All our employees are free to become or remain or to refrain from becoming or remaining members of Retail Automobile Salesmen, Local Union No. 501, affiliated with Retail Clerks International Association, AFL–CIO, or any other labor organization.

JIMMIE GREEN CHEVROLET,
Employer.

Dated_____ By_____
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Local 694, United Brotherhood of Carpenters and Joiners of America, AFL–CIO [Jervis B. Webb Company] *and* Elmer P. Barr

Lower Ohio Valley District Council of Carpenters and Joiners of America, United Brotherhood of Carpenters and Joiners of America, AFL–CIO [Jervis B. Webb Company] *and* Elmer P. Barr. *Cases Nos. 25–CB–395 and 25–CB–404. September 8, 1961*

DECISION AND ORDER

On October 27, 1960, Trial Examiner Reeves R. Hilton issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had not engaged in the unfair labor practices alleged in the complaint and recommending that the complaint be dismissed in its entirety, as set forth in the Intermediate Report attached hereto. Thereafter, the General Counsel filed exceptions to the Intermediate Report and a supporting brief.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Rodgers, Fanning, and Brown].

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following additions.

We agree with the Trial Examiner's conclusion that there is insufficient evidence to support a finding that the Respondents and the Employer were parties to an unlawful hiring arrangement whereby members of Respondents were given preference in hiring over nonmembers. It is clear, as our dissenting colleague concedes, that the Respondent Council's area contract is nondiscriminatory on its face. It is also clear that on January 27 the business agent of Respondent Local 694 specifically told Barr, the alleged discriminatee, that he had no objection to Barr's going to work for the Employer, and that on

January 28 the Employer offered to employ Barr without any referral from the Respondents. After the Employer had made this job offer, Barr spoke to the job steward who stated that he had no authority to run Barr off the job even though Barr was working without a referral. In view of the Employer's specific offer of work and the business agent's statement that Barr could work without a referral, we do not regard the statements of the job steward that Barr might "get himself in trouble" and "could be fined" as evidence that the Respondents caused the Employer to deny employment to Barr. Accordingly, we agree with the Trial Examiner that there was no discrimination against Barr.

Although our dissenting colleague places great reliance on the existence of a hiring list to prove the alleged unlawful arrangement, there was no indication that this list was ever used insofar as this Employer was concerned. The Employer's offer of work to applicants who did not possess referrals negatives the allegation that referrals were required in all cases. The dissent also places great weight on the way the application cards were filed in the out-of-work file. However, the point that the hiring arrangement conceivably could have been utilized in a discriminatory manner does not in any way establish that the hiring arrangement in fact was so utilized by Respondents and this Employer. Indeed, the evidence presented in this case of the operation of the hiring arrangement is not evidence of discrimination but evidence of lack of discrimination.

The interdiction of the statute is not directed against exclusive referral arrangements as such, but only against exclusive referral arrangements that are operated in a discriminatory manner. Discrimination must be proved; it cannot be presumed. In adopting the Trial Examiner's report, we are holding only that there was a failure to prove a discriminatory hiring arrangement.

[The Board dismissed the complaint.]

MEMBER RODGERS, dissenting:

I do not agree with my colleagues in their decision to dismiss the complaint.

The record establishes that the Employer commenced work on the Alcoa project on or about January 18, 1960, with a crew of five or six men. On January 26, Respondent Local 694's business agent, Wellmeyer, gave the Employer's superintendent, Colley, a copy of the Respondent Council's area contract. This contract provided, *inter alia*, for an exclusive and, on its face, nondiscriminatory referral arrangement.[1] During the instant hearing Wellmeyer testified that in operation of the hiring hall by Respondent Local 694, each applicant

[1] Respondents' answer to the complaint admits the exclusive arrangement.

for referral executes four application cards—one for each of the four locals making up the Respondent Council. These application cards, according to Wellmeyer's uncontradicted testimony, are filed in the out-of-work file in the following order: applicants who are members of Local 694; applicants who are members of locals affiliated with the Respondent Council; applicants of other locals of the Carpenters who clear into Local 694; and lastly, nonmembers who wish to work on a permit. Wellmeyer further testified, without contradition, that referrals from the hall were in the same order as the application cards were on file. When the General Counsel pursued this line of testimony further, Wellmeyer testified that when members of Local 694 completed a work assignment their application card was placed at the head of the out-of-work file at the rear of the cards of members of Local 694, and that such members were eligible for referral before the other categories of applicants.

