CONCLUSIONS OF LAW

1. The Employer is engaged in interstate commerce within the meaning of the Act.
2. The Respondent is a labor organization within the meaning of the Act.
3. The General Counsel has not established by a preponderance of the evidence that the picketing of the Union had as an object to force the employer to recognize it or the employees to select it as their bargaining representative within the meaning of Section 8(b)(7)(B) of the Act.

[Recommendations omitted from publication.]

Retail Store Employees' Union, Local No. 692, Retail Clerks International Association, AFL-CIO *and* Irvins, Inc. *Case No. 5-CP-10. November 24, 1961*

DECISION AND ORDER

On November 29, 1960, Trial Examiner James F. Foley issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the Intermediate Report attached hereto. Thereafter, the Respondent and the General Counsel filed exceptions to the Intermediate Report and supporting briefs.[1]

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudical error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in this case, and finds merit in the exceptions of the General Counsel. Accordingly, the Board adopts the findings,[2] conclusions, and recom-

[1] The Respondent's request for oral argument is hereby denied as, in our opinion, the record, exceptions, and briefs adequately present the positions of the parties.

[2] We agree with the Trial Examiner's findings that the Respondent engaged in picketing for an object of forcing or requiring Irvins to recognize, or its employees to select, the Respondent as the bargaining representative, in violation of Section 8(b)(7)(B) of the Act In reaching this conclusion we rely, *inter alia,* upon the testimony of Buckner, Respondent's business representative, which was given in the Section 10(l) injunction proceeding in the U S District Court for the District of Maryland The parties stipulated before the Trial Examiner that this testimony of Buckner be considered as evidence in the instant proceeding. In substance, Buckner's testimony was that the picketing would be discontinued if Irvins would assemble the employees, would give them certain assurances as to their free choice in the selection of a bargaining representative, and *would invite the Respondent's representatives to also address the employees* Although admitting the parties' stipulation into evidence, the Trial Examiner refused to consider this testimony in the belief that it was not "probative evidence for or against Respondent" (See Intermediate Report, footnote 17) We disagree In determining the objective of a union's picketing, the testimony of a principal actor (here, the Respondent's business representative) as to the conditions required before such action will be discontinued is quite probative and entirely relevant as to the issue of object Cf. Wigmore, Treatise on Evidence, vol I, sec 28, *et seq ;* cf. vol II, sec 475. Accordingly, *in addition* to the evidence relied upon by the Trial Examiner, we find that Buckner's testimony, particularly in the light of Respondent's earlier communication to Irvins that it disclaimed recognition "until a majority [of the employees] indicate their desire to be represented by our

mendations of the Trial Examiner, except insofar as they are inconsistent with the following:

The Trial Examiner found that the Respondent commenced picketing Irvins for an admittedly proscribed object on May 31, 1960. This picketing continued, without interruption, until October 3, 1960, when the Federal District Court for the District of Maryland issued its order granting temporary injunction "pending the final adjudication by the Board."[3] On June 13, 1960, the Respondent filed a representation petition and, on August 18, 1960, an election was conducted. Of 189 votes cast, the Respondent received 50 votes, 95 votes were cast against it, and 44 ballots were challenged. As the challenged votes were insufficient to affect the outcome of the election, and as no objections were filed, the Regional Director, on August 26, 1960, certified the results of the election, stating that the Respondent did not receive a majority of the votes cast and, therefore, was not the exclusive bargaining representative.

The Trial Examiner, having properly found that the Respondent's postelection picketing was for an object proscribed by Section 8(b)(7)(B) of the Act, recommended that the Respondent cease and desist from picketing Irvins for such object "for a period of 1 year following the election of August 18, 1960." The General Counsel filed exceptions to the Trial Examiner's recommended notice and order, contending that an appropriate remedy in 8(b)(7)(B) cases should provide for no such picketing for 1 year, computed from the date of the certification of results of the election (in this case August 26, 1960), rather than from the date of the election itself (August 18, 1960).

In support of his exceptions, the General Counsel contends that both the language and legislative history of Section 8(b)(7)(B) indicate a congressional purpose to insure to an employer a full "twelve month" period insulated from picketing following a lost election. Noting that only after the Board issues its certification of results can it be determined that a "valid election" has in fact been conducted, the General Counsel argues that the only way to provide the security which Congress intended is to predicate the violation upon picketing occurring after the issuance of the certification of results. Finally, insofar as there might be an area of potential conflict created between Sections 8(b)(7)(B) and 9(c)(3),[4] the General Counsel urges that,

local," constitutes probative testimonial evidence that the Respondent was desirous of organizing Irvins' employees in order to be in a position to demand recognition.

[3] *John A Penello* v *Retail Store Employees Local Union No 692, Retail Clerks International Association, AFL–CIO (Irvins, Inc.)*, 188 F. Supp 192 (D C Md, 1960), grant of injunction affirmed 287 F 2d 509 (C.A. 4).

[4] Section 9(c)(3) provides, in pertinent part, that "No election shall be directed in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a *valid election* shall have been held" [Emphasis supplied]

for remedial purposes in 8(b)(7)(B) cases, the Board's "election year" rule [5] should give way to the "certification year" rule.[6]

Although we find merit in certain of the General Counsel's arguments, we do not believe that either his certification of results proposal or the Trial Examiner's election date recommendation wholly answers the question of what remedy is appropriate in cases involving violations of Section 8(b)(7)(B) of the Act. Moreover, the issues raised by the General Counsel's exceptions are not confined solely to the matter of remedy; also brought into focus is the question of when, in point of time, does a labor organization's postelection picketing constitute a violation of Section 8(b)(7)(B). Thus, the Board is faced with two distinct questions: First, the determinative date for purposes of finding the *violation;* secondly, the determinative date for purposes of providing an appropriate *remedy.*

As it is axiomatic that "the relief which the statute empowers the Board to grant is to be adapted to the situation which calls for redress," [7] we first consider the precise nature of the violation before we address ourselves to the question of appropriate relief.

1. The violation

Section 8(b) makes it an unfair labor practice for a labor organization

> (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:
>
> * * * * * * *
>
> (B) where within the preceding twelve months a valid election under section 9(c) of this Act has been conducted. . . .

