

**B. G. Costich & Sons, Inc.; East End Moving & Storage, Inc.; Wm. J. Renner Carting Co., Inc.; and Service Storage, Inc. and New York State Teamsters Conference Pension and Retirement Fund and Chauffeurs, Teamsters and Helpers, Local Union No. 118, Party to the Contract.** Cases 3-CA 8453-4, 3-CA-8453-5, 3-CA-8453-8, and 3-CA 8453-11

June 26, 1979

## DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS PENELLO  
AND TRUESDALE

On March 23, 1979, Administrative Law Judge David S. Davidson issued the attached Decision in this proceeding. Thereafter, Respondents filed exceptions and a supporting brief,<sup>1</sup> and the General Counsel filed cross-exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge, except that the remedy is modified to delete the provision for a fixed rate of interest on the retroactive payments to the Fund,<sup>2</sup> and to adopt his recommended Order.

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that Respondents B. G. Costich & Sons, Inc.; East End Moving & Storage, Inc.; Wm. J. Renner Carting Co., Inc.; and Service Storage, Inc., Rochester, New York, their officers, agents, successors, and

<sup>1</sup> As the record adequately presents the positions of the parties, the Employer's request for oral argument is hereby denied.

<sup>2</sup> Because the provisions of employer benefit fund agreements are variable and complex, the Board does not provide at the adjudicatory stage of a proceeding for the addition of interest at fixed rate on unlawfully withheld fund payments. We leave to the compliance stage the question whether Respondent must pay any additional amounts into the benefit funds in order to satisfy our "make-whole" remedy. These additional amounts may be determined, depending upon the circumstances of each case, by reference to provisions in the documents governing the funds at issue and, where there are no governing provisions, to evidence of any loss directly attributable to the unlawful withholding action, which might include the loss of return on investment of the portion of funds withheld, additional administrative costs, etc., but not collateral losses. See *Merrweather Optical Company*, 240 NLRB 1213 (1979).

assigns, shall take the action set forth in the said recommended Order.

## DECISION

### STATEMENT OF THE CASE

DAVID S. DAVIDSON, Administrative Law Judge: The charges in this case were filed on April 19, 1978, by New York State Teamsters Conference Pension and Retirement Fund, herein called the Fund. The consolidated complaint issued on June 16, 1978, alleging that Respondents have violated Section 8(a)(3) and (1) of the Act by making pension fund contributions to the Fund on behalf of casual employees who are members of Chauffeurs, Teamsters and Helpers, Local Union No. 118, while refusing to make such payments on behalf of casual employees who are not members of Local 118. In their answer, Respondents deny the commission of any unfair labor practices.

A hearing was held before me in Rochester, New York, on September 28 and 29, 1978. At the conclusion of the General Counsel's case, the General Counsel was permitted to withdraw the complaint insofar as it relates to Boulter Carting Co., Inc., Clancy Carting & Storage Co., Inc., George M. Clancy Carting Co., Inc., Global Van and Storage, Inc., Gottry Corp., Michael J. Ryan d/b/a Ryan Carting Co., and Vogel Van & Storage of Rochester, Inc., leaving to be decided the allegations as to B. G. Costich & Sons, Inc., herein called Costich, East End Moving & Storage, Inc., here called East End, Wm. J. Renner Carting Co., Inc., herein called Renner, and Service Storage, Inc., herein called Service. At the conclusion of the hearing, the remaining Respondents moved for dismissal of the complaint as to them and ruling was reserved. The General Counsel and Respondents have filed briefs.

Upon the entire record in this case, including my observation of the witnesses and their demeanor, I make the following:

### FINDINGS AND CONCLUSIONS

#### I. THE BUSINESS OF RESPONDENT

Respondents Costich, East End, Renner, and Service are engaged in the moving and storage of household goods and related services in Rochester, New York. Annually each derives gross revenues in excess of \$50,000 from its moving and storage operations performed pursuant to contracts with or arrangements with and/or as agents for various interstate common carriers. I find that Respondents are employers engaged in commerce within the meaning of the Act and that it will effectuate the policies of the Act to assert jurisdiction herein.

#### II. THE LABOR ORGANIZATION INVOLVED

Local 118 is a labor organization within the meaning of the Act.