Barr, the alleged discriminatee, is a member of Carpenters Local 90, not affiliated with the Respondent Council. Around January 23, Barr spoke to Wellmeyer about obtaining work at the Alcoa project and clearing into Respondent Local 694. Wellmeyer was agreeable but pointed out that Barr could not be cleared until the next membership meeting to be held on January 29. While awaiting to be cleared, Barr learned from another prospective applicant for employment at the Alcoa project that the Employer was interested in hiring him, and that he should deposit his book with Wellmeyer and get "straightened out." On January 26, Barr deposited his book with Wellmeyer and executed the four application cards. That evening Barr received the Employer's employment record form and an employee tax withholding exemption certificate, both of which Barr executed and dated January 28.

During the morning of January 27, Barr met Colley who signed Barr's employment record form. Barr then went to Respondent Local 694's hiring hall. Sometime later, Colley appeared at the hall and conferred with Wellmeyer, after which Colley informed Barr and five others present in the hall that Wellmeyer refused to send them out to the Alcoa project. Barr and the others remained at the hall. About an hour later Wellmeyer informed them that they could go down to the job if they wanted to go to work but that he was not going to give them a referral. The following morning Barr went to the Alcoa project, where Colley offered to put him and two others to work even though they did not have referrals. Barr stated that he first wished to confer with the steward of Local 694. Barr spoke to the steward, Lampkins, who informed Barr that he didn't have authority to run him off the job, but that he could get into trouble by working without a referral and could be fined. Lampkins also told Barr that he, Lampkins, would have to tell Local 694 if Barr went to work. Barr, and

the two others who lacked a referral, decided not to go to work. That afternoon Barr visited his home local (Local 90) and asked the business agent what would happen if he went to work without a referral from Local 694. Barr was informed that Local 694 could fine him, refer the charges back to Local 90, and Local 90 would have to collect the fine before Barr could be referred for employment from that local.

Colley testified at the hearing that late in January he conferred with Wellmeyer and Ward, the Respondent Counsel's business agent, and was informed that Barr and four others could not be referred out because there were other men out of work and there was a hiring procedure to go through first.

On February 2, while representatives of the Respondent and Employer were conferring about the employment of two men from Detroit, Barr came into the hiring hall and complained about not being able to work. Cox, the Employer's general superintendent, stated to Barr that Colley had no right to hire him except under the hiring provisions of the contract. Barr became dissatisfied and requested that his book be returned. Barr's book, but not his application cards, was returned to him. The record shows that by mid-February Barr's was the sole application for referral on file with Respondent Local 694, and, although the Respondents had difficulty in filling referrals, Barr had not been referred.

My colleagues, by adopting the Trial Examiner's report, hold that there was no illegal referral arrangement between the Employer and the Respondent. I disagree. In the first place, the Respondent specifically admitted the existence of an exclusive hiring arrangement in their answer to the complaint herein. Secondly, over and above the Respondent's admission, there is substantial evidence in the record that the parties did in fact maintain an exclusive arrangement.[2] That this exclusive arrangement was implemented in an unlawful way is shown by Wellmeyer's testimony that preference was given in referrals to members of the Respondents over other applicants. Accordingly, I would find that the Respondents by maintaining and enforcing the unlawful arrangement have violated Section 8(b)(2) and (1)(A) of the Act.

I would also find that the Respondent discriminated against Barr in violation of the Act. Although Wellmeyer told Barr he could go to work, and although Colley offered to put Barr to work without a referral, in a very realistic sense Barr was actually prevented by the Respondents from taking the job. This is true in view of the fact that

[2] As previously noted, Colley attempted to have Barr and others cleared for referral through Local 694's hiring hall and was thwarted in this attempt; Colley was informed by Wellmeyer and Ward that Barr and others could not be referred because there was a hiring procedure to be followed; the Employer found it necessary to confer with the Respondents concerning the employment of two men from Detroit; and, the Employer's general superintendent Cox, stated to Barr that Colley had no right to hire him except under the provisions of the contract

Job Steward Lampkins told Barr that he could be fined for working without a referral, and in view of the statement of Local 90's business agent that that local would not refer Barr out of its hall until the fine had been paid. Obviously any waiver of the referral requirement as to Barr was purely illusory. I am persuaded that by the threat of fining Barr the unlawful arrangement was enforced as to him, and that Barr was constructively denied employment because he had not perfected his clearance into Local 694. I would, therefore, find that the Respondents by this conduct violated Section 8(b)(2) and (1)(A) of the Act.

