**General Service Employees Union Local No. 73, affiliated with Service Employees International Union, AFL–CIO *and* William Witsman d/b/a Active Detective Agency *and* Certain Teed Corporation.** Cases 13–CP–353 and 13–CC–1003

January 31, 1979

## DECISION AND ORDER

On May 31, 1975, Administrative Law Judge Thomas D. Johnston issued the attached Decision in this proceeding. Thereafter, the General Counsel and the Respondent filed exceptions and supporting briefs and later filed answering briefs.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings,[1] findings, and conclusions[2] of the Administrative Law Judge, and to adopt his recommended Order, as modified herein.[3]

## 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, as modified below, and hereby orders that the Respondent, General Service Employees Union Local No. 73, affiliated with Service Employees International Union, AFL–CIO, its officers, agents, and representatives, shall take the action set forth in the said recommended Order, as so modified:

Insert the following as paragraph 2(c) and reletter the following paragraph accordingly.

"(c) Publish at its expense the terms of the notice, in a form and size approved by the Regional Director for Region 13, in a daily newspaper of general circulation in the Chicago, Illinois, area. Publication is to be made on 3 separate days within a 3-week period at a time designated by the Regional Director."

CHAIRMAN FANNING, concurring in part and dissenting in part:

I would not find that Section 8(b)(7)(C) prohibits threats by a union to picket an employer with the object of forcing or requiring that employer to recognize the union as the exclusive bargaining representative of its guard employees. See my dissenting opinion in *General Service Employees Union Local No. 73, affiliated with Service Employees International Union AFL–CIO (A-1 Security Services Co.)*, 224 NLRB 434 (1976). Nor would I find that Section 8(b)(7)(C) bars a nonguard union from engaging in any picketing to gain recognition and bargaining for a unit of guards, for the reasons set forth in my dissenting opinion in *Drivers, Chauffeurs, Warehousemen and Helpers, Local Union No. 71, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Wells Fargo Armored Service Corporation)*, 221 NLRB 1240 (1975). Further, since the Respondent herein could have lawfully engaged in primary picketing against Active, I would not find that its notification to Certain Teed, a neutral employer, of its intent to engage in such picketing violated Section 8(b)(4)(ii)(B) of the Act. In all other respects I would affirm the Administrative Law Judge's Decision and would dismiss the complaint in its entirety.

[1] The Respondent and the General Counsel have excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an Administrative Law Judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] Members Jenkins, Penello, and Truesdale agree with the Administrative Law Judge that the Respondent violated Sec. 8(b)(7)(C) of the Act. For the reasons set forth in her dissent in *General Service Employees Union Local No. 73 (A-1 Security Service Co.)*, 224 NLRB 435, 437 (1977) and *General Service Employees Union Local No. 73 (Rainey's Security Agency)*, 239 NLRB 1233 (1978), Member Murphy disagrees with this finding and would dismiss the 8(b)(7)(C) allegations of the complaint. Members Penello, Murphy, and Truesdale agree with the Administrative Law Judge that the Respondent violated Sec. 8(b)(4)(ii)(B) of the Act.

[3] Contrary to the Administrative Law Judge, Members Jenkins, Penello, and Truesdale find appropriate the General Counsel's requested remedy that the Respondent be ordered to publish a copy of the notice in a newspaper of general circulation. *General Service Employees Union Local No. 73 (Andy Frain, Inc.)*, 239 NLRB 295 (1978); *General Service Employees Union Local No. 73 (Rainey's Security Agency)* 239 NLRB 1233 (1978). Member Murphy, for reasons set forth in her dissent in *General Service Employees Union Local No. 73 (Andy Frain, Inc.)*, *supra* at fn. 2, would not require such publication.

## DECISION

### STATEMENT OF THE CASE

THOMAS D. JOHNSTON, Administrative Law Judge: These consolidated cases were heard at Chicago, Illinois, on December 5 and 6, 1977,[1] pursuant to a charge filed on September 20 in Case 13–CP–353 by William Witsman d/b/a Active Detective Agency (herein referred to as Active) and a charge filed on September 20 in Case 13–CC–1003 by Certain Teed Corporation (herein referred to as Certain Teed) and a consolidated complaint issued on September 28.

The consolidated complaint alleges that General Service Employees Union Local No. 73, affiliated with Service Employees International Union, AFL–CIO (herein referred to as the Respondent), which admits into membership employees other than guards, demanded that Active recognize and bargain with it as the collective-bargaining

[1] All dates referred to are in 1977 unless otherwise stated.

representative of the guard employees of Active and threatened to picket Active and its customers, including Certain Teed, with objects of (1) forcing Active to recognize or bargain with the Respondent as the representative of Active's guard employees in violation of Section 8(b)(7)(C) of the Act, and (2) forcing or requiring Certain Teed to cease doing business with Active and/or to force or require Active to recognize and bargain with the Respondent as the representative of its guard employees in violation of Section 8(b)(4)(ii)(B) of the Act.

The Respondent, in its answer filed on October 11, denies having violated the Act as alleged.