The gravamen of a violation under this section is the determination that picketing (for a proscribed object) is being carried on despite the

[5] Under the long-established interpretation of Section 9(c)(3), the Board holds that the "twelve-month" limitation runs from the date of balloting and not from the date of the certification of results *where no union was selected as bargaining representative.* See, e.g., *Mallinckrodt Chemical Works,* 84 NLRB 291, 292; *Kolcast Industries, Inc.,* 117 NLRB 418, 419

[6] In support of his position that the decisive date for the violation and remedial relief should be based on the "certification year" rule, the General Counsel notes that when a union wins an election, the Board holds that its rights as bargaining representative extend from the date of its certification and not from the date of the election. See, e.g., *Centr-O-Cast & Engineering Company,* 100 NLRB 1507; *N.L.R.B.* v. *Ray Brooks,* 204 F. 2d 899 (C.A. 9), affd 348 U.S. 96.

[7] *N.L.R.B.* v *Mackay Radio & Telegraph Co.,* 304 U.S. 333, 348.

fact that within the past 12 months *a valid election was held.* It is of no moment that the labor organization engaged in the picketing may not have participated in the prior election,[8] for in clear and unequivocal terms the section bans postelection picketing by any but a "currently certified" union.[9] Thus, where "no-union" is selected by the employees, the employer and his employees may not be picketed for a proscribed object for the next succeeding 12 months following that valid election.

The foregoing is made clear by the Section's terms, as amplified by the supporting legislative history. What is not as clear, however, is what measure the Board is to apply in determining when "a valid election" has been conducted. In considering this question, the Board has been particularly aware of the difficulties which confront the General Counsel in handling charges filed under this section because of the statute's lack of certainty as to when the violation occurs. Indeed, the Board recognizes that this question is no less troublesome to labor organizations and employers alike in terms of ascertaining where the bounds of the section are to be laid.

The Board has decided that in 8(b)(7)(B) cases, the decisive date for purposes of ascertaining when there has been a valid election conducted under Section 9(c) of the Act is the date on which a certification of bargaining representative, or a certification of results is issued in a Board-conducted election.[10] In arriving at this position, the Board necessarily had to choose between the alternatives previously noted: The date of balloting or the date on which the results of the election are certified. In making the latter date the determina-

[8] Section 8(b)(7)(B) is concerned with the situation where "the Board has held an election during the preceding twelve months and the picketing union had either failed to win the election or even to participate in it, and had thereby also failed to demonstrate that it represented a majority of the employees of the picketed employer" Vol. II, Legis Hist., LMRDA 1959, at p. 1184(3). In such a situation, "then no union may picket for recognition or organization for 12 months" Vol II, at p. 1858(3). See also, vol. II, pp. 1187(2), 1361(1), 1377(3), and 1462(3).

[9] However, "if a union wins such an election and is certified by the Board, it may picket without violating this section 8(b)(7)" Vol II, Legis. Hist., LMRDA 1959, at p 1858(3). This protection is expressly guaranteed by the "unless" clause in the first paragraph of Section 8(b)(7) Cf. vol II, Legis. Hist, LMRDA 1959, pp. 1720(3) and 1722(1–2).

[10] Although the General Counsel has limited his argument to the situation where, in an election, no union receives a majority of the valid votes cast and thereafter a "Certification of Results" is issued, we believe the determination as to when "a valid election" has been conducted is equally applicable to the situation in which a union does receive a majority of the votes and is thereafter "Certified" as the employees' bargaining representative In the former situation (which is the instant case), no union is permitted to engage in recognition or organizational picketing for a period of 12 months, whereas in the latter situation, no union except the certified union may engage in such picketing (see *supra,* footnotes 8 and 9). But in both situations, as more fully discussed hereafter, there must first be a determination that "a valid election" has been conducted, and this determination occurs on the date of issuance of either a "Certification of Results" or "Certification of Representative." Accordingly, although our discussion hereafter will concern itself primarily with the instant case wherein no union was certified, it is intended to apply as well to the case where the converse situation obtains

tive date, the Board notes that there is legislative history to support its decision.[11] The Board also believes that the "certification of results" date will more realistically conform with, and give meaning to, the concept of when "a valid election" has been conducted—an essential determination for purposes of Section 8(b)(7)(B). The election day count of the ballots is only a preliminary determination; for an election, under the Board's rules, is not a conclusive and final determination until the time for filing challenges and/or objections has expired,[12] or until it has been determined that a runoff election is not required.[13] Thus, the status achieved by a labor organization as indicated by a tally of ballots issued on the election date may change appreciably when the results of the election are finally determined on the certification date. Until there is such a "final determination" of the results of an election, there is no basis for proceeding on a charge alleging a violation of Section 8(b)(7)(B).

Accordingly, the Board has decided that no violation of Section 8(b)(7)(B) should be deemed to lie until all challenges and objections have been ruled upon or otherwise disposed of, or until it has been determined that a runoff election is not required;[14] and since such final disposition is the condition precedent to the issuance of a certification of results, the date upon which such certification is issued will coincide with the determination that a "valid election" has been conducted.

2. The remedy

As for the remedy to be applied in 8(b)(7)(B) cases, the Board has concluded that neither the election date nor the certification of results date is dispositive. In fashioning a remedy adapted to "the situation which calls for redress," the Board has been mindful of the fact that the congressional purpose underlying Section 8(b)(7)(B) is to provide a 12-month period free from picketing for a proscribed objective following an election in which no union is selected as a bargaining representative.[15] This 12-month period is the outer limit

[11] See, e g., statement of Congressman Rhodes (vol II, Legis Hist., LMRDA 1959, p 1462(3)) that Section 8(b)(7)(B) "also protects the employer and his employees from harassment where an election under NLRB provisions has resulted in a "no union' [sic] *certification*. . ." [Emphasis supplied] See also Senator Goldwater's analysis on the differences between the House-Senate bills (vol. II, Legis Hist, LMRDA 1959, p. 1361(1)): "The prohibitions on picketing during the 12-month period after an election where no union was *certified* [fall within Section 8(b)(7)(B)] ." [Emphasis supplied]

[12] See NLRB Rules and Regulations, Series 8, Section 102 69

[13] See NLRB Rules and Regulations, Series 8, Section 107 70

[14] Although a labor organization which does not participate in a Board election has no standing to file challenges or objections, the final determination that a "valid election" has been conducted must nevertheless be made before such labor organization will be deemed subject to the provisions of Section 8(b)(7)(B). See *supra,* footnote 8

[15] See references to legislative history, *supra,* footnotes 8 and 11.

which Congress has prescribed in the section, and manifests a clear intention to curtail picketing for 1 year in order to "protect the employer and his employees from harassment." [16] An apt analogy may be drawn between the congressional purpose sought to be achieved under Section 8(b)(7)(B), and a similar purpose which was intended in 1947 when Congress amended the Wagner Act by the addition of Section 9(c)(3). By including the 12-month limitation on the frequency of Board-conducted elections in Section 9(c)(3), Congress intended to, and did effect a reasonable balance between a union's interest in gaining representational status, and the employees' interest in maintaining stability and repose after having exercised their free choice in a representation election.[17] Although Section 9(c)(3) is concerned with the principle of stability and repose vis-a-vis employees after they have voted in an election, Section 8(b)(7)(B) now extends the principle for the benefit and protection of the employer as well where, following such election, a union engages in proscribed picketing. Therefore, and consistent with the foregoing salutary principles, the Board believes that it will best effectuate the policies of the Act if the remedy adopted under Section 8(b)(7)(B) preserves to employers and employees a 12-month period free from picketing, while at the same time ensuring that the prohibition on the union's picketing activity will not, due to circumstances beyond *its* control, be unreasonably extended beyond the same period of time.

