

Chauffeurs, Teamsters, Warehousemen & Helpers Local Union 525, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Helmkamp Construction Co. Case 14-CC-1702

10 July 1984

DECISION AND ORDER

BY MEMBERS ZIMMERMAN, HUNTER, AND DENNIS

On 26 March 1984 Administrative Law Judge Elbert D. Gadsden issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel, in support of the judge's decision, filed with the Board the brief previously submitted to the judge.

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Chauffeurs, Teamsters, Warehouse & Helpers Local 525, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Alton, Illinois, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

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

DECISION

STATEMENT OF THE CASE

ELBERT D. GADSDEN, Administrative Law Judge. This case was tried before me at St. Louis, Missouri, on November 17, 1983. The charge was filed by Helmkamp Construction Co. on August 25, 1983, and a complaint was issued on September 19, 1983. The principal issue in this case is whether Respondent violated Section 8(b)(4)(i) and (ii)(A) and (B) of the National Labor Relations Act, by picketing and threatening to picket Helmkamp with an object of forcing Helmkamp to require self-employed owner-drivers to become members of a

labor organization, or forcing Helmkamp to cease doing business with owner-drivers.

On the entire record, including my observation of the demeanor of the witnesses, and after consideration of the briefs filed by the General Counsel, counsel for the Charging Party, and counsel for the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

Helmkamp, a Delaware corporation, is a general contractor in the construction industry engaged in the contract trucking business, involving contract hauling and hauling equipment and materials for Helmkamp and for other contractors in Southern Illinois and Missouri.

At all times material herein Helmkamp has maintained its principal office and place of business at 510 Alton-St. Louis Road in the city of Wood River, and State of Illinois, herein called the Wood River place of business, where it receives building materials and other goods and materials valued in excess of \$50,000, from points located outside the State of Illinois. The Union admits and I find that Helmkamp is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

As a general contractor, Helmkamp is engaged in a business in the construction industry. Formerly, Helmkamp was also engaged in the business of providing trucking services involving transportation of materials and equipment to and from construction jobsites. Helmkamp also supplied trucking services on the jobsites where it was performing construction work, and to other construction contractors at other jobsites. In 1982 and early 1983, Helmkamp owned approximately 70 to 75 trucks and it employed as many as 50 to 60 truckdrivers. The truckdrivers were represented by Respondent and other Teamsters locals in other jurisdictions for purposes of collective bargaining. However, Helmkamp usually dealt with Respondent regarding matters involving its truckdrivers.

According to the undisputed and credited evidence, officers of Helmkamp had been concerned for several years about the profitability of its trucking division. In keeping with this concern, Helmkamp performed a computer analysis of its business operation and discovered that its trucking division was losing substantial sums of money. In view of such financial losses Helmkamp decided in late 1982 to close down its trucking operation because it was no longer profitable. Subsequently, Helmkamp's president Bryon Farrell met with Respondent's secretary-treasurer-business representative Marshall McDuffy in December 1982 or January 1983. At that time Farrell informed McDuffy that Helmkamp was closing its trucking operation because it was no longer profitable. He also advised McDuffy that Helmkamp would be selling its trucks and it would not be employing any drivers. McDuffy expressed his regret about the Helm-

kamp decision and stated that Helmkamp was always a good employer. He further stated that Respondent had a problem with owner-drivers and that the problem was not confined to Respondent but was a nationwide problem which the Teamsters would have to resolve. McDuffy did not protest or grieve the decision to close the trucking operation, nor did he request Helmkamp to bargain with Respondent about the decision to close the trucking operation, or the effects of that decision.

In mid-February 1983, Helmkamp received a letter from Respondent, the substance of which was not described. In response to that letter however, Helmkamp mailed a letter (G.C. Exh. 2) of which Farrell delivered a copy in person to McDuffy, with whom he met at the Lewis & Clark Restaurant on February 28, 1983. In essence the letter advised that Helmkamp was terminating its contract with Respondent and any other Teamsters local, effective at the expiration of the current contract (April 30, 1983); that Helmkamp had decided to eliminate its trucking operation and was selling its truck fleet before the contract expired; that it would thereafter rent trucks with drivers as the need required. During the meeting with McDuffy, Farrell reiterated the contents of the letter. McDuffy requested Farrell to meet with Illinois Conference of Teamsters President Bill Bounds. Farrell said he had no objections to such a meeting.

