

District Council of Iron Workers of the State of California and Vicinity and Iron Workers Local Union No. 155 of the International Union of Bridge, Structural and Ornamental Iron Workers, AFL-CIO and J. W. Reinforcing Steel, Inc. Case 32-CB-4365

June 8, 1995

DECISION AND ORDER

BY MEMBERS STEPHENS, COHEN, AND
TRUESDALE

On March 31, 1995, Administrative Law Judge Mary Miller Cracraft issued the attached decision. The Respondents filed exceptions and a supporting brief, and the Charging Party filed an answering brief.

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 Respondents, District Council of Iron Workers of the State of California and Vicinity and Iron Workers Local Union No. 155 of the International Union of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, Hercules and Fresno, California, their officers, agents, and representatives, shall take the action set forth in the Order.

¹ The Respondents have 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), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

Barbara D. Davison, Esq., for the General Counsel.
Victor J. Van Bourg, Esq., of San Francisco, California, for the Respondent.
Theodore R. Scott, Esq., of San Francisco, California, for the Charging Party.

DECISION

STATEMENT OF THE CASE

MARY MILLER CRACRAFT, Administrative Law Judge. This case was tried in Oakland, California, on February 9, 1995. The charge and amended charge were filed October 11 and 20, 1994, respectively, and the complaint was issued October 27, 1994. The Respondents are District Council of Iron Workers of the State of California and Vicinity (Respondent District Council) and Iron Workers Local Union No. 155 of

the International Union of Bridge, Structural and Ornamental Iron Workers, AFL-CIO (Respondent Local 155). The Respondents filed a timely answer and an amended answer to the complaint denying most of the allegations in the complaint¹ and asserting certain affirmative defenses.

The issues in this case involve an independent contract incorporating a master agreement. The General Counsel contends the Respondents violated Section 8(b)(3) and (d) of the Act by attempting to compel J. W. Reinforcing Steel, Inc., the Employer, to agree to a midterm modification of this contract, by refusing to dispatch employees pursuant to the terms of that agreement unless the Employer agreed to the proposed midterm modification and by repudiating the terms of the contract. The Respondents defend their actions by attacking the validity and legal sufficiency of the contract.

On the entire record, including my observation of the demeanor of the witness, and after considering the briefs filed by the General Counsel, the Respondents, and the Employer, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondents deny that the Employer is engaged in commerce within the meaning of the Act. The evidence indicates that the Employer is a California corporation with its headquarters in El Cajon, California. Although the Respondents moved to dismiss the complaint based, *inter alia*, on failure of proof of jurisdiction and on the assertion that only the articles of incorporation could prove that the Employer is a California corporation, I find that the un rebutted testimony of the Employer's president, James Coker (Coker),² establishes that the Employer is a California corporation, that the Employer is engaged in the construction industry as a steel reinforcing subcontractor, that during fiscal year 1994, the Employer purchased steel bar valued in excess of \$50,000 from J. L. Davidson Co., Inc. (JLD) also located within the State of California, and that JLD purchased this steel bar directly from sources located outside the State of California.³ Ac-

¹ The Respondents denied filing and service of the charge and the amended charge. The formal papers contain verified returns which indicate that the charge and the amended charge were filed and served as alleged in the complaint. Sec. 102.113 of the Board's Rules and Regulations provides that the verified return shall be proof of service. No evidence was presented by the Respondents indicating that the charge and the amended charge were not filed and served as alleged. Accordingly, I find that the charge and the amended charge were filed and served as set forth in the complaint.

² James Coker was a thoroughly credible witness. I am convinced that at all times he testified to the best of his recollection and without embellishment regarding events that occurred in 1992, 1993, and 1994. Coker adequately explained all omissions or minor inconsistencies with his affidavit. Coker's demeanor throughout an entire day on the witness stand was forthright and appropriate. His testimony in general was logical and consistent.

³ The Respondents' motion to dismiss contests the General Counsel's proof that the Employer purchased goods in excess of \$50,000 indirectly from sources outside the State of California. I find that Coker's un rebutted testimony establishes that the Employer purchased approximately \$1 million of steel bar from JLD during fiscal 1994, the bulk of which was manufactured in the States of Oregon and Washington, thus outside the State of California. Coker credibly testified that during fiscal year 1994 he personally inspected the mill

Continued

cordingly, I find that the Employer satisfies the standards for indirect inflow set forth in *Siemons Mailing Service*, 122 NLRB 81, 85 (1958), and thus is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The Respondents admit that they are labor organizations within the meaning of Section 2(5) of the Act.⁴

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background

Incorporated in 1987, the Employer initially operated as a nonunion subcontractor in Southern California installing reinforcing steel on various concrete construction sites. In May 1992, the Employer successfully bid on a subcontract for a State of California prison to be built in Blythe, California. This construction project was governed by the Davis-Bacon Act, 40 U.S.C. § 276a-276a-7, which required that prevailing Iron Workers' wages be paid on all Iron Workers' jobs. None of the Employer's prior work had been covered by a prevailing wage requirement.