## III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

## 1. The agreements between the parties

Respondents are members of Rochester Truckmen's and Warehousemen's Association, herein called the Association, and bargain jointly through the association with Local 118. They are parties to a collective-bargaining agreement with Local 118 effective from April 16, 1977, to April 15, 1980.

Article 1 provides that the agreement covers "all truck drivers, helpers, dockmen, warehousemen, checkers, power-lift operators, hostlers, riggers, rigger helpers, packers of china and furniture, heavy hauling and freight, and such other employees as may be presently or hereafter represented by the Union." It provides further that employees covered by the agreement shall include all employees used in dockwork checking, stacking, loading, unloading, handling, shipping, receiving, assembling, and allied work.

Article 2, Section 1 of that agreement provides that the employer recognize Local 118 "as the sole and exclusive representative for all employees in the classification of work covered by this Agreement for the purposes of collective bargaining as provided by the National Labor Relations Act."

Article 2, Section 2, entitled "Probationary Employees," provides for a 30-day probationary period for new employees after which they are to be placed on the regular seniority list, but "This does not apply to employees who are hired as replacements for employees who are on vacation or are absent from work." It also provides as follows as to casual employees:

In case of discipline within the thirty (30) day period the Employer shall notify the Local Union in writing. Casual employees shall not come under this provision.

Casual employee is one hired to cover jobs caused by vacations, sickness, absenteeism and leaves of absence and cannot work more than five (5) months or one hundred (100) work days without acquiring seniority.

Casual employees of thirty (30) work days or more shall be granted the first regular job openings and no junior casual employee can be employed unless senior casual is also employed or has earned his full day or full week. Senior casual employees shall be granted regular job before hiring any junior casual employees as regular employees.

Any casual employee whose work is fifty per cent (50%) or more due to influx of business for thirty (30) days or more automatically becomes a regular employee after thirty (30) days.

Regular employee is one hired to fill job designated by Employer for a period of thirty (30) consecutive work days, or any employee who has an earned seniority as specified elsewhere herein.

Regular employees on laid off status must be recalled to work in seniority order before any casual employees and casual employees of thirty (30) work days or more shall hold casual seniority and shall be laid off and rehired according to their casual seniority.

Article 23 of the agreement, entitled "Pension and Retirement Fund," provides that the employer agrees to contribute to the fund for "any and all of his employees covered by this Agreement" in specified amounts. It provides further that the fund shall be open to participation by any group of members belonging to a participating local and "any or all other employees of a participating Employer not members of the Union." It provides further that it is understood that the contributions to the fund provided therein "are in the nature of compensation to the employee for the purpose of inducing employment and continued employment in the industry and for the purpose of providing benefits for himself and his dependents however intangible such benefits may be to the individual employee at any given time."

In administering the pension fund, participating employers are usually required to sign a form stipulation providing, among other things: "1. The employer agrees to contribute for any and all of his regular full-time and any and all other employees covered by this Agreement" to the fund.

It provides further:

7. The Pension Fund shall be open to participation by any group of members belonging to a participating Local Union and the employer may contribute to the New York State Teamsters Conference Pension & Retirement Fund for employees working outside the jurisdiction of the Collective Bargaining Agreement in the amounts indicated above. However, if these employees are included, the employer agrees to make contributions on *all employees* in this category subject to the same conditions and on the same basis as is provided in this stipulation, and the employer also agrees to continue to make contributions on *all of these employees* for as long as there shall be a Collective Bargaining Agreement or Agreements between the employer and the Union, subject to any and all rules and regulations of decisions covering this group that are issued by the Board of Trustees.

8. The employer agrees that should he not make contributions on 100% of all his non-union employees as required herein, the New York State Teamsters Conference Pension & Retirement Fund will not pay nor be liable or obligated to pay any Pension & Retirement or other benefits to all his non-union employees whatsoever, whether or not contributions were made on such individuals, in which event the employer shall pay to any or all such non-union employees any and all Pension & Retirement or other benefits that such employee or employees may have been entitled to or are later entitled to until such time that the Pension Board of Trustees of the New York State Teamsters Conference Pension & Retirement Fund once again extends coverage to this group and only under terms decided solely by the Board of Trustees of the New York State Teamsters Conference Pension & Retirement Fund.

