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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 770261

SERVICE STEEL ERECTORS COMPANY
Appellant

v.

INTERNATIONAL UNION OF OPERATING ENGINEERS ETC.
Appellee

JOINT APPENDIX

John H. OBrion, Jr., Esq.
R. Hunter Manson, Esq.
Paul S. Bliley, Esq.
1200 Ross Building
Richmond, Virginia 23219
Counsel for Appellant

Henry Howell, Jr., Esq.
Stuart R. Gordon, Esq.
Suite 808
Maritime Tower
Norfolk, Virginia 23510
Counsel for Appellee

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OCTOBER 28, 1976

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EXHIBITS

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SERVICE STEEL ERECTORS COMPANY,

Plaintiff,

v.

INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 147, 147A, 147B AND 147R,
Serve On: A. R. Moore, Jr.
Business Manager and President
5307 Virginia Beach Boulevard
Norfolk, Virginia 23502,

Defendant.

MOTION FOR JUDGMENT

The Plaintiff, by counsel, respectfully represents unto the Court as follows:

1. It is a Virginia corporation duly authorized to conduct business in this State.

2. The Plaintiff and Defendant are parties to a collective bargaining agreement dated June 10, 1975.

3. The collective bargaining agreement provides that there will be no work stoppage because of a jurisdictional dispute and further that there shall be no work stoppages, strikes or lockouts during the term of the agreement for any reason whatsoever.

4. The Plaintiff was a subcontractor on the second Hampton Roads Bay Bridge Tunnel job and the Defendant agreed to provide Plaintiff with operating engineers on that job in accordance with the provisions of the collective bargaining agreement.

5. The Defendant breached the collective bargaining agreement by failing to provide operating engineers to the Plaintiff on July 10, 11, 14, 15 and 16, 1975, thereby causing a work stoppage.

6. The work stoppage by the Defendant caused the Plaintiff to incur actual damages in the amount of Ten Thousand Dollars ($10,000.00).

WHEREFORE, the Plaintiff asks that it be awarded a judgment against the International Union of Operating Engineers Local 147, 147A, 147B and 147R in the amount of Ten Thousand Dollars ($10,000.00) with interest from July 16, 1975, and costs on its behalf expended.

SERVICE STEEL ERECTORS COMPANY

By R. Hunter Manson
Counsel

John H. OBrion, Jr.
R. Hunter Manson
Browder, Russell, Little, Morris & Butcher
1200 Ross Building
Richmond, Virginia 23219

A N S W E R

Now comes the Defendant, International Union of Operating Engineers, Local 147, 147A, 147B and 147R, and for its answer to the Motion for Judgment exhibited against it, states as follows:

1. The Defendant denies knowledge or information sufficie to form a belief as to the allegations contained in Paragraph designated "1", and calls for strict proof thereof.

2. The Defendant neither admits nor denies the allegations contained in Paragraph designated "3", and calls for strict proof thereof.

3. The Defendant neither admits nor denies the allegations contained in Paragraph designated "4", and calls for strict proof thereof.

4. The Defendant denies each and every allegation contained in Paragraph designated "5".

5. The Defendant denies each and every allegation contained in Paragraph designated "6", and calls for strict proof thereof.

And having fully answered this Defendant prays that the Court dismiss the Motion for Judgment filed herein and award the Defendant attorneys' fees and costs.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 147, 147A, 147B and 147R,

By: _____
Of Counsel

C E R T I F I C A T E

I hereby certify that a copy of the foregoing ANSWER was on this 7 day of June, 1976, mailed to the offices of Messrs. Browder, Russell, Little, Morris & Butcher, 1200 Ross Building, Richmond, Virginia 23219, counsel for the Plaintiff.

_____
Stuart R. Gordon

ORDER

This day came the plaintiff by Michael Jernigan, its Vice President and by counsel and the defendant by Russell Moore, its Business Agent and by counsel and thereupon came a jury to-wit: Johnnie M. Peaden, Patricia C. Petersen, Charles W Quinley, Alex M. Salzberg, Sally A. Smith, Cornelius A. Volder and Ollie E. Wilkins who were duly sworn the truth to speak upon the issue joined.

Thereupon at the conclusion of the plaintiff's evidence, the defendant, by counsel moved the Court to strike the plaintiff's evidence and enter summary judgment in its behalf, which motion after having been fully heard and maturely considered by the Court, is sustained, to which action of the Court, the plaintiff, by counsel, duly excepts.

Whereupon it is considered and ordered by the Court that the said plaintiff take nothing for its motion for judgment and that the said defendant go hence without day and recover of the said plaintiff its costs about its defense herein expended.

Spencer G. Gill Jr.
Judge

A COPY, TESTE: HUGH L. STOVALL, CLERK
BY Harrell, D. C.

SERVICE STEEL ERECTORS COMPANY, a Virginia Corporation, Plaintiff,	)	
v.	)	NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR
INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL #147, 147A, 147B, and 147R, Defendants.	)	At Law #L76-816

NOTICE OF APPEAL

Plaintiff hereby gives Notice of Appeal to the Supreme Court of Virginia from the judgment rendered herein on October 28, 1976.

ASSIGNMENTS OF ERROR

1. The Court erred in sustaining defendant's Motion to Strike the plaintiff's evidence made at conclusion of the plaintiff's evidence, and in entering summary judgment on behalf of defendants.

2. The Court erred in excluding testimony from plaintiff's witnesses Michael Jernigan and Warren Jessup as to statements made by a member of the defendant Union as to reasons for leaving the construction job on July 10, 1975, reasons for not reporting to work between July 10, 1975 and July 16, 1975, and reasons for returning to work on July 16, 1975.

3. The Court erred in refusing to admit the expert testimony of Michael First, an accountant for plaintiff, and erred in requiring all financial books and records of plaintiff to be entered as exhibits, and

erred in requiring said books and records to be identified by Plaintiff's bookkeeper/custodian.

STATEMENT REQUIRED BY RULE 5:9

A transcript of the hearing of October 28, 1976 will be hereafter filed.

SERVICE STEEL ERECTORS COMPANY

By _____
Of Counsel

CERTIFICATE

I hereby certify that a true copy of the foregoing Notice of Appeal and Assignments of Error has been mailed this 15 day of November, 1976 to Henry E. Howell, Jr., Esquire, of Howell, Anninos, Daugherty & Brown, Suite 808 Maritime Tower, Norfolk, Virginia 23510, counsel of record for the Defendant.

By _____
Of Counsel

JOHN H. OBRION, JR.
R. HUNTER MANSON
Browder, Russell, Little, Morris & Butcher
1200 Ross Building
Richmond, Virginia 23219

CIRCUIT COURT
Filed NOV 15 1976
BY: _____ D.C.

JOSEPH MICHAEL JERNIGAN,

called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. OBRION:

Q. Would you please state your full name for us?

A. Joseph Michael Jernigan.

Q. Are you an officer of Service Steel Erectors?

A. Yes, I am.

Q. Where is that business located?

A. In Chester, Virginia.

Q. And can you tell us generally what kind of business it is engaged in? What does it do?

A. We do steel erection mostly, reinforcing steel, and crane rental.

Q. Was your company a subcontractor on the second Hampton Roads Bridge Tunnel job in the summer of 1975?

A. We were a contractor for the approaches on the second Hampton Roads Tunnel crossing.

Q. What do you mean by "approaches"?

A. There were three jobs on this bridge, the approaches and the tube itself, and we were the contractor on

1 the approaches.

2 Q. All right. What particular side were you

3 working on in the summer of 1975?

4 A. We were working on both sides, but I was

5 in charge of the north island.

6 Q. The north island being the Hampton side --

7 A. That's right.

8 Q. -- the Hampton Roads side?

9 MR. OBRION: May I approach the witness,

10 Your Honor?

11 THE COURT: Yes, sir.

12

13 BY MR. OBRION:

14 Q. Would you be able to come to this table,

15 please, and take this pencil and piece of paper and draw the

16 tunnel access roads and where you were working in July, 1975?

17 A. Well, I am not going to be able to do it

18 to scale, but I will get it generally so that you can understand.

19 All right. This will be Strawberry Banks here.

20 Q. Is that the motel?

21 THE COURT: You all may get up and see this

22 if you wish.

23 THE WITNESS: And here is 64 coming this

24 way, and this is where the toll plaza was. This is

25 the new bridge here, and this is the old bridge from

1 Q. Would you indicate what tunnel you -- that
2 area where Mr. Walters was working on the morning of July 10th,
3 1975?
4 A. All right. In here; I had steel to be
5 placed in this area here. Now at the morning all this happened
6 he was right here and my trailer was right here.
7 Q. Put a "T" on that for trailer.
8 A. Okay. In this area here, either one of
9 these areas here is where he always parked the crane to work
10 on it or whatever. But let me say this: This was all paved
11 or packed road right through here. The rest of it was sand
12 where a car couldn't get past. You had to use a heavy piece
13 of equipment to get around it.
14 MR. OBRION: We would like to introduce
15 this as Plaintiff's Exhibit 1.
16 THE COURT: Have you seen it, Mr. Howell?
17 All right, sir.
18
19 (Whereupon, the foregoing diagram
20 was received in evidence and marked for identification as
21 Plaintiff's Exhibit Number 1.)
22 BY MR. OBRION:
23 Q. What was the nature of your work on this
24 particular job in July, 1975? What phase were you in and what
25 work were you actually attempting to accomplish at that time?

Q. Did any member of Local 147 check and clear their credentials when they came on the job?

A. Yes, he did.

Q. Can you identify that gentleman and tell me what his title was?

A. Peewee Evans -- his nickname was Peewee -- was the local representative on the job, the steward. He checked the credentials. I was with him when he did.

Q. When they reported to the job?

A. Right. That's just customary to make sure the individual has paid his dues and has a proper referral.

Q. Who was the operating engineer you were using on July 10th, 1975?

A. Gordon Walters.

Q. Was Gordon Walters to your knowledge a member in good standing of Local 147?

A. Yes, he is and was.

Q. Did Mr. Gordon Walters come to work on the morning of July 10th?

A. Yes, he did.

Q. You have previously identified on Plaintiff's Exhibit 1 where he was working. Do you know exactly what he was doing and what kind of machinery he was operating that morning?

A. He was operating a fifteen-ton cherry

1 picker and he was engaged in moving steel from our storage
2 areas down into the hole where the work was being done to the
3 iron workers who would then place it.
4 Q Did you see Mr. Peewee Evans come to the
5 north island that morning?
6 A Yes, I did.
7 Q Could you indicate on Plaintiff's Exhibit
8 1 where you saw Mr. Evans come from and where you saw him go?
9 THE COURT: What morning is that?
10 MR. OBRION: July 10th, Your Honor. I am
11 sorry.
12 THE WITNESS: Do you want me to get up?
13 MR. OBRION: Yes.
14 THE COURT: You may step down there.
15 THE WITNESS: All right. Now this is, as
16 I said, this is your steel stockpile; this is the
17 trailer. I was between here and the area where we
18 were working, back and forth. And I had just come
19 back to the trailer and seen the car go by. And I
20 don't remember what kind it was, but I knew it was
21 him. And he came over here, parked his car and
22 walked over to the cherry picker and had a conversation
23 with our operator and then left.
24 BY MR. OBRION:
25 Q Following the conversation -- you did not

1 hear the words spoken yourself personally?

2 A. No, I did not.

3 Q. Following Mr. Evans coming up to Mr. Walters

4 tell us, please, what if anything Mr. Walters did.

5 A. He told me -- I asked him what was wrong.

6 He said that the steward had told him that it was a legal strike.

7 MR. HOWELL: If Your Honor please, we object

8 to hearsay.

9 THE COURT: Well, sir --

10 MR. HOWELL: Walters is not a party to this

11 suit.

12 THE COURT: No, he's not, but what's your

13 response to that?

14 MR. OBRION: Your Honor, we have a case in

15 point to the statement given by one union in response

16 to their -- 194 Virginia -- to hearsay. That objection

17 that it would be hearsay loses a valid case.

