Louisiana Law Review

Volume 27 | Number 4
June 1967

Labor Law - The Effect of Section 8(b)(7) on Picketing in Aid of a Lawful Economic Strike

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LABOR LAW—THE EFFECT OF SECTION 8(b)(7) ON PICKETING IN AID OF A LAWFUL ECONOMIC STRIKE

Section 8(b)(7) of the National Labor Relations Act[1] restricts recognitional and organizational picketing.[2] The statute prohibits picketing, or a threat of picketing, by an uncertified union when *an* object is recognition or organization in three circumstances: (a) where the employer has "lawfully recognized" another labor organization and it is not appropriate to raise a representation question under section 9(c) of the act, (b) where a valid election has been conducted within the preceding twelve months, or (c) where such picketing has been conducted without a representation petition being filed within a

1. National Labor Relations Act (Wagner Act), 49 Stat. 449 (1935), *as amended* by Labor Management Relations Act (Taft-Hartley Act), 61 Stat. 136 (1947), and Labor-Management Reporting and Disclosure Act (Landrum-Griffin Act), 73 Stat. 519 (1959), 29 U.S.C. §§ 141-187 (1964). NLRA § 8(b)(7), 29 U.S.C. § 158(b)(7) (1964), added by the Landrum-Griffin Act in 1959, provides: "It shall be an unfair labor practice for a labor organization or its agents—to picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer where *an* object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective bargaining representative, *unless* such labor organization is *currently certified* as the representative of such employees:

"(A) where the employer has lawfully recognized in accordance with this Act any other labor organization and a question concerning representation may not appropriately be raised under section 9(c) of this Act,

"(B) where within the preceding twelve months a valid election under section 9(c) of this Act has been conducted, or

"(C) where such picketing has been conducted without a petition under section 9(c) being filed within a reasonable period of time not to exceed thirty days from the commencement of such picketing: *Provided*, That when such a petition has been filed the Board shall forthwith, without regard to the provisions of section 9(c)(1) or the absence of a showing of a substantial interest on the part of the labor organization, direct an election in such unit as the Board finds to be appropriate and shall certify the results thereof: *Provided further*, That nothing in this subsection (C) shall be construed to prohibit any picketing or other publicity for the purpose of truthfully advising the public (including consumers) that an employer does not employ members of, or have a contract with, a labor organization, unless an effect of such picketing is to induce any individual employed by any other person in the course of his employment, not to pick up, deliver or transport any goods or not to perform any services.

"Nothing in this paragraph (7) shall be construed to permit any act which would otherwise be an unfair labor practice under this section 8(b)." (Emphasis added.)

2. "'Organizational' picketing, which is directed at enrolling employees into the picketing union, is sometimes distinguished from 'recognitional' picketing, which exerts pressure directly on an employer in order to induce him to recognize the picketing union." Meltzer, *Organizational Picketing and the NLRB: Five on a Seesaw*, 30 U. CHI. L. REV. 78, 79 n.10 (1962). See generally, Dunau, *Some Aspects of the Current Interpretation of Section 8(b)(7)*, 52 GEO. L.J. 220 (1964); Cox, *The Landrum-Griffin Act Amendments to the National Labor Relations Act*, 44 MINN. L. REV. 257 (1959).

reasonable period of time, not to exceed thirty days from commencement.[3]

Picketing to attain objects not included within the scope of the statute is permissible.[4] For example, picketing does not include a recognitional object where it is designed to publicize prevailing area standards,[5] to force reinstatement of discharged employees,[6] or to enforce compliance with an existing collective bargaining agreement.[7] Picketing to protest employer unfair labor practices is permitted, except where the unfair labor practice is a refusal-to-bargain within the meaning of 8(a)(5).[8] If the alleged unfair labor practice is a refusal-to-bargain, the union must file an 8(a)(5) charge; if the charge is subsequently found to be meritorious, the picketing escapes the proscription of 8(b)(7).[9] Pending resolution of the 8(a)(5) charge, either by dismissal or by an order requiring the employer to bargain, picketing may lawfully continue.[10]

There is little difficulty in determining applicability of 8(b)(7) when an initial object of picketing is recognition or organization and thus clearly proscribed. But does the proscrip-

3. Further refinements to § 8(b)(7)(C) include: (1) a right to an expedited election when an 8(b)(7)(C) charge is filed, and (2) the exemption of truthful informational picketing, unless an effect of such picketing is to induce other employees not to pick up, deliver, or transport goods, or to perform services. A picketing union may not invoke the expedited election procedure established by the first proviso to § 8(b)(7)(C). C. A. Blinne Constr. Co., 135 N.L.R.B. 1153, 1157 (1962).

