International Brotherhood of Electrical Workers, Local 98, AFL–CIO *and* MCF Services, Inc., t/a State Electric; Wohlsen Construction Company; United Parcel Service, Inc.

International Brotherhood of Electrical Workers, Local 380, AFL–CIO *and* MCF Services, Inc., t/a State Electric. Cases 4–CC–2214, 4–CC–2244, 4–CB–8348, 4–CC–2240-2, 4–CB-8300–1, 4–CC–2246, and 4–CC–2248

July 30, 2004

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

On June 23, 2000, Administrative Law Judge George Alemán issued the attached decision. The Respondents, International Brotherhood of Electrical Workers Local 98, AFL-CIO, and International Brotherhood of Electrical Workers Local 380, AFL–CIO, each filed exceptions and a supporting brief. The General Counsel and the Charging Parties each filed briefs in opposition to the Respondents' exceptions.

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions only to the extent consistent with this Decision and Order.[2]

I. INTRODUCTION

The judge found, among other things, that Local 98, through its agent, organizer Timothy Browne, violated Section 8(b)(4)(ii)(B) of the Act on June 8, 1999,[3] by threatening the Cheltenham School District (the District) with picketing at its high school construction site if it awarded a contract to State Electric (State), a nonunion electrical contractor. The judge also found that Local 98, again through Browne, violated Section 8(b)(1)(A) in August 1999 by blocking State employee Vincent Ponticello from performing his work at the District's jobsite, threatening Ponticello with physical harm, and coercively photographing him and other employees at the site. We affirm these findings, as well as the judge's other findings concerning Local 98, involving similar misconduct relating to other nonunion contractors, as detailed in his decision.[4]

The judge further concluded that Local 380 was jointly and severally liable for Local 98 Organizer Browne's unfair labor practices involving State, based on his finding that Local 380 and Local 98 were engaged in a "joint venture" for the purpose of organizing State's employees. The judge relied on the Board's decision in *Sheet Metal Workers Local 19 (Delcard Associates)*, 316 NLRB 426 (1995), enf. denied 154 F.3d 137 (3d Cir. 1998), which held that, in a joint venture among unions, each union is liable for unfair labor practices committed by the other unions in furtherance of their shared objective.[5] As an alternative basis for finding Local 380 liable for the violations, the judge found that Local 98 Organizer Browne, himself, was Local 380's agent at the times in question.

Respondent Local 380 has excepted to the judge's finding that it is liable for Organizer Browne's misconduct, contesting both the judge's reliance on the joint-venture theory and his application of the Board's agency law principles. We find it unnecessary to pass on the judge's application of the joint-venture theory because we agree with his alternative analysis that Local 98 representative Browne was acting as Local 380's agent when he unlawfully threatened the District at its June 8 meeting and engaged in unlawful activity at the jobsite in late August.

II. THE AGENCY FINDINGS

A. The Judge's Factual Findings

Local 98 Organizer Browne began acting on behalf of Respondent Local 380 as early as August 1998. It was

[1] The Respondents have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] We disavow any reliance on the judge's comments in fn. 16 of his recommended decision regarding possible 8(b)(7)(C) violations, which have not been alleged in this proceeding.

[3] All dates are in 1999, unless stated otherwise.

[4] The judge's finding that Browne unlawfully photographed State employees while contemporaneously issuing threats (i.e., telling State employee Vincent Ponticello "I know who you are, I know where you live. We're going to get you someday"), is consistent with Board law. See *Mike Jurosek & Son*, 292 NLRB 1074 (1989) (union photographing of employees objectionable in an election context where accompanied by the threat, "We've got it on film; we know who you guys are . . . after the Union wins the election some of you may not be here"); A*uto Workers Local 695 (T.B. Wood's)*, 311 NLRB 1328, 1336 (1993) (videotaping accompanied by threats and assaults violated Sec. 8(b)(1)(A)).

Contrary to Local 98's contention, the fact that Ponticello did not testify that he subjectively felt threatened by Browne's statements is not dispositive of the 8(b)(1)(A) allegation. The Board applies an objective test. See *Carpenters (Society Hill Towers Assn.)*, 335 NLRB 814, 814-815 (2001).

[5] The judge acknowledged the Third Circuit's rejection of the Board's joint venture theory, but properly concluded that he was bound to follow Board precedent. See *Waco, Inc.*, 273 NLRB 746, 749 fn. 14 (1984).

then that Browne first contacted Local 380 Organizer Kenneth MacDougall about organizing State's employees. MacDougall agreed to take on the task of "head[ing] up that campaign." MacDougall and Browne then held several conversations to discuss their strategy for organizing State's employees.

On about August 13, 1998, Organizer Browne held a meeting for State employees at Local 98's office. Browne distributed union authorization cards to the employees. Some of the cards designated Local 98 as the bargaining representative while others identified Local 380 as the representative.

Approximately half of the cards signed at the meeting were Local 380 cards. Browne accepted them all. Local 380 Organizer MacDougall did not attend the meeting, but Browne later reported back to him what had transpired at the meeting.

On September 25, Local 380 filed a petition with the Board seeking certification as the bargaining representative of State's employees. MacDougall alone signed the petition on behalf of Local 380. Local 98 Organizer Browne, however, continued to play an integral role in the organizing campaign.

MacDougall and Browne's organizing strategy included a "salting" campaign against State and visits to numerous jobsites to monitor State's activities. MacDougall acknowledged that, in 1998 and 1999, he and Browne visited employers who were doing business with State, or were considering doing so, regarding the employers' contracting for work with State. On one occasion in about February 1999, MacDougall and Browne actually picketed the Genuardi jobsite in East Norriton, Pennsylvania, when State was on the job.

On other occasions, MacDougall and Browne engaged in conversations with State employees about voting for representation by Local 380. In one such instance, MacDougall and Browne met with State employees, including State Foreman Vincent Ponticello, at a residential construction site. They spoke with Ponticello and another State employee about voting for the union and what the union could do for them. MacDougall made similar visits with other Local 98 representatives, but most often accompanied by Local 98 Organizer Browne. Browne also visited jobsites alone on some occasions.

Of particular significance to the issue of the agency relationship were MacDougall and Browne's activities directed at the District. On about June 1, the District met to award contracts for renovation work at Cheltenham High School. Browne attended the meeting. The District awarded several contracts and proposed awarding State the electrical work. Browne identified himself as a representative of Local 98, objected to any award to State, and alleged problems with State's business practices, asserting, among other things, a lack of trained electricians to perform the necessary work. Browne asserted that only a union contractor could do the electrical work properly. The District postponed voting to investigate Browne's allegations.

Browne subsequently reported to MacDougall about the District meeting. They discussed Browne's allegations against State as well as their shared belief that State was violating prevailing wage laws. Browne indicated that he would present these allegations to the District at its next meeting. MacDougall agreed and planned to join Browne at the meeting.

The next District meeting was held June 8. Browne, District Director of Support Services Stephen Saile, and the president of State, Sharon Ponticello, were present. MacDougall also attended the meeting, although he arrived late. According to Ponticello's credited testimony, Browne told the District that the union contractors on the job would not work with State. He added that he "could throw up [a] picket line in 30 days" and that "no one would come in or out and this would cause a lot of delays." Browne warned that he had successfully caused similar delays at a project run by another nonunion contractor in the area. The District school board president asked if there was any way to avoid picketing. Browne responded, "Well, I don't know. Some days I wake up happy and some days I don't wake up so happy."

Neither Local 380 nor Local 98 ever picketed the high school jobsite. Browne, however, visited the site several times in late August 1999. Browne took pictures of employees entering and exiting the site, as well as pictures of the license plates on their vehicles. On one such occasion, Browne used his vehicle to block State Foreman Ponticello from operating a forklift for about 1530 minutes.[6] When Ponticello asked Browne to move his vehicle, Browne responded, "I know who you are, I know where you live. We're going to get you some day." On another occasion, Browne, in his vehicle, followed Ponticello, who was in his vehicle with a couple of coworkers, into the jobsite parking lot, circled Ponticello's vehicle, and videotaped the occupants.

B. Analysis

The Board is guided by common law principles in determining agency status. Under those principles, an agent's authority may be actual or apparent, and the principal may create either type of authority expressly or by implication. As the Board explained in *Communications*

[6] There is no claim by the Respondent Unions that Foreman Ponticello was not a statutory employee entitled to the protections of Sec. 8(b)(1)(A).

Workers Local 9431 (Pacific Bell), 304 NLRB 446 fn. 4 (1991):

> [A]ctual authority refers to the power of an agent to act on his principal's behalf when that power is created by the principal's manifestation to him. That manifestation may be either express or implied. Apparent authority, on the other hand, results from a manifestation by a principal to a third party that another is his agent. Under this concept, an individual will be held responsible for actions of his agent when he knows or "should know" that his conduct in relation to the agent is likely to cause third parties to believe that the agent has authority to act for him. (Citing Restatement 2d, *Agency*, § 27.)

Further, as described in Section 2(13) of the Act, a principal is liable for his agent's actions, even if the principal did not authorize or ratify the particular acts. As the Board explained in *Bio-Medical of Puerto Rico*, 269 NLRB 827, 828 (1984):

> A principal is responsible for its agents' conduct if such action is done in furtherance of the principal's interest and is within the general scope of authority attributed to the agent . . . it is enough if the principal empowered the agent to represent the principal within the general area in which the agent has acted.

Applying these principles, we affirm the judge's finding that Local 98 Organizer Browne was acting as Local 380's agent when he unlawfully threatened the District at the June 8 meeting and engaged in unlawful conduct at the District jobsite in late August.[7]

1. Local 98 Organizer Browne's threat to picket the District's jobsite

We affirm the judge's finding that Local 380 was vicariously liable for Browne's June 8 threat to picket the District's jobsite, because the evidence in the record demonstrates that Browne had *actual authority* to speak for Local 380 at the June 8 District meeting. MacDougall admitted that, although Browne had originally raised the idea of the organizing campaign, MacDougall was "head[ing] up" the campaign, and there is no argument that he lacked the authority to bind Local 380 to an agency arrangement with Browne. Browne admitted that he and MacDougall met twice and conferred several times by telephone to plan the campaign to organize State employees, and reported directly to MacDougall on the results of the August 13 membership meeting with State employees. MacDougall admitted that prior to the District's June 8 meeting, he and Browne discussed State's alleged noncompliance with applicable prevailing wage laws and agreed that the District should be told about these allegations, and they agreed that Browne would raise them to the District, in an effort to create difficulties for State and thus to weaken its resistance to the Local 380 organizing campaign. These facts demonstrate that MacDougall gave Browne implied, if not express, actual authority to speak on Local 380's behalf and to further its interests at the June 8 meeting. See *Electrical Workers Local 3 (Cablevision)*, 312 NLRB 487, 490–491 (1993) (agency relationship found where union officer asked alleged agents to assist an organizing campaign on the union's behalf and know of their activities).

Our dissenting colleague says that MacDougall and Browne never discussed action to be taken on June 8. We disagree. It is clear that MacDougall was aware of Browne's presentation at the June 1 District meeting; that MacDougall and Browne agreed that Browne would raise their concerns about State to the District following the June 1 meeting; that MacDougall would join Browne at that meeting; and that the District made it publicly known that it would take up the question of awarding contracts to State at its June 8 meeting. Despite these predicates, our dissenting colleague concludes that they made no plan for further action. We agree with the judge that these facts, coupled with MacDougall's uncredited explanation for his presence at the June 8 meeting, lead to the logical conclusion that Browne had MacDougall's prior consent and approval to address their concerns about State at the June 8 District meeting.

Local 380's assertion that no Local 380 representative was present when Browne issued his threats to the District on June 8 is not dispositive. The agency relationship means that Browne was authorized to act on Local 380's behalf, not simply in the presence of the principal. See *Service Employees Local 87 (West Bay Maintenance)*, 291 NLRB 82 (1988) (no requirement that principal be present for agent's unlawful acts.) Local 380's further assertion that no Local 380 official endorsed or ratified Browne's picketing statement is also unavailing. First, the Act itself dictates that Respondent Local 380's argument fails. As Section 2(13) provides, "in determining whether any person is acting as an 'agent' of another person so as to make such other person responsible for

[7] Contrary to our dissenting colleague, we believe that the context in which Browne and MacDougall's relationship arose supports our finding that Local 380 had liability for Browne's conduct. It is undisputed that Browne and MacDougall were publicly engaged in a joint effort to organize State's employees for Local 380. As discussed above, MacDougall had entrusted Browne to collect authorization cards for Local 380 from State's employees. That they had no contractual or formal relationship is irrelevant. 19 Williston on Contracts Sec. 54:14 (4th ed. 1991) ("The creation of an agency relationship requires no special formalities–the principal and agent need not enter into a formal contract to create it, and the required consent need not be express.").

his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling." Moreover, Local 380 does not dispute that it never repudiated Browne's threat.

As the Board explained in *Bio-Medical of Puerto Rico*, supra, it is sufficient that MacDougall empowered Browne to appear before the District in furtherance of Local 380's effort to become the bargaining representative of State's employees. Further, any doubt that the scope of Browne's agency encompassed the picketing statements is laid to rest by MacDougall's agreement that part of Local 380's campaign strategy would be to cause trouble for State. Thus, we affirm the judge's finding that Local 380 is liable for Browne's threat to picket the District's jobsite in violation of Section 8(b)(4)(ii)(B) of the Act.

Last, we disagree with our dissenting colleague's conclusion that, "even assuming that MacDougall had authorized Browne to bring up State's wage policies with the District . . .Browne stepped well beyond that authority when he threatened to picket the District's jobsite." Our colleague's essential argument is that, even if Browne were an agent of Local 380, the scope of the agency only extended to lawful, not unlawful conduct. Our colleague's approach ignores the long-settled principle that a principal is held responsible for its agent's conduct within the general area within which the principal empowered the agent to act. See *Bio-Medical of Puerto Rico*, supra; *Longshoremen ILWU Local 6 (Sunset Line)*, 79 NLRB 1487, 11509 (1948).

We find that Browne's presentation at the District meeting, including his threat to picket, was within the parameters of the conduct that MacDougall had empowered Browne to undertake on behalf of Local 380. Indeed, it was simply a continuation of Local 380's organizing campaign. See *Electrical Workers Local 3*, 312 NLRB at 490-491 (1993) (finding union authorized its agent's unlawful conduct because it was a continuation of the organizing campaign the agent had been authorized to pursue). As discussed above, MacDougall had authorized Browne to speak at the District meeting in order to advance the campaign against State. Browne's threat to picket was clearly designed to serve that end. Moreover, the threat was in line with other conduct that Browne had undertaken with MacDougall as part of the campaign. Indeed, MacDougall, with Browne, had picketed at the Genuardi's jobsite prior to the District meeting, contacted employers who were doing business with State, and visited numerous jobsites where State was employed. Accordingly, in these circumstances, we find that Browne did not exceed the general scope of his authority when he threatened to picket the District's jobsite to dissuade the District from awarding work to State.

2. Browne's misconduct at the District's jobsite

Similarly, we affirm the judge's finding that Local 380 was liable for Local 98 Organizer Browne's conduct at the District's jobsite in late August 1999. In this instance, however, our finding is based on Browne's apparent authority to act for Local 380 in connection with its campaign to organize State's employees.

