

**Joint Council of Teamsters No. 42, and its affiliated Local Unions, Sales Drivers & Dairy Employees, Local 166; General Truck Drivers, Local 235; General Truck Drivers, Chauffeurs & Helpers, Local 692; Chauffeurs, Teamsters and Helpers, Local 186; Building Material and Dump Truck Drivers, Local 420; General Teamsters, Chauffeurs, Warehousemen & Helpers, Local 982; Truckdrivers, Warehousemen and Helpers, Local 898; Teamsters & Warehousemen, Local 381; all affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; Teamsters, Chauffeurs, Warehousemen and Helpers, Local 87, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Associated General Contractors of California, Inc.; Building Industry Association of California, Inc.; Engineering Contractors Association, Inc.; Southern California Contractors Association and California Dump Truck Owners Association and Associated Independent Owner-Operators, Inc.**

**Building Material and Dump Truck Drivers, Local 420, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Associated Independent Owner-Operators, Inc. and Irvine-Santa Fe Company, Party to the Contract**

**Building Material and Dump Truck Drivers, Local 420, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Irvine-Santa Fe Company) and Associated Independent Owner-Operators, Inc. Cases 21-CE-196, 21-CE-199, 21-CE-200, and 21-CC-2004**

March 31, 1980

#### DECISION AND ORDER

By Chairman Fanning and Members Penello and Truesdale

Upon appropriate charges,<sup>1</sup> the General Counsel of the National Labor Relations Board, by the Re-

<sup>1</sup> The original charge in Case 21-CE-196 was filed on December 19, 1977, by California Dump Truck Owners Association (herein called CDTOA) against Joint Council of Teamsters No. 42, and its affiliated Local Unions, Sales Drivers & Dairy Employees, Local 166; General Truck Drivers, Local 235; General Truck Drivers, Chauffeurs & Helpers, Local 692; Chauffeurs, Teamsters and Helpers, Local 186; Building Material and Dump Truck Drivers, Local 420; General Teamsters, Chauffeurs, Warehousemen & Helpers, Local 982; Truckdrivers, Warehousemen and Helpers, Local 898; Teamsters & Warehousemen, Local 381; all affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; Teamsters, Chauffeurs, Warehousemen and Helpers, Local 87, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (herein collectively called Respondent Unions); and against Respondent Associated General Contractors of California, Inc.; Building Industry Association of California, Inc.; Engineering Contractors Association, Inc.; and Southern California Contractors Association (herein collectively called Respondent Association). CDTOA filed a first amended charge in Case 21-CE-196 on December 23, 1977. The charge in Case 21-CE-199 was filed on January 3, 1978, by Associated Independent Owner-Operators, Inc. (herein called

Regional Director for Region 21, issued an order consolidating cases, a consolidated complaint, and a notice of hearing on January 23, 1979. Copies of the charges, complaint, and notice of hearing were duly served on Respondents.

The complaint alleged that Respondent Unions and Respondent Associations had violated Section 8(e) of the Act by entering into agreements whereby the employer-members of Respondent Associations have ceased or refrained, or agreed to cease or refrain, from doing business with other persons. The complaint alleged further that Respondent Local 420 had violated Section 8(b)(4)(ii)(A) of the Act. Respondents filed answers to the complaint and thereby denied the commission of any unfair labor practices.

On June 23, 1979, the parties in the consolidated cases executed a stipulation of facts and a motion to transfer proceedings to the Board in which the parties waived a hearing before an administrative law judge and agreed to submit the cases directly to the Board for findings of fact, conclusions of law, and a Decision and Order, based on a record consisting of the stipulation of facts and extensive exhibits attached thereto. On September 13, 1979, the Board approved the stipulation of the parties and transferred the proceedings to the Board. Thereafter, the General Counsel, CDTOA, Respondent Unions, Respondent Associations, and Respondent General Truck Drivers, Local 235, filed briefs with the Board.

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 entire record stipulated by the parties<sup>2</sup> and the briefs filed by the parties, and hereby makes the following findings and conclusions:

#### FINDINGS OF FACT

##### I. THE BUSINESS OF THE EMPLOYERS

Respondent Association, comprised of various employers in the building and construction industry in southern California, engage in collective bargaining for and negotiate collective-bargaining agreements on behalf of their respective employer-mem-

AIOO) against the Respondent Unions and the Respondent Associations. The charges in Cases 21-CE-200 and 21-CC-2004, involving the employer Irvine-Santa Fe Company (herein called Irvine), were filed on January 5, 1978, by AIOO against one of the Respondent Unions, Building Material and Dump Truck Drivers, Local 420 (herein called Respondent Local 420).

<sup>2</sup> On January 26, 1979, the United States District Court for the Central District of California issued an injunction against Respondents pursuant to a petition filed by the General Counsel under Sec. 10(l) of the Act. Copies of the pleadings, order, and all relevant documents filed by the parties have been attached as an exhibit to the stipulation of facts.

bers with various labor organizations, including Respondent Unions. In the course and conduct of business operations, Respondent Associations, in the aggregate, annually purchase and receive goods, materials, and supplies valued in excess of \$50,000 directly from suppliers outside the State of California.

Irvine is a general contractor in the building and construction industry in southern California. At all times material herein, Irvine has been engaged in a construction project in the city of Alhambra, California (herein called the Alhambra project), where it has subcontracted certain work to various subcontractors, including Pacific Railroad Constructors. In connection with its work as a subcontractor of Irvine on the Alhambra project, Pacific Railroad Constructors has purchased and received materials and supplies valued in excess of \$50,000 directly from suppliers located outside the State of California.

The parties stipulated, and we find, that the employer-members of the Respondent Associations, including Irvine, are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

## II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated, and we find, that each of Respondent Unions is, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.<sup>3</sup>

## III. THE ALLEGED UNFAIR LABOR PRACTICES

### A. The Issues

1. Do certain sections pertaining to owner-operators in article XIII of Respondents' current collective-bargaining agreement violate the general prohibition in Section 8(e) of the Act?

(a) Are the owner-operators of for-hire dump trucks independent contractors or employees within the meaning of the Act?

(b) If the owner-operators are independent contractors, are the sections of article XIII which apply to them secondary in nature?

2. Is article XIII limited to construction jobsite work in a way which would entitle it, even if secondary, to protection under the first proviso to Section 8(e) of the Act?