Under the plan administered and supported by the fund, in order to be eligible to receive retirement benefits a par-

ticipant must accumulate at least 15 years of credited service.<sup>1</sup>

## 2. The declaratory judgment

In January 1978, members of the association, including Respondents, commenced a civil action in the Supreme Court of New York, seeking among other things a declaratory judgment that the employer members of the association are not required by the collective-bargaining agreement to make contributions to the fund on behalf of nonunion employees.<sup>2</sup>

On August 2, 1978, Justice Robert H. Wagner issued a declaratory judgment in favor of the association, holding that its employer members were obligated under the collective-bargaining agreement to make contributions to the fund "only on behalf of employees who are members of Local Union No. 118." Although the accompanying decision of the court contains some indication that the court was under the impression that all casual employees were not members of Local 118 and were excluded from coverage by the contract, it concluded that the intent of the parties was to establish a closed shop and that for pension purposes only union employees doing bargaining unit work were covered by the contract.

A notice of appeal from the declaratory judgment has been filed, and the appeal was pending at the time of the hearing.

## 3. The practice with respect to contributions to the fund on behalf of casual employees and their employment

During the period from October 19, 1977, 6 months before the charges in this case were filed, until the date of the hearing, Respondent Costich employed 27 casual employees, of whom only one was a member of Local 118. During the same period Respondent East End employed 39 casual employees, of whom 7 were members of Local 118; Respondent Renner employed 15 casual employees, of whom one was a member of Local 118; and Respondent Service employed 37 casual employees, of whom 8 were members of Local 118. During this period each of these Respondents made pension contributions to the fund on behalf of the casuals who were members of Local 118, but not on behalf of the remaining casuals who were not members of Local 118.

Casual employees are hired either through the New York State Department of Labor or from lists of prospects maintained by Respondents. Casuals work as drivers, helpers, or warehousemen, as needed, and never perform work other than that performed by regular bargaining unit employees. Because they often lack experience, they usually require more supervision than regular employees. They receive the same hourly wage as regular employees receive, but do not

receive fringe benefits other than the contributions to the fund made on behalf of union member casuals. One witness testified that Boulter made such contributions on behalf of its union casuals because the union casuals were more experienced than the nonmember casuals.

As a rule, Respondents do not tell nonmember casuals that they have made contributions to the pension fund on behalf of union member casuals, but once a month they are required by the terms of the stipulation with the fund to post in conspicuous places copies of the remittance form to the fund listing each employee on whose behalf contributions have been made and the amounts of the contributions.<sup>3</sup>

## B. Concluding Findings

There is no dispute that casual employees are employees within the meaning of the Act who are protected by Section 8(a)(3) of the Act against discrimination which encourages or discourages union membership. However, there are issues raised as to the inclusion of the casual employees in the contractual unit and as to whether the disparate treatment of nonmember casuals is discrimination which encourages union membership.

Initially, the General Counsel contends that all casual employees are part of the contractual bargaining unit, while Respondents contend that they are not. Respondents contend that its position is consistent with the decision of the court in the declaratory judgment action. However, while one portion of the decision appears to state that all casuals are excluded from the contractual unit, it reaches the conclusion that the contract covers all union members, including casuals,<sup>4</sup> but excludes all nonmember casuals. It thus appears that in this proceeding neither the General Counsel nor Respondents support the position taken by the court. While the state court had jurisdiction to construe and enforce the collective-bargaining agreement,<sup>5</sup> the Board is not bound by the decision of the state court.<sup>6</sup> Here, to the extent that the state court found that the contract established a closed shop and covered casual employees who were members of Local 118, while excluding casual employees who were not, the decision establishes a members only contractual unit which the Board would not find appropriate.<sup>7</sup> Moreover, the construction of the agreement as establishing a closed shop places it in conflict with the provisions of Section 8(a)(3) of the Act. In these circumstances, it is appropriate to interpret the agreement independently of the decision in the state court.<sup>8</sup>

<sup>3</sup> One of the Respondents, Costich, stopped posting the forms when the current collective-bargaining agreement became effective because it did not sign a new stipulation with the fund. In its case, each month the steward inspects the remittance form and verifies that the payments have been made.

<sup>4</sup> From their conduct it is clear that Respondents so construed the decision and order and continued their practice with respect to contributions to the fund.