18 THE COURT: What's the name of the case?

19 MR. OBRION: It's 194 Virginia, United

20 Construction Workers versus Laburnum, 872.

21 THE COURT: You are familiar with that,

22 Mr. Howell?

23 MR. HOWELL: No, sir. This is an exception.

24 THE COURT: What's the page, gentlemen?

25 MR. OBRION: The page number is 896.

1 MR. HOWELL: If Your Honor please, it's a
2 very tightly limited exception, and there has been
3 no groundwork to show that the --
4 MR. OBRION: I can perhaps lay a better
5 foundation if that will assist the Court and alleviate
6 the objection.
7 THE COURT: All right, sir.
8
9 BY MR. OBRION:
10 Q Did Mr. Walters leave the work site on that
11 morning, July 10, after the conversation with Mr. Evans?
12 A Yes, he did.
13 Q Where did he go exactly?
14 A He went to the bridge and waited just on
15 the other side of the picket line.
16 Q Now this picket line, was that -- well, I
17 am going to ask you to stay where you are. I hope they will be
18 able to see it. Would you be able to point with your finger
19 to Plaintiff's Exhibit 1 and tell us where the picket line is?
20 MR. HOWELL: If Your Honor please, before
21 any relevant evidence concerning a picket line in
22 this case he would have to first ask if there was a
23 picket line maintained by the operating engineers.
24 THE COURT: Not necessarily.
25 MR. HOWELL: We note our objection.

1 BY MR. OBRION:

2 Q. Could you show us where the picket line

3 was located?

4 A. It was right here at Strawberry Banks. As

5 you get off 64 coming south there is a little turn by the

6 motel there. Right there where that curve is was where the

7 access road was, right between the motel and the existing

8 Interstate.

9 Q. Now Mr. Walters left the position marked

10 with --

11 A. Yes, he did.

12 Q. Did he park the equipment?

13 A. Yes, he did. He came to the trailer,

14 informed me what had happened and a few other things.

15 Q. Did he tell you the reason he was not

16 continuing to work?

17 A. Yes, he did.

18 MR. HOWELL: If Your Honor please, we

19 object to this hearsay testimony. They have a

20 witness and the witness can testify to whatever might

21 be relevant, but I don't think this witness can

22 testify concerning what another witness said.

23 I've just seen that case, but just looking

24 at it there has been no groundwork laid.

25 THE COURT: Isn't there something to be

1 shown by the witness himself? Then he is subject to
2 cross-examination by Mr. Howell.
3 MR. OBRION: Well, if Your Honor please,
4 we could present our case in any manner that we'd
5 like to. And Mr. Walters' testimony, if it came in --
6 at that time we may choose not to call Mr. Walters,
7 but insofar as this witness --
8 THE COURT: The problem of the objection
9 to hearsay evidence is it denies the other party the
10 right to cross-examination.
11 MR. OBRION: We will have him here to --
12 THE COURT: No, he can't cross-examine his
13 own witness.
14 MR. OBRION: That's strategy.
15 THE COURT: I am not talking about what he
16 can do; what you can do, you can call him yourself.
17 MR. OBRION: Yes, sir.
18 THE COURT: I sustain your objection, Mr.
19 Howell, unless these are admissions against a party
20 to the suit.
21 MR. OBRION: That's exactly what they are.
22 Could we take it up outside of the presence of the
23 jury?
24 THE COURT: Ladies and gentlemen, if you
25 would step out.

(Whereupon, the jury left the courtroom.)

MR. OBRION: I will summarize the evidence for the purpose of the argument. If Your Honor then rules against me I would ask that it be put on the record.

THE COURT: Outside the presence of the jury let Mr. Jernigan tell us.

BY MR. OBRION: [OUTSIDE PRESENCE OF JURY]

Q What statement did Mr. Walters make to you when he had left the job?

A He said that the steward, Peewee, had told him that it was a legal picket and that they were going to honor it.

Q Who did you interpret "they" to be?

A He meant the operators were going to.

Q All right. Now during the course of that week when he was out of work did you have other conversations with Mr. Walters?

A Yes, I did.

Q Can you tell me what reason he gave if any as to why he was not returning to work?

A Well, he had never been threatened, or

1 anyway I don't want it to sound like he had been. He was afraid --
2 well, he told me he was afraid charges might be brought up, if
3 it was a legal picket, against him which would cost him money or
4 he might not ever be able to get another job out of the Local.
5 MR. OBRION: In other words, the thing would
6 be when he finally went back to work, but the same
7 matters will come up during the course of my evidence.
8 BY MR. OBRION:
9 Q Did he give you a reason as to why he had
10 returned to work?
11 A. He had been told to come back.
12 MR. OBRION: We maintain that his statement
13 as to the reasons why he left, stayed out and came
14 back insofar as they involve the defendant union and
15 efforts by the steward and they were told to come
16 back by union officials, that they amount to union
17 involvement in any permanent decision which he might
18 make to the extent they occurred immediately after
19 the leaving of the job on July 10th, which they are
20 a res gestae exception to the extent that they are
21 admissions against interest.
22 THE COURT: Whose interest?
23 MR. OBRION: The interest of Local 147 of
24 which he is a member. Now this case Laburnum
25 Construction, the parties were the same. It was the

1 employer asking the employee union member as to if
2 wherein they would not come back to work.
3 THE COURT: I am still minus something here,
4 and that is I don't see that it has been shown that
5 Mr. Walters was a person who is authorized to speak
6 on behalf of the union and to bind the union.
7 MR. OBRION: We don't contend that he was
8 authorized to speak --
9 THE COURT: It would be the defendant
10 against the interest of the defendant. Now this is
11 an individual who is a member of the defendant union.
12 MR. OBRION: Yes, sir. If I might --
13 THE COURT: Is he authorized to bind them
14 by admissions against interest? Can he say, "Mr.
15 Jernigan, that union is wrong, and if they persist
16 in this they are going to owe you $10,000"? Can that
17 be binding or an admission against the interest of
18 the union?
19 MR. OBRION: We claim absolutely so. And
20 I believe there's another case that will show that
21 they are responsible.
22 THE COURT: May I see the case, please,
23 because I am not convinced at this moment. What's
24 the other one?
25 MR. OBRION: United Brotherhood versus Humphreys,

1 203 Virginia 781, on employees being labor members
2 which would bind the union.
3 THE COURT: That's a little different from
4 admission against interest. Just like a bus driver.
5 The bus driver drives a bus. If he's negligent his
6 negligence is attributable to his employer. But the
7 bus driver can't go out and knock you down and say,
8 "Please don't worry. The bus company will pay you
9 a hundred thousand dollars for your interest."
10 MR. OBRION: They usually say "my insurance
11 carrier".
12 THE COURT: They usually do. That's my
13 problem in this. If you can give me any authority.
14 MR. OBRION: If I might add, Your Honor,
15 the Virginia Supreme Court did not go on admission
16 against interest. They allowed it to show the state
17 of mind of the declarant and the state of mind --
18 THE COURT: Was it solved?
19 MR. OBRION: No, sir. In the Laburnum
20 case is not --
21 MR. HOWELL: You are citing Humphreys'
22 admission against interest?
23 THE COURT: I can't find as evidence now
24 interest that this member of the union can make an
25 admission against the interest of the defendant union.

1 so as to be admissible in itself.

2 MR. OBRION: All right. I would ask that

3 the Court admit it on the basis as showing Mr. Walters'

4 state of mind as a declarant showing that he had

5 some fear of the consequences as his reason for

6 leaving and for not going back to work.

7 Usually you say "We have a case on point"

8 but this is the same party, same relationship, same

9 result to show the state of mind of the declarant.

10 If it's a hearsay objection he's making a normal

11 exception.

12 THE COURT: I sustain his objection.

13 All right, sir. You have vouched the

14 record, and you want to note your objection.

15 MR. OBRION: Yes, sir.

16 THE COURT: All right. Bring the jury

17 back in, please.

18

19 (Whereupon, the jury returned to

20 the courtroom and resumed their seats in

21 the jury box.)

22 MR. OBRION: May I approach the witness?

23 THE COURT: Yes, sir.

24 MR. HOWELL: I have no objection to the

25 pictures going in and reflecting some --

1 MR. OBRION: I have vouched the record. I
2 have in my hand four photographs which are representa-
3 tive of the pickets who were in place, as described
4 by Mr. Jernigan, on July 10th.
5 MR. HOWELL: It's agreed none were members
6 of the operating engineers.
7 MR. OBRION: All right.
8 THE COURT: Did you all get this? These
9 are pickets but they are not members of the defendant
10 union.
11 All right, sir.
12
13 (Whereupon, there was an off-the-
14 record discussion at the bench out of the
15 hearing of the jury and the court reporter.)
16
17 THE COURT: All right. I'll simply add my
18 initial beneath here. These will be Exhibits 2, 3,
19 4 and 5.
20
21 (Whereupon, the foregoing four
22 photographs were received in
evidence and marked for identi-
23 fication as Plaintiff's Exhibit
Numbers 2, 3, 4 and 5.)
24 BY MR. OBRION:
25 Q Did Mr. Walters remain at the job site

1 that morning, July 10th?

2 A. He remained there only long enough to try

3 to contact the Business Agent for the operating engineers.

4 MR. HOWELL: If Your Honor please, I

5 object to that.

6 THE COURT: Well --

7 THE WITNESS: I was in his presence.

8 MR. HOWELL: What?

9 THE COURT: He was there and heard him

10 call the Business Agent.

11 Well, I don't know.

12 MR. HOWELL: That's what he testified to.

13 THE WITNESS: That's what I heard.

14 THE COURT: It's within his own knowledge.

15 MR. HOWELL: We note our objection for

16 the record.

17 THE COURT: You do?

18 MR. HOWELL: Yes, sir.

19 THE COURT: Overruled.

20

21 BY MR. OBRION:

22 Q. Did you yourself make attempts to contact

23 Mr. Moore, the Business Agent?

24 A. Yes, I did.

25 Q. Were you successful?

1 A. No. I was told he was unavailable, out of
2 town, something to that effect.
3 Q. Did you know whether Mr. Walters came to
4 the job site on other days following July 10th?
5 A. He came up to the pickets every day.
6 Q. Every morning?
7 A. Every morning and he stayed there for
8 quite a bit of time, several hours every day.
9 Q. Did you witness personally with your own
10 knowledge other efforts by Mr. Walters to contact the Business
11 Agent, Mr. Moore?
12 A. Yes, I did, in his apartment.
13 Q. Do you know the results of these efforts?
14 A. He was always told that Mr. Moore was
15 unavailable.
16 THE COURT: Wait a minute. Who was told?
17 THE WITNESS: Gordon Walters was.
18 MR. HOWELL: Judge, the same objection.
19 Unless it was an extension there is no way for him
20 to know.
21 THE COURT: I am trying to find out. Did
22 you hear the person at the other end of the line?
23 Were you on the 'phone listening also?
24 THE WITNESS: I was on one occasion because
25 he had said --

1 (Whereupon, the jury returned to
2 the courtroom and resumed their seats in
3 the jury box.)
4
5 THE COURT: All right.
6
7 BY MR. OBRION:
8 Q. Mr. Jernigan, did you yourself personally
9 on July 10th and throughout the next five to seven days make
10 telephone calls to the business office of Local 147 to Mr.
11 Moore and to his home?
12 A. Yes, I did.
13 Q. Were you ever able to personally talk to
14 Mr. Moore?
15 A. No.
16 Q. Can you tell us what response you personally
17 received when you called those numbers?
18 A. That he was unavailable or out of town,
19 something to that effect.
20 Q. Were you personally present when Mr. Gordon
21 Walters made similar attempts to call the business office of
22 Local 147 and Mr. Moore?
23 A. Yes.
24 Q. Do you know whether Mr. Walters ever
25 reached Mr. Moore by telephone in your presence?

1 A. As far as I know he never did.
2 Q. Did you hear any responses made to Mr.
3 Walters' calls from the Local office of 147?
4 A. On a couple of occasions I did.
5 Q. What was that response?
6 A. That he was unavailable.
7 MR. HOWELL: I didn't hear it. What did
8 he say?
9 MR. OBRION: He was unavailable.
10 That's all I intended to cover.
11 THE COURT: All right, sir.
12
13 BY MR. OBRION:
14 Q. Did the picket line remain up July 11, 12
15 and -- let's see. Can you pinpoint July 10th? Do you know
16 what day that was?
17 A. I believe it was a Wednesday.
18 Q. Did it remain up the remainder of that
19 week and the rest of the part after that week?
20 A. Yes, it did.
21 Q. Mr. Walters came to the job site each of
22 these days but did not cross the picket line?
23 A. That's correct.
24 (Whereupon, there was an off-the-
25 record discussion at the bench out of the hearing of the jury and the court reporter.)