3. Has Respondent Local 420 violated Section 8(b)(4)(ii)(A) of the Act by engaging in threatening or coercive conduct with an object of forcing self-employed persons to join a labor organization?

<sup>3</sup> The stipulation of facts indicated that Respondent General Truck Drivers, Local 235, is now merged with and subsumed by Sales Drivers, Food Processors, Warehousemen & Helpers Local 952.

### B. The Stipulated Facts

On or about July 1, 1977, Respondent Associations, on behalf of their employer-members, including Irvine, entered into a Master Labor Agreement (herein called the MLA) with Respondent Unions. The MLA is effective from July 1, 1977, until June 15, 1980, and covers all of the southern California area except San Diego County.

The following sections of MLA article XIII, entitled "Owner-Operators," are at issue in this proceeding:

1302. The Owner-Operator shall be carried on the payroll of the Contractor as an employee and as such, all the terms and conditions of this Master Agreement and any amendment or amendments thereto, shall be applicable to him except as provided elsewhere in this Article and except that in the event that it is determined that the services of an Owner-Operator were terminated without just cause, any payment for time lost shall be limited to the wage and fringe benefit payments provided in this Agreement, and shall not in any event include any payment with respect to the equipment or the loss of use thereof; and except, further, that Owner-Operator shall not be subject to the provisions of Paragraph 201, subparagraph 201.1 through 201.7.1 inclusive.

#### 1303. *Hiring:*

The Contractor or subcontractor shall make every reasonable effort to refer to the Local Union with area jurisdiction over the work all Owner-Operators or drivers of equipment for clearance before work begins; and, in any event, the Union shall be notified of the name and Social Security number of the Owner-Operator within forty-eight (48) hours after the Owner-Operator begins work on that job.

\* \* \* \* \*

#### 1306. *Union Membership:*

(a) All employees who are presently members of a Local Union hereunder shall, as a condition of continued employment, maintain such membership in good standing.

(b) As a condition of continued employment, all employees covered by this Agreement shall on the 8th day after commencing employment under this Agreement, or the date of this Agreement, which ever is later, become and remain members of the Local Union in good standing.

#### 1307. *Terminations:*

The Contractor or subcontractor will terminate the employment of any employee covered

by this Agreement after notice by the Union, or the Local Union with jurisdiction in the event such employees shall fail to comply with Section 1306 of this Article; provided that membership in the Union, or the Local Union with jurisdiction was available to such employee on the same terms and conditions generally applicable to other members, and the membership was not denied or terminated for reasons other than the failure of the employee to render the periodic dues, and the initiation fees uniformly required as a condition of acquiring and retaining membership. Such employee shall not be re-employed by the Contractor or subcontractor until the employee has paid or tendered to the Local Union with jurisdiction, any such initiation fee, re-initiation fee or dues accrued to date of termination.

\* \* \* \* \*

1312. The provisions of this Article have been negotiated and agreed upon by and between the parties for the objects and purposes expressed in Paragraph 1313 of the Article. The parties have not undertaken to negotiate for the employees any profit whatsoever for the leasing and rental of the equipment they drive. On the contrary, compensation for the equipment shall be set by Agreement between the Contractor and the Owner-Operator at a level which will not circumvent or defeat the payment of wages, fringes and conditions of any employee covered by this Master Labor Agreement and which will assure compensation to the Owner-Operator of not less than the actual cost of operation of such equipment.

1313. It is further mutually understood and agreed that the intent of this Article is to assure the payment of wages, fringes, and conditions as provided in the Master Agreement and to prohibit the making and carrying out of any plan, scheme or device to circumvent or defeat the payment of wages, fringes and conditions as provided in this Master Agreement. Any such agreement, contract or arrangement presently in existence shall be abrogated upon the execution of this Agreement.

1314. It is further agreed that the Contractor will not devise or put into operation any scheme, whether herein enumerated or not to defect the terms of this Article of this Master Agreement, nor shall any Owner-Operator's arrangement with a Contractor be terminated for the purpose of depriving any other employee of employment. In the event that the Contractor has available equipment, the

Owner-Operator may be assigned to operate such equipment on the job during the period of the repair of the Owner-Operator's equipment and not to exceed that work shift and so long as no employee is laid off of provide work for such equipment.

\* \* \* \* \*

1317. It is understood by the parties that this Agreement provides for an Employer-Employee relationship between the Contractor or subcontractor and each Owner-Operator of equipment used hereunder.

1318. It is recognized that many Owner-Operators have executed "short-form" agreements with the Teamsters Union which incorporate by reference provisions of this Master Labor Agreement. The provisions of such "short-form" agreement shall be applicable to said Owner-Operators only in their capacity as employers, i.e., when such Owner-Operators are employing one or more employees. When Owner-Operators are working on a job covered by this Master Labor Agreement their employment shall be covered by the Owner-Operator clause of this Agreement.

1319. If a Contractor through the grievance procedure is found violating any portion of this Article, the Joint Adjusting Board or the Impartial Chairman, as described in Article V, shall require the Contractor to immediately pay compensatory damages for each Owner-Operator with respect to whom the Contractor is in violation in an amount equal to the sum of Health and Welfare and Pension contributions, under the terms of this Agreement, for eight hours for each day or portion thereof the violation occurred such damages to be made payable to the Construction Teamsters Security Fund by check promptly mailed to the respective Local Union. The Joint Adjustment Board or Impartial Chairman may also grant such further relief as may be deemed appropriate.

\* \* \* \* \*

1321. Notwithstanding any other provision of this Agreement, this Article XIII shall be applicable only to Owner-Operators performing (or who, upon their employment, will be performing) work to be done at the site of construction, alteration, painting or repair of a building, structure, or other construction work.

1321.1 The term "work to be done at the site of the construction, alteration, painting or repair of a building, structure, or other construction work" as used in the Paragraph 1321 shall include all driving to, from and in connection with hauling materials to or from any source or disposal site on the one hand, and a geographical site of construction, on the other hand, in accordance with the following:

\* \* \* \* \*

1321.1.2 Hauling of materials between a primary location and a secondary location not excluded by Paragraph 1321.1.1 above<sup>4</sup> that is located five (5) or less miles by the closest feasible means of access from the nearest boundary of the primary location shall be work to be done at the site, effective August 1, 1977.

1321.1.1 Delivery of materials to or from commercial suppliers or public dumps off the primary location shall always be exempt from the provisions of Article XIII. Any other general exclusions from the construction industry proviso, previously defined by the NLRB or the courts, shall continue to be applicable in interpreting Article XIII.