INTERMEDIATE REPORT

STATEMENT OF THE CASE

Upon separate charges, as amended, which were duly consolidated, the General Counsel of the National Labor Relations Board, through the Regional Director for the Twenty-fifth Region (Indianapolis, Indiana), issued a complaint, dated June 16, 1960, against the above-named Respondents, herein referred to as Local 694 and the Council, alleging that the Respondents have engaged in and are engaging in unfair labor practices in violation of Section 8(b)(1)(A) and (2) of the Labor Management Relations Act, as amended. In their answer the Respondents admit certain allegations of the complaint but deny the commission of any unfair labor practices. Pursuant to notice, a hearing was held on July 25, 1960, at Evansville, Indiana, before the duly designated Trial Examiner. All parties were present and represented by counsel, as indicated above, and were afforded full opportunity to adduce evidence, to examine and cross-examine witnesses, to present oral argument, and to file briefs. Counsel waived oral argument and did not file briefs.

Upon the entire record, and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE COMPANY'S BUSINESS

Counsel stipulated that Jervis B. Webb Company, herein called the Employer, is a Michigan corporation having its main office and place of business at Detroit, Michigan, and is engaged in the manufacture and erection of power and free conveyors. During the year preceding the issuance of the complaint, the Employer performed services valued in excess of $100,000 in States other than the State of Michigan. I find the Employer is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

Local 694 and the Council are labor organizations within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The issues*

The complaint alleges that since January 1, 1960, the Employer and the Respondents have maintained and followed an unlawful hiring agreement, arrangement, or practice and since January 28, 1960, the Respondents have refused to refer Elmer P. Barr for employment to the Employer because he was not a member or applicant for membership and had not "cleared into" the Respondents. As a consequence Barr was denied employment by the Employer. By the foregoing acts the Respondents allegedly violated Section 8(b)(1)(A) and (2) of the Act.

The Respondents generally deny the allegations of unfair labor practices and affirmatively assert Barr was informed to go to work for the Employer.

B. *The agreement between the Employer and the Council*

The Respondent Council is composed of four local unions, namely Local 694 at Boonville, Indiana, and others located at Huntingburg, Indiana, and Owensboro and Henderson, Kentucky. One of the functions or purposes of the Council is to act as collective-bargaining representative for all the locals.

At all times material herein, the Council had a standard contract for the area, and the Employer, by virtue of an agreement with the International Union, accepted, and was a party to, the Council area contract.

According to the contract the Council agrees upon request of the Employer, to furnish competent journeymen selected for reference to jobs upon a nondiscriminatory basis, the Employer retaining the right to reject or accept the applicants for employment. The contract further provides as follows:

> SECTION 1. The Local Union (or Council) shall establish and maintain open and non-discriminatory employment lists for the use of individuals desiring employment.
>
> SEC 2. All individuals desiring employment shall register in person at the Local Union (or Council).
>
> SEC. 3. Employers shall first call upon the Local Union (or Council) having work and area jurisdiction for employees. If an employer requests individuals by name pursuant to Section 5, he shall advise the Local Union (or Council) of the location of the last job worked and the termination of date of such individuals.
>
> SEC. 4. If the Local Union (or Council) is unable to furnish the number of individuals desired within 48 hours after the request, the employer may obtain individuals from any source and immediately notify the Local Union (or Council) of the names of the employees hired and the job location.

Section 5 of the contract provides for the order in which individuals shall be referred to jobs:

(a) First, individuals in the order of their reigstration who within 2 years immediately preceding the job order performed work covered by the contract in the geographical area of each local union affiliated with the Council.

(b) Next, all other individuals in the order of their registration. However, an employer may request by name, individuals formerly employed by him in the geographical area of each local union affiliated with the Council.

The contract also provides that a copy of the hiring procedures be posted at the local union and Council office and at each jobsite covered by the contract. There is no dispute regarding the Respondents' compliance with the posting provisions.