Farrell met with McDuffy and Illinois Conference of Teamsters President Bounds at the Company's offices during the week March 7, 1983. During the meeting Farrell reiterated Helmkamp's reasons for closing its trucking operation and offered to bargain with Respondent regarding the effects of the decision. Subsequently, in response to a letter from Bounds dated April 13, 1983, inviting Farrell to attend negotiations to continue or replace the expiring contract, Farrell responded in a letter dated April 18, 1983, in which he again advised Respondent that Helmkamp intended to sell or dispose of its remaining trucks and its plans to hire trucks and drivers from other sources. Farrell further advised that Helmkamp would not be utilizing Teamsters as employees and it would be happy to meet with the Union to bargain and discuss the effects of the elimination of the trucking operation. Farrell did not receive a response to his April 18 letter, so he called Respondent's office near the end of April to advise that Helmkamp was about to sell its last trucks and close down the operation. McDuffy testified that the latter telephone conversation occurred in June, instead of May, as McDuffy testified.¹

McDuffy requested Farrell to postpone the sale of Helmkamp's last trucks until he had an opportunity to negotiate some other contracts and meet with Farrell again. In agreement with the request, Farrell met with McDuffy on August 18, 1983, to discuss the closing of

Helmkamp's trucking operation. McDuffy immediately announced that he was present as a representative of the Illinois Conference of Teamsters Negotiating Committee. Thereupon, he presented two contracts to Farrell and demanded he sign one of them. Each contract contained the following provisions:

Article XXXIV; Owner Driver

24.1 The Term "Owner-Driver" means an individual, who, in addition to being employed to perform services covered by this agreement is also the owner and operator of equipment. Legal or equitable title must be in the name of the driver. The following provisions shall apply to all owner-drivers engaged to perform work.

24.2 The Owner-Driver shall be carried on the payroll of the employer as an employee and as such, all the terms and conditions of this agreement, including article IV Procurement of Labor, shall be applicable to him. A separate referral list will be kept for Owner-Drivers.

Article III; Union Security

3.1 It is understood and agreed by and between the parties hereto that as a condition of continued employment and effective after the seventh day following the beginning employment or the execution date of this Agreement, whichever is the later, all persons hereafter employed to work within the bargaining unit which is the subject of the Agreement, as well as all persons presently so working but who are not members of one of the Local Unions referred to herein, shall become members of the particular Local Union having jurisdiction for representation purposes over the geographical area within which such persons then work. It is further understood and agreed that as a condition of continued employment all persons who are presently members in good standing of one of the Local Unions referred to herein or who hereafter become such shall be required to pay the periodic dues of the Local Union having jurisdiction for representation purposes over the geographical area within which such persons work for a majority of the time figured on a month by month basis.

3.3 The failure of any person to become a member of a Local Union in the manner and within the time above provided for shall obligate his Employer, upon written notice from the Union to such effect and to the further effect that Union membership was available to such person on the same terms and conditions generally available to other members, to forthwith discharge such person. Further, the failure of any person to pay the monthly periodic dues required shall, upon written notice from the Union to his Employer to such effect, obligate his Employer to discharge him forthwith.

Farrell refused to sign either of the contracts containing the above-described provisions but McDuffy continued insisting that he sign a contract. Farrell continually

¹ I credit Farrell's date of the conversation and discredit McDuffy's date of June, because I was persuaded not only by the demeanor of Farrell, but also by the accurate, business, and professional manner in which he testified with respect to dates, events, and conversations he held with officers of Respondent. Also, the documentary evidence tends to demonstrate that Farrell was trying to be as candid and as fair with Respondent in keeping it abreast of Helmkamp's steps in eliminating its trucking operation. McDuffy, on the other hand, appeared uncertain as to specific dates and knowledge of Helmkamp's disposal of its trucking fleet.

refused to sign either contract, explaining that he would have no need for a contract since he would not have any drivers or trucks. Farrell also informed McDuffy he had not relicensed a number of Helmkamp's trucks during the licensing month of June 1983, and that he was down to the bare minimum of drivers and trucks. McDuffy said it did not make any difference whether the Company was going out of business or not and again asked Farrell to sign the agreement. After Farrell refused to sign either of the contracts McDuffy said he would report the matter to the Illinois Conference of Teamsters and they "would both have to get their best hold and see what would happen." On the next day, August 19, 1983, the Illinois Conference of Teamsters and Teamsters Joint Conference 65, President Bill Bounds, sent a telegram to Farrell advising that, if a new collective-bargaining agreement was not signed, the Illinois Conference of Teamsters and its affiliated locals would take all legal and economic recourse they deemed necessary.

