

**United Brotherhood of Carpenters and Joiners of America, Local No. 1914, AFL-CIO (W & H Conveyor Systems, Inc.) and Roy Washburn.**  
Case 28-CB-1497

August 6, 1980

**DECISION AND ORDER**

BY CHAIRMAN FANNING AND MEMBERS  
JENKINS AND TRUESDALE

On May 12, 1980, Administrative Law Judge Harold A. Kennedy issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in answer to Respondent's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,<sup>1</sup> and conclusions of the Administrative Law Judge and to adopt his recommended Order.

**ORDER**

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, United Brotherhood of Carpenters and Joiners of America, Local No. 1914, AFL-CIO, Phoenix, Arizona, its officers, agents, and representative, shall take the action set forth in said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

<sup>1</sup> Respondent has in effect excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

**APPENDIX**

**NOTICE TO MEMBERS**  
**POSTED BY ORDER OF THE**  
**NATIONAL LABOR RELATIONS BOARD**  
An Agency of the United States Government

**WE WILL NOT** operate our exclusive hiring hall in disregard of the provisions of the col-

lective-bargaining agreement dated July 31, 1976, or any successor agreement.

**WE WILL NOT** refuse to dispatch Roy Washburn or any other person to his or her rightful employment.

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

**WE WILL** notify W & H Conveyor Systems, Inc., in writing, that we have no objection to the employment of Roy Washburn.

**WE WILL** make whole Roy Washburn for the loss of pay or benefits he may have suffered by reason of the discrimination against him, plus interest.

**UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,**  
**LOCAL NO. 1914, AFL-CIO**

**DECISION**

**HAROLD A. KENNEDY**, Administrative Law Judge: This case, which was heard in Phoenix, Arizona, on September 11, 1979,<sup>1</sup> presents the issue whether the Respondent Union, United Brotherhood of Carpenters and Joiners of America, Local No. 1914, AFL-CIO, violated the National Labor Relations Act, as amended (herein called the Act), on or about May 2 in connection with the operation of an exclusive hiring hall by refusing to refer a worker named Hoy Washburn to W & H Conveyor Systems, Inc. (herein called W & H), an employer engaged at the time in installing a conveyor belt system at the Sky Harbor Airport in Phoenix. Having considered the whole record and determined that Respondent did violate Section 8(b)(1)(A) and (2) of the Act by refusing to refer Washburn as alleged, I recommend entry of an order proscribing such violations.<sup>2</sup>

**Admitted Allegations and Contested Charges**

The Respondent Union is a labor organization as defined in Section 2(b) of the Act. W & H is a New York corporation with its principal office and place of business located in Carlstadt, New Jersey. On May 7 Roy Wash-

<sup>1</sup> All dates herein refer to 1979 unless otherwise stated. The General Counsel has requested that certain corrections be made in the transcript. Respondent has not objected to any of the proposed corrections, and the corrections are therefore ordered as requested.

<sup>2</sup> Sec. 8(b) provides, in part, that it shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.

burn, an individual, filed the charge herein which was served on the Respondent on the same day. W & H is engaged in the business of building and installing conveyor belt systems. W & H is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Between April 19 And the date of the complaint, which was issued on May 30, W & H purchased goods and materials valued in excess of \$50,000 and caused them to be transported in commerce to the Sky Harbor jobsite directly from suppliers located in States other than Arizona.

Respondent employs the following persons: Lee Kelly, business manager; Leroy Jones, assistant business manager; and Susan Francis, secretary.

Respondent is a party to a collective-bargaining agreement which provides for operation of an exclusive hiring hall by Respondent whereby signatory employers obtain all carpentry, millwright, and drywall workmen to be employed within Respondent's area jurisdiction. W & H is a signatory employer to said agreement. The collective-bargaining agreement includes the following provisions:

704.3—Each dispatching office shall maintain appropriate registration lists or cards, kept current, and referrals will be made in the following order of preference:

704.3.1—Group "A". Workmen who are properly qualified, (as hereinafter provided) whose names are properly registered, and who have been formerly employed for a period of at least sixty (60) days by any individual Contractors signatory to this Agreement in a craft covered by this agreement or other agreements containing this procedure between the union and other employers in the state of Arizona within the immediately preceding two (2) years.

