UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

In the Matter of

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO

and

Cases 9-CB-10716-2
(formerly 4-CB-8411-1)

OVERNITE TRANSPORTATION COMPANY 9-CB-10716-4
(formerly 4-CB-8765-1)

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO

and

Cases 9-CB-10716-10
(formerly 7-CB-12240-2)

OVERNITE TRANSPORTATION COMPANY 9-CB-10716-13
(formerly 7-CB-12380)
9-CB-10716-14
(formerly 7-CB-12484)

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO

and

Case 9-CB-10716-11
(formerly GR-7-CB-12241)

OVERNITE TRANSPORTATION COMPANY

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO

and

Cases 9-CB-10142-1

OVERNITE TRANSPORTATION COMPANY
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO

and

Cases 9-CB-10156-1,-2

OVERNITE TRANSPORTATION COMPANY

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO

and

Cases 9-CB-10162

9-CB-10224

OVERNITE TRANSPORTATION COMPANY

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO

and

Cases 9-CB-10263

9-CB-10414-1

OVERNITE TRANSPORTATION COMPANY

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO

and

Cases 9-CB-10716-16

(formerly 10-CB-7413-1)

9-CB-10716-17

(formerly 10-CB-7422)

OVERNITE TRANSPORTATION COMPANY

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO

and

Cases 9-CB-10716-20

(formerly 10-CB-7585)

CHRISTOPHER A. JOHLE, AN INDIVIDUAL
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO

and

Cases 9-CB-10716-18
(formerly 10-CB-7425)

OVERNITE TRANSPORTATION COMPANY

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO

and

Cases 9-CB-10716-19
(formerly 10-CB-7426)

OVERNITE TRANSPORTATION COMPANY

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO

and

Cases 9-CB-10612
(formerly 11-CB-3160)

OVERNITE TRANSPORTATION COMPANY

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO

and

Cases 9-CB-10716-21
(formerly 12-CB-4697)

OVERNITE TRANSPORTATION COMPANY

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO

and

Case 9-CB-10716-22
(formerly 13-CB-16123)

OVERNITE TRANSPORTATION COMPANY

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO

and

Cases 9-CB-10716-23
(formerly 13-CB-16253)

OVERNITE TRANSPORTATION COMPANY

9-CB-10716-26
(formerly 13-CB-16447)

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO

and

Cases 9-CB-10716-24
(formerly 13-CB-16257)

OVERNITE TRANSPORTATION COMPANY

9-CB-10716-25
(formerly 13-CB-16275)
TEAMSTERS, AFL-CIO

and

OVERNITE TRANSPORTATION COMPANY

Cases 9-CB-10716-56
(formerly 26-CB-3854)

9-CB-10716-59
(formerly 26-CB-3885)

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO

and

OVERNITE TRANSPORTATION COMPANY

Cases 9-CB-10716-53
(formerly 26-CB-3801)

9-CB-10716-54
(formerly 26-CB-3808)

9-CB-10716-55
(formerly 26-CB-3839)

9-CB-10716-57
(formerly 26-CB-3855)

9-CB-10716-58
(formerly 26-CB-3864)

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO

and

OVERNITE TRANSPORTATION COMPANY

Cases 9-CB-10716-60
(formerly 28-CB-5234)

9-CB-10716-61
(formerly 28-CB-5364)

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO

and

DONALD A. RIZZI, AN INDIVIDUAL

Case 9-CB-10716-62
(formerly 29-CB-11103)

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO

and

OVERNITE TRANSPORTATION COMPANY

Case 9-CB-10716-63
(formerly 30-CB-4311)

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO

and

OVERNITE TRANSPORTATION COMPANY

Cases 9-CB-10716-64
(formerly 33-CB-3676)

9-CB-10716-65
(formerly 33-CB-3685)
SETTLEMENT STIPULATION

IT IS HEREBY STIPULATED AND AGREED by and between International Brotherhood of Teamsters, AFL-CIO, herein called Respondent, Overnite Transportation Company, herein called Overnite, Christopher A. Johlie, an individual, herein called Johlie, Michael V. Abcarian, an individual, herein called Abcarian, John D. Smart, an individual, herein called Smart, Daniel A. Rizzi, an individual, herein called Rizzi, and the General Counsel of the National Labor Relations Board that:

December 16, 1999, and served on Respondent on the same date, upon a first amended charge filed by Overnite in Case 9-CB-10716-65 (formerly 33-CB-3685) on March 29, 2000, and served on Respondent on the same date, upon a charge filed by Overnite in Case 9-CB-10716-66 (formerly 33-CB-3690) on January 19, 2000, and served on Respondent on the same date, upon a first amended charge filed by Overnite in Case 9-CB-10716-66 (formerly 33-CB-3690) on January 28, 2000, and served on Respondent on the same date, receipt of all charges and amended charges is hereby acknowledged by Respondent, the General Counsel of the National Labor Relations Board (herein called the Board) by the Regional Director for Region 9, acting pursuant to authority in Section 10(b) of the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151, et seq. (herein called the Act), and 102.15 of the Board’s Rules and Regulations, Series 8, as amended, issued an Order Consolidating Cases, Amended Consolidated Complaint and Notice of Hearing, herein called the Complaint, against Respondent on January 24, 2003. True copies of the Complaint were duly served by certified mail on Respondent on the same date, and by regular mail on Overnite, Rizzi, Abcarian, Smart and Johlie on the same date, receipt of which is hereby acknowledged by all parties.

2. (a) Overnite, a Virginia corporation, with service centers/terminals throughout the United States has been engaged in the interstate and intrastate transportation of general commodity freight.

(b) During the past year, Overnite, in conducting its business operations described above in subparagraph (a), derived gross revenues in excess of $50,000 for the performance of its interstate transportation services.

3. At all material times, Overnite has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

4. At all material times, Respondent has been a labor organization within the meaning of Section 2(5) of the Act.

5. Respondent withdraws any answers previously filed in these cases and all parties hereto waive the filing of an answer, hearing, administrative law judge’s decision, the filing of exceptions and briefs, oral argument before the Board, the making of findings of fact and conclusions of law by the Board, and all further and other proceedings to which the parties may be entitled under the Act or the Board’s Rules and Regulations.

6. This stipulation, together with the charges, amended charges and Amended Consolidated Complaint issued January 24, 2003, shall constitute the entire record.

7. It is understood that the signing of this stipulation by Respondent does not constitute an admission that Respondent has violated the Act or that Respondent engaged in a joint venture resulting in violations of the Act. It is further understood that this Agreement settles only the allegations in the above-captioned cases, and does not constitute a settlement of any other cases or matters. It does not preclude persons from filing charges, the General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters which precede the date of the approval of this Agreement regardless of whether such matters are known to the General Counsel or are readily discoverable. The General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above-captioned cases for any relevant purpose in the litigation of this or any other cases, and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to said evidence.

8. Respondent, its officers, and agents shall:

   Cease and desist from:

   (A) Brandishing or carrying any weapon of any kind, including, but not limited to, guns, knives, slingshots, rocks, ball bearings, liquid-filled balloons or other projectiles, sledge hammers, bricks, sticks, or two by fours at or near any picket line, handbilling effort, rally or in any vehicle engaged in ambulatory picketing of any Overnite vehicle or following the private vehicle of any Overnite employee.

   (B) Using or threatening to use a weapon of any kind, including but not limited to guns, knives, slingshots, rocks, ball bearings, liquid-filled balloons or other projectiles, picket signs, sticks, sledge hammers, bricks, hot coffee, bottles, two by fours, lit cigarettes, eggs, or bags or balloons filled with excrement against any non-striking Overnite
employee or security guard, or in the presence of any Overnite employee.

(C) Damaging, threatening to damage or attempting to damage any vehicle or equipment owned or operated by Overnite, its employees or security guards, by any means or manner, including but not limited by slingshots, rocks, ball bearings, liquid-filled balloons or other projectiles, knives, picket signs, sticks, sledge hammers, bricks, bottles, two by fours, eggs, or paint, or by tearing off mirrors, windshield wipers or antennas, or breaking windows.