From the outset of the organizing campaign, Local 380 Organizer MacDougall presented Browne to third parties, particularly State employees, in ways that reasonably would lead them to conclude that Browne was an authorized representative of Local 380. At Browne's initial meeting with State employees, he solicited employees' signatures on Local 380 authorization cards and accepted the signed cards for Local 380. Then, after Local 380 filed its representation petition, Browne accompanied MacDougall to jobsites to speak to State employees about voting for union representation. Indeed, Browne himself testified that he and MacDougall "were always together." The record also shows that Browne communicated with State on behalf of Local 380 regarding several unfair labor practice charges filed against State by Local 380. Among the employees they visited was Vincent Ponticello, who later became the object of Browne's coercive conduct at the District's jobsite in August.

We find that, as far as State's employees were concerned Browne had apparent authority to act for Local 380. MacDougall knew, or reasonably should have known, that, because Local 380 had allowed Browne to solicit State employees to sign Local 380 authorization cards, to speak with them about voting for Local 380, and to picket at jobsites where State employees were at work, the employees were likely to conclude that Browne had authority to act for Local 380 in connection with the organizing campaign. In disputing Browne's apparent authority to engage in the kind of coercive conduct he undertook at the Cheltenham jobsite, our dissenting colleague again argues that Local 380 did not specifically authorize Browne to break the law on his behalf. As discussed above, however, that is not the appropriate inquiry. Instead, the question is whether Browne was acting within the general area in which he had been empowered to act by Local 380. We find that Browne's conduct was within that general area. With MacDougall at his side, he had visited State's worksites and interacted with State's employees for the purpose of advancing Local 380's organizing campaign. MacDougall knowingly place Browne in a position that would reasonably lead employees to believe that Browne was soliciting on be-

half of Local 380. Accordingly, when Browne engaged in solicitation misconduct, Local 380 was responsible therefor. We therefore affirm the judge's finding that Local 380 was liable for Browne's unfair labor practices at the District's school construction site in late August.

III. CONCLUSION

For these reasons, we affirm the judge's finding that Local 380 was liable for Local 98 Organizer Browne's unlawful threat to the District at its June 8 meeting and for his unlawful conduct at the District's jobsite in August.

ORDER

The National Labor Relations Board orders that the Respondents, International Brotherhood of Electrical Workers Local 98, AFL–CIO, and International Brotherhood of Electrical Workers Local 380, AFL–CIO, their officers, agents, successors, and assigns, and/or representatives, shall take the action set forth in the recommended Order of the administrative law judge, amended as follows:

1. Substitute the attached notices for those of the administrative law judge.[8]

MEMBER LIEBMAN, dissenting in part.

It is clear that Local 98, through its organizer Timothy Browne, committed unfair labor practices, and the Order we issue today appropriately requires Local 98 to fully remedy these violations. No direct conduct by Local 380 is alleged to be unlawful. Only by stretching common law agency principles too far (as my colleagues do), or by basing liability on a joint-venture theory that is not permitted by the Act (as the judge did), can Local 380 too be held liable for Browne's actions.

I. THE AGENCY STATUS OF TIMOTHY BROWNE

The majority opinion accurately sets out the applicable legal principles: the party asserting an agency relationship must establish its existence under common law agency principles. See *Corner Furniture Discount Center, Inc.*, 339 NLRB 1122 (2003); *Pan-Olston Co.*, 336 NLRB 305 (2001); *Shen Automotive Dealership Group*, 321 NLRB 586, 593 (1996). An agent's authority may be actual or apparent, and the principal may create either type of authority expressly or by implication. See generally *Communications Workers Local 9431 (Pacific Bell)*, 304 NLRB 446 fn. 4 (1991) (citing Restatement 2d, *Agency*, § 27).

While actual authorization or notification of conduct is not necessary to prove an agency relationship, the Board has recognized that a principal is not necessarily responsible for an agent's conduct outside the scope of his authority. *Pan-Olston*, supra, 336 NLRB at 306.[1] The burden is on the party asserting the agency relationship to establish the relationship "with regard to the specific conduct alleged to be unlawful." Id.

Applying these principles, I would find that the General Counsel failed to establish that Local 98 Organizer Browne was acting as an agent of Local 380 when he (1) threatened the District on June 8 with picketing at its construction site or (2) engaged in coercive conduct at the District's jobsite in late August 1999.

Initially, it is important to put Local 380's alleged liability for Local 98 Organizer Browne's misconduct in the proper context. Local 380 had no formal relationship with Browne. Browne was not an officer, manager, or an employee of Local 380. They had no contractual relationship. Nor was Browne a member of Local 380. As a result, Browne was not formally under Local 380's control. The question therefore is whether the General Counsel established that Local 380 nonetheless should be held responsible for Browne's informal, voluntary assistance. I do not think the General Counsel carried this burden.

First, as my colleagues recognize, Local 380's liability for Browne's threat at the June 8 meeting must turn on his actual authority because there is no evidence of apparent authority.[2] The General Counsel's evidence of actual authority is lacking as well.

The credited evidence establishes that Local 380 Organizer MacDougall talked with Browne about attending the June 8 meeting, but there is no evidence that MacDougall directed Browne to attend the meeting on behalf of Local 380. Indeed, Browne, who had attended the District's earlier June meeting by himself, where he identified himself solely as a representative of Local 98, was merely informing MacDougall that he intended to follow up with the District about State's wage policies. MacDougall agreed that the District should be informed of

[8] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

[1] Sec. 2(13) provides that: "In determining whether any person is acting as an agent of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling."

[2] Local 380 Organizer MacDougall did not make any statements or engage in any conduct during the June 8 meeting that reasonably would have led the District to believe that Browne was Local 380's agent. Indeed, MacDougall, who arrived late and sat in the back of the room, did not say anything at all, or even identify himself to the District. As a result, an essential element of apparent authority—some manifestation by the principal that would likely to cause third parties to believe that the agent has authority to act for him—is missing.

State's wage policies, but there is no evidence that MacDougall and Browne discussed any further position or action that would be taken by either union. In short, there is no indication that Local 98 authorized Browne to threaten, or even discuss, picketing. In my view, then, the evidence fails to establish that MacDougall authorized "the specific conduct alleged to be unlawful." *Pan-Olston Co.*, supra, 336 NLRB at 306.

In finding that Browne did not exceed the scope of his authority in threatening to picket the District, my colleagues assert that Browne's threat was designed to serve Local 380's organizing campaign and was in line with other conduct that Browne had undertaken with MacDougall as part of the campaign. Browne's intent is beside the point. What matters is that MacDougall had only discussed with Browne State's wage policies. There is no evidence that MacDougall knew, or could have known, that Browne would freelance on the unrelated subject of picketing. Browne's threat, moreover, was not in line with Browne's prior conduct with MacDougall. My colleagues point to the fact that MacDougall and Browne had picketed at the Genuardi's jobsite prior to the District meeting, contacted employers who were doing business with State, and visited numerous jobsites where State was employed. These activities tend to confirm that MacDougall held the authority to commit Local 380 to picketing and related conduct. But they do not show that MacDougall ever authorized Browne to independently engage in, or threaten, such conduct.

Second, there is no actual agency authority in connection with Browne's conduct at the District's jobsite. There is no evidence that MacDougall, or any other Local 380 representative, discussed with Browne his visiting the District's jobsite, knew that Browne intended to visit the site, or later learned or approved of any of Browne's coercive conduct at the site. Nor is there evidence of any apparent authority: Local 380 did nothing that would lead State employees to reasonably believe that Local 380 had authorized Browne to engage in the conduct.

The facts are that Local 380 authorized Browne to solicit authorization cards, and Browne visited some of State's jobsites in late 1998 and 1999 to encourage support for the campaign. But, Browne's misconduct did not occur in these meetings.

And, as stated, there is no evidence that any Local 380 representative discussed with Brown his activities at the District's jobsite, knew that Browne intended to engage in such activities, or later approved of the activities.

Further, MacDougall, Local 380's own representative, was "heading up" the campaign, and regularly meeting with employees. In fact, MacDougall was with Browne on the day Ponticello recalled meeting Browne. According to Ponticello's testimony, they talked to him only about why he should vote for the union. There is no evidence that MacDougall said or did anything that would lead Ponticello, or other State employees, to reasonably believe that Browne was authorized months later to threaten State employees, block State employees from doing their work, or to engage in any other coercive conduct. For these reasons, I would find that the General Counsel failed to establish that Local 98 Organizer Browne had apparent authority to engage in the particular conduct on behalf of Local 380.

II. THE JOINT-VENTURE THEORY

Local 380 itself committed no unfair labor practices. The judge, however, found that Local 380 was vicariously liable for Local 98's violations because the unions were participants in a joint venture to organize State's employees. In *NLRB v. Sheet Metal Workers Local 19*, 154 F.3d 137 (3d Cir. 1998), denying enforcement to 316 NLRB 426 (1995), the United States Court of Appeals for the Third Circuit rejected the joint-venture theory now advanced by the General Counsel in this case and sustained by the judge. According to the court, the Act does not permit this theory. The court's reasoning is persuasive, and I would accordingly reject that theory of Local 380's vicarious liability.

Section 8(b) makes it an unfair labor practice for "a labor organization *or its agents*" to engage in certain types of conduct. 29 U.S.C. § 158(b) (emphasis added). By the terms of the statute, then, a labor organization may be held liable only for its own unfair labor practices or those of its officers, employees, or other agents. As discussed, the Board looks to common law agency principles to decide agency issues.

The Board's joint-venture theory, however, is not anchored in common law agency principles. In *Seattle District Council of Carpenters (Cisco Construction)*, 114 NLRB 27, 30 (1950), the Board, referring to "well-established principles," but no specific authority, concluded that where two or more unions engage "in a joint course of action to accomplish their common purpose" there is a "joint venture," carrying joint and several liability by each union for the acts of the other unions. Ibid. The Board subsequently articulated the "well-established principles" mentioned in *Cisco*. In *Great Lakes Dredge Company*, the Board said that joint adventurers, "'*being governed by the law of partnership*, are each the agent, and by the same token, the principal of each other.'" (quoting *Poutre v. Saunders*, 143 P.2d 554, 556 (Wash. 1943)) (emphasis added). The joint-venture theory is therefore premised on partnership law, and *not* common law agency principles. See *Sheet Metal Work-*

ers Local 19, supra, 154 F.3d at 143 fn. 9. Accord: *Longshoremen (Canaveral Port Authority)*, 323 NLRB 1029, 1030 (1997) (expressing view that the joint-venture theory is not a theory of common law agency), on remand from 56 F.3d 205 (D.C. Cir. 1995).

The Third Circuit decided that the Board runs afoul of the statutory limitation on Section 8(b) when it bases vicarious liability on anything other than common law agency principles. In *Sheet Metal Workers Local 19*, supra, as here, several local unions joined to organize a contractor working at a common jobsite. The Board found that Local 19 was liable for the other locals' unlawful picketing because the locals were acting "pursuant to a common plan and as a joint venture." 316 NLRB at 434–435. The Board, however, did not find that any of the other unions was acting as Local 19's agent.

In denying enforcement of the Board's decision, the Third Circuit emphasized that Section 8(b) applies only to the unfair labor practices of "a labor organization or its agents," as determined by the "ordinary common law rules of agency." 154 F.3d at 142. The court observed:

> Members of [a] joint venture, however, are not considered agents of the other co-venturers pursuant to common law principles of agency, but pursuant to partnership law . . . . Therefore, even if the other unions were agents of Local No. 19 under joint venture and partnership jurisprudence, they were not agents pursuant to common law principles of agency law and thus were not agents pursuant to § 8 of the Act.

154 F.3d at 143 fn. 9 (citations omitted). For these reasons, the court held that the joint-venture theory was inconsistent with Section 8(b) and could not be relied on by the Board as a basis for holding Local 19 liable for the other unions' unlawful acts. Id. at 143.

The Third Circuit's reasoning is persuasive. I would overrule those Board decisions applying a joint venture theory of liability under the Act, and I would reverse the judge's finding here that Local 380 was vicariously liable as a joint-venturer for Local 98's unfair labor practices involving State.

For all of the foregoing reasons, I would dismiss the complaint with respect to Local 380.

APPENDIX A

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

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO:

Form, join or assist a union
Choose representatives to bargain with your employer on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT interfere with, restrain, or coerce employees of employers performing work at the Cheltenham, PPH, and UPS jobsites, or of any other employer, by threatening them with physical harm, preventing them from performing their work duties, coercively photographing them as they enter and leave the jobsite, and blocking them from entering or leaving their jobsites, or in any other manner interfere with the rights guaranteed employees by Section 7 of the Act.

WE WILL NOT picket, threaten to picket, or in any other manner seek to restrain or coerce general contractor Adams-Bickel, the Cheltenham School District, PPH and/or Wohlson Construction, UPS, or any other employer or person engaged commerce or in any industry affecting commerce, where the object of such activity is to force or require said employers or persons to cease doing business with State Electric, Dayspring Electric, NDC, or any other employer with whom we may have a dispute.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 98, AFL–CIO

APPENDIX B

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

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO:

Form, join or assist a union
Choose representatives to bargain on your behalf with your employer
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT threaten the Cheltenham School Board with picketing at its high school construction jobsite so as to force it to cease doing business with MCF Services, Inc., T/A State Electric, with whom we have a dispute.

WE WILL NOT interfere with, restrain, or coerce employees employed at the Cheltenham jobsite in the exercise of the rights guaranteed them by Section 7 of the Act by threatening them with physical harm, preventing them from performing their work duties, coercively photographing them as they enter and leave the jobsite, and blocking the ingress and egress of employees from the Cheltenham jobsite.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 380, AFL–CIO

Donna D. Brown, Esq., for the General Counsel.
Richard B. Sigmond & Stephen J. Holroyd, Esqs., for the Respondents.
Stephen J. Sundheim, Esq., for Wohlson Construction Co.
Arlene J. Angelo, Esq., for MCS Services Inc. t/a State Electric.
Gary M. Tocci, Esq., for United Parcel Service.

DECISION

GEORGE ALEMÁN, Administrative Law Judge. Pursuant to unfair labor practice charges filed by MCF Services, Inc., t/a State Electric (State Electric), Wohlson Construction Company (Wohlson), and United Parcel Service, Inc. (UPS),[1] the Regional Director for Region 4 of the National Labor Relations Board (the Board) issued a consolidated complaint on October 4, 1999,[2] alleging that the Respondents, Local 98 and Local 380 of the International Brotherhood of Electrical Workers, AFL–CIO, had violated Section 8(b)(1)(A), (4)(i) and (ii)(B) of the National Labor Relations Act. [3]

More specifically, as to the charges filed by State Electric, the complaint alleges that Local 98 violated Section 8(b)(4)(ii)(B) by threatening to picket Adams-Bickel Associates, a general contractor retained to do construction work at St. Bellamine Catholic Church who subcontracted the electrical work at the project to State Electric, in order to force it to cease doing business with State Electric. The complaint further alleges that Local 98 and Local 380, as joint venturers, violated Section 8(b)(4)(ii)(B) by threatening the Cheltenham School District of Pennsylvania with picketing at a high school construction site in order to force the school District to cease doing business with State Electric, which had been awarded the electrical subcontracting work, and violated Section 8(b)(1)(A) by implicitly threatening State Electric employees with physical harm, photographing them and their vehicles, and blocking employees from returning to work.