Accordingly, the Board has decided that, absent unusual circumstances warranting different treatment,[18] remedial orders in Section 8(b)(7)(B) cases will require a cessation of all recognitional and/or organizational postelection picketing for a period of 12 months, which period shall be *computed from the date the labor organization terminates its picketing activities (either voluntarily or involuntarily)*.[19] Since the labor organization which engages in picketing has complete control over its operations and is able to determine when, where, and for how long the picketing should go on, *it* will now be able to ascertain the precise period which the Board's Order will cover in the event its

[16] Vol. II, Legis. Hist., LMRDA 1959, p. 1462(3).

[17] See discussion *N.L.R.B.* v. *Ray Brooks*, cited *supra*, footnote 6. Cf. *Vickers, Incorporated*, 124 NLRB 1051, 1052. The principle of 1 year's stability and repose, as contemplated by Section 9(c)(3), is of prime importance regardless whether the employees' decision at the polls is to select or reject a bargaining representative. Additionally, see vol. 1, Legis. Hist., LMRA 1947, at p. 418, where it is noted that the 12-month limitation on frequency of elections will "impress upon employees the solemnity of their choice, when the Government goes to the expense of conducting a secret ballot . . . ."

[18] In this regard the Board is leaving open for later determination the treatment which should be given to novel or unusual fact situations. Thus, *for example*, the remedy adopted herein will not, necessarily, be considered dispositive of a situation in which a labor organization engages in intermittent picketing, or where the picketing continues to the date of a Board Decision and Order.

[19] Thus, the labor organization might decide to discontinue its picketing or, contrary to its own designs, the picketing might be halted through formal (State or Federal) injunctive processes.

conduct is found to be unlawful.[20] And since it is the picketing, and not solely the fact that "a valid election" has been conducted, which goes to the heart of the violation of Section 8(b)(7)(B), the remedy provided herein adapts itself to the situation which calls for redress and, in the Board's opinion, will most effectively "translate into actuality the policies of the Act."[21]

Applying the foregoing principles to the facts of this case, the Respondent's challenges to the election of August 18, 1960, were disposed of on August 26, 1960, the date upon which the Regional Director issued the certification of results indicating that the employees did not select the Respondent as their bargaining representative. As the issuance of this certification constitutes the final determination that "a valid election" has been conducted, we find that the Respondent's picketing on and after August 26, 1960, for objects proscribed by Section 8(b)(7), constitutes a violation of subparagraph (B) thereof.

As previously discussed, the determinative date for computing the duration of the Board's cease-and-desist order is the date on which the labor organization's unlawful picketing is terminated. In the instant case, Respondent's picketing was enjoined by the Federal District Court for the District of Maryland on October 3, 1960. Accordingly, in order to remedy the violations found, and to effectuate the policies of the Act, the Respondent will be ordered to cease and desist from picketing Irvins, Inc., Baltimore, Maryland, for objects proscribed by Section 8(b)(7) of the Act, for a period of 12 months computed from October 3, 1960. We shall also require the Respondent, thereafter, to refrain from engaging in recognitional and/or organizational picketing of Irvins, Inc., Baltimore, Maryland, where within the preceding 12 months a valid election shall have been conducted.

ORDER

Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Retail Store Employees' Union, Local No. 692, Retail Clerks International Association, AFL–CIO, its officers, representatives, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Picketing or causing to be picketed, or threatening to picket, Irvins, Inc., Baltimore, Maryland, an object thereof being to force or

[20] To adhere to the Trial Examiner's recommendation and order a cessation of picketing from the date of balloting, the Board would be including in the computed period the picketing which occurs between the date of the election and the date of the certification of results—a period during which the labor organization is permitted to picket (assuming, of course, that there is not outstanding any lawful impediment to the labor organization's continued picketing) Such an order would unquestionably reduce the statutory ban on picketing to less than the 12-month period intended by Congress.

[21] *Phelps Dodge Corp* v. *N.L.R.B.*, 313 U.S. 177, 188.

require Irvins, Inc., to recognize or bargain collectively with it, or to force or require the employees of Irvins, Inc., to accept or select it as their collective-bargaining representative, for a period of 1 year from October 3, 1960.

(b) Picketing or causing to be picketed, or threatening to picket, Irvins, Inc., for any of the aforementioned objects, where within the preceding 12 months a valid election under Section 9(c) of the Act has been conducted which the Respondent did not win.

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

(a) Post in Respondent's business offices and meeting halls, copies of the notice attached hereto marked "Appendix." [22] Copies of said notice, to be furnished by the Regional Director for the Fifth Region, shall, after being duly signed by official representatives of Respondent, be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to its members are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Mail to the Regional Director for the Fifth Region signed copies of the aforementioned notice for posting by Irvins, Inc., the Company willing, in places where notices to employees are customarily posted. Copies of said notice, to be furnished by the Regional Director for the Fifth Region, shall, after being duly signed by Respondent's official representatives, be returned forthwith to said Regional Director.

(c) Notify the Regional Director for the Fifth Region, in writing, within 10 days from the date of this Decision and Order, what steps have been taken to comply herewith.

[22] 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"

APPENDIX

NOTICE TO ALL MEMBERS OF RETAIL STORE EMPLOYEES' UNION, LOCAL NO. 692, RETAIL CLERKS INTERNATIONAL ASSOCIATION, AFL-CIO

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, we hereby notify you that:

WE WILL NOT picket, or cause to be picketed, or threaten to picket, Irvins, Inc., Baltimore, Maryland, where an object thereof is to force or require Irvins, Inc., to recognize or bargain collec-

tively with us, or its employees to accept or select us as their collective-bargaining representative, for a period of 1 year from October 3, 1960.