The issues involved are whether the Respondent violated Section 8(b)(7)(C) and Section 8(b)(4)(ii)(B) of the Act by unlawfully threatening to picket Active or its customers, including Certain Teed, for the proscribed objects alleged. An additional issue, which was raised in a motion by the Respondent at the outset of the hearing and on which ruling was deferred, was whether the contents of a conversation between representatives of the Respondent and Active were inadmissible as evidence under Rule 408 of the Federal Rules of Evidence on the grounds that the conversation was held for the purpose of settlement negotiations.

Upon the entire record in these cases, from my observation of the witnesses, and after due consideration of the briefs filed by the General Counsel, Certain Teed, and the Respondent,[2] I hereby make the following: [3]

## Findings of Fact

### I. THE BUSINESSES OF THE EMPLOYERS

Active, with its office and place of business located at Park Forest, Illinois, is engaged in the business of providing detective, security guard, and other services. During 1977, a representative period, it will, in the course of its operations, perform services valued in excess of $50,000, for employers who meet the Board's jurisdictional standards except solely the indirect outflow or indirect inflow standards.

Certain Teed, a Maryland corporation, with a facility located at Chicago Heights, Illinois, is engaged in the business of producing asphalt roofing and other materials. During 1976, a representative period, it shipped goods and materials, valued in excess of $50,000, directly from its Chicago Heights' facility to points located outside the State of Illinois.

Active and Certain Teed are each employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

### II. THE LABOR ORGANIZATION INVOLVED

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

[2] Active did not submit a brief.

[3] Unless otherwise indicated the findings are based upon pleadings, admissions, stipulations, and undisputed evidence contained in the record, which I credit.

### III. THE UNFAIR LABOR PRACTICES

#### A. *Background*

Active, which is located at Park Forest, Illinois, is engaged in the business of providing detective, security guard, and other services. Included among its official and supervisory personnel are William Witsman, the licensee and owner, Catherine Hunt, the bookkeeper and accountant, and Carl Hunt, the office manager.

By September, Active employed approximately 25 guards including both full-time and part-time guards. These guards spend their working time at Active's various accounts which are located away from its office.

Certain Teed, which is located at Chicago Heights, Illinois, is engaged in the business of producing asphalt roofing and other materials. Its plant manager is Daniel Pofelski.

Since November 1974 Certain Teed has employed security guards of Active to perform services for Certain Teed at its Chicago Heights facility.

The Respondent is a labor organization which admits into membership employees other than guards. Included among its officials and representatives are Irving Kurasch, the president, Harry Kurshenbaum, the business manager, David Loewenberg, the general counsel, Richard Wesley, a business representative, and James Myles, a business representative.

#### B. *Threats Made to Active*

On August 17 the Respondent deposited in the mail a letter addressed to Active in which it informed Active that it had reason to believe Active did not comply with area standards in the employment of guards in the area, requested Active to send to it certain information to determine whether it met such standards, and implied if Active was not complying with the area standards the Respondent would engage in area standards picketing. However, Active's bookkeeper Catherine Hunt, Owner Witsman, and Office Manager Carl Hunt all credibly denied that Active had received such letter which was sent by regular mail.

Active's bookkeeper Catherine Hunt testified that on the morning of September 15 she received a telephone call from a man who identified himself as Mr. Loewenberg from the Respondent who said he wanted to talk but did not tell her what it was about. After informing him she was busy she requested his telephone number and informed him that she would call him back. However, she then asked attorney Harvey Sussman, who represented Active, to handle the matter, furnishing him the telephone number Loewenberg gave her.

Respondent's general counsel Loewenberg did not deny having such a telephone conversation with Catherine Hunt and acknowledged that he had spoken with attorney Sussman on the telephone that day whereupon a meeting was arranged for that night.[4]

[4] Attorney Sussman did not specifically testify about the arrangements for this meeting.

Catherine Hunt further testified that that afternoon she received a telephone call from a man who identified himself as Mr. Myles from the Respondent. According to Hunt the caller told her that Harvey Sussman had called Loewenberg back and said they would set up a meeting and he was calling to find out when. Upon informing the caller that Sussman had called her and told her they requested a meeting but that it would have to be set up at Sussman's convenience, the caller again asked when. After she replied she did not know the caller said they were not going to wait forever, and if they did not have the meeting they were going to start picketing. Catherine Hunt was unable to further identify the caller.

Respondent's representative, James Myles, who was alleged to have made this telephone call, denied having made such a telephone call to Catherine Hunt. I credit his denial.

On the evening of September 15 a meeting was held in the office of attorney Sussman between representatives of the Respondent and Active. Present for Active, besides attorney Sussman, were Owner Witsman, Office Manager Carl Hunt, and bookkeeper Catherine Hunt. The Respondent was represented by business representative Wesley and general counsel Loewenberg.