704.3.1.1—Individual Contractors may requisition a workman specifically by name from Group "A" for the same craft in which he was previously employed, provided said workman is properly registered and available for such employment.

\* \* \* \* \*

706—Registration. No workman shall be refused registration or dispatchment because of his Union or non-union status, if he is otherwise entitled to dispatchment. Preference in dispatchment is based solely upon the requirements of Paragraphs 704.3 and 704.4 hereof.

Paragraph 10 of the complaint alleges that on or about May 2 W & H requested Respondent to refer Washburn to W & H for employment; that Washburn "was properly qualified and registered as a workman in Group 'A'"; and that "Respondent, by its agent, Lee Kelly, refused" to do so "for arbitrary and invidious reasons and because of his opposition to the Respondent's leadership." The complaint further alleges that such conduct (1) has caused or attempted to cause an employer to discriminate in violation of Section 8(a)(3) of the Act and thereby violated Section 8(b)(2) (pars. 11 and 12) and (2) has

restrained and coerced employees in the exercise of their rights guaranteed in Section 7 of the Act and thereby violated Section 8(b)(1)(A) (par. 13d).

At the hearing the parties filed a written stipulation which provides that Kelly and Jones have been agents of the Respondent during the relevant time period within the meaning of Section 2(13) of the Act. The stipulation also provides that Respondent and W & H were, during the period April 19–May 31, parties to a collective-bargaining agreement which provided for operation of an exclusive hiring hall by Respondent by which Respondent referred to signatory employers all carpentry, millwright, and drywall workmen within Respondent's area jurisdiction. The collective-bargaining agreement dated July 31, 1976, and covering the period July 31, 1976–May 31, 1979, was made a part of the stipulation which also included a statement to the effect that Respondent and W & H have been, since June 1, parties to a new collective-bargaining agreement which "contains no material changes in the provisions governing the operation of the exclusive hiring hall by the Respondent."

#### The Testimony

The testimony is largely undisputed.

*Roy Edward Washburn*, the Charging Party, is a millwright and has been a member of Local 1914 for approximately 7 years. He has been active in the Local's affairs over the years, particularly during the Union election campaign which began in December 1978 and ended with an election on June 12. Washburn had supported a losing slate which consisted of Chuck Graham as a candidate for business agent, Gene Hodges as a candidate for president, and himself as a candidate for recording secretary. (On cross-examination Washburn mentioned Maurice Robinson also as a member of the opposition slate.) During the campaign, according to Washburn, he used the phone, handed out literature, and campaigned "all of the time." He did not believe that he had told Business Manager Kelly or Assistant Business Manager Jones of his candidacy. On cross-examination he agreed that he had been outspoken concerning union affairs but denied that he had always been critical of the administration of the Union by Kelly. "I've given it to them in things I felt they've done wrong," he said. Washburn said he had once been a good friend of Assistant Manager Jones, with whom he had worked prior to the time Jones became an officer of the Union. Washburn recalled that he had criticized the operation of the Union's hiring hall during a particular conversation with Jones and was told, in effect, that it was none of Washburn's business how the hiring hall was run.<sup>3</sup>

Washburn said he was told by a friend, Ed Hines, then acting steward on the W & H job at Sky Harbor Airport, that the W & H superintendent would ask the Union to refer Washburn on May 2 to work at Sky Harbor. Hines had reported to Washburn that he had recommended Washburn to the superintendent as a "good worker and good welder" after the superintendent had inquired about the identity of a good welder with

<sup>3</sup> Jones testified he did not recall "that part of the conversation."

some conveyor work experience.<sup>4</sup> Washburn, who said he had been out of town when called by Hines, went to the union hall and signed up on the "A" list on April 30 as he was qualified to do. Washburn thereafter filed the charge in this proceeding when he learned another man had been sent by the Union to the W & H job at Sky Harbor.<sup>5</sup>

Lee Kelly, business manager of Local 1914 for about 7 years, was first called by the General Counsel and later by Respondent as a defense witness. He explained the operation of the Union's hiring hall—how workers signed up in a book and how referrals were thereafter made. A union secretary at the end of each week would "take off" from the book the names of workers who had worked for a signatory contractor the specified time and then prepared an "A" list. Kelly agreed that W & H had requested Washburn on May 2, that he was on the "A" list at the time, and that another person, Audie Redstrom, had been sent instead.

