representative of such employees at times material, and that by the economic coercion of the picketing said Respondents restrained and coerced employees of Ruffalo in violation of Section 8 (b) (1) (A) of the Act; (2) during February 1956, all of the Respondents except Local 707 induced or encouraged the employees of certain employers to engage in concerted refusals in the course of their employment to handle goods or commodities with the objects of forcing or requiring (1) the employers to cease doing business with Ruffalo and (2) Ruffalo to recognize or bargain with Local 506 as the representative of certain of Ruffalo's employees although Local 506 had not been certified as such representative under the provisions of Section 9 of the Act, and that said Respondents thereby violated Section 8 (b) (1) (A), (4) (A), and (4) (B) of the Act; and (3) during February 1956, Pasquale "Buck" Perrotta, an agent of Local 707, accompanied by unnamed agents, threatened to inflict bodily harm and injury upon Clarence LaMore, an employee of Ruffalo, and to take away the union book of an unnamed Teamsters member who was assisting LaMore in the performance of work for Ruffalo, in violation of Section 8 (b) (1) (A) of the Act. At the hearing Local 707, which had filed an answer, did not enter an appearance. All other parties were represented by counsel. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence pertinent to the issues, to argue orally upon the record, and to file briefs and proposed findings and conclusions. Briefs were received from Ruffalo and all Respondents except Locals 641 and 707. The motion by certain Respondents to strike the complaints against certain Respondents are disposed of in accordance with the deter testimony of Stanley Seeman is hereby granted. The motions to dismiss the complaints against certain Respondents are disposed of in accordance with the determinations below.

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

#### FINDINGS OF FACT

##### I. THE BUSINESS OF RUFFALO

Ruffalo's Trucking Service, Inc., a New York corporation having its principal office and place of business at Newark, New York, is engaged in the business of motor freight transportation in New York, New Jersey, and Pennsylvania. During the year 1955, Ruffalo's revenue exceeded \$250,000, of which more than \$150,000 represented services performed in interstate commerce. I find that Ruffalo is engaged in commerce within the meaning of the Act.

##### II. THE RESPONDENTS

Locals 506 and 641, with offices in Auburn, New York, and Jersey City, New Jersey, respectively, and Locals 707 and 852, with offices in New York City, are affiliates of the Teamsters, and said Locals and their parent organization are labor organizations within the meaning of Section 2 (5) of the Act. Local 506 functions under a trusteeship with DePerno as trustee under the jurisdiction of the president of the Teamsters. Adams and Snyder are acting president and business agent of Local 506, respectively. Hickey is a vice president of the Teamsters.

##### III. THE UNFAIR LABOR PRACTICES

###### A. The dispute between Ruffalo and Local 506

In a Decision and Direction of Election dated December 29, 1955, in *Ruffalo's Trucking Service, Inc.*, 114 NLRB 1549, a decertification proceeding, there appear a number of facts relating to Ruffalo and Local 506. It is recited, *inter alia*, that on July 14, 1955, sometime after the filing of charges by Local 506, a settlement agreement was executed in which Ruffalo agreed to bargain collectively with Local 506, that subsequent negotiations were unfruitful, that on August 17 a decertification petition was filed, and that on September 23 the Regional Director for the Third Region closed the complaint case after he concluded that Ruffalo had complied with its obligations under the settlement agreement and that Local 506 had "evidenced a lack of good faith in consummating a contract." One of Local 506's principal contentions in the decertification proceeding was that the settlement agreement constituted a bar to the petition because Local 506 was "in the same position as a certified union, and a reasonable time, i. e., one year should be permitted the parties within which to agree on a contract." The Board resolved that issue adversely to Local 506, holding that the settlement agreement was not "equivalent to a certification" and that, under the circumstances of the case, a reasonable period for bargaining had elapsed. The Board directed an election, the outcome of which is set forth below. In the instant proceeding Local 506 took issue with the Board's determinations in the decertification case. Those determinations are binding upon me.<sup>1</sup>

During 1955, Ruffalo's operations in New York City were interrupted for a period of months.

###### B. Events during 1956

At times material, Ruffalo had a contract with Local 707 pursuant to which that Respondent supplied a "city man" or helper to assist the driver of each of Ruffalo's trucks when making deliveries in New York City and adjacent territory. Ruffalo did not have such a contract with Local 641 covering its operations in the Jersey City area, but it was Ruffalo's practice to hire members of the Teamsters when Ruffalo made deliveries in the northern New Jersey and New York City areas. As will be seen, Locals 641 and 707 took steps to prohibit their members' accepting employment with Ruffalo. We do not have an issue in this proceeding concerning the validity of those steps *per se*.

On January 6, 1956, Local 506 filed a motion to vacate the Direction of Election, conceding that it did not then represent a majority of Ruffalo's employees in the appropriate unit. On January 9, Nicholas A. Santino, Ruffalo's president, telegraphed Hickey, a Respondent, and Vincent Doyle, president of Local 707, stating his intention of resuming operations in New York City and asking if Local 707

<sup>1</sup> At the hearing Local 506 also asserted that its majority status was dissipated by continuing unfair labor practices. I sustained objections to questions designed to develop matters which had occurred prior to the Decision and Direction of Election.

would service Ruffalo's trucks. There was no response. On January 11 Santino tried to reach Doyle and Hickey by telephone and, being unsuccessful, he telephoned "Buck" Perrotta who acted as the head of the shapeup<sup>2</sup> of Local 707 members at a particular location in New York City. Perrotta said that he would try to contact Hickey and Doyle and that he would communicate with Santino. He did not contact Santino, however. On January 12 Santino, unable to reach Perrotta, called Charles Benanti, a member of Local 707 with whom Santino had dealt during 1955 concerning the assignment of Local 707 members as helpers on Ruffalo's trucks. Benanti said that he would talk with Perrotta and thereafter call Santino, but Santino did not hear from him. On or about January 13, Santino reached Doyle by telephone. Doyle said that he was unable to assign members of Local 707 to work on Ruffalo's trucks because of instructions from Hickey.<sup>3</sup>

On January 19, the election was held. There were 3 votes in favor of representation by Local 506, 17 votes against, and 1 challenged ballot. Picketing of Ruffalo's place of business, which had been sporadic became more regular. It was ineffective and was engaged in by a lone man, unidentified, who had on the front and rear of his parked automobile signs which read:

**THIS IS AN ORGANIZATIONAL PICKET LINE.**

Join our Union and enjoy Union conditions,  
Ruffalo Trucking.