Although McDuffy testified he first learned during this August 18 meeting that Helmkamp would no longer employ drivers, he nevertheless later admitted receiving Farrell's letter of February 28, advising Respondent that Helmkamp was terminating its trucking services, selling all of its trucks, and would be leasing needed trucking services in the future. McDuffy also acknowledged receipt of Farrell's letter of April 18, advising Respondent that Helmkamp would no longer employ Teamsters drivers. Almost throughout this proceeding McDuffy subsequently changed his testimony to comport with testimony of Farrell either after he had been confronted with a letter previously sent to Respondent, or on some other aspect of cross-examination. I was persuaded by changes McDuffy made in his initial testimony (as reflected in the record) that either he had a poor memory or he was purposefully trying to avoid telling the truth. It was quite evident he did not keep records of his conversations with Farrell, while Farrell often backed up his oral conversations with McDuffy with a letter. Further persuaded by the demeanor and businessmanship of Farrell that he was telling the truth about his conversations with Respondent, I credit his testimony wherever it conflicted with McDuffy's changing and uncertain testimony.

Based on the foregoing credited testimony, I am persuaded that Respondent was fully aware of Helmkamp's decision and its gradual elimination of its trucking operation as the evidence as a whole clearly demonstrates.

The record shows that Helmkamp leased its remaining trucks and permanently laid off the remainder of its drivers on August 23, 1983. On the same date Farrell notified Bounds by telegram (G.C. Exh. 6) that Helmkamp had terminated its entire trucking operation and sold or leased all its licensed trucks. On August 26, 1983, Respondent commenced a strike and picketing of Helmkamp's office. The picketing of Helmkamp was expanded on August 31, 1983, to various construction sites in southern Illinois, where Helmkamp was performing work. The strike as expanded remained in effect until September 7, 1983, when a temporary restraining order was issued against Respondent by the U.S. District Court for the Southern District of Illinois, prohibiting further picketing.

Helmkamp and Respondent entered into a new collective-bargaining agreement on September 21, 1983 (G.C. Exh. 7), containing the same provisions as those which McDuffy showed to Farrell during their meeting on August 18 except, in a side letter (G.C. Exh. 8), Respondent agreed not to enforce the owner-driver provision until it is judicially determined whether the owner-driver provisions were legal. Respondent waived all recall, backpay, and other rights its former members enjoyed while employed by Helmkamp.

The essentially uncontroverted and credited evidence of record establish that after Helmkamp terminated its trucking operation on August 23, 1983, it utilized only owner-drivers mostly referred to it by Trans-Truck, a truck broker, to transport its materials and equipment. Prior to closing its trucking operations, Helmkamp utilized owner-drivers on a limited basis. Since sometime in October 1983, Helmkamp on occasion has contracted directly with two owner-drivers who were formally employed by Helmkamp. Both drivers owned their trucks. All owner-drivers are paid a flat rate based on the number of hours utilized or the tonnage of materials delivered. Helmkamp does not deduct social security, taxes, or other payroll deductions for owner-drivers. Nor does it make unemployment compensation payments on behalf of the owner-drivers, who also license and maintain their own trucks and pay their own taxes. The record also shows that owner-drivers are not obligated to report to Helmkamp on any particular day unless they have agreed to do so. Moreover, the owner-drivers can refuse work from Helmkamp, and they can contract trucking services with other businesses. Finally, Helmkamp has no control over owner-drivers furnished by truck brokers and it does not pay any expenses incurred by such drivers in the course of rendering trucking services to Helmkamp.

Based on the foregoing evidence I conclude and find that all the owner-drivers utilized by Helmkamp subsequent to August 23, 1983, were independent contractors and not employees of Helmkamp. *Teamsters Local 814 (Santini Bros.)*, 208 NLRB 184, 190-198 (1974), reaffirmed 223 NLRB 752 (1976), enfd. 546 F.2d 989 (D.C. Cir. 1976); *Portage Transfer*, 204 NLRB 787 (1973); *Conley Motor Express*, 197 NLRB 624 (1972).

Analysis and Conclusions

In its posthearing brief, Respondent contends the issue presented for decision is:

Whether Respondent Union violated Section 8(b)(4) of the Act by striking to obtain a contract clause which required owner-drivers to be treated as employees at a time when no owner-drivers would be affected by the contract.