Regarding the Wohlson charges, the complaint alleges that Local 98 violated Section 8(b)(4)(ii)(B) by picketing the Philadelphia Protestant Home (PPH) in Philadelphia, PA, where Wohlson was a general contractor engaged in certain renovation work for PPH (the Webb Pavilion project), and threatening employees of contractors working on the project, in order to force PPH to cease doing business with Wohlson and other nonunion contractors. As to the UPS charges, the complaint alleges that Local 98 further violated Section 8(b)(4)(i) and (ii)(B) by threatening to picket, and thereafter picketing, UPS in order to force it to stop doing business with Network Dynamic Cabling (NDC), a UPS contractor.

The Respondents, in separate answers, deny having engaged in any unfair labor practices. A hearing in the matter was held before me in Philadelphia, Pennsylvania, from November 1 to 3, during which all parties were afforded a full opportunity to present oral and written evidence, to examine and cross-examine witnesses, to argue orally on the record, and to file briefs setting forth their respective positions. On the basis of the entire record before me, including my observation of the demeanor of the witnesses, and after considering briefs filed by the General Counsel, the Respondents, and Charging Parties State Electric, Wohlson, UPS, I make the following[4]

FINDINGS OF FACT

I. JURISDICTION

State Electric, a Pennsylvania corporation with an office and principal place of business in Norristown, Pennsylvania, is engaged as an electrical contractor in the construction industry. During the year preceding issuance of the complaint, State

[1] The charges in Cases 4–CC–2214, 4–CC–2244, 4–CC–2248, and 4–CB–8348 were filed by State Electric; the charges in 4–CC–2240–2 and 4–CB–8300–1 were filed by Wohlson, and the charge in 4–CC–2246 was filed by UPS.

[2] All dates are in 1999, unless otherwise indicated.

[3] Sec. 8(b)(1)(A) makes it unlawful for a labor organization or its agents to restrain or coerce employees in the exercise of the rights guaranteed in Sec.7 of the Act.

Sec. 8(b)(4)(i)(B) prohibits a labor organization or its agents from engaging, inducing or encouraging any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or, under Subsec. (ii), to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce where, in either case, an object thereof is to force or require 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 Sec. 9; provided that nothing contained in this clause shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing.

[4] State Electric has moved, without objection, to correct certain typographical and spelling errors contained in the transcript of the proceedings. Having reviewed the proposed corrections, I agree with State Electric that the changes are warranted. Accordingly, and in the absence of objection from any of the parties herein, I grant the motion to correct and shall make it part of the record as CP Exh. 2.

Electric has performed services valued in excess of $50,000 outside the Commonwealth of Pennsylvania.

UPS, an Ohio corporation, with terminals located throughout the United States, including one at 15 Oregon Avenue, Philadelphia, Pennsylvania (the Oregon facility), is engaged in the interstate transportation and distribution of parcel packages. During the year preceding issuance of the complaint, UPS derived gross revenues in excess of $500,000, and, during the same period, purchased and received goods valued in excess of $50,000 directly from points located outside the State of Ohio and the Commonwealth of Pennsylvania.

Wohlson, a Pennsylvania corporation, with headquarters in Lancaster, Pennsylvania, is engaged as a general contractor in the construction industry. During the year preceding issuance of the complaint, Wohlson, in the conduct of its business, purchased and received goods valued in excess of $50,000 directly from points located outside the Commonwealth of Pennsylvania.

The complaint alleges, the Respondents admit, and I find that State Electric, UPS, and Wohlson are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. I further find that the Respondents are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The State Electric Cases (Cases 4–CC–2214; 4–CC–2244; 4–CC–2248; and 4–CB-8348)

1. The joint venture

The Respondents, Local 98 and Local 380, as noted, are sister locals affiliated with the International Brotherhood of Electrical Workers. In August 1998, the Respondents began a joint effort to organize employees of State Electric (Tr. 356, 387). Local 98 organizer Timothy Browne and Local 380 organizer Kenneth MacDougall, both admitted agents of their respective Locals, were the individuals primarily involved in that endeavor, and were assisted in this effort by Local 98 agent, Ray Della Vella, and Local 380 agent, Mike Hnatkowsky. MacDougall testified that Browne contacted him sometime in the fall of 1998 and asked him to head up the organizing drive because, according to MacDougall, State Electric fell within Local 380's jurisdictional bounds. MacDougall agreed to do so. According to Browne, he and MacDougall met twice, and had several phone conversations, to discuss how to go about organizing State Electric's employees. (Tr. 357, 359.) The record reflects that on or about August 13, 1998, a meeting was held among State Electric employees at Local 98's office during which authorization cards were signed. Half of the cards signed that day by State Electric employees designated Local 98 as bargaining representative, and the other half Local 380. While MacDougall did not attend the meeting, he was nevertheless kept abreast by Browne of what had transpired (Tr. 378). On September 25, 1998, Local 380 filed a petition with the Board seeking to represent State Electric's employees (GC Exh. 37).[5]

In furtherance of the organizing drive, Browne and MacDougall also began a "salting" campaign by having union members apply for work at State Electric in the hopes of organizing the latter from within, and visited various employer jobsites, including the Adams-Bickel and Cheltenham High School jobsites, to ascertain if State Electric was on the job (Tr. 386–387).[6] Both MacDougall readily concedes that he and Local 98 representatives, including Browne, contacted various employers who were doing business, or attempting to do business, with State Electric. At one such jobsite, a Genuardi's supermarket construction site, Browne and MacDougall actually picketed the site and engaged in discussions with employees. MacDougall's testimony regarding his activities with Browne, and Browne's own testimony that he and MacDougall "were always together," bespeaks of a high level of cooperation between Browne and MacDougall, and implicitly Local 98 and Local 380, in their joint effort to organize State Electric. Hnatkowsky and Della Vella also took part in similar activities. According to MacDougall, the teams visiting the various jobsites communicated with each other regarding their visits to the various employers.

The complaint, as noted, alleges that the Respondents' combined effort to organize State Electric's employees amounted to a joint venture. To show that a joint venture has been created among unions, the party asserting the existence of such a relationship, here the General Counsel (joined by State Electric)[7] must establish that the unions participated in a planned course of action that was jointly conceived, coordinated, and adopted so as to attain a mutually agreed-upon object. *Sheet Metal Workers Local 19 (Delcard Associates)*, 316 NLRB 426, 434 (1995).[8] The evidence here, more particularly Browne's and MacDougall's own testimony, fully supports a finding of a joint venture. Thus, it is undisputed that in August 1998, Local 380 and Local 98, on Browne's advice and recommendation, agreed to and in fact embarked upon a planned course of action to organize State Electric's employees under Local 380's auspices and under MacDougall's direction. The activities of the joint

[5] Processing of Local 308's representation petition was blocked by the charges filed against the Respondents herein.

[6] MacDougall initially testified that he and Browne only contacted governmental agencies (townships) in Pennsylvania. However, on further questioning by the General Counsel, MacDougall admitted that he and Browne also contacted private companies to determine if State Electric was performing work for them. Among the other employers visited or contacted by the Respondents' agents were the World Bank in King of Prussia, Pennsylvania, various Pennsylvania township offices (e.g., Chalfont, Lower Merion), and the East Norriton, Pennsylvania Fire Department. Among the private employers contacted by the Respondents were Gallagher Fluid Seal, IMC Construction, E. Allen Reeves, Cedarsville Church in Pottstown, Pennsylvania, and Genuardi's Supermarkets.

[7] The burden of establishing the existence of a joint venture is on the party asserting that the relationship exists. See generally 46 Am.Jur. Joint Ventures. The burden of establishing the existence of a joint venture is on the party asserting that the relationship exists. See generally, 46 Am.Jur. Joint Ventures Sec. 69 (1969); 48 C.JS. Joint Adventures Sec. 12(h) (1947).

[8] A Third Circuit U.S. court of appeals in *Sheet Metal Workers Local 19 v. NLRB*, 154 F.3d 137 (1998), denied enforcement of the Board's holding in Delcard that a joint venturer union was liable for the unfair labor practices committed by a coventurer.

venture were jointly coordinated by MacDougall and Browne, with assistance from Hnatkowsky and Della Vella. Their activities in this regard, as noted, included coordinating a card signing meeting with State Electric employees, joint visits to different employer jobsites to determine if State Electric was performing subcontracting work, and engaging in joint picketing and discussions with employees at one such jobsite. The above evidence convinces me, and I so find, that the Respondents in August 1998 did, in fact, create a joint venture for the purpose of organizing State Electric's employees.

2. The Adams-Bickel jobsite

In early July 1998, Adams-Bickel began work as a general contractor on a project known as the Robert Bellamine Catholic Church jobsite. Pursuant to a bidding process, State Electric was retained by Adams-Bickel to perform the electrical work at the project. The record is silent on whether other contractors were retained by Adams-Bickel to work at the jobsite. Adams-Bickel's vice president, Gustavo Perea, testified, without contradiction, that on or around July 29, 1998, Browne called his office and left a message asking why no union contractors had been asked to bid on the project, stating that he intended to picket the jobsite, and asking Perea to call him back.[9] Perea returned Browne's call the next day and had a 15-minute conversation with Brown during which the latter reiterated his belief that no union electrical contractors had been asked to bid on the project. Perea, however, disagreed with Browne's assertion. Browne again insisted that no union contractors had been allowed to submit bids and stated he could not allow the project to go forward without an electrical union contractor on the job and that he intended to picket the site and engage in "mass demonstrations" if that was the case. Perea again denied that "affiliation with any organization" played a role in the bidding process and agreed to furnish Browne with the list of contractors who submitted bids in response to Adams-Bickel requests for such bids. The conversation ended with the parties agreeing to discuss the matter further in the near future. (Tr. 405.)

Browne again called Perea on or about August 31, 1998 to "resolve the issues" at the St. Bellamine project. Browne, according to Perea, knew before this conversation that State Electric had been retained by Adams-Bickel as the electrical subcontractor on the job. Browne told Perea that he could not "allow the project to go forward without a union contractor doing the work." Perea replied that he was already under contract with State Electric and that unless the latter did something wrong or breached its contract, he, Perea, was under no obligation to throw State Electric off the job. Browne replied, "If that's the way it's going to be, then the line has been drawn; let the games begin." (Tr. 407.) He went on to tell Perea that if State Electric remained on the job, he, Browne, would create "a media event" by picketing and passing out leaflets at the Church "so that the Church and the members . . . would know that we were using an inferior contractor, or a contractor that did not pay their people well, or treat their people well." Browne, however, did assure Perea that he would give the latter prior notice any action he intended to take. (Tr. 407–408.)

a. Discussion

The General Counsel and State Electric contend, and Local 98 denies, that Browne's August 31, remarks to Perea amounted to threats of the type proscribed by Section 8(b)(4)(ii)(B) of the Act. I find merit in the General Counsel's and State Electric's contention.

Initially, I credit Perea's unrefuted version of his August 31, conversation with Browne and find that Browne did threaten to picket and to otherwise create a "media event" if Adams-Bickel allowed State Electric to remain on the job. Browne's comments make clear, and Local 98 does not contend otherwise, that the latter's dispute was with State Electric, the primary employer, and not with Adams-Bickel, a neutral employer. The Board has held that "where a union makes an unqualified threat to a neutral general contractor to picket a jobsite where an offending primary employer would be working, and has reason to believe that persons other then the primary would be at work on the site, it has an affirmative obligation to qualify its threat by clearly indicating that the picketing would conform to Moore Dry Dock standards,[10] or otherwise be in uniformity with Board law." (Footnote added.) *Teamsters Local 456 (Peckham Materials)*, 307 NLRB 612, 619 (1992); *Meat & Allied Food Workers Local 248, (Milwaukee Independent Meat Packers)*, 230 NLRB 189 (1977), enfd. 571 F.2d 587 (7th Cir. 1978).

Nothing in Perea's description of Browne's remarks suggests that Browne gave Perea assurance that the picketing would comply with the *Moore Dry Dock* requirements and be restricted to, and directed only at, the primary, State Electric. In fact, Browne's threat to create a media event at the jobsite and to picket and leaflet the Church and its members makes clear that Local 98 had no intentions of restricting any such picketing to State Electric, but intended instead to picket neutral parties having no involvement in its dispute with State Electric, pre-

[9] A message slip showing a call placed to Perea from Browne on July 29, and reflecting Browne's intent to picket the jobsite, was received into evidence as GC Exh. 39, and corroborates Perea's testimony. Despite being present at the hearing and testifying as to other matters, Browne was not asked about, and consequently did not refute, any of the testimony provided by Perea regarding their conversations.

[10] In *Sailors Union (Moore Dry Dock)*, 92 NLRB 547 (1950), the Board established four criteria by which to measure the presumptive lawfulness of picketing in common situs situations. Such picketing is deemed to be presumptively lawful if: (a) the picketing is strictly limited to times when the situs of the dispute is located on the secondary employer's premises; (b) at the time of the picketing the primary employer is engaged in its normal business at the situs; (c) the picketing is limited to places reasonably close to the location of the situs; and (d) the picketing discloses clearly that the dispute is with the primary employer.

In addition to the *Moore Dry Dock* standards adopted to minimize the potential for unnecessarily involving neutrals in a primary dispute, the Board and courts have recognized the right of employers to designate at a common site a gate specially reserved for the exclusive use of the primary employer, his employees, suppliers, and materialmen for entry and departure and to establish other gates for use by neutral employers, employees and others having business relationships with the neutral employers. Where separate gates are thus designated and legitimately maintained, the union must confine its picketing activities to the primary gate and avoid implicating neutrals by picketing the gates set aside for the neutrals' sole use, or else risk violating Sec. 8(b)(4)(B) of the Act.

sumably in the hope that said pressure on neutrals would in turn force Adams-Bickel to cease doing business with State Electric. Accordingly, I find that by threatening to enmesh neutrals in its dispute with State Electric, Local 98, through Browne, violated Section 8(b)(4)(ii)(B) of the Act, as alleged.

3. The Cheltenham jobsite

The record reflects that in furtherance of some renovation work to be done at the District's high school facility, the Cheltenham. school board convened on June 1, 1999 and awarded the electrical work at that project to State Electric. The minutes of that meeting, received into evidence as General Counsel Exhibit 40, reflect that the renovation work would require other contractors to be on the jobsite along with State Electric. Cheltenham school district director of support services, Stephen Saile, recalls Browne being present at that meeting. Saile testified, without contradiction, that during the meeting, Browne expressed opposition to State Electric being awarded the work on grounds that the latter was not properly staffed, had several liens against it, and utilized improper hiring practices, and claiming that only a union contractor (which State Electric was not) could do the job properly. In light of Browne's allegations, and to insure that the general contractor's paperwork was in order, the school board voted to postpone granting the award.

