Sheet Metal Workers Local Union No. 91, affiliated with Sheet Metal Workers International Association, AFL–CIO *and* The Schebler Co.

Sheet Metal Workers International Association, AFL–CIO *and* The Schebler Company. Cases 33–CC–853, 33–CB–2401–1, 33–CE–14, 33–CC–854, and 33–CB–2401–2

December 31, 1991

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT AND RAUDABAUGH

On June 7, 1989, the Board issued a Decision and Order[1] finding that the Respondent Unions violated Section 8(e) by entering into and maintaining in effect with Winger Contracting an ''Integrity Clause,'' and violated Section 8(b)(4)(ii)(A) by coercing Schebler Co. to sign the Integrity Clause. The Board, inter alia, ordered the Unions to cease entering into or giving effect to the Integrity Clause in the Winger collective-bargaining agreement. Thereafter, the Unions petitioned for review and the Board filed a cross-application for enforcement with the United States Court of Appeals for the District of Columbia.

On June 12, 1990, the court issued a decision[2] agreeing with most of the Board's findings. The court stated, however, that the Board had failed to articulate an explanation for rejecting the Unions' argument that any illegality in the Integrity Clause could have been cured by severing section 3. Citing *Plumbers District Council 16 (Jamco Development)*, 277 NLRB 1281 (1985), the court stated that there was support in Board precedent for ''curing an unlawful secondary contract by severing an objectionable clause.'' (Id. at 423.) The court remanded the case to the Board to explain the rejection of the Unions' severability argument, and expressly to address the applicability of *Jamco*.

On September 17, 1990, the Board notified the parties that it had accepted the court's remand and that they could file statements of position. The General Counsel and the Unions filed statements of position.

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

We have reconsidered our decision in this case in light of the court's remand and the decision in *Jamco*. We have decided to reaffirm our earlier decision with the following further explanation. We conclude that the issues presented in *Jamco* and here are fundamentally different and that it is inappropriate to apply the severability rule used to establish the appropriate remedy in *Jamco* to the essential issue here, i.e., whether the Respondents had a secondary object. Moreover, even assuming that it would be appropriate to apply the *Jamco* severability rule here we find that the factors of freedom of contract and the stability of labor relations that supported applying the severability rule in *Jamco* are not present. Thus severing section 3 of the Integrity Clause, as advocated by the Union, would be inappropriate.

Section 8(e) of the Act proscribes an express or implied agreement between a union and an employer by which the employer agrees to cease doing business with any other person. As interpreted by the Supreme Court in *National Woodwork Mfrs. v. NLRB*,[3] Section 8(e) is violated when

> [t]he tactical object of the agreement and its maintenance is [the boycotted] employer, or benefits to other than the boycotting employees or other employees of the primary employer thus making the agreement or boycott secondary in its aim. The touchstone is whether the agreement or the maintenance is addressed to the labor relations of the contracting employer vis-a-vis his own employees. [Footnote omitted.]

The construction industry proviso to Section 8(e) exempts construction industry agreements with secondary objects, if the agreement meets the carefully delineated standards of the proviso:

> *Provided*, That nothing in this subsection (e) shall apply to an agreement between a labor organization and an employer in the construction industry relating to the contracting or subcontracting of work to be done at the site of the construction . . . .

Thus, where the proviso applies, a secondary object is privileged; where the proviso does not apply, a secondary object makes the agreement unlawful under Section 8(e). As the Board stated in *Ets-Hokin*, 154 NLRB 839, 843 (1965), ''By an exception, Congress has permitted in the construction industry certain contracts which would otherwise be unlawful under Section 8(e).''

An essential issue presented in cases involving agreements clearly outside the construction industry proviso (and in this case in which the Respondent expressly disavowed reliance on the proviso) is whether the agreement has a secondary object or whether the object is primary. *National Woodwork*, above. Congress made an agreement with a secondary object unlawful. In some cases, parties seek to disguise their secondary objectives. On this subject, the Board has stated:

[1] 294 NLRB 766.