Kelly agreed that a provision in the collective-bargaining agreement, section 704.3.1.1, allows an employer to call in and ask for a specific worker on the "A" list. He had "no quarrel" with the provision, he said, and agreed that there was a valid purpose in having the provision:

Well, I suppose it's to give the contractor the right to hire people that have worked for him in the past that are good workers and probably skilled in a special part of the craft that they need, whether it be a carpenter or a millwright. He may be a good high man and they would like to have him. A lot of people can't climb high. He may be a good welder.

Kelly indicated that there were 49 other workers on the list when W & H called in for Washburn, and he was concerned about the proper treatment of the other workers.<sup>6</sup> Kelly said there were problems in the local Union because of the dishonesty of some members. He said he talked "dozen of times" about workers jumping the list or soliciting work.

Kelly indicated that he was opposed to allowing a new contractor in the area to invoke section 704.3.1.1 in order that the Union might stop a "buddy system" that allows workers to "jump the list." He agreed, however, that the buddy system would continue with old contractors continuing to call in for specific workers by name. Kelly was of the view that when a new contractor comes into the area and does not know any of the workers "a little judgment" is called for. He said he knew in the instant case that the contractor "had never been there and he didn't know anybody" and "he [the contractor] didn't have the right to request somebody by name." Kelly

<sup>4</sup> Dirk Van Everdingen, W & H's superintendent at Sky Harbor, indicated that Hines had mentioned Washburn's name unsolicited but that he (Van Everdingen) had told Hines he would be calling the Union for another man.

<sup>5</sup> Washburn said the Union did refer him to the W & H Airport job in June and that he continued to work there until he got a better job sometime in August. (Resp. Exh. 10.)

<sup>6</sup> Asked by a General Counsel's attorney whether the Union had been unable to fill a call for four men for the W & H job, Kelly replied:

I couldn't answer that; I doubt it very much, we had plenty of people on the list.

agreed that the Union had on no other occasion applied the 704.3.1.1 provision against a new contractor but cited a 1959 directive from his union headquarters in Indianapolis as supporting his position.<sup>7</sup> According to Kelly, the directive "pretty well states that the contractor should not hire anybody unless they have worked for them before, and we have had that posted on our board many, many times. . . ."<sup>8</sup>

Kelly agreed that he had fired Ed Hines as steward on the W & H airport job on May 12, the day after Hines had given the National Labor Relations Board a statement about this matter. Kelly said he could dismiss a steward at any time, and he did so for Hines, "blatant attempt to bypass the hiring hall procedure." He never notified Hines of his replacement as steward and replaced him by simply designating Ken Carey as the new steward on the W & H airport job.

Kelly stated that he did not know that Washburn had campaigned actively for Chuck Graham but "was aware that Washburn would campaign for anybody against me." On defense Kelly testified that he did not know Washburn was a candidate for office until the second Saturday in May but he acknowledged however that Washburn had been opposed to his policies "for many years."

Members of the slate in opposition to his administration were not, according to Kelly, eligible to run for office—and, therefore, presumably their candidacies presented no threat to him and gave him no reason to discriminate against Washburn—as they did not comply with a bylaw that required attendance of six (50 percent) of the union meetings held during the preceding year.<sup>9</sup>

During his testimony on defense Kelly said "it isn't a rule" that a new contractor cannot ask for a worker by name. "[I]t's something I asked the contractor to comply with for the good of his job and the good of all the jobs, it's not a rule." But he pointed out that he was "a great believer in a no request policy completely," adding, "but I don't think I can get away with it." "I'd like to apply it to all of them," he said. Kelly said there were three other new contractors in the area and that he sought to maintain the "same" policy (as followed in the case of W & H's request for Washburn) with respect to referrals, but, he said, "You can't change something overnight." Kelly also said:

What I do is ask the contractor if it's all right with him if we have a no request policy. That's entirely different. It's got [sic] a ruling, I say, "Is it all right

<sup>7</sup> Testifying on defense, Kelly could recall no other incident over the past 7 years when an out-of-town contractor had asked for a worker by name.