Loewenberg testified that at the outset of the meeting, after informing them the Respondent had an area standards problem with Active and pursuant to attorney Sussman's inquiry, he explained what that meant, he asked whether they could have a settlement conference pursuant to the rule, and mentioned while he was not really that familiar he knew there was a Federal rule 608 or 408. When Sussman, who stated he was not a labor lawyer, denied understanding or knowing what the rule meant, Loewenberg explained it meant that any evidence or any conversation as the result of their discussions would not be admitted, he believed, in any proceedings. Sussman then mentioned that he was a personal injury lawyer, and said it was like a settlement conference to which Loewenberg agreed. Sussman then stated that he had participated in many settlement conferences and asked did that mean they were off the record, whereupon Loewenberg replied it did. According to Loewenberg, Sussman then turned to his clients and asked if they understood that it was going to be an off-the-record discussion, whereupon they all agreed. Representative Wesley corroborated general counsel Loewenberg's testimony concerning this agreement.

Attorney Sussman testified that about 10 or 15 minutes after the meeting started[5] Loewenberg asked him if this could be off-the-record to which he agreed. Sussman denied that anything else was said regarding the nature of the meeting or that any Federal rules of evidence were mentioned. Under cross-examination Sussman acknowledged that he was not familiar with Rule 408 of the Federal Rules of Evidence and denied it was his understanding that matters discussed in an off-the-record discussion were not to be used in evidence. According to Sussman he had never had a conversation with another attorney before where there was an agreement to go off-the-record and stated off-the-record settlement discussions could be used in the litigation by bringing them to the attention of the judge although juries were insulated from such discussions. Sussman explained his understanding of the request to go off-the-record was that through earlier telephone conversations that day he felt that they were engaged in something that might have been improper or illegal which Loewenberg did not want brought up later and felt he ought to protect his clients and go off-the-record if that was what Loewenberg wanted.

Both Catherine Hunt and Carl Hunt acknowledged that early in the meeting Loewenberg requested that the meeting be off-the-record, whereupon attorney Sussman agreed. Witsman, who acknowledged his memory was vague about the matter, also testified that in the early part of the meeting Loewenberg had asked Sussman whether this could be off-the-record.

Regardless of whether any Federal rule of evidence was mentioned, such evidence clearly establishes there was an agreement between the parties at the outset of the meeting, and I so find, that the conversation would be off-the-record.

During this meeting various subject matters were discussed. General counsel Loewenberg, pursuant to attorney Sussman's inquiry, informed them that the Respondent represented over 90 percent of the industry and the area standards which it required were those benefits contained in its collective-bargaining agreement with the Associated Guard and Patrol Agencies and its health and welfare program.

When Loewenberg mentioned the Respondent had sent Active a letter in August, discussed *supra*, about whether Active was complying with the area standards, Active's representatives denied having received such a letter. According to Catherine Hunt, Loewenberg told them that Active was not a union company, it was putting union companies in jeopardy by not paying local standards, and it could underbid an account.

Loewenberg, whose testimony was corroborated by business representative Wesley, informed them if they could demonstrate they were meeting area standards they would walk away. Under cross-examination both Catherine Hunt and Carl Hunt acknowledged that Loewenberg either said or could have said that if the Company could show it met area standards the Respondent would leave it alone. Catherine Hunt further stated that Loewenberg told them if they complied with their standards they would send them a letter of compliance; on another occasion she added that Loewenberg also said no one ever had or would. Loewenberg denied using such an expression.

Respondent's representatives furnished Active's representatives with a copy of the Respondent's collective-bargaining agreement with the Associated Guard and Patrol Agencies and its health and welfare program, who, in turn, furnished Respondent's representatives with a copy of the benefits Active provided for its own employees. These benefits were then compared and discussed. Differences pointed out were in the insurance benefits, whereby the Respondent's plan, unlike Active's, was noncontributory and provided for maternity benefits. There were also differences between sick leave policies; also Active did not pay for cleaning uniforms, as required by the Respondent.

[5] Attorney Sussman did not testify concerning the subject matter of the meeting itself.

However, Active also provided certain benefits for employees which the Respondent did not, such as reimbursement for certain school and travel expenses.

Witsman testified that when attorney Sussman mentioned Active was in compliance, Loewenberg responded by saying their insurance benefits did not compare with the Respondent's, and he mentioned that they did not have maternity benefits. According to Witsman upon asking that if they complied with the policy whether Loewenberg would let them off the hook. Loewenberg said they were too small and could not get that kind of policy. Loewenberg denied making the latter statement. Carl Hunt also testified that when Sussman proposed that the Respondent forget about Active because it was meeting area standards, the Respondent's representative informed them it was not meeting area standards because of maternity insurance.

Loewenberg stated that when Sussman mentioned it looked like they were meeting the area standards he denied it and told them that they were below area standards mentioning that Active's sick leave policy was discretionary and not fixed like the Respondent's, and there was a difference in hospitalization with the guards having to pay whereas their policy was noncontributory.

Catherine Hunt testified that upon asking Loewenberg why they had not contacted their employees if they wanted them to join a union, Loewenberg's response was that there was a Federal law which put guards in their own category and they could not approach the guards individually to join a union. Witsman stated that he had asked Loewenberg that question, whereupon Loewenberg replied it was impossible because it violated the Taft Hartley Act and they could not contact security guards to have an election.