4. "In other words, the thrust of all the section 8(b)(7) provisions is only upon picketing for an object of recognition or organization, and not upon picketing for other objects." *Id.* at 1159.

5. Claude Everett Constr. Co., 136 N.L.R.B. 321 (1962); Calumet Contractors Ass'n, 133 N.L.R.B. 512, *reversing* 130 N.L.R.B. 78 (1961).

6. Mission Valley Inn, 140 N.L.R.B. 433 (1963); Fanelli Ford Sales, Inc., 133 N.L.R.B. 1468 (1961), *overruling* Lewis Food Co., 115 N.L.R.B. 890 (1956). See also McLeod v. Local 140, Bedding Workers, 207 F. Supp. 525 (S.D.N.Y. 1962).

7. Sullivan Electric Co., 146 N.L.R.B. 1086 (1964); Downtowner Motor Inns, 146 N.L.R.B. 1094 (1964).

8. Mission Valley Inn, 140 N.L.R.B. 433 (1963); Bachman Furniture Co., 134 N.L.R.B. 670 (1961). See also a reference to the ample legislative history supporting this proposition in C. A. Blinne Constr. Co., 135 N.L.R.B. 1153, 1168, n.29 (1962). NLRA § 8(a)(5), 29 U.S.C. 158(a)(5) (1964) provides: "It shall be an unfair labor practice for an employer to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a)."

9. Dayton Typographical Union v. NLRB, 326 F.2d 634, 646-49 (D.C. Cir. 1963). *Dayton* contains an excellent discussion of the legislative history of § 8(b)(7). See also C.A. Blinne Constr. Co., 135 N.L.R.B. 1153, 1166 n.24 (1962).

10. See C. A. Blinne Constr. Co., 135 N.L.R.B. 1153, 1163-67 (1962), discussed in Note, 47 MINN. L. REV. 1013, 1028 (1963): "The result in the *Blinne case* may be justified on the ground that a meritorious charge under section 8(a)(5) indicates that the union probably possesses majority status."

tion extend to initially legitimate picketing subsequently acquiring an additional recognitional object? For example, after negotiations for a new contract have failed to produce agreement, suppose a presently recognized union initiates an economic strike and pickets the employer in aid of collective bargaining demands. If the union's objective at the inception of picketing is valid and not within the scope of 8(b)(7), would the employer's replacement of a majority of economic strikers with non-union personnel add a recognitional object and invoke the sanctions of 8(b)(7)?

In *Sullivan Electric Co.*,[11] the National Labor Relations Board apparently laid the foundation for a negative answer to this question in 8(b)(7)(C) cases. In *Sullivan*, the employer entered into a bargaining agreement with the labor councils of two California counties. During the contract term, two council-affiliated unions, unaware of the contract, commenced area standards picketing of a Sullivan construction project. When informed of the contract's existence, the unions altered the picket signs to allege a breach of the agreement.[12] The Board dismissed Sullivan's 8(b)(7)(C) charge against the picketing unions on the basis of a finding that the sole object of the picketing was to enforce compliance with an existing collective bargaining contract, but added:

> "Nevertheless, after analyzing the overall Congressional purpose behind the enactment of the section, we are convinced that the words 'recognize or bargain' were not intended to be read as encompassing two separate and unrelated terms. Rather, we believe they were intended to proscribe picketing having as its target forcing or requiring an employer's *initial acceptance of the union as the bargaining representative of his employees.* When viewed in this posture, it is clear that Sullivan had recognized and extended bargaining rights to the Respondents long before the disputed picketing commenced here and that such picketing therefore was not designed to attain those statutory objectives."[13] (Emphasis added.)

11. 146 N.L.R.B. 1086 (1964).

12. Initially, the picket signs read: "Sullivan Electric Co. Not Paying Prevailing Wages and Benefits."; but were changed to: "Sullivan Electric Unfair in Breach of Contract with Santa Barbara Building and Construction Trades Council and Affiliated Unions, AFL-CIO."

13. Sullivan Electric Co., 146 N.L.R.B. 1086, 1087 (1964). The Board cited C. A. Blinne Constr. Co., 135 N.L.R.B. 1153 (1962).