1321.1.3 Hauling of material between a primary location and a secondary location located in excess of five (5) miles by the closest feasible means of access from the nearest boundary of the primary location shall not be work to be done at the site, effective August 1, 1977.

1321.2 Effective January 1, 1978, the mileage outlined in Paragraphs 1321.1.2 and 1321.1.3 will be increased to six (6). Effective July 1, 1978, the mileage outlined in paragraphs 1321.1.2 and 1321.1.3 will be increased to seven (7). Effective January 1, 1979, the mileage outlined in paragraphs 1321.1.2 and 1321.1.3 will be increased to eight (8). Effective July 1, 1979, the mileage outlined in paragraphs 1321.1.2 and 1321.1.3 will be increased to nine (9). Effective January 1, 1980, the mileage outlined in paragraphs 1321.1.2 and 1321.1.3 will be increased to ten (10).

\* \* \* \* \*

1321.5 It is expressly understood that if a haul is covered by the terms of this Section, all time spent on any public road shall be covered as well as all other time spent in connection with such haul.

<sup>4</sup> For unknown reasons, the complaint, stipulation of facts, and briefs fail to set forth the terms of MLA paragraph 1321.1.1, which states:

1321.6 The Owner-Operator shall become a bona-fide employee as defined in Paragraphs 1301 and 1302 upon reporting for work on the first day on that job, such employee status to be effective from the first hour of work performed.

The parties agree that the foregoing provisions of the MLA apply to the owner-operators of dump truck equipment who perform certain hauling services within the geographic area covered by the MLA for the construction contractors who are employer-members of Respondent Associations.<sup>5</sup> Although contractors have in some instances used their own driver-employees in company-owned trucks to haul material to and from construction sites, they usually must engage dump truck owner-operators to perform such work. On occasion, a contractor may deal directly with and be billed directly by an owner-operator for a particular job, but the prevalent practice for the procurement of an owner-operator's services involves a tripartite relationship among the contractor, owner-operator, and a trucking broker known as an overlying carrier. Under a typical arrangement, a contractor contracts with an overlying carrier for the provision of needed transportation services. The overlying carrier then performs such services either by using his own equipment, vehicles, and employee-drivers, or by using owner-operators with whom the overlying carrier has executed subhaul agreements.

An overlying carrier commonly has subhaul agreements with numerous owner-operators. In turn, an individual owner-operator usually has subhaul agreements with several overlying carriers. A construction contractor, however, ordinarily has no direct agreement with an owner-operator and no control over an overlying carrier's selection of the owner-operator who will work for the contractor. Although bound by subhaul agreement, an owner-operator is free to refuse an overlying carrier's job referral, to leave a job prior to its completion, or to substitute another owner-operator in his stead. Pursuant to one or more subhaul agreements, an owner-operator may work on several different jobsites for several different contractors within a week or even a single day.

Whenever an owner-operator's vehicle travels in excess of 50 feet along a public highway, the ac-

<sup>5</sup> These and similarly occupied owner-operators elsewhere in California have been the subject of considerable litigation, hereinafter discussed, before the Board and the courts of appeals. In reference to prior litigation, the parties herein agree that the evidence adduced at a Board representation case hearing in Case 21-RD-1008 remains unchanged and applicable to the determination of the owner-operators' present employment status. The evidence in this proceeding accordingly includes both an extensive statement of stipulated facts and the record from Case 21-RD-1008, which is attached as an exhibit to the stipulation.

tivities of the owner-operator and overlying carrier are regulated by the California Public Utilities Commission (PUC), which establishes minimum tariffs designed to reflect the costs of both labor and equipment use for any job. The requirements of a particular job, however, may result in trilateral negotiations for the payment of a rate higher than the PUC minimum. When an overlying carrier refers an owner-operator to a contractor for a job, the overlying carrier bills and collects sums due from the contractors, deducts 5 percent as a brokerage fee, and transmits the remainder to the owner-operator. Whether the mode of payment is direct from contractor to owner-operator or through an overlying carrier, an owner-operator keeps his own record for billing purposes of time spent on the job and submits a freight bill based on that record to the appropriate parties. (Some contractors use an employee designated as a "load checker" to maintain a separate record of an owner-operator's hours for purposes of verifying the freight bill's accuracy.) An owner-operator is generally paid in gross, with no deductions for taxes or benefit payments, and only for hours when his equipment is in actual use. In contrast, employee-drivers of a contractor receive hourly based net wages for the duration of a fixed workday, even if their company-owned vehicles are not operating at all times.

The dump truck equipment used by an owner-operator in the performance of services for construction contractors varies, but may include a tractor, a semitrailer unit, a truck and transfer trailer, a tractor with a bottom dump trailer, a semibottom dump trailer, or a truck and pup trailer, or service equipment may be purchased or leased. An owner-operator is responsible for all costs of owning, operating, maintaining, or repairing any equipment used. These costs include the basic expense of financing equipment purchases or leases and the additional expenses entailed by, *inter alia*, PUC permit, bonding, and liability insurance requirements, California licensing fees, Federal and state income taxes, Federal highway use taxes, and any traffic violations.

A contractor may use the services of a dump truck owner-operator for a variety of construction projects, including the construction of highways, residential or commercial structures, underground passageways, and overhead bridges. Whatever the project, owner-operators participate in the loading, hauling, and unloading of materials between two sites. In some instances, an owner-operator's activities take place entirely within the physical confines of the construction project, herein called the geo-

graphical site of construction.<sup>6</sup> In other instances, an owner-operator must haul materials along a private or public right-of-way between the geographical site of construction and a remote location.<sup>7</sup> If the latter type of haul originates at the site of construction, it typically involves hauling excess excavated materials or refuse to a remote dumping location which may be either a public dump or a site opened by the contractor specifically for the construction project, or hauling broken asphalt to a crushing facility where the material's components are separated for reuse. If the haul terminates at the geographical site of construction, it typically involves hauling material from a remote "borrow pit" opened by the contractor specifically to obtain materials needed for a construction project, or hauling materials from a remote commercial source of supply such as a rock crushing plant, asphalt supplier, sand pit, or dirt pit. In addition to the foregoing, an owner-operator may haul material such as dirt from the contractor's geographical site of construction to another geographical site of other construction, which may or may not involve the same contractor.<sup>8</sup>