<sup>5</sup> *Charles Dowd Box Co., Inc. v. Courtney, et al.* 368 U.S. 502 (1962); *Smith v. Evening News Association*, 371 U.S. 195 (1962).

<sup>6</sup> *Combustion Engineering Company, Inc.*, 86 NLRB 1264, 1266-67 (1949); cf. *N.L.R.B. v. Walter E. Heyman, d/b/a Stanwood Thriftmart*, 541 F.2d 796 (9th Cir. 1976).

<sup>7</sup> *Manufacturing Woodworkers Association of Greater New York, Inc.*, 194 NLRB 1122, 1123 (1972); *Kansas Power & Light Company*, 64 NLRB 915 (1945).

<sup>8</sup> Cf. *Carey v. Westinghouse Electric Corp.*, 375 U.S. 261, 272 (1964).

<sup>1</sup> Death and disability benefits may accrue after 1 year of participation. The rate of accrual of credits is geared to the contractual contribution rate per hour, and credits can accrue in amounts as little as 1/10th of a year based on the total contribution made in a participant's behalf in the course of a fiscal year.

<sup>2</sup> The collective-bargaining agreement contains a union-security clause. Insofar as appears, the only employees referred to as nonunion employees were casual employees who were not members of Local 118.

Contrary to the court decision, it is clear from the face of the agreement that it establishes a lawful union shop, rather than a closed shop, and that nonmembers of Local 118 are covered by its terms, even though they may be required to become members of Local 118 after finishing grace or probationary periods.

Furthermore, notwithstanding testimony of several witnesses that they never negotiated with Local 118 on behalf of casual employees, inclusion of provisions in the agreement which have appeared in predecessor agreements for many years shows that the parties have bargained over terms of employment of casuals and have regulated employment of casuals by their agreements. Thus, the agreement specifically provides that it covers all employees performing the work described by its terms. While it denies casual employees seniority after completion of a 30-day probationary period and exempts casuals from a requirement of notification to Local 118 of disciplinary actions, it provides for casual seniority and gives senior casual employees preferential hiring rights both for regular job openings and casual employment. Although some of the provisions in the agreement pertaining to casuals may be viewed as intended to protect the jobs of regular employees against erosion through abuse of the right to hire casual employees, the preferential hiring rights given senior casuals are of no benefit to regular employees and can only be viewed as regulation of the terms and conditions of employment of the casuals.<sup>9</sup>

In these circumstances, I find that the agreement was intended to cover all casual employees, who, as has been shown, perform the same work as regular employees. As there is no evidence to show that inclusion in the contract unit of the employees termed casual by the agreement in this case conflicts with any policy of the Board,<sup>10</sup> I find that the parties have established by a long bargaining history units which include casual employees with regular employees performing the same work.

I find further that the Respondents' payment of pension contributions to the fund for casuals who were members of Local 118 at times when it did not make such payments for nonmember casuals constituted discrimination in regard to terms or conditions of employment which encourages union membership. Respondents contend that there were in fact no benefits lost by nonmember casuals because they would never receive pension or retirement benefits under the pension plan as they would never accumulate 15 credit years. Respondents' contention, however, is premised on the assumption that nonmember casuals will never become regular employees, an assumption that cannot be made in the light of the provisions of the agreement which contemplate that casual employees may become regular employees and set forth the conditions under which the change of status is to occur. Many employees, including nonmember casuals, member casuals, and regular employees may never accu-

mulate 15 credit years under the terms of the plan, but their identity cannot be determined in the early years of their employment, and the agreement contemplates that not every employee on whose behalf contributions are made will ultimately receive a pension from the fund. Thus it provides that contributions to the fund are compensation for the purpose of providing benefits "however intangible such benefits may be to the individual employee at any given time." But to the nonmember casual who ultimately becomes a regular employee, Respondents' failure to make payments to the fund while he is not a member may result in his being required ultimately to work longer than a member casual to become eligible for a pension. I find that the failure to pay pension contributions for nonmember casuals is discrimination with respect to terms of employment.