The *initial acceptance* concept announced in *Sullivan* was not necessary for the decision,[14] and problems involving the extent of its application have arisen in later cases.[15]

In the first case after *Sullivan* considering the question, *Penello v. Warehouse Employees Union*,[16] a long series of satisfactory collective bargaining agreements was interrupted when, at the end of two negotiating sessions for a new contract, the union walked out, filed a refusal-to-bargain charge, and began picketing the employer's premises.[17] The picketing was in aid of a lawful economic strike initiated to enforce the union's bargaining demands. Thereafter, the employer hired permanent replacements for all strikers and withdrew recognition, alleging that the union no longer represented a majority of the employees.[18] The Regional Director sought to enjoin the union from picketing apparently violative of 8(b)(7)(C), arguing that there was "reasonable cause"[19] to believe that the picketing had acquired an added object of recognition after the hiring of non-union replacements and subsequent withdrawal of recognition by

14. "We find, in agreement with the trial examiner, that the sole objective of the Respondent's allegedly unlawful picketing was to compel Sullivan to comply with an existing valid collective-bargaining contract between the parties." Sullivan Electric Co., 146 N.L.R.B. 1086, 1087 (1964).

15. "This decision . . . adds a new condition to section 8(b)(7)(C), requiring that a union picket for *initial* recognition or bargaining to be within the purview of the statute." Comment, 38 TEMPLE L.Q. 433, 439 (1965).

16. 230 F. Supp. 900 (D. Md. 1964), noted 39 ST. JOHN'S L. REV. 156 (1964).

17. NLRA § 7, 29 U.S.C. § 157 (1964) provides: "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3)."

NLRA § 13, 29 U.S.C. § 163 (1964) provides: "Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right."

Professor Lesnick has concluded that the rights granted in §§ 7 and 13 are not to be abridged, except in the face of a clear congressional mandate. Lesnick, *The Gravamen of the Secondary Boycott*, 62 COLUM. L. REV. 1363, 1398-1403 (1962). The problem arises in the interplay of §§ 7 and 13 and others, *e.g.*, 8(b)(4) and 8(b)(7), which provide certain restrictions on strikes and picketing.

18. An employer violates NLRA § 8(a)(3) if he discharges economic strikers *before* replacing them. Economic strikers are entitled to the return of their jobs if they are not permanently replaced prior to their *unconditional* offer to return to work. *But*, an employer may deny reinstatement to economic strikers who have been permanently replaced prior to their unconditional offer to return to work. NLRB v. Mackay Radio & Telegraph Co., 304 U.S. 333 (1938).

19. NLRA § 10(1), 29 U.S.C. § 160(1) (1964) provides that the Regional Director *shall* seek a temporary restraining order from the United States District Court whenever he has *reasonable cause* to believe that a charge alleging a violation of § 8(b)(7) is true.

the employer.[20] The union contended that *Sullivan* precluded injunction since the picketing was lawfully commenced and did not, at that time, have as an object requiring the "initial acceptance" of the union as the employees' bargaining representative. The court rejected the initial acceptance argument and found the picketing to be recognitional,[21] but held it would not be "just and proper" to grant the requested injunction.[22]

In *Whitaker Paper Co.*,[23] the *Penello* case came before the Board for final disposition. The Board stated: "The issue presented here is whether or not picketing, lawfully commenced and maintained during a strike by a recognized incumbent statutory representative in support of a collective bargaining dispute with respect to economic issues, was converted to picketing for a recognitional objective within the meaning of section 8(b)(7)(C) merely because the picketed company replaced the striking employees."[24] Citing the *Sullivan* language quoted before and disagreeing with the district court, the Board concluded that picketing lawfully commenced in aid of an economic strike was not converted to recognitional picketing merely by

20. In a prior action, the Regional Director sought a temporary injunction on the ground that the picketing had acquired a recognitional object *automatically* upon the employer's replacement of the economic strikers and subsequent withdrawal of recognition. The court denied the injunction and held that such a recognitional object could not be established automatically. Rather, a requirement that there was reasonable cause to believe the picketing had acquired a recognitional object was necessary. Penello v. Warehouse Employees Union, 230 F. Supp. 892 (D. Md. 1964).

21. In commenting on *Sullivan*, the court said: "This Court agrees with the Board that 'the words "recognize or bargain" were not intended to be read as encompassing two separate and unrelated terms.' And this Court believes that the statute was intended to proscribe picketing having as its target forcing or requiring an employer's acceptance of the union as the bargaining representative of his employees. This Court questions, however, the justification for inserting the word 'initial' before the words 'acceptance of the union'. The word 'initial' was not necessary for the decision of that case; the employer there involved was at all material times obliged to recognize the union, since there was an unexpired contract between them. The Board did not cite any legislative history or other reason or authority in support of the dictum. This Court finds no justification in the statute, the legislative history or the cases interpreting the statute, for limiting sec. 8(b)(7) to picketing having as its target forcing or requiring an employer's *initial* acceptance of the union as the bargaining representative of his employees." Penello v. Warehouse Employees Union, 230 F. Supp. 900, 903-04 (D. Md. 1964).

