

**Operating Engineers, Local Union No. 3, AFL-CIO
and Joy Engineering, Case 32-CB-3899**

November 22, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On May 11, 1993, Administrative Law Judge Joan Wieder issued the attached decision. The Respondent filed exceptions and a supporting brief, and the Charging Party filed a brief in response.

The National Labor Relations Board has considered the decision and record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions² and to adopt the recommended Order as modified.³

AMENDED CONCLUSIONS OF LAW

Substitute the following for the judge's Conclusion of Law 4.

"4. By attempting to cause Joy Engineering to hire only employees dispatched through the Union's hiring hall, and to discharge employees not so dispatched, in

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.

We have corrected the judge's inadvertent misspelling of the name of Union Business Agent Pete Cox.

² The Respondent has excepted, inter alia, to the judge's finding that the 1984 agreement between Richard Joy Jr. and the Union was ambiguous. In adopting the judge's findings in this regard, we rely solely on the language of the document itself. Thus, we find that the provisions in the agreement which state that it shall apply to the employees of the signatory individual employer are ambiguous when read in conjunction with the inclusion of the phrase "owner-operator" in the agreement, and the fact that the agreement was executed in the name of Richard Joy Jr. (rather than the partnership, Joy Engineering, asserted by the Union to be bound by the agreement) and contains Joy's social security number. Because the agreement is ambiguous on its face, we may properly resort to extrinsic evidence to determine its meaning. *Timberland Packing Corp.*, 261 NLRB 174, 176 (1982); *Gulf Refining & Marketing Co.*, 238 NLRB 129 fn. 2 (1978). For the reasons stated by the judge, we agree that the circumstances surrounding the execution of the 1984 agreement indicate that it is applicable only to Richard Joy Jr. individually, and does not cover employees of Joy Engineering. See *Mid-States Construction*, 270 NLRB 847 (1984) (employer not bound by collective-bargaining agreement despite signing assent of participation which stated employer was bound, where assent form ambiguous, surrounding circumstances indicated employer had not agreed to be bound).

³ The judge found that the Respondent violated the Act by demanding recognition as the exclusive bargaining representative of the Employer's employees at a time when there was no valid collective-bargaining agreement. Because this finding is not based on any complaint allegation, we shall amend the judge's conclusions of law, Order, and notice to reflect the violations actually alleged and established in this case.

the absence of a valid collective-bargaining agreement authorizing such actions, the Respondent has violated Section 8(b)(1)(A) and (2) of the Act."

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below, and orders that the Respondent, Operating Engineers, Local Union No. 3, AFL-CIO, Reno, Nevada, its officers, agents, and representatives, shall take the action set forth in the Order of the administrative law judge, as modified.

1. Substitute the following for paragraph 1(b).

"(b) Attempting to cause Joy Engineering to hire only employees dispatched through the Respondent's hiring hall, or to discharge employees not so dispatched, in the absence of a valid collective-bargaining agreement authorizing such actions."

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

**NOTICE TO EMPLOYEES
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 restrain or coerce the employees of Joy Engineering by threatening them with loss of employment because they have not been dispatched through our hiring hall.

WE WILL NOT attempt to cause Joy Engineering to hire only employees dispatched through our hiring hall, and to discharge employees not so dispatched, in the absence of a valid collective-bargaining agreement authorizing such actions.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act.

WE WILL notify, in writing, Joy Engineering that we have no objection to its employment of individuals who have not been dispatched through our hiring hall.

**OPERATING ENGINEERS, LOCAL UNION
No. 3, AFL-CIO**

Valerie Hardy-Mahoney, Esq., for the General Counsel.
Lawrence B. Miller, Esq., of Alameda, California, for the Respondent.

Mark R. Thierman, Esq. (Thierman, Cook, Brown & Prager)
of San Francisco, California, for the Charging Party.

DECISION

STATEMENT OF THE CASE

JOAN WIEDER, Administrative Law Judge. This case was tried on November 20, 1992, at Reno, Nevada.¹ On a charge filed on April 28, by Joy Engineering (Charging Party or Employer), which was amended on March 30, a complaint and notice of hearing was issued on June 30 by the Regional Director for Region 32 alleging Operating Engineers Local Union No. 3 of the International Union of Operating Engineers, AFL-CIO (Respondent or Union) committed certain violations of Section 8(b)(1)(A) and (2) of the National Labor Relations Act (the Act). The complaint was amended at hearing.

Respondent's timely filed answer to the complaint admits certain allegations, denies others, and denies the commission of any unfair labor practices.

The parties were given full opportunity to appear and introduce evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Based on the entire record, from my observation of the demeanor of the witnesses, and having considered the posthearing briefs, I make the following

FINDINGS OF FACT AND CONCLUSIONS

I. JURISDICTION

The parties stipulated Employer Joy Engineering meets one of the Board's jurisdictional standards. Accordingly, Respondent admits, and I find, the Employer is engaged in commerce and in business affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act. Respondent also admits, and I find, it is a statutory labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICE

A. Preliminary Matters

Counsel for General Counsel moved to strike a portion of Charging Party's posthearing brief. The gravamen of General Counsel's motion is that portion of Charging Party's brief which claims the agreement signed by Joy Jr. is a prehire agreement under Section 8(f) of the Act which was effectively repudiated, should be stricken from consideration for it exceeds the scope of the allegations in the complaint and the theory propounded by General Counsel. Respondent agrees with General Counsel that "whether the Employer abrogated or repudiated an 8(f) agreement is neither within the framework of the pleadings nor the issues litigated at hearing."

In opposition to General Counsel's motion, Respondent argues a central issue is the nature of the agreement signed by the Union and the Employer. Thus, Charging Party claims its theory the agreement is a prehire agreement which was effectively repudiated, is within the scope of the issues raised by the complaint and a party has the right to raise any theory that will support its arguments. Charging Party further asserts its theory does not broaden the issues. Charging Party claims while "General Counsel is entrusted with the management of

the prosecution of the complaint. . . . Charging Party is not required to mimic the General Counsel's brief on all points."