According to Local 506, the picketing was for organizational purposes only. According to the General Counsel, Local 506's objective in picketing and in its other activities described herein was to obtain a contract with Ruffalo regardless of its lack of majority status.

On February 3 Clarence LaMore, a driver for Ruffalo who was not a member of the Teamsters, was in New Jersey preparatory to making deliveries for Ruffalo. In line with the practice of employing a helper, he hired John Hild, a member of Local 641. At a warehouse of Safeway Stores, Inc., herein called Safeway, in South Kearney, New Jersey, LaMore and Hild were faced with a delay because of the number of trucks in line ahead of them, and they decided to make another delivery elsewhere. As they prepared to leave, Adams and Snyder of Local 506 approached Hild. Adams asked if Hild was a member of Local 707, and Hild answered that he was a member of Local 641. Adams identified himself and asked to see Hild's union book. As Adams made notations of data therein, Hild asked the reason, and Adams said that Ruffalo was "on strike." Hild turned to LaMore and asked if that were true, and LaMore answered that the strike had been settled. As Adams went to one of Safeway's telephones, Hild told LaMore that they should remain at Safeway until the matter was settled. Hild and LaMore followed Adams. Presently Adams, while engaged in a telephone conversation, turned to Hild and said that Hickey wished to speak with him. Hild, who was not acquainted with Hickey, was asked by a man at the other end of the telephone line to identify himself. Hild gave his name and local union number. He was asked if he was working on the Ruffalo truck, and he answered in the affirmative. He was told that Ruffalo was "on strike," and he answered that he was waiting to hear from a representative of Local 641. Hild then gave the telephone back to Adams. For the reasons set out in footnote 4, I find that Hild talked with Hickey. Somewhat later Harold Swigon, a Safeway employee who was a shop steward for Local 641, told Hild that George Lonergan, a business agent of that Respondent, was coming to the warehouse. Before Lonergan's arrival, both LaMore and Hild talked by telephone with Santino who was at Ruffalo's place of business, and Hild gave Santino the name of Swigon as a person whom Santino might call. Santino placed a person-to-person call to Swigon, who identified himself as a shop steward and said that Adams and Snyder had stopped Ruffalo's "trucks from unloading" and that an "official" was en route to the warehouse to "straighten the matter out." After Lonergan's arrival, he talked privately with Adams and Snyder, but Hild heard him say to Adams that Local 641 did not know that Local 506 was on strike against Ruffalo and that "You people should have let us know." Charles Halpern, a truckdriver for Safeway who was Local 641's chief steward at the

<sup>2</sup> This term is applicable to the practice whereby unemployed persons gather at a central location to make themselves available for any job opportunities which develop.

<sup>3</sup> These findings are based upon the uncontradicted testimony of Santino, a witness for the General Counsel. The Respondents did not call any witnesses in their behalf and the only Respondent to testify is Adams, who was called by the General Counsel as an adverse witness.

warehouse, spoke to Safeway's employees on the unloading platform, saying, "Don't take anything off Ruffalo's truck." Lonergan told LaMore to "take that truck and get out of there." Lonergan told Hild that he did not think Ruffalo would "be able to get unloaded" at Safeway, saying also something to the effect that Hild should not accept further employment from Ruffalo and that Hild should inform fellow members of Local 641 at their shapeup not to accept such employment until the dispute was settled. The truck was not unloaded and LaMore drove it away. Adams left for his headquarters in Auburn, New York.<sup>4</sup>

On February 6 LaMore returned to Safeway. He was accompanied by a helper whose name he could not recall. At the unloading platform another man, whom LaMore identified only as a steward, asked the helper to produce his union book in order to establish that he was a member of the Teamsters, but the helper said that he had left his book at home. While the person identified by LaMore as a steward left to make a telephone call for the purpose of ascertaining if the helper was a member of the Teamsters, Chief Steward Halpern walked over to LaMore and said that LaMore would "have to pull [the truck] out" because "This man hasn't got a book." As LaMore was driving the truck from the premises, he saw Santino who told him to wait. Santino was accompanied by a man whose name Santino could not recall at the hearing but whom he identified as "Biff" and as an acquaintance "for quite a few years" whose name appears in Ruffalo's office records.<sup>5</sup> Santino went to the warehouse and a guard arranged for him to talk with Halpern, who said to Santino that he had talked with Adams and Snyder on February 3 and that he could not unload the truck because of Ruffalo's dispute with Local 506. Santino spoke of the representation case before the Board, and Halpern countered with the remark that the helper did not have a union book. Santino said that Biff could be the helper if Halpern was concerned about union qualifications, but Halpern rejected the suggestion, saying that the truck would not be unloaded until the dispute was settled. Halpern proposed that Santino see Ken O'Connor, secretary of Local 641. Santino and Biff went to the offices of that union where they talked with O'Connor who said