Whether at the geographical site of construction or at a remote "borrow pit" established by a contractor, an employee of the contractor, usually a member of the Operating Engineers Union, operates a skip-loader or other equipment to load material into an owner-operator's dump truck. At a remote commercial source of supply, the commercial vendor's employee, who may or may not be a member of any labor organization, loads the owner-operator's truck by methods which vary according to the material involved. The method of unloading materials at any site also varies, depending upon the type of dump truck, the type of material hauled, and—at a geographical site of construction—the nature of the construction project. An owner-operator knows from experience to dump a load as closely as possible to where a bulldozer operator or grader operator, usually members of Operating Engineers, is working. During loading or unloading procedures, the owner-operator ordinarily remains in his vehicle and does not converse with any employee on the site. The owner-operator

<sup>6</sup> The stipulation of facts defines the geographical site of construction as "including contiguous lands temporarily used during the construction, upon which the final highway, road, structure, building, conduit, canal, channel, bridge or other things will be located after that construction activity is complete."

<sup>7</sup> As used in the stipulation of facts, the term "remote" applies to a location which is physically separated from the geographical site of construction by more than the width of a public road.

<sup>8</sup> Employee-drivers of a contractor also perform all of the types of hauls described. The record indicates, however, that although employee-drivers of contractors in Respondent Association operate loading equipment, pickup trucks, water trucks, and flatbed trucks, they do not usually drive the kind of dump truck equipment used by owner-operators.

is solely responsible for the operation of his truck, but he may receive general instruction from a construction project superintendent or directional signals from a contractor's employee-flagman, who is usually a member of the Laborers Union.

At any geographical site of construction or remote location, actual loading times vary in average from 1 to 7 minutes and actual unloading times average 3 minutes or less. The total amount of time spent at any location by the owner-operator may vary depending upon, *inter alia*, waiting time. A contractor utilizing an owner-operator's services is cost-motivated to insure that the owner-operator spends an absolute minimum of time per haul. In this regard, a contractor normally tries to locate a remote source of supply or dumping site as close as possible to the geographical site of construction. A contractor may also designate the route to be traveled to and from the geographical site of construction, although owner-operators are often free to choose their own route. The owner-operator ordinarily drives at approximately 30 miles per hour on public roads, more slowly on undedicated roads, so that travel time between a geographical site of construction and a remote site 5 miles away would average 25 minutes.

In reference to the relationship between the aforementioned provisions of MLA article XIII and the aforementioned activities of California dump truck owner-operators, the parties have placed into evidence and stipulated the credibility of sworn affidavits given by Gary Hope, a project superintendent for MLA signatory construction contractor Irvine, and Iendelle Kinder, a dump truck owner-operator. Hope states that during the first week of December 1977, he had a conversation with Charles Tanberg, business agent for Respondent Local 420, at Irvine's Alhambra, California, construction site. Tanberg told Hope in this conversation that the MLA required all truck-drivers on Irvine's job, including owner-operators, to join the Teamsters. Thereafter, on December 22, 1977, Hope stated that he observed Tanberg stopping trucks in the loading area at the Alhambra jobsite and talking to the drivers. Later in the morning, Hope learned that one of Irvine's foremen had permanently "signed out" some truck-drivers because they were not members of the Teamsters. After futile attempts to secure more trucks, Hope called an overlying carrier and "told him not to send any more truckers unless they were members of the Teamsters."

Kinder's affidavit corroborates Hope's statement. According to Kinder, he was working as an owner-operator driver at Irvine's Alhambra jobsite on December 22, 1977, when Tanberg asked to see

his Teamsters card. During the ensuing conversation, Tanberg indicated to Kinder that he would not be continuing his work for Irvine because he was not a union member. At the end of the day, Kinder was told by Irvine's foreman not to return on the following morning, in spite of the availability of additional work, because of the "union problem."

### C. Contentions of the Parties

The General Counsel, CDTOA, and Respondent Associations all contend that the provisions of MLA article XIII set forth in full above are proscribed by Section 8(e) of the Act. Specifically, these parties argue that article XIII applies to owner-operators who are independent contractors, is secondary in nature, and is not privileged by the construction industry proviso to Section 8(e) because it is not limited to construction jobsite work. The General Counsel further contends that Respondent Local 420 has threatened, coerced, and restrained owner-operators who are independent contractors of Irvine with an object of forcing or requiring them to join a union, in violation of Section 8(b)(4)(ii)(A) of the Act.

With respect to both the alleged 8(e) and 8(b)(4)(ii)(A) violations, Respondent Unions contend that the dump truck owner-operators at issue are employees rather than independent contractors. Respondent Unions therefore contend that article XIII and the alleged conduct of Respondent Local 420 must be considered primary and lawful in nature when applied to owner-operators *qua* employees of the employer-members of Respondent Associations. Even if the Board finds the owner-operators to be independent contractors, Respondent Unions assert that article XIII is properly limited to jobsite work and entitled to the protection of the construction industry proviso.

### D. Discussion and Conclusions

#### 1. The alleged 8(e) violation

Section 8(e) of the Act forbids entry into a collective-bargaining agreement whereby an employer agrees to refrain dealing in the product of another employer or to cease doing business with any other person.<sup>9</sup> It is well established, however, that con-

<sup>9</sup> The actual text of Sec. 8(e) provides in relevant part:

It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such an agreement shall be to such extent unenforceable and void: *Provided*, That nothing

*Continued*

tract clauses which may technically fall within the literal proscription of Section 8(e) are not unlawful if the clauses are found to have the primary objective of preserving or protecting work performed by the contracting employer's employees.<sup>10</sup> Furthermore, even clauses which are secondary in nature and within the general proscription of Section 8(e) may be lawful and protected if they satisfy the requirements for exemption under the construction industry proviso to Section 8(e).

The complaint alleges that the several cited paragraphs of article XIII in Respondent's MLA violate Section 8(e) because they require signatory employers to cease doing business with dump truck owner-operators who are independent contractors on any terms other than those applicable to unit employee-drivers under the MLA. In determining the merits of the complaint, we are faced with the threshold question whether the owner-operators actually are independent contractors, rather than employees, when working for the employer-members of Respondent Association.<sup>11</sup> If the owner-operators are employees within the meaning of the Act, then article XIII is primary in scope and the complaint must be dismissed.