1. The Blythe independent agreement

Shortly before work began on the Blythe prison project, Employer President Coker received a telephone call from Donald E. Holmes (Holmes), who identified himself as a union representative for Iron Workers Local Union No. 416 (Local 416). The two discussed the possibility of signing a one-job agreement for the Blythe prison project. Coker said he would consider such an agreement. On May 18, 1992, Coker and Holmes signed two copies of the Iron Workers Independent Agreement (the Blythe Independent Agreement). At the time of execution, Coker wrote on both original documents, "1 JOB AGREEMENT BLYTH [sic] PRISON." The Blythe Independent Agreement is on a standard form and incorporates by reference the terms of the "Iron Worker Employers State of California and a Portion of Nevada . . . and District Council of Iron Workers of the State of California and Vicinity Master Agreement" (the Master Agreement) "in effect at the execution date hereunder."⁵ By letter of

certificates of all purchases of steel bar from JLD. Most of this steel bar came from Cascades Steel Rolling Mills, McKinville, Oregon, or Barbary Coast Steel, Seattle, Washington. These sources are located outside the State of California. Coker testified that he inspected the mill certifications because he, in turn, had to submit the mill certifications (showing the size, grade, and type of steel) to the general contractor to ensure that the correct grade of steel was used for each project. Coker's testimony was corroborated by a letter of October 11, 1994, from JLD to the NLRB that confirmed that it sold over \$50,000 of reinforcing bar materials to the Employer during fiscal year 1994 and that material was obtained by it directly from sources located outside the State of California. The parties submitted this letter by stipulation.

⁴The Respondents also admit that Iron Workers Local Unions Nos. 118, 229, 377, 378, 416, and 433 are labor organizations within the meaning of Sec. 2(5) of the Act.

⁵The standard form language states that the agreement is between "the undersigned individual employer and the [Respondent] District Council . . . for and on behalf of its affiliated California Field Iron Worker Local Unions." The standard form language further provides, "By executing this [agreement], the undersigned individual employer . . . agrees . . . this Iron Workers Independent Agreement shall remain in full force and effect indefinitely unless notice is

June 3, 1992, Richard Zampa (Zampa), who was identified in the letterhead and on the signature line of the letter as president of Respondent District Council, wrote to the Employer enclosing a copy of the executed Blythe Independent Agreement that was date stamped May 21, 1992, by Respondent District Council and thanking the Employer for signing the Blythe Independent Agreement.⁶

The Employer completed the Blythe Prison project about 1 year after it was started. Throughout that time, Local 416 referred ironworker employees to the Employer. Union Representative Holmes visited the project about once a week during this time period. For all employees covered by the Blythe Independent Agreement, the Employer made contributions to the trusts funds designated in the Master Agreement.

2. The Coalinga independent agreement

In early 1993, the Employer successfully bid on a subcontract to install reinforcing steel for the Coalinga, California prison. This project was also covered by the Davis-Bacon Act prevailing wage requirement. Following several telephone calls with Joe Roth (Roth), who identified himself as a union representative for Respondent Local 155, Coker met Roth in Fresno, California, on January 7, 1993, and executed an Iron Workers Independent Agreement (the Coalinga Independent Agreement) with the notation, "ONE JOB ONLY" and the further notation, "This agreement will be in effect for the Coalinga Prison job located in Coalinga, California." These notations were typed onto the Coalinga Independent Agreement by Roth's secretary prior to execution. The standard form that had been utilized for the Blythe Independent Agreement was also used for the Coalinga Independent Agreement.

The Employer received a letter dated February 8, 1993, from Zampa stating his thanks for execution of the independent agreement and enclosing an executed copy. Roth is identified on the letterhead as secretary of Respondent District Council. Respondent Local 155 referred ironworker employees during the term of this project. The Employer made contributions to the trust funds designated in the Master Agreement for its employees covered by the Coalinga Independent Agreement. Coker and Roth had a conversation during the term of this project in which Roth indicated that Coker would not be allowed another one-job agreement.

given strictly in accordance with the limitations [set forth below]." At the bottom of the standard form, Respondent District Council's name is set forth. Under Respondent District Council's title, a line appears, "Local Union No. _____" and under that "By _____" appears. On the first blank, the number 416 is handwritten and on the second blank, the signature "Donald E. Holmes" appears. The Blythe Independent Agreement is dated May 18, 1992, and the effective date is also May 18, 1992.