<sup>4</sup>The findings concerning events at Safeway are based upon the testimony of Hild, LaMore, and Santino, witnesses for the General Counsel. As recited in footnote 3, the Respondents did not offer testimony. Snyder, Lonergan, Hickey, Swigon, and Halpern were not witnesses. Adams, called by the General Counsel as an adverse witness, gave unconvincing testimony. He testified that: He had been in New York City for 2 days on business and decided to go with Snyder for an automobile ride in New Jersey; by chance he saw the Safeway warehouse and decided to solicit Safeway's aid in trying to organize Ruffalo's employees; he and Snyder talked with a man whose name and business title he could not recall, but who identified himself as being in charge of the warehouse; he asked the man to cease doing business with Ruffalo, and the man said that he would look into the matter and let Adams know but did not do so; he and Snyder returned to his automobile where he busied himself with some "book work"; presently he noticed that there was a Ruffalo truck on the premises; the truck was leaving, and LaMore, the driver, stopped the truck and initiated a conversation with him; he identified himself to Hild and asked if Hild was a member of Local 707, to which Hild responded that he was a member of Local 641, whereupon he took Hild's name and book number; he went to a telephone and called the office of Local 707 in New York City, and talked with someone whose identity he did not learn, informing the unidentified person that "there was a driver over there [at Safeway] with a 641 driving the truck"; the person asked to speak with Hild, and he put Hild on the phone. Adams testified further that: He did not leave Safeway's premises promptly after the telephone conversation as there was "something wrong" with the automobile which required "monkeying" or "tinkering"; while he was in the automobile a steward came and asked, "What is the trouble here?"; to which he replied that he would not discuss the matter with anyone other than a representative of management; Lonergan arrived soon and came to the automobile, asking why Adams was there, and he replied that he had asked the manager not to use Ruffalo's services; Lonergan did not reply to that remark, but he and Lonergan discussed the fact that he "was up there trying to organize them." Adams' unsupported testimony, contradicted in part by that of Hild and LaMore, is incredible. With respect to Hild's portion of the telephone conversation, in view of Adams' statement to Hild that the other party to the conversation was Hickey, coupled with Hickey's failure to testify, I find that it was Hickey who talked with Hild.

<sup>5</sup>Biff was not a witness. According to the General Counsel, Biff was a rank-and-file member of the Teamsters named Buffano. According to the testimony of Santino and LaMore, Biff obtains frequent employment from truckdrivers, acting as their helper in unloading at American Stores, Inc., an employer mentioned below.

that he would not "recognize" Ruffalo in the territory of Local 641 because he was obligated to DePerno. O'Connor said to Biff: "From now on, until you get further instructions, you don't unload any of Ruffalo's trucks, and pass the word on to the other shapers." Later that day, Santino returned to Safeway where he talked with representatives of management and it was agreed that an effort to deliver would be made the next day.

On February 7 LaMore drove to Safeway's warehouse with Hild, who had agreed to work as a helper upon condition that the dispute was settled. Swigon, the shop steward, told Hild that he was unaware of any settlement. Hild telephoned the office of Local 641 and talked with Loneragan, asking if the dispute had been settled. Loneragan replied, "No, not yet. Don't you people be working them trucks until we get it settled." Hild turned to LaMore and said that he could not work on the truck. LaMore talked with Santino, Attorney Martino, one of Ruffalo's counsel, and Maurice O'Connor, warehouse superintendent, who were present, following which LaMore backed the truck to the platform. Chief Steward Halpern told Maurice O'Connor not to accept the goods until Halpern approved. Halpern also directed employees of Safeway not to unload the truck. It was not unloaded.

Early on February 8, Adrian Bouwens, a truckdriver for Ruffalo, drove to a warehouse of American Stores, Inc., which is located a few blocks from Safeway's warehouse. Bouwens, alone and tired, parked his truck and went to sleep. He was awakened by Biff who, apparently seeking employment, asked if Bouwens had arranged for a helper to unload the truck. Bouwens answered that he had anticipated hiring someone at American Stores. Biff then asked if the truck was owned by Ruffalo and, upon Bouwens' affirmative reply Biff said that he was pretty sure that freight from Ruffalo was not being received at American Stores. Biff said too that the shop steward was waiting to see Bouwens, and he directed Bouwens to a man on the loading dock. Biff did not give Bouwens the man's name, nor did the man himself tell Bouwens his name or that he was the shop steward. The man told Bouwens that freight from Ruffalo would not be accepted while the labor dispute existed. Bouwens expressed the opinion that the dispute had been settled and, according to Bouwens, the man said that he would have to communicate with "the union hall or somebody," following which the man made a telephone call and then drove away in an automobile. Upon the man's return, Bouwens asked if he had learned anything and he answered in the negative. Later another man<sup>6</sup> told Bouwens to move truck if it was not to be unloaded. Still later the first unidentified man told Bouwens that the truck could not be unloaded. Bouwens departed.<sup>7</sup>

On the same day, February 8, Santino and Attorney Martino called upon Doyle, Local 707's president. In their discussion, Santino asserted that Local 707's refusal to assign helpers to Ruffalo's trucks in New York City was a breach of the contract between that union and Ruffalo, and Doyle said that assignments would be made if Ruffalo were not being picketed. Later that day Santino talked with Doyle by telephone, and Doyle said that Perrotta would not take any steps to have Ruffalo's trucks unloaded because Hickey had not given approval. That evening Martino talked by telephone with Attorney Walsh, counsel for Local 506, which had been suggested by Doyle. Martino told Walsh that Doyle had proposed that representatives of Ruffalo and Local 506 meet to discuss a contract, but Martino and Walsh agreed that it would be inappropriate to do so in view of the outcome of the election. Walsh said that he would try to reach DePerno, following which he would telephone Martino, but Martino did not receive a call from him.

On February 17 the Board issued a Supplemental Decision and Certification of Results of Election, overruling objections to the election which had been filed by Local 506 and certifying that Local 506 was not the exclusive representative of

<sup>6</sup> Bouwens gave this man's name as "Eisenroh" and testified that he thought that the man was "receiving clerk or some official from American Stores." The General Counsel's attempt to refresh Bouwens' recollection by using the name "Aisenberry" for "Eisenroh" was unsuccessful.