WE WILL NOT picket, or cause to be picketed, or threaten to picket, Irvins, Inc., Baltimore, Maryland, where an object thereof is to force or require Irvins, Inc., to recognize or bargain collectively with us, or its employees to accept or select us as their collective-bargaining representative, where a valid election which we did not win has been conducted by the National Labor Relations Board among the employees of Irvins, Inc., within the preceding 12 months.

RETAIL STORE EMPLOYEES' UNION, LOCAL NO. 692, RETAIL CLERKS INTERNATIONAL ASSOCIATION, AFL–CIO,

Union.

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

STATEMENT OF THE CASE

This Case No. 5–CP–10 brought under Section 10(b) of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519), herein called the Act, on a charge filed August 29, 1960, by Irvins, Inc. (herein called Irvins), against Respondent Retail Store Employees' Union, Local No. 692, Retail Clerks International Association, AFL–CIO (herein called Respondent or Respondent Union), was heard by the duly designated Trial Examiner in Baltimore, Maryland, on October 10, 1960, on a complaint of the General Counsel dated September 8, 1960, and an answer of Respondent dated September 16, 1960.

The complaint alleges, and Respondent denies, that since August 26, 1960, Respondent, in violation of Section 8(b)(7)(B) of the Act, picketed four retail stores of Irvins in Baltimore, Maryland, to force or require Irvins to recognize and bargain with Respondent as the collective-bargaining representative of the employees of Irvins, and to force or require the employees of Irvins to accept and select Respondent as their collective-bargaining representative.

Respondent, General Counsel, and the Charging Party were represented at the hearing and all parties were afforded an opportunity to be heard, to introduce relevant evidence, to present oral argument, and to file briefs. Counsel for all parties filed briefs after the close of the hearing.

FINDINGS AND CONCLUSIONS

I. THE BUSINESS OF RESPONDENT

The complaint alleges, and Respondent in its answer admits, that Irvins, a Maryland corporation with its principal office in Baltimore, Maryland, is engaged in operating four retail department stores, a warehouse, and office building in Baltimore, Maryland. The complaint also alleges, and Respondent also admits, that during the 12-month period preceding September 8, 1960, Irvins had gross sales valued in excess of $500,000, and purchased merchandise and supplies valued in excess of $50,000 which were shipped from points outside the State of Maryland to Irvins' places of business in Baltimore, Maryland. I find that Irvins is engaged in commerce within the meaning of Section 2(6) of the Act, and that assertion of jurisdiction is warranted.

II. THE LABOR ORGANIZATION INVOLVED

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

III. THE UNFAIR LABOR PRACTICES

A. *Evidentiary findings*

On May 9, 1960, Respondent Union filed with the office of the Regional Director of the Board's Fifth Region located in Baltimore, Maryland, a petition for certification as collective-bargaining representative of the employees of Irvins' four retail establishments. The petition specifically excluded the employees of Irvins' warehouse and office as well as watchmen, guards, drivers, and supervisors as defined in the Act. The Respondent stated in the petition that it had not requested Irvins to recognize it as collective-bargaining representative, and that Irvins had not declined to represent it as collective-bargaining representative.

On May 13, 1960, Respondent Union distributed to Irvins' employees a letter addressed to "Dear Friend" and signed by Alvin Akman, its secretary-treasurer. The letter contained a notice of the Respondent's filing of its petition for certification as bargaining representative, and a quotation of Section 7 of the Act. Section 7 guarantees employees the right to bargain collectively through a representative of their own choosing and to engage in other concerted activity, and the right to refrain from engaging in such activities. The letter also contained the statement that Respondent Union had been informed that Irvins had violated the Act by coercing and intimidating employees, that it was gathering evidence of such conduct and would place it in the hands of its attorneys, that charges would be filed with the Board against Irvins, and the latter requested to order that any employees who were fired, forced to resign under pressure, intimidated, or coerced be reinstated in their jobs with backpay or made whole for the injury suffered. The employees were requested to inform the Respondent Union of any mistreatment by Irvins in order for Respondent Union to take legal action against it. The concluding paragraph stated that Respondent Union was contemplating direct economic action against Irvins, and would take such action unless it ceased union-busting conduct and dealt fairly with Respondent Union. It identified itself as the employees' choice. Floyd C. Buckner, representative of Respondent Union, testified that the economic action referred to in the letter was picketing.

Following a hearing on May 26, 1960, at the Regional office, on its petition of May 9, 1960, for certification as bargaining representative, Respondent Union withdrew it. The evidence does not disclose the reason for the withdrawal. Respondent Union's witnesses contend that the hearing covered only the question of appropriate unit. On May 31, 1960, Respondent Union began picketing Irvins' four retail stores with picket signs bearing the legend, "Irvins refuses to recognize Local 692. Retail Store Employees Union—R.C.I.A., AFL–CIO." The picketing with this picket sign legend continued through August 18, 1960, the day of the Board-conducted election.

Starting on or about June 3, 1960, and continuing through August 18, 1960, Respondent Union distributed at the entrances to Irvins' four retail stores to Irvins' employees and to the public, including customers, two leaflets. The receivers of the leaflets were asked in one not to trade at Irvins' stores, and in the other not to patronize Irvins' stores. In the first leaflet, they were asked to refrain from doing business with Irvins as good neighbors helping Irvins' employees gain decent working conditions and fair pay. Irvins was charged with firing employees because they exercised their American right to join the union of their choice. This leaflet's message ended with the request: "Please don't support low wages and union busting with your purchasing dollar." In the second leaflet, Irvins was accused of being unfair to organized labor, firing employees who joined Respondent Union, paying most of its employees below recognized minimum wage levels, and refusing to have a Board election among sales personnel only. The public, including customers, were asked to help raise Irvins' employees standard of living, and not to buy at Irvins' stores until a union sign was in the window.