(D) Disabling or attempting to disable vehicles owned or operated by Overnite, by any means or manner, including but not limited to disconnecting or otherwise severing air brake lines, padlocking doors, spraying substances in or otherwise jamming locks, stealing keys, puncturing radiators, cutting hoses or door cables, flattening tires or throwing, placing or otherwise spreading any nails, screws, star nails, jack rocks or similar devices capable of puncturing tires on any road surface.

(E) Endangering or impeding the progress of, or harassing any non-striking employees or employees of a neutral person doing business with Overnite, while they are operating a company or personal vehicle, by forcing or attempting to force them off the road, blocking, delaying or limiting their access to or passage on any road, swerving toward, driving recklessly near, tailgating or braking abruptly in front of them, impeding their progress by speeding up and slowing down, or driving at speeds below the legal minimums while in front of them.

(F) Endangering or impeding the progress of, or harassing any non-striking employees or employees of a neutral person doing business with Overnite, while they are operating a company vehicle or personal vehicle, by jumping on vehicles, attempting to open the doors of vehicles, throwing paint on windshields, using mirrors, laser pointers, spot lights or flash photography in the eyes of drivers, or obstructing the view of drivers by holding picket signs over the windshields of vehicles.

(G) Engaging in mass picketing or otherwise impeding the ingress or egress of Overnite employees or employees of any other employer to or from any Overnite service center or any facility of any neutral person doing business with Overnite, or patrolling or walking across the entrance of any Overnite service center or a facility of any neutral person doing business with Overnite in such a manner as to impede or delay the ingress or egress of any individual.

(H) Battering, assaulting, spitting on, blowing whistles loudly near a person’s ear, throwing any liquid or solid object at, or attempting to assault any non-striking employees of Overnite, any member of their family, or any employee of a neutral employer doing business with Overnite, or any security guard or supervisor or manager of a neutral employer doing business with Overnite in the presence of employees.

(I) Threatening to kill or inflicting bodily harm, making throat slashing motions, making gun pointing motions, challenging or threatening to fight or assault employees, threatening to sexually assault non-striking employees or their family members, threatening to follow non-striking employees to their homes, using racial epithets or obscene gestures at non-striking employees or otherwise threatening unspecified reprisals on any non-striking employees of Overnite or any member of their family or any employee of a neutral employee doing business with Overnite, or on any security guard, supervisor or manager of Overnite or neutral employers doing business with Overnite in the presence of employees.

(J) Videotaping or photographing any non-striking employees of Overnite, or vehicles of Overnite or of its non-striking employees while engaging in coercive activity observed by or known by those being videotaped or photographed or threatening to release the photographs, names, addresses or phone numbers of non-striking employees in order to intimidate the non-striking employees.

(K) Preventing any non-striking employee from accessing an Overnite vehicle or a personal vehicle or blocking Overnite vehicles or the personal vehicles of non-striking Overnite employees.

(L) Threatening to fine or cause the discharge of non-member employees because they cross a picket line or refuse to go on strike.
(M) Threatening to cause any employee’s discharge if they do not engage in a strike or picketing of Overnite or of any neutral person doing business with Overnite.

(N) Attempting to harass and intimidate employees or security guards on Overnite property by using mirrors to reflect sunlight into the eyes of Overnite drivers or use mirrors or laser pointers to shine light into the eyes or video cameras of security guards.

(O) Issuing documents or otherwise ratifying or condoning acts which restrain or coerce employees in the exercise of their Section 7 rights.

(P) Removing the personal property of non-striking employees from their personal vehicles.

(Q) In any other manner, restraining or coercing employees in the exercise of their Section 7 rights.

9. Respondent, its officers, and agents shall:

Take the following affirmative action to effectuate the policies of the National Labor Relations Act, as amended:

(a) Respondent shall provide a copy of this settlement stipulation to all of its freight industry locals.

(b) During the course of any strike or picketing called, directed, or controlled by Respondent against Overnite, or at which Respondent’s agents are physically present, Respondent shall for a two-year period commencing with the approval of this Settlement Stipulation:

(1) Designate an agent responsible for insuring lawful conduct is maintained at each Overnite facility that is being struck, picketed or handbilled, at each facility of any neutral person doing business with Overnite where picketing or handbilling is occurring and at each location where ambulatory picketing or handbilling is occurring.