Catherine Hunt stated that upon suggesting to Loewenberg that she would furnish him with a desk and he could take a vote of the employees on payday to see if they wanted a union, he informed her that he could not because it was against the law. Upon offering to take the vote herself, she stated that Loewenberg replied they would have to join the Union because they could not fight them financially since they were a small company and did not have money. Under cross-examination Catherine Hunt acknowledged that Loewenberg had informed her neither she nor he could hold an election in the office with the employees because it would be against Federal law. Both Witsman and Carl Hunt testified that they questioned Loewenberg about holding an election. According to Witsman, Loewenberg informed him it was not the proper procedure; proper procedure would be to sign a contract and give cards to the employees to fill out. Carl Hunt stated that Loewenberg told him there was some kind of law pertaining to security officers, they could not hold such an election, and they were going to have to join the Union because they were below area standards.

Both Loewenberg and Wesley denied saying that Active had to join the Union. Wesley stated that when Witsman asked why they could not sign the guards up themselves, Loewenberg replied it did not fall under the Act and made no sense.

Catherine Hunt and Carl Hunt testified that Loewenberg told them he would furnish them with cards for the employees to sign and have payroll deductions taken out. They, along with Witsman, each testified that they asked Loewenberg whether they had to fire employees who did not want to join the Union, whereupon Loewenberg told them they did. Catherine Hunt also stated that upon commenting she thought Illinois was a union shop, Loewenberg replied it would not be in security.

Loewenberg's version was that upon being asked by Witsman about the procedure regarding a contract, he informed them that he would supply cards which the employees would be expected to sign for dues checkoff; when asked by Witsman about those employees who did not want to sign, he told them they would talk to the employees and if it did not work out they would send a letter to the Company asking that the employee be terminated.

Other companies were also discussed at the meeting. Both Catherine Hunt and Witsman stated that Loewenberg had mentioned other companies had spent money fighting the Respondent but ended up by joining the Respondent. Loewenberg testified that when Carl Hunt complained about the Respondent leaving other companies alone, he mentioned that they had audited the books of one company and found there were problems about their not putting people in the Union.

Catherine Hunt testified that Witsman mentioned he was not going to bother fighting and guessed he would just have to live with the fact Loewenberg was going to close up their security accounts, whereupon Loewenberg replied all the ones he had and all the ones he may ever pick up unless they joined them. Loewenberg, whose testimony was corroborated by Wesley, denied making such statement.

Loewenberg's request to audit their books was denied, although Catherine Hunt offered to hire a private CPA.

Catherine Hunt stated that Loewenberg said if they did audit the books, he guaranteed they would find something else besides a difference in maternity benefits and either he would audit their books or there would be no letter of compliance (Loewenberg denied this).

Carl Hunt stated that Loewenberg told them the Respondent was organizing in a suburban area and they were going to have to join the Union. He also testified, without stating specifically what was said, that Loewenberg made it clear they did not feel they could fight the Respondent financially and they were going to join if they were going to stay in the security business. Carl Hunt also stated that Loewenberg said Active was below area standards. Both Loewenberg and Wesley denied such statements were made.

Witsman testified that upon telling Loewenberg it did not matter what the area standards were because Loewenberg had to take everybody, Loewenberg's response was they had 80 percent of the agencies at the present time, and they would have everybody in the area in the Union.

Loewenberg himself testified that after Witsman told him it looked like what Loewenberg really wanted was a contract, they discussed it, and he told Witsman that what he really wanted was a contract. However, Loewenberg further stated that Witsman informed him that he was not going to sign a contract and did not like the idea of not being able to hold an election. Loewenberg also stated that during the conversation when Catherine Hunt mentioned why did not they join the Union and maybe they could get

some time, he told her he would give them 90 days on the health and welfare.

Wesley also testified that Witsman told Loewenberg that the bottom line was Loewenberg wanted them to sign a contract, whereupon Loewenberg agreed. According to Wesley, Witsman also told them he would never sign a contract with them.

The subject of picketing was also discussed at this meeting.[6]

Catherine Hunt testified that Witsman asked Loewenberg why he was picketing Active's accounts instead of their office, whereupon Loewenberg responded by asking what good would that do them and stated their accounts would not drop them if they were at their office instead of their sites. However, Witsman's version was that when he asked Loewenberg why he was not going to picket Active instead of picketing their clients, Loewenberg's response was that it would not serve any useful purpose. Carl Hunt also testified when Witsman asked Loewenberg why he did not picket their office, Loewenberg asked what good would that do him.

Loewenberg, however, stated that when Witsman asked why they did not picket at the offices, he informed him the reason they did not was because there were no guards there and the picketing would have no impact.

Catherine Hunt also testified that Loewenberg said they would be picketing their accounts, who would drop them, and unless they joined the Union then before going to any court action they would have already lost all their security accounts. Witsman stated that Loewenberg told him that he could go into court and try to get an injunction but the Union would tie them up for a year and in the meantime they would be picketing their accounts. Witsman further testified that upon mentioning that if he did not sign a contract and force the employees to join the Union that Loewenberg was going to picket his clients forcing them to drop him and putting him out of business, Loewenberg informed him that was the way it was and mentioned other companies had fought and had to join.