As indicated in the previous section of this Decision, the Board is no stranger to proceedings involving the employment status of these owner-operators. In 1971, petitions were filed in Cases 21-RD-1008 and 20-RD-721 to decertify the Teamsters Unions as representatives of the dump truck owner-operators within the Unions' respective southern and northern California jurisdictions. After separate hearings, the Board consolidated the two representation cases for issuance of a Decision and Order finding the owner-operators to be employees.<sup>12</sup> Subsequent to hearings on additional matters, the Board issued a Supplemental Decision and Direction of Election in each of the representation proceedings.<sup>13</sup> Before the directed elections could be conducted, the Teamsters and various employer associations in the California construction industry executed new collective-bargaining agree-

ing in this subsection (e) shall apply to an agreement between a labor organization and an employer in the construction industry relating to the contracting or subcontracting of work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work . . .

<sup>10</sup> *National Woodwork Manufacturers Association v. N.L.R.B.*, 386 U.S. 612 (1967).

<sup>11</sup> Under Sec. 2(3) of the Act, the term "employee" does not include "any individual having the status of an independent contractor." General agency principles, paramount among which is the "right-to-control" test, apply to the determination of whether an individual is an employee or independent contractor. *N.L.R.B. v. United Insurance Company*, 390 U.S. 254 (1968).

<sup>12</sup> *Contractor Members of the Associated General Contractors of California, Inc.*, 201 NLRB 311 (1973).

<sup>13</sup> *Contractor Members of the Associated General Contractors of California, Inc.*, 209 NLRB 363 (1974), 209 NLRB 366 (1974).

ments for both southern and northern California. As a result, parallel unfair labor practice charges were filed with the Board alleging violations of Section 8(a)(2) and (1) of the Act and "blocking" further processing of the representation cases. The Board thereafter issued a Decision and Order adopting an administrative law judge's findings that the alleged unfair labor practices had been committed.<sup>14</sup>

Upon a petition for enforcement and a cross-petition for review, the United States Court of Appeals for the Ninth Circuit denied enforcement of the Board's Order because it found, contrary to the Board, that the owner-operators were independent contractors who were not properly part of any employee unit.<sup>15</sup> Upon remand of the unfair labor practice case from the court, the Board consolidated it with the representation cases still pending and issued a Supplemental Decision and Order finding "pursuant to law of the case" that the dump truck owner-operators were independent contractors, not employees.<sup>16</sup> Prior inconsistent Decisions were vacated and all proceedings were dismissed.

Notwithstanding the foregoing history of litigation, Respondent Unions seek *de novo* consideration of the dump truck owner-operators' status in the present case and urge the Board to find these individuals to be employees. We do not regard such a course of action as appropriate. In the prior representation case and unfair labor practice case litigation, the same parties as are involved herein, or their privies, were present and fully litigated the identical issue of employment status considered herein. Moreover, there has been no significant change in the nature of the owner-operators' work since that litigation terminated. Accordingly, under established principles of *res judicata* and collateral estoppel, the final and conclusive finding in the prior cases that the dump truck owner-operators are independent contractors is controlling in this proceeding.<sup>17</sup>

The owner-operator provisions of MLA article XIII, paragraphs 1302, 1303, 1306, 1307, 1312-19, and 1321.6, require all employer-members of Respondent Associations to cease doing business with dump truck owner-operators who do not become union members and employee-drivers subject to all

<sup>14</sup> *Associated General Contractors of California, Inc., et al.*, 220 NLRB 540 (1975).

<sup>15</sup> *Associated General Contractors of California, Inc. v. N.L.R.B.*, 564 F.2d 271 (1978).

<sup>16</sup> *Associated General Contractors of California, Inc., et al.*, 239 NLRB No. 100 (1978).

<sup>17</sup> See, e.g., *Graneto-Datsun, A Graneto Company*, 220 NLRB 399 (1975); *International Longshoremen's and Warehousemen's Union, et al. (California Cartage Company, Inc.)*, 215 NLRB 541, 542 (1974); *Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO (New York Telephone Company)*, 197 NLRB 866, 867-868 (1972).

terms of the MLA. Such provisions, applied to individuals whom we have found to be independent contractors, are secondary on their face.<sup>18</sup> They are designed to serve the general institutional interests of Respondent Unions in organization rather than any specific legitimate interests of bargaining unit employees in unit work preservation.<sup>19</sup>

The critical inquiry with respect to the applicability of the construction industry proviso to article XIII concerns whether that article covers only "work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work." All parties agree that article XIII, on its face and in practice, applies to transportation work performed by dump truck owner-operators off the geographical site of construction. The General Counsel and CDTOA contend that such coverage *per se* exceeds the jobsite limitation, as it has been defined in legislative history and Board precedent. Respondent Unions argue, however, that offsite work should be considered jobsite work within the meaning of the proviso if it involves only the transportation of materials between a contractor's geographical site of construction and a remote dumping or supply site established up to 10 miles away by the contractor for exclusive use in connection with work at the geographical site of construction. They further contend that article XIII applies only to the owner-operators' jobsite work, as so defined.<sup>20</sup>

The legislative history of Section 8(e) and its construction industry proviso is sparse in references to the precise definition of jobsite work intended by Congress. In this regard, the House Conference report stated only that:

<sup>18</sup> *Local 814, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Santini Brothers, Inc.)*, 208 NLRB 184, 198-200 (1974); *Newspaper & Periodical Drivers' & Helpers Local 921, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (San Francisco Newspaper Printing Co., Inc.)*, 204 NLRB 440 (1973); *Highway Truck Drivers and Helpers, Local 107, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; et al. (S & E McCormick, Inc.)*, 199 NLRB 531 (1972); *Milk Wagon Drivers and Creamery Workers Local Union No. 66 of Seattle, Washington and Vicinity, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Carnation Company)*, 181 NLRB 882, 886 (1970); *General Teamsters, Chauffeurs, Warehousemen and Helpers, Local 982, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; et al. (J. K. Baker Trucking Co.)*, 181 NLRB 515, 520-521 (1970); and see *A. Duie Pyle, Inc. v. N.L.R.B.*, 383 F.2d 772 (3d Cir. 1967).

<sup>19</sup> We note that none of Respondents have even argued in their briefs that the owner-operator provisions have a valid work preservation purpose if the dump truck owner-operators are in fact independent contractors.

<sup>20</sup> Respondent Associations admit that art. XIII is not limited to jobsite work within the meaning of the Act. They urge the Board to articulate a "majority time" jobsite definition which would apply to all transportation work by the owner-operators herein if a majority of each day's working time is spent at the geographical site of construction and/or at a contractor-controlled remote site where the contractor's own employees are also working.