<sup>7</sup> The findings concerning the events at American Stores are based upon the testimony of Bouwens. Biff and the other unidentified persons were not witnesses. Bouwens testified that he had known Biff over a period of years in which he had made deliveries to American Stores, but that he did not know Biff's name. Bouwens testified also, with respect to the man whom Biff called a shop steward, that upon earlier visits to American Stores he had seen the man "walking around there" but "didn't know who he was," that on February 8 he did not see the man engaged in work, and that upon a subsequent visit or visits he did not see the man. As appears above, the General Counsel believed Biff's name to be Buffano and the records of Ruffalo will identify him. Nevertheless, Biff was not called as a witness to identify the man whom Bouwens regarded as a steward.

Ruffalo's employees. On February 21 Martino telephoned Doyle, asking if Doyle would permit members of Local 707 to be helpers on Ruffalo's trucks in New York City in view of the Supplemental Decision. Doyle replied that he could not do so until the matter was settled with Hickey. Martino then called Hickey, who said that Ruffalo could not operate in the metropolitan area of New York City until it had signed a contract with Local 506. Martino related his conversation with Attorney Walsh, but Hickey said that he could not understand Walsh's agreement with Martino that it would be inappropriate to discuss a contract. Hickey said also that he would talk with DePerno and Walsh and that Martino should call him again in 3 days. On February 24 Martino telephoned Hickey who said that he had been unable to reach DePerno and Walsh and that Ruffalo would be unable to operate in New York City until DePerno informed him that Ruffalo was "no longer on [Local] 506's list." Hickey said also that he would telephone Martino later, but he did not do so.<sup>8</sup>

On February 29, LaMore was scheduled to make deliveries for Ruffalo. Near the New Jersey entrance to the Holland Tunnel where helpers congregated in search for employment, LaMore hired an unidentified man who had a union book in a local other than Local 707. LaMore proceeded to the place of business of Regal Foods in New York City. There he saw Perrotta of Local 707 and two unidentified persons. Perrotta said to LaMore: "There are too many of you fellows coming into the city down here. We will put a few of you in the hospital and you won't be coming in here delivering any more." LaMore did not answer. Perrotta also spoke to the helper, saying that he would have the helper's union book taken away. Insofar as LaMore was aware, employees of Regal Foods were willing to accept delivery, but he departed in order to avoid trouble. LaMore telephoned Santino who told him to return to New Jersey and to telephone Santino again from there. En route, LaMore discharged the helper at Holland Tunnel.<sup>9</sup>

Following several telephone conversations, LaMore was met by Attorney Rowan, another of Ruffalo's counsel. They decided to make a delivery at the warehouse of John Sexton & Co., herein called Sexton, in Long Island City before going to Regal Foods. LaMore drove the truck with Rowan following in his automobile.<sup>10</sup> En route to Sexton, LaMore obtained a helper named LoTito who was a member of Local 707. Prior to their arrival at Sexton, however, certain developments occurred there in connection with the forthcoming delivery. Sexton's warehouse employees are represented by Local 852 and the contract between Sexton and that local provides in part that employees shall not "be disciplined for refusal to receive and handle unfair goods after the employer shall have been given 48 hours' notice by the union" that particular goods are "unfair." That morning Edward Dempsey, the shop steward and an employee, talked with an unidentified man, following which he spoke to Edward McNeil, the receiving clerk and also a member of Local 852. McNeil's duties included the assignment of platform space to trucks. Dempsey told McNeil not to accept deliveries from Ruffalo "until further orders."<sup>11</sup> Dempsey also talked with his superior, Joseph Stone, Sexton's superintendent, saying that upon the direction of Dennis Crotty, president of Local 852, he would refuse to accept delivery from Ruffalo's truck which was scheduled to arrive that morning. Stone replied that he would "check on" it. He went to Anthony Marino, the traffic manager, saying that there was merchandise enroute from Ruffalo which the "warehouse union" had been instructed not to handle and that Marino should arrange to have the merchandise delivered by another carrier. Stone next went to Sexton's branch manager, one Manley, and said that Dempsey had informed him that the "warehouse union" would not unload merchandise to be brought that day by Ruffalo. Manley told Stone to get verification. Stone telephoned Crotty and asked what the situation was that involved Ruffalo's truck. Crotty said that a strike against Ruffalo had been either authorized or recognized by Hickey and that he, Crotty, had instructed Dempsey not to accept deliveries from Ruffalo. Upon completion of the telephone conversation, Stone reported to Manley. Marino was called into the conversation. They decided, in the words of Stone, that they "were

<sup>8</sup> The findings concerning Martino's and Santino's conversations with the union officials and Attorney Walsh are based upon their uncontradicted testimony.

<sup>9</sup> The findings concerning events at Regal Foods are based upon the uncontradicted testimony of LaMore. Perrotta was not a witness.

<sup>10</sup> Rowan arranged for a police escort to join LaMore in New York. It does not appear that the escort was needed.

<sup>11</sup> McNeil testified that he was so instructed by Dempsey "a couple of hours" before Ruffalo's truck arrived.

not accepting the merchandise under his [Crotty's] ruling," but Stone did not instruct any employees to refuse to unload Ruffalo's truck and there is no evidence that Manley or Marino so instructed them. Marino made arrangements to obtain the merchandise by another carrier. When Ruffalo's truck arrived, LoTito took the bills of lading to the platform. He returned to the truck and told LaMore that it would not be unloaded. Rowan joined them and, in company with LoTito, went to the platform. Rowan asked Dempsey, in the presence of McNeil, why he had refused to accept the delivery, and Dempsey answered that he was acting upon the instructions of Crotty. Rowan, LaMore, and LoTito departed.<sup>12</sup> They went to Regal Foods and when they arrived Perrotta was absent. The shipment was unloaded. Rowan then telephoned Santino and related the events. Santino told him to communicate with Marino in order to arrange for the delivery of Sexton's merchandise<sup>13</sup> Rowan did so. The goods for Sexton were delivered by another carrier.