⁶Although the Respondents argue that the words "1 JOB AGREEMENT BLYTH [sic] PRISON" were inserted by Coker after the fact, the Respondents presented no witnesses or documents to prove this point. In the absence of such evidence, I conclude that no such evidence exists. Moreover, I credit Coker's testimony that this language was inserted when the documents were executed. I also credit Coker's testimony that Holmes made no explicit representations regarding the extent of his authority to bind the Respondents.

3. The Susanville independent agreement

In February 1994,⁷ the Employer was awarded work on the Susanville, California prison. Sven Sorensen (Sorensen), who identified himself as a representative of Iron Workers Local Union No. 118 (Local 118), contacted the Employer and a meeting was arranged in Sacramento. In the presence of a man introduced as Business Agent Jim Murphy, Sorensen asked Coker if Coker would sign a statewide agreement and Coker explained that it would be economically impossible to do so. Sorensen asked if Coker would consider a one-job agreement. Coker was surprised at the prospect of a one-job agreement given Roth's admonition that no more one-job agreements would be awarded. Coker had already made plans to perform the job nonunion and he told Sorensen this. Sorensen and Murphy left the office for about 10 minutes. When they returned, Sorensen asked if Coker would consider a statewide agreement that excluded Southern California (anything below the Los Angeles county line). Coker agreed. Sorensen and Murphy left and returned again, this time with an agreement containing notations. The parties then signed two copies of the standard form independent agreement (the Susanville Independent Agreement), which had the following typewritten notations:

This agreement is for the Susanville Prison project and/or any work bid north of the L. A. county line.

*The employer shall be allowed to bring in 4 key employees.

The fringe benefits for this project shall be joint checked with McCarthy.

The copy of the Susanville Independent Agreement in evidence is not dated in the "date" blank below the signature lines and no effective date appears at the bottom of the agreement where a blank is provided for such a date. Both the Blythe and Coalinga Independent Agreements had execution and effective dates set forth in the appropriate blanks on the standard form. Contrary to its experience with the Blythe and Coalinga Independent Agreements, the Employer did not receive a letter from Respondent District Council enclosing a file stamped copy of the Susanville Independent Agreement. The Employer, however, did receive the typical benefits payment packet and has made all benefit payments as required.

In March, Coker received a telephone call from Zampa⁸ regarding a court judgment of delinquency of the Employer's fringe benefit payments on the Coalinga job. Coker understood that the District Council had waived delinquency fees for some contractors when the contractor tendered the arrearage. During the course of this conversation, Zampa stated that he was aware of the Employer's contract with Local 118 (the Susanville Independent Agreement) and he was not happy with it. Coker asked Zampa if Zampa would accept the past due amounts on the Coalinga job and waive the delinquent fees. Zampa replied that he could waive the trust

fund delinquent fees but he would not do so unless Coker signed a full statewide agreement and did away with the one Coker had with Local 118 (meaning the Susanville Independent Agreement). Coker told Zampa he would not agree to this and the Employer paid the arrearages with delinquent fees on the Coalinga job.

In February 1995 (at the time of hearing), the Employer continued to perform work on the Susanville prison project. The project continued to be staffed by union ironworkers referred from Local 118 and their fringe benefits were paid according to the Susanville Independent Agreement.

B. *The Soledad Prison Project*

In August 1994, subcontractor JLD awarded the Employer second-tier subcontractor work on the Soledad prison project.⁹ Soledad, California, is located north of the Los Angeles County line. Coker called Roth to advise him that the Employer would be coming down to the Soledad project. Roth replied, he did not think so. Coker responded that he would have to talk to his lawyer to see what the Employer's legal rights were but Coker thought he had an agreement. Roth said he "had" Coker this time because the Employer was not the original subcontractor with the general contractor on the jobsite (referring to the Employer's second-tier status). In fact, JLD, the original subcontractor, could subcontract work only to Respondent Local 155 or Respondent District Council signatories because JLD was a party to the Master Agreement.

Coker saw Sorensen each week at the Susanville jobsite. On one of these weekly visits, Coker related to Sorensen that Roth was not going to furnish ironworkers to the Employer at Soledad. Sorensen said he could not understand that because the Employer had an agreement. Sorensen further stated that Respondent District Council was aware of the notations typed into the Susanville Independent Agreement before it was signed and that there should be no problems at this late date. Sorensen added that there was nothing he could do for Coker.