Witsman also testified that when Carl Hunt brought up picketing their accounts, Loewenberg told him that under the law they had a right to notify their clients they did not meet area standards, and mentioned if they did not meet area standards the Respondent would picket his company at those locations wherever the guards were located.

Catherine Hunt stated that Loewenberg told them pickets would go up at their accounts, the accounts would drop them as soon as the pickets went up because the accounts were not going to lose business because of Active, and accounts would rather drop Active as an agency and get an agency with a union rather than lose business themselves; once the pickets went up at Certain Teed or the Sheraton Motel their truckdrivers would not deliver things, their people would not come in, and the accounts themselves would be financially hurt. They would drop them, and that was how he was going to either have them join the Union or lose their accounts.

Carl Hunt testified that Loewenberg mentioned many times that if they did not join the Respondent, they would picket their accounts, causing them to lose their accounts and naturally they would be out of the security business. Witsman also testified that Loewenberg said they either had to sign a contract with the Respondent or they would picket their clients.

Under cross-examination both Carl Hunt and Witsman denied the Respondent threatened to picket Active; Witsman acknowledged that he was the one who first mentioned picketing during the conversation, and that the Respondent wanted Active to join the Union.

Both Loewenberg and Wesley denied that Loewenberg made the statements attributed to him by Catherine Hunt, Carl Hunt, and Witsman concerning the picketing. According to Loewenberg, Catherine Hunt and Witsman kept saying they were going to picket them and it would just be a matter of time until they drove them out of business. Loewenberg stated that he told them they would never picket their accounts but would picket Active at the accounts if they had a dispute with them and could not resolve it. Loewenberg also stated that when Witsman said he knew they were going to picket them and asked about picketing their accounts, he informed Witsman they were going to picket Active and not picket the accounts.

Wesley stated that during the conversation Loewenberg explained to them that if they could not arrive at an understanding that night, they would and could picket Active at their accounts, mentioning area standards picketing.

To the extent the foregoing testimonies of Active's representatives, Owner Witsman, Office Manager Carl Hunt, and bookkeeper Catherine Hunt and the testimonies of Respondent's representatives, general counsel Loewenberg and Business Representative Wesley are conflicting concerning what transpired at this meeting, I find the versions of Loewenberg and Wesley more credible. Apart from my observations of the witnesses in resolving credibility, the testimonies of Witsman, Carl Hunt, and Catherine Hunt were conflicting in many instances about what was said as well as who said it; also, Catherine Hunt was evasive and, on occasion, contradicted her own testimony.

The meeting ended with attorney Sussman promising to give Loewenberg its decision the next morning.[7]

About September 29, Active received a letter from the Respondent stating that the Respondent had no interest in representing its employees or entering into a contract to represent its employees, but stated its dispute with Active was over its failure to meet area standards, requested corrective action be taken, and implied action would be taken against Active to enforce area standards.

### *C. Threats Made to Certain Teed*

Certain Teed received a letter in the mail dated September 12 from Respondent's business manager, Kurshenbaum, advising that it had an area standards dispute with Active, and in furtherance of such dispute, it intended to

[6] Prior to the meeting, the Respondent had not engaged in any picketing regarding Active or its accounts nor did it engage in any such picketing following the meeting.

[7] The basis of the decision is in dispute with the Respondent's representatives who claimed it was to decide whether to comply with area standards; Active's representatives claimed it was to decide whether to enter into a collective-bargaining agreement with the Respondent.

picket Active at such times and places when the guards of Active were located on the premises of Certain Teed.[8] The letter also stated the picketing would be conducted in accordance with applicable laws and urged the Company's officials if there was any interference with production to contact Charles Bonesz, Richard Wesley, or Business Manager Kurshenbaum. The letter stated it wanted to again emphasize their dispute was only with Active and no other employer, and the picket signs would clearly reveal this point. The letter further stated that if the location of the Company's facilities prevented effective communication with employees of Active regarding the nature and character of the dispute, the Respondent shall be obligated to conduct their activities on the Company's property in a peaceful and nonviolent way; and if the Respondent's representatives should be threatened with arrest Respondent would have no alternative but to file unfair labor practice charges against Certain Teed. The letter further provided as follows:

> Since organization or representation of the employees of Active Detective Agency is not our object nor is it our intent to in any way interfere with your work or production, we trust that area standards picketing conducted on your property in a peaceful manner will not cause your company to interfere in any way with our representatives.