On March 3 or 4, several of Ruffalo's drivers and Santino talked with Adams and Snyder of Local 506 at a hotel in Palmyra, New York. The drivers asked Adams why Ruffalo was being picketed and whether the dispute could be settled. Adams responded that the picketing would continue until Ruffalo signed a contract, that Local 707 would "recognize" Ruffalo in New York City when the dispute was settled, and that until that time Hickey would continue to direct Local 707 not to assign helpers to Ruffalo's trucks. Adams said also that he would talk with DePerno, but the record does not disclose whether he did so. During April the activities in New Jersey by certain of the Respondents were enjoined. During May a stipulation was executed pursuant to which certain activities in New York City ceased. At an undisclosed time, Local 506 discontinued the primary picketing of Ruffalo at Newark, New York.

### C. Conclusions

We turn to the conclusions to be reached upon the above factual recital. Preliminarily, however, it should be borne in mind that the various refusals by Locals 707 and 641 to permit their members to accept employment with Ruffalo are not alleged as unfair labor practices. It should be borne in mind, too, that the factual recital sets forth instances in which persons who were not witnesses, in the course of conversations with persons who were witnesses, attributed certain remarks and positions to union representatives. Such instances involve hearsay. Consequently, the conclusions below are based upon the findings reiterated therewith.

#### 1. The boycott activities

This portion of the cases involves all Respondents except Local 707. With respect to the events at Safeway on February 3, 6, and 7, it is clear that Locals 506 and 641 induced employees of Safeway to refuse to accept shipments from Ruffalo. On February 3 Lonergan, business agent of Local 641, was called to the scene to resolve the question whether Ruffalo's truck was to be unloaded, and Adams and Snyder, acting president and business agent of Local 506, respectively, talked with him. They acquainted Lonergan with Local 506's dispute with Ruffalo. Thereafter Halpern, Local 641's chief steward at Safeway, told Safeway employees not to unload the truck, and it is reasonable to attribute Halpern's conduct to Lonergan's decision. On February 6 Halpern again refused to permit Ruffalo's truck to be unloaded. While at first glance it may appear that the failure of LaMore's helper to have a union book was a substantial factor in that refusal, it is clear from Halpern's conversation with Santino that he, Halpern, prevented the unloading because of Local 506's dispute with Ruffalo. On February 7 Halpern continued his activity by again telling Safeway employees not to unload Ruffalo's truck. Local 641 is responsible for the conduct of Halpern and Lonergan who were its

<sup>12</sup> The findings concerning events at Sexton are based upon the testimony of Stone, McNeil, LaMore, and Rowan. Dempsey, Crotty, and LoTito were not witnesses. As related, before Dempsey spoke to McNeil, Dempsey talked with an unidentified man. The General Counsel contended by questions of Adams that Adams was present at Sexton's on February 29, but the record will not support a finding that Adams or any other representative of Local 506 was there on that day.

<sup>13</sup> Contrary to the assertion in Local 852's brief, it appears that it was in this conversation, rather than in an earlier conversation that day, that Rowan and Santino discussed the inability to unload the truck at Sexton's warehouse.

agents. Local 506 is similarly responsible for the conduct of Adams and Snyder and, I find, their solicitation of Lonergan to induce Safeway's employees not to unload Ruffalo's truck constituted participation in such inducement.

Turning to the events of February 8 at American Stores, the proof does not sustain the alleged violations of the Act. While it is true that 2 days earlier Ken O'Connor, Local 641's secretary, told Santino that Ruffalo would not be "recognized" in the territory of that Respondent, I cannot conclude that O'Connor or any other representative of Local 641 induced employees of American Stores to refuse to unload Ruffalo's truck. There is no evidence that a union representative talked with employees of American Stores. The evidence instead is that Bouwens, Ruffalo's truckdriver, talked primarily with 2 persons, 1 of whom is "Biff" who was at most a rank-and-file member of Local 641, who was not an employee of American Stores, and who did not refuse to accept the goods from Ruffalo. The other person is the unidentified man whom Bouwens regarded as a shop steward and who refused to accept the goods, but the record will not support a finding that the man was in fact Local 641's shop steward at American Stores. (See footnote 7.)

With respect to the events at Sexton on February 29, we have seen that Crotty, president of Local 852, acknowledged to Stone, Sexton's superintendent, that he had instructed Dempsey, Local 852's shop steward, not to accept deliveries from Ruffalo. Dempsey, in turn, directed McNeil, the receiving clerk, not to accept such deliveries "until further orders." In its brief Local 852 contends that it lawfully induced Sexton, rather than Sexton's employees, not to accept delivery from Ruffalo. According to Local 852, Crotty delegated Dempsey to notify Sexton "of future refusal to unload the Ruffalo truck"; Sexton agreed and, in effect, waived the 48-hour notice provided for in the collective labor agreement; Crotty, in talking with Dempsey, intended no more than that Dempsey notify Sexton of Local 852's position; Dempsey, in telling McNeil not to accept deliveries from Ruffalo "until further orders," was referring to "further orders from Sexton"; and Ruffalo's truck was not taken to the warehouse in a bona fide attempt to make a delivery because Rowan and LaMore knew that Sexton already had agreed not to receive the merchandise from the truck. The factual situation does not support these assertions. In particular, there is no testimony by Crotty or Dempsey concerning their actions and I cannot infer that Crotty intended that Dempsey act only as a messenger to transmit to Sexton notice of Local 852's position. Moreover, it was Dempsey, not Stone or any other representative of Sexton, who directed McNeil not to accept the goods from Ruffalo, and the record dictates the conclusion that Sexton's decision that it was "not accepting the merchandise under his [Crotty's] ruling" was not an agreement to waive the notice provided for in the contract but, instead, acquiescence in Local 852's instructions to Sexton's warehouse employees not to receive goods from Ruffalo. These determinations make it unnecessary to discuss Local 852's contention that Ruffalo's truck was not taken to the warehouse in a bona fide effort to make a delivery, but it may be observed that the finding in footnote 13 disputes the contention. Since Crotty and Dempsey were acting as agents of Local 852, that Respondent is responsible for their conduct, and it is now the law that the contract between Local 852 and Sexton affords no immunity for the former's inducement of the latter's employees not to unload Ruffalo's truck. *Sand Door and Plywood Co.*, 113 NLRB 1210; *American Iron and Machine Works Company*, 115 NLRB 800.