By letter of October 6, Coker's attorney contacted Respondents' attorney regarding the Soledad project. A copy of the Susanville Independent Agreement was faxed to the Respondents' attorney on the same date. By letter of October 14, Respondents' attorney questioned the authorship of the Susanville Independent Agreement typewritten language and stated that the Employer had not shown it was signatory to an agreement with Respondent District Council. By letter of October 14, counsel for Respondents notified JLD that the Employer had never executed a collective-bargaining agreement with Respondent Local 155 and that the existence of a collective-bargaining agreement with Respondent District Council had not been demonstrated.

Two telephone conversations between Roth and Coker ensued. In the first of these, Coker told Roth on October 19 that he was moving onto the Soledad jobsite, he expected

⁷ All further dates are in 1994 unless otherwise indicated.

⁸ In addition to his identification in Respondent District Council's letterhead stationary as president, Zampa is also identified in the Master Agreement as president of Respondent District Council and union chairman of the board of directors of the Ironworker Employees' Benefit Corporation and the Pension Trust Board of Trustees.

⁹ The Employer's work at the Blythe, Coalinga, and Susanville projects was performed pursuant to a direct contract with the general contractor in charge of those projects. This was referred to as a "first-tier subcontractor." The Employer's work at the Soledad prison project was awarded as a contractor of a subcontractor to the general contractor. This was referred to at the hearing as a "second-tier contractor."

men to be dispatched, and wanted to meet the jobsite steward. Roth responded that Coker should speak to Roth's lawyer. A confirming letter setting forth this same information and dated October 21 was also sent by the Employer to Respondent Local 155.

When Coker actually arrived at the Soledad jobsite, he called Roth just before the job was to start and asked Roth if he was going to dispatch ironworkers. Roth again responded, "Speak to my lawyer." Coker asked Roth if Roth would sign a one-job agreement for the Soledad project. Roth responded that Coker would have to sign a statewide agreement "or else."

By letter of October 20, JLD informed the Employer that it was unable to subcontract the labor on the Soledad project to the Employer because this would violate the terms of its "Master Agreement with the Iron Workers." Respondent Local 155 never furnished any ironworker employees to the Employer for the Soledad project. The Employer was terminated from its second-tier contract status with JLD for the Soledad prison project but Coker was hired by JLD to supervise that work and ironworkers were dispatched to JLD. Coker supervised the JLD ironworker employees on the Soledad project.

III. ANALYSIS AND CONCLUSIONS

Section 8(b)(3) of the Act provides: "It shall be an unfair labor practice for a labor organization or its agents—(3) to refuse to bargain collectively with an employer, provided it is the representative of its employees subject to the provisions of Section 9(a)." The proviso to Section 8(d) of the Act requires that the parties to a collective-bargaining agreement continue the agreement "in full force and effect, without resorting to strike or lockout" until the expiration date of the agreement unless notice of a proposed termination or modification are provided in accord with the Act. These tenets also apply to the parties to construction industry prehire agreements sanctioned in Section 8(f) of the Act. *John Deklewa & Sons*, 282 NLRB 1375, 1377 (1987), enfd. sub nom. *Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988), cert. denied 488 U.S. 889 (1988). Voluntary prehire agreements cannot be unilaterally repudiated by either party during the term of the agreement. *Id.* at 1387.

A. Respondents' Obligations Pursuant to the Susanville Independent Agreement

1. Existence of a collective-bargaining agreement

The Respondents argue that because there is no effective date entered on the independent agreement form utilized for the Susanville Independent Agreement and because the parties did not date their signatures, the agreement, "even if legitimate, simply does not ever go into effect, and therefore, it does not exist." (R. Br. at p. 5.) The absence of a date on a written and signed collective-bargaining agreement does not invalidate the contract for purposes of contract bar when the contract is clearly for a definite term. *Western Roto Engravers*, 168 NLRB 986 (1967). Accordingly, the failure of the parties to date their signatures and place an effective date on the blank provided on the independent agreement standard form does not render the contract void.