The Hiring Procedures

Wallace Wellmeyer, secretary-treasurer and business agent of Local 694, described the hiring procedures of the local as follows:

An applicant for employment fills out four identical application cards wherein he states his name, address, local union, and job qualifications. One of the cards is retained by the local and the remainder are sent to the other three locals affiliated with the Council. Local 694 maintains an out-of-work card file, which is divided into groups, for the purpose of referring applicants to jobs. The first group contains the cards of applicants who are members of Local 694; the second group those of applicants who are members of locals affiliated with the Council; the third group comprises members of locals outside the Council, who do not want to clear into Local 694, but desire to work on a permit basis, and the last group consists of nonunion members Job applicants are referred for employment in the order of time in which their applications were made and appear in the card file, provided they are qualified for the job. Wellmeyer stated that clearing into the local means that a member of a local outside the Council simply transfers his records from that local to the Council local.

C. *The alleged refusal to refer Barr for employment*

Sam Colley, job superintendent, stated the Employer commenced the Alcoa project, the one in question, about January 18, 1960, and it was completed around June 17, 1960. Wellmeyer testified he gave Colley a copy of the Council contract around January 26. Colley started operations on January 19, with a crew of five or six combination or conveyor men, including George Lampkins, who later acted as job steward for Local 694.

Barr, a member of Local 90, at Evansville, Indiana, testified that Barney Conger, a member of Local 1102, in Detroit, Michigan, telephoned him, apparently about January 25, 1960, to state that Colley wanted him for the Alcoa job and to take his book to Boonville (Local 694) and get straightened out for the job. On the morning of January 26, Barr went to the office of Local 694, and gave his book to Wellmeyer, who told him to fill out four application cards. Barr filled out the cards wherein he stated he was a member of Local 90 and that he was qualified for work in the classifications of millwright, welder, machine set, pile driver, and bridge. Barr gave the

cards to Wellmeyer and inquired if he had any calls for men. Wellmeyer replied he had no calls as of that time.

The same night Barr met Conger who gave him the Employer's employment record form and an employee's withholding exemption certificate. Barr completed the employment record and gave January 28, 1960, as the date he was hired and his occupation as a welder. He also signed the exemption certificate and dated it January 28, 1960.

About 7:30 the morning of January 27, Barr, with Conger and three or four other men present, met Colley at a restaurant about a mile from the jobsite. While Barr was somewhat hazy concerning their conversation, he did state that he spoke to Colley and Colley asked if he had the cards (the employment record and withholding exemption certificate). When Barr answered in the affirmative Colley said, "I will sign them for you and give you a badge and go to work." The conversation ended on that note and Barr then went to the Local 694 hall where he remained until dinnertime, but nothing unusual occurred. Later, when the General Counsel inquired if Colley had mentioned his going to the union hall, Barr replied, Colley asked ". . . if I had my book up there and was ready to go to work and I told him my book was at Boonville. I had taken it up and left it." Barr said that concluded his conversation but when further pressed by General Counsel on the subject of going to the union hall Barr stated Colley "told me to go up there that he would call for me."

Barr then went to the Local 694 hall, arriving there about 8 o'clock, and met five other men who were waiting to go to work. Barr related that Wellmeyer received a telephone call from someone and about 30 minutes later Colley came to the hall. Colley talked with Wellmeyer and after their conversation Colley told Barr and the other men that Wellmeyer had refused to send them out to the job Barr and the men remained at the hall and in about an hour Wellmeyer told Barr and the men, ". . . that we could go down to the job if we wanted to go to work he wasn't going to tell us we couldn't go, but he wasn't going to give us a referral." Seemingly the men made no response to this offer.

Around 8 or 9 a.m. on January 28, Barr went to the union hall but as Wellmeyer was leaving he had no conversation with him. Barr then proceeded to the jobsite where he met Colley. Barr testified, "Mr Colley offered to put us [Barr, Conger, and Sunderland] to work without a referral, to go down to the job and go to work." Barr said he wanted to talk to Lampkins, the job steward, before going to work. He then spoke to Lampkins about going to work without a referral and Lampkins informed him "I ain't got the authority to run you off. If they want you off somebody else is going to have to come down here and take you off. I can't." Barr then changed his mind about working without a referral and when Colley offered to take him to the job Barr said it was near dinnertime and he would come in the next morning. Like Barr, none of the other men went to work.

That afternoon Barr went to the hall of Local 90, where he spoke to Art Ulsas, business agent for the Local. Barr asked Ulsas what Local 694 could do to him if he went to work without a referral card and Ulsas said the local could fine him. He then inquired how that would affect him with Local 90 and Ulsas explained that Local 694 would "just refer the charges back down here and they would have to collect from them before I could be sent out here."