1 BY MR. OBRION:

2 Q. What was the number designation of the job which

3 Service Steel was involved in?

4 A. I don't know what it was.

5 Q. What was the subject matter of that job?

6 A. The approaches and the vent building.

7 Q. Was Lockwood involved in the approaches

8 and the vent building?

9 A. No, they weren't.

10 Q. From July 10th to July 17th did you

11 personally see Mr. Moore, the Business Agent, at the site?

12 A. No, I did not.

13 Q. From July 10th to July 17th did you

14 personally see Mr. Peewee Evans, the steward, at the job site?

15 A. Not on the job site.

16 Q. Can you tell us to the best of your know-

17 ledge when the members of Local 147 and Mr. Gordon Walters in

18 particular went back to work?

19 A. Well, it was -- I don't recall the exact

20 date. I think the 17th, something like that.

21 Q. Was it the next week from the week --

22 A. It was the next week.

23 Q. Can you tell us on the north island where

24 you were what was the status of this picket line shown in

25 Plaintiff's Exhibits 2 through 5 at the time they went back to

1 work?

2 A. It was still up.

3 Q. Now I would like to direct your attention

4 to July 7, 1975, and ask you if that picket line had appeared

5 on that day.

6 A. Yes, it had.

7 Q. The same sheet metal workers?

8 A. The exact same picket.

9 Q. Did the operating engineers and Mr. Walters

10 in particular go to work on July 7, the day the picket line

11 was up?

12 A. Yes.

13 Q. What kind of machinery again was Mr. Walters

14 operating on July 10?

15 THE COURT: You already covered that once.

16

17 BY MR. OBRION:

18 Q. I was leading up to what effect did Mr.

19 Walters not being on the job on this piece of machinery have

20 on July 10 to July 17?

21 A. It meant that we ran out of material. We

22 were placing -- we could not move from one place to another

23 on the job site.

24 Q. Was this the only piece of major machinery

25 in operation during this particular phase of your job?

1 back to the specific agreement. How long had Mr. Gordon
2 Walters been working for your company?
3 A. I'm really not sure.
4 Q. Approximately.
5 A. I know he's -- I have personal knowledge
6 of seeing him at both job sites since '73, and I know that he's
7 worked for us before that but I was in college at the time so
8 I don't know exactly how long.
9 Q. Now on July 10 did you ask him to go to
10 work?
11 A. Yes, sir. He had gone to work.
12 Q. And when he stopped work did you ask him,
13 tell him, "Now if you don't go back to work I am going to fire
14 you"?
15 A. I told him that. I said, "My father --"
16 I told him, "You know my father is going to have me fire you
17 if you don't go back to work."
18 Q. That is right. Did he go back to work?
19 A. No, sir.
20 Q. Did you fire him?
21 A. No, sir.
22 Q. You kept him on the payroll?
23 A. He was not paid for any time he didn't
24 show up.
25 Q. But you did not discharge him?

1 A. No, sir.
2 Q. Did he show up during that period of July
3 10th up to the 17th?
4 A. Every day except Saturday and Sunday.
5 Q. Did you pay him when he showed up?
6 A. No, sir.
7 Q. Now did you call the Virginia Employment
8 Commission for another cherry picker operator?
9 A. No, sir. I called my father and I got
10 into contact with some operators that I knew in the Richmond
11 area.
12 Q. I am talking about you. Your father's not
13 here. Did you call the Virginia Employment Service?
14 A. No, sir.
15 Q. Did you run an ad in the newspaper?
16 A. No, sir.
17 Q. Did you yourself call any other person who
18 could operate a cherry picker?
19 A. Yes, sir, I did.
20 Q. And did they come to work?
21 A. No, sir.
22 Q. Who did you call?
23 A. I called some -- at the time I was in an
24 engineering company with the National Guard and I called the
25 heavy equipment operators I knew in that, and one boy that I

1 knew as a non-union operator.

2 Q. I want his name.

3 A. I am not sure of his first name. His

4 nickname is Cocky Price.

5 Q. Where did you call Cocky Price?

6 A. He lives in Colonial Heights, which is in

7 Chester. I was going home that night so I called him that

8 night.

9 Q. Was Cocky Price working at the time?

10 A. No, sir.

11 Q. Why couldn't he come to work with you?

12 A. Because he said he was a non-union worker

13 and would not cross the picket line.

14 Q. Did you call anybody besides Cocky Price?

15 A. Yes, sir.

16 Q. Who else did you call?

17 A. A fellow named Williamson, and I can't

18 recall the names of the other people; it's been so long.

19 Q. Was Williamson a non-union cherry picker

20 operator?

21 A. He was an equipment operator, not

22 necessarily cherry picker.

23 Q. He didn't belong to the union, did he?

24 A. That's correct.

25 Q. Did he say he would come to work for you?

1 A. He said the same thing. He told me in
2 stronger language he wasn't going to take a chance of getting
3 beat up by crossing a picket line.
4 Q. And this picket line was being maintained
5 by the sheet metal workers?
6 A. Yes, sir.
7 Q. I notice that in Defendant's Exhibit 2
8 that there is a picket there that said "Marus Tile and --"
9 A. Tile setters.
10 Q. "Marus Tile and Marble Company". Here,
11 take a look at that. That was another craft that had a picket
12 line up, wasn't it?
13 A. Yes, sir. This came up at a later date.
14 I am not sure. Well, you see, one day -- the signs says,
15 "Morris Knudsen Company, Incorporated, subcontractor employees
16 use this gate." After that sign was put up the tile people
17 then put up a picket.
18 Q. And the tile people and the sheet metal
19 pickets were both picketing at the same time?
20 A. Well, the tile people put up their picket
21 line some time after the sheet metal workers had theirs up.
22 I don't know what time.
23 Q. Was this during the period that we are
24 talking about, July 10 --
25 A. I couldn't say when those pictures were

1 taken. Those could have been taken, you know, after the men
2 had gone back to work. I didn't take those pictures personally.
3 I took some but that's not them.
4 Q. I thought you were offering them in
5 evidence because they show the pickets.
6 A. That's right. It shows pickets.
7 Q. But --
8 A. But I don't know when exactly the picture
9 was taken.
10 Q. It could have been July 10th you had the
11 Marble people with the picket signs and the sheet metal people?
12 A. That's right.
13 Q. So these non-union people that you called
14 in Colonial Heights and that area, you told them there was a
15 picket line up. Is that right?
16 A. Yes, sir.
17 Q. And they said, "We are afraid --"
18 A. I explained to them the whole situation as
19 I knew it.
20 Q. They said, "We just don't -- we are afraid
21 to cross the picket line"?
22 A. That's right.
23 Q. "It creates bad trouble between fellow
24 workers"?
25 A. "It gets you beat up" is what they said.

1 Q. The people that would be doing the beating
2 would be the picketers?
3 A. Not necessarily the picketers but the union
4 people. They didn't specify who was going to beat them up. I
5 couldn't guess.
6 Q. All right, sir. So then you reported to
7 work on July 10th. Where did you first enter the bridge, from
8 the Hampton side or the Norfolk side?
9 A. From the Hampton side.
10 Q. All right, sir. And was Gordon Walters
11 already at work?
12 A. On the 10th?
13 Q. The first day, that first day.
14 A. Well, I got there close to 6:00 and work
15 started for us at 6:30. So he crossed on down there; at 6:30
16 he went to work.
17 Q. My point was was he already on the job
18 when you reported, or did he come after you were there?
19 A. I think we came pretty close to the same
20 time. We came in separate cars.
21 Q. And did he actually start operating his
22 cherry picker that morning?
23 A. Yes, sir.
24 Q. And that was what time about?
25 A. Well, he usually gets his warm-up about

1 know about, was it, in this agreement you signed?
2 A. Well, you are asking me something I
3 couldn't answer; I am not a lawyer.
4 Q. Now you say you saw a man named Peewee --
5 A. Peewee Evans. Is that who you are speaking
6 of?
7 Q. Yes -- come over and talk to Mr. Walters,
8 right?
9 A. Yes, sir.
10 Q. And were you standing by? How far were you
11 from Mr. Walters and Peewee?
12 A. Thirty, forty yards. I am not really
13 certain exactly what it is, but it was fairly close, under
14 fifty.
15 Q. How long would you estimate that Peewee
16 and Mr. Walters were talking to each other as you stood thirty
17 or forty yards away?
18 A. Just a couple minutes, two or three.
19 Q. Then Peewee drove which way, back towards
20 Norfolk or did he come out on the Hampton side?
21 A. I think he went back towards Norfolk, but
22 I didn't really pay attention. All I noticed was that he
23 talked to our operator.
24 Q. And how long was it before Gordon Walters
25 came? Did you go into your trailer that you use as an on-the-

1 site office after Peewee was seen talking to Gordon and Gordon
2 talking to Peewee?
3 A. Yes, sir. The window faced -- I could
4 easily see everything that went on because my window faced the
5 crane at the time.
6 Q. Were you in the work trailer at the time
7 you saw Peewee?
8 A. (Witness shaking head negatively.)
9 Q. You were not?
10 A. No. I was right at the trailer.
11 Q. Then you went inside the trailer?
12 A. Yes, sir.
13 Q. How long was it before Peewee came over?
14 A. Peewee never did. Are you talking about
15 came to me?
16 Q. Came in your presence, yes.
17 A. Peewee never came in my presence.
18 Q. All right. Did you go out at any time to
19 call Peewee?
20 A. No, I didn't. There was no need for me to.
21 Q. You say he was a steward?
22 A. That's right.
23 Q. Well, did you ever go over to the Norfolk
24 side to attempt to talk to the shop steward, Peewee?
25 A. On what occasion? On this particular --

1 Q On this occasion when your man --
2 A No, sir, I did not.
3 Q All right, sir.
4 A All right.
5 Q Now when Walters came he came into the
6 trailer, didn't he?
7 A Yes, he did.
8 Q Do you know how long it was after the
9 conversation that you observed?
10 A Immediately after. He immediately got off
11 the rig and came over.
12 Q All right, sir. And he asked permission
13 to use your 'phone, or did he just go in and use it?
14 A No. He told me the situation.
15 Q All right, sir. But did he telephone
16 anybody from your trailer, or did he then leave the job?
17 A He informed me of the situation.
18 Q Excuse me. The question is did he use
19 your telephone inside the trailer to call anybody?
20 A Yes, sir.
21 Q That's what I want to know. And did you
22 hear him when he talked into the receiver?
23 A Yes, sir, I did.
24 Q All right. Do you know by memory, or
25 perhaps you have a telephone book with Mr. Moore's telephone

1 Q. And was that the day that you listened in
2 on the extension when he called the office of the Local?
3 A. I didn't say -- I don't think I said
4 "extension". I may have, but Gordon held the 'phone and we
5 both listened together.
6 Q. You said an "extension".
7 A. It was inadvertent if I did.
8 Q. All right, sir. What was the purpose of
9 Gordon letting you get close to the 'phone so you could hear?
10 A. I wanted to hear what was being said. I
11 wanted to make sure that Gordon was indeed calling the office
12 of his Local.
13 Q. Do you know whether he was talking to a
14 man or a woman?
15 A. No, sir, I don't remember.
16 Q. This was a very important conversation,
17 this is one in which you wanted to eavesdrop really, wasn't it?
18 A. I wanted to make sure my man was calling.
19 Q. You didn't tell the other person you were
20 listening in?
21 A. It was more or less "Let me have that" --
22 like that.
23 Q. You were awful anxious in knowing what was
24 said on the other end.
25 A. I had heard what was being said; I called

1 myself. I wanted to assure myself that Gordon was indeed
2 dialing the right number and getting him.
3 Q You didn't trust Gordon?
4 A I wanted to check.
5 Q And did you make any notes of the conversa-
6 tion?
7 A No, sir.
8 Q You did not. All right. Well, that was
9 on the 10th you did that. Now did you go back to Gordon's
10 apartment after the 10th?
11 A Yes, sir.
12 Q And on direct examination I believe you
13 said that you went back almost every day to his apartment.
14 A Well, he would come up -- he would come to
15 the site at work time, you know, he would come to the picket
16 line. Then we would go back out to his apartment. It was
17 almost within a stone's throw of where we were working. He
18 was living in Phebus. He was the individual we needed so we
19 would go to where he was.
20 Q All right, sir. It's rather important in
21 testing the recollection of Gordon Walters as well as your
22 recollection. And to assist you July the 10th was on a
23 Thursday, and you all were not working on Saturdays and Sundays?
24 A We weren't working on Saturdays and Sundays,
25 no, sir.