[2] *Sheet Metal Workers Local 91 v. NLRB*, 905 F.2d 417 (D.C. Cir. 1990).

[3] 386 U.S. 612, 645 (1967).

> Section 8(e) bans only ''express or implied'' agreements for the prohibited objective. The term ''implied'' is used in law as contrasted with ''express'' when the ''intention in regard to the subject matter is not manifested by explicit and direct words, but is gathered by implication or necessary deduction from the circumstances, the general language, or by the conduct of the parties.'' No particular words are necessary to establish an implied agreement. Neither will an express disclaimer necessarily negative the existence of such an agreement. It is all the circumstances which determine whether, notwithstanding the attempted disguise of language, an agreement [for the prohibited objective] has in fact been made. . . . Probably no [statutory] language can be explicit enough to reach in advance every possible subterfuge of resourceful parties. Nevertheless, we believe that in using the term ''implied'' in Section 8(e) Congress meant to reach every device which, fairly considered, is tantamount to an agreement that the contracting employer will not handle the products of another employer or cease doing business with another person.[4]

In determining the object of an allegedly unlawful agreement the Board looks at the agreement in its context, including how the agreement in issue operates within the remainder of a collective-bargaining contract and the employer's operation. The Board also considers extrinsic evidence regarding the parties' intent in determining the agreement's object. The Board does not consider in isolation clauses that were written to operate together.

In contrast, given the specific protection of the construction industry proviso, parties in the construction industry who want to enter into a secondary agreement (covering work to be done at construction sites) have no need to engage in subterfuge regarding their object. Rather, they may be straightforward about a secondary object.

A result of Section 8(e) and its construction industry proviso has been that cases involving agreements that are exempted by the construction industry proviso raise quite different issues from nonconstruction industry cases. For example, the essential question of a nonproviso 8(e) case is whether there is a secondary object. By contrast, in cases involving the proviso, the secondary object is often clear and the sole issue is whether the agreement conforms to the proviso's requirements.[5] Proviso cases have also involved the issue of whether the allegedly unlawful agreement could be enforced in ways Congress did not intend to allow. For example, although the construction industry proviso may exempt the secondary object of agreements that fit within its requirements, the proviso does not protect all possible means of enforcing the secondary agreement. These secondary agreements may be enforced only through grievance procedures and arbitration, or through lawsuits.[6] They may not be enforced through ''non-judicial acts of compelling or restraining nature, applied by way of concerted self-help consisting of a strike, picketing or other economic retaliation.''[7]

The Decision in *Jamco*

The *Jamco* case involved an unlawful ''self-help'' enforcement mechanism to a ''union signatory'' clause[8] that otherwise was protected by the construction industry proviso to Section 8(e). The contested issue in *Jamco* was the proper remedy under those facts.

In *Jamco*, the collective-bargaining agreement contained the following:

> Section III, Work Covered
>
> 12. No contractor shall subcontract work to be done on job site covered by this Agreement to any Employer who is not signatory to this Agreement and/or the Independent Plumbing and Piping Industry Council Agreement or any National Agreement with the United Association excluding the Union Label Agreement.

The collective-bargaining agreement's grievance and arbitration procedure (secs. XIII and XIV) encompassed section III,12. In addition, subsection 42 of section IX, Strikes and Lockouts, allowed the union to strike if Jamco failed or refused to comply with any

[4] *Amalgamated Lithographers Local 78 (Miami Post)*, 130 NLRB 968, 976 (1961), enfd. as modified 301 F.2d 20 (5th Cir. 1962). Accord: see the court's decision in this case, ''By prohibiting certain secondary activity based on 'express or implied' agreements, section 8(e) was intended to close a loophole in section 8(b)(4)(ii)(B) through which unions used 'hot cargo' clauses 'to exert subtle pressures upon employers to engage in 'voluntary' boycotts.'' *Sheet Metal Workers*, above, 905 F.2d at 421, quoting in part *National Woodwork Mfrs*.