I find it unnecessary to grant the motion. I conclude the merits of the Charging Party's argument need not be reached based on the findings and conclusions here. Assuming I find there was a contract between Respondent and Charging Party, I further conclude its position is inconsistent with General Counsel's position and is beyond the scope of the complaint. There was no notice to Respondent the issues encompassed within the complaint included the issue of whether the agreement was an 8(f) agreement which was repudiated by Charging Party's actions. There was no clear opportunity afforded Respondent to address these positions adopted by Charging Party in its brief. Charging Party failed to state explicitly on the record it was going to adopt this position. General Counsel's motion to strike portions of Charging Party's brief is denied, however, in considering Charging Party's brief, those portions concerning the existence of an 8(f) contract and repudiation of such a contract, are not considered here.

In view of the lack of clear and fair notice to Respondent concerning these issues, I conclude Charging Party's theory concerning the existence of an 8(f) prehire agreement which was repudiated should not be considered as encompassed within the complaint hereunder consideration. See *Tyson's Foods*, 172 NLRB 2008 (1968); *Utility Workers v. Consolidated Edison Co.*, 309 U.S. 261 (1940); *Piasecki Aircraft Corp. v. NLRB*, 280 F.2d 575 (3d Cir. 1960), cert. denied 364 U.S. 933 (1961); *Sailors Union (Moore Dry Dock)*, 92 NLRB 547 (1950).

B. Background and Issues

The issues raised in this proceeding are whether the Charging Party and Respondent entered into a valid collective-bargaining agreement covering any of its employees; whether Respondent threatened one of Charging Party's employees that it would seek his discharge because the employee had not been dispatched by Respondent; and whether Respondent demanded the Charging Party discharge employees because they had not been dispatched by Respondent.

1. Is Charging Party a signatory to an agreement with Respondent?

Charging Party is, and has been at all material times, a California partnership with an office and place of business in Portola, California, engaged in the construction industry as an excavation contractor. The partnership was formed in 1980 by Richard L. Joy and his father.² In 1980, Charging Party did not have employees, only the partners performed work. In 1984, Charging Party had two part-time employees in addition to the partners. Joy Jr. was working alone in Antioch for MJM Construction, a firm based in California. MJM became a signatory to a collective-bargaining agreement with the Union. An official of MJM informed Joy Jr. if he wanted to retain his employment he "had to become an owner-operator."

Because Charging Party lived in or around Reno, Nevada, and knew and trusted the union business agent, Ed Jones, he telephoned Jones that evening. During this conversation, Joy

¹ All dates are in 1992 unless otherwise indicated.

² The father and son have the same names, so the partners will be referred to as Joy Sr. and Joy Jr.

Jr. informed Jones he “could not afford to have my company become union, and that I didn’t mind doing it individually, I had no problems with that.” According to Joy Jr., Jones replied, “No problem, we can go ahead with that. . . . When you get home this weekend, go ahead and give me a call, I’ll meet you, and we’ll take care of it.” It is undisputed some contractors are required by their collective-bargaining agreement to use “union owner-operators.” It is also undisputed the 1984 contract would apply only to work performed in northern Nevada.³

When Joy Jr. arrived home that weekend, he arranged to meet Jones and again “discussed the situation in Antioch, and I told him that I wanted to become an owner-operator but I did not want my firm to become a union firm, and Ed [Jones] said it was no problem.” On or about February 6, 1984, Jones and Joy Sr. executed a standard agreement entitled “INDEPENDENT Northern Nevada Construction Agreement.” Written on top of the document was the term “owner-operator.” As here pertinent, the agreement defines the term employee as any person whose work for an employer is covered by the agreement within the recognized jurisdiction of the Union. Paragraph 4 of the agreement provides: “This agreement shall cover and apply to all employees.”

At the time Joy Jr. executed the agreement, Charging Party had two part-time employees. Joy Jr. informed Jones about these employees. Joy Jr. testified, without contradiction:

Q. When you had your conversation with Mr. Jones in the parking lot in Reno, did you discuss whether or not the contract that you were signing was covering these employees.

A. Yes I did. . . . [Jones] told me that it was not, that it was only for me, and he—I was really concerned about it, and that’s why I did what I did, because I really respect him and knew him. I felt very comfortable with Ed and he assured me that it was not for the company, that it was for me as an individual.

Jones admitted he could not recall the details of Joy Sr. signing the 1984 agreement. Jones could not recall specifically if he ever signed an owner-operator to another agreement after the owner-operator hired employees. Jones was a union business agent for more than 9 years, severing his employment relationship with Respondent in 1988 by retiring. Although Jones exhibited poor recall concerning the events resulting in Joy Jr. executing the owner-operator agreement, he appeared to be attempting to respond to questions in an open and honest manner. I was impressed with his demeanor which strongly tends to give his testimony credence. Accordingly, I will credit those portions of his testimony where he indicated he had recall of the subject matter of the question. There is no doubt Jones had authority to speak for Respondent in this matter.

Jones also explained the advantages of an owner-operator signing an agreement as follows:

³The record is silent how the 1984 agreement met the requirements of MJM Construction. There is no claim Jones informed Joy Jr. he would have to join the northern California branch of the Union.

Q. The advantage of being an owner/operator and signed with the union is that if you own your own equipment, some of the general contractors are required to use union owner/operators, right?

A. Yeah.

Q. So it would be important for an individual who maybe owned a bulldozer or a backhoe to hold a union card so that he could be on those jobs, right?

A. Yeah.

Q. The owner/operators, do they ever have employees?

A. Some of them, yeah.

Q. They would sign a regular agreement or they’d sign as owner/operator?

A. If they’re owner/operator, they’d sign for owner/operator, and if they’re—as they get bigger, then they hire more people and things change.

Q. And you’d make them sign a new agreement?

A. Probably.

I conclude Joy Jr. was led to believe by Jones he was signing as an individual and not as a company representative for Charging Party. His recitation of events was done with substantially persuasive detail, giving the strong impression he was making an honest attempt to accurately recall the facts. Joy Jr. testified in an open and candid manner. He appeared to be very frank and did not seem to engage in any dissimulation. The document had Joy Jr.’s social security number on it and his name, not the Charging Party’s firm name. Raymond Morgan, respondent district representative for northern Nevada, admitted the agreements with employers do not have the employer signatory’s social security number.