It should be particularly noted that the proviso relates only and exclusively to the contracting or subcontracting of work to be done at the site of the construction. The proviso does not exempt from Section 8(e) agreements relating to supplies and materials or other products shipped or otherwise transported to, and delivered, on the site of construction.<sup>21</sup>

In addition, the legislative history more generally suggests that a primary motivation for the enactment of the proviso was the desire to prevent potential labor strife between union and nonunion personnel working at the same jobsite.<sup>22</sup>

Interpreting legislative intent from the foregoing, the Board has consistently adhered to a narrow definition of jobsite work when evaluating contractual provisions on a case-by-case basis. It has found that the proviso clearly does not extend to offsite work merely because such work *could be done* at the site of construction.<sup>23</sup> Furthermore, the Board has refused in several cases to apply the proviso's coverage to various types of transportation work wherein deliveries have been made directly on the geographical site of construction. In particular, the Board has found that none of the following constitutes jobsite work: the mixing, delivery, and pouring of ready-mix concrete;<sup>24</sup> the delivery of precast concrete pipe;<sup>25</sup> the "bringing of tools, materials, and personnel to and from the site of construction;"<sup>26</sup> and the delivery of sand landfill.<sup>27</sup>

We must evaluate the work coverage provisions of MLA article XIII, contained in paragraph 1321 and subparagraphs thereto, in light of the foregoing legislative history and precedent. Without the limitations on coverage stated in subparagraph 1321.1.1, the remainder of paragraph 1321 would on its face apply the secondary provisions of article XIII to non-jobsite work. Specifically, the owner-operator provisions would without subparagraph

<sup>21</sup> H. Conf. Rept. 1147, 86th Cong., 1st sess., p. 39; Leg. Hist. 943. See also the legislative history set forth in *Ohio Valley Carpenters District Council, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Cardinal Industries, Inc.)*, 136 NLRB 977, 988-989 (1962).

<sup>22</sup> See, e.g., the discussion of legislative history in *International Union of Operating Engineers, Local Union No. 12, AFL-CIO (Robert E. Fulton)*, 220 NLRB 530, 536 (1975).

<sup>23</sup> *Ohio Valley Carpenters District Council (Cardinal Industries)*, *supra* at 988.

<sup>24</sup> *International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 294 (Island Dock Lumber, Inc.)*, 145 NLRB 484 (1963); *Teamsters Local Union No. 559, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Connecticut Sand and Stone Corporation)*, 138 NLRB 532 (1962).

<sup>25</sup> *Joint Council of Teamsters No. 42, et al. (Inland Concrete Enterprises, Inc.)*, 225 NLRB 209 (1976).

<sup>26</sup> Local Union No. 282, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (D. Fortunato, Inc.), 197 NLRB 673 (1972).

<sup>27</sup> *Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Clemence D. Stanton, d/b/a Rexford Sand and Gravel Co.)*, 195 NLRB 378 (1972).

1321.1.1 cover the offsite transportation of all materials between a geographical site of construction and any remote location within an area expanding from 5 to 10 miles away from the site during the life of the MLA. Article XIII would then not be entitled to protection under the construction industry proviso, because it would clearly apply to the various types of transportation work defined as off-site work by the Board in the cases cited in the preceding paragraph.

Subparagraph 1321.1.1, however, states that article XIII does not apply to the "delivery of materials to or from commercial suppliers or public dumps."<sup>28</sup> As indicated in the preceding section of this Decision, the parties have inexplicably failed in the complaint, stipulation of facts, and briefs to refer to the express terms of subparagraph 1321.1.1. Respondent Unions nevertheless implicitly rely upon the limiting language of this subparagraph by admitting in their brief that neither the delivery of materials from a remote commercial source to the geographical site of construction nor the cartage of materials away from the geographic site to a remote commercial dumping site constitutes jobsite work within the meaning of the Act and the MLA. We agree, and find that subparagraph 1321.1.1 on its face so limits article XIII as to exclude from its coverage such offsite construction work.<sup>29</sup>

Notwithstanding the limitation expressed in subparagraph 1321.1.1, we find that paragraph 1321 in its entirety clearly extends the coverage of article XIII to nonjobsite work. Paragraph 1321 does not, in fact, conform to the jobsite definition advocated by Respondent Unions, because it does not restrict article XIII to the transportation of materials between a contractor's geographical site of construction and a remote location *controlled by the same contractor* for use in connection with work at the geographical site of construction. On the contrary, article XIII undisputedly covers dump truck owner-operators who are engaged in the transpor-

tation of materials between different contractors' geographical sites of construction. Such hauls may include the transportation of materials to or from, as well as the loading or dumping of materials on, a jobsite controlled by a nonunion contractor. The Board has twice refused to broaden the jobsite definition under the construction industry proviso to permit application of a contract's secondary provisions to work performed for a subcontractor at a remote location established exclusively or partially to service a contractor's geographical site of construction.<sup>30</sup> If remote locations not controlled by the contractor for a geographical site of construction cannot be viewed as extensions of the contractor's jobsite, and we reaffirm that they cannot whether or not they are themselves actual construction sites, then the transportation of materials between such sites is no different than the transportation of materials between a geographical site of construction and a remote commercial supply or dumping location. As previously stated, the Board has consistently held that such work is not jobsite work.

Even if we were to accept the premise that article XIII covers only the transportation of materials between sites up to 10 miles apart but controlled by the same contractor, we would find such coverage to be overly broad. Based on the parties' estimates of average times involved, article XIII would apply to an owner-operator who in the course of a 10-mile roundtrip haul spends an average of 10 minutes combined at the geographical site of construction and the remote location and an average of 50 minutes in offsite travel. The primary purpose of the construction industry proviso—to avoid tensions among groups of employees at the same site—has little relevance to persons having such incidental contact with the site. The legislative history of the proviso demonstrates that Congress shared this conclusion by expressing its specific intent to exempt from the proviso the total process of transporting materials in spite of the fact that some tasks in that process might take place on a construction jobsite.<sup>31</sup> Consistent with this intent, the Board has repeatedly held that the proviso does not apply to jobsite deliveries (or, by logical inference, pickups) which are only a small part of basically offsite transportation activity. In the present case, we perceive no justification for departing from this well-established precedent merely be-

<sup>28</sup> Subparagraph 1321.1.1 also states that "[a]ny other general exclusions from the construction industry proviso, previously defined by the NLRB or the courts, shall continue to be applicable in interpreting Article XIII." We give no weight to this language. An explicit, self-contained, and clearly illegal contractual provision, such as the secondary owner-operator provision herein, will not be purged of its illegality by a vague and general "savings clause." See *The Essex County and Vicinity District Council of Carpenters and Millwrights, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Associated Contractors of Essex County, Inc.)*, 141 NLRB 858, 869 (1963); *Perry Coal Company, Midwest-Radiant Corporation, and Peabody Coal Company*, 125 NLRB 1256 (1956).