[5] See, e.g., *Ets-Hokin*, above, 154 NLRB at 840–841, in which the Board found an agreement protected by the construction industry proviso although it did not ''expressly contain'' language limiting the agreement's application to construction site work. On this subject, the Board stated that where a clause is ambiguous, unlawfulness would not be presumed but extrinsic evidence would be considered to determine whether the agreement was intended to be applied lawfully. See also *Cement Masons Local 97 (Interstate Employers)*, 149 NLRB 1127 (1964) (finding no construction industry protection for contract clauses which extended to subcontractors involved in transporting material outside of the construction site).

[6] *Teamsters Local 83 (Cahill Trucking)*, 277 NLRB 1286 (1985).

[7] *Ets-Hokin*, above, 154 NLRB at 842, quoting *Sheet Metal Workers v. Hardy Corp*., 332 F.2d 682, 686 (5th Cir. 1964).

[8] In *Teamsters (California Dump Truck)*, 227 NLRB 269, 272 (1976), the Board noted that ''union signatory clauses'' are ''contract clauses which purport to limit subcontracting to employers who are signatories to union contracts.''

settlement or decision reached through the parties' grievance and arbitration procedures.

In October 1978, the union began pursuing a grievance against Jamco alleging that it had breached section III,12 the union signatory clause. Ultimately, the parties' joint arbitration board found Jamco in violation of the union signatory clause and assessed damages against it. The union did not engage in or threaten any economic action against Jamco.

The Board's analysis of whether there was an 8(e) violation in *Jamco* required three steps due to the nature of the statutory language and case law. First, the Board concluded that the union signatory clause required the signatory employer to boycott nonsignatory subcontractors in order to influence their labor relations, and thus would be unlawful under the body of Section 8(e). Second, it found that if the union signatory clause was considered by itself, it would be lawful under the construction industry proviso. Third, the Board concluded that the agreement went beyond the proviso and violated Section 8(e). Thus, the contract's union signatory clause, read in conjunction with its provision allowing the union to strike to enforce arbitration awards, gave the union the right to use economic ''self-help'' to enforce the union signatory clause. *Jamco*, 277 NLRB at 1283, above.

Although the analysis just described is relevant to the issue of the applicability of *Jamco* to the present case, the underlying 8(e) violation was not really contested in *Jamco*. Id. at 1282. Rather, the only issue that the union contested in *Jamco* was the proper remedy for the violation. The General Counsel argued that the ability of the union to use self-help to enforce an arbitration award regarding the union signatory clause made the entire subcontracting provision void and unenforceable. The union argued that its arbitral award remained valid and that the Board's remedy should focus only on limiting the (discrete) self-help provision found unlawful.

The Board agreed that the union's narrow approach to the remedy was appropriate. The Board noted that in cases following *Ets-Hokin*, above, where an agreement had a union signatory clause that was otherwise lawful under the construction industry proviso but provided for unlawful self-help, the Board's remedial policy was to sever the lawful provisions from the unlawful (although language in some cases incorrectly suggested that an unlawful enforcement mechanism would make the entire union signatory clause void and unenforceable). The Board's explanation in *Jamco* for a narrow remedial policy of severability is important to our consideration of this case:

> We find no policy reason under the Act that would justify the invalidation of a lawful, voluntary bilateral agreement. To the contrary, our narrow injunction against the unlawful application of self-help provisions serves multiple statutory policies by protecting parties' freedom of contract, by promoting labor relations stability, and by tailoring the Board's remedy to fit the specific unfair labor practice found. [277 NLRB at 1284.]