Lending credence to Joy Jr.’s testimony is the fact the agreement was between Joy Jr. and Respondent, not Joy Engineering. Joy Jr. paid his dues and arranged for owner-operator health coverage.⁴ From 1984 until 1992, Joy Jr. did continue to pay union dues and health insurance premiums for himself only. The employer operated openly as a nonunion contractor. There is no claim Joy Engineering ever made contributions to any of the Respondent’s funds for any of its employees, and there is no claim Charging Party held itself out as a union employer or paid union wage rates. None of Charging Party’s employees were dispatched by Respondent during this period of time.

During the same period of time, 1984–1992, Charging Party worked on about 41 jobs in Northern Nevada. For these jobs, which lasted between 4 days to 6 months, Charging Party hired between one to six employees. Respondent never contacted Charging Party about its failure to use the union referral system, failure to pay union wage rates, and failure to make contributions to Respondent’s health and welfare and pension funds. Further, there is no correspondence from Respondent to the Charging Party indicating any

⁴Owner/operators have a health plan that is separate and distinct from that maintained for the “normal rank and file.” Owner/operators do not have a pension plan. Pete Cocks, an admitted business representative of Respondent, did not know if owner/operator members could sit on a negotiating committee, although they can, like any member, vote on contracts. Cocks has been an agent of Respondent’s for about 6 years.

changes to contractual rates or advising Joy Engineering of any obligation to pay contractual rates.

Further buttressing my conclusion Joy Jr. signed the agreement with Respondent with the understanding it was for himself, not Joy Engineering, were the actions of Respondent regarding Joy Sr. In 1987, George Morgan,⁵ Respondent's district representative in northern California, spoke to both Joy Jr. and Joy Sr. at a worksite in Quincy, California. A week after this conversation, Joy Sr. signed an "Independent northern California Construction Agreement" on July 8, 1987. This collective-bargaining agreement was in the name of Richard L. Joy Engineering. The 1987 agreement was modified and Joy Sr. executed the second agreement on October 12, 1987.

The modification was to have the collective-bargaining agreement in the name of "Richard L. Joy, individually as owner-operator." Respondent admits this October 12, 1987 collective-bargaining agreement applies to Joy Sr. individually; it affects work only in northern California, not Nevada. The verbiage printed on the October 12, 1987 collective-bargaining agreement is similar to the agreement Joy Jr. executed in 1984 which Respondent claims binds Charging Party and its employees. There is no basis to conclude the northern California district of Respondent conducts business differently than the northern Nevada district. Inasmuch as Jones has been found to have represented to Joy Jr. that owner-operators' contracts do not include the Company, I conclude this has been shown to be a standard operating procedure of Respondent in both northern California and northern Nevada.

The change in the 1987 collective-bargaining agreement's coverage was a result of a letter from an attorney for Joy Sr. The letter reads:

Pursuant to our telephone conversation of this date, it is my understanding that you are in agreement that the existing "Independent northern California Construction Agreement between Richard L. Joy Engineering and Operating Engineers Local Union No. 3 does not correctly reflect the intention of the parties, and that the contract will be corrected to reflect the true intent of the parties. This will show Mr. Joy, individually, as an owner-operator of a CAT Dozer joining Operating Engineers Local Union No. 3. *Mr. Joy's firm, Richard L. Joy Engineering, is non-union and there was never any intention of his firm joining the union.* [Emphasis added.]

Please send a new contract showing Richard L. Joy, individually, joining the union and confirmation that the current agreement with Richard L. Joy Engineering has been rescinded.

By the October 1987 agreement, Respondent reflects it has collective-bargaining agreements with owner-operators that do not bind their firms. Respondent argues, by the above letter, Charging Party never sought to modify the 1984 collective-bargaining agreement to cover Joy Jr. only as an individual and thus it should be bound to cover the employees of Joy Engineering. I find this argument to be unpersuasive. Both the 1984 and 1987 collective-bargaining agreements

⁵George Morgan is the brother of Raymond Morgan, Respondent's northern Nevada district representative.

refer to the individuals signing the agreement on the line for individual employer as owner-operators. The only difference between the 1984 contract for Joy Jr. and the 1987 contract for Joy Sr. is the term "individually." The use of this term is not alleged by Respondent to alter the application of the contract.⁶ Respondent admits the 1984 agreement executed by Joy Jr. was designated an owner-operator agreement. Further, Respondent, by Raymond Morgan, admits when it enters into a collective-bargaining agreement with partnerships, it has both partners execute the contract.⁷ There is no claim Joy Sr. signed the 1984 agreement.

Moreover, Respondent never contested the claim in the above-quoted letter that Charging Party "is nonunion and there was never any intention of his firm joining the union." This claim reflects and is consistent with Joy Jr.'s understanding that when he signed the 1984 agreement, it covered him individually, not his company. Thus, I conclude Respondent had owner-operator agreements which solely covered the individual signatory and not their employees. There is no claim by Respondent that Charging Party had no employees at the time Joy Sr. signed the agreement in 1987.

Respondent argues the 1984 agreement should be treated differently than the 1987 agreement, for Charging Party failed to ask for modification of the 1984 agreement at the same time it requested alteration of the 1987 agreement. Inasmuch as Charging Party operated as a nonunion company since the 1984 agreement was signed, there was no basis shown for any request to modify its terms; the 1984 agreement was already similar to those changes requested in the 1987 agreement. Another factor controverting Respondent's claims is the difference in the treatment by the Union of the effects of the 1984 and 1987 contracts.

After Joy Jr. signed in 1984, the Union never claimed Charging Party was a union company, never requested their employees be dispatched by Respondent, never required the employees join the Union, never asked that their employees be paid pursuant to any collective-bargaining agreement, never requested payment of benefits to any health or pension funds for employees, and never informed Charging Party of any changes in benefits pursuant to contracts negotiated after 1984. Finally, neither Respondent nor any of its affiliated trust funds sent Charging Party report forms for any employees other than Joy, Sr. and Joy Jr.

In contrast, the day after Joy Sr. signed the contract in 1987, a union representative called Charging Party and informed them they "were now a union firm, that we would have to obtain our operators from the hall." It was only after

⁶Respondent, by Raymond Morgan, claimed both contracts applied to Joy Engineering, despite the communications between the Charging Party and George Morgan, Raymond's brother and Respondent's northern California representative. There is no claim by Respondent that the northern California portion of the Union operated under different rules and/or procedures than the northern Nevada Division.