22. *Id.* at 905: "The final question is whether issuance of the requested injunction would be 'just and proper'. In the ordinary case under sec. 10(1), it is clear that injunctive relief is necessary to achieve the Congressional objective. (Citations omitted.) In the present case it is not clear that such relief is either necessary to achieve that purpose or that it would be just and proper. Both Whitaker and its employees have had the right to call for an election under 9(c), before or after October 16, 1963, when Whitaker first challenged respondent's representation of its employees."

23. 149 N.L.R.B. 731 (1964).

24. *Id.* at 734.

an employer's act of hiring permanent non-union replacements for economic strikers and then raising a representation question.[25] This conclusion was grounded on legislative history indicating that a prime purpose of 8(b)(7)(C) was to abolish "blackmail picketing,"[26] rather than to encompass the situation there presented. Particular reliance was placed on Congressman Griffin's statement:

> "At the outset, it should be clear that there is no provision in any of the bills which impairs or affects the right of organized employees to go on strike for better wages and working conditions—and to picket in connection with such a strike."[27]

In subsequent 8(b)(7)(C) cases dealing with this problem, the Board has consistently applied the initial acceptance analysis developed in *Whitaker*.[28]

However, the Board has abandoned the *Whitaker* requirement that picketing for recognition must be an initial object, when the issue is presented in an 8(b)(7)(B) case. If after the employer's replacement of economic strikers with non-union personnel, a decertification petition[29] is filed resulting in an election which the union loses, a different conclusion is reached when an 8(b)(7)(B) charge is filed.

In *Lawrence Typographical Union*,[30] the Board held that con-

25. After *Whitaker*, presumably Regional Directors will no longer seek temporary injunctions under § 10(1) in such cases, since the requirement of reasonable cause to believe that the charge of an 8(b)(7)(C) violation was true would be absent.

26. 2 LEGISLATIVE HISTORY OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959, 994, 1182, 1518, 1523, 1615, 1630 (1959).

27. *Id.* at 1567.

28. Jones & Jones, 154 N.L.R.B. 1598 (1965); Frank Wheatley Pump & Valve Mfg. Co., 150 N.L.R.B. 565 (1964); Deaton Truck Line, 150 N.L.R.B. 514 (1964).

29. NLRA § 9(c)(1), 29 U.S.C. § 159(c)(1) (1964) provides that an employee, group of employees, individual or labor organization acting in their behalf may request an election to establish that an individual or labor organization currently certified *or recognized* is no longer the employees' choice as their bargaining representative. Thus, a recognized union need not be certified to be the subject of a *decertification election*.

30. 158 N.L.R.B. No. 134 (1966). Here, the employer and union had entered into a contract covering composing room and mailing room employees. The contract expired on May 31, 1961, and after unsuccessful negotiations for a new contract the union struck and picketed the plant, commencing on September 19, 1961. Negotiations continued and the employer maintained production with replacements. A decertification petition alleging that the union no longer represented the mailing room employees was filed January 15, 1963, and a similar petition covering the composing room employees was filed January 21, 1963. A hearing was held on both petitions on May 7, 1963, and an election was subsequently conducted on August 28, 1963. After a number of proceedings resolving the validity of the

tinued picketing after loss of a decertification election constituted seeking a forbidden recognitional object within the meaning of 8(b)(7)(B). That the picketing was lawfully commenced in aid of an economic strike was of no moment.[31] *Whitaker's* initial acceptance argument was held not controlling[32] because of the different purposes served by 8(b)(7)(B) and 8(b)(7)(C).[33] The Board reasoned that 8(b)(7)(B) was designed to provide stability for the twelve-month period during which section 9(c)(3) prevented another election by prohibiting recognitional picketing. The fact that a union lawfully commenced picketing prior to an election is not compelling, because once the employees have voiced their opinion by rejecting the union they are entitled to protection from recognitional picketing after the election.