<sup>8</sup> But on cross-examination Kelly said he was not sure when the directive was last posted. The directive was received as Resp. Exh. 11. Kelly said he relied on rule 5, which reads in part:

However an employer may request by name individuals formerly employed by him on work performed in the geographical area of the Local Union (District Council).

<sup>9</sup> Asked if Washburn had not been employed some distance away on out-of-town jobs during the preceding year, Kelly replied: "Well, that is where most of [the] work is."

with you if we have a no request policy cause we hire directly from the hall." He says, "Fine."

If the contractor will not comply with his policy, Kelly does send the requested workers: "[t]here's nothing I can do about it."<sup>10</sup>

*Dirk Van Everdingen*, superintendent of the W & H job at Sky Harbor Airport, said he first met Local 1914 Manager Kelly on April 19 when he signed on with the Union as a signatory contractor on behalf of W & H. He recalled that Hines had suggested that he ask for Washburn when requesting the Union for a new worker. He did so when he called the Union and talked with a woman (later identified as Susan Francis).<sup>11</sup> The woman indicated there was a question about the referral of Washburn and that, in fact, Audie Redstrom was referred rather than Washburn. Van Everdingen said he talked with Kelly a few days later and was told by Kelly that "he'd rather not have me request people by name."

*Ed Hines*, a member of Local 1914 for 7 years, corroborated the testimony of previous witnesses—that he had recommended Washburn to W & H Superintendent Van Everdingen and that the superintendent had asked the Union to refer Washburn to it for work at Sky Harbor. He recalled Jones later told him that W & H as a new company in the State had no right to ask for a particular worker and that job referrals to the Company would be "strictly by the list." Jones also told him, Hines said, that he need not have given a statement to the Labor Board. Hines was admittedly upset at the way he was relieved as steward at the airport job but denied that he had improperly injected himself into the hiring hall controversy by suggesting Washburn to W & H. Hines stated:

It's not an uncommon practice, because I did it and because Roy Washburn was involved, that's what this is all about. Had it been a couple other people I could mention, nothing ever would have come about, you know. I've seen jobs where possibly, I'd say the better part of the job had been maned [sic] by requests. I've seen this happen, but you know, you go open up a can or worms and what's going to come of it. Everybody's putting political undertones on this thing, and I don't have any hard feelings toward Leroy Jones. I don't have any hard feelings toward Lee Kelly. I guess they're doing their job the best they know how, but you know right's right.<sup>12</sup>

<sup>10</sup> Asked why he could recommend a person to a new contractor but that Hines could not, Kelly pointed out: "[t]here's a difference in the position that we hold. This is my job to recommend to the contractor people that can do the job."

<sup>11</sup> Hines made two calls to the Union; the first time he forgot to ask for Washburn by name and then called back again.

<sup>12</sup> Susan Francis, a secretary employed at Local 1914 and the one who does "most of the dispatching under Mr. Kelly's direction," testified that "[a]s far as I know" a contracting concern could not ask for a worker by name unless he had worked for the company before. She said she told Van Everdingen when he phoned and asked specifically for Washburn: "[I]t was my understanding there'd be no requests on the job, and I'd have to check with Mr. Kelly." She said she checked with Kelly who told her, "No, to go by the list. That was the agreement."

*Charles Graham*, a member of Local 1914 for 12 years and a former business manager of the Union, testified, as Washburn and Hines had before him, that he was unaware of any rule which restricted a new contractor from asking for referral of a specific worker. He said he was also unaware of the Indianapolis union directive and was of the opinion that it would not be applicable to Local 1914 anyway.