1 Q. So you went by Gordon Walters' apartment
2 on Friday when he made a call?
3 A. Sir, I don't know the exact date, and I
4 wish you wouldn't keep trying to tell me what dates --
5 MR. OBRION: May I object here? This is
6 about the third time he said he can't remember
7 exactly, but sometime between July 10th and July 17th
8 he went by Gordon Walters', and it was not Saturday
9 or Sunday. I think the third time is --
10
11 BY MR. HOWELL:
12 Q. How many times did you go?
13 A. I don't know.
14 Q. Did you go more than once?
15 A. Yes.
16 Q. Did you use the same method the second time?
17 A. I don't remember when it was that I used
18 that method, whether it was the first time, second time or
19 third time or tenth time. If I went that many times I tried
20 that. I didn't think whether the voice was male or female.
21 So I didn't recollect that. The only thing I considered
22 important to remember was that Mr. Moore was unavailable.
23 That's what I remember.
24 Q. That's the only thing you remember?
25 A. Besides that we did attempt.

1 Q. As Vice President you don't know who
2 decided to sue this Local or for what purpose?
3 A. I believe it was my father.
4 Q. Now we have tried this case once before
5 when your father was here, haven't we?
6 A. Yes, sir.
7 Q. And he decided to withdraw the suit at that
8 time because he couldn't prove --
9 MR. OBRION: I object to that.
10 THE COURT: Just disregard that. The only
11 lawsuit that is being tried today is here. Forget
12 what's gone before.
13
14 BY MR. HOWELL:
15 Q. All right. Now have you ever asked your
16 father who authorized this lawsuit to be brought?
17 MR. OBRION: That's got to be the same two-
18 step hearsay he was objecting to when I was doing it.
19 MR. HOWELL: Cross-examination, if Your
20 Honor please.
21 THE COURT: I overrule your objection.
22
23 BY MR. HOWELL:
24 Q. All right. Now did you ever -- after the
25 first day did you ever try to reach the gentleman you call

1 Peewee who you said was the shop steward?

2 A. I -- let me see. I never did see him if

3 he wasn't on the site or at the line where I could see him. I

4 wouldn't know where to look for him.

5 Q. After the first day did you ever ask for

6 Gordon Walters to come back to work?

7 A. Every day.

8 Q. Every day you asked him?

9 A. (Witness nodding head affirmatively.)

10 Q. Did you tell him that his union was not

11 picketing?

12 A. Yes, sir. I had told every man that worked

13 for us because we knew the Monday that the thing first came up

14 that it was not against our job. Every one of our men had been

15 informed that it was against the tunnel itself and not the

16 approaches.

17 Q. I mean you specifically told Gordon Walters,

18 "Gordon, your union is not picketing"?

19 A. Yes, sir, I certainly did.

20 Q. Then did he give you the same general

21 statement that Cocky and the non-union members up in Colonial

22 Heights gave you that they just --

23 A. No, sir.

24 MR. HOWELL: I think that is all. I am

25 just checking. That is all. Thank you.

1 THE COURT: All right. Mr. OBrion,
2 redirect?
3
4 REDIRECT EXAMINATION
5
6 BY MR. OBRION:
7 Q Mr. Jernigan, Mr. Howell just asked you
8 did Mr. Walters give you the statement Mr. Cocky Price did.
9 What statement did he give you?
10 A He told me he had been informed it was a
11 legal picket being honored by his union. He had been told that
12 by the steward. Charges could either be brought up against
13 him, he could be fined for that or he could never get another
14 job out of that Local.
15 Q Mr. Howell asked you on cross-examination
16 and brought it into this court as an exhibit a contract, and
17 I believe the number is seven. He asked you to read to the
18 jury portions of that contract. I ask you to read to the
19 jury from Defendant's Exhibit 7 or Defendant's Exhibit --
20 MR. HOWELL: Judge, let's get the record
21 straight. I asked him to read anything he thought
22 that limited his right.
23 THE COURT: All right. Members of the jury,
24 that's one of the facts you'll have to determine,
25 whether that was the question asked or whether it was

1 another question as Mr. OBrion says. You'll have
2 to remember, and your memory of that is important.
3
4
5 BY MR. OBRION:
6 Q. Local 147 has offices in the Richmond area,
7 does it?
8 A. Yes, it does.
9 Q. Is the gentleman you have identified as
10 William Boyd, did he have a position with Local 147?
11 A. Yes.
12 Q. Do you know what that position was?
13 A. Business Agent for that Local.
14 Q. Do you understand he had a position similar
15 to Mr. Moore?
16 A. It's my understanding; it's my understanding
17 it's much the same position.
18 Q. Mr. Howell asked you on cross-examination
19 if you did fire Mr. Walters, and your response was "No".
20 During July 10th to July 17th, you further testified, you did
21 not pay him during that period.
22 A. That's correct.
23 Q. Would you tell the jury, please, the
24 reasons why you did not fire Mr. Walters?
25 A. Mr. Walters had been in our employ for a

1 long time. He was a trusted and valued employee. And that's
2 demonstrated by the fact that we brought him along with the
3 piece of equipment from Richmond. I knew -- I didn't want to
4 fire the man because I knew he was more or less between a rock
5 and a hard place. He was caught between us not wanting to
6 fire him or going to work and what action would be taken by
7 the union if he did go to work.
8 Q. Do you know the reasons for Mr. Walters
9 making calls to Mr. Moore, the Business Agent?
10 MR. HOWELL: Your Honor, that would
11 certainly be subjective for testimony.
12 THE COURT: I don't know whether he knows
13 if he -- do you know his reasons?
14 THE WITNESS: I know that I told him
15 specifically to call the Business Agent for the union
16 and find out whether he could go to work or not.
17 THE COURT: All right, sir.
18 MR. OBRION: I have no more redirect.
19 MR. HOWELL: That's right.
20 THE COURT: Thank you, sir. You may step
21 down.
22
23 (Witness excused.)
24 THE COURT: Who is your next witness?
25 MR. OBRION: Mr. Poteat, Your Honor.

1 ARTHUR D. POTEAT,

2 called as a witness on behalf of the plaintiff,

3 having been first duly sworn, was examined and

4 testified as follows:

5

6 DIRECT EXAMINATION

7

8 BY MR. OBRION:

9 Q. Could you identify yourself, please, for us?

10 A. My name is Arthur D. Poteat.

11 Q. Are you known as Doc Poteat?

12 A. Yes, sir.

13 Q. Are you now and were you employed by the Morris

14 Knudsen Company in July, 1975?

15 A. I was, sir.

16 Q. What was your position with them?

17 A. Project Manager of the second Hampton Roads

18 Tunnel crossing, sir.

19 Q. Could you explain to the jury, please,

20 what projects were going on at the Hampton Roads Tunnel crossing

21 and what particular job Morris Knudsen was working on at that

22 time?

23 A. Well, the day that you mentioned Morris

24 Knudsen -- we had contractors, general contractors for the

25 approaches to the two ventilation structures, electrical work

on the second road and all roads to the second Hampton Roads Tunnel crossing from Willoughby and the Hampton side of the bay crossing.

Q. Did the contract and jobs which were going on there have separate designations?

A. Yes, sir, they did. We were known as the contractee for the contractor for that portion of the crossing. There was another contractor, Regan-Nager, who was the contractor that did the tile work inside the tube and the ceiling work. There was also another contractor, Foscoe, which had all the signs, the automation of the signs and the sign plotting linings as such and the TV monitors and such and such.

Q. So that we might orient things, Service Steel was the subcontractor of yours on the four approaches dealing with the approaches and the vent buildings. Is that correct?

A. That is correct.

Q. Now in the course of work being done by you and Morris Knudsen in July, 1975, did you have occasion to use operating engineers from Local 147?

A. I did, sir.

Q. Approximately how many operating engineers did you use during this period of time?

MR. HOWELL: If Your Honor please, Morris Knudsen have brought no suit for damages or anything else. They are not a party to this suit. It's

BY MR. OBRION:

Q. Approximately how many members would you be using of the union?

A. At that time I think about maybe ten to twelve.

Q. Can you tell me who was designated as the steward on the job as far as you know?

A. Well, for my portion of the job for Local 147 a gentleman named Emanuel Evans.

Q. He was known --

A. Known as Peewee, yes.

Q. Were you familiar with Exhibit Number 7, which has been identified as a contract between the contractors and Local 147? Have you seen it and were you familiar with that document in July of '75?

A. Oh, yes, very.

Q. Now I ask you, on the morning of July 10th did you see Mr. Emanuel "Peewee" Evans at the job site on that morning?

A. No, sir. I saw him off the site at the city street on the Willoughby side where you come up a temporary ramp to come onto the trestle to come out to the job itself.

Q. I ask you to turn to Articles 20 and 21 of that Exhibit 7.

A. All right, sir.

1 Q. Did you read Article 20 to Mr. Emanuel
2 Evans on the morning of July 10th, 1975?
3 A. I read Article 20 and 21 both.
4 Q. Would you please read Article 20?
5 A. Article 20 states "There shall be no work
6 stoppage because of a jurisdictional dispute" period.
7 Q. Would you read the first paragraph of
8 Article 21, please?
9 A. Article 21 states "There shall be no work
10 stoppage, strikes or lockouts during the term of this agree-
11 ment for any reason whatsoever" period.
12 Q. Now at the time you read this were the
13 operating engineers from 147 on the site, or had they gone
14 beyond the picket line, do you recall?
15 A. They were on the city street adjacent to
16 the ramp as you come in from the Willoughby side.
17 Q. Can you tell us, please, the response of
18 Mr. Evans, the union steward, when you advised him of the
19 terms of this contract?
20 A. His comments were to me that he didn't
21 have the agreement, was completely unaware of Articles 20 and
22 21.
23 Q. Did he advise you what he was going to do,
24 if anything?
25 A. Well, my suggestion to Mr. Evans was to

1 attempt to get ahold of the Business Agent, being Mr. Moore,
2 and tell him what was going on out there.
3 Q. Did you ever see Mr. Evans, the steward,
4 at the job site where you were working from July 10th through
5 the middle of the next week?
6 A. I can't say that I did. I know I can't
7 under oath say that I did see him on the job after that until
8 they reported back to work.
9 Q. Can you tell us, please, whether you ever
10 saw Mr. Moore, the Business Agent, on the job site from July
11 10th to approximately July 16th or 17th?
12 A. I did not.
13 Q. Did you ever get any response from Mr.
14 Evans after you read that contract to him?
15 A. No, I did not.
16 Q. Did you yourself make personal efforts to
17 contact Mr. Russell Moore, the Business Agent of Local 147?
18 A. Yes, I did.
19 Q. Can you tell us approximately how many times
20 you attempted to get ahold of Mr. Moore from July 10th through
21 July 17th?
22 A. Just a moment, please. Would you ask that
23 question again, please?
24 Q. Can you tell me how many different efforts
25 you made to contact Mr. Russell Moore, the Business Agent of

1 Local 147, after July 10th?

2 A. There were seven attempts made. I contacted

3 the office, the secretary, but I physically did talk with Mr.

4 Moore on the 14th.

5 Q. Well, that's with regard to the telephone

6 contacts. Did you ever reach him by telephone?

7 A. I did not.

8 Q. Do you know where he was at the times you

9 called?

10 A. The report I got is he was out.

11 Q. Did he ever return your calls to your

12 knowledge?

13 A. No, sir.

14 Q. At the times you made calls to the Local

15 union office did you place orders for operating engineers?

16 A. I did, sir.

17 Q. Now did you happen to run into Mr. Moore

18 in person sometime during that period?

19 A. Yes, sir. I ran into Mr. Moore down at

20 the Holiday Inn Scope.

21 Q. Was that by accident, or did you have a

22 pre-arranged meeting with him?