Prior to the enactment of 8(b)(7), a similar interpretation of 8(b)(4)(C)[34] was reached in *Western Auto Supply*.[35] Section 8(b)(4)(C) provides protection from picketing only if the union is certified as the employees' bargaining representative, whereas 8(b)(7)(B) provides protection once an election is held, regardless of the outcome. In *Western Auto*, the union struck and picketed the employer after failure to agree on a new contract. Over a period of time, the employer hired a number of

election, on August 3, 1964, the Regional Director certified that the union was no longer the bargaining representative of the employees. Thereafter, the employer filed an 8(b)(7)(B) charge.

31. The Board has previously reached this conclusion in 8(b)(7)(B) cases without considering lawful commencement. Stoltze Land & Lumber Co., 156 N.L.R.B. 388 (1965); Jamestown Sterling Corp., 146 N.L.R.B. 474 (1964), *enf. den. on other grounds*, 337 F.2d 936 (2d Cir. 1964).

32. The district court, considering the Regional Director's request for a temporary injunction under § 10(1), reached the same decision. Injunction granted. Sperry v. Lawrence Typographical Union, 238 F. Supp. 498 (D. Kan. 1964).

33. "The purpose of Section 8(b)(7)(B) was, not to deal with so-called 'blackmail picketing' but, to provide stability for the 12-month period during which section 9(c)(3) of the Act barred a second Board election for the same unit by protecting the employer and employees during that period against the pressures of recognitional and organizational picketing in a situation where neither the picketing union nor any other union was selected as the employees' bargaining representative in a valid Board election." Lawrence Typographical Union, 158 N.L.R.B. No. 134, 62 L.R.R.M. 1243, 1245 (1966).

34. NLRA § 8(b)(4)(C), 29 U.S.C. § 158(b)(4)(C) (1964): "It shall be an unfair labor practice for a labor organization or its agents—(4)(i) to engage in, or to induce or encourage 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 (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 . . . (C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9."

permanent replacements for the economic strikers. A second union then filed a representation petition and in the following election was certified as the new bargaining representative. The Board held that the striking union violated 8(b)(4)(C) by continued post-election picketing despite the fact that its sole initial object was the legitimate one of seeking a favorable new contract.

Additional support for the application of 8(b)(7)(B) to reach the *Lawrence* picketing, despite lawful commencement, is found in the Supreme Court decision in *NLRB v. Drivers Local Union (Curtis Bros.)*.[36] There the Court rejected the Board's contention that 8(b)(1)(A)[37] prohibited peaceful post-election picketing, lawfully commenced in aid of an economic strike. Although the majority relied primarily on legislative history of the Taft-Hartley Act indicating that 8(b)(1)(A) was not designed to encompass "peaceful" picketing, they buttressed that decision with a reference to the recent passage of 8(b)(7), arguing that it represented a comprehensive new code governing recognitional picketing.[38] The dissenters concluded that the new statutory provision seemed to squarely cover the circumstances there presented, and voted to remand the case to the Board for reconsideration.[39]

Similarly, *Whitaker* has not been followed when the issue of lawful commencement is presented in an 8(b)(7)(A) case.

35. 93 N.L.R.B. 1638 (1951).

36. 362 U.S. 274 (1960).

37. NLRA § 8(b)(1)(A), 29 U.S.C. § 158(b)(1)(A) (1964) provides: "It shall be an unfair labor practice for a labor organization or its agents . . . to restrain or coerce . . . employees in the exercise of the rights guaranteed in section 7."

38. 362 U.S. 274, 281-90 (1960). The Court resolved a "split" in the lower courts on the applicability of 8(b)(1)(A). The District of Columbia Circuit had concluded 8(b)(1)(A) was inapplicable to "peaceful" post-election picketing, lawfully commenced prior to the election. NLRB v. Drivers Local Union, 274 F.2d 551 (D.C. Cir. 1958), *aff'd*, 362 U.S. 274 (1960). On the other hand, the Fourth Circuit had enforced a Board decision applying 8(b)(1)(A) to such picketing. NLRB v. United Rubber Workers (O'Sullivan Rubber Corp.)., 269 F.2d 694 (4th Cir. 1959), *rev'd*, 362 U.S. 329 (1960). Chief Judge Sobeloff, dissenting in *O'Sullivan*, recognized the problem of restricting initially legitimate picketing. "In dealing with this problem Congress may or may not recognize a difference between a case where the union has *never* represented the employees and continues to picket after they have rejected it in an election and another case, where, as here, the employees represented by a certified union have gone out on an economic strike and been replaced by a new force of employees who vote the union out in an election based upon a decertification petition. In the latter situation the union may be thought by Congress to have equities which warrant protection." 269 F.2d at 703. Nevertheless, such a distinction was not drawn in § 8(b)(7), passed shortly after the decision in *O'Sullivan*.