*Leroy Jones*, president of Local 1914 since 1978 and assistant business representative since 1979, was called by both the General Counsel and the Respondent. He said he did not know that Washburn was seeking office himself until mid-May 1979.<sup>13</sup> Jones acknowledged, however, that he "had been aware for quite sometime that Mr. Washburn disagreed with Kelly's administration." Jones said he did not recall discussing Washburn's opposition to Kelly's administration with Kelly, but he thought it was "common knowledge."

Jones testified that Hines had telephoned him some time prior to May 2 and inquired about the possible referral of Washburn to the W & H airport job. His response was, he said, "I'd have to wait and see at the time the request came in . . . ." Several weeks later, according to Jones, Hines came to the union office and "apologized to me for being involved with these charges and I told him that I was disappointed that he had not used the grievance procedure through the District Council. . . ." He denied making any threats against Hines.

Jones said he tried to reach Washburn for a job with Robert E. White, a local contractor who had specifically asked for Washburn, but he said he was unable to reach him at his home.

#### Discussion

The Circuit Court of Appeals for the Ninth Circuit recently stated in *N.L.R.B. v. International Association of Bridge, Structural and Ornamental Iron Workers, Local 433 [Associated General Contractors of California, Inc.]*, 600 F.2d 770 (9th Cir. 1979), enfg. 228 NLRB 1420 (1977):

On a number of previous occasions, we have held that it is an unfair labor practice in violation of §§ 8(b)(1)(A) and 8(b)(2) for a bargaining representative to act in an unreasonable, arbitrary, or invidious manner in regard to an employee's employment status. *Kling v. N.L.R.B.*, 503 F.2d 1044, 1046, 88 LRRM 2385 (9th Cir. 1975). See, e.g., *N.L.R.B. v. Bricklayers Local No. 7*, 563 F.2d 977, [96 LRRM 3202] (9th Cir. 1977). By wielding its power arbitrarily, the Union gives notice that its favor must be curried, thereby encouraging membership and unquestioned adherence to its policies. *Laborers and Hod Carriers Local No. 341 v. N.L.R.B.*, 564 F.2d 834, 839-40, 97 LRRM 2287 (9th Cir. 1977). No specific intent to discriminate on the basis of union membership need be shown; if the foreseeable result of discrimination is the encouragement of union

<sup>13</sup> He agreed later on cross-examination, however, that he was aware earlier that Washburn was supporting Graham for union office.

membership, it must be supported by a legitimate purpose. *Id.* . . . .

Even more recently the same court in *N.L.R.B. v. Laborers' International Union of North America, Local 300, AFL-CIO [Memorial Park Development Assn., Inc.]*, 613 F.2d 203 (9th Cir. 1980), stated:

[A]lthough the union follows its hiring hall rules in doing so, a single instance of discriminatory treatment will support a finding of unlawful discrimination when those rules are not consistently followed. As in *Local 83 [Construction Bldg. Materials & Misc. Drivers Local 83 v. N.L.R.B.]*, 590 F.2d 316 (9th Cir. 1979), the Union here did not consistently follow its hiring hall rules. To be sure, the rules in this case have a contractual basis, while in *Local 83* it appears that the rules merely represented established union practice. See *id.* at 510. Even so, the principle is the same. When a union introduces an element of discretion into what is otherwise a non-discretionary process, the union may be held accountable for discriminatory exercise of that discretion.

Quoting from the Board's decision in *International Brotherhood of Electrical Workers, Local 592 (United Engineers & Construction Co.)*, 223 NLRB 899, 901 (1976):