Shortly after the June 1 meeting, Browne visited Saile at his office and dropped off a report which Browne claims supported his assertion that State Electric was not qualified to do the electrical work at the high school and thus should not be awarded the contract.[11] Browne contacted Saile several days later and asked his opinion about the report Browne had given him. Saile replied that he had reviewed the report but had found nothing therein that would cause him to change his recommendation that the school board award the contract to State Electric. Browne, according to Saile, expressed disbelief that Saile intended to adhere to his recommendation notwithstanding the report, and then made reference to the fact that he was having similar problems with nonunion contractors at another construction site (Circuit City) and that the Cheltenham school board could expect the same "kind of performance" at its jobsite as was occurring at the Circuit City site. Saile did not ask Browne to explain what he meant, but assumed that Browne was referring to having a union presence at the high school jobsite.

On June 8, The Cheltenham school board held a public meeting to discuss the award. In attendance were Saile, Browne, MacDougall (who arrived late), and State Electric president, Sharon Ponticello. Ponticello and Saile both testified as to comments made by Browne at the meeting. Ponticello testified that prior to the start of the school board meeting, Browne looked over at her and commented that things didn't have to be like this, that eventually she would be union, and that she was only making it harder on herself. Ponticello claims she simply turned away at that point. She further recalls that when the subject of the electrical contracting work was discussed by the school board, Browne addressed the board and stated that the board would have problems on the project because while the general and plumbing contractors were union, two other subcontractors were not, and that the two groups would not be able to work together. Browne, according to Ponticello, also mentioned that he could throw up a picket line in 30 days and that no one would be allowed to come in or out of the jobsite, resulting in delays for the Cheltenham project. Browne went on to describe to the School Board how he'd been successful in causing similar delays at another project run by another general contractor, R. M. Schumacher, adding that if the union contractors were forced to cross the picket line, "he would exercise his rights and sue." Asked by the school board president if there was any way to prevent the establishment of a picket line, Browne purportedly replied, "Well, I don't know. Some days I wake up happy and some days I don't wake up so happy." When again asked what it would take to avoid a picket line, Browne offered no response.

Saile likewise recalls Browne addressing the school board and expressing opposition to State Electric being awarded the electrical contracting work and citing, in support thereof, information contained in General Councel's Exhibit 33. Saile, like Ponticello, also recalls Browne telling the school board that he could legally set up a picket line for 30 days and that union contractors on the site would not cross it. The school board voted to award the contract to State Electric over Browne's objections. In response to Browne's picketing pronouncement at the meeting, and on advice of legal counsel, a two-gate system was set up at the jobsite so that the union and nonunion contractors at the site could enter and leave through their respective gates without problems. There is no evidence to suggest, or claim being made, that Local 98 in fact engaged in picketing at the Cheltenham jobsite. Nor is there any indication that the threat to picket made by Browne at the June 8, meeting was ever retracted by Browne or Local 98.

The record reflects that in late August, after State Electric had received the contract, Browne visited the Cheltenham jobsite on several occasions. Thus, Saile testified that on one occasion, Browne walked onto the site purportedly searching for a Local 98 employee employed by the mechanical contractor at the site. Not certain if Browne had a right to be on the premises, Saile permitted Browne to continue searching for the Local 98 employee. He recalls Browne was carrying a camera at the time and taking pictures of the work being done, and repeatedly threatening to file charges. After finding the Local 98 employee, Browne engaged in some conversation with the construction manager and, at one point, called the local police from his cell phone to complain that he had been threatened by Ponticello on the jobsite. According to Saile, he heard Browne describe himself to the police as a physically handicapped senior citizen who was fearful for his safety and simply trying to get back to his vehicle. When the police arrived, Browne continued to complain about being threatened, stated he was not feeling well, and was going to sit in his car and wait for his attorney. Saile allowed Browne to remain on the jobsite for another hour and a half and then asked him to leave. When Browne refused, Saile called the police at which point Browne drove his car off the jobsite and stationed it outside the nonunion gate reserved for State Electric where he remained for several more hours.

[11] The report was received into evidence as GC Exh. 33.

Saile recalled Browne showing up again the following day, accompanied by several other individuals who stationed themselves outside the nonunion gate. Saile then observed Browne taking pictures of individuals entering and leaving the jobsite. He was unsure, however, if any of the other individuals who accompanied Browne also had cameras. This same scenario, according to Saile, was repeated by Browne the next 2 days. Saile admits that neither Browne nor any of the individuals with him on those days engaged in any picketing at the jobsite. However, he testified that, at one point, employees on the jobsite expressed concern about the photographs which Browne had been taking of them.

State Electric foreman, Robert Mortensen, testified that while at the Cheltenham jobsite in late August, he observed Browne at the nonunion gate taking pictures of "everybody" who drove in and out of the jobsite, and further recalled that other individuals who were with Browne also had cameras but gave no indication if they too were taking pictures.[12] On seeing Browne taking pictures, Mortensen pulled out his own camera and began taking pictures of Browne.

Two State Electric employees, apprentice Christopher Wilczynski and Foreman Charles DeShields, testified that they were at the Cheltenham jobsite in August and observed Browne taking pictures of them. Wilczynski recalled that as he drove towards the nonunion gate to enter the jobsite, he stopped his vehicle near two storage bins located at the gate. As he did so, he observed Browne through his rear view mirror taking pictures of the rear of his vehicle. Wilczynski then approached Browne and complained that he did not like being photographed, and asked Browne to remove the film from the camera. When Browne asked if Wilczynski was threatening him, the latter said no and then called the police. The police, however, advised Wilczynski that Browne was not doing anything wrong because he was not on the school property. (Tr. 476–477.) DeShields recalls seeing Browne at the jobsite on three separate occasions in late August. On one such occasion, as he drove his truck to the jobsite, he saw Browne sitting on the storage bins taking pictures. After loading his truck, DeShields went over to Browne and asked what he was doing. When Browne replied that he was taking pictures, DeShields removed the tags from the rear of his truck and said to Browne, "This is one you won't get," to which Browne replied, "I already got it." (Tr. 480.) On another occasion, he observed Brown videotaping each employee who entered and exited the jobsite on foot or in a vehicle. DeShields further recalls that on one such occasion, he observed Browne use his vehicle to prevent Vincent Ponticello, a job foreman and Sharon Ponticello's brother-in-law, from continuing with his job assignment consisting at the time using a "loll" or forklift to dump waste into a trash dumpster.

[12] Although Mortensen admitted on cross-examination that he could not tell for sure if Browne was actually taking pictures or merely pointing the camera, I seriously doubt that Browne was simply going through the motions and not taking pictures. Rather, it is, in my view, safe to assume, as Mortensen indeed testified, that if someone is pointing a camera in a picture-taking position that a picture is in fact being taken. Thus, employees who might have observed Browne pointing a camera at them could reasonably have assumed that their picture was being taken.

Vincent Ponticello corroborated DeShield's testimony regarding Browne's interference with his job duties.[13] Thus, he testified that as he drove his forklift to the dumpster, Browne drove his vehicle, a black Lincoln Continental, between the forklift and the dumpster. When Vincent Ponticello approached Browne and asked him to move his vehicle, Browne told Vincent Ponticello, "I know who you are, I know where you live. We're going to get you some day." Asked if he understood what Browne meant by his remark, Vincent Ponticello testified that he read Browne's remarks to mean that Browne would someday get State Electric to go union. Vincent Ponticello claims he walked away at that point, and that Browne kept his car in the same blocking position for about 15–30 minutes, thus preventing him from completing his chore, after which he drove away. He further testified to having observed Browne and two other individuals taking pictures of State Electric's employees as they entered and exited through the nonunion gate, and believes Browne may have also photographed his vehicle. Vincent Ponticello recalled one incident that occurred on or around August 28, during which Browne followed his vehicle through the nonunion gate into the jobsite parking lot, and circled his (Ponticello's) vehicle twice videotaping the occupants. Vincent Ponticello testified that he and the other vehicle occupant got out of their truck, got into the pickup truck of a coworker, and left. Browne, according to Vincent Ponticello, continued to photograph and videotape him and other employees as they went about their business. Nervous and upset by Browne's conduct, Vincent Ponticello called the police and filed an incident report, a copy of which was received into evidence as General Counsel's Exhibit 44. To his knowledge, however, no charges were ever brought against Browne.

While Browne testified at the hearing, he was not asked about, and consequently did not refute, any of the testimony provided by Saile, Sharon Ponticello, Vincent Ponticello, Mortenson, Wilczynski, and DeShields.[14] Accordingly, their versions of the individual conversations they had with Browne, of what Browne may have said at the June 8 School Board meeting, and of Browne's conduct and activities at the jobsite, remain uncontroverted and are credited.[15]

[13] Local 98's assertion on brief (p. 33), that Vincent Ponticello was the only witness to Brown's interference with his job duties, is clearly erroneous for DeShield testified without contradiction, and credibly in my view, to have personally witnessed the incident.

[14] Browne was called and examined by the General Counsel as an adverse witness under Rule 611(c) of the Federal Rules of Civil Procedure. Following the General Counsel's direct examination of Browne, the Respondents chose not to cross-examine Browne nor to call him as their own witness. In fact, the Respondents rested their case following the General Counsel's presentation of his case-in-chief without calling any witnesses whatsoever.

[15] From my observation of their demeanor on the witness stand, I a.m. persuaded that Saile, Sharon Ponticello, Vincent Ponticello, Mortenson, Wilczynski, and DeShields all testified in an honest and truthful manner. In this regard, I reject as without merit Local 98's claim, on brief, that Sharon Ponticello should not be credited because she is "a biased party with an interest in the outcome" of this proceeding, and because her testimony regarding Browne's response to the School Board's inquiry on what could be done to avoid the picketing, was not corroborated by Saile. The fact that a witness may have an interest in

b. Discussion

1. The 8(b)(4)(B) allegation

The General Counsel and State Electric contend that Local 98 violated Section 8(b)(4)(ii)(B) when, in his June 8 remarks to the Cheltenham School Board, its admitted agent Browne unlawfully threatened to set up a picket line at the jobsite for 30 days during which no one would be allowed to enter or leave the site, arguing, in support thereof, that the object of Browne's threat was to force the School Board, a neutral entity, into not doing business with State Electric, with whom Local 98 was having a dispute, and to having it award the electrical contracting work to a union contractor.

While not denying that Browne made the remark attributed to him by Saile, Local 98 nevertheless argues on brief (p. 32) that Browne's comment about picketing for 30 days was only "a clear reference to the window allotted for recognitional picketing under Section 8(b)(7) of the Act" and, as such, neither threatening nor coercive.[16] Local 98's assertion in this regard would be entitled to some consideration had Browne so testified. Browne, however, offered no testimony whatsoever regarding his June 8 comments, much less an explanation of what he meant by his remarks. Nor do I find anything in Saile's or Sharon Ponticello's description of Browne's remark that can be construed as supporting Local 98's claim that Browne was simply expressing its right under Section 8(b)(7)(C) to engage in recognitional picketing for a 30-day period. Thus, Local 98's interpretation of what Browne may have intended by his remark is based on supposition, speculation and conjecture, and not on any evidence of record. Its claim in this regard is therefore rejected.

Browne's unexplained threat to picket the Cheltenham school jobsite, a neutral entity, for 30 days, like his above-described threat to Perea at the Adams-Bickel jobsite, contained no assurance that said picketing would comply with the Moore Dry Dock requirements and be restricted solely to and directed at, the primary employer, State Electric. As noted, absent such assurances, and where, as here, a union has reason to know that persons other than the primary employer would be working at the jobsite,[17] a threat by that union to picket the representative of a neutral employer violates Section 8(b)(4)(ii)(B). *Teamsters Local 456 (Peckham Materials)*, supra; *Meat & Allied Food Workers Local 248 (Milwaukee Independent Meat Packers)*, supra. In light of these facts, I find that Browne's unqualified remark to picket the Cheltenham jobsite for 30 days violated Section 8(b)(4)(ii)(B).

2. The 8(b)(1)(a) allegations

The General Counsel and State Electric also contend, and I agree and therefore find, that Local 98, through its agent Browne, violated Section 8(b)(1)(A) by interfering with and preventing Vincent Ponticello from doing his work duties, by telling Vincent Ponticello that he, Browne, would get him some day, and by photographing employees and their vehicles as their entered and left the jobsite.

The blocking of employee access to and from a jobsite has long been found by the Board to be coercive and violative of Section 8(b)(1)(A). *General Maintenance Service Co.*, 329 NLRB 638 (1999) ("nonviolent conduct, including efforts to prevent employees from reporting to work by impeding access to an employer's facility . . . proscribed by [Section 8(b)(1)(A)]"); *Sheet Metal Workers Local 19 (Delcard Associates)*, supra at 431 ("blocking an entrance or an exit even for a short period of time constitutes restraint and coercion"); *Carpenters Philadelphia District Council (Delran Builders)*, 307 NLRB 172 (1992) (preventing supervisor in presence of employee from entering jobsite unlawful); *Mine Workers District 17 (Dehue Coal Co.)*, 275 NLRB 715 (1985) ("preventing . . . employees from entering [jobsite] to perform assigned tasks and [blocking] ingress and egress" unlawful); *Laborers Local 275 (S. B. Apartments)*, 209 NLRB 279, 286 (1974) ("obstructing an employee wishing to leave was restraint and coercion"). Clearly, the right of an employee to carry out his job functions free of union interference, restraint and coercion is no less protected than the statutory right of employees to cross a picket line without similar union interference. Thus, while Browne here may not have blocked Vincent Ponticello from entering or leaving the jobsite, his interference with Vincent Ponticello's right to perform his work duties had the same coercive purpose and effect associated with the unlawful denial of access to a jobsite. Accordingly, I find that Browne's conduct in preventing Vincent Ponticello from performing his job duties violated Section 8(b)(1)(A) of the Act.

the outcome of a proceeding does not, without more, serve as a basis for rejecting the witness' testimony, or render it biased. As noted, from a demeanor standpoint, Sharon Ponticello came across as a sincere, honest, and straightforward witness. Further, Saile's failure to corroborate Sharon Ponticello's testimony as to how Browne responded to the School Board's inquiry, does not, in my view, render her testimony suspect, for Saile readily admitted that he was not paying full attention when Browne addressed the School Board (Tr. 424). It is therefore quite possible that Browne did make the remarks attributed to him by Sharon Ponticello and that Saile simply did not hear them because his attention at the time was on other matters. Sharon Ponticello, on the other hand, credibly explained that she paid close attention to what Browne was saying to the school board because she was concerned that State Electric might not get the contract (Tr. 401). In these circumstances, I see no reason to reject Ponticello's testimony. Rather, I fully credit her testimony as to what Browne said to her and to the school board on June 8.

[16] While there is no allegation here that Browne's threat to picket was unlawful under Sec. 8(b)(7)(C), it should be noted that for purposes of Sec. 8(b)(7)(C), a threat to picket continues in effect until it is retracted. Such a threat to picket for a proscribed object thus remains operative until such time as the union clearly indicates it no longer intends to pursue the threatened picketing *Local No. 73 Service Employees, AFL–CIO (A-1 Security Service Co.)*, 224 NLRB 434, 436, fn. 8 (1976). As Browne apparently never withdrew his threat, it is quite likely that the threat might also violate Sec. 8(b)(7)(C). However, I make no such finding here as that question is not before me.