It would appear from Respondent's above-stated issue that Respondent is contending that its strike against Helmkamp did not violate the Act, because Helmkamp had not commenced utilizing owner-drivers on a regular basis on August 26, when the Union commenced picketing Helmkamp. The record does not show the exact date on which Helmkamp commenced utilizing owner-drivers

on a regular basis. It is possible Helmkamp commenced regular use of owner-drivers on the day following its termination of all employee drivers on August 23. In any event, it does not appear material when Helmkamp started regular use of owner-drivers since Respondent knew Helmkamp had been using owner-drivers on an occasional basis several months before closing its trucking operations on August 23, 1983.

Additionally, it is particularly noted that Helmkamp had advised Respondent by letter, as early as February 28, that it was eliminating its trucking services on April 30, and thereafter would be leasing trucks with drivers. Helmkamp repeated its decision to Respondent on March 7, and again in a letter on April 18. Finally, when Helmkamp refused to sign a contract requiring it to carry contracted independent contractor owner-drivers on its payroll as employees, and require them to join the Union in order to remain in its employ, Respondent, on the next day (August 19), threatened to resort to economic means (strike) if Helmkamp did not sign one of the agreements. Thus, it is clear that Respondent threatened to strike Helmkamp for its contemplated use of owner-drivers even before Helmkamp closed its trucking operation.

In support of its conception of the issue in this case, Respondent argues that it may legitimately seek an agreement which preserves for its members work which they traditionally performed even if Employer Helmkamp must cease doing business with another employer, or self-employed owner-drivers otherwise engaged in or affecting commerce. Respondent cites *NLRB v. Plumbers Local 638*, 429 U.S. 507, 510 (1977). However, Respondent did not describe how the latter case is applicable to any specific facts in the instant case, and I do not find *Plumbers Local 638* applicable to the facts or supportive of Respondent's argument in the case before me. Acceptance of Respondent's argument would totally ignore the Supreme Court's decision which held that "management's decision to shut down part of its business purely for economic reasons outweighs the incremental benefit that might be gained through the union participating in making the decision." *First National Maintenance Corp. v. NLRB*, 452 U.S. 666 (1981); or as the Court stated in *Textile Workers v. Darlington Co.*, 380 U.S. 263, 268 (1965), "an employer has the absolute right to terminate his entire business for any reason he pleases." Here, Helmkamp terminated its trucking operation and sold its trucks. It did not transfer work from unit employees to nonunit employees of Helmkamp. Consequently, Helmkamp has no work for Respondent to obtain through a work-preservation clause.

As counsel for the General Counsel maintains, the principal issue presented for determination is: whether Respondent violated Section 8(b)(4)(A) and (B) of the Act, by threatening to picket, and in fact picketing Helmkamp in order to force Helmkamp to sign a contract to carry, on its payroll, independent owner-drivers as employees, so as to require such owner-drivers to become members of Respondent Union, or not do business with such owner-drivers at all.

Section 8(e) of the Act in essence provides that:

It shall be an unfair labor practice for . . . any employee to enter into any contract or agreement . . . whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling . . . or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person, and any . . . such agreement shall be . . . void.

Section 8(b)(4) as relevant herein provides that:

It shall be an unfair labor practice for a labor organization or its agents—

(4)(i) To engage in, or . . . encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike . . . or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object there of is:

(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by section 8(e);

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person

In construing the above-cited sections of the Act, the Board has repeatedly held that a labor organization coerces and restrains an employer, in violation of Section 8(b)(4)(A) of the Act, when it threatens an employer with the object of forcing or requiring self-employed persons (independent contractors) to join a labor organization. *Joint Council of Teamsters No. 42*, 248 NLRB 808, 817 (1980), enfd. in part at 671 F.2d 305 (9th Cir. 1981).

During the August 18 meeting in the instant case, Respondent (McDuffy) insisted that Helmkamp (Farrell) sign one of two contracts containing articles XXXIV and III, heretofore described, which would require Helmkamp to carry on its payroll all independent contractor owner-drivers utilized by Helmkamp, upon which owner-drivers the terms of the contract would be binding; and that each such owner-driver not currently a member of Respondent, must as a condition of initial and continued employment, become members of Respondent within 7 days either after the effective date of the agreement, or after entering Helmkamp's employ. When Helmkamp (Farrell) refused to sign either contract, Respondent, on the next day (August 19), threatened to undertake all legal and economic recourse (strike) it deemed necessary, and Respondent thereafter commenced striking Helmkamp on August 26.