<sup>29</sup> Although it is unnecessary to refer to extrinsic evidence for interpretation of an unambiguous contractual provision, we note that our view of the restrictive import of subparagraph 1321.1.1 is supported by the affidavit of George A. Pappy, submitted by Respondent Unions during the injunction proceeding before the district court. On the other hand, other witness affidavits submitted in that proceeding indicate that Respondent Unions have ignored the subparagraph's limitations in their efforts to enforce art. XIII.

<sup>30</sup> *Operating Engineers, Local Union No. 12 (Robert E. Fulton)*, *supra*; *International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers (Bigge Drayage Company)*, 197 NLRB 281 (1972).

<sup>31</sup> *Teamsters, Chauffeurs, Warehousemen & Helpers, Local Union No. 631, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Reynolds Electrical and Engineering Co., Inc.)*, 154 NLRB 67, 95 (1965).

cause the transportation activity takes place between and involves brief work on two sites controlled by the same construction contractor.<sup>32</sup> The secondary owner-operator provisions of article XIII clearly extend to predominately offsite transportation work performed by dump truck owner-operators. We find that such work is not jobsite work within the meaning of the construction industry proviso.<sup>33</sup>

For the foregoing reasons, we find that the secondary provisions of article XIII are not entitled to protection under the construction proviso. Accordingly, we find that those provisions violate Section 8(e) of the Act.

## 2. The alleged 8(b)(4)(ii)(A) violation

Uncontroverted record evidence conclusively demonstrates that Respondent Local 420, through its business agent, Charles Tanberg, threatened a self-employed dump truck owner-operator, Lendelle Kinder, with loss of a job at the Alhambra, California, jobsite of construction contractor Irvine unless Kinder would become a member of Local 420. The evidence further shows that Respondent Local 420, through Tanberg, coercively insisted that Irvine cease doing business with independent contractors who were not and would not become members of Local 420. Based on such evidence, we find that Respondent Local 420 has threatened, coerced, and restrained Irvine and the independent contractors of Irvine with an object of forcing or requiring the independent contractors to join a labor organization, in clear violation of Section 8(b)(4)(ii)(A) of the Act.

## THE REMEDY

Having found that Respondents have engaged in unfair labor practices, we shall order them to cease and desist therefrom and to take certain affirmative action to effectuate the purposes of the Act.<sup>34</sup>

<sup>32</sup> We reject Respondent Unions' argument that the definition of jobsite work in the proviso to Sec. 8(e) should be identical to the definition of jobsite work in the Davis-Bacon Act. That Act, as a remedial statute, is broader in coverage than the 8(e) proviso. *International Union of Operating Engineers, Local Union No. 12 (Acco Construction Equipment, Inc.)*, 204 NLRB 742 (1973); *Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers, Local Union No. 695 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America v. N.L.R.B.*, 361 F.2d 547, 553 (D.C. Cir 1966).

<sup>33</sup> We leave open the question whether, if ever, the definition of jobsite work under the proviso may include the brief and incidental transportation of materials between two proximate, but not physically contiguous geographical, sites of construction, each of which is exclusively controlled by the same contractor.

<sup>34</sup> We hereby deny the Charging Party CDTOA's request that we require Respondent Unions to reimburse any owner-operators for payment of initiation fees and dues, deducted contributions to union benefit funds, or income lost by reason of the enforcement of unlawful terms in MLA art. XIII. The Board has on one occasion adopted without comment an administrative law judge's recommended Order containing such a remedy. *Local 814, Teamsters (Santini Brothers, Inc.) supra* at 201. In the

Upon the basis of the foregoing findings of fact, and upon the entire record in this proceeding, we make the following:

## CONCLUSIONS OF LAW

1. The employer-members of Associated General Contractors of California, Inc., Building Industry Association of California, Inc., Engineering Contractors Association, Inc., and Southern California Contractors Association are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The following organizations are labor organizations within the meaning of Section 2(5) of the Act: Joint Council of Teamsters No. 42, and its affiliated Local Unions, Sales Drivers & Dairy Employees, Local 166; General Truck Drivers, Local 235; General Truck Drivers, Chauffeurs & Helpers, Local 692; Chauffeurs, Teamsters and Helpers, Local 186; Building Material and Dump Truck Drivers, Local 420; General Teamsters, Chauffeurs, Warehousemen & Helpers, Local 982; Truck-drivers, Warehousemen and Helpers, Local 898; Teamsters & Warehousemen, Local 381; all affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; and Teamsters, Chauffeurs, Warehousemen and Helpers, Local 87, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

3. By threatening, coercing, and restraining persons engaged in commerce, including Irvine-Santa Fe Company and the independent contractors of Irvine, with an object of forcing or requiring the independent contractors of Irvine to join a labor organization, Building Material and Dump Truck Drivers, Local 420, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, has engaged in unfair labor practices in violation of Section 8(b)(4)(ii)(A) of the Act.

4. By entering into, maintaining, and giving effect to the aforementioned paragraphs in article XIII of the Master Labor Agreement between Respondent Associations and Respondent Unions, Respondents have engaged in unfair labor practices in violation of Section 8(e) of the Act.

present case, however, no evidence has been introduced with respect to alleged losses directly attributable to actual coercion by Respondent Unions, nor has the remedial issue been expressly litigated. Furthermore, we find a reimbursement order, typically used to "make whole" employees for violations of the Act, to be generally overly broad and inappropriate in the context of 8(e) violations. We note that aggrieved owner-operators engaged in business as independent contractors may pursue a damage claim under Sec. 303 of the Act. For the foregoing reasons, we find that the reimbursement of owner-operators requested by CDTOA would not effectuate the remedial policies of the Act. See *Local 60, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, et al. v. N.L.R.B.*, 365 U.S. 651 (1961).