The next question is whether certain Respondents who, insofar as the record discloses, did not induce employees not to unload Ruffalo's trucks, are to be held accountable for the conduct of Locals 506, 641, and 852. Those Respondents are the Teamsters, Hickey, a vice president of the Teamsters, and DePerno, trustee of Local 506. As recited in section II, above, Local 506 functions under a trusteeship with DePerno as trustee under the jurisdiction of the president of the Teamsters. Pursuant to the Teamsters' constitution, article VI, section 6, the trustee has full charge of the affairs and subordinate officials of Local 506 subject to the supervision of the Teamsters' president. I find that DePerno, by virtue of this direct control over the policies and operations of Local 506, and the Teamsters, by virtue of its trusteeship of Local 506, share responsibility for the unlawful conduct of that Respondent. *Otis Massey Company, Ltd.*, 109 NLRB 275, 279; *Thurston Motor Lines, Inc.*, 110 NLRB 748, 749. I find too that the Teamsters is not responsible for the conduct of Locals 641 and 852. Cf. *W. T. Smith Lumber Company*, 116 NLRB 507. I find also that the allegations of the complaint that the Teamsters and Hickey independently engaged in inducement of

employees not to unload Ruffalo's trucks have not been sustained. This is so because the case against the Teamsters must rest upon the activity of Hickey who is the only officer of that Respondent allegedly involved and as to whom there is little evidence of probative value. The hearsay evidence must be disregarded. The telephone conversation with Hild on February 3 constituted at most inducement of Hild not to work for Ruffalo, the primary employer. The telephone conversation on February 21 between Hickey and Attorney Martino was initiated by the latter in an effort to overcome Local 707's refusal to assign its members as helpers on Ruffalo's trucks, which refusal is not alleged as an unfair labor practice, and Hickey's remarks to Martino cannot reasonably be construed as an admission that Hickey had participated in inducement of employees not to receive shipments from Ruffalo. In any event, Hickey, as an officer of the Teamsters, will be bound by any order in this case against that Respondent which, for reasons given above, shares responsibility for the conduct of Local 506.

Since the objects of the above-described inducement of employees by the Teamsters, Locals 506, 641, and 852, and Adams, Snyder, and DePerno were to force (1) employers to cease doing business with Ruffalo and (2) Ruffalo to recognize or bargain with Local 506, which had not been certified by the Board as the representative of Ruffalo's employees, I find that said Respondents violated Section 8 (b) (4) (A) and (B). It is also alleged that the above-described inducement of employees constituted restraint or coercion of Ruffalo's employees in violation of Section 8 (b) (1) (A) because the inducement obstructed Ruffalo's employees in the performance of their work and caused impairment of their earnings. Insofar as I am aware, this contention has not been passed upon by the Board. A like issue was posed in *McAllister Transfer, Inc.*, 110 NLRB 1769, where it was my conclusion as Trial Examiner that such inducement of employees was not violative of Section 8 (b) (1) (A), but the Board did not pass upon the issue because it deemed "the remedy sufficient." See footnote 28 of the Board's Decision and Order at page 1783. I adhere to the views which I expressed at page 1806.

### 2. Perrotta's threats at Regal Foods

As related, on February 29, while LaMore and his helper were at Regal Foods to make a delivery for Ruffalo, he was addressed by Perrotta, the head of Local 707's shapeup. Perrotta said to LaMore that there were "too many of you fellows" coming into New York City to make deliveries and he threatened to "put a few of you in the hospital." Perrotta also threatened to have the helper's union book taken away. In view of Local 707's support of Local 506 in the latter's dispute with Ruffalo by refusing to assign members of Local 707 as helpers on Ruffalo's trucks, and in view of Perrotta's failure to testify in explanation of his conduct, it is a reasonable inference, and I find, that Perrotta was motivated by LaMore's lack of membership in the Teamsters and employment by Ruffalo. I find, therefore, that Local 707, by Perrotta's threats to LaMore and the helper, restrained and coerced employees of Ruffalo in violation of Section 8 (b) (1) (A) of the Act.

### 3. The primary picketing of Ruffalo

This portion of the cases involves the allegation that the Teamsters, Local 506, Adams, Snyder, and DePerno, by picketing Ruffalo's place of business after Local 506's loss of the decertification election, with the object of forcing Ruffalo to recognize Local 506 as the exclusive representative of the employees and to execute a contract with it, restrained and coerced Ruffalo's employees in violation of Section 8 (b) (1) (A) because of "the economic coercion of such picketing." Insofar as I can discern the reasoning of the General Counsel, inherent in it are the contentions that it is a violation of Section 8 (a) (1) by an employer, and of Section 8 (b) (1) (A) by a labor organization, when an employer and a minority union execute an exclusive recognition contract and, *ipso facto*, it is a violation of Section 8 (b) (1) (A) for a minority union to picket an employer for that objective, even if the picketing is peaceful, because of an economic threat to the employees which flows from the picketing. The problem is now pending before the Board in *Curtis Brothers, Inc.*, 119 NLRB 232; *Shepherd Machinery Company*, 119 NLRB 320; and *Alloy Manufacturing Company, et al.*, 119 NLRB 307.

As we have seen, the picketing was by Local 506, was peaceful, and was not accompanied by oral threats. Insofar as appears, it also was not accompanied by a

strike on the part of any of the three employees who had voted in favor of representation by Local 506. It was engaged in by a lone, unidentified individual whose parked automobile bore signs reading:

THIS IS AN ORGANIZATIONAL PICKET LINE.

Join our Union and enjoy Union conditions,  
Ruffalo Trucking.