The Decision in *Schebler*

Schebler involves allegations that the Unions violated Section 8(e) by entering into and maintaining the ''Integrity Clause'' in a collective-bargaining agreement with Winger and Section 8(b)(4)(ii)(A) by coercing (unsuccessfully) Schebler to sign the clause. The case does not involve any arguable protection of the clause or the conduct under the construction industry proviso of Section 8(e). The integrity clause at issue states:

> SECTION ONE: A ''bad faith employer'' for purposes of this Agreement is an Employer that itself or through a person or persons subject to an owner's control, has ownership interests (other than a non-controlling interest in a corporation whose stock is publicly traded) in any business entity that engages in work within the scope of SFUA Article I hereinabove using employees whose wage package, hours, and working conditions are inferior to those prescribed in this Agreement or, if such business entity is located or operating in another area, inferior to those prescribed in the agreement of the sister local union affiliated with Sheet Metal Workers' International Association, AFL–CIO in that area.
>
> An Employer is also a ''bad faith employer'' when it is owned by another business entity as its direct subsidiary or as a subsidiary of any other subsidiary within the corporate structure thereof through a parent-subsidiary and/or holding-company relationship, and any other business entity within such corporate structure is engaging in work within the scope of SFUA Article I hereinabove using employees whose wage package, hours, and working conditions are inferior to those prescribed in this Agreement or, if such other business entity is located or operating in another area, inferior to those prescribed in the agreement of the sister local union affiliated with Sheet Metal Workers' International Association, AFL–CIO in that area.
>
> SECTION TWO: Any Employer that signs this Agreement or is covered thereby by virtue of being a member of a multi-employer bargaining unit expressly represents to the Union that it is not a ''bad faith employer'' as such term is defined in Section 1 hereinabove and, further, agrees to advise the union promptly if at any time during the life of this Agreement said Employer changes

> its mode of operation and becomes a ''bad faith employer.'' Failure to give timely notice of being or becoming a ''bad faith employer'' shall be viewed as fraudulent conduct on the part of such Employer.
>
> In the event any Employer signatory to or bound by this Agreement shall be guilty of fraudulent conduct as defined above, such Employer shall be liable to the Union for liquidated damages at the rate of $500 per calendar day from the date of failure to notify the Union until the date on which the Employer gives notice to the Union. The claim for liquidated damages shall be processed as a grievance in accordance with, and within the time limits prescribed by, the provisions of SFUA Article X.
>
> SECTION THREE: Whenever the Union becomes aware that an Employer has been or is a ''bad faith employer,'' it shall be entitled, notwithstanding any other provision of this Agreement, to demand that the Agreement between it and such ''bad faith employer'' be rescinded. A claim for rescission shall be processed by the Union as a contract grievance in accordance with, and within the time limits prescribed under, the provisions of SFUA Article X of this Agreement.

As more fully described in our earlier decision and the court of appeals' decision, the International drafted the Integrity Clause for inclusion in its local unions' collective-bargaining agreements in response to the International's concern about ''double-breasted'' employers. The clause was the centerpiece of the International's policy designed to force employers to ''make a decision that they are either 100% union or 100% non-union.'' Consistent with the International's advice, Local 91 denied employers who refused to include the clause in their contracts ''Resolution 78'' relief. Resolution 78 provided for concessions from contractual wages and benefits that the local granted on a case-by-case basis to signatory employers to help them remain competitive with nonunion employers. Specifically, when Winger initially refused Local 91's demand to include the Integrity Clause in its contract, Local 91 threatened to deny, and subsequently denied, Winger several requests for contract concessions under Resolution 78. Winger then relented and signed the clause in order to resume receiving economic relief. Although the Local's refusal to grant Resolution 78 relief to Winger was not alleged to be a violation and that issue is not before us, we note that the Local's refusal to grant Schebler the same relief in these circumstances was found to have violated Section 8(b)(4)(ii)(A).[9]

The judge's decision in *Schebler*, which the Board adopted, first examined whether the Integrity Clause had a primary ''work preservation'' purpose or the ''secondary purpose of promoting the broader goals of the union 'by asserting control over the labor relations' of other employers.''[10] He found that the International designed and the local implemented the clause to respond to double-breasted contractors on a ''nationwide'' basis, ''to pressure [the Respondents'] own union contractors to the extent these contractors were affiliated with nonunion entities.''[11] The judge found that the clause

> requires the [signatory] to cause the related firms to change their nonunion operation or their wage and benefit package. Alternatively, the clause requires the [signatory] to change its own relationship own affiliation with the related firm. [Supra at 771.]