Colley stated that in the latter part of January he was in a restaurant when Barr, R. L. Wood, and several other men asked him for employment. All of these men had previously worked for Colley and he said he would hire them. Colley did not mention the union hall or tell them to report to the hall although he did ask them "how they stood." Sometime later Colley telephoned Local 694 and spoke to Doras F. Ward, who at that time was business agent for the Council. Colley told Ward he wanted five welders and named Barr, Wood, John Clayton, Howard Hornback, and Chick Varble as the men desired. Ward said he did not have these men or they were not listed with the Union and the conversation ended

The next morning Colley went to Local 694 and told Wellmeyer or Ward that he would like to have the five above-named men, that he was ready to start work. According to Colley, Wellmeyer or Ward "seemed to say I was out of order or that they didn't belong to that local that he had other men. He had a hiring procedure to go through that had to go through first." Apparently, that ended the conversation. Later, at some unspecified time, he told Barr that he could have the job if he checked in with Local 694 and the local okayed him.

Wellmeyer testified Barr came to his home one Saturday seemingly January 23, regarding employment at Alcoa. Barr explained he was a member of Local 90, had previously worked for the Employer and would like to clear into Local 694. Wellmeyer told him to bring in his book but he could not be cleared in until the next meeting which would be held on Friday, January 29. Wellmeyer also stated he

had men on the waiting list and he would have to await his turn for employment. Barr said he did not expect to be placed ahead of anyone.

The next Monday or Tuesday, January 25 or 26, Barr came to the hall of Local 694, where he filled out job application cards which he gave to Wellmeyer. At that time, or later, he also presented his book for clearance into the local. Wellmeyer again stated he could not be cleared in until the Friday meeting. Wellmeyer also said that Wood, Clayton, Hornback, and Varble presented employment record cards to him. He further said he read the hiring procedures as set forth in the contract, and as posted at the jobsite, to Barr and the other men.

Concerning Barr's application cards, which were executed in quadruplicate, Wellmeyer said these cards and his book remained on his desk awaiting clearance into the local, but, as appears below, the cards were apparently returned to Barr when he requested the return of his book. On the other hand, Wellmeyer admitted that about April 8, 1960, in the course of the investigation of the charge filed herein, Barr's application card was found in his out-of-work file. Wellmeyer also conceded that Barr's withdrawal of his book or removal of his card would not have precluded him from being referred by the local. In fact by the middle of February the out-of-work file was completely exhausted.

Wellmeyer denied he ever prevented Barr from working on the Alcoa job. On the contrary, he specifically informed Barr he could work on the project, although he could not give him a referral, but Barr declined because he was afraid he might get in trouble

Lampkins likewise testified he told Barr he could go to work as far as he was concerned but he might get into trouble.

The Meeting of February 2

On the above date Wellmeyer, Ward, and Hugh Washburn, International representative, met with Colley and R. W. Cox, general superintendent for the Employer, at the union hall The purpose of the meeting was to discuss the employment of two men from Detroit. Wellmeyer claimed he did not issue referrals because the men had not filed job applications and he had men who were not working.

While the meeting was in progress, Barr, as related by Wellmeyer, came in and announced that somebody was going to pay for the time he had lost as a result of his being unable to work. Washburn asked how he figured he had any lost time and Barr stated he had been hired by Colley and produced his employment record. Cox explained Colley had no right to hire Barr except under the hiring procedures of the contract. Barr became dissatisfied and angered with the explanation and requested the return of his book. Ward thereupon handed Barr his book. However, Ward knew nothing of Barr's job application card and did not return any such card to Barr. After receiving his book Barr talked to Cox and then left. Wellmeyer stated that was the last he saw of Barr. Wellmeyer said that within the next few days the remaining welders requested by Colley were cleared into the local and referred to the job.

Barr testified that at the conclusion of the meeting he spoke to Cox, Washburn, Wellmeyer, and Ward about employment and "they as good as told me they wasn't going to send me out." Barr declared if that was the way "you wanted to run the thing you could give me my book." Ward then returned his book, but not his job application card.

Colley said the meeting was called to discuss the employment of Licino and Waterschoot of Detroit. Barr entered the room stating he wanted a job and he and Ward became involved in an argument. Someone asked Barr to leave and Colley heard Ward remark that the local did not need Barr and he was not going to work.