[A]uthority support the view that where referral under an exclusive hiring hall agreement is conditioned upon clear and unambiguous standards set forth in that agreement, the refusal to refer an employee who qualifies for referral under such standards, without more, suffices to establish, *prima facie*, a violation of Section 8(b)(2) and (1)(A) of the Act. Thus, in *International Association of Heat & Frost Insulators & Asbestos Workers, AFL-CIO, Local 22 (Rosendahl, Inc.)*, 212 NLRB 913 (1974), a labor organization was held to have violated Section 8(b)(2) and (1)(A) of the Act by refusing to refer a member, under a contractual request by name provision, despite the absence of *specific* evidence that the Union, in doing so, was motivated by a desire to encourage union membership. Pursuant to the holding in *Rosendahl, supra*, under an exclusive hiring arrangement a labor organization is under a duty to conform with and apply lawful contractual standards in administering registry, preference and referrals, and any departure therefrom resulting in a denial of employment to a member falls within that class of discrimination which inherently encourages union membership. See, e.g., *Radio Officers' Union of the Commercial Telegraphers Union, AFL [A. H. Bull Steamship Company] v. N.L.R.B.*, 347 U.S. 17, 40-42 (1954). Thus, under established precedent a proscribed discriminatory motivation is presumed where, through its control of employment opportunities, a labor organization demonstrates its power by impairing an employee's tenure of employment.<sup>14</sup>

<sup>14</sup> The Supreme Court stated in *Radio Officers' Union*:

The policy of the Act is to insulate employee's job from their organizational rights. Thus, §§ 8(a)(3) and 8(b)(2) were designed to allow

The Board has declined to hold as unlawful *per se* every interference with an employee's status for reasons other than the failure to pay dues and initiation fees. In *International Union of Operating Engineers, Local 18, AFL-CIO (Ohio Contractors Assn.)*, 204 NLRB 681 (1973),<sup>15</sup> the Board stated:

When a union prevents an employee from being hired or causes an employee's discharge, it has demonstrated its influence over the employee and its power to affect his livelihood in so dramatic a way that we will infer—or, if you please, adopt a presumption that the effect of its action is to encourage union membership on the part of all employees who have perceived that exercise of power.<sup>3</sup> But the inference may be overcome, or the presumption rebutted, not only when the interference with employment was pursuant to a valid union-security clause, but also in instances where the facts show that the union action was necessary to the effective performance of its function of representing its constituency.

Thus the Supreme Court has sanctioned union control over access to employment through hiring hall agreements,<sup>4</sup> even though recognizing that "the very existence of a hiring hall encourages union membership." And this Board has found legitimate a union's action in causing the layoff of an employee who insisted on working without receiving a subsistence allowance called for by the collective-bargaining agreement.<sup>5</sup> In such cases, the union's actions, while incidentally encouraging union membership, were nevertheless essential to its effective representation of employees.

<sup>3</sup> *Radio Officers' Union [A. H. Bull Steamship Co.] v. N.L.R.B.*, 347 U.S. 17 (1954).

<sup>4</sup> *Local 357, Teamsters [Los Angeles-Seattle Motor Express] v. N.L.R.B.*, 365 U.S. 667 (1961).

<sup>5</sup> *Plant Corporation*, fn. 2, *supra*.

In the instant matter, section 704.3.1.1 of the collective-bargaining agreement granted all signatory contractors, including those who were new in the area, the right to request a worker by name from the Group "A" list. W & H, through its superintendent, Dirk Van Everdingen, made such a request for Roy Washburn at a time when he was eligible for the assignment: He had been previously employed as a millwright, and he was on the "A" list and was available for employment. Respondent refused to refer Washburn as requested by W & H. It remains to be determined whether Respondent's action was "necessary to the effective performance of its functions in representing employees."

employees to freely exercise their right to join unions, be good, bad or indifferent members or abstain from joining any union without imperiling their livelihood.

<sup>15</sup> The Board's decision, 220 NLRB 147 (1975), was reversed and remanded on other grounds 496 F.2d 1308 (3d Cir. 1974). The same language appears, however, in *International Association of Heat & Frost Insulators & Asbestos Workers, AFL-CIO, Local 22 (Rosendahl, Inc.)*, 212 NLRB 913 (1974).

The Respondent Union concedes that it has acted in a manner inconsistent with the express terms of the collective-bargaining agreement, but it asserts that its "action was necessary to the effective performance of its function of representing its constituency" (citing *Operating Engineers, Local 18, supra*). Respondent stated:

Kelly reacted reasonably to an unfair situation, by imposing a hiring hall policy consistent in every way with the referral-by-name provision of the collective-bargaining agreement, which was designed to assist employers, clearly *not hiring hall* registrants. Kelly's clear intent was to prevent the manipulation of the hiring hall by Hines and Washburn. This fact is emphasized by Hines' removal as Union steward following his clear involvement in efforts to undermine the hiring hall.