[17] The evidence makes clear that Browne knew that other contractors would be working at the Cheltenha.m. jobsite. Minutes of the Cheltenha.m. school board meeting attended by Browne, and at which he raised objections to the use of State Electric as the electrical contractor, reveal that other contractors being used at that jobsite were discussed. Sharon Ponticello's credited testimony further reveals that during his address to the school board, Browne himself made reference to the plumbing and general contractors working at the jobsite.

Further, Browne's statement to Vincent Ponticello about knowing who he was and where he lived, followed by his "we're going to get you someday" remark was, in my view, a veiled threat of physical harm to Vincent Ponticello. Browne, as noted, made his remarks as he unlawfully prevented Vincent Ponticello from performing his work duties and after Vincent Ponticello demanded that Browne move his vehicle and allow him to proceed. Browne offered no explanation at the hearing as to what he meant by his remark, and nothing in Vincent Ponticello's testimony suggests that Browne provided him with any such explanation. However, given confrontational nature in which the remark was made, there can be little doubt, and I so find, that the intent behind Browne's remark was to further coerce, harass, and intimidate Vincent Ponticello because of his relationship to State Electric president, Sharon Ponticello. I reject in this regard Local 98's suggestion that Browne's remark was neither coercive or unlawful because Vincent Ponticello may not have viewed it as such, for the test of coercion and intimidation is not whether the misconduct proves effective, but rather whether the misconduct is such that, under the circumstances existing, it may reasonably tend to coerce or intimidate employees in the exercise of rights protected under the Act. *NLRB v. Mine Workers of America*, 429 F.2d 141, 146 (3d Cir. 1970); *Operating Engineers Local 542 v. NLRB*, 328 F.2d 850, 852–853 (3d Cir. 1964); *Service Employees (GMC Janitorial)*, 322 NLRB 422, 414 (1996); *Graphic Arts International Union 96 B (Williams Printing)*, 235 NLRB 1153 (1978) The fact that Vincent Ponticello may not have felt personally threatened or coerced by Browne's remark, therefore, has no bearing on whether Browne's remark is or is not unlawful. As previously discussed, the coercive context in which the remark was made, and the very nature of the remark itself, persuades me that Browne's remark did not have the benign purpose attributed to it by Vincent Ponticello in his testimony, and was instead meant to be a veiled threat of physical harm. See, *Culinary Workers Local 226 (Casino Royale)*, 323 NLRB 148, 160–161 (1997), where virtually identical remarks as that directed here by Browne to Vincent Ponticello were found by the Board to be coercive and violative of Section 8(b)(1)(A). Accordingly, I find that Browne's remark was in fact unlawful and violative of Section 8(b)(1)(A).

Finally, Browne's photographing of employees entering and leaving the jobsite through the nonunion gate for 3 days, and his repeated photographing and videotaping of Vincent Ponticello and fellow employees on August 28 while circling the latter's vehicle, and on subsequent occasions, was also unlawful. Browne offered no explanation for taking the photographs. The Board has on prior occasions found such conduct to be coercive. *Auto Workers Local 695 (T. B. Wood's)*, 311 NLRB 1328, 1329 (1993); *Laborers Union Local 383 (Carter-Glogau Laboratories)*, 260 NLRB 1340, 1342–1343 (1982). Here, Browne's activity in photographing employees entering and leaving the jobsite could reasonably have led employees to believe that the photos might be used by Local 98 in the future to harass, intimidate, or retaliate against them. Indeed, Saile's testimony, that employees expressed concern to him about Browne's conduct in photographing them, amply supports such an inference. Accordingly, I find that Browne's picture-taking activity was indeed coercive and violative of Section 8(b)(1)(A) of the Act.

3. Local 380's liability for Browne's conduct

The General Counsel and State Electric contend, and I agree, that Local 380 is jointly and severally liable with Local 98 for the unlawful conduct engaged in by the latter after the joint venture was created in August 1998. Thus, as the judge, with Board approval, pointed out in Delcard, supra, "[a] joint venture relationship carries with it responsibility on the part of the participants for each other's actions, including any consequent unfair labor practices." See also *Seattle District Council of Carpenters (Cisco Construction)*, 114 NLRB 27, 30 (1950), cited by the judge in *Delcard*, supra. Local 380, however, contends that it cannot be held liable for any unlawful conduct Browne may have engaged in, citing in support the court's refusal in *Sheet Metal Workers Local 19 v. NLRB*, 154 F.3d 137 (3d Cir. 1998), to enforce the Board's joint venture holding in Delcard, and arguing further that the General Counsel here has not established that Browne was acting as agent of Local 380. I disagree.

An administrative law judge is bound by Board law unless or until the Supreme Court or the Board rules otherwise. *Iowa Beef Packers*, 144 NLRB 615, 616 (1963); See also *Overnite Transportation Co.*, 329 NLRB 990 (1999); *Zimmerman Plumbing and Heating Co.*, 325 NLRB 106, 115 (1997). Thus, while a Federal appeals court has in fact disagreed with the Board's position in *Delcard* on the joint venture question, I find nothing in subsequent Board decisions to suggest that the Board has abandoned the views expressed in its *Delcard* and *Cisco* decisions regarding a joint venturer's liability for the unfair labor practices committed by a coventurer. Accordingly, I am bound to follow Board precedent on this matter and, consistent therewith, find, in agreement with the General Counsel and State Electric, that Local 380, as a joint venturer with Local 98, is vicariously liable for the unlawful threats directed by Browne to the Cheltenham school board and for Browne's unlawful threat of physical harm to Vincent Ponticello, his unlawful interference with the latter's performance of his work duties, and by unlawfully photographing Vincent Ponticello and other employees as they entered and exited from the Cheltenham jobsite.

The record in any event supports a finding that Browne was acting as Local 380's agent when he attended and addressed the Cheltenham school board and when he visited the Cheltenham jobsite, thus making Local 380 responsible for his actions. Local 380's attempt on brief to downplay Browne's involvement in its organizational drive, by suggesting that Browne merely provided "some guidance to MacDougall during the campaign," is contradicted by MacDougall's and Browne's own testimony which clearly reveal that Browne was an active participant in that campaign and not a mere advisor to MacDougall. Thus, as previously discussed, Browne's activities included, among other things, calling and visiting different employers to ascertain if State Electric was doing any electrical work for said employers, sending union members out to apply for work with State Electric as part of a "salting" campaign, participating with Local 380 in the picketing of at least one

such employer, and talking to employees presumably about Local 380's campaign. Further, MacDougall's own testimony and conduct make clear that Browne attended the Cheltenham school board meeting following joint consultations on the matter. Thus, MacDougall testified that following joint discussions regarding State Electric, he and Browne agreed that the Cheltenham school board should be made aware of the wages State Electric was paying employees. His admission in this regard, and his and Browne's subsequent appearance at the school board meeting, leads me to believe that Browne's attendance and remarks made at the school board meeting were done with MacDougall's prior consent and approval. MacDougall's suggestion that went to the school board meeting simply to take an employee who wished to attend, and that he and Browne had not planned any such visit, is rejected as not credible. Browne, who might have corroborated MacDougall in this regard was not questioned about his discussions with MacDougall regarding the Cheltenham visit, leading me to doubt that he would have done so had he been asked.

In light of the above, I find that Browne was speaking for and on behalf of Local 380 when he threatened the Cheltenham school board with picketing for 30 days, and was similarly acting on its behalf when he engaged in the above-described unlawful conduct at the Cheltenham school jobsite. Accordingly, I find that Local 380 violated Section 8(b)(4)(ii)(B) by threatening, through its agent Browne, the Cheltenham school board on June 8 with unlawful picketing, and 8(b)(1)(A) when, in late August, Browne threatened Vincent Ponticello with physical harm, interfered with the latter's performance of his work duties, and photographed employees entering and exiting the Cheltenham school jobsite.

B. The Wohlson Cases (4-CB-8300-1; 4-CC-2240-2)

Wohlson, as previously noted, is a general contractor hired by PPH to renovate four wings and two floors of PPH's Webb Pavilion located on the PPH grounds in Philadelphia, PA. Work on the project began in February and was completed in July. To perform the various parts of the project, Wohlson retained Lower Bucks Heating and Cooling to do the heating and air-conditioning work, Dayspring Electric to perform the electrical work, and David Smith Plumbing to do the plumbing work. Another company, Sharp's Landscaping, performed landscaping work for PPH but was not part of the Webb Pavilion construction project. PPH had three entrances to its facilities: a construction entrance located on Magee St. for use by construction employees (Gate 1); a main entrance located on Martin's Mill Road and Tabor Road (Gate 2); and a resident/employee entrance also located on Magee St. (Gate 3), some 50 yards from the construction entrance.

On May 24, Local 98 began picketing at all three PPH entrances. Michael Bierds, at the time Wohlson's construction superintendent on the PPH-Webb Pavilion project,[18] testified that he arrived at the jobsite around 7:20 a.m. on May 24, and immediately observed approximately 20 pickets at the construction entrance carrying signs identifying themselves as being with Local 98 and Local 19. On looking towards the resident/employee entrance, Bierds observed some 6 or 7 pickets stationed there as well also carrying signs containing the same wording. Bierds then went to Gate 2 (main entrance) and found some 20 pickets there carrying similar signs. Following consultations with a local law enforcement official, and to avoid any incidents, Bierds instructed his employees and contractors to go home.

Lower Bucks Heating and Cooling mechanic and crew leader, Peter Paolella, testified that on May 24, he arrived at the PPH site around 6 a.m. and observed no pickets at that time, but that by around 7:30 a.m., when he left the site through the construction entrance to retrieve tools from his truck, observed some 15–20 pickets at the entrance. While he had no difficulty getting out of the jobsite, he was blocked from entering the premises by the pickets who gathered together shoulder-to-shoulder to prevent him going in. During this incident, one of the pickets, according to Paolella, yelled out, "F___k you! Do you want to start something?" Paolella replied that he was not looking for trouble and only wanted to get his helper and tools out of the jobsite, at which point someone in the group called him a "f___king bum" and told him he was not getting through the line. Paolella then returned to his truck and waited until his helper came out around 9 a.m. (Tr. 97–98.) Paolella's testimony is unrefuted and is accepted as true.

Dayspring Electric employee Michael Rearick testified that on May 24, as he and a fellow passenger drove towards Gate 1 to enter the jobsite, he observed some 15 pickets at the entrance standing around a vehicle with its hood opened. When he turned towards the employee gate, he observed some six to seven pickets also standing at that gate. Wanting to find out what was going on, Rearick parked his truck and walked towards the construction entrance. As he approached the group, the pickets, according Rearick, positioned themselves shoulder-to-shoulder blocking the entrance and did not move even when Rearick and his coworker continued walking towards it. Rearick admits that no words were exchanged between him and the pickets. He explained, however, that "there was no need for me to say anything" because he understood from the manner in which the pickets positioned themselves that they were not about to let him proceed to the jobsite. (Tr. 130.) Rearick claims that after waiting around for 15 minutes or so, he called his boss who instructed him to return to the shop. Rearick's testimony was unrefuted and is accepted as true.

James Ward, Dayspring Electric's Estimator and Project Manager, testified that early on May 24, he received a call from his superior, Tom Richie, who informed him that his employees, presumably Rearick and his coworker, were returning from the PPH jobsite. Ward went to the jobsite around 8 a.m. and, on driving around the site, observed pickets at all three PPH entrances, some carrying signs which read, "NOTICE, PHILADELPHIA PROTESTANT HOME IS UNFAIR TO ELECTRICIANS, LOCAL 98, IBEW." He testified, without contradiction, that he then went to the main entrance, inquired of the picketers gathered there who was in charge, and was directed to Hnatkowsky who was standing nearby. On inquiring from Hnatkowsky what was going on, the latter replied that the pickets were not there for him but for PPH because they did not

[18] At the time of the hearing, Bierds was no longer employed by Wohlson.

want PPH using nonunion labor on their construction projects. Hnatkowsky further told Ward that the pickets would be there again the next day handing out pamphlets, and would continue to block the entrances for the next month.

Ward testified that while he was at the jobsite observing and photographing the pickets, he saw two trucks, one belonging to Neighborhood Health Care and the other to Superior Moving, attempt to enter the PPH grounds through the main entrance but were forced to turn away because the entrance was blocked by pickets.

Picketing by Local 98 continued on May 25. Bierds testified that he arrived at the jobsite around 6:45 a.m., observed six to seven pickets at the construction entrance carrying Local 98 signs and blocking the entrance, and four to five more pickets at the residents/employee entrance. Some 15 minutes later, a Wohlson truckdriver sought entry through the construction entrance but could not get through because the pickets continued to block the entrance. Around 7:15 a.m., Bierd instructed employees to retrieve some reserve gate signs from the rear of the truck and had them posted on the three entrances.[19] The sign posted at gate 1 read:

> GATE #1
>
> This gate is reserved for the exclusive use of employees, suppliers, and visitors of the contractor(s)

The signs posted at gates 2 and 3 were identical and read as follows:

> GATE #
>
> "This entrance may not be used by employees, suppliers, and materialmen of the contractors or visitors. Employees, suppliers and materialmen of the contractors must use Gate # 1."

After the signs were posted, Bierd attempted to distribute a letter to Hnatkowski and the picketers who were gathered at the main entrance (gate 2) advising them of the establishment of the reserve gate system, and instructing that all picketing should be restricted to gate 1 (GC Exh. 15). Hnatkowski and the pickets, however, refused to accept copies of the letter from Bierd, at which point Bierd read the letter aloud. The record, however, does not make clear whether Hnatkowski or any of the pickets paid any attention to Bierd as he read the letter, or if Bierd attempted to hand out or read the letter aloud to the pickets that had gathered at Gates 1 and 3.[20] I credit Bierd's above unrefuted testimony.

Soon after the signs were posted, Dave Smith Plumbing employees Eric Blair and Jim Pearsey attempted to drive their van into the jobsite through the construction entrance but were prevented from doing so by the pickets. Blair, the driver of the van, testified that he observed some seven to eight pickets at the construction entrance, along with other individuals wearing suits and badges who appeared to be police officers and that, as he sought to drive through, two of the pickets stepped forward from the group and blocked the entrance, with one of them telling Blair, "You don't want to cross this line." Bierd's testimony that he was nearby and heard one of the pickets tell the Dave Smith Plumbing driver not to cross the picket line corroborates Blair's account. Blair was then instructed by his superiors to leave the premises and go home. Blair, however, claims that he made an attempt to enter the jobsite through the employee entrance but was again unsuccessful. (Tr. 113.) Blair's testimony is undisputed and is accepted as true.