(2) At each facility at the commencement of such strike, picketing or handbilling, distribute copies of the attached Notice marked as “Appendix A” to every person who participates in the strike, picketing or handbilling and thereafter maintain a list of all picketers and handbillers. The list shall contain the name and location of the Overnite facility or facility of the neutral person doing business with Overnite that is being struck, picketed or handbilled, the dates of the activity and the full names and addresses of all persons present on the picket line or where the handbills are being distributed along with their job classifications or positions with Respondent, if any, or with any local union or joint council affiliated with Respondent.

(3) Upon the commencement of ambulatory picketing, distribute copies of the attached Notice marked as “Appendix A” to every person who participates in such ambulatory picketing and thereafter maintain a list of all such persons and the vehicles engaged in any such activity. The list shall contain the location of such ambulatory picketing the make, model, year, and license plate number of every vehicle used in such activity, the dates of the activity and the full names and addresses of all persons participating or in any way involved in the ambulatory picketing along with their job classifications or positions within Respondent, if any, or with any local union or joint council affiliated with Respondent.

(4) Within 48 hours following notification of the filing of an unfair labor practice charge alleging unlawful conduct in connection with picketing or handbilling of any kind, provide to the Regional Director for the Region in which the charge has been filed a copy of the list or lists set forth in (2) and/or (3) above, as pertinent to the allegations in the charge. If the list(s) is not provided within the 48-hour period, Respondent shall order the person set forth in (1) above to refrain from engaging in any picketing or handbilling at or near any Overnite facility, the premises of any neutral person doing business with Overnite or any ambulatory picketing of any Overnite vehicles in the general area in question for a period of one year.

(5) Seek to prevent any member or individual acting on behalf of Respondent who refuses to sign or
otherwise refuses to be entered on the list or lists set forth in (2) and/or (3) above from engaging in any activity on behalf of Respondent by ordering the individual to leave the area immediately. Should the individual remain at the premises while continuing to refuse to sign or be entered on the list or lists set forth in (2) and/or (3) above, Respondent shall publicly disavow his or her conduct. Upon a finding that the individual refused to sign or be entered on the applicable list or lists, Respondent will order the individual not to engage in any future conduct on behalf of Respondent in connection with this labor dispute. A failure to enforce any portion of provision (b) in good faith shall preclude Respondent from disavowing the agency status of any such individual whose name is not entered on the list(s) set forth above in (2) and/or (3) in this or any other future proceedings before the Board or appropriate Court of Appeals.

(c) Post at all Respondent’s locations where notices are customarily posted, and advise its freight industry Locals to post at all freight industry employers where they may post notices, copies of the attached Notice marked “Appendix A.” Copies of the Notice, on forms provided by the Regional Director for Region 9, after being signed by Respondent’s authorized representative, shall be posted immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where Notices to Employees and Members are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the Notices are not altered, defaced, or covered by any other material.

(d) Within 10 days of receipt, provide copies of the attached Notice marked “Appendix A,” after being signed by Respondent’ authorized representative, to the Regional Director for Region 9 who, in turn, will provide the mailing of the Notice to Overnite for posting should Overnite desire to do so.

(e) Within 10 days, prominently post on Respondent’s Internet Home Page a copy of this Settlement Stipulation and a copy of the attached Notice marked “Appendix A” for a period of 60 consecutive days.

(f) Notify the Regional Director in writing within 20 days from the date of this Settlement Stipulation what steps Respondent have taken to comply.