Certain Teed's Plant Manager Pofelski testified that about September 16 he received a telephone call from a man who identified himself as Rick Wesley of the Respondent and asked Pofelski whether he had received a letter indicating their position with Active. Upon replying he had, the caller said that Active did not meet area standards and mentioned they had had a meeting the previous night in an attempt to settle the dispute, but that nothing could be agreed upon and Active had walked out on them. The caller said that they had no alternative but to picket Active at their accounts, and they would be out at Certain Teed's plant the next morning with pickets. After telling the caller, pursuant to his inquiry, that Active's guards were located within the Certain Teed's premises, the caller informed him they would picket there. Pofelski stated that he told the caller that would be trespassing and he would not allow it. The caller then mentioned a court ruling gave them the right to picket on private property, with which he disagreed, and told the caller he was afraid some of the employees would honor the picket line and go home, causing serious problems of a work stoppage, and they would have to shut the plant down. The caller's response was that their dispute was with Active and not with Certain Teed; he said he would not stop employees from crossing the picket line, but he would not force them to cross it either.

Business Representative Richard Wesley,[9] who is alleged to have made telephone threats to picket, did not deny making such a call. Since the Respondent's letter to Certain Teed mentioned the name of Richard Wesley and Wesley had attended the meeting with Active's officials the previous evening to which the caller referred, and absent any denial by Wesley, I credit the testimony of Plant Manager Pofelski, and I find that he had had such a telephone conversation with Business Representative Wesley.

### D. *Analysis and Conclusions*

The General Counsel contends that the Respondent threatened to picket Active and its customers, including Certain Teed, with objects of (1) forcing Active to recognize or bargain with the Respondent as the representative of Active's guard employees in violation of Section 8(b)(7)(C) of the Act, and (2) forcing or requiring Certain Teed to cease doing business with Active and/or to force or require Active to recognize and bargain with the Respondent as the representative of its guard employees in violation of Section 8(b)(4)(ii)(B) of the Act. The Respondent, however, denies having violated the Act as alleged and asserts as its defense that it had a lawful dispute with Active over Active's alleged failure to comply with area standards.

The threshold issue to be resolved is whether the statements made by the representatives of the Respondent and Active at their September 15 meeting are inadmissible under Rule 408 of the Federal Rules of Evidence as the Respondent contends.

This rule provides as follows:

> Evidence of (1) furnishing or offering or promising to furnish, or (2) excepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negativing a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

The Board has held that the contents of discussions which are part of bona fide settlement negotiations are inadmissible under Rule 408 of the Federal Rules of Evidence. *Building and Construction Trades Council of Philadelphia and Vicinity, AFL–CIO (Altemost Construction Co.)*, 222 NLRB 1276, footnote 1 (1976).

While the findings *supra* establish that the parties had agreed that their discussions at the September 15 meeting would be off-the-record, the only conceivable matter in dispute at the time such agreement was entered into was whether Active met those area standards espoused by the Respondent which would neither be unlawful nor give rise to a violation under the Act. Under these circumstances and absent, as here, any pending, threatened, or anticipated filing of unfair labor practice charges or other legal proceedings, I find that Rule 408 was not applicable to the situation, and the mere agreement to have the discussions

[8] The Respondent admitted it had no dispute with Certain Teed.

[9] At the hearing Richard Wesley was referred to by Respondent's General Counsel Loewenberg as Rick Wesley.

off-the-record, standing alone, cannot be invoked by the Respondent to shield or insulate it from liability for any unlawful statements its agents may have made at the meeting by excluding such statements as evidence. Therefore, I reject Respondent's argument and find contrary to its position that the statements made at the September 15 meeting were admissible as evidence.[10]

The next issue discussed is whether the Respondent violated Section 8(b)(7)(C) of the Act by threatening to picket for the proscribed recognitional object alleged, or whether Respondent's conduct, urged as its defense, had as its object to require Active to comply with the Respondent's area standards.

Section 8(b)(7)(C) of the Act provides as follows:

> It shall be an unfair labor practice for a labor organization or its agents—
>
> (7) to picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer where an object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective bargaining representative, unless such labor organization is currently certified as the representative of such employees:
>
> * * * * *
>
> (C) where such picketing has been conducted without a petition under section 9(c) being filed within a reasonable period of time not to exceed thirty days from the commencement of such picketing: *Provided*, That when such a petition has been filed the Board shall forthwith, without regard to the provisions of section 9(c)(1) or the absence of a showing of a substantial interest on the part of the labor organization, direct an election in such unit as the Board finds to be appropriate and shall certify the results thereof: *Provided further*, That nothing in this subparagraph (C) shall be construed to prohibit any picketing or other publicity for the purpose of truthfully advising the public (including consumers) that an employer does not employ members of, or have a contract with, a labor organization, unless an effect of such picketing is to induce any individual employed by any other person in the course of his employment, not to pick up, deliver or transport any goods or not perform any services.

It is well settled that Section 8(b)(7)(C) of the Act does not prohibit picketing conducted for the sole purpose of compelling an employer to comply with area wage and benefit standards. *Centralia Building and Construction Trade Council* v. *N.L.R.B.*, 363 F.2d 669, 701 (D.C. Cir. 1966). However, Section 8(b)(7)(C) of the Act does make it unlawful for a labor organization, which cannot be certified under Section 9(b)(3) of the Act[11] as the collective-bargaining representative because it admits into membership both guards and nonguards, as in the instance case, to threaten to picket an employer for the proscribed recognitional object. *International Brotherhood of Teamsters Local 344 (Purolator Security, Inc.)*, 228 NLRB 1379 (1977), enfd. 561 F.2d 31 (7th Cir. 1977); and *General Service Employees Union Local No. 73, affiliated with Service Employees International Union, AFL-CIO (A-1 Security Service Co.)*, 224 NLRB 434 (1976), enfd. 97 LRRM 2906, 83 LC ¶ 10,375 (D.C. Cir. 1978).