Respondents' also contend that any discrimination is *de minimis* because it results in at most loss of one-tenth of a credit for failure to contribute on behalf of an employee for the first 30 days of his employment. However, the requirement that an employee work an additional 30 days to be eligible for retirement is hardly trivial and may bear serious consequences for an employee or his dependents in future years. There is no indication that Respondents intend to change their practice in the future, and the number of casuals affected by the practice is constantly expanding. I find that the discrimination is not *de minimis*.

Respondents contend further that there can be no finding that discrimination in this case encouraged union membership because there is no evidence that nonmember casuals were aware that pension contributions were made on behalf of member casuals. However, it is not necessary to show that the specific discriminatees knew of Respondents' practice. Three of the Respondents posted their monthly remittance reports of contributions to the Fund, and the fourth showed its report to the shop steward. The purpose of this disclosure was to insure that all contributions required by the agreement were made. In these circumstances, it is reasonable to infer that employees were aware of Respondents' discriminatory practice.

Finally, Respondents contend that there is no evidence of discriminatory intent and that no such intent can be found where Respondents' conduct was confirmed by the declaratory judgment. However, "specific proof of intent is unnecessary where employer conduct inherently encourages or discourages union membership."<sup>11</sup> The declaratory judgment came long after Respondents adopted the practice of making pension contributions for casuals based on their union membership, and clearly was not the cause of it.<sup>12</sup>

<sup>11</sup> *Radio Officers' Union of the Commercial Telegraphers Union, AFL [A.H. Bull Steamship Company] v. N.L.R.B.*, 347 U.S. 17, 45 (1954).

<sup>12</sup> Respondent Renner contends that the evidence shows that it made contributions to the pension fund on behalf of member casuals only after being advised of Justice Wagner's decision and order and that it should not be found in violation of the Act for following that order. Alvin Renner, president of Respondent Renner, testified that during the period beginning October 19, 1977, to the date of the hearing, Respondent Renner employed only one member casual who was hired on August 16, 1978, and that the contribution on his behalf was made after Renner was advised of the decision of Justice Wagner and pursuant thereto. Although Renner also testified that to the best of his knowledge Respondent Renner had never previously employed a member casual, in an affidavit given the General Counsel on May 10, 1978, Renner stated that since 1955 Renner had made contributions to the pension fund on behalf of member casuals. In the light of this statement

<sup>9</sup> In their brief, in connection with their contention that any discrimination which may occur is *de minimis*, Respondents appear to concede that casuals are required to become members of the Union after 30 days of casual employment, which would be inconsistent with a conclusion that the agreement does not cover casual employees.

<sup>10</sup> See *All-Work, Inc.*, 193 NLRB 918 (1971); *Ray Patin Productions, Inc.*, 121 NLRB 1172 (1958).

Moreover, the State court decision did not purport to determine the lawfulness of the practice under the Act and gave no cause for Respondents to believe that the agreement as construed did not violate Section 8(a)(3). I find that Respondents' conduct in this case inherently encouraged union membership and violated Section 8(a)(3) of the Act.<sup>13</sup>

While I have found above that casual employees were included in the contractual bargaining unit, even if the casuals had been found to be excluded from the contractual unit, the conclusion would nonetheless follow that Respondents' practice with respect to pension fund contributions for casuals was discriminatory.<sup>14</sup> While Respondents contend that the reasoning of *Radio Officers' Union v. N.L.R.B.*, *supra*, applies only where the two groups of employees who have been treated unequally are represented by a union in the same bargaining unit, the cases relied on by Respondents all involve situations in which a group of represented employees has been treated differently from a group of unrepresented employees.<sup>15</sup> They do not stand for the proposition that an employer may grant union members different benefits from those provided nonmembers where none of them are represented for purposes of collective bargaining and all of them perform the same work and otherwise receive the same benefits. In the circumstances here present the differing treatment is based solely on union membership and violates the Act for the same reasons as set forth above. I conclude that Respondents have violated Section 8(a)(3) and (1) of the Act by making pension contributions to the fund on behalf of only those of its casual employees who were members of Local 118.

#### IV. THE REMEDY

Having found that Respondents engaged in unfair labor practices, I shall recommend that they be ordered to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

As I have found that Respondents unlawfully discriminated against casual employees who were not members of Local 118 by not making pension contributions on their behalf while making such contributions on behalf of member casuals, I shall recommend that Respondents be ordered to make the nonmember casuals whole by making such contributions to the fund retroactively on their behalf for the period from October 19, 1977, the date 6 months before the charge was filed, until such time as Respondents begin to make contributions to the fund on behalf of all casual employees, to which shall be added interest to be

the conclusion is warranted that as in the case of the other Respondents Renner did not institute contributions on behalf of the member casuals because of the court decision and that it had a longstanding practice of making such contributions.