10. (a) The restrictions and obligations contained in paragraphs 8 and 9 of this Settlement Stipulation will effectuate the purposes and policies of the Act, and Respondent will immediately comply with all the provisions set forth therein. In the event that the Regional Director of Region 9 of the National Labor Relations Board, within two (2) years of the effective date of this Settlement Stipulation, informs the parties in writing that complaint is warranted against Respondent for serious strike misconduct in violation of Section 8(b)(1)(A) of the Act which occurs during the course of any strike or picketing against Overnite called, directed or controlled by Respondent that commences following the Regional Director’s approval of this stipulation, Respondent agrees to the following: Upon submission to the Board by the General Counsel that Region 9 has informed the parties in writing that complaint is warranted alleging that Respondent has engaged in serious strike misconduct violative of Section 8(b)(1)(A) of the Act in connection with Respondent’s dispute with Overnite, the Board may enter an order forthwith based on this Settlement Stipulation, together with the other documents constituting the record as described in paragraph 6 hereof, without further notice to and without the consent of Respondent providing for the relief set forth in paragraphs 8 and 9 hereof. Thereafter, any United States Court of Appeals for any appropriate circuit may, upon application by the Board, enter its judgment enforcing the Order of the Board in the form set forth in paragraphs 8 and 9 hereof. Respondent waives all defenses to the entry of the judgment, including compliance with the Order of the Board, and its right to receive notice of the filing of an application for the entry of such judgment, provided that the judgment is in the words set forth in paragraphs 8 and 9 hereof. However, Respondent shall be required to comply with the affirmative provisions of the Board’s Order after entry of the judgment only to the extent that it has not already done so.

(b) The term “serious strike misconduct” as discussed in paragraph 10(a) is defined as misconduct which under the existing circumstances “may reasonably tend to coerce or intimidate employees in the exercise of rights protected under the Act” as set forth in the Board’s decisions in Clear Pine Mouldings 268 NLRB 1044 (1984) and its progeny, including Mohawk Liqueur Co. 300 NLRB 1075 (1990) et. al. For purposes of this settlement stipulation, “serious strike misconduct” is generally understood to mean conduct such as menacing gestures or threats of violence to person(s) or property or actual violent conduct towards person(s) or property. “Serious strike misconduct” is generally understood to exclude non-menacing gestures, name calling, comments, or remarks that do not contain threats of violence or conduct which does not substantially interfere with ingress or egress. Conduct not meeting the “serious strike
misconduct” definition as discussed above may be remedied in newly filed unfair labor practice charges but for purposes of this Settlement Stipulation will not constitute a basis for seeking a Board Order or Court Order in the instant cases.

11. This stipulation contains the entire agreement between the parties hereto, there being no agreement of any kind, verbal or otherwise, which varies, alters or adds to it.

12. In the event that the General Counsel, pursuant to the provisions of paragraph 10 above, submits to the Board for entry of an order, this stipulation, together with the other documents constituting the record as described above in paragraph 6 hereof, shall be filed with the Board. Upon the Board’s approval of the Stipulation, Respondent will immediately comply with the provisions of the order as set forth in paragraphs 8 and 9 hereof.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO

(Respondent)

By: _______________________________________

(Responsible Official) (Title)

Dated: May 14, 2003

Signed at: Washington, D.C.

(City and State)

OVERNITE TRANSPORTATION COMPANY

(Charging Party)

By: Daniel B. Parkers (Daniel B. Parkers)

Dated: June 25, 2003

Signed at: Chicago, Illinois

(City and State)

MICHAEL V. ABCARIAN, AN INDIVIDUAL

(Charging Party)

By: Michael V. ABCARIAN

Dated: 6/25/03

Signed at: Dallas, Texas

(City and State)
DANIEL A. RIZZI, AN INDIVIDUAL
(Charging Party)
By: ____________________________
(Responsible Official) (Title)
Dated: _________________________
Signed at: ______________________
(City and State)

CHRISTOPHER A. JOHLIE, AN INDIVIDUAL
(Charging Party)
By: ____________________________
(Responsible Official) (Title)
Dated: _________________________
Signed at: ______________________
(City and State)

JOHN D. SMAR, AN INDIVIDUAL
(Charging Party)
By: ____________________________
(Responsible Official) (Title)
Dated: _________________________
Signed at: ______________________
(City and State)

Recommended by: ____________________________
David L. Ness
Counsel for the General Counsel
National Labor Relations Board
Region 9, National Labor Relations Board
3003 John Weld Peck Federal Building
550 Main Street
Cincinnati, Ohio 45202

Approved: ____________________________
Earl L. ledford
Acting Regional Director, Region 9

Attachments