According to the General Counsel, the picketing is to be characterized as "recognition picketing" because its object was to force Ruffalo to recognize Local 506 notwithstanding that local's lack of majority status. On the other hand, Local 506 asserts that the picketing was "organizational picketing," having the object of organizing the employees again as members of that local. In view of the remarks by Adams to several of Ruffalo's truckdrivers on March 3 or 4, as well as other events described herein, I find that one object of the picketing was to force Ruffalo to recognize Local 506 without regard to the matter of majority status, although another object was to induce the employees to designate that local again as their representative.

Our issue is not simply whether Local 506's objective of obtaining an exclusive recognition contract, regardless of the lack of majority status, was an unlawful objective. Nor is the issue whether one may logically characterize the peaceful picketing as restraint or coercion of employees because of the potentially adverse economic effects to flow from the picketing. The issue, instead, is whether peaceful picketing of an employer by a minority union for the objective, among others, of an exclusive recognition contract is a restraint or coercion of employees in the statutory sense. The authorities are opposed to the General Counsel's position.

The Board's determinations in various cases will be set forth. In *National Maritime Union (The Texas Company)*, 78 NLRB 971, the Board considered the legislative history of Section 8 (b) (1) (A) at length, held that a limited construction of the term "restraint or coerce" in that section was envisaged by the legislative scheme, and said at page 986:

We are mindful of the fact that the Respondents' strike had as its purpose the accomplishment of an illegal objective; but we are not prepared to say . . . that a strike for an illegal objective necessarily "restrains" and "coerces" employees, as those terms were intended to be applied in Section 8 (b) (1) (A). . . .

In *Perry Norvell Company*, 80 NLRB 225, the Board held that a strike to force an employer to recognize a minority union<sup>14</sup> as exclusive representative of employees in place of the noncertified incumbent representative<sup>15</sup> was not violative of Section 8 (b) (1) (A).<sup>16</sup> At page 239, the Board said:

. . . Section 8 (b) (1) (A) was not intended to have the broad and almost limitless reach which the General Counsel urges upon the Board. The legislative history of the Act shows that, by this particular section, Congress primarily intended to proscribe the *coercive conduct* which sometimes accompanies a strike, but not the strike itself. [Citing *National Maritime Union*.] By Section 8 (b) (1) (A), Congress sought to fix the rules of the game, to insure that strikes and other organizational activities of employees were conducted peaceably by persuasion and propaganda and not by physical force, or threats of force, or of economic reprisal. [*Ibid.*] In that Section, Congress was aiming at means, not at ends.

The Board's decision led to comments by an appropriate congressional committee which were given substantial weight by the Board in *Ekco Products Company*, 117

<sup>14</sup> While the Board did not say precisely that The Perry-Norvell Shoe Workers Committee was a minority union, the Board's discussion has significance only on that basis. In any event, the Board later resolved any doubt. See footnote 16.

<sup>15</sup> As the Board said at pages 239-240, the incumbent union "was never certified, so Section 8 (b) (4) (C) cannot be here invoked; the General Counsel, barred from invoking it by this fact, has turned to Section 8 (b) (1) (A) instead."

<sup>16</sup> In its Fourteenth Annual Report, the Board said at page 83, citing *Perry-Norvell*, "The Board also found no merit in the contention that . . . non-violent attempts by a minority to unseat an incumbent union constituted violations of section 8 (b) (1) (A)."

NLRB 137, and which are pertinent here.<sup>17</sup> In *Tungsten Mining Corporation*, 106 NLRB 903, the Board held that a strike by a minority union to displace a union which enjoys a certified status is not violative of Section 8 (b) (1) (A). In *Ira A. Watson Company*, 80 NLRB 533, a union's organizational efforts were so unsuccessful that none of the employees joined it, following which it made a demand upon the employer that he execute a closed-shop contract and, upon the employer's refusal, it engaged in peaceful picketing. The Board held that the picketing was not in violation of Section 8 (b) (1) (A).<sup>18</sup> In *Miami Copper Company*, 92 NLRB 322, a minority union threatened an employer with strike action, and engaged in such action, to successfully force the employer to adjust grievances of individual employees outside the presence of the majority representative; but, said the Board at page 324:

. . . the fact that the Union's conduct caused the Employer to violate a statutory right of the employees is not sufficient, in our opinion, to bring that conduct within the limitations which the legislative history requires we place on Section 8 (b) (1) (A).

In *The Higbee Company*, 97 NLRB 654, a union whose majority status was in doubt picketed for the purpose of inducing employees to withdraw a decertification petition. The Board, without deciding whether the union possessed majority status, held that the conduct was not violative of Section 8 (b) (1) (A).

In some of the above cases there was strike action accompanied by picketing. In *Watson Company* and *Higbee Company*, as in the instant case, there was picketing only, but that difference was not advanced by the Board as significant although, it may be observed, minority strike action can have a greater impact upon non-strikers than picketing as, for instance, when there is a strike by a few key employees upon whose work the flow of production depends. In any event, if a union has the right to strike and to picket in such circumstances, it has the right to picket without calling its members out on strike. These cases, of which *Perry Norvell* is particularly apposite, furnish a consistent line of authority which is dispositive of the issue here. They hold, in effect, that a minority union which engages in a peaceful strike or picketing for the objective set forth does not restrain or coerce employees in the statutory sense. The early decisions among those cases, by lengthy references to the legislative history, show why this is so. Nevertheless, it may be helpful to examine cases wherein a majority union sought an invalid union-security contract, which may be analogous to our case where a minority union sought an exclusive-recognition contract. In *Kanawha Coal Operators' Association*, 94 NLRB

<sup>17</sup> In Report of the Joint Committee on Labor-Management Relations, No. 986, part 3, 80th Cong., 2d sess., at page 85, there is comment upon the Board's determination, and at page 71 it is said:

. . . The right to strike for recognition is only foreclosed when another labor organization has been certified as the bargaining representative.

A labor organization may lose an election in which it was the only union on the ballot and the next day call a *legal strike* to force the employer to recognize it as the bargaining agent for those employees who have just rejected it. . . . [Emphasis added.]