39. 362 U.S. 274, 292 (1960).

The Board has recently held that it is not material that the picketing union lawfully commenced its activity prior to the employer's recognition of another union.[40] Thus, when picketing in aid of an economic strike continues beyond the employer's replacement of strikers, it is protected from only an 8(b) (7) (C) charge. If 8(b) (7) (A) or 8(b) (7) (B) is applicable, lawful commencement of the picketing is immaterial.

It is arguable that the *Whitaker* distinction exempting lawfully commenced picketing from the proscription of 8(b) (7) (C), where it would not otherwise be exempted from application of 8(b) (7) (B) or 8(b) (7) (A), is unwarranted. The Board's argument assumes that since 8(b) (7) (C) was intended to stop blackmail picketing, it cannot be used to reach picketing lawfully commenced in aid of an economic strike. Nevertheless, though the evil prompting the statute may have been blackmail picketing, "the clear language of the statute, as it was ultimately enacted, . . . goes far beyond mere correction of that evil."[41] Indeed in a decision rendered just prior to *Whitaker, Bartlett & Co.*,[42] the Board found a violation of 8(b) (7) (C) under circumstances identical to those presented in *Whitaker*, without discussing the fact that the initial objects of the picketing did not include recognition or organization. However, a literal application of the statute leaves much to be desired. "In the absence of clear indicia of congressional intent to the contrary, these provisions [Sections 7 and 13] caution against reading statutory prohibitions as embracing employee activities to pressure their own employers into improving the employees' wages, hours, and working conditions."[43]

It is submitted that there are significant merits to the *Whitaker* requirement that recognition be an "initial object" before picketing will be proscribed by 8(b) (7) (C). Absent the initial object requirement, a literal application of 8(b) (7) (C) would produce unwarranted variations in the treatment of "certified" unions and unions merely "recognized" as the employees' bargaining representative. Whereas 8(b) (7) (A) and 8(b) (7) (B) presently reach both categories, 8(b) (7) (C) would reach

40. Harlan Fuel Co., 160 N.L.R.B. No. 129 (1966); Seagraves Coal Co., 160 N.L.R.B. No. 124 (1966).

41. Dayton Typographical Union v. NLRB, 326 F.2d 634, 636 (D.C. Cir. 1963).

42. 141 N.L.R.B. 974 (1963).

43. National Woodwork Mfg. Ass'n v. NLRB, 35 U.S. L. WEEK 4349, 4358 (April 17, 1967).

only the latter, since the former are specifically excepted under the terms of the statute. This distinction is not justified by any meritorious policy consideration. Moreover, the absence of the initial object requirement would mean that a good faith union attempting to comply with 8(b) (7) (C) would be required to guess when picketing acquired a recognitional object in order to file a representation petition within the thirty-day limitation. On the other hand, under the present rule, employer and employees are amply protected from unwanted recognitional picketing. Whenever the addition of a sufficient number of permanent non-union replacements for economic strikers raises a representation question involving the union's majority, they need only file a petition for a decertification election to resolve the issue. If the union is decertified, then under the decision in *Lawrence*, 8(b) (7) (B) would be applicable, and further post-election picketing would be prohibited. A literal application of 8(b) (7) (C) would work substantial hardship on a union engaged in a lawful economic strike, in the teeth of Congressman Griffin's assurance that there was no intent to impair that right with the enactment of 8(b) (7).

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RES IPSA LOQUITUR—BURDEN OF PROOF—APPLICABILITY IN ELECTRICITY CASES

Plaintiff, manager of a cotton gin, noticed the lights in the gin flickering. While attempting to turn off all electric power at the fuse box, he received an electrical shock. When he staggered out of the building, defendant's power cable serving the gin broke and fell to the ground, causing flash burns to his eyes. *Held*, the doctrine of res ipsa loquitur is applicable, and "the burden shifts to the defendant to show that the accident was caused by something for which it is not responsible."[1] Since defendant failed to meet this burden, judgment for plaintiff was upheld. *Tassin v. Louisiana Power & Light Co.*, 191 So. 2d 338 (La. App. 3d Cir. 1966).

In the majority of American jurisdictions, the doctrine of res ipsa loquitur is nothing more than a rule of circumstantial evidence. In a situation where the doctrine is properly applied,

1. Tassin v. Louisiana Power & Light Co., 191 So. 2d 338, 341 (La. App. 3d Cir. 1966).