While the findings *supra* establish that the subject of area standards was discussed at the September 15 meeting between representatives of the Respondent and Active, the evidence further establishes, based upon the testimonies of both general counsel Loewenberg and Business Representative Wesley, that the Respondent's object, notwithstanding their statements to the contrary about area standards, which I reject, was to get Active to recognize the Respondent as the bargaining representative of its guard employees and to enter into a collective-bargaining agreement with it. In this respect, Loewenberg acknowledged discussing a contract, informing them employees would be expected to sign dues checkoff for the Respondent or be terminated, and offered to give them 90 days on the health and welfare benefits if they joined; both Loewenberg and Wesley admitted that when Loewenberg was asked by Witsman if what he really wanted was a contract, Loewenberg agreed that that was what he wanted.

Since the evidence *supra* establishes that both general counsel Loewenberg and Business Representative Wesley further admitted telling Active's officials and representatives at the September 15 meeting that they were going to picket Active at their accounts, and having found the recognitional object of their conduct, I find that the Respondent thereby violated Section 8(b)(7)(C) of the Act by its threats to picket Active for a recognitional object.[12] Since the Respondent's conduct was not for the purpose of truthfully advising the public that Active did not employ members of or have a contract with it and because the Respondent was barred by Section 9(b)(3) of the Act from being certified to represent Active's guard employees, the contention argued in its brief that the second proviso of Section 8(b)(7)(C) of the Act precludes finding a violation is without merit.

The remaining issue is whether the Respondent violated Section 8(b)(4)(ii)(B) of the Act by making threats to Certain Teed to force or require Certain Teed to cease doing business with Active or to force or require Active to recognize and bargain with the Respondent as the representative of its guard employees.

Section 8(b)(4) of the Act makes it an unfair labor practice for a union:

[10] Based upon my findings and for the reasons indicated, the Respondent's motion to exclude such evidence, on which ruling was deferred, is also denied.

[11] Sec. 9(b)(3) of the Act provides, in pertinent part, that "no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards."

[12] While the Respondent sent Active a letter about September 29 disclaiming any interest in representing its employees or obtaining a contract, I find that such letter, which did not attempt to retract its recognitional object herein found, to be self-serving and not probative evidence.

. . . (ii) to threaten, coerce, or restrain any person . . . where in either case an object thereof is:

* * * * *

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

While a union is permitted to picket a primary employer with which it has a labor dispute, it violates Section 8(b)(4) of the Act if it threatens to picket a neutral employer with a proscribed object of enmeshing that employer in a controversy not its own. *General Teamster, Warehouse, and Dairy Employees Union Local No. 126, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Ready Mixed Concrete, Inc.)*, 200 NLRB 253, 254 (1972).

The evidence *supra* establishes that Respondent sent Certain Teed a letter, dated September 12, informing it that the Respondent intended to picket Active at Certain Teed's premises; this statement was repeated by Business Representative Wesley to Certain Teed's Plant Manager Pofelski about September 16. Although both the letter and Business Representative Wesley's statements gave as the reason for its intentions to picket the claim that Active did not meet area standards, having found previously that the Respondent had threatened to picket Active at its accounts for a proscribed recognitional object, I find that the Respondent, by such conduct directed to Certain Teed, attempted to enmesh Certain Teed, a neutral employer, in its dispute with Active; it thereby threatened Certain Teed with picketing for an object of forcing or requiring Active to recognize and bargain with the Respondent as the representative of its guard employees, thereby violating Section 8(b)(4)(ii)(B) of the Act. Having found a proscribed recognitional object for Respondent's conduct and having discredited the testimonies of Active's representatives about the subject matter discussed at the September 15 meeting, I do not find any evidence sufficient to show or to infer that Respondent also had as its object to force or require Certain Teed to cease doing business with Active as alleged.

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

The activities of Respondent set forth in section III, above, found to constitute unfair labor practices occurring in connection with the operations of Active and Certain Teed described in section I, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

## CONCLUSIONS OF LAW

1. William Witsman d/b/a Active Detective Agency and Certain Teed Corporation are each employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. General Service Employees Union Local No. 73, affiliated with SService Employees International Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.
3. Respondent admits into membership employees other than guards, and under Section 9(b)(3) of the Act cannot be certified as the collective-bargaining representative of employees in a unit comprised of guards.
4. By threatening to picket William Witsman d/b/a Active Detective Agency at its accounts with an object of forcing or requiring it to recognize and bargain with the Respondent as the collective-bargaining representative of its guard employees, when the Respondent has not been certified as the representative of such employees and cannot be so certified by virtue of the provisions of Section 9(b)(3) of the Act, the Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(7)(C) of the Act.
5. By threatening to picket Certain Teed Corporation with an object of forcing or requiring William Witsman d/b/a Active Detective Agency to recognize and bargain with Respondent as the representative of its guard employees, Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(4)(ii)(B) of the Act.
6. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