At around 9:15 a.m., some 2 hours after the signs were put up, Bierd modified the Gate 1 sign by inserting the phrase "performing work on Webb Pavilion" at the end, so that the sign now read, "This gate is reserved for the exclusive use of employees, suppliers, and visitors of the contractors performing work on Webb Pavilion." He similarly modified the signs at Gates 2 and 3 by adding the words, "for Webb Pavilion" at the end, so that the signs now read, "This entrance may not be used by employees, suppliers, and materialmen of the contractors or visitors. Employees, suppliers, and materialmen of the contractors must use Gate No. 1 for Webb Pavilion." (See GC Exhs. 3, 4, 5)

The record reflects that around 9–9:15 a.m. on May 25, two trucks driven by employees of Sharp's Landscaping sought to enter the PPH grounds through the main entrance. Eric Goldsmith, who drove the lead truck, testified that he observed four pickets standing at the entrance wearing signs, and that other individuals were also milling around. He claims that as he tried to drive through the entrance, the four pickets positioned themselves in front of his truck, and that one of the pickets told him that he and the other driver were not allowed in, and should go home (Tr. 117). Each picket then took turns standing in front of his truck so as to prevent it from proceeding forward onto the PPH grounds. Sharp then backed away from the entrance and tried unsuccessfully to go through one of the other entrances. Another attempt to enter through the main entrance also proved unsuccessful because the picketers continued to block the entrance. According to Bierd, the pickets were still present at the entrances when he left the site around 11 a.m. that day.

1. Discussion

a. The 8(b)(4)(B) allegation

The General Counsel and Wohlson contend that Local 98's picketing of the PPH facility violated Section 8(b)(4)(B), as it was directed at PPH, a neutral employer, and not at some other employer working at the Webb Pavilion site with whom it had a dispute, and that its purpose was to force PPH into ceasing to do business with the nonunion contractors at the jobsite. Local 98 contends that its picketing was directed at Dayspring Electric, not at PPH, and that the picketing was at all times lawful and complied with the Board's *Moore Dry Dock* standards. I find merit in the General Counsel's and Wohlson's contention as the weight of the evidence clearly reveals that PPH, not Dayspring Electric, was the target of Local 98's picketing.

Thus, while Local 98 claims its dispute was with Dayspring Electric and not PPH, the picket signs carried by its members,

[19] Bierd admits that prior to posting the signs on May 25, the entrances had no signs instructing employees or members of the public which entrance to use. However, he testified that all contractors knew before the job was started that gate 1 was to be their entrance.

[20] As Local 98 correctly points out on brief, the letter is somewhat ambiguous in that it states that certain contractors were to use gate 1, and others, gate 2, without identifying which contractors would be using gate 1 and which would be using gate 2.

as described above, identified only PPH as the target of the picketing, and made no mention of any ongoing dispute between Local 98 and Dayspring Electric. The picket signs, in fact, contained no reference whatsoever to Dayspring Electric, or so much as identified it as a nonunion contractor. Local 98's attempt, on brief (p. 21), to explain away this discrepancy by suggesting that the reference to PPH on the picket signs was an "error," and that it had simply "misidentified" PPH as the party with which it was having a dispute, is devoid of evidentiary support and is, more importantly, inconsistent with Hnatkowski's representation to Dayspring Electric's project manager, Ward, on May 24, regarding the true reason for the picketing. Ward, as noted, testified without contradiction, and credibly in my view, that Hnatkowski assured him the pickets were not there for Dayspring Electric but rather for PPH because the latter was using nonunion contractors on the Webb Pavilion project. Hnatkowski, for whatever reason, was not called to refute Ward's above testimony, warranting an adverse inference that Local 98 chose not to do so because Hnatkowski would not have supported its claim. *Jim Walters Resources,* 324 NLRB 1231, 1233 (1997). The evidence of record therefore makes clear, and I so find, that PPH, not Dayspring Electric, was the true target of Local 98's picketing. I am also convinced, and thus find, from the wording on the picket signs and Hnatkowski's admission to Ward, that the true purpose behind Local 98's picketing was to pressure PPH into forcing its general contractor, Wohlson, to stop doing business with the various nonunion subcontractors working at the Webb Pavilion jobsite, including Dayspring Electric. Such attempts to pressure a neutral employer to cease doing business with nonunion contractors are unlawful and violative of Section 8(b)(4)(B). *Nashville Building & Construction Trades Council (H. E. Collins Contracting),* 172 NLRB 1138, 1140 (1968), enfd. 415 F.2d 385 (6th Cir. 1970); *Building & Construction Trades Council of Philadelphia and Vicinity,* 149 NLRB 1629, 1630 (1964), enfd. 359 F.2d 62 (3d Cir. 1966).

A finding that Local 98's picketing violated Section 8(b)(4)(B) would be warranted even if Local 98's claim that its dispute was only with Dayspring Electric were found to be true. Clearly, if Local 98 was involved in a labor dispute with Dayspring Electric, it was certainly free under the proviso to Section 8(b)(4)(B) to picket Dayspring Electric as the primary employer at PPH's Webb Pavilion jobsite, provided, of course, said picketing conformed to the *Moore Dry Dock* standards. Its picketing of the PPH facility clearly did not, for, as previously discussed, Local 98 never identified Dayspring Electric on its picket signs as the object of its picketing nor as the employer with whom it was having the dispute, as required by the fourth *Moore Dry Dock* standard. Nor did Local 98 confine its picketing to places reasonably close to the situs of the dispute, e.g., Gate 1, which had been expressly reserved for Dayspring Electric and other contractors, as required by the third *Moore Dry Dock* standard.[21] Instead, Local 98 picketed at all three PPH entrances, including gate 2, the facility's main entrance, and gate 3, which was reserved exclusively for PPH residents and employees.

Local 98 admits that it picketed at all three PPH gates on both May 24 and May 25 (see Local 98 brief, p. 22). It argues, however, that as no reserve gate system was in place when it began picketing on May 24, its picketing of all three entrances that day was lawful and did not violate the third *Moore Dry Dock* requirement. As to the picketing that occurred after the reserve gate system was established on May 25, Local 98 argues that the system set up by Wohlson was flawed because the signs failed to specifically identify the contractors entitled to use the various gates, and that, consequently, "employees of Dayspring Electric would have had no idea" which gate they were to enter through (Local 98 brief, p. 20). I find Local 98's arguments to be without merit.

First, the signs posted by Wohlson at all three PPH entrances were neither confusing nor ambiguous, as claimed by Local 98. The gate 1 sign, for example, clearly and unambiguously stated that that particular entrance was to be used exclusively by contractors, and their suppliers, employees, and visitors. The signs at gates 2 and 3 likewise expressly notified contractors that they were not to use either of these entrances to gain access to, or exit from, the facility, but were to enter and leave the jobsite only through gate 1. All three signs therefore clearly and unambiguously instructed all contractors that they were to enter through gate 1 only. Thus, I find it highly unlikely that employees of Dayspring Electric, or for that matter any other contractor, would have been confused by the lack of specific mention of contractors on the signs, or otherwise been misled as to which gate they were to use, given the explicit directive on all three signs that all contractors, without exception, were to use gate 1 exclusively to enter and exit the PPH facility.[22] Local 98, it should be noted, cites no record evidence, nor have I found any, to suggest that employees of Dayspring Electric in fact found the signs confusing or were uncertain as to which gate to use. Its assertion, therefore, that "employees of Dayspring Electric would have no idea of where they were to

[21] Contrary to Local 98's claim on brief, I find no confusion in the reserve gate signs posted by Wohlson at all three gates. The sign at Gate 1, for example, clearly identified the entrance as being for the exclusive use of contractors, their employees, and visitors, while the signs posted at gates 2 and 3 made clear that contractors were not to use either of these two gates but instead were to enter or exit the premises of PPH through gate 1. clearly and unambiguously for the signs, in my view, clearly and unambiguously directed at gate 1 clearly stated that this entrance was to be used by all contractors message nothing confusing about the signs identifying the that the signs were confusing is without merit.

[22] Nor is it likely that employees of Dayspring Electric would have been confused as to which gate to use following Wohlson's modification of the signs to include the words "working on Webb Pavilion." The modification, as noted, limited the use of gate 1 to contractors working at the Webb Pavilion project. The change meant only that employers doing business with PPH and not associated with the Webb Pavilion project, such as Sharp's Landscaping, Neighborhood Health Care, and Superior Moving, all of which, as noted, were affected by Local 98's picketing, were to use either gate 2 or gate 3. Thus, the change simply clarified that only Webb Pavilion contractors, such as Dayspring Electric, were to use gate 1. However, as employees of Dayspring Electric and other contractors working at the Webb Pavilion jobsite were, prior to the modification, already required to use gate 1, the change could hardly have been confusing to employees of the contractors.

enter," is simply devoid of any evidentiary support and amounts to nothing more than rank speculation. Finally, Bierd's testimony, which I credit, that he personally instructed all contractors before the picketing began on May 24, to use Gate 1 to enter and leave the jobsite, establishes rather convincingly that employees of Dayspring Electric and other contractors working on the Webb Pavilion project knew full well that Gate 1 had been reserved for their exclusive use. Accordingly, I reject as without merit Local 98's claim that Wohlson's failure to identify the various contractors by name on the signs placed at the PPH's three entrances rendered the reserve gate system invalid. *Electrical Workers Local 970 (Interox America)*, 306 NLRB 54, 60 (1992)

In sum, I find that the reserved gate system established by Wohlson at the PPH facility for contractors working at the Webb Pavilion jobsite was valid. Local 98 does not contend, nor is there any evidence in the record to show, that the gate system had been misused, violated, or otherwise compromised which might have justified Local 98's picketing at all three entrances. *Iron Workers Local 433 (Oltmans Construction)*, 272 NLRB 1182 (1984). Absent evidence that breach of the reserve gate system had occurred, Local 98 was obligated to confine its picketing to Gate 1. By its own admission, it clearly did not do so, and in fact continued to picket all three gates even after Wohlson modified the signs to further clarify that Webb Pavilion contractors, including Dayspring Electric, were restricted to gate 1.

Thus, if, as claimed by Local 98, its dispute was only with Dayspring Electric and not with any other employer working at PPH's facilities, then its noncompliance with the third and fourth *Moore Dry Dock* requirement, and the conduct of its picketing members in blocking employees of the various neutral employers with whom it had no dispute from entering PPH's facility (some of which, e.g., Sharp's Landscaping, Neighborhood Health Care, Superior Moving had no connection with the Webb project), provides strong evidence that Local 98's picketing had a secondary objective. The above evidence makes patently clear that rather than trying to resolve its alleged dispute directly with Dayspring Electric, the primary employer, Local 98 sought instead to achieve its goal in that dispute by bringing pressure to bear on the various neutral employers working at the PPH facility, whether or not engaged in the Webb Pavilion project, with the expectation that they would in turn pressure PPH and/or Wohlson to cease doing business with Dayspring Electric. By engaging in such conduct both on May 24 and 25, Local 98, I find, violated Section 8(b)(4)(i)(B) of the Act, as alleged. While it is true that no reserve gate system had yet been established on May 24, when Local 98 began its picketing, that fact alone does not render lawful Local 98's May 24, picketing, for the determining factor as to whether picketing, or other union conduct, is primary or secondary is the objective of the union, e.g., whether it seeks to pressure the primary or the secondary employer, not whether a reserve gate system is in place. Here, Local 98's failure to identify the employer with whom it the dispute when it began picketing on May 24, and its conduct in blocking employees of neutral employers Neighbor Health Care and Superior Moving from entering the PPH facility, both of whom Local 98 could reasonably have known had no involvement with the Webb Pavilion project, suggests, and I so find, that its May 24, picketing, like its conduct following the creation of the reserve gate system, was intended to put unlawful secondary pressure on neutrals, and thus violated Section 8(b)(4)(i)(B) of the Act.

b. The 8(b)(1)(A) allegations

The General Counsel and Wohlson further contend that Local 98 violated Section 8(b)(1)(A) when on May 24 and May 25, its pickets prevented employees from entering or leaving the PPH facility, and threatened employees with harm if they crossed the picket line. I find merit in their contention.

As previously discussed, employees have a Section 7 right to cross a picket line and report for work, and a union's interference with that right, such as by blocking employee ingress and egress from a jobsite, even if for a short period of time, violates Section 8(b)(1)(A). See *General Maintenance Service Co.*, supra, and other cases cited in section II(a) above. The mere massing of a hostile crowd of pickets or protesters by a union at the entrance to a worksite is by itself also deemed to be coercive even if the protesters do not effectively prevent employees from passing through their midst. *Meat Packers (Hormel & Co.)*, 287 NLRB 720, 721 (1987); also, *SEIU Local 525 (General Maintenance Service)*, supra. The record evidence here makes clear that on May 24 and May 25, Local 98 pickets did indeed prevent employees from entering or leaving PPH's facility.

On May 24, for example, Lower Bucks Cooling and Heating employee Paolella was prevented by Local 98 pickets from reentering the jobsite after he had exited momentarily to retrieve something from his truck. Dayspring Electric employee Rearick similarly testified that as he tried to report for work that day, he and a coworker were prevented from doing so by Local 98 pickets amassed at gate 1. Local 98's claim on brief, that neither Paolella nor Rearick had in fact sought entry to the jobsite that day, is simply wrong and a gross mischaracterization of their testimony. Thus, Paolella testified, credibly and without contradiction, that he was in fact attempting to reenter the jobsite but that as he did so, the pickets stood shoulder to shoulder "and wouldn't let me pass." (Tr. 97.) Rearick provided a similar credible and unrefuted explanation of what occurred to him and his coworker as they sought to report for work.[23] The above testimony thus makes patently clear, and I so find, that both Paolella and Rearick were in fact attempting to enter the jobsite on May 24, but were effectively prevented from doing so because Local 98 pickets (which Paolella and Rearick recalled numbered about 15) physically blocked the Gate 1 entrance with their bodies so as to make entry to the jobsite without force or confrontation virtually impossible. Indeed, Paolella's further testimony, again unchallenged by Local 98, that one of the pickets sought to provoke him by asking if he wanted to start some trouble by crossing the picket line, suggests that the

[23] Local 98's assertion that Rearick walked up to the picketers for the sole purpose of reading the wording on the picket signs, and not to enter the facility, is a further mischaracterization of Rearick's testimony, for Rearick testified that he read the sign only as he approached the pickets in his attempt to enter the jobsite.

crowd of pickets amassed at Gate 1 may indeed have been a hostile one itching for a confrontation.

In these circumstances, I find that on May 24, Local 98, as alleged in the complaint, violated Section 8(b)(1)(A) by interfering with, restraining, and coercing employees Paolella and Rearick in the exercise of their Section 7 rights by blocking the entrance to the Webb Pavilion jobsite, effectively preventing them and, according to Ward's credited testimony, others from reporting for work. Further, I agree with the General Counsel that the provocative remark directed at Paolella by one of the pickets constituted a threat of physical harm and was itself coercive and violative of Section 8(b)(1)(A). Local 98's assertion on brief that no 8(b)(1)(A) violation can be found here because neither Paolella nor Rearick ever made a verbal request to the pickets to let them onto the jobsite is so lacking in merit as to warrant little, if any, discussion. Clearly, Paolella's credited testimony that on approaching the pickets, he was told he "wasn't getting through the line," makes clear that a request by Paolella to the pickets to let him enter would have been a futile gesture. As to Rearick, while no words were exchanged between him and the pickets as he approached the gate, the actions of the pickets in closing ranks and standing shoulder to shoulder to block his entry clearly conveyed to Rearick, as he so testified, the pickets' determination not to allow him to enter. Like Paolella, therefore, any such request by Rearick to the pickets to let him onto the jobsite would have been an act of futility.