I note, in addition, that the Susanville Independent Agreement incorporates the terms of the Master Agreement. The

Master Agreement recites that it was entered into by the "IRON WORKER EMPLOYERS State of California and a Portion of Nevada . . . and DISTRICT COUNCIL OF IRON WORKERS OF THE STATE OF CALIFORNIA AND VICINITY." The Master Agreement states that it is made,

between the California Ironworker Employers Council, Inc. [as defined] and the District Council of Iron Workers of the State of California and Vicinity and Local Unions 118, Sacramento; 155, Fresno; 229, San Diego; 377, San Francisco; 378, Oakland; 416, Los Angeles and 433, Los Angeles . . . who are affiliated with said District Council, which District Council and Local Unions are signatory hereto and are recognized as the collective bargaining representatives of the employees.

(Master Agreement at p. 1.)¹⁰ As the Respondents note, the independent agreement standard form language incorporates the Master Agreement and this standard form is approved by Respondent District Council. (R. Br. at p. 3.) I find, based upon the Master Agreement, that Respondent District Council and Respondent Local 155, together with Iron Workers Local Unions Nos. 118, 229, 377, 378, 416, and 433 are the joint representative of unit employees covered by the Master Agreement for the period from July 1, 1992, through June 30, 1995. In addition, I find that the joint representative is a labor organization within the meaning of Section 2(5) of the Act; I find that Iron Workers Local Nos. 118, 229, 377, 378, 416, 433, and Respondent Local 155 have been members of Respondent District Council and that the entities comprising the joint representative are engaged in a joint venture existing at least in part for the purpose of negotiating, administering, and enforcing collective-bargaining agreements on a joint basis with employers in the building and construction industry including the collective-bargaining agreements with the Employer (the Blythe, Coalinga, and Susanville Independent Agreements).

At the time of execution of the Susanville Independent Agreement (established by the testimony of Coker to be in February 1994), the Master Agreement was effective July 1, 1992, through June 30, 1995. Accordingly, a specific term is set forth in the Master Agreement. In addition, work on the Susanville prison agreement continued from February 1994 until at least February 1995 pursuant to the terms of the Susanville Independent Agreement. Because I credit the testimony of Coker that the typewritten notations were present on this agreement at the time of execution, I find that the Susanville Independent Agreement applies by its terms to the Soledad prison project and was effective from the date Local 118 began referring ironworkers and continues at least until June 30, 1995 (or another agreed date).

2. Agency

Section 2(13) provides:

In determining whether any person is acting as an "agent" of another person so as to make such person responsible for his act, the question of whether the spe-

¹⁰The jurisdictional boundaries and geographical descriptions of each of the Local unions is set forth beginning at p. 61 of the Master Agreement.

cific acts performed were actually authorized or subsequently ratified shall not be controlling.

Whether someone acts as an agent under the NLRA must be determined by common law principles of agency which, of course, incorporate principles of implied and apparent authority. *NLRB v. Laborers Local 341 (Bannister-Joyce-Leonard)*, 564 F.2d 834, 839 (9th Cir. 1977). The Taft-Hartley amendments of 1947 expressly incorporated common law agency principles by adding Section 2(13) to the Act in order to avoid a narrower interpretation of agency authority that would require actual instigation, participation, or ratification. *Longshoremen ILA (Coastal Stevedoring Co.)*, 313 NLRB 412, 415 (1993) (citing 93 Cong.Rec. 6858–6859 (remarks of Senator Taft)). Moreover, in the labor relations context, agency principles must be broadly construed in order to reflect the legislative policies of the Act, looking to the particular circumstances of industrial labor relations. *Id.*

Apparent authority is created through a manifestation by the principal to a third party that supplies a reasonable basis for the latter to believe that the principal has authorized the alleged agent to do the act in question. *NLRB v. Donkin's Inn*, 532 F.2d 138, 141 (9th Cir. 1976); *Alliance Rubber Co.*, 286 NLRB 645, 646 fn. 4 (1987). Thus, either the principal must intend to cause the third person to believe that the agent is authorized to act for him, or the principal should realize that this conduct is likely to create such a belief. Restatement 2d, *Agency* § 27 (1958, Comment). Two conditions, therefore, must be satisfied before apparent authority is deemed created: (1) there must be some manifestation by the principal to a third party, and (2) the third party must believe that the extent of the authority granted to the agent encompasses the contemplated activity. *Id.* at § 8.

Dentech Corp., 294 NLRB 924, 925–926 (1989), quoting from *Service Employees Local 87 (West Bay Maintenance)*, 291 NLRB 82 (1988). On the other hand, implied authority originates from the express terms of the agency authorization. Certain powers are implied or inferred from the words used, the parties' customs, and the relations of the parties. Restatement 2d, *Agency* § 7.