5. The above unfair labor practices are unfair labor practices affecting commerce and the free flow of commerce within the meaning of Section 2(6) and (7) of the Act.

#### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that:

A. Respondent Building Material and Dump Truck Drivers, Local 420, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, its officers, agents, and representatives, shall:

1. Cease and desist from threatening, coercing, and restraining Irvine-Santa Fe Company or the independent contractor dump truck owner-operators of Irvine with an object of forcing or requiring the owner-operators to join a labor organization.

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

(a) Post at its business offices and meeting halls copies of the attached notice marked "Appendix A."<sup>35</sup> Copies of said notice, on forms provided by the Regional Director for Region 21, after being duly signed by Respondent's representative, shall be posted by said Union immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Union to insure that said notices are not altered, defaced, or covered by any other material.

(b) Sign and mail to said Regional Director sufficient copies of the aforementioned notice for posting at the premises of Irvine-Santa Fe Company, if willing.

(c) Notify the Regional Director for Region 21, in writing, within 20 days from the date of this Order, what steps the Respondent Local 420 has taken to comply herewith.

B. Respondents Joint Council of Teamsters No. 42, and its affiliated Local Unions, Sales Drivers & Dairy Employees, Local 166; General Truck Drivers, Local 235; General Truck Drivers, Chauffeurs & Helpers, Local 692; Chauffeurs, Teamsters and Helpers, Local 186; Building Material and Dump Truck Drivers, Local 420; General Teamsters, Chauffeurs, Warehousemen & Helpers, Local 982; Truckdrivers, Warehousemen and Helpers, Local 898; Teamsters & Warehousemen, Local 381; all affiliated with the International Brotherhood of

<sup>35</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."

Teamsters, Chauffeurs, Warehousemen and Helpers of America; and Teamsters, Chauffeurs, Warehousemen and Helpers, Local 87, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, their officers, agents, and representatives, shall:

1. Cease and desist from entering into, maintaining, giving effect to, or enforcing the provisions of article XIII in their 1977-80 Master Labor Agreement with Associated General Contractors of California, Inc., Building Industry Association of California, Inc., Engineering Contractors Association, Inc., and Southern California Contractors Association, to the extent found unlawful herein.

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

(a) Post at their business offices and meeting halls copies of the attached notice marked "Appendix B."<sup>36</sup> Copies of said notice, on forms provided by the Regional Director for Region 21, after being duly signed by Respondents' representative, shall be posted by said Unions immediately upon receipt thereof, and be maintained by them for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Unions to insure that said notices are not altered, defaced, or covered by any other material.

(b) Sign and mail to said Regional Director sufficient copies of the aforementioned notice for posting at the premises of Associated General Contractors of California, Inc., Building Industry Association of California, Inc., Engineering Contractors Association, Inc., and Southern California Contractors Association, and their employer-members, if willing.

(c) Notify the Regional Director for Region 21, in writing, within 20 days from the date of this Order, what steps Respondents have taken to comply herewith.

C. Respondents Associated General Contractors of California, Inc., Building Industry Association of California, Inc., Engineering Contractors Association, Inc., and Southern California Contractors Association, and their employer-members, their officers, agents, successors, and assigns, shall:

1. Cease and desist from entering into, maintaining, giving effect to, or enforcing the provisions of article XIII in their 1977-80 Master Labor Agreement with the Respondent Unions, to the extent found unlawful herein.

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

<sup>36</sup> See fn. 35, *supra*.

(a) Post at their places of business copies of the attached notice marked "Appendix C."<sup>37</sup> Copies of said notice, on forms provided by the Regional Director for Region 21, after being duly signed by representatives of the Respondent Associations, shall be posted by the Associations and their employer-members immediately upon receipt thereof, and be maintained by them for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Association and their employer-members to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 21, in writing, within 20 days from the date of this Order, what steps the Respondent Associations have taken to comply herewith.

<sup>37</sup> See fn. 35, *supra*.

#### APPENDIX A

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

WE WILL NOT threaten, coerce, or restrain Irvine-Santa Fe Company or the independent contractor dump truck owner-operators of Irvine-Santa Fe Company with an object of forcing or requiring the owner-operators to join a labor organization.

BUILDING MATERIAL AND DUMP  
TRUCK DRIVERS, LOCAL 420, INTER-  
NATIONAL BROTHERHOOD OF TEAM-  
STERS, CHAUFFEURS, WAREHOUSE-  
MEN AND HELPERS OF AMERICA

#### APPENDIX B

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

WE WILL NOT enter into, maintain, give effect to, or enforce the owner-opertor provisions of article XIII in our 1977-80 Master Labor Agreement with Associated General Contractors of California, Inc., Building Industry Association of California, Inc., Engineering Contractors Association, Inc., and Southern California Contractors Association, and thier employer-members, to the extent that such

provisions violate Section 8(e) of the National Labor Relations Act, as amended.

JOINT COUNCIL OF TEAMSTERS NO. 42, AND ITS AFFILIATED LOCAL UNIONS, SALES DRIVERS & DAIRY EMPLOYEES, LOCAL 166; GENERAL TRUCK DRIVERS, LOCAL 235; GENERAL TRUCK DRIVERS, CHAUFFEURS, & HELPERS, LOCAL 692; CHAUFFEURS, TEAMSTERS AND HELPERS, LOCAL 186; BUILDING MATERIAL AND DUMP TRUCK DRIVERS, LOCAL 420; GENERAL TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS, LOCAL 982; TRUCKDRIVERS, WAREHOUSEMEN AND HELPERS, LOCAL 898; TEAMSTERS & WAREHOUSEMEN, LOCAL 381; ALL AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 87, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

#### APPENDIX C

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

WE WILL NOT enter into, maintain, give effect to, or enforce the owner-operator provisions of article XIII in our 1977-80 Master Labor Agreement with Joint Council of Teamsters No. 42 and its affiliated Local Unions, all affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and also with Teamsters, Chauffeurs, Warehousemen and Helpers, Local 87, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, to the extent that such provisions violate Section 8(e) of the National Labor Relations Act, as amended.

ASSOCIATED GENERAL CONTRACTORS OF CALIFORNIA, INC.  
BUILDING INDUSTRY ASSOCIATION OF CALIFORNIA, INC.  
ENGINEERING CONTRACTORS ASSOCIATION, INC.  
SOUTHERN CALIFORNIA CONTRACTORS ASSOCIATION