⁷Specifically, Raymond Morgan testified:

ADMINISTRATIVE LAW JUDGE: Let's assume they have a business and that they operate under the business name, how would you have a contract?

THE WITNESS: I would still put it under his name, if he was an individual working as an owner/operator, and not hiring employees.

[ADMINISTRATIVE LAW JUDGE]: What if it's a partnership and two people working . . . as a partnership, not as individuals.

this conversation concerning the 1987 agreement that Charging Party sought modification of the Joy Sr. contract to insure it applied only to Joy Sr. and not Charging Party. The alterations Respondent agreed to in the agreement were to make it similar to the 1984 contract by referring to Joy Sr. as an owner-operator and to delete reference to Joy Engineering.

If Respondent had considered Charging Party to be a unionized firm since 1984, then there would have been no reason to inform them after Joy Sr. executed the 1987 agreement, that only then, in 1987, were they obligated to get employees through union referrals. Respondent never refuted Charging Party's claim in their attorney's August 6, 1987 letter that "Richard L. Joy Engineering, is non-union and there was never any intention of his firm joining the union." The record is silent concerning whether the northern California division communicates with the northern Nevada division, and whether representations made to one division does or does not bind the other division. Assuming these divisions do not communicate, there is still an absence of any evidence they historically treated the owner-operator agreements differently.

Respondent indicated it contacted Charging Party in 1992 after it saw Joy Engineering was the successful bidder on the DRI Research job. The form collective-bargaining agreement provided for exclusive referral of employees by Respondent Union. After checking their contract file, Respondent wrote Charging Party the February 25 letter. There was no claim Charging Party was not designated as a successful contractor on other bidders list between 1984 and 1992. Thus, there was no convincing claim or other probative evidence that Respondent did not know Charging Party employed operators in northern Nevada between 1984 and 1992. In fact, Pete Cocks, one of Respondent's business agents, previously worked as a foreman on jobs in northern Nevada where Charging Party was the successful bidder as a subcontractor in 1986. Cocks also admitted Respondent regularly checks the bidders sheets.

The clarity and consistency of Charging Party's understanding is depicted by a review of the jobs it performed in northern Nevada without any adherence to a collective-bargaining agreement covering its employees and without any claim by the Union these employees and Charging Party were subject to such an agreement. Respondent did not expressly aver it had no knowledge of any of Charging Party's operations in northern Nevada.⁸ Raymond Morgan, Respondent's northern Nevada district representative for the past 6

⁸The following is a summary of Charging Party's operations in northern Nevada from 1984 through 1991. In 1984, one job lasting 4-5 months employing one operator. In 1985, Charging Party employed two operators for 2-1/2 to 3 months. In 1986 it employed two operators for 2-1/2 or 3 weeks. In 1987, Charging Party had six jobs employing one to four operators, one job employed four operators for 6 to 7 weeks, and another job lasted throughout the year and employed between one to three operators. In 1988, there were nine jobs employing between one to three operators, with one job having three operators for 5 months. In 1989, Charging Party had seven jobs, one using six operators for 3 months and another utilizing four operators for 3 weeks. In 1990, there were four jobs, one using one to three operators and lasting throughout the year. In 1991, Charging Party had five jobs in northern Nevada, one using three operators for 3 weeks and another using two operators for 2 months.

years, never explicitly and convincingly demonstrated why the Union waited until February 25, 1992, to inform Charging Party they were considered a signatory contractor who had to get their operators from the Union and had to set up a monthly billing with the Union for their employees fringe benefits.⁹ In fact, the owner-operator designation on the agreement informs the trust funds they should not bill the employer.

Discussion

Having found Respondent represented to Joy Jr. that Charging Party's employees would not be covered under the 1984 agreement, the dispositive question is whether this conclusion overrides the written terms of the agreement. General Counsel cites¹⁰ *Steelworkers v. American Mfg. Co.*, 363 U.S. 564, 567 (1960), for the following holding:

In our role of developing a meaningful body of law to govern the interpretation and enforcement of collective bargaining agreements, we think special heed should be given to the context in which collective bargaining agreements are negotiated and the purpose which they are intended to serve. See *Lewis v. Benedict Coal Corp.*, 361 U.S. 459, 468.

General Counsel also cites *Auto Workers v. White Motor Corp.*, 505 F.2d 1193, 1199 (8th Cir. 1974), cert. denied 421 U.S. 921 (1975), for the following determination:

In interpreting a collective bargaining agreement it is often necessary to go outside the four corners of the contract itself and examine the agreement history to ascertain the intent of the agreement and determine the rights and duties of the parties.

Both these cases involved the construction and interpretation of collective-bargaining agreements which contained arbitration clauses. This consideration does not render these cases inapplicable. In *John Wiley & Sons v. Livingston*, 376 U.S. 543 (1964), the Court took a substantial departure from orthodox contract law and found a successor to be subject to the terms of a collective-bargaining agreement even though they did not sign or specifically agree to the terms of that agreement. In *NLRB v. C&C Plywood Corp.*, 385 U.S. 421 (1967), the Court determined the Board had authority to interpret collective-bargaining agreements that do not have arbitration clauses.

As held in *Gulf Refining & Marketing Co.*, 238 NLRB 129, 133 (1978),

Without giving probative weight to the bargaining history, there can be no effective assurance of the enforceability of the written contract. In *NLRB v. Strong Roofing Co.*, 393 U.S. 357, 361 (1969), the Supreme Court observed that the Board may "if necessary to adjudicate an unfair labor practice, interpret and give effect to the terms of a collective bargaining contract," citing *NLRB v. C&C Plywood Corp.*, 385 U.S. 421 (1967).

⁹Charging Party did not reply to this letter from Respondent.

¹⁰Respondent did not cite any cases in its brief.

I find the circumstances of this case oblige me to inquire into all the relevant circumstances surrounding the negotiation of the 1984 agreement. The inclusion of the term owner-operator to the agreement with the representation by the Union that such an addition negates the clause in the contract which provides it covers all employees creates ambiguity. The ambiguity is increased when the contract is not in the name of the Employer, is not executed by both partners, and contains the social security number of Joy Jr. The bargaining history in this case, where Joy Jr. testified, without contradiction, Respondent's representative informed him the addition of the term owner-operator rendered the clause of the contract which made it applicable to employees, ineffective fully establishes such latent ambiguity.