23 A. No. This was an AFL-CIO State Council

24 Meeting and I was invited to attend. That's the first contact

25 I made with Mr. Moore during this time.

1 Q. That was on July what?
2 A. On July 14th.
3 Q. Are you yourself a union member, Mr. Poteat?
4 A. Yes, sir.
5 Q. How long?
6 A. Oh, about thirty-six years now.
7 Q. Do you know of any effort by the International
8 Union of Operating Engineers to contact Mr. Russell Moore of
9 Local 147?
10 MR. HOWELL: If Your Honor please, I object
11 to it as being hearsay.
12 THE COURT: The question is does he know
13 personally. That's what it should be; personally.
14 THE WITNESS: Yes, I do know personally.
15 He got a telegram from his International --
16 MR. HOWELL: That's not personal that he got
17 a --
18 THE WITNESS: -- with a copy to Morris
19 Knudsen to my attention.
20 THE COURT: All right, sir.
21 MR. HOWELL: My point is that I don't know
22 who this International person is. We have no
23 opportunity to cross-examine him, and it's not
24 admissible testimony. If I can't cross-examine I
25 don't think they can put in some unknown person who

1 A. No, sir. It was a separate complete
2 general contract. It just happened; that's the oddity of the
3 thing. Geographically they were adjacent to each other.
4 Q. Do you know whether prior to July 10th
5 within two or three days this picket line had gone up also?
6 A. Yes, sir.
7 Q. Did the operating engineers from Local 147
8 come to work on that day?
9 A. Yes, they did.
10 Q. Mr. Poteat, it has been introduced into
11 evidence a certain notice designated as Plaintiff's Exhibit 6.
12 Did you see that notice during the time that the picket was up?
13 A. Yes, sir.
14 Q. And finally, Mr. Poteat, to your knowledge
15 did Local 147 provide operating engineers to that job site
16 between July 10th and July 16th or 17th?
17 A. They didn't for the four contracts.
18 MR. OBRION: Thank you.
19 THE COURT: Mr. Howell.
20 MR. OBRION: Just one minute. That concludes
21 my direct examination.
22
23 CROSS-EXAMINATION
BY MR. HOWELL:
24 Q. Mr. Poteat, the sheet metal workers went to
25 the Joint Board, didn't they?

1 A. Yes, they went to the Joint Board first.

2 Q. And an award was handed down by the Joint

3 Board?

4 A. Well, about -- finally it was handed down,

5 Mr. Howell, by the Appeals Board.

6 Q. And that's the last resort, isn't it?

7 A. That's the end of the line for organized

8 labor, yes, sir.

9 Q. The Appeals Board awarded the work to the

10 sheet metal workers. Is that correct?

11 A. They certainly did; I have a copy of the

12 telegram.

13 Q. Notwithstanding that, the iron workers

14 stayed down during this work?

15 A. To my knowledge they worked every day, yes,

16 sir.

17 Q. What did you do as head of Knudsen to carry

18 out this final award awarding this work to the iron workers --

19 I mean the sheet metal workers?

20 A. It wasn't anything I could do. It was

21 irrelevant to our case; it wasn't my job, Mr. Howell.

22 Q. But when the sheet metal workers -- were

23 the pickets advertising the fact that Lockwood, that they

24 wanted the workers at Lockwood to employ sheet metal workers?

25 A. That's correct.

1 Q. And in effect they were trying to organize
2 the workers of Lockwood working on that tunnel to do business
3 under the terms of the contract of the sheet metal workers?
4 A. I don't know whether they were trying to
5 organize or that they were already organized just at that
6 point and time. If it's admissible Lockwood didn't employ
7 sheet metal workers.
8 Q. And the sheet metal workers signed a
9 statement that Lockwood wasn't supplying sheet metal workers?
10 A. I believe that's correct, sir.
11 Q. And they really wanted to get the workers
12 of Lockwood who were putting these hangers up into the roof of
13 the tunnel to be members of the sheet metal workers?
14 A. Well, I can't answer that directly. I
15 know he had a lot of men and Mr. DeGraw that did the same for
16 Local 80, but whether he wanted to put his members at work
17 to get new members I would say that I am not that familiar.
18 Q. But his picket sign was to make an effort
19 to have Lockwood employ members of his Local?
20 A. Well, I am -- if I might admit, Your Honor,
21 I don't know. It was a notice to the public that "The sole
22 purpose of patrolling this site (Hampton Roads Second Bridge
23 Tunnel Crossing) is to inform the public that Lockwood Brothers,
24 Incorporated refuses to comply with the final opinion of the
25 Appeals Board (Plan for Settlement of Jurisdictional Disputes

1 in the Construction Industry).

2 "Sheet Metal Workers' International Associa-
3 tion Local Union Number 87, AFL-CIO is not attempting to induce
4 or encourage any employee of any employer to refuse to work,
5 transport, or otherwise handle or work on any materials. No
6 one is requested to cease doing business with any person.
7 Sheet Metal Workers' International Association Local Union
8 Number 87, AFL-CIO."

9 Q. That sheet that you have -- did you get one?

10 A. I did.

11 Q. Did you stand out there to see if the people
12 with the pickets were handing a sheet to everybody that came
13 up to go onto the bridge?

14 A. I won't say they handed them to everybody, Mr. Howell.
15 They were available to everybody that came through the entrance. Whether
16 they handed them to everybody I couldn't say that. I don't really know, sir.

17 Q. And the only place that the pickets could walk on was
18 on the public way on the Norfolk side and the Hampton side? They were not
19 permitted to come out on the bridge where the work was?

20 A. I don't know whether they were permitted out there or
21 not. I didn't have any jurisdiction over that. The pickets, the line as
22 such would stand right across the street from the Red Carpet Inn on Willoughby
23 Spit. It was right at the exit off of I-64 on Strawberry Banks on the
24 Hampton side.

25 Q. Did you see where it was on the Norfolk side?

A. Yes. At the Norfolk side right as you come

1 up the gravel ramp, our access appointed to us by the State of
2 Virginia for access to the job.
3 Q. You never called the police to object as
4 to where they were?
5 A. No, sir.
6 Q. So they were in a legal place to be as far
7 as you were concerned?
8 A. I don't know whether it's legal or illegal,
9 Mr. Howell, but that's their location.
10 Q. Now you do know that working people many
11 times are apprehensive about crossing a picket line to work
12 on the other side of the line, aren't they?
13 A. Well, that seems to be a trait down through
14 the years. And I've traveled all over, and it's according to
15 how much pressure is on them and how much pressure the Business
16 Agent puts on them. Me, I have to earn a livelihood or I'll
17 have a divorce.
18 Q. You yourself do not know the names of the
19 individuals who, when they saw that picket line, decided not
20 to cross the line and to leave the site?
21 A. No. All I know is some of the names of the
22 individuals that were employed by us; whether they refused to
23 cross the picket -- the fact is they didn't report for work.
24 Q. But you don't know the names of any
25 individuals who actually on any particular day came and saw the

picket line and then made up their minds to turn and go back?

A. Well, I don't know what precluded the particular crafts that particular morning from failing to come to work. Partial crews did come. I didn't get them from IVEW and the Brotherhood of Electricians or any other operating engineers. I didn't get them out of the carpenters. I didn't get them out of the laborers. I didn't get them out of the sheet metal workers.

Q. The second day they didn't come?

A. Partial crews of mechanics, of carpenters, laborers did and cement masons, yes, sir, they did.

Q. The third day they worked all the way through you say?

A. Yes, sir. I had partial crews except during the time -- except IVEW and the operating engineers.

Q. Now the electricians, did you sue the electricians for not honoring the contract?

A. No, I did not. I have a national agreement. I say "I"; the corporation has a national agreement with IVEW, but we on this particular job were not doing the electrical work. It was another subcontractor known as E. C. Ernst. Ocean Electric's electricians were hired by them for this particular venture.

Q. How about the operating engineers? Did your company sue them when the individual members did not cross the picket line?

1 A. No, sir. We contacted Local 147 through
2 Mr. Russell in our Labor Relations Department and the Vice
3 President, Mr. Hanley. We did arrive at an agreement about
4 this particular work stoppage on this particular project.
5 Q. Now the only people that were engaged in
6 picketing were the sheet metal workers?
7 A. To my knowledge, yes, sir.
8 Q. How about these plasterers? We have a
9 picture here showing another craft.
10 A. Yes, sir. I am aware of that and it
11 appeared after this picture was put in.
12 Q. Plaintiff's Exhibit 3?
13 A. Right. That appeared on the Strawberry
14 or Hampton side.
15 Q. And --
16 A. That's another -- the tile contractor, Marus
17 Tile, is a subcontractor to Regan-Nager from dam plate to dam
18 plate, tubes 1 through 21, entirely in the tunnel. At the time
19 of this there was no access into what is called the tunnel
20 because we had never breached down the dam plates where the
21 ventilation structures set. We had to have a certain amount of
22 work done for the liability before we could breach. The tile setter did
23 all his work in tubes 1 through 21 through an access snorkel hole.
24 Q. Now do you know who they were picketing?
25 Was it your company, Knudsen?

1 A. I didn't have any tile work. They were
2 picketing the five contractors again or his subcontractor.
3 Marus Tile was out of Greensboro, North Carolina.
4 Q. For the purpose of organizing the tile
5 workers?
6 A. Mr. Howell, I can't truthfully say. I don't
7 know why they picketed them. To me it was another step. To
8 me it would be maybe the Chrysler Corporation or General
9 Motors; I work for General Motors and the other contractor
10 is just that much separate in it.
11 Q. As far as you know they could have been
12 picketing to organize the tile workers or it could have been
13 for some other reason?
14 A. Anything, I could presume, but to say I do
15 I do not --
16 Q. Right. Now on the sign that's on this
17 fellow carrying the sheet metal sign, the sign doesn't say
18 anything about formational picketing or organizational picketing,
19 does it?
20 A. No, sir. The handout slip is the only
21 thing that said this. And the sign says, "Lockwood Brothers,
22 Incorporated refused to comply with the final opinion of the
23 Appeals Board, which awarded the metal pan ceiling work to
24 the sheet metal workers. Lockwood unfair to Local Union 87."
25 Q. Up until the time that these tile workers

1 were picketing this tile company and up until the time that
2 the sheet metal workers were picketing Lockwood Brothers you
3 didn't have any trouble with the operating engineers working,
4 did you?
5 A. No, I did not.
6 Q. It was only when this picket line went up
7 at the approaches to the work site?
8 A. That's correct.
9 Q. And you yourself don't know why a particular
10 operating engineer did not report to work? You don't know nor --
11 A. All I can state is this, Mr. Howell: Mr.
12 Emanuel Evans, when I went out to the city street adjacent to
13 the marina on Willoughby Spit and read the contract, which
14 you recollect we are a member of the Virginia Association of
15 Contractors, which are both signatory -- I read these to him.
16 I said, "In my opinion you are in violation of your contract.
17 I would recommend that you go to work." His comments were,
18 "I will not cross a picket line." My comments were, "There's
19 a second gate. Use it. That's a secondary boycott, as you
20 well know."
21 Q. There was nothing in your agreement that
22 you have stated that it was mandatory for an individual to
23 cross a picket line. There was not a specific paragraph with
24 the affirmative statement that you have to run the risk of
25 whatever's involved and cross a picket line. There was nothing

1 in the contract requiring that, was it?

2 A. Not to my knowledge. It would be to work

3 stoppage or no slow-ups as long as that contract was in

4 existence or in force.

5 Q. Just one or two other questions, Mr. Poteat.

6 Would you be in a position to confirm or deny the fact that

7 Mr. Moore tried to get some operating engineers to cross that

8 line and that they came down there and looked at the picket

9 line and then turned around and went back?

10 A. I am not aware of that, Mr. Howell. I didn't

11 know it did happen. I am not saying it didn't; it could have.

12 I still feel, as I always did, under the contract agreement he

13 was the man. My job, if I have problems, whether jurisdictional

14 or foolish negligence, I think as being a Business Agent, he

15 owes it to the company to resolve it. You never resolve nothing

16 stopping.

17 Q. Well, you don't know whether he tried to

18 get people to cross it or not?

19 A. He could very well have or not have. I

20 couldn't truthfully say whether he did or did not.

21 Q. You are a man of some practical years

22 experience. Would you agree there is no way that Mr. Moore

23 could force an individual to cross that line if that individual

24 was apprehensive about working behind a picket line?

