

BULLETIN

TO: ALL EMPLOYEES JULY 1, 2008

FROM: OPERATING ENGINEERS TRUST FUNDS (I.U.O.E., Local 12)

SUBJECT: COLLECTIVE BARGAINING AGREEMENT-OWNER-
OPERATOR PROVISIONS

Your Collective Bargaining Agreement with I.U.O.E., Local 12 specifically prohibits a self-employed person from performing any work covered by the Agreement. A "self-employed person" is one person who works for an unincorporated trade or business in which that person owns 10% or more of the interest in the capital or profits.

The Collective Bargaining Agreement further requires the contractor to take all necessary steps to make an owner-operator an actual bona fide employee of the contractor. The Agreement requires the contractors to deal with the owner-operator solely in an employer-employee relationship and does not permit the contractor to treat the owner-operator as a self-employed person or independent contractor. The Agreement further prohibits the contractor from acting as a broker of owner-operator services to any other party.

In the event the contractor does not comply with the provisions regarding owner-operators, the Agreement requires damages to be paid to the Operating Engineers Health and Welfare Fund in an amount equal to the contributions plus interest and liquidated damages from the date contributions would have been due that would have been paid on an employed person to perform work covered by the agreement. The monies paid under this provision shall be as damages and not for the benefit of any specific individual.

The employer associations and I.U.O.E., Local 12, have agreed that the owner-operator shall have the option of electing in writing not to be placed on the payroll of the contractor prior to the beginning of work, and thereby waiving benefits from the Operating Engineers Trust Funds.

FOR PURPOSES OF THE AGREEMENT, THE ELECTION PROVISIONS APPLY ONLY TO THOSE OWNER-OPERATORS WHO ARE NOT INCORPORATED.

BULLETING TO ALL EMPLOYERS

(Page 2)

Special forms are provided by the Operating Engineers Trust Funds office to be used in those cases where the owner-operator elects not to go on the payroll of the contractor. The form's use is limited to the reporting of one owner-operator per reporting form. The report form is designed to be used to report the same owner-operator for more than one day for a specific month.

At the end of the month the contractor will complete the form and remit the total contributions due to the Trusts based on the total hours worked by the owner-operator for the specific month.

THE REPORT FORM MUST BE SIGNED BY THE OWNER-OPERATOR.

The original form will be sent to the Operating Engineers Trust Fund office along with the funds that are due. A copy of the form will be provided to the owner-operator. A copy of the form will be retained by the contractor.

It is important to understand that the reporting procedure is subject to audit by the Trustees of the Operating Engineers Trust Funds. In any case where the owner-operator is not treated as an employee or there is no election form of record signed by the owner-operator, the assessment of damages set forth in the Collective Bargaining Agreement will be invoked.

The provisions in the Agreement regarding timely reporting apply in this case. Late reporting or failure to report will subject to the assessments set forth in the Agreement.

If you have any questions regarding this new provision in your agreement with I.U.O.E., Local 12, please call the Employer Department in the Fund Office at (626) 356-1040.

Your cooperation with this new procedure will be appreciated.

Michael Graydon
Fund Manager