<sup>13</sup> *Prestige Bedding Company, Inc.*, 212 NLRB 690 (1974).

<sup>14</sup> It is clear that union membership cannot serve to distinguish casuals for unit purposes, and all are either included in the unit or excluded from it. Respondents have offered no facts to show that the employment regularity of member casuals differs from that of nonmember casuals. If evidence had been adduced showing that member casuals are more in the nature of regular part-time employees or have predictably regular employment while nonmember casuals work only sporadically, then a different set of conclusions might well follow.

<sup>15</sup> *Meredith Corporation*, 194 NLRB 588 (1971); *The B. F. Goodrich Company*, 195 NLRB 914 (1972); *Intermountain Equipment Company v. N.L.R.B.*, 239 F.2d 480 (9th Cir. 1956).

computed in the manner prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977).<sup>16</sup>

#### CONCLUSIONS OF LAW

1. B. G. Costich & Sons, Inc., East End Moving & Storage, Inc., Wm. J. Renner Carting Co., Inc., and Service Storage, Inc., are employers engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. Chauffeurs, Teamsters and Helpers, Local Union No. 118, is a labor organization within the meaning of Section 2(5) of the Act.

3. By discriminating against casual employees who are not members of Local 118 in regard to payment of pension contributions to the New York State Teamsters Conference Pension and Retirement Fund, Respondents have engaged in unfair labor practices affecting commerce within the meaning of Sections 8(a)(3) and (1) and 2(6) and (7) of the Act.

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

#### ORDER<sup>17</sup>

The Respondents, B. G. Costich & Sons, Inc., East End Moving & Storage, Inc., Wm. J. Renner Carting Co., Inc., and Service Storage, Inc., Rochester, New York, their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discriminating against casual employees with regard to the payment of pension fund contributions because they are not members of Chauffeurs, Teamsters and Helpers, Local Union No. 118.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their right to engage in or refrain from engaging in any or all the activities specified in Section 7 of the Act.

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

(a) Make their casual employees whole for any loss of benefits they may have suffered as a result of the discrimination against them by making contributions to the New York State Teamsters Conference Pension and Retirement Fund in the manner set forth in the section of this Decision entitled "The Remedy."

<sup>16</sup> See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962). The General Counsel asks that interest be ordered at the rate of 9 percent rather than at the rate prescribed in *Florida Steel Corporation, supra*, on the ground that financial events since the *Florida Steel* Decision shows that its formula is not adequate to make employees whole. While I believe that there is force to the General Counsel's argument that the Internal Revenue Service's adjusted prime rate has not reflected current market interest rates since *Florida Steel* was decided, I am constrained to follow that Decision until modified by the Board.

<sup>17</sup> In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records relevant and necessary to a determination of compliance with paragraph (a) above.

(c) Post at their Rochester, New York, places of business copies of the attached notice marked "Appendix."<sup>18</sup> Copies of said notice, on forms provided by the Regional Director for Region 3, after being duly signed by Respondents' representatives, shall be posted by them immediately upon receipt thereof and be maintained by them for 60 consecutive days thereafter, in conspicuous places, including all places where notices are customarily posted. Reasonable steps shall be taken by Respondents to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 3, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

<sup>18</sup> In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

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

WE WILL NOT discriminate against our casual employees with regard to payment of pension fund contributions because they are not members of Chauffeurs, Teamsters and Helpers, Local Union No. 118.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the right to engage in or to refrain from engaging in any or all the activities specified in Section 7 of the Act.

WE WILL make our casual employees whole for any loss of benefits they may have suffered as a result of the discrimination against them by making all contributions on their behalf to the New York State Teamsters Conference Pension and Retirement Fund which we have failed to make since October 19, 1977.

B. G. CUSH & SONS, INC.; EAST END MOVING & STORAGE, INC.; WM. J. RENNER CARTING CO., INC.; AND SERVICE STORAGE, INC.