The use of parole evidence in these circumstances appears warranted. As held in *Printing Industries of northern California*, 204 NLRB 329, 332 (1973): "the parole evidence rule as applied to commercial contract is unsuitable of application to a collective-bargaining agreement. If the true intent of the parties is to remain our concern it would seem important that we not be required to close our eyes to all but the uncertain writing itself."¹¹

On all the foregoing, I find the credited evidence demonstrates the parties agreed the 1984 agreement would apply only to Joy Jr. and not include the employees of Charging Party. This conclusion explains and clarifies the parties' intent regarding the provisions of the collective-bargaining agreement. *Beech & Rich, Inc.*, 300 NLRB 882 (1990). To hold otherwise would alter the terms of the collective-bargaining agreement by making them applicable to Charging Party, even though Joy Engineering is not a designated party to the agreement and the social security number of Joy Jr. indicates it is an agreement solely between him and Respondent. As noted above, Respondent does not have the Employer's signatory put his social security number on its collective-bargaining agreements. This determination is supported by the failure of Joy Jr.'s partner, Joy Sr., to sign the collective-bargaining agreement.

If reliance on the bargaining history is deemed improper, then logical analysis of the undisputed evidence would require a similar conclusion. Respondent's northern California division permitted Joy Sr. to enter into an analogous agreement as an individual with the same owner-operator appellation. Thus, there has been established an industry practice of the Union permitting owner-operators to sign agreements as individuals without applying the contract to the owner-operator's employees; despite the written provisions concerning employees. Respondent failed to produce any owner-operators

who signed similar agreements as individuals that later were applied to their employees. Respondent admittedly had a practice of not setting up accounts for billings where the contracts contained the owner-operator appellation. Jones opined Respondent would require a new agreement if it were applied to the owner-operator's employees.

Although Raymond Morgan claims it is common for owner-operators to execute contracts with Respondent in their own name rather than their firm name, not one contract of this type was placed in evidence. There was no explanation why the Respondent's practice of having the partner also sign the agreement when the contract covers a partnership was not followed in this case. Raymond Morgan was not working at the northern Nevada location at the time Joy Jr. signed the agreement and he was not shown to know the practice at that location in 1984. Finally, when the northern California representative attempted to bind Charging Party rather than Joy Sr., it prepared a contract with Joy Engineering as the Employer signatory. When the northern California representative converted the contract to cover Joy Sr. only, not Charging Party, it merely changed the name of the employer to Joy Sr., owner-operator. There was no credible evidence the northern Nevada division followed a different operating procedure.

In sum, in this case, it is necessary to adjudicate the unfair labor practice allegation, to "interpret and give effect to the terms of a collective bargaining agreement"¹² by analyzing the "context in which collective bargaining agreements are negotiated and the purpose which they are intended to serve."¹³ The negotiations leading to the 1984 agreement and the Union's practice established with the 1987 Joy Sr. agreement, the failure to have the firm name and the partners signature, and the inclusion of Joy Jr.'s social security number, clearly demonstrate that at the least, there is ambiguity on the face of the agreement sufficient to permit parole evidence which unrefutedly requires the construction the contract was entered into with the clear understanding it would only apply to Joy Jr. and not Charging Party.

Under the surrounding circumstances, the provision of the contract referring to Joy Jr.'s employees is implicitly ambiguous and superfluous because it has been demonstrated that Jones and Joy Jr. agreed the contract was to apply only to Joy Jr. and not Joy Engineering and its employees. I conclude under these circumstances, Joy Engineering is not bound by the 1984 agreement and its employees are not subject to the provisions of that agreement.¹⁴

¹¹ Citing *Am.Jur.2d., Labor and Labor Relations*, § 1208 which stated:

A collective bargaining agreement is not an ordinary contract to which apply the principle of law governing contracts. It must be construed liberally rather than narrowly and technically, and it must be read as a whole and in the light of the law relating to it when made

In order to interpret a collective bargaining agreement, it is necessary to consider the scope of other related collective bargaining agreements as well as the practice, usage, and custom pertaining to all such agreements

The industrial common law—the practices of the industry and the shop—is equally a part of the collective bargaining agreement, although not expressed in it.

¹² *Strong Roofing Co.*, supra, 393 U.S. 357, 361, citing *NLRB v. C&C Plywood Corp.*, supra, 385 U.S. 421.

¹³ *Steelworkers v. American Mfg. Co.*, supra at 567.

¹⁴ In light of these conclusions, I deem it unnecessary to reach Charging Party's argument that the Union's attempt to enforce the 1984 contract against Joy Engineering is improper for Joy Jr. would then have to be determined to have been fraudulently induced to enter into the agreement by Jones' promises it applied only to him as an individual. Citing *Rozay's Transfer v. Teamsters Local 208*, 850 F.2d 1321 (9th Cir. 1988), cert. denied 490 U.S. 1030 (1989). I do, however, note the analogy to the Rozay's case that Joy Jr. clearly informed Respondent he would never enter into the agreement if it covered Joy Engineering and its employees rather than himself as an individual.

2. Allegations Respondent violated Section 8(b)(1)(A) and (2) of the Act

In late April, Respondent, by Business Representative Pete Cocks, an admitted agent, went to Charging Party's worksite and spoke to an employee, Derek Garver. Garver was a member of the Union at the time of this conversation. According to Garver:

A. Well, I needed to speak with the supervisor of the subcontractor, with whom I had to coordinate my efforts. And I went to speak with him, and at that time Pete [Cocks] was standing there talking to him and I, at the time, didn't know Pete until then.

And he apparently was checking to make sure that all the guys on the job site were cleared through the hall. And when I drove up he asked me if I was, identified himself, and I told him, "No, I wasn't."

And he [Cocks] told me that I couldn't be out there working if I wasn't cleared through the hall, and I told him he'd have to take that up with my supervisor.¹⁵

Garver became concerned about this conversation and informed Rick Joy

that Pete Cocks had asked me if I was a member of the Operating—if I had dispatched out of the hall and that I told him, no, I hadn't. And that Pete said I shouldn't be working out there unless I had, and I told—I'm repeating what I told Rick—that I told Pete, "Well, you'd have to take that up with my supervisor." I wasn't going to just leave unless my boss told me to.