## THE REMEDY

The General Counsel urges, as opposed by the Respondent, that a broad remedial order be issued against the Respondent. Those cases cited in support, which involve the same sections of the Act[13] herein found to have been violated, are as follows: *General Service Employees Union Local No. 73, affiliated with Service Employees International Union, AFL CIO (Andy Frain, Inc.)*, 230 NLRB 351 (1977), finding violations of Section 8(b)(4)(i) and (ii)(B) and Section 8(b)(7)(C) of the Act; *General Service Employees Union Local No. 73, affiliated with Service Employee International Union, AFL CIO (A-1 Security Service Co.)*, 224 NLRB 434 (1976), enfd. 97 LRRM 2906, 83 LC ¶ 10,375 (D.C. Cir. 1978), finding violations of Section 8(b)(7)(C) of the Act; and *General Service Employees Union, Local No. 73, affiliated with Service Employees International Union, AFL CIO (R.R.S., Inc., Security and Investigation Service Division)*, J.D. 795 74 issued Dec. 19, 1974 (unpublished), finding violations of Section 8(b)(7)(C) and 8(b)(4)(i) and (ii)(B) of the Act.

[13] The General Counsel also cites other cases, however, since they are either pending or involve different sections of the Act not involved here, I have not considered them.

Wherever the facts of a particular case or prior decisions against a respondent based upon similar unlawful conduct in the past establish a proclivity to violate the Act, a broad remedial order is appropriate. *Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Sea-Land of California, Inc.),* 197 NLRB 125 (1972), enfd. 490 F.2d 87 (9th Cir. 1973).

Having found in the instant cases that the Respondent has engaged in certain unfair labor practices within the meaning of Section 8(b)(7)(C) and Section 8(b)(4)(ii)(B) of the Act and in view of its prior violations set forth *supra* of these same sections of the Act, I find the totality of its conduct establishes a proclivity to violate these sections of the Act. Accordingly, I shall recommend a broad remedial order and that it cease and desist therefrom and take certain affirmative action to effectuate the policies of the Act.

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

## ORDER [14]

The Respondent, General Service Employees Union Local No. 73, affiliated with Service Employees International Union, AFL–CIO, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening to picket, picket, or causing to be picketed William Witsman d/b/a Active Detective Agency, or any other employer where an object thereof is to force or require Active Detective Agency, or any other employer, to recognize or bargain with the Respondent as the representative of their guard employees, or forcing or requiring the guard employees of Active Detective Agency, or any other employer, to accept or select Respondent as their collective-bargaining representative when Respondent has not been certified as the representative of such employees and cannot be certified by virtue of the provisions of Section 9(b)(3) of the Act.

(b) Threatening, coercing, or restraining Certain Teed Corporation, or any other employer or person engaged in commerce or in an industry affecting commerce where an object thereof is to force or require William Witsman d/b/a Active Detective Agency, or any other employer, to recognize or bargain with the Respondent as the representative of their employees unless the Respondent has been certified as the representative of such employees under the provisions of Section 9 of the Act.

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

(a) Post at its Chicago, Illinois, facilities, copies of the attached notice marked "Appendix." [15] Copies of said notice, on forms furnished by the Regional Director for Region 13 shall, after being duly signed by Respondent's authorized representative, be posted immediately upon receipt thereof and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Furnish signed copies of the notice to the Regional Director for Region 13, for posting by William Witsman d/b/a Active Detective Agency and Certain Teed Corporation, said employers be willing, at all locations where notices to its employees are customarily posted.

(c) Notify the Regional Director for Region 13, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the consolidated complaint be, and hereby is, dismissed insofar as it alleges unfair labor practices not specifically found herein.

[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 the United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

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

WE WILL NOT threaten to picket, picket, or cause to be picketed William Witsman d/b/a Active Detective Agency, or any other employer, where an object thereof is to force or require Active Detective Agency, or any other employer, to recognize or bargain with General Service Employees Union Local No. 73, affiliated with Service Employees International Union, AFL–CIO as the representative of their guard employees, or force or require the guard employees of Active Detective Agency, or any other employer, to accept or select Local No. 73 as their collective-bargaining representative when Local No. 73 has not been certified as the representative of such employees and cannot be certified by virtue of the provisions of Section 9(b)(3) of the National Labor Relations Act, as amended.

WE WILL NOT threaten, coerce, or restrain Certain Teed Corporation, or any other employer or person engaged in commerce or in an industry affecting commerce, where an object thereof is to force or require Active Detective Agency, or any other employer, to recognize or bargain with Local No. 73 as the representative of their employees unless Local No. 73 has been certified as the representative of such employees under the provisions of Section 9 of the National Labor Relations Act, as amended.

GENERAL SERVICE EMPLOYEES UNION LOCAL NO. 73, AFFILIATED WITH SERVICE EMPLOYEES INTERNATIONAL UNION, AFL–CIO