\* \* \* \* \*

Present law in no way limits the primary strike for recognition except in the face of another union's certification. . . .

The views of certain members of the Joint Committee are expressed in S. Rept. 374, 81st Cong., 1st sess., at page 50, as follows:

In a section of its final report, captioned "Strikes for Recognition" (pp. 70-72), the Ball Committee determines against recommending the prohibition of such strikes beyond the present prohibition of strikes against the recognition of unions which have been certified. We agree that no such further prohibition is warranted, not only for the reasons stated in the Ball report, that section 9 (c) (3) of the Taft-Hartley Act limits elections to one per year and that long delay is entailed in NLRB election proceedings, but also for the additional reason that such a restriction would constitute further unwise Government intervention in the relations between employers and unions.

<sup>18</sup> Although the Trial Examiner's conclusion in that case, which the Board affirmed, appears to have been based upon the free speech provisions of Section 8 (c), the Board

1731, the Board held that pressure upon employees, in order to be violative of Section 8 (b) (1) (A), must be direct. In *Kogap Lumber Industries*, 96 NLRB 165, the Board held that peaceful picketing in an unsuccessful effort to compel an employer to adopt and apply a proposed contract containing an invalid union-security provision was not violative of Section 8 (b) (1) (A) because the union's conduct was directed toward the employer rather than toward the employees.<sup>19</sup> Where, however, a union and an employer execute a contract containing such a provision the union does violate Section 8 (b) (1) (A), and this is so even when the contracting parties do not intend to enforce the provision and thus do not create discriminatory conditions of employment. The reason is that the contract itself carries an "apparent threat of economic action" by the contracting union against employees who are not its members. *Monolith Portland Cement Company*, 94 NLRB 1358; *Permanente Steamship Corporation*, 107 NLRB 1111. One may conclude, therefore, that peaceful picketing of an employer by a union to secure an invalid union-security contract does not restrain or coerce employees in the statutory sense, whereas the bare existence of such a contract does restrain or coerce them in that sense, because in one instance the restraint or coercion is indirect and in the other it is direct. If this be so, and assuming, *arguendo*, as the General Counsel contends, that the execution of an exclusive-recognition contract by a minority union covering the wages, hours, and working conditions of employees is violative of Section 8 (b) (1) (A), it follows that the primary picketing of Ruffalo was not violative of that section although, if the picketing had continued and Ruffalo had yielded before Local 506 again achieved a majority status, a violation would have occurred then.

For the reasons stated, I find that the Respondents who picketed Ruffalo did not thereby violate the Act.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondents set forth in section III, above, to the extent found to have been unlawful, occurring in connection with the operations of Ruffalo described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. THE REMEDY

Having found that all of the Respondents except Hickey have engaged in unfair labor practices, I shall recommend that they cease and desist therefrom and that they take certain affirmative action designed to effectuate the policies of the Act.

Upon the basis of the above findings of fact and upon the entire record in the case, I make the following:

#### CONCLUSIONS OF LAW

1. Ruffalo's Trucking Service, Inc., is engaged in commerce within the meaning of the Act.
2. Each of the Respondent Unions is a labor organization within the meaning of Section 2 (5) of the Act.
3. By inducing and encouraging employees of Safeway or Sexton, as the case may be, to engage in a concerted refusal in the course of their employment to perform services for their respective employers, objects thereof being to force or require (1) their respective employers to cease doing business with Ruffalo and (2) Ruffalo to recognize or bargain with Local 506 which had not been certified by the Board, the Teamsters, Locals 506, 641, and 852, and Adams, Snyder, and DePerno have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (b) (4) (A) and (B) of the Act.
4. By restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, Local 707 has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Act.

cited as additional authority its Decision in *National Maritime Union*, *supra*. In the instant case, Local 506 does not advance the defense that its conduct is immunized by Section 8 (c).

<sup>19</sup> Although not a violation of Section 8 (b) (1) (A), the picketing was violative of Section 8 (b) (2).

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

6. The Respondents other than Local 707 have not engaged in unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Act.

7. The Respondent Hickey has not engaged in unfair labor practices within the meaning of Section 8 (b) (4) (A) of the Act.

[Recommendations omitted from publication.]

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**Cupples-Hesse Corporation and Independent Union of Paper Workers, Petitioner and Warehouse & Distribution Workers Union, Local 688, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.<sup>1</sup> Case No. 14-RC-3229. January 10, 1958**

### SUPPLEMENTAL DECISION AND CERTIFICATION OF REPRESENTATIVES

Pursuant to a Board Decision and Direction of Election<sup>2</sup> an election by secret ballot was conducted on September 16, 1957, under the direction and supervision of the Regional Director for the Fourteenth Region of the National Labor Relations Board among the employees in the unit therein found appropriate. Following the election, the parties were furnished a tally of ballots which showed that of approximately 364 eligible voters, 169 cast ballots for the Petitioner, 163 cast ballots for the Intervenor, 2 cast ballots for neither, and 1 ballot was challenged.

On September 20, 1957, the Intervenor filed timely objections to the election, and requested that the September 16 election be set aside and a new election directed. In accordance with the Rules and Regulations of the Board, the Regional Director conducted an investigation of the objections and, on November 6, 1957, issued his report on objections to election in which he found the objections to be without merit and recommended that they be overruled. On November 18, 1957, the Intervenor filed timely exceptions in which it does not make exception to the facts set forth in the report but only to the Regional Director's conclusions and recommendations.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Rodgers, Bean, and Jenkins].

In its first objection, the Intervenor contends that the Regional Director's refusal to hold the election off company premises was prejudicial to the Intervenor and prevented the employees casting

<sup>1</sup> The Board having been notified by the AFL-CIO that it deems the Teamsters' certificate of affiliation revoked by convention action, the identification of this Union is hereby amended.

<sup>2</sup> Not reported in printed volumes of Board Decisions and Orders.