The judge concluded that ''the object of the clause is not the preservation of . . . unit work but the attainment of objectives elsewhere—with other employers or persons and in other work units.'' Id. Additionally, the judge found that, even if the clause could be determined to be ambiguous, the extrinsic evidence regarding the purpose of the clause made it clear that it was intended to affect the labor relations of noncontracting employers. Specifically, he relied on the statements of the officials of the International, which was responsible for drafting the clause, that the purpose of the clause was to force contracting employers to become ''either 100% union or 100% non-union.''[12]

---

[9] Schebler was also asked to agree to the clause as a condition of receiving Resolution 78 relief. Schebler declined to sign the clause because to do so would render Schebler in violation of the clause. (Sixty-three percent of Schebler, which does business in Iowa and Illinois, is owned by Egan Companies of Minnesota; the president of Egan Companies, as an individual, has an ownership interest in Egan-Ryan, a nonunion Arizona company that does sheet metal work (though it does no work in Iowa or Illinois).) Pursuant to the International's directions, the local refused Schebler's requests for economic relief because it had not signed the clause.

In fall 1985, Local Business Manager Churuvia explained to Schebler President Kertesz that employers who would not sign the clause would not receive economic relief and showed Kertesz the International's directive to that effect. In January 1986, Churuvia told Kertesz that Schebler's problems might soon end because there was an effort to organize the employees of Egan-Ryan, the nonunion Arizona contractor that would cause Schebler to violate the clause. In December 1986 discussions between the Respondents and Schebler over an ''industrial addendum'' to Schebler's contract, the Respondents conditioned agreement on the addendum on the International and its Phoenix local coming to agreement with Egan-Ryan about representing its employees.

[10] 294 NLRB 766, 770, citing *Associated General Contractors*, 280 NLRB 698, 702 (1986), and *Food & Commercial Workers Local 1442 (Ralph's Grocery)*, 271 NLRB 697 (1984).

[11] Supra at 770. The judge noted that the language of the clause was not limited to protecting bargaining unit work, nor was it limited to influencing employers that would come within the definition of ''single employers'' with signatories to the clause.

[12] We note also the January and December 1986 statements of Local Business Manager Churuvia to Schebler President Kertesz that

The judge noted the Respondents' argument that the clause would merely require a signatory to supply information to the Unions so that they could decide whether to enter into or continue a collective-bargaining relationship with the signatory. The judge rejected the argument. He stated that section 2 of the clause (the information section)

> standing alone . . . would not establish a secondary object. But taken together with the remainder of the clause, and in conjunction with the contemporaneous explanation of the clause, it is clear that the information section is merely part of an overall effort to require the signatory employer to change the operations of its related entities under penalty of contract rescission.[13]

Although the judge noted that the Respondents disavowed any contention that the clause was privileged under the construction industry proviso of Section 8(e), he went on to conclude that the clause was not privileged because it applied to work beyond the construction site.[14] Having made the finding that there was no construction industry proviso privilege, the judge noted that he need not decide the issue of whether, assuming that there was proviso exemption, the clause's enforcement mechanism (sec. 3) was coercive, and cited *Jamco*.

Conclusion

The court of appeals agreed with the Board's conclusions that the Integrity Clause, read as a whole, had an unlawful secondary object.[15] The court found, however, that the Board had not addressed the Unions' argument ''that any illegality in the Integrity Clause could have been cured by severing section three's rescission mechanism.'' *Sheet Metal Workers*, above at 422. It found that the judge's statement that the clause's information section (section 2), by itself, would not establish a secondary object, could be interpreted to mean that sections 1 and 2 would be lawful if severed from section 3. The court also noted that it was possible to infer that the Unions' ''contemporaneous explanation'' of the clause would condemn sections 1 and 2 as secondary in purpose even without section 3. Id. at 423.