The plain language of the Master Agreement¹¹ designates Iron Workers Local Nos. 118, 229, 377, 378, 416, and 433 and Respondent Local 155 as agents of Respondent District Council authorized to bind Respondent District Council to collective-bargaining agreements. In addition, the language incorporated in the standard form independent agreement¹² indicates that the affiliated locals may act as agents of Respondent District Council in obtaining independent agreements. Thus, the standard form independent agreement states that the agreement is made between the individual employer and Respondent District Council for and on behalf of its affiliated locals. The signature blocks are further evidence of

¹¹ This language is quoted on p. 4, *supra*. The language not only creates a joint representative status among Respondent District Council and its affiliated locals, its also allows an inference that the affiliated locals and Respondent District Council may act in each other's interest in matters of collective bargaining under the Master Agreement.

¹² See fn. 5, *supra*.

agency status. Respondent District Council's name is typed immediately above the signature block for the local union with a blank left on the form so that the local union can enter its number.

In the particular circumstances of this case, the Respondents were parties to a Master Agreement and various local unions affiliated with Respondent District Council presented "me too" or standard form independent agreements to non-signatory employers who appeared at various construction sites. In this particular case, the representatives of the union had offices in the relevant union halls and made inspection trips to the jobsites involved. The Respondents argue, however, that no evidence shows that Sorensen of Local 118 had any authority to bind another local union or, specifically to bind Respondent Local 155. This contention is unsupported and, in fact, is belied by the language of the Master Agreement that creates an agency relationship between Respondent District Council and its affiliated local entities.

The Respondents presented no evidence to rebut Coker's testimony regarding the actions and statements of the alleged agents. Such evidence, however, was exclusively within the control of the Respondents. Due to the failure of these witnesses to appear and testify, I infer that their testimony would have been consistent with that of Coker and unfavorable to the Respondents. *Iron Workers Local 118 (California Erectors)*, 309 NLRB 808, 811 (1992) (failure to call Sorensen as a witness to rebut testimony of the General Counsel raises an adverse inference that his testimony would not have been favorable); *Hotel & Restaurant Employees Local 50 (Dick's Restaurant)*, 287 NLRB 1180, 1185 (1988) (failure to call alleged agent Horton as a witness warranted an adverse inference). Specifically, I find that Sorensen, Zampa, Roth, and other alleged agents, if called, would have testified that Sorensen had authority to bind Respondent District Council and Respondent Local 155 to the Susanville Independent Agreement. In addition, just as in *California Erectors*, *supra* at 811, I find that Sorensen was an agent of Local 118.

Moreover, the particular circumstances of industrial labor relations involved herein warrant a finding that Sorensen was an agent of Local 118 and was cloaked with at least apparent authority, if not actual authority, to make a binding agreement with the Employer: the Susanville Independent Agreement with all its notations and incorporating the Master Agreement.¹³ The Respondents manifested to various construction industry employers including the Employer herein that the local unions were its affiliates and were a joint collective-bargaining representative with it under the Master Agreement. In both the Blythe and Coalinga projects, Zampa's thank you letter to the Employer warranted a con-

¹³ Accordingly, I conclude that the collective-bargaining unit encompassed by the Susanville Independent Agreement is as follows:

All full time and regular part-time employees of the employer performing work as set forth in "Section 3: Craft Jurisdiction" of the Master Agreement, north of the Los Angeles, California County Line; excluding all other employees, guards, and supervisors as defined in the Act.

I further conclude that the joint representative is the designated limited exclusive collective-bargaining representative of the unit employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

clusion that the particular local involved was empowered to enter in independent agreements with notations that modified the standard form language. Because the Respondents are a joint collective-bargaining representative of the employees pursuant to the terms of the Master Agreement, Sorensen's agency authority extends to binding the joint collective-bargaining representative to honoring the terms of the Susanville Independent Agreement. Moreover, I note that policies of industrial peace favor such a finding. An opposite finding would create a great deal of uncertainty among employers who sign independent agreements at a union hall with a person who identifies himself or herself as an officer of the local union and who subsequently visits the jobsite to administer the contract. For the same reasons, I find that Respondent Local 155 and Iron Workers Local Union No. 118 have functioned as agents of Respondent District Council and the joint representative within the meaning of Section 2(13) of the Act in negotiating and administering collective-bargaining contracts on behalf of Respondent District Council, the joint representative, and their respective members.¹⁴

3. Ratification of the Susanville Independent Agreement

In order for ratification by a higher governing body of the union to be a condition precedent to implementation of a collective-bargaining contract, there must be agreement between the parties that such ratification is necessary. *Teamsters Local 471 (Superior Coffee)*, 308 NLRB 1, 2 (1992). Not only do the facts fail to establish that ratification was a condition precedent for approval of the Susanville Independent Agreement, in addition, it was never explicitly discussed by the parties and cannot be inferred as a condition precedent.