Since the owner-drivers were independent contractors, and not employees of Respondent, the object of Respondent's threat to strike, as well as its effectuation of the strike, was designed to force or require employer Helmkamp to force or require the self-employed independent contractor owner-drivers to join Respondent

Union. Under these circumstances, Respondent's conduct was secondary and clearly in violation of Section 8(b)(4)(A) of the Act. *Joint Council of Teamsters No. 42*, supra; *Painters Local 249 (John J. Reich)*, 136 NLRB 176 (1962).

Respondent argues that its purpose in picketing Helmkamp was an effort to protect and preserve the work previously performed by its members and, as such, did not violate Section 8(b)(4) of the Act. While picketing solely for the purpose of preserving work of a specific unit of employees constitutes primary picketing, which is legal, such picketing coupled with an object of forcing self-employed persons to join a labor organization, or forcing an employer to cease doing business with self-employed persons who are not members of the Union, is unlawful and in violation of Section 8(b)(4) of the Act. As the Board has held, while a union may have several lawful objectives for a strike, if it has only one illegal objective, as Respondent does here (to force employer Helmkamp to require self-employed owner-drivers to join Respondent, or cease doing business with owner-drivers), the illegal objective is sufficient to constitute a violation of Section 8(b)(4) of the Act. *Mine Workers Local 1854 (Amax Coal Co.)*, 238 NLRB 1583, 1587 (1978); *Retail Clerks Local 770 (Food Employers)*, 145 NLRB 307, 308-309 (1963). In the instant case the evidence is clear that Respondent's primary motive in picketing Helmkamp was to assure that all owner-drivers contracted by Helmkamp would be members of Respondent in good standing. This is further evident by the fact that Respondent did not request Helmkamp to bargain about its decision or the effects of its decision to eliminate its trucking operation and contract for trucking services with owner-drivers.

The Board has also held that where a labor organization gives an employer an option of forcing self-employed persons to join the union, or not doing business with self-employed persons, the labor organization violates Section 8(b)(4)(B), as well as Section 8(b)(4)(A) of the Act. *Federacion de Musicos de Puerto Rico, Local 468 (Pat Mills & Co.)*, 246 NLRB 782, 786 (1979). Since Respondent (Local 525) gave Helmkamp the option of forcing or requiring the independent contractor owner-drivers to become members of Respondent, or not do business with the owner-drivers at all, Respondent's conduct clearly violated Section 8(b)(4)(B) and (A) of the Act. *Teamsters Local 814 (Santini Bros.)*, 208 NLRB 184 (1974), reaffirmed 546 F.2d 989 (D.C. Cir. 1976); *Federacion de Musicos de Puerto Rico, Local 468*, supra.

As counsel for the General Counsel points out, in finding a violation of Section 8(b)(4)(B) and (A) of the Act, the administrative law judge in *Santini Bros.*, supra, which the Board adopted, cited the reasoning of the U.S. Court of Appeals for the Third Circuit, in *A. Duie Pyle, Inc. v. NLRB*, 383 F.2d 722, 777-778 (1967), where the court said:

On their face these requirements [that owner-operators become employees and join the union] are "secondary" in their purpose as well as their result. They do not require a carrier to put an end to subcontract, but only to terminate it as to its subcon-

tractees who refuse to become members of the union. Thus, their effect is to make the continuance of the relationship between the employer and an independent contractor depend on the latter's decision to become a member of the union if he is an owner-operator This is substantially similar to provisions which permit an employer to subcontract only with third parties who are unionized. . . .

The present provisions, to the extent that they require the subcontractees to become employees and members of the union, therefore must be declared invalid. As in the case of secondary boycotts generally, a union may not employ a collective-bargaining agreement with one employer as a means of effecting its object to coerce another employer to unionize. Nor may it by this means seek to coerce self-employed persons to become union members. Congress has made this clear by Section 8(b)(4)(A) which prohibits secondary boycotts with an object of "forcing or requiring any employer or self-employed person to join any labor . . . organization" The self-employed owner-operator is as much entitled to protection from coercion to join a labor organization as is a fleet operator who may have one or even many employees. [208 NLRB at 199-200.]

Additionally, since another object of Respondent's strike threat and actual strike was to force the self-employed owner-drivers to join Respondent Union and, thereby, become bound by the agreement which, as it would have been forced upon Helmkamp by Respondent, violated Section 8(e) of the Act, Respondent also violated Section 8(b)(4)(i) and (ii)(A) and (B) of the Act. *Santini Bros.; Teamsters Local 810 (A & J Heating)*, 235 NLRB 567 (1978).

REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I find it necessary to order it to cease and desist and to take certain affirmative action to effectuate the policies of the Act.

Respondent having threatened to strike (picket), and thereafter did strike (picket) Employer Helmkamp because Helmkamp refused to sign a contract agreeing to acquire self-employed owner-drivers, with whom Helmkamp contracted for trucking services, to join Respondent Union, Respondent violated Section 8(b)(4)(A) of the Act; and by such threat to strike (picket) and in fact striking (picketing) Helmkamp, Respondent, in effect, gave Helmkamp an option of not doing business with self-employed owner-drivers, or of forcing or requiring such owner-drivers to join Respondent Union, Respondent violated Section 8(b)(4)(B) and (A) of the Act, and such threat by Respondent also violated Section 8(b)(4)(ii)(A) and (B) of the Act, the recommended Order will provide that Respondent cease and desist from engaging in such unlawful conduct; and that it rescind the unlawful provisions of articles III and XXXIV of the current collective-bargaining agreement between Employer Helmkamp and Respondent Union.

On the basis of these findings of fact and the entire record in this case, I make the following

CONCLUSIONS OF LAW

1. Employer Helmkamp Construction Co. is, and had been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Respondent Chauffeurs, Teamsters, Warehousemen & Helpers Local 525, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

3. The self-employed owner-truckdrivers contracted by Employer Helmkamp are independent contractors and not employees of Helmkamp, and are persons engaged in or affecting commerce, within the meaning of the Act.

4. By threatening, coercing, and restraining Helmkamp by means of threatening to strike and in fact striking Helmkamp, with an object of forcing Helmkamp to enter into and give effect to an agreement prohibited by Section 8(e) of the Act, by forcing or requiring the independent contractor owner-drivers to become members of the Union and, in effect, with an object of requiring Helmkamp to cease doing business with the independent contractor owner-drivers, if they do not become members of the Union, the Union has engaged in unfair labor practices in violation of Section 8(b)(4)(i) and (ii)(A) and (B) of the Act.

5. These unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommendation²

ORDER

The Respondent, Chauffeurs, Teamsters, Warehousemen & Helpers Local Union 525, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Alton, Illinois, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Threatening, coercing, or restraining Helmkamp, or any other employer or person engaged in commerce or an industry affecting commerce, where an object thereof is either (1) to force or require Helmkamp or any other employer or person to enter into an agreement prohibited by Section 8(e) of the Act, or (2) to force or require independent contractor owner-drivers contracted by Helmkamp or another employer, or self-employed person, to join the Union or other labor organization, or (3) to force Helmkamp to cease doing business with independent contractor owner-drivers.

² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) Entering into a collective-bargaining agreement containing articles III and XXXIV of the current collective-bargaining agreement between Helmkamp and Respondent, which is found unlawful under Section 8(e) of the Act.

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

(a) Rescind the unlawful provisions in articles III and XXXIV of the current collective-bargaining agreement between Employer Helmkamp and Respondent Union.

(b) Post at its business offices, meeting halls, and places where notices to members are customarily posted copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Mail or deliver additional signed copies of said notices to the Regional Director for Region 14, for posting by Helmkamp Construction Co. if willing, at locations where notices to its independent contractor owner-drivers are customarily posted.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges violations of the Act not found herein.

³ If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

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

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten, coerce, or restrain Helmkamp Construction Co. or any other person in commerce or in an industry affecting commerce, where in either case an object thereof is either (1) to force or require Helmkamp or any other employer or any other person to enter into or give effect to an agreement prohibited by Section 8(e) of the National Labor Relations Act, or (2) to force or require the independent contractor truck-owner drivers of Helmkamp or other employer or self-employed person to join the Union, or other labor organization, or (3)

force or require Helmkamp to cease doing business with independent contractor truck-owner drivers.

WE WILL NOT enter into, give effect to, or enforce articles III and XXXIV of our current collective-bargaining agreement with Helmkamp Construction Co. which has been found to be unlawful under Section 8(e) of the National Labor Relations Act.

WE WILL rescind articles III and XXXIV of our current collective-bargaining agreement with Helmkamp Construction Co.

CHAUFFEURS, TEAMSTERS, WAREHOUSE-
MEN & HELPERS LOCAL UNION 525, AF-
FILATED WITH THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, CHAUF-
FEURS, WAREHOUSEMEN AND HELPERS OF
AMERICA