Local 98 further violated Section 8(b)(1)(A) on May 25, when its pickets prevented employee Blair from driving his Dave Smith Plumbing truck onto the jobsite through the gate 1 entrance, and blocked Sharps Landscaping driver Goldsmith from entering the PPH grounds through the gate 2 main entrance. As with the May 24, incidents, Local 98 claims that had Blair and Goldsmith asked the pickets to allow them entry to the PPH premises, they would have done so, and points, in support thereof, to the fact that Goldsmith was in fact allowed to enter after making such a request. The record does not bear out Local 98's claim. Goldsmith, for example, testified, credibly and without contradiction, that when he attempted to enter through the main gate, the pickets stood in front of his lead truck to block it from entering, told him he and the other truck behind him were not allowed in, and instructed him to go home (Tr. 117.) Thus, Goldsmith's testimony suggests that he was not even given a chance to seek entry before being told he was not allowed to work at the site and to go home. Any subsequent request to the pickets by Goldsmith for entry to the PPH grounds would I am convinced have fallen on deaf ears and been a futile gesture. Although subsequently allowed to enter the premises on his second try, Goldsmith testified, and Local 98 admits (br., p. 24), that he was still denied entry for several minutes. (Tr. 121.)

Blair, contrary to Local 98's assertion, also sought entry through the construction entrance at gate 1, but was prevented from doing so by two pickets who stood in front of his vehicle as he attempted to drive through the gate and told him, "you don't want to cross this picket line." Blair's testimony as to what transpired and was said by the picketers as he approached gate 1 makes clear that the picketers knew full well what Blair's intentions were, e.g., to enter the facility. There was no need, therefore, for Blair to verbalize either his desires or intentions to the picketers, and for him to have done so, as Local 98 claims he should have done, would more likely than not have been an exercise in futility. Accordingly, I find that Local 98's conduct on May 25, in blocking Blair and Goldsmith from reporting to work constituted violations of Section 8(b)(1)(A) of the Act.[24]

C. The UPS Case (4–CC–2246)

As indicated, UPS is an international parcel delivery service operation. It maintains several facilities in the greater Philadelphia, Pennsylvania area, including one at Philadelphia International Airport and a main Philadelphia facility situated on Oregon Ave. The Oregon facility is a large complex having four separate gates or entrances, all approximately 30 ft. wide, used by different personnel to enter and exit the facility. The facility is bordered by Oregon Ave. on the south, and Weccacoe St. on the east. Gate 1, located on the Oregon Ave. side of the complex, is an employee entrance. Gate 2 is for use by UPS' tractor-trailer drivers. Gate 3 serves a dual purpose. Thus, it is used by employees working in that part of the facility, by the brown UPS vehicles commonly seen making deliveries, and also serves as a tractor-trailer entry/exit point. Gate 4 is a vendor entrance for use by contractors (and their subcontractors or vendors) retained by UPS.[25] Gates 2, 3, and 4 are all located on Weccacoe St., with Gate 4 situated at the northernmost part of Weccacoe St (See GC Exh. 25). In addition to these four gates, the Oregon facility has four large overhead doors fronting Oregon Ave., located just east of Entrance 1. (See GC Exh. 25.)

The record reflects that UPS had contracted with Network Dynamic Cabling (NDC) to perform some cabling work at its Oregon and airport facilities, and with G.M. Shuhart Electric to perform some electrical work, both of which apparently were nonunion companies (Tr. 165). Frank Maxwell, the labor relations manager of UPS' Metro Philadelphia District, testified that on May 11, Bill Corazo, an admitted agent of Local 98, called to express concerns about UPS' use of a particular contractor, and asked if Maxwell would meet with him outside the facility. Maxwell agreed to do so, and thereafter met with

[24] Local 98's claim that no violation should be found, on de minimis grounds, regarding the denial of entry to Goldsmith is without merit. The short delay referenced by Local 98 of the Sharps Landscaping trucks occurred during Goldsmith's second attempt at entry. Goldsmith had, by then, already been refused entry by Local 98 pickets once before. The refusal to allow Goldsmith entry during his first attempt by itself amounted to a violation of Sec. 8) (b)(1)(A). As to the second attempt, Goldsmith did testify that he was detained for only a short period of time. However, as previously indicated, a denial of ingress or egress even for a short period of time can constitute unlawful interference, restraint and coercion and violate Sec. 8(b)(1)(A). See, e.g., *Shopmen's Local 45 (Stokis Multi-Ton Corp.*), 243 NLRB 340 (1979) (pickets refusal to allow truck to exit facility for several minutes found to be unlawful).

[25] Gate 4 is normally kept padlocked. When a contractor seeks to enter the facility, it must first report to the security guard stationed at Gate 3, who provides the contractor with a pass and redirects it to gate 4 for entry. The security guard then walks over to gate 4, unlocks it to allow the contractor to enter, and then relocks it. (Tr. 250–251.)

Corazo and Della Vella on the sidewalk in front of the facility. At this meeting, Corazo identified NDC as the contractor the Union was having problems with, stating in particular that unfair labor practices had been filed against it, and that NDC was generally not a good contractor for UPS. Unaware of the contractual arrangement between UPS and NDC, Maxwell agreed to look into Corazo's allegations.

Three weeks later, on June 2, Maxwell received a call from a security guard stationed outside the Oregon facility informing him that Corazo and Della Vella were outside and wished to speak with him again. Maxwell, accompanied by Labor Manager Mark Aaron, went outside and met with Corazo and Della Vella. According to Maxwell, Corazo reiterated much of what he had said earlier about NDC, and added that NDC was in violation of city codes, did not have proper permits and licenses, had not paid its business privilege or City wage taxes, and was generally a substandard employer. Corazo also mentioned that he had union contractors that could do the work for UPS that NDC was doing at a price that would not cost UPS any more money, and indicated he would like UPS to use such union contractors. Maxwell did not respond to Corazo's suggestion that UPS use union contractors, but did express a willingness to receive from Corazo a list of union contractors that UPS would include in the bidding process for any future work that might become available in the Philadelphia area. He further agreed to look into whether or not NDC was complying with the city licensing and taxing requirements, made clear to Corazo and Della Vella that UPS was bound by its contract with NDC and that the latter would remain on the property until the work was completed. Della Vella responded that while he and Corazo had already spoken to Maxwell twice regarding NDC and "had tried to be nice" to Maxwell, the latter's response had been to shrug his shoulders and state he had a contract with NDC. Della Vella then remarked that this was not all he and Corazo could do, that "we can come back, not just the two of us, but en masse, but that's not a threat." Della Vella also complained to Maxwell about UPS' use of another nonunion contractor, Shuhart Electric, at the Oregon facility. Concerned by Della Vella's remarks, Maxwell turned to Corazo, whom he described as the calmer of the two, stated he would look into the allegations regarding the NDC's lack of permits, and asked Corazo to give him advance notice of any action Local 98 might be thinking of taking at the Oregon facility. Corazo agreed to do so. (Tr. 163–164.) Neither Corazo nor Vella Della testified in this proceeding. Consequently, Maxwell's above testimony remains unrefuted. I found Maxwell to be a wholly credible witness. Accordingly, I accept his unrefuted account of his meeting with Corazo and Della Vella and find that Local 98, through admitted agent Della Vella, informed Maxwell of its intent to engage in mass picketing if UPS did not agree to end its contractual arrangement with NDC.

Following his June 2 conversation with Local 98's agents, Maxwell looked into Corazo's allegations regarding UDC, and was told that the cabling contract was awarded to NDC based on its competitive pricing, and that NDC had been approved by the region as a special provider of cabling service. He also learned that a union contractor had been included by UPS in the bidding process and asked to submit a bid, but failed to do so. The next day, June 3, in response to his discussion with Corazo and Della Vella, and following consultations with fellow Labor Manager Mark Aaron, Maxwell had signs, approximately 8-1/2 x 11 inches in size, posted at entrances 1, 3, and 4. Entrance 2 already had a sign that was posted in 1997 in response to a strike and read:

"THIS ENTRANCE IS RESERVED FOR THE EXCLUSIVE USE OF UNITED PARCEL SERVICE VEHICLES ONLY"

At Entrance 4, the gate reserved for vendors, the following sign was posted:

Northern Weccacoe St. Entrance
This entrance is reserved for the exclusive use of Network Dynamic Cabling and G.M. Shuhart Electric, and their employees, vendors or sub contractors.

The signs posted at Entrances 1 and 3 on June 3, read:

This entrance is reserved for the exclusive use of United Parcel Service Inc., its employees, customers, vendors, agents, agents or sub contractors.
Employees of Network Dynamic Cabling and G.M. Shuhart Electric may not use this entrance, but must use the Northern Weccacoe Street entrance.

It is undisputed, and Respondent Local 98 admits in its answer, that it engaged in picketing at the Oregon facility on June 24. UPS area security manager, Gene McGlone, testified that early in the morning of June 24, while still at home, he received a call from one of his supervisors, Doug McQueen, who reported that picketers were starting to congregate at all the entrances to the Oregon facility. McGlone left for facility immediately and, on arriving around 6:40 a.m., circled the facility in his car during which he observed approximately 50–60 picketers standing around entrances 2, 3, and 4, carrying signs identifying them as being with Local 98.[26] Soon thereafter, he walked over to entrance 3, which was where the largest group of picketers had congregated, and asked who was in charge. One of the picketers pointed to Della Vella. After introducing himself to Della Vella, McGlone asked why they were there, and Della Vella responded that they were protesting because one of UPS' contractors was nonunion. McGlone then advised Della Vella that all UPS' vendors were required to use entrance 4 and that whatever picketing was to take place should be restricted to that entrance. He admits, however, not having mentioned to Della Vella that NDC was not on the jobsite at the time. When

[26] Local 98 asserts, on brief, that the signs also identified NDC as the employer with whom it had a dispute (R. Br. 25). There is, however, no evidence to support that assertion for the witnesses at the hearing who were asked about the wording on the signs recalled only seeing some reference to the IBEW or Local 98, not NDC, on the signs. (Tr. 263, 313.) The General Counsel, it should be noted, offered a videotape into evidence showing some of the picketing that took place at the Oregon facility on June 24. While the videotape shows pickets wearing signs, the wording on the signs is not readily discernible from a plain viewing of the video.

McGlone asked if Della Vella was going to let any of UPS' vehicles in or out of the Oregon facility, the latter replied, "No way, no fucking thing's coming in and out of this building." Della Vella, as noted, was not called to testify. As to McGlone, I found him to be quite credible. Accordingly, I credit his unrefuted account of his conversation with Della Vella and find that Della Vella indeed made the above remarks.

Consistent with Della Vella's remarks, certain vehicles seeking to enter and leave the Oregon facility were in fact prevented from doing so by Local 98 pickets. Thus, McGlone testified, credibly and without contradiction, that he personally observed four tractor-trailers attempt to gain entry to UPS' facility that morning through gate 3, but were prevented from doing so by pickets blocking the entrance, that a delivery vehicle from Corporate Express carrying general office supplies to the Oregon facility was likewise prevented from entering through entrance 3 by pickets, and that a tractor-trailer carrying next day air products from the Oregon facility to a UPS air service center in downtown Philadelphia was also prevented by pickets from exiting the Oregon facility.

One trailer, carrying A-4 canisters used to deliver high priority, time-sensitive packages, also was denied entry to the Oregon facility by the pickets.[27] McClone testified, without contradiction, that on informing Della Vella that the packages were scheduled for next-day delivery and asking the latter to allow the shipment through. Della Vella repeated that "nothing was going in and out of this building again." McClone then instructed the driver of the A-4 trailer, UPS preload supervisor, Dennis Craig, to drive to the western side of the Oregon facility and attempt to enter the premises through an old unused gate.[28]

Craig worked the midnight shift, from 11 p.m. to 10 a.m.. He testified, credibly and without contradiction, that at around 6:50 a.m. on June 24, he observed some 30 pickets standing in front of entrance 2 and approximately 30 more at entrance 3. Corroborating McGlone, Craig further testified that after several unsuccessful attempts to drive the A-4 trailer through entrance 3, McGlone directed him to enter through the unused gate. On finding the unused gate welded shut, Craig, on further instructions from McGlone, crashed through the gate. (Tr. 238, 265–267.)

UPS Metro Philadelphia Operations Manager Bruce Trotter testified to receiving a call from Oregon facility preload manager, Rich Barbazon, around 6:50 in the morning advising him of the pickets at that facility. On arriving at the facility some 25 minutes later, Trotter observed Local 98 pickets at the employee entrance, and in front of the four large overhead doors. He credibly recalled there being around five to seven pickets stationed in front of each overhead door wearing Local 98 signs. On asking the pickets who was in charge, Trotter was directed to Corazo. Corazo, accompanied by Della Vella, then approached Trotter and told the latter that Local 98 had gotten no satisfaction from talking with Maxwell regarding NDC, and that the picketers were not going to move (Tr. 305). Trotter replied that he had time-sensitive packages that needed to be delivered in a timely fashion, and informed Corazo that NDC was not on the premises. Corazo then left for a few minutes to make a call on his cell phone. When he returned Trotter took Corazo aside and asked what it was "going to take . . .to get the pickets from in front of my building and get these packages out for delivery." Corazo responded that it was going to take UPS meeting "with the Local and talk about making sure that we don't use NDC, and that we give them a chance at doing work on Oregon Ave." (Tr. 305–306.) Trotter agreed to meet with Corazo the following day and to keep NDC out of the Oregon facility in the meantime. According to Trotter, the pickets dispersed within 3–4 minutes of his conversation with Corazo. He testified, however, that operations at the Oregon facility were disrupted for at least 2 hours because of the pickets.

Around 12:30 p.m. that same day, Trotter received a call from Corazo complaining that he had seen an NDC truck going into UPS' airport facility. Trotter replied that he had no knowledge of the NDC truck being at that facility and agreed to remove the NDC truck consistent with his earlier promise to Corazo that NDC would be kept of UPS' facilities.

Maxwell testified that he first learned of Local 98's June 24 picketing of the Oregon facility while in Baltimore, Maryland from a UPS manager who called him to report that IBEW pickets were blocking all entrances to the facility. By the time Maxwell got back to the Oregon facility around 2 or 3 p.m., the picketing had ended. Presumably on learning of the discussion between McClone and Corazo regarding the airport facility, Maxwell posted a sign at the airport entrance which was simply a modification of the entrance 1 and 3 signs, and similarly modified the latter two signs. Thus, the airport sign, and the signs at entrance 1 and 3 now read:

> This entrance is reserved for the exclusive use of United Parcel Service Inc., its employees, customers, vendors, delivery agents, and sub contractors; except, employees of Network Dynamic Cabling and G.M. Shuhart may not use this entrance. Employees of Network Dynamic Cabling and G.M. Shuhart Electric must use the Northern Weccacoe Street entrance.

As agreed, Local 98 officials met with UPS officials the next day, June 25. In attendance for UPS were Trotter, Maxwell, Aaron, and TSG Manager Rolf Stutzer. Corazo, Della Vella, John Daugherty, and Hnatkowsky were there for Local 98. Trotter began the meeting by giving Local 98 the opportunity to express their concerns. Trotter recalls that Daugherty did most of the talking and began by identifying himself as the head of Local 98, describing his various political and other connections, and pointing out that, if necessary, he would use those connections to secure work for his Local 98 members at the Oregon facility. Daugherty, he further recalled, described NDC as a substandard contractor which had been having labor disputes with Local 98 all over the place and mentioned that unfair labor practice charges involving NDC were pending before the Board. Corazo chimed in that "he wanted to take over for NDC," that "he didn't think they were properly licensed . . . and didn't have all the licenses that they needed to have, and that NDC shouldn't be working in our building." (Tr.