25 A. I don't know if he would have the authority.

1 I would say this: I think a Business Agent being associated
2 with the union -- and of course hindsight is good for all of
3 us and we learn. I think had I had Mr. Moore's position at
4 that particular time -- and he could have been available or
5 his assistant -- I would have come out and said, "Hey, fellows,
6 we are wrong. We are turning down our work. Go to work." I
7 can't think for Mr. Moore.
8 Q But if he urged that it would be all he
9 could do, wouldn't it?
10 A Unless he took it to our board and said,
11 "They refused to work." There is such a thing to be in one
12 but I have never been unfortunate. But a Business Agent is
13 represented as fair and impartial for the betterment of its
14 members. That is why they pay him.
15 MR. HOWELL: All right, sir. Fine.
16 THE COURT: Mr. OBrion.
17
18 REDIRECT EXAMINATION
19 BY MR. OBRION:
20 Q Mr. Poteat, Mr. Howell has cross-examined
21 you about your response about the establishment of a second
22 gate.
23 A Yes, sir.
24 Q Can you tell me what the purpose of a
25 second gate was?

1 A. Well, any time when you have on any
2 construction work it's been my experience, my knowledge, if
3 you have more than one contractor, general contractor and you've
4 got a labor strike -- I have been on jobs and missile work
5 safeguard. I built the one we got. At one time I had seven
6 gates because of jurisdictional disputes, and you had other
7 contractors in that --
8 MR. HOWELL: The missiles are at other
9 places.
10 THE COURT: Well, he is trying to tell us
11 what the second gate means. If you go through the
12 second gate are you violating the picket line of
13 the first gate?
14 THE WITNESS: No, sir.
15 THE COURT: Is that the idea?
16 THE WITNESS: That's the whole idea.
17
18 BY MR. OBRION:
19 Q. Did you make known to Mr. Moore that there
20 was a second gate at the site?
21 A. I made it known to Mr. Moore at the Holiday
22 Inn Scope meeting and to his steward. After that I even went
23 out and went up -- the signs, I think you might find them
24 reflected in some of these pictures probably.
25 Q. Now Mr. Howell asked you that there has

1 been a number of pressures brought to bear on the union members
2 both on bringing home the groceries and by the wives. I take
3 it then that a Business Agent is an important officer of the
4 Local union, is he not?
5 MR. HOWELL: If Your Honor please, this is
6 redirect. It's grossly leading.
7 THE COURT: All right, sir. It is leading.
8 I sustain the objection.
9 MR. HOWELL: Rephrase it.
10
11 BY MR. OBRION:
12 Q. What role, if any, do you know that the
13 Business Agent plays in the Local union?
14 A. Well, as far as the responsibility of
15 the Business Agent is to send out referrals, refer his men
16 to their place of employment and then to -- well, he's just
17 like I am on the job. I am the top of the list, power of
18 attorney, anything I speak for Morris Knudsen is binding for
19 the whole company.
20 He is a Business Agent. All right. His
21 Local, in essence, is comparable. He is in complete control
22 of Local 147, being Mr. Russell Moore. He has control.
23 That's what he is elected to do.
24 ~~MR. OBRION: Thank you, sir.~~
25

1 A. Michael D. First.

2 Q. With whom are you employed, Mr. First?

3 A. I am a partner in Gary, Stosch, Walls and

4 Company.

5 Q. What is your profession?

6 A. I am a Certified Public Accountant.

7 Q. What college did you graduate from, and

8 what was your major?

9 A. I attended and graduated from the University

10 of Richmond School of Business Administration and graduated

11 with a degree in accounting.

12 Q. Are you licensed to practice accounting

13 by the State of Virginia?

14 A. Yes, sir, I am.

15 Q. Have you been certified by the State Board

16 of Accountancy of the State of Virginia?

17 A. Yes, sir.

18 Q. For how many years have you practiced your

19 profession of accountancy?

20 A. Approximately thirteen.

21 Q. For how many years have you been assisting

22 Service Steel Erectors in their accountant work approximately?

23 A. Approximately five years.

24 Q. And could you tell us, please, during your

25 twelve years of experience the general kind of accounting

1 services which you have rendered?

2 A. I would say as far as the services of a

3 Certified Public Accountant that they would run the same gamut,

4 taxes, auditing, management advisory services, the normal

5 functions performed by a CPA.

6 Q. Would you tell us, please, your membership

7 in any professional organizations involving accountancy?

8 A. I am a member of the American Institute of

9 Certified Public Accountants; I am a member of the Virginia

10 Society of Certified Public Accountants and I am a member of

11 the Richmond Society of Certified Public Accountants.

12 MR. OBRION: Your Honor, I submit that he

13 is qualified as an expert.

14 THE COURT: There's been no objection.

15 You go ahead and ask the questions.

16

17 BY MR. OBRION:

18 Q. Have you examined the books and records of

19 Service Steel Erectors Company with regard to the projection the

20 second Hampton Roads Bridge Tunnel?

21 A. Yes, sir, I have.

22 Q. Could you tell us, please, exactly what

23 kind of records you looked at in particular?

24 A. I examined the cash receipts journals,

25 sales journals, payroll journals and financial statements.

1 Q. Did you look at the financial statements
2 for the preceding years to July of 1975?
3 A. Yes, sir, I looked at previous financial
4 statements.
5 Q. Did you examine the particular period of
6 time between July 10th, 1975 and July 17th, 1975?
7 A. Yes, sir.
8 Q. Could you tell us, please, based on your
9 findings what losses, if any, were sustained by Service Steel
10 Erectors from your books and records which you examined in
11 July, 1975 for that period of time?
12 MR. HOWELL: Just before you answer, if
13 Your Honor please, we object to that.
14 THE COURT: Would you all step into the
15 jury room, please?
16
17 (Whereupon, the jury left the
18 courtroom.)
19
20 THE COURT: All right, Mr. Howell.
21 MR. HOWELL: The question is designed to
22 reduce the -- and, if Your Honor please, the only
23 way it would do is the Shop Book Rule. And the Shop
24 Book Rule requires the person who made the entries in
25 the original books. And it would have to be shown

1 THE COURT: -- in the ordinary course of
2 business?
3 THE WITNESS: I am an outside auditor.
4
5 BY MR. OBRION:
6 Q You are regularly employed by Service Steel
7 Erectors and have conducted their audits for five years?
8 A Yes, sir.
9 Q You are with them on a regular basis for
10 whatever accounting services they need?
11 A Right.
12 Q You are familiar with all the books and
13 records?
14 A Yes.
15 Q The same ones you looked at are the ones
16 you have been examining for five years?
17 A The ones we decide, yes.
18 THE COURT: Let's take a little look at
19 the case on the Shop Book Rule. I think it goes to
20 the records themselves being admissible without
21 bringing in each person who filed or something of
22 that nature. Let's take a look at it.
23 MR. OBRION: If you had -- the classic
24 case, as I recall, is the DuPont case. If you had
25 to bring in and submit every voucher and invoice --

1 THE COURT: You don't. You submit the
2 records themselves, but you have to meet certain
3 criteria in order to have a guardian trust for
4 worthiness for those records.
5 MR. OBRION: We have some of them here, but
6 the trust for worthiness insofar as we know --
7 THE COURT: Let's see. Do you have a
8 citation?
9 MR. OBRION: I am trying to remember; the
10 last province case is DuPont, E. S. DuPont De Nemours.
11 THE COURT: Come on in chambers. Let's
12 take a look at this.
13
14 (Whereupon, the Court and counsel
15 retired to chambers.)
16
17 (Whereupon, the Court and counsel
18 returned to the courtroom.)
19
20 THE COURT: All right, sir. To avoid any
21 problems do you want to try?
22 MR. OBRION: All right. May I lead?
23 MR. HOWELL: Sure.
24 BY MR. OBRION:
25 Q Mr. First, are you the regular Certified

1 Public Accountant hired by Service Steel Erectors?

2 A. Yes, sir.

3 Q. Have you represented Service Steel Erectors

4 for the past five years?

5 A. Yes, sir.

6 Q. Are you familiar with the books and

7 records of Service Steel Erectors?

8 A. Yes, sir.

9 Q. To your knowledge do they employ the

10 regularly accepted accounting principles?

11 A. They employ generally accepted accounting

12 principles.

13 Q. Did you examine the books and records in

14 this company insofar as the Hampton Roads job of July, 1975

15 is concerned?

16 A. Yes, sir, I did.

17 Q. Do you have in your possession the books

18 and records which you examined?

19 A. Yes, sir.

20 Q. Can you make those available to be delivered

21 into evidence if we are able to later substitute the records

22 and give you back the originals?

23 A. Yes, sir.

24 MR. HOWELL: Where are you going from there?

25 You haven't gone anyplace yet.

1 that knows they are kept in the ordinary course of
2 business.
3 THE COURT: In response to my inquiry Mr.
4 First was very frank. He said he was a CPA. He is
5 not the custodian; he does not control. He says his
6 examination of what he saw indicates that the generally
7 accepted accounting practices are followed in the
8 way these records are kept. But as far as being the
9 custodian who says that they are in the usual course
10 of business and that they are contemporaneous or
11 practically so, as well as you can in business affairs,
12 he's not that person.
13 MR. OBRION: That's why I asked if there
14 could be another person other than the custodian of
15 the books who might know that it is ordinarily kept
16 in the course of business.
17 THE COURT: For instance, who?
18 MR. OBRION: The regular company CPA,
19 perhaps the Vice President, perhaps the President.
20 THE COURT: Perhaps the Vice President,
21 I don't know. All I am ruling on is this gentleman
22 here, what his function is, what his knowledge is.
23 MR. OBRION: Let me try to explore it.
24 BY MR. OBRION:
25 Q Do you regularly go to Service Steel Erectors

1 Company's office?

2 A. Yes, I do.

3 Q. Do you regularly consult with the bookkeeper

4 or whoever makes entries in the books and records?

5 A. Yes, I do.

6 Q. Do you regularly review these entries?

7 A. Yes, I do.

8 Q. Do you use those entries in the preparation

9 of Federal Tax Returns?

10 A. Yes, I do.

11 Q. Do you sign the little thing at the bottom

12 about what you have done, everything is accurate and all that?

13 A. Yes, sir.

14 Q. What other purposes do you examine the

15 books and records of Service Steel for? What do you give for

16 from those books and records?

17 A. Well, I have here with me a copy of the

18 Annual Audit Report whereby I certify that in my opinion the

19 financial statements present fairly the financial position and

20 condition of Service Steel Erectors as of a given day, based

21 upon my guidelines as far as my profession is concerned. That

22 imposes certain restrictions, certain requirements that I must

23 fulfill, one of which is to examine the books and records.

24 Part of the computations I made included figures that were

25 excerpted from these financial statements.

1 MR. HOWELL: No, sir.

2 THE COURT: That's the way it came out from

3 up here.

4 MR. HOWELL: No, sir, I am not offering it

5 as damages. I am offering it to sustain my objection

6 that this CPA cannot ignore the itemized damages and

7 now go into a hypothetical case of damages. I mean

8 we went through --

9 THE COURT: There have been some amendments

10 filed.

11 MR. OBRION: That's what he testified. I

12 don't say he can't cross-examine him on this or try

13 to impeach him on that or anything else. For the

14 particular thing, $744 for Jernigan and Jessup, that

15 represents his pay for that period. That document,

16 he hasn't physically handled, and Mr. Howell can see

17 it. If he said he didn't know --

18 THE COURT: Let's get back. First of all,

19 about this item you indicated was to be in evidence.

20 My interpretation of "in evidence" is goes to the jury.

21 MR. HOWELL: We withdraw it as an exhibit.

22 Just a few more preliminaries.

23

24 BY MR. HOWELL:

25 Q. Do you go to every one of your corporations

1 that you are an auditor for, you go once a month and go through
2 the books?
3 A No, sir. "Every" is a word I try not to
4 use. Frequently I do; not every day I do, but frequently.
5 We are management services oriented, and we believe in dealing
6 very closely with our clients. We process a financial state-
7 ment monthly on our computer. We maintain the general ledger
8 for Service Steel Erectors.
9 THE COURT: What is that again? You main-
10 tain it?
11 THE WITNESS: Yes, sir.
12 THE COURT: Your firm?
13 MR. OBRION: I am trying to say he has
14 a close connection with these books and records.
15 THE COURT: I had not understood that you
16 maintain the general records. I thought you reviewed
17 the records.
18 THE WITNESS: No, sir. We actually post
19 the general ledger. The point I was stressing before
20 is --
21 THE COURT: Do you have a copy of the
22 period involved here, July 10th through 17th, 1975 --
23 THE WITNESS: No, sir, I do not.
24 THE COURT: -- of the general ledger?
25 THE WITNESS: Not with me.