Garver admitted Cocks never said he was going to seek to have him discharged from Joy Engineering. Garver volunteered "Pete was very nice. Every time he spoke with me, he was extremely civil and pleasant."

About 1 week later, Garver saw Cocks and spoke with him, having become concerned about his status.¹⁶ Cocks ad-

¹⁵ Garver also testified:

Q. Did you inform Mr. Cocks that you were working for Joy Engineering?

A. Yes, I did.

Q. And did you do that before or after he asked you if you had cleared through the hall?

A. After.

Q. Did he say anything to you after you said you worked for Joy Engineering?

A. You mean other than what I've already related to you?

Q. Right, what you've already told us.

A. Nothing of any consequence that I can recall.

After Garver informed Cocks of his Employer, Cocks did not retract his comments or modify them to indicate they applied only to employees of a subcontractor working on the project that was a signatory to a collective-bargaining agreement with Respondent. Thus, the fact Cocks learned the identity of Garver's employer after the questioning is not exculpatory. Cocks did nothing to repudiate his prior comments or mitigate their impact.

¹⁶ Garver testified:

Well, as I already mentioned, I was a member of the Operating Engineers at the time, and as that week or so passed I began to see that I was getting in the middle of an unpleasant situation because of my union affiliation, and so I walked past—Pete was visiting that day, out on the job site, and I stopped to talk to him for a moment. And I told him that I was a member and

mitted having two conversations with Garver. Cocks described the first conversation as:

Mr. Garver indicated to me that he had worked prior for Joy Engineering. He was somewhat—pardon me—he indicated he did not want to speak to me at length on the job, due to the fear of someone seeing him talk to me.

I expressed that was no problem and that I was just—my thoughts were that Joy was signed and that that's—that everyone there would be squared away. That was the end of the conversation.

Cocks described the second conversation as not containing any threat, claiming:

He [Garver] asked me how we were doing, and I says, you know, at this time we have not been able to do anything.

He asked me about the fringe benefits. And I said if he was indeed—if the contract was settled, then we were—then he was signatory, then he would get his fringe benefits.

I said, you know, I cannot tell you that, because we can't get any contact with Rick, so I don't know where we stand on our contract.

He indicated that he was looking forward to getting the insurance. I said, "Well, I can't tell you the answer to that."

Cocks claimed Garver was nervous talking to him, he did not want to be seen talking to Cocks because he feared "someone seeing him talk to me." He admitted expressing "that was no problem and that I was just—my thoughts were that Joy was signed and that that's—that everyone there would be squared away." This appears to substantiate Garver's claim Cocks said he needed to be dispatched by Respondent.

Garver's testimony is credited based on his forthright demeanor. Also, he was explicit, sure, and certain in his recall of these encounters with Respondent's representatives. In contrast, Cocks volunteered information and was not responsive to some questions. He appeared to be tailoring his testimony to fit Respondent's litigation theory. Accordingly, I

that I wasn't carrying a card. I was concerned about having problems with the union as a member.

And he told me that, you know, he didn't have any problems with me and that they were dealing with and that it was between them, basically, and I was pretty much not going to get sucked into it . . .

I believe during the course of the second conversation when Pete and I were just chit-chatting that I asked him if they had gotten things worked out yet, and he said that as far as he knew, no.

And I said, well, you know, I have no problem whatsoever with going to the hall. I'd be more than happy to dispatch, you know.

And I told him, also, that, you know, I was a member in good standing on the A list with the Reno hall and that if they wanted to work something out with Joy Engineering and dispatch me through the hall, I had absolutely no objection.

As a matter of fact, I would have liked it if they had done that.

credit Garver's version of these conversations and find Cocks told him he should not be working for Joy because he had not been dispatched by the Union.

Both Cocks and Raymond Morgan spoke with Timothy Burres, Charging Party's project manager on the DRI Loop Road Project in northern Nevada, the job Garver was working on. According to Burres, the project began on April 13. On or about April 24, Burres noticed a vehicle parked on the projects haul road, so he drove over to determine who was on the road.¹⁷ He recalled there were two gentlemen in the vehicle and they introduced themselves as representatives of Respondent. Burres could only recall the name of one, Raymond Morgan. Most of Burres' conversation was with Morgan; he had no recollection concerning the identity of the second union representative. According to Burres:

Q. And what happened after they introduced themselves?

A. They objected to one of the employees that we had on the job. They objected to him being there.¹⁸

Q. What was said?

A. As best as I can recall, the exact wording was that he can't—he can't be here because he hasn't been dispatched by the union.

Q. And what was your response?

A. I replied that we were non-union, that we were a non-union contractor.

Q. And then what happened?

A. This was a very short conversation, the wind was blowing very hard that time. I had other problems and I basically shined him on.

I didn't want to talk with him.

I asked him to leave. I asked him to get off the haul road.

They were parked in a dangerous location and they did leave, and they went one way and I went the other.

Burres described the conversation as very short "because I didn't want to get run over by a scraper. We were parked in a bad spot, and it was a very quick-and-dirty conversation."

About 1 week to 10 days later, Cocks came up to Burres on the jobsite:

and he introduced himself, identified himself again, and so on, and said he had been down talking with one of our operators, a gentleman named Chuck Hall. And he made the comment to me, he said, "Chuck can't be on that machine."

And my reply was, "What machine?" You know, I suppose I misunderstood him a little bit at first. I

thought he meant he couldn't be on that specific machine.

And I replied then that Chuck was—Chuck was non-union and that we were a non-union contractor, also.

Mr. Cocks at that point made the comment that Rick Joy was personally signatory, therefore all the operators on the project had to be dispatched by the union.¹⁹

We subsequently discussed the fact that Chuck had not been dispatched by the hall. That was their objection—his objection. . . .

I must have replied, "We're a non-union contractor. Chuck Hall was non-union, as far as I knew. We're a non-union contract."

And I didn't understand why he was trying to tell me that Chuck couldn't be on that particular machine. . . . Mr. Cocks said that Rick was personally signatory in the union, therefore all the operators on the job had to be dispatched by the union.