On June 10, 1960, Irvins filed a charge with the Regional Office alleging that Respondent Union was picketing for recognitional and organizational objects without filing a petition for certification of collective-bargaining representative within 30 days of the commencement of the picketing, and thereby violated Section 8(b)(7)(C) of the Act. On June 13, 1960, Respondent Union filed a petition required by Section 8(b)(7)(C) for certification of collective-bargaining representative in

the same appropriate unit covered by the petition it filed on May 9, 1960, and withdrew on or about May 26, 1960.[1]

On June 17, 1960, John A. Penello, Regional Director for the Board's Fifth Region, dismissed Irvins' unfair labor practice charge filed June 10, 1960, by reason of Respondent Union's petition filed June 13, 1960, and notified Irvins and Respondent Union of the dismissal, and the scheduling of an election to be held on June 23, 1960, in the appropriate unit of Respondent's employees stated in Respondent Union's petition filed June 13, 1960. On June 22, 1960, the day before the scheduled election, Respondent Union filed an unfair labor practice charge alleging that Irvins violated Section 8(a)(1) of the Act by intimidation and coercion of its employees and threats thereof. The Regional Director thereupon postponed the election scheduled for June 23, 1960, pending the disposition of the charge. On June 30, 1960, Respondent Union filed an amended charge alleging additional acts of intimidation, coercion, and threats by Irvins in violation of Section 8(a)(1) of the Act. No allegation was contained in the original or amended charge that Irvins had discharged employees as stated in the leaflets it had been distributing since June 3, 1960. On July 8, 1960, Irvins and Respondent Union executed a settlement agreement approved by the Regional Director, in which Irvins, without conceding that it violated the Act as charged, agreed that it would not in the future engage in conduct in violation of Section 8(a)(1) of the Act as identified by the words of that section of the Act, and by the conduct Respondent Union charged that Irvins had committed. Irvins also agreed to post notices in its retail establishments to this effect. Irvins posted the notices on July 10, 1960.

On August 9, 1960, the Regional Director determined that there could be held on August 18, 1960, without interference with Irvins' employees' rights to vote in a representation election in a free and voluntary manner, the election he had originally scheduled for June 23, 1960, and which he had canceled on June 22, 1960, because of the charge Respondent Union filed against Irvins on that date. Respondent Union and Irvins were so notified on August 9 as well as notified that there would be a preelection conference on August 17, 1960. On August 15, 1960, Respondent Union sent a telegram to Irvins asking it for permission to address Irvins' employees. There is no evidence as to whether Irvins replied or did not reply to the telegram. On August 17, 1960, the preelection conference was held at the Regional Office. Representatives of Respondent Union participated in the conference. Neither at this time nor since the August 18 election date was announced, did Respondent Union raise any objection to the holding of the election. Neither did it complain at any time of any conduct by Irvins violative of the settlement agreement of July 8, 1960.

On August 18, 1960, the Board election was held. The tally of ballots, dated August 18, 1960, showed that of 189 votes cast by Irvins' employees, 50 votes were for Respondent Union, 95 votes were against it, and 44 votes were challenged. A statement was contained on the tally sheet that the challenged ballots were not sufficient in number to affect the outcome of the election, and that a majority of votes had not been cast for Respondent Union. Buckner, on behalf of Respondent Union, stated on the tally of ballots that he acted as observer in the counting and tabulating of ballots, and certified thereon that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated on the tally. Buckner also acknowledged service of the tally. On August 18, 1960, following the election, Respondent Union, by two representatives who acted as observers on behalf of Respondent Union at the balloting, certified that the balloting was fairly conducted, that all eligible voters were given an opportunity to vote their ballots in secret, and that the ballot box was protected in the interest of a fair and valid vote.[2]

On August 19, 1960, Respondent Union, by its Secretary-Treasurer Akman, sent a letter to President Perellis of Irvins. In the first paragraph of the letter, Respondent Union stated that in view of the results of the election, it would not request recognition nor accept recognition until the majority of Irvins' employees indicated their desire to be represented by Respondent Union. In the second paragraph of the letter, Respondent Union stated that it felt obligated to inform the Baltimore

[1] The petition stated that Respondent Union had requested Irvins to bargain on June 2, 1960, but had received no reply.

[2] A certification of the results of the August 18 election was issued by Regional Director Penello on August 26, 1960 He stated therein that a majority of votes were not cast for Respondent Union, and that it was not the exclusive collective-bargaining representative of Irvins' employees.

labor movement and the people of Baltimore of the antiunion conduct of Irvins and its supervisors, agents, and representatives, of threatening, coercing, and intimidating employees. It further stated in this paragraph that it planned to advertise to the public what it considered to be Irvins' "reprehensible anti-union position."

On August 19, 1960, Respondent Union changed its picketing procedure at Irvins' four retail stores. One picket instead of two patrolled each of the stores. The picket sign legend was changed to read, "This is a Non-Union Store—Irvins Opposes Unions for its Employees—Please do not Patronize." There followed the identification of the Respondent Union.[3] The picketing was begun at 12:30 noon and was ended at 5 p.m., on Monday, Tuesday, and Wednesday. On Thursday, Friday, and Saturday, the starting time was 1:30 in the afternoon and the ending time was 9 p.m. Prior to the Board election, the picketing also began at 12:30 noon on Monday, Tuesday, and Wednesday, and at 1:30 in the afternoon on Thursday, Friday, and Saturday. However, on Monday, Tuesday, and Wednesday it had ended at 5:30 p.m., instead of 5 p.m., and on Thursday, Friday, and Saturday, at 9:15 to 9:30 p.m., instead of 9 p.m. The store hours at Irvins during all the picketing ran from 9 a.m. to 9 p.m. on Monday, Thursday, Friday, and Saturday, and from 9 a.m. to 5:30 p.m. on Tuesday and Wednesday. The lunch periods for Irvins' employees during the entire period of the picketing were between the hours of 11 a.m. and 2 p.m.

Buckner testified that the picketing prior to August 19, 1960, was to obtain Irvins' recognition of it as the employees bargaining representative, and to obtain its acceptance by Irvins' employees as their collective-bargaining representative. He claimed that the picketing following the election was to convey information only. The information conveyed, according to Buckner, was the information set out in its letter to Irvins on August 18, 1960. Buckner testified that between July 10 and August 18 he talked with 12 to 18 employees about union activity. According to him, they said that the posting of the notice on July 10, 1960, pursuant to the settlement agreement of July 8, 1960, had not removed the fear from their minds that Irvins would carry out its threats to blacklist them among all department stores in Baltimore, with the result that they would never be able to work in a store again. Buckner said he discussed with these employees the rights they had under the Act, and the settlement agreement of July 8, 1960, and the notice posted on July 10, 1960.

Buckner also testified[4] that the picketing would be discontinued if certain conditions were met by Irvins. He stated that Irvins would have to assemble employees to reassure them it would not carry out threats it previously made, further reassure them that they would be subject to no pressure and would have a free choice in the selection of a bargaining agent, and, finally, invite the representatives of Respondent Union to address the assembled employees. Buckner testified further that if these conditions were met the picketing would be discontinued.