1 ledger of this plaintiff then, and he is the custodian
2 of that record and he is testifying to --
3 MR. HOWELL: Suppose we see what he does
4 have in the way of documents because we really don't
5 know. We started out with nothing; now we have gotten
6 up with a whole lot.
7 THE WITNESS: Part of my basis --
8 THE COURT: Would you all like to use the
9 counsel table? Mr. Jernigan, if you will move those
10 papers over. Mr. First, go down there. We'll see.
11 Give him room to spread something out so it won't
12 get mixed up.
13 THE WITNESS: The basis for my loss of
14 profits are -- the first item that I computed was
15 what I considered to be loss of profits. Now in
16 that computation came revenue and direct cost, direct
17 cost being labor, union benefits paid and travel.
18 MR. OBRION: Union benefits paid; we want
19 to be sure to get that in.
20 THE WITNESS: And I have got the documents
21 that support those figures. For example, M S T
22 billings, July 5th. Immediately preceding the date
23 that shows billings on this project itself to be
24 two hundred thirty-four thousand four-0-two, which
25 I base this interest into my computation of the cost.

1 The lost profit --

2

3 BY MR. HOWELL:

4 Q. If I may interrupt you, before you leave

5 invoice number 7, did you prepare invoice number 7?

6 A. I did not physically prepare invoice number

7 7.

8 Q. Did you see vouchers which substantiated

9 by that steel rods raised, so many thousand pounds at six point

10 nine cents a pound represents two hundred six thousand dollars?

11 Did you see the vouchers in which --

12 A. No, sir, but I did trace this payment, and

13 it was paid.

14 Q. I understand that. But you did not keep

15 the invoice number 7 and you never looked at the documents

16 which supported the preparation of invoice number 7?

17 A. No, sir.

18 MR. HOWELL: That would be inadmissible,

19 Judge.

20 THE COURT: Keep on going. I'll rule on

21 it later.

22 THE WITNESS: Okay. Then this is a recap.

23 I took these work -- these time reports by employees

24 showing employee's name, social security number,

25 work classification and the hours they worked

1 specifically on the Hampton Roads project from the
2 inception of the job, week ending June 28th, '74,
3 up to the date in question, which was through report
4 number 31.
5 Okay. These are the time records signed
6 by the --
7
8 BY MR. HOWELL:
9 Q. Wait a minute. This is a payroll record.
10 A. Right, but it's got the time record on it
11 also, the record of the time worked by each employee.
12 Q. I'll take them later, but the record is
13 headed "Payroll Record", is that correct, so refer to it as
14 what the document is called.
15 A. It's headed "Payroll".
16 Q. All right.
17 A. This shows the hours worked by every
18 employee on this particular job by week -- by day, by week, with
19 the total hours, their rate of pay, and then it has the
20 calculation of what their net wages are for the week.
21 Q. Excuse me. Did you look at the time records
22 from which someone made the typed-in payroll record? You did
23 not type the payroll record, did you?
24 A. No, sir.
25 Q. And you don't know specifically who did do it?

1 A. Yes, sir, I do.
2 Q. Who is that, the wife of Mr. Jernigan?
3 A. Karen Cromer; she signed this form as
4 secretary.
5 Q. Does she work in the office?
6 A. Yes, sir.
7 Q. All right. Now did you look at the hourly
8 time records from which Karen Cromer made a --
9 THE COURT: Did you keep those?
10 MR. JERNIGAN: Yes, sir, I kept those. Mr.
11 Jessup did, too.
12 MR. HOWELL: I am talking about this
13 gentleman.
14 THE COURT: But this is the source.
15 MR. HOWELL: They can put on the source
16 if they want to get to him, but they can't put him
17 on until they have shown how --
18 THE COURT: We can't have every witness be
19 first. We have to start somewhere.
20 MR. HOWELL: He is coming to that. I would
21 think we would start at the foundation.
22
23 BY MR. HOWELL:
24 Q. Go ahead.
25 A. These were checks written to these people

1 for this job.

2 Q. And what is the relevancy of this document?

3 Could you explain that? You can get a direct cost, can you

4 not, Mr. First?

5 A. Yes. I can come up with a direct cost as

6 related to this job as compared with the gross revenue for this

7 job.

8 Q. But what's going to be the relevancy of

9 that? Some days are better than others; it may rain, someone

10 may have a stomach ache.

11 A. That's why I took the whole job. I could

12 have taken a very good week, and I could have made these figures

13 substantially better if I had taken one very good week at

14 certain points in the project, because obviously there are

15 points in the project where the profit is higher than at other

16 points.

17 MR. OBRION: I think all of those would be

18 proper cross-examination questions on this witness

19 when he gets him.

20 MR. HOWELL: Its irrelevancy is where is

21 the particular period involved here.

22 THE COURT: What is your objection?

23 MR. HOWELL: The objection here --

24 THE COURT: You were objecting. What we

25 are doing now is trying to determine whether there

1 BY MR. HOWELL:

2 Q. For an average period over --

3 A. I took the whole job.

4 Q. Which is how long, six months?

5 A. Well, it was actually 131 working days.

6 On that job there were actually 270 total workable days during

7 that period.

8 Q. How do you know that?

9 A. Well, by taking the number of days from

10 June the 24th of '74 up until July -- the week ending July 4

11 of '75.

12 Q. You are merely saying that you see that

13 people were shown as being recorded as having some spendable hours

14 on that day. You don't know whether it was raining, snowing or

15 muddy as they approached the job. You are merely saying you

16 see hours recorded and you think it's an average workable day?

17 A. Uh-huh.

18 Q. All right. Okay. And then you just took

19 six months and took your expenses and you determined what they

20 should have made as a profit and what you figured they did make

21 during that period of time and you charged it to this particular

22 incident, this six-day period or five-day period. Is that

23 about it?

24 A. Yes, sir.

25 MR. HOWELL: Judge, that certainly wouldn't

1 be a way to prove damages.

2 THE COURT: Let's get him back on the stand.

3 All right, sir. Now you are objecting to

4 this testimony on what ground?

5 MR. HOWELL: First, Judge, that the records

6 are inadmissible. They do not comply with the modern

7 Shop Book Rule or the original Shop Book Rule, and

8 for First, that he did not supervise the original

9 entries on any of the figures that he alluded to.

10 They represented his perusal of the entries made by

11 somebody else based upon another document that we

12 do not know the nature of nor have we seen.

13 And third, that the testimony would be

14 irrelevant for proving specific damages incurred for

15 the period involved, July the 10th through July the

16 16th; for the gentleman has stated that his testimony

17 as to loss of profits is arrived at by his taking the

18 total expenses and the total earnings over the entire

19 period of the job and averaging out a per-day --

20 what he's used seems to be a per-day profit that

21 should be made on an average over that period of time.

22 And that he's subtracting what he feels

23 would be a proper profit from the percentage of

24 profit he derived by averaging all the days on the job

25 when he has admitted that he does not know the particular

1 working conditions on any particular day. He only
2 knows that he sees a certain number of hours recorded
3 and a certain number of men. He considers that the
4 productivity of each man was the same over a period
5 of time regardless of whether it was a sloppy day
6 and they couldn't work as fast, couldn't get material,
7 on many, many extraneous factors that could affect
8 the average progress of the work and affect the
9 average profit made on this job.
10 THE COURT: What's your response, Mr. OBrion?
11 MR. OBRION: I think that the last three
12 or four comments he made are more properly interested
13 to the weight of any evidence that is admitted to
14 be given by the jury. I don't think that evidence
15 about rain or snow affects the admissibility of
16 the evidence. It could be something he could argue
17 to the jury about why not to believe Mr. First
18 because he didn't take into account these factors.
19 But in terms of admissibility from
20 29 American Jurisprudence Secondary Evidence,
21 Section 458, that the testimony of accountants is
22 frequently admitted where he has examined the
23 documents and books and is able to testify as to
24 the content of the books and records.
25 The Virginia rule seems to be that we

1 MR. HOWELL: Your Honor, while you are
2 perusing could I look at the file of the first case?
3 MR. OBRION: Defendant's Exhibit 1 was --
4 MR. HOWELL: I am talking about the
5 previous trial, that sheet which Mr. Jernigan brought
6 with him.
7 THE COURT: Mr. Manson, did you find
8 anything under Shop Book Rule A in American
9 Jurisprudence?
10 MR. MANSON: I was looking primarily for
11 any reference to an accountant testifying --
12 THE COURT: You were? Let's see.
13 MR. MANSON: -- on business records.
14 MR. OBRION: Your Honor, it would appear
15 even in case 204 Virginia they did not require the
16 entrant to come to court.
17 THE COURT: Not the entrant, the custodian.
18 In my opinion, when you get close on that
19 is where you produce evidence, to the effect that
20 Mr. First and his firm maintain the general ledger.
21 MR. HOWELL: They don't have the general
22 ledger.
23 THE COURT: And he has these things which
24 are used to set up the general ledger. All right, sir.
25 Anything further on this?

1 MR. HOWELL: I think they have failed to
2 produce admissible evidence regarding the matters
3 before the Court at the moment, and the evidence has
4 to be refused entry.
5 THE COURT: I sustain your objection.
6 All right, sir. Who will you have now?
7 You note your objection?
8 MR. OBRION: Could I -- and I am very
9 reluctant to ask the Court -- but could I have Your
10 Honor's ruling as to what would be admissible?
11 THE COURT: I see nothing to gain on point.
12 This is -- the thing to do is for the Judge to pay
13 attention to what's going on and to rule on what is
14 before him. To go an additional step and say to
15 you without thinking it through -- you've had the
16 opportunity to prepare for this case.
17 MR. OBRION: I withdraw.
18 THE COURT: All right. I think it would
19 be -- I would not care to do it because I don't think
20 that it would be a well-thought-at conclusion. It
21 doesn't cover -- I'll rule on what's before me;
22 anything else, no.
23 MR. OBRION: All right. This evidence --
24 is the evidence of the books and records which this
25 man has and his conclusions as an expert in

1 WARREN JESSUP,

2 called as a witness on behalf of the plaintiff,

3 having been first duly sworn, was examined and

4 testified as follows:

5

6 DIRECT EXAMINATION

7

8 BY MR. OBRION:

9 Q. You are Mr. Warren Jessup?

10 A. Yes, sir.

11 Q. Were you a foreman for Service Steel

12 Erectors on the Hampton Roads Tunnel job in July, '75?

13 A. Yes, I was.

14 Q. You are an iron worker and a member of

15 the iron workers' union?

16 A. Yes, I am.

17 Q. Were you on duty on July 10th, 1975?

18 A. I was.

19 Q. Did you see Mr. Gordon Walters on the job

20 site that morning?

21 A. Yes, sir, I did.

22 Q. Was he inside or outside of the picket

23 line which was up at the time you saw him?

24 A. He was -- I saw him inside and outside.

25 Q. When you saw him outside did you inquire

1 as to the reason he was not working?
2 A. Yes, I did.
3 Q. What reason did he give you for not working?
4 MR. HOWELL: We are objecting to all this
5 hearsay.
6 THE COURT: The witness is outside --
7 MR. OBRION: I thought there was an
8 objection to the testimony.
9 THE COURT: That's the reason that it is
10 being taken outside the presence of the jury because
11 you already have objected.
12 MR. HOWELL: All right, sir. I just didn't
13 want, if it gets up to the Supreme Court, that I
14 wasn't noting any objections to this man's hearsay
15 testimony. And I wanted the record to show that
16 the witness is on the outside. He is relating
17 statements to --
18 THE COURT: Well, there is nothing in the
19 record to that effect, but your objection is on the
20 record. Go ahead, Mr. Jessup.
21
22 BY MR. OBRION:
23 Q. What statement, if any, did Mr. Walters
24 make to you?
25 A. I asked him why he wasn't at work, what

1 the problem was, and he said that the steward had approached
2 him and told him that there was a picket line up and it would
3 be for his benefit to go on the other side of it.
4 Q. Now from that time throughout the week
5 until the people came back to work did you see Mr. Walters on
6 a personal basis?
7 A. Yes, I did.
8 Q. Did you see him at his home?
9 A. I saw him at his home.
10 Q. Did he give you any reason as to why he
11 was not going back to work?
12 A. Well, he said he wouldn't cross the picket
13 without authorization from his Business Agent. He had tried
14 to contact him and was not able to reach him. He said he
15 called during the day up until 11:30 at night and was not able
16 to reach him.
17 Q. Now when you went back to work on July 17th,
18 1975 did he tell you the reason that he came back to work?
19 A. He said that he had been notified to report
20 to work.
21 MR. OBRION: All right. That would conclude
22 it. No further questions.
23 THE COURT: Sustain the objection.
24 All right, Mr. Jessup. You may step down.
25 (Witness excused.)