We reaffirm our adoption of the judge's finding that the Integrity Clause, as a whole, violated Section 8(e). This finding was based on his analysis of the clause as it operated within the context of the collective-bargaining agreement and the signatory employers' operations, and the extrinsic evidence of the Unions' objective in obtaining the clause. We also reaffirm our earlier decision which implicitly rejected the Unions' argument that section 3 should be severed from the remainder of the Integrity Clause, which we have found to violate Section 8(e). The instant case is clearly distinguishable from *Jamco*. In *Jamco*, the clause would be rendered valid under the 8(e) proviso if the coercive self-help enforcement mechanism were removed. Hence, the remedy was to remove that mechanism. By contrast, in the instant case, the clause would not be rendered valid under the 8(e) proviso if the self-help provision were removed. Indeed, the Respondent does not even argue that the 8(e) proviso privileges the clause. Accordingly, unlike *Jamco*, there is no warrant for confining the remedy to the removal of the self-help provision.

In addition, to respond fully to the court's question whether section 3 of the clause could be severed, we specifically find that section 3 is integral to determining the intent of the entire clause.[16] A review of the Integrity Clause that the International drafted shows that section 1 defines a ''bad faith employer'' as a unionized, signatory employer who has an ownership relationship, very broadly defined, with any nonunion employer who performs work within the scope of the SFUA.[17] The ownership relationship between two employers as defined in section 1 is a business relationship that constitutes ''doing business'' within the meaning of Section 8(e).[18]

Although section 2 was written to appear merely to request information, we find that it also contains two

---

indicated the Respondents' secondary purpose of which the clause was an important part.

[13] Supra at 772. The Board adopted the judge's rationale. We note that in *Sheet Metal Workers Local 91*, 905 F.2d 420, above, the court of appeals stated, ''we reject the Unions' claim that the Integrity Clause is somehow immune from legal scrutiny because it implements the Union's right to decide with whom it will bargain.''

[14] In light of the Respondents' explicit disavowal of privilege under the construction industry proviso, the Board found it unnecessary to pass on the judge's statements regarding the proviso. See, 294 NLRB 766 fn. 1, above.

[15] Under the heading ''1. Lawfulness of the Integrity Clause as a Whole,'' the court stated, ''Applying these principles [of construing Section 8(e)], we have little difficulty upholding the Board's conclusion that the Union violated section 8(e) by securing inclusion of the Integrity Clause as a part of its collective bargaining agreement with Winger.'' *Sheet Metal Workers*, 905 F.2d 421, above, and ''The Board also reasonably concluded that the Integrity Clause has a secondary object'' and ''The circumstances under which the Union proposed the Integrity Clause buttress the Board's determination that the provision has an unlawful secondary object.'' Id. at 422.

[16] We also find, in agreement with the court's observation at 905 F.2d 423 fn. 11, that, even if section 3's contract rescission clause was severed, the Unions' threatened denial of economic relief under Resolution 78 would remain as coercion to employers who failed to abide by the agreements in secs. 1 and 2 of the clause.

[17] Standard Form of Union Agreement for Sheet Metal Roofing, Ventilating and Air Conditioning Industry.