The Respondents argue that a course of conduct was established between Respondent District Council and the Employer that indicates that ratification of Respondent District Council was necessary before the Susanville Independent Agreement could bind it or Respondent Local 155. The course of conduct regarding both the Blythe and Coalinga Independent Agreements indicates that the Employer and a local union representative executed the agreement with typed or handwritten changes. At a later time, the Employer received a file stamped copy from Zampa of Respondent District Council thanking the Employer for entering into the agreement and enclosing appropriate fringe benefit payment packets.¹⁵ From this course of conduct, the Respondents ask me to deduce that insertion of the language "1 JOB AGREEMENT BLYTH [sic] PRISON" (Blythe Independent Agreement) and "ONE JOB ONLY" (as well as the other additional language on the Coalinga Independent Agree-

ment), was conditional on ratification of Respondent District Council.

When the Employer signed the Susanville Independent Agreement, it did not receive a file stamped copy of the agreement from Zampa nor a letter thanking the Employer for entering into the agreement. Rather, with regard to the Susanville Independent Agreement, the Employer received only a fringe benefit payment packet. Based upon this course of conduct, the Respondents argue that it is clear that when any modification or amendment to the standard form language of the independent agreement is not approved in advance by Respondent District Council, it must be submitted to Respondent District Council for ratification and approval. (R. Br. at p. 3.)

It is not logical to infer from Zampa's letters "thanking" the Employer for entering the Blythe and Coalinga Independent Agreements that those agreements, and specifically the typed or handwritten notations on those agreements, were subject to ratification by Respondent District Council. Nothing in Zampa's letters hint that the agreements were not valid until "ratified" by Respondent District Council. Copies of the agreements were merely forwarded "for your records." Moreover, work began on both projects before Zampa's letters were prepared.¹⁶ Neither Holmes (union representative at the Blythe prison) nor Roth (union representative at the Coalinga prison) told the Employer that the Blythe and Coalinga Independent Agreements were subject to ratification. Nothing in the independent agreement language suggests a need for ratification. Moreover, the Susanville Independent Agreement was never the subject of a "thank you" letter. The project, however, was governed by the terms and conditions set forth in the agreement without objection from Zampa. Zampa knew of the Susanville Independent Agreement and was unhappy with it but did not attempt to reject the agreement in any way until the Employer asked for ironworker employees at the Soledad prison project. These facts further support a failure to prove that ratification by Respondent District Council was necessary.

Based on the evidence before me, I conclude that there was no agreement between the parties regarding ratification by Respondent District Council. Moreover, the Act imposes no obligation on a union to obtain approval of its chief executive officer in order to form a binding contract. See *North Country Motors*, 146 NLRB 671 (1964); see also *Electrical Workers IBEW Local 22 (Electronic Sound)*, 268 NLRB 760, 763 (1984), *enfd.* 748 F.2d 348, 350 (8th Cir. 1984).

B. Deferral to Arbitration

The Respondents argue that the Employer has not exhausted its remedies herein. Specifically, the Respondents claim that the Employer must attempt to file a grievance and force the Respondents to process the grievance through Federal court litigation before this unfair labor practice proceeding is warranted.

¹⁴I also find that Donald R. Holmes, business representative, Iron Workers Local Union No. 416; Joe Roth, business representative, Respondent Local 155; Jim Murphy, business representative, Iron Workers Local Union No. 118; and Richard Zampa, president, Respondent District Council are agents of Respondent District Council within the meaning of Sec. 2(13) and that Joe Roth is an agent of Respondent Local 155.

¹⁵The letters for Blythe and Coalinga are virtually identical and state, "Thank you for signing the Iron Workers Independent Agreement. Enclosed is an executed copy for your records. With best wishes, I remain . . ." (Blythe) and, "Thank you for signing the Iron Workers Independent Agreement. Enclosed you will find an executed copy for your records. With best wishes, I remain . . ." (Coalinga.)

¹⁶The Blythe Independent Agreement was dated May 18, 1992, and was followed by a letter from Zampa dated June 3, 1992. The Employer's work on the Blythe prison began in May 1992. The Coalinga Independent Agreement was dated January 7, 1993, effective January 18, 1993, and followed by a letter from Zampa dated February 8, 1993. In both instances, work began on the projects before Zampa's letter was written.