[27] It is unclear if this is one of the four trailers observed by McGlone trying to enter the Oregon facility.

[28] Craig replaced another driver in the trailer, a member of the Teamsters' union, who refused to cross the picket line.

310.) Daugherty, according to Trotter, also brought up the airport work and indicated he had a union company that could do the work.

Maxwell generally corroborated Trotter's above account of the meeting. He also recalled, however, Daugherty mentioning that charges were either pending or to be filed against NDC with the Equal Employment Opportunity Commission regarding one of Local 98's members, and stating that he had strong political ties to various Philadelphia officials, including the current and former mayors of Philadelphia. Daugherty pointed out that Philadelphia was a union town and that it was very important for him to have union members at UPS' Oregon and airport facilities. Daugherty claims that he and Trotter both informed the Union representatives that their picketing had been improper, amounted to illegal secondary picketing, and should not have taken place. Daugherty responded that he was simply exercising his First Amendment rights. Daugherty, Maxwell recalls, also indicated his awareness of another UPS job to be done at the airport facility and expressed his interest in getting that work for his members wanted to work with UPS officials in that regard. Maxwell, however, responded that Local 98 had a funny way of demonstrating its willingness to work with UPS and that shutting down the UPS facility for an hour and half the previous day was no way to show that he wanted the UPS work. Daugherty, Maxwell claims, became upset at that point and replied that "if you want to fight the fight, he'll fight it," adding that "if it's a big fight, it just means a big win for him." Daugherty then boasted of having fought bigger companies before, naming AT&T and Home Depot as examples, and stated that he "would do whatever they had to do to get our work at the Oregon Avenue and at the Philadelphia Air Hub facility." The meeting essentially ended with Maxwell again agreeing to look into Local 98's allegations that NDC lacked the proper licenses and was not paying its business privilege taxes, and promising to get back to Local 98 after the July 4th holiday.

Soon after the meeting, Maxwell, concerned about possible future picketing by Local 98, called Corazo to obtain assurance that Local 98 would not again engage in mass picketing at the Oregon facility. Corazo informed him that "as long as UPS keeps NDC off [the] property, there would be no Union activity." (Tr. 180, 182.) The record is silent on what, if anything, may have occurred between the parties after June 24. There is, however, no indication that Local 98 engaged in further picketing of any of UPS' facilities.

a. Discussion

The General Counsel and UPS contend, and Local 98 denies, that Della Vella's June 2 remark to Maxwell, and the picketing that occurred at the UPS site on June 24, violated Section 8(b)(4)(B) of the Act. I find merit in the General Counsel's and UPS' contention.

Thus, I am convinced that Della Vella's June 2, remark was intended as a threat to mass picket the UPS facility if UPS did not cease doing business with NDC. There is no disputing, and indeed Local 98 does not deny, that it objected to UPS' use of NDC as an electrical contractor. That sentiment was expressed to Maxwell during his May 11 meeting with Corazo when the latter referred to NDC as an "inappropriate contractor" for UPS. While Corazo may not have expressly conveyed to Maxwell during that May 11, meeting Local 98's wish that NDC be replaced with a union contractor, Della Vella's subsequent June 2, remarks leave no doubt that this indeed was Local 98's true goal. Thus, annoyed at Maxwell's insistence that UPS intended to retain NDC as its electrical subcontractor, Della Vella, as noted, warned that Local 98 could come back with "picketing," "handbilling," and "come back . . . en masse." There can be no doubt, and I so find, that Della Vella's warning, following as it did on the heels of Maxwell's insistence that NDC would be retained, was intended as a coercive threat by Local 98 to engage in mass picketing at the UPS facility unless UPS agreed to stop doing business with NDC. While Della Vella attempted to downplay the significance of his remark by telling Maxwell that his remark should not be taken as a threat, at no time did either he or Corazo, both of whom knew that contractors other than NDC would be working at the UPS facility, provide Maxwell with assurances that any such picketing would be carried out in conformity with the Moore Dry Dock standards or other applicable Board law.[29] *Teamsters Local 456 (Peckham Materials),* supra. Accordingly, I find that Della Vella's June 2, remark amounted to an unlawful threat under Section 8(b)(4)(ii)(B).

Support for the above finding can also be gleaned from Local 98's subsequent conduct. Thus, it is clear that Della Vella's threat to engage in mass picketing was not an idle one for, as discussed above, Local 98 on June 24, in fact picketed the UPS facility. The clear object of that picketing, I am convinced, was to force UPS into replacing NDC with a union contractor. That this indeed was Local 98's intent is evident from Local 98's failure to restrict its picketing to the gate (entrance 4) reserved for NDC, its employees, and suppliers, in clear contravention of the third *Moore Dry Dock* standard. Local 98 admits knowing that gate 4 was established as the primary gate and further concedes on brief (p. 26) that the sign on gate 4 was neither confusing nor ambiguous but rather "fairly clear."

Local 98, however, does contend that the signs posted at gates 1, 2, and 3 were not so clear. Thus, it argues that the signs posted at gates 1 and 3, while reflecting that these entrances were intended for the exclusive use of UPS employees and vendors, did not provide guidance to vendors and suppliers of NDC as to which gate they were to use. The absence of any such instructions to NDC vendors and suppliers on the signs posted at these three gates, argues Local 98, rendered the signs confusing as it created the likelihood that said vendors and suppliers would enter the UPS facility through gates 1 or 3 unaware that they were restricted from doing so. It makes a similar claim with respect to gate 2, arguing, for example, that while the sign at gate 2 states that this entrance was "reserved for the exclusive use of United Parcel Service vehicles only," it

[29] Della Vella's reference during his June 2 conversation with Maxwell to Shuhart Electric, another nonunion contractor, being on UPS' premises makes clear that Local 98 had knowledge that employers other than the primary employer, NDC, was working at the UPS facility. It is not clear, however, if Local 98 was also having a dispute with Shuhart Electric.

did not "sufficiently advise Local 98 that the gate would not be used by NDC employees, subcontractors, or suppliers." Local 98 asserts that the confusing nature of the signs rendered the entire reserve gate system flawed and justified its decision to picket at all UPS entrances. I disagree.

First, Local 98 makes no claim, nor do I find any evidence to show, that the neutrality of gates 1, 2, and 3 had been breached, or otherwise compromised, by vendors or suppliers claiming to be under contract to NDC, or by employees of NDC itself. Indeed, the record reveals, and Local 98 readily concedes on brief (p. 26), that NDC was not using any vendors, suppliers, or subcontractors at the UPS jobsite, thus making it highly unlikely that any such breach would have occurred. Local 98's claim of a potential taint of the neutral gates by NDC vendors or suppliers is, therefore, based on nothing more than supposition, conjecture, and speculation, rather than any credible evidence of record. Nor was there anything particularly confusing about the wording on the signs at gates 1, 2, and 3. Thus, the wording on the signs at gates 1 and 3 were identical and stated in clear and unambiguous language that these entrances were to be used exclusively by UPS employees and its vendors; the gate 1 sign likewise stated clearly and unambiguously that this entrance was for the exclusive use of UPS vehicles. I therefore find it highly unlikely, given the clear and plain language of the signs at these three neutral gates, that any vendor or supplier would have become confused by the wording thereon and attempted entry through those gates. Local 98, as noted, makes no claim or produced evidence to show that any such misunderstanding in fact occurred among suppliers visiting the jobsite. Nor is there any evidence to suggest that Local 98's members who took part in the June 24, picketing found the signs confusing. Again, Local 98 made no effort to call any of the pickets to testify in this regard. Accordingly, I reject as without merit Local 98's claim that the reserve gate system was rendered invalid, and that it was justified in picketing the entire UPS facility, simply because the signs posted at gates 1, 2, and 3 did not contain explicit language prohibiting potential NDC vendors and suppliers from using said gates. *Iron Workers Local 433 (Barry-Wehmiller Co.)*, 303 NLRB 287, 291–292 (1991); *Elevator Constructors (Long Elevator)*, 289 NLRB 1095, 1097 (1988); *Carpenters Local 1622 (Robert Woods & Associates)*, 262 NLRB 1211, 1217 (1982).

Local 98's failure to restrict its picketing to the gate reserved for the primary employer, NDC, with whom it had the dispute raises a presumption that the picketing had an unlawful secondary purpose. Della Vella's remark to McGlone, that Local 98 had no intention of allowing vehicles belonging to UPS, or for that matter any other contractor, including neutrals, to enter or leave the UPS facility through any gate, and Corazo's statement to Trotter that the picketing would end when UPS stopped using NDC and instead gave Local 98's members a chance to do the work being done by NDC, provides ample, if not irrefutable, proof, that Local 98's goal in picketing the entire facility was to pressure UPS into replacing NDC with a union contractor more suitable to Local 98. By engaging in the above-described conduct, Local 98, as alleged in the complaint, violated Section 8(b)(4)(i)(B) of the Act. *Electrical Workers Local 369* (*Garst-Receveur Construction Co.)*, 229 NLRB 68 (1977).

CONCLUSIONS OF LAW

1. State Electric, Wohlson Construction, and United Parcel Service are employers and persons engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Respondents Local 98 and Local 380 of the International Brotherhood of Electric Workers, AFL–CIO, are labor organizations within the meaning of Section 2(5) of the Act.

3. In August 1998, Respondents Local 98 and Local 380 created a joint venture to organize employees of State Electric.

4. Respondents Local 380 and Local 98, as joint venturers and through their agent, Timothy Browne, violated Section 8(b)(ii)(B) of the Act by, on June 8, 1999, threatening to picket the Cheltenham jobsite in order to force the Cheltenham school board it to cease doing business with State Electric, and Section 8(b)(1)(A) of the Act by threatening Vincent Ponticello with physical harm and interfering with his right to engage in work activity, by photographing him and other employees as they entered and exited the Cheltenham jobsite, and by blocking employee and vehicle egress and ingress at that jobsite.

5. Local 98 has further violated Section 8(b)(1)(A) of the Act by blocking the egress and ingress of employees and vehicles at the UPS and PPH jobsites.

6. By threatening to picket general contractor Adams-Bickel with the object of forcing it to cease doing business with State Electric at its Robert Bellamine jobsite, and threatening to picket UPS with the object of forcing it to cease doing business with NDC, Local 98 has violated Section 8(b)(4)(ii)(B) of the Act.

7. By picketing at gates reserved by UPS for neutral employers, their employees and suppliers at its Philadelphia facility with the object of forcing UPS to cease doing business with NDC, and by picketing at gates reserved by Wohlson Construction at the PPH facility for neutral employers, their employees and suppliers with the object of forcing Wohlson Construction to cease doing business with nonunion contractors and/or Dayspring Electric, Local 98 has violated Section 8(b)(4)(i)(B) of the Act.

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

REMEDY

Having found that Local 98 and Local 380 have violated Section 8(b)(1)(A) and Section 8(b)(4)(i) and (ii)(B) of the Act, I shall recommend that they be ordered to cease and desist from such violations, and to post appropriate notices.

The General Counsel and State Electric urge that a broad order be imposed on Local 98 requiring it to cease and desist from any conduct prohibited by Section 8(b)(4)(B) of the Act. A broad order is fully justified here. As the General Counsel correctly points out on brief, Local 98 is a repeat offender of the Act, having recently been found by the Board in *Electrical Workers Local 98 (The Telephone Man)*, 327 NLRB 1113 (1999), to have engaged in similar 8(b)(4)(B) conduct. In *Telephone Man*, supra, the Board, agreeing with an administrative law judge's recommendation, issued a broad cease-and-desist

order against Local 98 because, as explicated by the judge, Local 98 had by its conduct demonstrated a "proclivity for violating the Act" and a "general disregard for the fundamental rights of employees and neutral employers." As evident by its conduct here, Local 98 has not changed its ways. Indeed, Local 98 has, by its conduct herein, demonstrated a deliberate and near contemptuous disregard for the Board's processes and remedial orders, and has again shown its proclivity to violate the Act as well as a general disregard for the fundamental rights of employees and neutral employers. In these circumstances, a broad order is both appropriate and necessary here.[30]

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[31]

ORDER

A. The Respondent, International Brotherhood of Electrical Workers, Local 98, AFL–CIO, Philadelphia, Pennsylvania, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Interfering with, restraining, or coercing employees of employers performing work at the Cheltenham, PPH, and UPS jobsites, or of any other employer, by threatening them with physical harm, photographing them as they enter and leave their workplace, and blocking them and their vehicles from entering or leaving their jobsites or, in any other manner interfering with the rights guaranteed to employees by Section 7 of the Act.

(b) Picketing, threatening to picket, or in any other in manner or by any other means seeking to restrain or coerce general contractor Adams-Bickel, the Cheltenham school board, PPH and/or Wohlson Construction, UPS, or any other employers or persons engaged in commerce or in any industry engaged in commerce, where the object of such picketing or threats to picket is to force or require said employers or persons to, in turn, cease doing business with State Electric, Dayspring Electric, NDC, or any other employer with whom it may have a dispute.

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

(a) Within 14 days after service by the Region, post at its business offices and all meeting halls located in the State of Pennsylvania copies of the attached notice marked "Appendix A."[32] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by Local 98's authorized representative, shall be posted by Local 98 immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by Local 98 to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Within 14 days after service by the Region, mail a copy of the attached notice marked "Appendix A" to all of its members. The notice shall be mailed to the last known address of each member after being signed by Local 98's authorized representative.

(c) Sign and return to the Regional Director sufficient copies of the notice for posting by Adams-Bickel, the Cheltenham School District, Wohlson Construction, PPH, and UPS, if willing, at all places where notices to employees are customarily posted.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Local 98 has taken to comply.

B. The Respondent, International Brotherhood of Electrical Workers, Local 380, AFL–CIO, Collegeville, Pennsylvania, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Threatening the Cheltenham school board with picketing of its high school construction jobsite with the purpose of forcing the school board to cease doing business with State Electric, with whom Local 380 has a dispute.

(b) Restraining or coercing employees employed at the Cheltenham jobsite in the exercise of the rights guaranteed them by Section 7 of the Act by threatening them with physical harm and preventing them from performing their work duties, photographing them as they enter and leave the jobsite, and blocking the ingress and egress of employees and vehicles from the Cheltenham jobsite.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its meeting hall and office copies of the attached notice marked "Appendix B."[33] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by Local 380's authorized representative, shall be posted by Local 380 immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Local 380 to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Within 14 days after service by the Region, mail to the Regional Director copies of the signed notice for posting by the Cheltenham school District, if willing, at all places where notices to employees are customarily posted.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official, on a form provided by the Region, attesting to the steps Local 380 has taken to comply.

[30] No similar broad order has been requested for Local 380's conduct, nor do I find any to be warranted here with respect to Local 380.

[31] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[32] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

[33] See fn. 32, supra.