Q. And what was your response?

A. My reply? Well, I didn't have a lot of interest, you know, in the problem. We were a non-union contractor, as I said a while ago, I had shined off the first two gentlemen and basically at that point I lost interest in the conversation with him and I, you know, I kind of shined him off, too.

I said, "It isn't my problem. I don't have time to deal with it. You can call Rick or call his lawyer or call somebody, but you and I aren't going to have a discussion about this."

Burres admitted he did not know the legal requirements and he was very busy. Burres admitted; "I basically shined him on" and concluded the conversation by saying "Call Rick, or call his lawyer or something like that."

Raymond Morgan recalled talking to Burres in "mid-March or April—back at the first of the year, right after they started the DRI job." According to Raymond Morgan, he and Cocks "were looking for Mr. Joy and then to let him know that they were signatory and we wanted [Charging Party] to comply with the agreement." He denies talking with any employees of Charging Party. On cross-examination, Raymond Morgan admitted informing Burres the Union wanted Charging Party to be bound by and adhere to the 1984 agreement. He also admitted Burres said they would "have to talk to Rick Joy."

Cocks also claims he first went to the jobsite in late March or early April, even though Burres testified without contradiction that the job did not start until April 15. According to Cocks, the first time he spoke with Burres was mid-April and:

¹⁹ On further examination Burres elaborated, stating:

We had a fellow working for us named Chuck Hall. Chuck was running an excavator that particular day, putting in some storm drain. Chuck Cocks [sic] came up to me and said—as I recall, he said he had been down to talk—talking to Chuck and he said, "He can't be on that machine." And he turned and he pointed down to the area of the job where the machine was. So that was his comment, he said, "He can't be on that machine."

Q. And you responded?

A. Well, as I said earlier, I—my first reaction was, "Why can't he be on that certain machine? What kind of a machine can he be on," you know.

¹⁷ Burres explained, "it started out I went down to basically chase them off the haul road. I felt they were parked in a dangerous location on the project." Burres initially asked Raymond Morgan and Cocks to move because "they were parked in a dangerous spot." In response the union representatives introduced and identified themselves.

¹⁸ On cross-examination, Burres explained "they—after they introduced themselves, they brought up the subject of Derek Garver. . . . They said Derek couldn't be on the job. They objected to Derek being on the job. . . . Because he had not been dispatched by the hall.

just told him Rick was signed and that he needed to get his guys cleared and he said that, you know, he had nothing to do with that and would really prefer that I get a hold of Rick.

And I explained that I had tried, and I asked him if he could possibly get a message to Rick so, you know, at least we could get in contact with him.

Cocks denied telling Burres or anyone in management for Joy Engineering they were to terminate an employee or informing Garver or any other employee of Joy Engineering they would be discharged or they had to be cleared through the hiring hall. If an employee is not cleared through the hiring hall and is working for a signatory employer, the Union files a grievance and the employer pays “monies into our trust for the time that person’s on the job that he is not cleared.” In essence, the employer pays twice for that employee’s services; “double-payroll.” When the employer clears that employee through the hiring hall, the double billing stops.

Cocks admitted:

Q. And you also asked Mr. Burres that the Joy Engineering employees who were operators be cleared through the hall?

A. I did not ask him, I told him that’s what they needed to be done.

Q. The words you said, “they must” or “they need-ed” to be cleared?

A. To be cleared.

Q. So it wasn’t a request, it was a statement?

A. It was a statement.

I find Cocks’ admission he informed Burres Joy Engineering had to clear their employees through the Union’s hiring hall more believable than Raymond Morgan’s denials. This admission also buttresses Burres’ testimony, which I find credible. Cocks, on the other hand, will only be credited where his testimony is an admission against Respondent’s interests. He exhibited an unconvincing mien. Although demeanor alone warrants not crediting his testimony, I also note a portion of his testimony was elicited through the device of leading questions, his testimony was self-serving and exaggerated, and he appeared more interested in supporting a litigation theory than in testifying candidly about the events.

Discussion

General Counsel argues Cocks’ statement to Garver “that [Garver] couldn’t be out there working if he wasn’t cleared through the hall,” reasonably tended to coerce and restrain employees from exercising their statutory right to refrain from joining or assisting the Union. Citing *Clothing & Textile Workers (Troy Textiles)*, 174 NLRB 1148 (1969), and *Save-On-Drugs*, 227 NLRB 1638 (1977). Charging Party adopts a similar position, that absent a hiring hall arrangement, the Respondent violated Section 8(b)(1)(A) of the Act by informing Garver he had to go through the Respondent’s hiring hall. Citing, among others, *Carpenters Local 2396 (Tri-State Ohbayaashi)*, 287 NLRB 760 (1987).

Respondent, in addition to claiming it was merely enforcing a valid collective-bargaining agreement, thereby engaging

in lawful activity, denies its agents made any threats. I conclude Respondent’s reasons for discrediting General Counsel’s witnesses are unpersuasive. The fact Burres admitted he “shined him on” bespeaks his candor, as did his direct and forthright manner. Cocks admitted the first conversation occurred on a day when the weather conditions made it difficult for Charging Party to perform its work obligations. Thus the short direct conversation without immediately reporting the communications to either Joy Jr. or Joy Sr. is not improbable.

That the Local may not have threatened any employees with discharge, merely threatened the Employer with “double billing” if the employee is retained without being cleared through the hiring hall, if credited, is no less coercive. Very few if any employers, threatened with “double billing” would be able to continue their business operations without requiring the employee to be cleared through the hiring hall or terminating an employee unwilling to be cleared through the union hiring hall. Further, I have found Cocks told Garver he should not be working for Charging Party because he had not been dispatched “out of the hall.”

I have also found Respondent’s representatives informed Burres, an employee, he could not be working for Charging Party; “he can’t—he can’t be here because he hasn’t been dispatched by the union.” About 1 week later, Respondent notified Burres that an employee named Chuck Hall could not be operating “that machine,” because “all the operators on the project had to be dispatched by the union.” There was no reference to double billing.