I reject Respondent's contentions.

The Respondent Union apparently sees no potential for abuse by it through application of Kelly's "new contractor" rule by which the Union has the power to refuse the request for a specific worker by a new employer in the area in disregard of the plain terms of the collective-bargaining agreement. The Union overlooks the fact that it is the employer who is given the right to request a worker by name, regardless of how the employer learns the identity of the worker.

Granted that Business Manager Kelly was concerned about workers "jumping the list" by resort to the "buddy system," Kelly's solution was neither authorized by the collective-bargaining agreement nor rationally designed to correct the supposed evil.

I am persuaded that Kelly seized upon the new contractor rule to prevent the dispatch of Washburn to W & H. The testimony of Washburn, Hines, and Graham that the rule was previously unknown was convincing; the testimony of the Union's secretary that it had always been in effect ("as far as I know") was not. Kelly's application of the new rule was admittedly inconsistent. After applying it for the first time when W & H asked for Washburn on May 2, he did not apply it to three other new contractors in the area. The so-called International directive, presumably sent to Local 1914 20 years earlier, hardly provides a basis for creating or applying such a rule that is contrary to the express terms of the collective-bargaining agreement.<sup>16</sup> Kelly's testimony about the posting of the directive was uncertain—and unconvincing.

More important, Kelly's new contractor rule could do little to solve the supposed evil that Kelly wanted to remedy. Kelly, himself, indicated that referrals to new contractors were rare. The great majority of referrals involve aid contractors, so the rule have had little effect in stamping out "jumping the list" through use of the "buddy system." I find Kelly refused to refer Washburn to W & H on May 2 because of Washburn's activities in opposition to Kelly's administration of the Union. I be-

<sup>16</sup> Respondent states in its brief that it "has for many years maintained an unwritten rule prohibiting registrants from 'jumping the list' by soliciting their own jobs, or by having friends solicit jobs." (Emphasis supplied.)

lieve Kelly conceived of his new contractor's rule, which was not previously known to the workers or used by the Union, in order to mask the real reason for refusing to refer Washburn. Kelly's hostility toward Washburn is also indicated by his immediate dismissal of Hines as steward on the W & H job for supposedly undermining the hiring hall system. It is thus apparent that Kelly's hostility extended to a person who would seek to help Washburn.

That Kelly did not know Washburn himself was to be a candidate for union office until mid-May (after the requested referral of Washburn by W & H), that Kelly may not have known that Washburn would support opposition candidates, that Kelly may not have known that Washburn and other members of his opposition slate may not have been eligible for union office—all of these are irrelevant considerations. Kelly did know of Washburn's opposition to Kelly's administration for years, and I am persuaded that such fact motivated Kelly not to refer Washburn when specifically asked for by W & H's superintendent, Dirk Van Everdingen, on May 2. Further, that Respondent has referred Washburn on other occasions and that it has allowed him "to openly criticize Union officials" do not, of course, excuse Respondent from failing to honor the request W & H made for Washburn on May 2 and are not valid defenses to this action.

There are some similarities between the instant case and *United Brotherhood of Painters, Decorators & Paperhangers of America, Local Union No. 487, AFL-CIO (American Coatings, Inc.)*, 226 NLR8 299 (1976), wherein the Board found that a union's "action and rationale" had overcome the presumption of illegality, but there are differences in the cases which make the latter case inapposite here. In *American Coatings*, the employer had found some referrals by the union to be unsatisfactory, and union officials were concerned about that fact. The employer's foreman, Kappos, first asked for referral of an employee named Reise, but at the time Reise "hadn't signed the out-of-work list." Reise also complained that he had not been later referred to the employer (who had switched a brush painter to a spray job at the request of the union and then determined that it needed referral of another worker), but on that occasion it had not asked "expressly for him."