Akman, secretary-treasurer of Respondent Union, testified that a meeting was held on August 5, 1960, attended by him, Buckner, Ken Friedman, an organizer, and Joseph E. Finley, attorney for Respondent. According to Akman, they had lost six of eight elections prior to the August 18 election, and foresaw the possibility of losing the August 18 election. The four of them, as a result, according to Akman, determined to pursue a policy of informing the public after a lost election, by picketing and other publicity, of the conduct an employer engaged in prior to an election which was protected by Section 8(c) of the Act. Section 8(c) excludes from conduct violative of the Act, employer expressions of opinion regarding unions or union activity which do not contain any threats of reprisal or force or promise of benefit. According to Akman, the failure of Respondent Union to win the August 18 election was due to the statements made to employees by President Petrellis of Irvins, and other representatives of Irvins which were protected by Section 8(c) of the Act. Finley, counsel for Respondent, supported this position in statements he made in the course of the hearing.

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[3] As previously found, the picket sign legend up to and including August 18, 1960, the day of the election, read "Irvins refuses to recognize Local 692—Retail Store Employees Union—R C I.A., AFL–CIO."

[4] The U.S District Court for the District of Maryland enjoined Respondent's picketing on October 3, 1960, by a temporary injunction order. *Penello* v. *Retail Store Employees Local Union No. 692, Retail Clerks International Association, AFL–CIO,* 188 F. Supp. 192 (D C. Md.) The testimony of Buckner in that proceeding was stipulated by counsel at the hearing before the Trial Examiner on October 10, 1960. The stipulation was received in evidence by the Trial Examiner exclusive of any rulings thereon by the court, or of any findings of the court premised on such evidence.

B. *Analysis and concluding findings*

The issue to be decided is whether Respondent's picketing following the Regional Director's certification on August 26, 1960, of the results of the August 18, 1960, election violated Section 8(b)(7)(B) of the Act. This section reads 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:
> * * * * * * *
> (B) where within the preceding twelve months a valid election under section 9(c) of this Act has been conducted, or
> (C) . . . .[5]
> Nothing in this paragraph (7) shall be construed to permit any act which would otherwise be an unfair labor practice under this section 8(b).

Respondent Union has never been certified by the Board as collective-bargaining representative of Irvins' employees. General Counsel concedes that the picketing prior to the election on August 18 was legal. A violation, if committed, would run

[5] Counsel for Respondent Union argued that the second proviso in subparagraph (C) should be read into subparagraph (B) by applying the statutory rule of construction in *pari materia* This proviso is:

> . . 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 customers) 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 to perform any services

This proviso, while it makes evidence of a refusal to handle goods due to the inducement of the picketing proof of illegal object under the stated conditions (see *McCleod* v *Chefs, Cooks, Pastry Cooks and Assistants, Local 89, Hotel and Restaurant Employees Union, AFL–CIO, et al*, 280 F 2d 760, 764 (C.A. 2)), excludes as proof of object evidence of other effects or consequences, foreseeable or actual, when the stated conditions are present. See *Botany Worsted Mills* v *U S*, 278 U S 282, 289

The theory of Respondent Counsel's representation is that subsections (A), (B), and (C) alike govern recognitional and organizational picketing by a noncertified union, that they should be read together, and so read, the second proviso in subsection (C) is also a part of subsections (A) and (B). The presence in (C) of a first proviso precludes such a rationale This first proviso, which directs the Board to "forthwith" direct a representation election and certify the results, applies only to a subsection (C) situation Moreover, while the general subject matter is the same, each subsection treats of a different phase of it. In addition, in the situations covered by (A) and (B), the employees either have selected or rejected a bargaining representative, but in the subsection (C) situation, the employees may not have reached the point of selection or rejection So the application of the proscription on picketing to (A) and (B) situations will not interfere with employees' rights guaranteed by Section 7, but might have had that effect when applied to a (C) situation without the limitation contained in the second proviso

The presumption is that a proviso refers only to the provision to which it is attached, and, as a general rule, is deemed to apply only to the immediately preceding clause *United States* v. *McClure*, 305 U S. 472; *Dollar Sav Bank* v *United States*, 19 Wall (U.S.) 227. The above analysis supports this rule Rules of statutory construction or interpretation such as in *pari materia* serve a purpose only when they aid in disclosing legislative intent. *Posselius* v *First Nat Bank*, 264 Mich. 687, 251 N.W. 429, cert denied 292 U S 697; *United States* v. *One Ford Auto*, 292 F 2d 207 (C A.D.C); *Detroit Citizens Street R Co* v *Detroit*, 64 F. 2d 648 (C A 6) Representative Griffin, cosponsor of the Landrum-Griffin bill, which emerged substantially as the final law, stated in reference to the second proviso that "it pertains to subsection (C) *only* [emphasis supplied], and therefore consumer appeals for organizational or recognitional purposes are banned after an election." NLRB, Legislative History of Labor-Management Reporting and Disclosure Act of 1959 (U.S. Govt. Printing Office), p. 1812. See also *id.* at p 1858. So the second proviso of (C), applies to (C) only.

only from August 26, 1960, the date of the certification of results of the election, since the complaint alleges that the violation was from that date. Respondent Union concedes that objects of picketing engaged in prior to August 19, 1960, were to secure recognition by Irvins, and acceptance by Irvins' employees, of Respondent Union as bargaining representative.

Respondent Union changed its picket sign legend on August 19, 1960, to a statement that the store being picketed is a "Non-Union" store, and that "Irvins Opposes Unions for its Employees," followed by a "Please do not patronize" request. One picket patrolled in front of each of Irvins' four stores with this picket sign during the store's operating hours. By stating that the store was a nonunion store, customers understood Respondent Union to be stating that Irvins had no relations with unions.[6] More specifically they understood Respondent Union to be stating that Irvins refused to recognize it as the representative of its employees. They would be helped in having this understanding by the legend on the picket sign used by Respondent Union from May 31, 1960, until August 18, 1960, that "Irvins refuses to recognize Local 692." Customers also understood Respondent Union to be stating in the words of the new picket sign legend that Irvins opposes unions for its employees, that Irvins gave expression to a policy, either in terms of speech or conduct, that the employees were not to become members of Local 692 or seek representation by Local 692. How it opposed union membership or representation was left to the customer reading the sign to surmise. He was certainly aided by the legend on the sign carried by the pickets the prior June, July, and the first 18 days of August, that "Irvins refuses to recognize Local 692." The words "Please do not patronize" are clear and unambiguous. They clearly convey the request not to do business with Irvins. It is logical to assume that the purpose of the picketing was intended to induce present or future conduct. So to the customers, Respondent Union's picketing on and after August 19, 1960, was an appeal to cease doing business at Irvins' four retail stores until Irvins recognized Respondent Union as the representative of its employees. This finding is supported by the evidence that the picketing not only followed immediately an election lost by Respondent Union, but also picketing, the distribution of leaflets, and other conduct of Respondent Union with the obvious and admitted objects of recognition by Irvins and acceptance by its employees of Respondent Union as bargaining representative.[7]