1 He's making a motion. It's up to you to decide what
2 to do. Go ahead.
3 MR. HOWELL: If Your Honor please, the
4 motion is to strike the evidence and enter summary
5 judgment for the defendant on the merits of the
6 case. The law that we have filed with the Court shows
7 that in order to hold a membership of this Local
8 responsible for breach of contract that the --
9 THE COURT: May I see the contract, please?
10 It's Defendant's Exhibit 1, I think.
11 All right, sir.
12 MR. HOWELL: The law requires that there
13 be proof by a preponderance of the evidence that the
14 Business Representative or some authorized person
15 to bind the union, and the only one we have alluded
16 to here is Russell Moore, that he has to take some
17 affirmative action to produce a strike by his
18 members or affirmative action to produce a work
19 stoppage by his members.
20 The law is that no individual is required
21 to cross a picket line. It's illegal for Mr. Moore,
22 on behalf of the union, to say, "Don't cross the
23 picket line" or "Do cross the picket line." But
24 there is no evidence. The evidence is that Mr.
25 Jernigan attempted to call Mr. Moore once or twice.

one man.

MR. OBRION: That's another point. He is the Business Agent, the only one that controls the union and the breach of contract. All they have to do is not have a Business Agent and they can never breach a contract, never commit a tort, can't carry on any business.

THE COURT: All right, sir. I sustain the motion and enter summary judgment. Your action here is you allege that Paragraph 3 of the collective bargaining agreement provides that there will be no work stoppage because of a jurisdictional dispute. There is no evidence here that the defendant had a jurisdictional dispute with anyone, and further, that there should be no work stoppage or strikes or lockouts during the term of the agreement for any reason whatsoever.

And I frankly say, I did not find any competent evidence to demonstrate that the defendant here stopped the work or called a strike, and, of course, the lockout refers to the owner.

So on that ground I would sustain the motion and enter summary judgment in favor of the defendant here. You note your objection thereto?

~~MR. OBRION: I didn't know I was required~~

1 to any more, but if I am I certainly do.
2 THE COURT: I don't want you to miss
3 anything. I think under the rules --
4 MR. OBRION: I note my objection and
5 exception and general disagreement with the Court.
6 THE COURT: All right. Now let's see.
7 That was sustained, I note your objection; the rest
8 of it is in the record. Sheriff, would you bring
9 the jury in? Sheriff, would you ask the jury to
10 stand?
11 (Whereupon, the jury returned to
12 the courtroom.)
13
14 THE COURT: Ladies and gentlemen of the
15 jury, the plaintiff in effect has rested in regard
16 to the liability of the defendant in this matter,
17 and I have concluded as a matter of law that
18 judgment should be entered in favor of the defendant.
19 Therefore, there is nothing for you to decide and
20 the case is ended as far as you are concerned. We
21 thank you for your services. Court is adjourned.
22
23 (Whereupon, the hearing was
24 adjourned at 3:47 p.m.)
25 -------oOo-------

AGREEMENT

This Agreement, made and entered into this 20th day of June, 1975, has listed below the wage rates and other conditions of employment negotiated between the International Union of Operating Engineers Local No. 147, 147A, 147B and 147R and the Virginia Association of Contractors, Inc., on behalf of certain named contractors, for the following cities and counties which constitute the Union's jurisdiction.

CITIES

Chesapeake
Franklin
Hopewell
Newport News
Norfolk
Petersburg
Portsmouth
Richmond
Suffolk
Virginia Beach
Williamsburg

COUNTIES

Accomac
Albermarle
Amelia
Brunswick
Buckingham
Caroline
Charles City
Chesterfield
Clarke
Culpepper
Cumberland
Dinwiddie
Essex
Fluvanna
Frederick
Gloucester
Goochland
Greene
Greensville
Hanover
Henrico
Isle of Wight
King & Queen
King William
James City
Lancaster
Louisa
Lunenburg
Madison
Mathews
Mecklenburg
Middlesex
New Kent
Nottoway
Northampton
Northumberland
Orange
Page
Powhatan
Prince Edward
Prince George
Rappahannock
Richmond
Rockingham
Shennandoah
Southampton
Spotsylvania
Surry
Sussex
Warren
Westmoreland
York

ARTICLE I - INTRODUCTION

(A) This Agreement is applicable to Building and Construction Trade Work, does set forth specific understanding covering wages, hours, and other conditions of employment to govern the relationship of the parties hereto. It is understood that no other understandings, regulations or agreements concerning working rules, coming within the area of matters subject to collective bargaining, may be adopted by either party without the consent of the other party, and any such understandings, regulations, or agreements that

the day on the second engine.

(B) All mechanic's tools over ½ inch drive socket and end wrenches over 1½ inches, and any special tool shall be furnished by the employer. All engineers shall be expected to furnish the hand tools they feel are necessary to do running repairs except when employed on a job where their employer has a mechanic employed.

ARTICLE XVIII - APPRENTICES, FIREMEN AND OILERS

(A) All cranes and shovels, backhoes, clamshell machines, regardless of what work they perform of over ½ cu. yd. capacity must have apprentice on the machine, either as an oiler or a fireman. Truck cranes, except hydraulic cranes of 25 tons or less capacity, will require an oiler, who in addition, must be a qualified chauffeur. Hydraulic excavators of 3/4 yards or less capacity when used as a backhoe shall not require an oiler. (This does not include a gradall.)
(B) Pertaining to building or heavy construction, where any combination can be worked out--such as oiler and steam ginney, oiler and compressor, oiler and pump operator, or oiler and welding machine, the top rate for either of the classifications will prevail.

ARTICLE XIX - BROKEN TIME

In cases where a contractor is employing the use of not more than one (1) piece of straight time equipment on any one job and that said piece of equipment is working only on a periodic basis, the contractor can pay operators employed on this piece of equipment on a broken time basis. The rate of pay for such operations shall be 12½¢ per hour above the hourly scale set forth in the wage rate section. The business agent shall be notified when a broken time employee is requested.

ARTICLE XX - JURISDICTIONAL DISPUTES

There shall be no work stoppage because of a jurisdictional dispute.

ARTICLE XXI - SETTLEMENT OF DISPUTES

There shall be no work stoppages, strikes or lockouts during the terms of this Agreement for any reason whatsoever.

Any dispute or grievance other than jurisdictional shall be handled in the following manner without a work stoppage or any other kind of work disruption:

1. The dispute or grievance shall first be taken up between the Union Steward and the Employer's authorized representative on the job, and if not settled by those two within two (2) working days, the steward shall refer the matter to the Business Agent of the Union.

2. Any dispute or grievance referred to the Business Agent of the Union shall be taken up by him with an authorized official of the company, and if not settled in five (5) working days thereafter, shall be referred by the Business Agent to the proper official of his International Union.

3. Any dispute or grievance referred by the Business Agent of the Union to his International Union shall be taken up by the designated International Union official with the Executive Director of the Virginia Association of Contractors, Inc., or with some other person designated by the Employer to represent him, and if the matter is not settled within ten (10) working days after the International Union official contacts the proper representative of the Employer, the matter may be submitted to arbitration by either party. In this event the party desiring arbitration shall request the American Arbitration Association to submit a list of five (5) qualified arbitrators. The Union and Employer representatives shall then alternately strike names from the list until only one name remains and that person shall then be used as an arbitrator to make a final and binding settlement of the dispute or grievance. The arbitrator so selected shall have the authority to interpret this Agreement but shall have no authority to change this Agreement in any way. The expenses of this arbitration proceding shall be borne equally by the Union and the Employer.

ARTICLE XXII - COMPLETION OF OLD WORK

All construction contracts signed, or bids submitted, while the terms of these conditions of employment are in effect shall be continued at the scale of wages and working conditions contained herein for a period of not to exceed ninety (90) days. The contractors agree to furnish the Union a list of such work in writing at least fifteen (15) days prior to the expiration of this Agreement, in order to make the conditions of this Article effective. The above shall stand regardless of change in working conditions and/or wage increase or decrease negotiated in renewed Conditions of Employment. This Article is to be effective only to the extent that the benefits contained herein will be used by the contractors after the execution of a new agreement.

ARTICLE XXIII - QUALIFYING INTENT

It is not the intent of either party hereto to violate any laws or any rulings or regulations of any Governmental authority or State Agency having jurisdiction of the subject matter of this instrument, and the parties hereto agree that in the event any provision of this instrument is held to be unlawful or void by any tribunal having the right to so hold, the remainder of the instrument shall remain in full force and effect.

NOTICE TO THE PUBLIC

The sole purpose of patrolling this site (Hampton Roads Second Bridge Tunnel Crossing) is to inform the public that Lockwood Bros., Inc. refuses to comply with the final opinion of the Appeals Board (Plan for Settlement of Jurisdictional Disputes in the Construction Industry).

Sheet Metal Workers' International Association Local Union No. 87, AFL-CIO is not attempting to induce or encourage any employee of any employer to refuse to work, transport or other wise handle or work on any materials. No one is requested to cease doing business with any person.

Sheet Metal Workers' International Association
Local Union No. 87, AFL-CIO

20001 WASHINGTON, D.C., JULY 14, 1975

PMS MR. A. RUSSELL MOORE
IUOE LOCAL 147
5307 VIRGINIA BEACH BLVD.
NORFOLK, VIRGINIA 23502

FOLLOWING WIRE SENT TO IMPARTIAL JURISDICTIONAL DISPUTES BOARD BY MORRISON-KNUDSEN COMPANY, INC. AND A COPY RECEIVED IN THIS OFFICE FOR YOUR INFORMATION AND ATTENTION:

QUOTE ---RE: HAMPTON ROADS TUNNEL VENTILATION STRUCTURES PROJECT
HAMPTON, VIRGINIA

WE REQUEST YOUR IMMEDIATE ASSISTANCE ON THE REMOVAL OF SHEET METAL WORKERS PICKET LINE AT THE ABOVE PROJECT.
YOUR APPEALS BOARD HAS AWARDED WORK TO THE SHEET METAL WORKERS. LOCKWOOD BROTHERS IS A SUBCONTRACTOR OF REGAN-NAGER WHO IS A PRIME CONTRACTOR ON THE PROJECT. LOCKWOOD EMPLOYS IRON WORKERS. NEITHER LOCKWOOD NOR THE IRON WORKERS WILL ABIDE BY THE APPEALS BOARD DECISION. NEITHER REGAN-NAGER NOR LOCKWOOD ARE SUBCONTRACTORS OF MORRISON-KNUDSEN. HOWEVER, THE PICKET LINE HAS THE EFFECT OF STOPPING WORK ON THE ENTIRE PROJECT. WE HAVE ESTABLISHED A SECOND GATE, BUT THE ELECTRICIANS AND OPERATING ENGINEERS ARE NOT ENTERING THE PROJECT.
WE REQUEST YOUR IMMEDIATE ENFORCEMENT OF THE PROCEDURES OF THE BOARD AS AGREED TO BY THE VARIOUS UNIONS. UNQUOTE

YOU ARE HEREBY DIRECTED TO RETURN MEN TO WORK SINCE IT IS A VIOLATION OF THIS OFFICE AND THE IMPARTIAL JURISDICTIONAL DISPUTES BOARD TO RESPECT PICKET LINES OF THIS NATURE.

(TO BUS MGR MOORE, LOCAL 147 AND COPY BY MAIL TO MORRISON-KNUDSEN)

HUNTER P. WHARTON, GEN PRES
BY FRANK HANLEY, ASST TO GEN PRES