*Sheet Metal Workers International Association, Local Union No. 202, AFL-CIO*, 233 NLRB 732 (1977), also cited by Respondent, is quite different from the instant matter, however, and is easily distinguished. It is enough to say that in that case the charging party had a long (but remote) history of opposing the administration of Union Business Representative Robert DeBartolo and Business Manager Arthur Brown but "did not question either Brown or DeBartolo concerning why he has not been referred during this [relevant] period."

Thus, I find the General Counsel's complaint to be fully supported by the evidence. Respondent's new contractor rule was not known to the workers, it was discriminatorily applied to prevent the dispatch of Washburn to the W & H job at Sky Harbor Airport and the rule

was not reasonably related to achieving a legitimate objective.<sup>17</sup>

Based on the foregoing, I make the following:

#### CONCLUSIONS OF LAW

1. United Brotherhood of Carpenters and Joiners of America, Local No. 1914, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

2. W & H Conveyor Systems, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. Respondent and W & H Conveyor Systems, Inc., were parties to a collective-bargaining agreement dated July 31, 1976, under which Respondent has operated an exclusive hiring hall.

4. Respondent violated Section 8(b)(2) and (1)(A) of the Act by (a) operating the exclusive hiring hall in disregard of the provisions of the collective-bargaining agreement, and (b) refusing to dispatch Roy Washburn when requested to do so by W & H Conveyor Systems, Inc.

#### THE REMEDY

Having found that Respondent engaged in unfair labor practices, I shall recommend issuance of an order that it cease and desist therefrom, and that it take affirmative action necessary to effectuate the policies of the Act. My recommended Order will require that Respondent make Roy Washburn whole for any loss of earnings he may have suffered as a result of Respondent's unlawful conduct. Backpay is to be paid in accordance with decisions in *F. W. Woolworth Company*, 90 NLRB 289 (1950), *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1972), and *Florida Steel Corporation*, 231 NLRB 651 (1977).<sup>18</sup>

Accordingly, upon the foregoing findings of fact and conclusions of law, and upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

#### ORDER<sup>19</sup>

The Respondent, United Brotherhood of Carpenters and Joiners of America, Local No. 1914, AFL-CIO,

<sup>17</sup> Respondent's request that the complaint be dismissed on the basis that *Collyer Insulated Wire, A Gulf and Western Systems Co.*, 192 NLRB 837 (1971), requires deferral to the grievance arbitration machinery provided by the collective-bargaining agreement must be rejected as it is not the Board's policy to defer in cases involving alleged interference with individual employees' basic rights under the Act. *General American Transportation Corporation*, 228 NLRB 808 (1977), and *Potter Electric Signal Company*, 237 NLRB 1289 (1978). See also the Board's decision in *Iron Workers Local 433*, *supra*.

<sup>18</sup> As previously noted, Respondent referred Washburn to the W & H Sky Harbor Airport job in June, and he left it later in the summer for another position. Respondent's backpay liability, however, can best be determined during a subsequent backpay proceeding.

<sup>19</sup> In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the

Phoenix, Arizona, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Operating its exclusive hiring hall in disregard of the provisions of the collective-bargaining agreement dated July 31, 1976, or any successor agreement:

(b) Refusing to dispatch any individual who is entitled to dispatch pursuant to hiring hall procedures set forth in a collective-bargaining agreement.

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

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

(a) Operate its exclusive hiring hall in a nondiscriminatory manner and in accordance with the provisions of the collective-bargaining agreement of July 31, 1976, or any successor thereto.

(b) Make whole Roy Washburn for any loss of earnings and benefits he may have suffered in the manner set forth in the section of this Decision entitled "The Remedy."

(c) Notify W & H Conveyor Systems, Inc., in writing, that it has no objections to it requesting Roy Washburn for employment in the future.

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all records pertaining to employment through its hiring hall, and all records relevant and necessary for compliance with this Order.

(e) Post at its business offices, hiring hall, and meeting places copies of the attached notice marked "Appendix."<sup>20</sup> Copies of said notice, on forms provided by the Regional Director for Region 28, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director for Region 28, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

<sup>20</sup> In the event that 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."