A foreseeable consequence of this picketing was the forcing or requiring of Irvins to recognize and its employees to accept Respondent Union as bargaining representative.[8] The threat, as well as the actual consequence of losses in sales, could well be enough to cause Irvins to fear economic disaster and escape from it by recognizing Respondent Union, and to cause Irvins' employees to fear for their jobs, and to guard against losing them by accepting the Respondent Union as collective-bargaining representative. Prior to the addition of Section 8(b)(7) to the Act, the courts and the Board determined that the type of conduct engaged in by Respondent was reasonably calculated to have that effect.[9] Congress in enacting Section 8(b)(7)(B), considered the economic loss resulting from picketing following an election in which the employees rejected the union, and aimed to protect the employer and the employees from this hardship, when the object was recognition or acceptance as bargaining representative.[10]

The objective standard for determining object from foreseeable effects or consequences has been recognized in the field of labor relations.[11] Moreover, the fact

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[6] It is elementary that words are to be given their common and ordinary meaning absent a showing that they have a special or technical meaning

[7] There are no presumptions in favor of or against Respondent Union arising from Respondent's conduct prior to August 19, 1960 However, evidence of Respondent's conduct prior to that date can be, and has been, considered in determining the object of the picketing under scrutiny See *Stan Jay Auto Parts and Accessories Corporation,* 127 NLRB 958

[8] Peaceful picketing for an object proscribed by Section 8(b)(7) satisfies the words "forcing or requiring" in that section. *Stan Jay Auto Parts and Accessories Corporation, supra.*

[9] *Teamsters Local* v *Vogt, Inc*, 354 U S 284; *Capital Service, Inc, d/b/a Danish Maid Bakery, et al* v. *N L R B*, 204 F. 2d 848, 853 (C A 9), *Curtis Brothers, Inc*, 119 NLRB 232, 236, revoked on other grounds 362 U S 274 The actual happening of the foreseeable consequence is not a necessary condition. *Curtis Brothers, Inc, supra,* at p 237

[10] NLRB, Legislative History of Labor-Management Reporting and Disclosure Act of 1959 (U.S. Govt Printing Office), pp 472, 1518, 1523, and 1813

[11] *The Radio Officers' Union of the Commercial Telegraphers Union, AFL (A. H Bull Steamship Company)* v. *N L.R.B*, 347 U S. 17, 45–46, 51. The Supreme Court applied

that Congress in limiting the proof of a violation of subsection (C) of Section 8(b)(7), in a situation described in the second proviso to that subsection, recognized as evidence of a violation the actual effect or consequence of a refusal to make pickups, deliveries, or transfers or to perform services, is persuasive that it considered the consequences or effects reasonably calculated to flow from the picketing to constitute proof of object, with respect to other (C) situations and those under (A) and (B)

Respondent Union by way of defense showed that it engaged in independent acts it claims reveal an intention to convey information only by its picketing, and not to force or require Irvins to recognize it or Irvins' employees to accept it, as bargaining representative. Common sense prevents me from considering this picketing with a please do not patronize request contained in the picket sign legend as merely a vehicle for the dissemination of ideas.[12] Respondent's defense will have to show that what appears to be an illegal object from the analysis of the picket sign legend considered with Respondent Union's prior conduct, and from the foreseeable consequence of forced recognition and acceptance due to economic coercion through customers, was not in fact intended by Respondent Union. It is not enough for Respondent to show that a second object of the picketing was to convey information.[13]

Respondent contends that its letter to the president of Irvins, signed by Secretary-Treasurer Akman, and dated August 19, 1960, the same day that it changed its picketing, discloses the true object of the picketing, to merely inform the public of certain antiunion conduct of Irvins. The letter stated that Respondent Union did not seek or desire recognition by Irvins or acceptance by its employees as bargaining representative in view of the results of the election, accused Irvins of threatening, intimidating, and coercing employees, and announced that it intended to "advertise" to the public the "reprehensible anti-union position" of Irvins.

So Respondent in its August 19 letter charged Irvins with engaging in conduct violative of Section 8(a)(1) of the Act and the terms of the settlement agreement of July 8, 1960. But Respondent, during the period from July 8 to August 19, 1960, did not file an unfair labor practice charge or otherwise complain to the Regional Director of this alleged illegal conduct. Nor had it filed any such charge or complaint by October 10, 1960, the day of the hearing. Neither did Respondent request the Regional Director to delay the holding of the election when, on August 9, 1960, he announced that an election could be conducted in which Irvins' employees could cast their ballots in a free and voluntary manner, and scheduled it for August 18, 1960, as well as a preelection conference for August 17, 1960.[14] Nor was such a request made thereafter. Respondent union representatives attended the preelection conference, acted as observers at the election and at the counting of the ballots, and certified that the election and the counting were conducted fairly, that the secrecy of the ballot was preserved, and that the tally of the ballots was accurate.

The value of the August 19 letter as evidence is rendered more doubtful by the testimony of Buckner, Respondent's representative and organizer, and Akman, its secretary-treasurer. Buckner testified that Respondent sought to disclose to the

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the common law rule that a man is held to intend the foreseeable consequences of his conduct, *id* at p 45, citing *Cramer* v. *U S.*, 325 U S. 1, 31; *Nash* v *U S*, 229 U.S 373, 376; *U S* v *Patten*, 226 U.S. 525, 539; *Agnew* v *U S*, 165 U S 36, 50. Courts of appeals have applied the ruling in *Radio Officers* in cases involving union conduct as well as employer conduct. *N L R B* v *Local 140, United Furniture Workers of America, CIO, et al (Brooklyn Spring Corp)*, 233 F. 2d 539, 541 (C A. 2); *N L R B.* v. *Oklahoma City General Drivers, Warehousemen and Helpers, Local Union 886, International Brotherhood of Teamsters, etc (Chief Freight Lines Co.)*, 235 F. 2d 105, 107 (C.A. 10); *Olin Mathieson Chemical Corporation* v. *N.L.R.B.*, 232 F. 2d 158, 161 (C.A. 4). But cf. *Douds* v. *Local 50, Bakery and Confectionery Workers International Union of America, AFL (Arnold Bakers, Inc.)*, 224 F 2d 49 (C.A 2); and *N L R B.* v. *Local 50, Bakery & Confectionery Workers International Union, AFL–CIO (Arnold Bakers, Inc.)*, 245 F. 2d 542 (C A. 2). In these cases customers did not use the area picketed. The findings and conclusion I make in this case are premised on the picketing considered in the context of this case

[12] Peaceful picketing, a potent economic weapon, is more than speech, and may be banned by Congress when aimed at preventing a valid public policy. *Teamsters Union* v *Vogt, Inc*, 354 U S. 284, 289–293

[13] *N L R B.* v *Denver Building and Construction Trades Council, et al (Gould & Preisner)*, 341 U S. 675, 688–689.