Although the NLRB has never required strict exhaustion of remedies in order to prosecute an unfair labor practice charge, the Board held in *Collyer Insulated Wire*, 192 NLRB 837 (1971), that prearbitral deferral was warranted when a dispute arose regarding the meaning of the parties' contract within the confines of the collective-bargaining relationship and the employer was willing to process the grievance to arbitration. Although prearbitral deferral policies have expanded and contracted,¹⁷ a constant precept underlying the policy is that deferral is inappropriate when the issue involved is whether a contract exists. This is a question of statutory obligation rather than a question of contractual interpretation. *Longshoremen ILA Local 3033 (Smith Stevedoring)*, 286 NLRB 798, 807 (1987). Based upon these principles, I deny the Respondents' request that this matter be deferred to the contract grievance procedures.

CONCLUSION OF LAW

By advising the Employer that it had no contractual obligation with the Employer; that Respondent Local 155 would not dispatch any employees to the Employer's Soledad, California prison jobsite; and that it would not dispatch employees unless the Employer agreed to execute a statewide contract, and by advising JLD that the Employer was not signatory to any collective-bargaining agreement with the Respondents, the Respondents have repudiated the Susanville Independent Agreement and attempted to compel the Employer to agree to a midterm modification of the Susanville Independent Agreement and have engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(3) and (d) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, I find that they must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. The Employer has requested that the Respondents be ordered to make it whole for all losses suffered including any losses attributable to the Soledad prison project. The Employer has cited no authority which would authorize an award of such consequential damages and I know of no such authority. I have not included such a remedy in the recommended Order.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁸

ORDER

The Respondents, District Council of Iron Workers of the State of California and Vicinity and Iron Workers Local Union No. 155 of the International Union of Bridge, Struc-

¹⁷In *National Radio Co.*, 198 NLRB 527 (1972), the policy was extended to 8(a)(1) and (3) cases. Then in *General American Transportation Corp.*, 228 NLRB 808 (1977), the Board restricted deferral pursuant to *Collyer* to only 8(a)(5) and 8(b)(3) cases. Finally, in *United Technologies Corp.*, 268 NLRB 557 (1984), the Board returned to the *National Radio* policies, overruling *General American*.

¹⁸If 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.

tural and Ornamental Iron Workers, AFL-CIO, Hercules and Fresno, California, their officers, agents, and representatives, shall

1. Cease and desist from failing or refusing to bargain collectively and in good faith with J. W. Reinforcing Steel, Inc. by advising the Employer that the Respondents have no contractual obligation with the Employer; by advising the Employer that Respondent Local 155 would not dispatch any employees to the Employer's Soledad, California prison jobsite; by advising that the Respondents would not dispatch employees unless the Employer agreed to execute a statewide contract; and by advising JLD that the Employer was not signatory to any collective-bargaining agreement with the Respondents.

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

(a) On request, honor the terms and conditions of the Susanville Independent Agreement at the Soledad prison site and any other site within the geographic designation "north of the L.A. county line."

(b) Post at its offices in Fresno and Hercules, California, copies of the attached notice marked "Appendix."¹⁹ Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondents' authorized representative, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all place where notices to members are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Furnish to the Regional Director for Region 32 signed copies of the attached notice for posting by J. W. Reinforcing Steel, Inc., if willing, at its office or places where notices to employees are customarily posted. Copies of the notice, to be furnished by the Regional Director for Region 32, shall, after being duly signed by the Respondents as indicated be forthwith returned to the Regional Director for disposition.

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

¹⁹If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES AND 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 fail or refuse to bargain collectively and in good faith with J. W. Reinforcing Steel, Inc. by advising J. W. Reinforcing Steel, Inc. that we have no contractual obligation with it; by advising J. W. Reinforcing Steel, Inc. that Local 155 will not dispatch any employees to the Em-

ployer's Soledad, California prison jobsite; by advising that we will not dispatch employees unless J. W. Reinforcing Steel, Inc. agrees to execute a statewide contract; and by advising J. L. Davidson, Inc. that J. W. Reinforcing Steel, Inc. is not signatory to any collective-bargaining agreement with us.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, on request, honor the terms and conditions of the Susanville Independent Agreement at the Soledad prison

site and any other site within the geographic designation "north of the L.A. county line."

DISTRICT COUNCIL OF IRON WORKERS OF THE
STATE OF CALIFORNIA AND VICINITY

IRON WORKERS LOCAL UNION NO. 155 OF
THE INTERNATIONAL UNION OF BRIDGE,
STRUCTURAL AND ORNAMENTAL IRON WORK-
ERS, AFL-CIO