General Counsel cites *Clothing & Textile Workers Local 990 (Troy Textiles)*, 174 NLRB 1148 (1969), *enfd.* 430 F.2d 966 (5th Cir. 1970), which held the union violated Section 8(b)(1)(A) of the Act by threatening employees with loss of employment if they did not join the union, inasmuch as that statement reasonably had the tendency to coerce employees. “The test of coerciveness of a statement does not, of course, depend upon its actual effect upon listeners but, rather, upon whether it reasonably tends to have a coercive effect.”

As the Supreme court held in *Radio Officers v. NLRB*, 347 U.S. 17, 40–42 (1954):

The policy of the Act is to insulate employees’ job rights from their organizational rights. Thus Sections 8(a)(3) and 8(b)(2) were designed to allow employees to freely exercise their right to join unions, be good, bad, or indifferent members, or abstain from joining any union without imperiling their livelihood. . . . [n]o other discrimination aimed at encouraging employees to join, retain membership, or stay in good standing in a union is condoned.

I find, in the absence of a lawful collective-bargaining agreement between Charging Party and Respondent Union, by engaging in the above-described conduct, Respondent violated Section 8(b)(1)(A) and (2) of the Act. The Respondent’s statements constituted implied threats that employees would not be permitted to continue working for Charging Party if they did not join the Union, or agree to be dispatched through the Union’s hiring hall. The statements to Burres were attempts to cause the Employer to discriminate against employees who were not dispatched through Respondent’s hiring hall. Without a lawful collective-bargaining

agreement binding on Joy Engineering, these statements exceed the bounds permitted by the Act.

Although Respondent did not expressly demand the discharge of any one employee, it informed Burres an employee could not operate a piece of equipment because he had not been dispatched from the Union's hiring hall. As held in *Northwestern Montana District Council of Carpenters (Glacier Park)*, 126 NLRB 889, 897 (1960):

An express demand or request is not essential to a violation of Section 8(b)(2) of the Act. It suffices if any pressure or inducement is used by the union to influence the employer.

Analogously, *NLRB v. Jarka Corp.*, 198 F.2d 618, 621 (3d Cir. 1952), was quoted in *Electrical Workers IBEW Local 441 (Otto K. Olesen Electronics)*, 221 NLRB 214 (1975), as follows:

[I]t is unnecessary to determine whether Respondent's unlawful conduct was fortified by a threat as "the relationship of cause and effect, the essential feature of Section 8(b)(2), can exist as well where an inducing communication is in courteous or even precatory terms, as where it is rude and demanding."

In *Operating Engineers Local 18 (Ohio Contractors)*, 204 NLRB 681 (1973), the Board stated in part:

When a union prevents an employee from being hired or causes an employee's discharge, it has demonstrated its influence over the employee and its power to affect his livelihood in so dramatic a way that we will infer—or, if you please, adopt a presumption that—the effect of its action is to encourage union membership on the part of all employees who have perceived that exercise of power [citing *Radio Officers*]. But the inference may be overcome, or the presumption rebutted, not only when the interference with employment was pursuant to a valid union-security clause, but also in instances where the facts show that the union action was necessary to the effective performance of its function of representing its constituency.

In this case, General Counsel has made a prima facie showing Respondent did not have the right to claim dispatches must be made through its hiring hall and there was no demonstration by the Union there was any lawful basis for its demands the employees be dispatched through their hiring hall as a condition of employment to both Burres and Garver. Accordingly, I conclude the statements of Respondent's admitted agents were in derogation of Charging Party's employees right to refrain from supporting the Union, and encouraged employee support for the Union, as well as endeavoring to enforce the 1984 agreement by attempting to require the Employer to hire only employees dispatched through the Union's hiring hall, or to otherwise discriminate, in violation of Section 8(b)(2) and (1)(A) of the Act. See *Bricklayers Local 2 (Glenshaw Glass)*, 205 NLRB 478 (1973).

CONCLUSIONS OF LAW

1. Respondent Union is a labor organization within the meaning of Section 2(5) of the Act.

2. Charging Party is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. By threatening employees with the loss of their employment if they did not get dispatched through Respondent Union's hiring hall, Respondent has violated Section 8(b)(1)(A) of the Act.

4. By demanding recognition as the exclusive bargaining representative of the employees employed by Joy Engineering, when there was no valid collective-bargaining agreement covering the employees, and by seeking to enforce the agreement by attempting to require the Employer to hire only employees dispatched through the Union's hiring hall, or to otherwise discriminate, Respondent has violated Section 8(b)(1)(A) and (2) of the Act.

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

THE REMEDY

Having found that Respondent violated Section 8(b)(1)(A) and (2) of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

I shall recommend Respondent cease and desist from acting as the collective-bargaining representative of Charging Party's employees in northern Nevada, until Respondent is certified by the Board as the collective-bargaining representative of the employees in question or Respondent and Joy Engineering voluntarily enter into a clear and unambiguous collective-bargaining agreement covering Joy Engineering's employees in northern Nevada.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²⁰

ORDER

The Respondent, Operating Engineers Local Union No. 3, AFL-CIO, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Threatening employees of Joy Engineering with loss of employment if they are not dispatched through Respondent's hiring hall.

(b) Acting as the bargaining representative of the employees of Joy Engineering in northern Nevada, for the purposes of collective bargaining, unless and until there is a valid collective-bargaining agreement between Respondent and Charging Party and attempting to cause Joy Engineering, or any other employer, to deny employment to or otherwise discriminate against employees who have not been dispatched through Respondent's hiring hall.

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

²⁰If 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.

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

(a) Notify Joy Engineering, in writing, that it has no objection to the employment of employees that have not been dispatched through the Union's hiring hall.

(b) Post at its business offices and other places where notices to their members are customarily posted copies of the attached appropriate notice, marked "Appendix"²¹ Copies of the attached notice, on forms provided by the Regional Director for Region 32, shall be posted by the Respondent after

²¹ If this Order is enforced by a judgement 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 Judgement of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

being signed by its authorized representative, shall be posted for 60 consecutive days in conspicuous places where notices to members are customarily posted. Reasonable steps shall be taken by Respondents to ensure that the notices are not altered, or covered by any material.

(c) Notify immediately Joy Engineering that it has no objection to the Company's employing individuals that have not been dispatched through the Union's hiring hall.

(d) Mail to the Regional Director for Region 32 signed copies of the notice for posting by Joy Engineering, if willing, in places where notices to employees customarily are posted.

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