[14] See *Robert P Scott, Inc.* v. *Rothman*, 46 LRRM 2793 (D.C.D.C.); *Colony Materials, Inc.* v *Rothman*, 46 LRRM 2794 (D.C D.C.).

public by the picketing threats made by Irvins' officials prior to July 8, 1960, responsible for the continuation of a fear in the minds of employees after July 8 that if they favored the Respondent Union they would lose their jobs, and not be able to secure employment elsewhere in the Baltimore area. According to Buckner, 12 to 18 employees informed him of this fear between July 8 and August 18. Akman, Respondent's secretary-treasurer, assisted by Finley, Respondent's counsel, testified that the picketing was intended to disclose to the public only statements made by Irvins' officials to employees unfavorable to the Respondent Union, but protected by Section 8(c) of the Act.[15] This constitutes an admission by Akman that the representation in the August 19 letter, which he signed, that Respondent Union was informing the public by the picketing of conduct constituting threats, intimidation, and coercion was not true. Akman's admission is supported by his testimony that at the meeting of August 5, 2 weeks prior to the date of the letter, at the office of Respondent Union, attended by him, Buckner, Organizer Friedman, and Finley, Respondent Union's counsel, the decision to inform the public of *legal* conduct by Irvins unfavorable to Respondent Union was determined.

This analysis of the evidence convinces me that no weight should be attributed to the August 19 letter or to the conclusionary testimony of Buckner and Akman, as to what the picketing was intended to accomplish.[16] In any event, on studying the picket sign legend comprised of the statement that the Irvins' store is a nonunion store and that Irvins opposes unions for its employees, and the request not to patronize the store, I fail to find the slightest clue as to what the August 19 letter, or Buckner's or Akman's oral testimony states was intended to be disclosed to the public, including customers, by the picketing; namely, that Irvins threatened, intimidated, and coerced employees with respect to their union activity, or that a fear of loss of employment caused by threats made by Irvins continued in the minds of its employees after the settlement agreement of July 8, 1960, or that Irvins made statements to employees that were expressions of opinion without threat of reprisal or force or promise of benefit, but which showed that Irvins did not favor Respondent Union or other unions.

I credit the evidence that there was no disruption of deliveries, pickups, or transfers, or performance of other services, by employees of other employers by reason of the picketing, and that Respondent Union representatives or agents saw to it that the picketing did not interrupt these activities. However, while this evidence shows that Respondent did not seek to accomplish an illegal object through the economic hardship of a disruption of services, it fails to dent the evidence that Respondent was seeking to achieve an illegal object by appealing to customers not to trade with Irvins, and their response to the appeal. I further find that evidence of object from foreseeable consequences is not limited to evidence of disruption of deliveries, pickups, and transfers, or other services, since for the reasons stated in footnote 5, *supra*, the second proviso to subsection (C) is not applicable to subsection (B).[17]

The statement in Respondent Union's letter of August 19, 1960, that it was not seeking recognition by Irvins or acceptance by its employees, as bargaining representative is not supported by the evidence. I have not commented on the fact that Respondent Union conveyed only to Irvins the representation that it would not accept the role of bargaining representative. It made no effort to communicate this "information" to the customers of Irvins through whom it was compelling Irvins to recognize it, and its employees to accept it, as bargaining representative

For the above reasons, I conclude and find that Respondent Union's picketing of Irvins' four retail stores in Baltimore on and after August 26, 1960, violated Section 8(b)(7)(B) of the Act.

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[15] Section 8(c) provides that "The expressing of any views, arguments, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit"

[16] The conflicts in this evidence of Respondent have made it unnecessary for me to determine whether its conclusionary nature would have permitted me to attribute any weight to it in the presence of the more probative evidence of the picketing itself and Respondent's prior conduct, from which I can draw my conclusions, rather than accept those of Respondent See *A C A.* v. *Douds,* 339 U S 382, 411; and *Spokane & I E R. Co* v *U S.,* 244 U S 344, 351.

[17] I do not consider the testimony Buckner gave in response to the inquiry as to what Irvins had to do to cause Respondent Union to voluntarily discontinue the picketing, to be probative evidence for or against Respondent General Counsel argued that it disclosed an illegal object, and counsel for Respondent argued that it disclosed a legal object.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent Union set forth in section III, above, occurring in connection with the operations of Irvins 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 Respondent Union has engaged in an unfair labor practice in violation of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

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

CONCLUSIONS OF LAW

1. Irvins, Inc., Baltimore, Maryland, is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Retail Store Employees' Union, Local No. 692, Retail Clerks International Association, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.
3. By picketing the four retail stores of Irvins, Inc., located in Baltimore, Maryland, from August 26, 1960, until enjoined by the United States District Court for the District of Maryland on October 3, 1960, with an object of forcing or requiring Irvins, Inc., to recognize it or bargain with it as the collective-bargaining representative of the employees of Irvins, Inc., or forcing or requiring the employees of Irvins, Inc., to accept or select it as their collective-bargaining representative, although it had not been currently certified as the collective-bargaining representative of such employees, and a valid election under Section 9(c) of the Act had been held within the preceding 12 months, Retail Store Employees' Union, Local No. 692, Retail Clerks International Association, AFL–CIO, engaged in an unfair labor practice within the meaning of Section 8(b)(7)(B) of the Act.
4. The aforesaid unfair labor practice is an unfair labor practice affecting commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommendations omitted from publication.]

Glaziers, Glassworkers & Glass Warehouse Workers Local Union No. 1778, Brotherhood of Painters, Decorators and Paperhangers of America, AFL–CIO [Dixie Glass Co., Inc.] *and* Fred Hunt. *Case No. 23–CB–376. November 24, 1961*

DECISION AND ORDER

On August 14, 1961, Trial Examiner John P. von Rohr issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its power in connection with this case to a three-member panel [Chairman McCulloch and Members Rodgers and Brown].

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The