[18] See, for example, *Amax Coal v. NLRB*, 614 F.2d 872, 885–886 (3d Cir. 1980), enfg. 238 NLRB 1583 (1978), ''The phrase 'doing business' refers to a continuing business relationship which is capable of being discontinued by one employer to accede to union demands.'' See also *Chicago Dining Room Employees (Gaslight Club)*, 248 NLRB 604, 606 fn. 4 (1980), in which the Board distinguished between lease arrangements which do constitute ''doing business,'' and the sale of a business, which does not constitute ''doing business.''

implicit promises by the signatory employer that are significant for our analysis. Section 3 indicates what those promises are. Substituting the practical definition for the International's terminology, those promises are: (1) The signatory employer represents that it is not a bad-faith employer (i.e., that it does not do business with any nonunion employer who does sheet metal work), and (2) the signatory employer agrees to advise the union if, during the life of its collective-bargaining agreement, it changes its mode of operation and becomes a bad-faith employer (i.e., does business with a nonunion employer). Section 3, similarly translated, allows the union to rescind the signatory's collective-bargaining agreement if it learns that the signatory has been or is a ''bad faith employer,'' one who is doing business or has done business with a nonunion employer who does sheet metal work.

As the Board earlier found in this case, the threatened rescission of the parties' bargaining relationship in section 3 is coercive.[19] But section 3 is not merely an enforcement provision of a promise clearly stated in another section as in *Jamco*. Rather, section 3 also identifies or explicates—by the employer conduct which it chooses to punish—the content of the promise contained in section 2. To wit, the coercion of section 3 is directed at the employer conduct of doing business with a nonunion employer. As the judge found, this is a secondary object and, in the absence of any arguable privilege from Section 8(e)'s prohibition of agreements with secondary objects, it is unlawful. Further, since section 3 is integral to our finding that the Integrity Clause has a secondary object, we reject the Unions' argument that it can be severed and that the vice of the remainder will thereby be cured.[20]

Finally, we note another, separate reason for not applying a severability remedy. As noted in our earlier discussion, the Board stated in *Jamco* that it would apply severability there because doing so would serve the statutory purposes of ''protecting parties' freedom of contract, by promoting labor relations stability, and by tailoring the Board's remedy to fit the specific unfair labor practice found.'' *Jamco*, above, 277 NLRB at 1284.

In this case, severing section 3 of the Integrity Clause would not support the statutory purposes. Specifically, the parties in *Jamco* had come to voluntary bilateral agreement on how to conduct their labor relations. They agreed on a contract which contained a lawful construction site union signatory clause which also had an unlawful self-help mechanism for enforcing it. The context of Winger's ''agreement'' to the Integrity Clause is much different. There was no voluntary agreement to the Integrity Clause. Rather, the Unions coerced Winger to obtain the unlawful secondary agreement. The coercion that the Unions applied to Winger was the same as the coercion applied to Schebler which has been held to have violated Section 8(b)(4)(ii)(A). Thus, it would not promote the freedom of contract or labor relations stability to sever section 3 from the rest of the clause.

Regarding tailoring the remedy to the violation found, we note that it is the Integrity Clause, as a whole, that we have found violates Section 8(e), not merely its enforcement provision. As the court of appeals noted, ''By prohibiting certain secondary activity based on 'express or implied' agreements, section 8(e) was intended to close a loophole in section 8(b)(4)(ii)(B) through which unions used 'hot cargo' clauses 'to exert subtle pressures upon employers to engage in 'voluntary' boycotts.'' *Sheet Metal Workers*, above, 905 F.2d at 421, quoting *National Woodwork Mfrs*., above. In this case, we find that if section 3 were severed from the rest of the Integrity Clause, the signatory employers still would be left with a powerful reminder of the agreement's illegal secondary object.

ORDER

The National Labor Relations Board affirms its prior Decision and Order in this case and orders that the Respondents, Sheet Metal Workers Local Union No. 91, affiliated with Sheet Metal Workers International Association, AFL–CIO, Rock Island, Illinois, and Sheet Metal Workers International Association, AFL–CIO, their officers, agents, and representatives, shall take the action set forth in the original Order (294 NLRB 766).

[19] 294 NLRB 766, 771, above, and see also 905 F.2d at 422.

[20] In light of this finding it is unnecessary to determine whether secs. 1 and 2 would be lawful standing alone. See 905 F.2d at 424, above.