Colley admitted there was some discussion of the hiring procedures set forth in section 5 of the contract and that he made arrangements for the employment of nine men These men including Wood and Clayton reported for work between February 3 and 5. Hornback and Varble, though apparently cleared, did not report for work. There were no hirings subsequent to the latter date. Colley said he would have hired Barr on January 28, and thereafter, if he had been sent out by the Union.

Concluding Findings

The Council contract, as accepted by the Employer, obligates the Employer to hire carpenters exclusively through Local 694, or the Council. The Board in the *Mountain Pacific* case,[1] held that an agreement of this character inherently and

[1] *Mountain Pacific Chapter of the Associated General Contractors, Inc ; et al*, 119 NLRB 883 See also, *Los Angeles-Seattle Motor Express, Incorporated, et al.*, 121 NLRB 1629.

unlawfully encourages union membership and is discriminatory on its face unless the agreement specifically provides that: (1) selection of applicants for referral to jobs shall be on a nondiscriminatory basis and shall not be based on, or affected by, union membership, bylaws, rules, regulations, constitutional provisions, or any other aspect of union membership, policies, or requirements; (2) the employer retains the right to reject any job applicant referred by the union; and (3) the parties to the agreement post appropriate notices in places where notices to employees or applicants for employment are customarily posted. The Council contract contains the foregoing safeguards deemed essential by the Board for a legal exclusive hiring arrangement, and I find accordingly.

The next question presented is whether the Respondents carried out the contract in an unlawful manner and caused or attempted to cause the Employer to discriminate against Barr in violation of Section 8(b)(1)(A) and (2) of the Act.

From the testimony detailed above, I find that around January 23, Barr spoke to Wellmeyer about work at Alcoa and expressed his desire to clear into Local 694, which was agreeable to Wellmeyer. However, Wellmeyer pointed out he could not be cleared until the next meeting which would be held on Friday, January 29. Barr made no objection to this procedure.

Thereafter, about January 26, Barr presented his book to Wellmeyer and filled out an application for work. Barr then asked if he had any calls for men and Wellmeyer advised him he had none at that time. Barr's actions, of course, were voluntary on his part and occurred prior to any employment or even promise of employment by the Employer. Moreover, there is no evidence the Employer had requested Local 694, or the Council, to furnish any men for the job as of that date.

Early the morning of January 27, Barr was employed when Colley signed his employment card and told him to go to work. Later, Barr related a different version of his employment in that Colley inquired if he had left his book with Local 694 and when informed that he had, Colley instructed Barr to go to the local hall and that he would call him. As Barr's second version was obtained through prodding and leading questions I give little weight to its importance, but in any event Barr did go to the local hall that morning. Sometime later Colley appeared at the hall and after talking to Wellmeyer, he informed Barr (and other men) that Wellmeyer would not send him to the job. Barr remained at the hall and about an hour later Wellmeyer advised him (and the other men) that he could go to work on the project, although he would not give him a referral card.

The next morning January 28, Barr went to the jobsite and Colley offered to put him to work without a referral from the local. Barr did not accept the offer and spoke to Lampkins about working without a referral card. Lampkins asserted he had no authority in the matter and Barr could work as far as he was concerned, although there was a chance he might get into trouble. Barr then changed his mind about working and declined Colley's offer to take him to the job, stating he would come in the following morning.

The same afternoon Barr discussed the matter with his business agent, Ulsas, who expressed the opinion that Local 694 could fine him if he worked without a referral.

Nothing further happened until February 2, when Barr accused representatives of the Employer and the Respondents of refusing him employment and requested the return of his book, which was given to him.

The foregoing facts make it abundantly clear that Barr was not denied employment by virtue of any unlawful hiring arrangement between the Respondents and the Employer. On the contrary, the facts affirmatively prove that the Employer offered to employ Barr without any referral from the Respondents and that the Respondents explicitly instructed Barr they had no objection to his being employed by the Employer. Despite these assurances, Barr declined employment unless the Respondents granted him a referral card. His decision, no doubt, was prompted by the opinion expressed by Ulsas to the effect that he might be subject to fine if he accepted employment without a referral from the Respondents. It is sufficient to say that Ulsas was a stranger in the matter and had no authority to speak on behalf of either the Employer or the Respondents, therefore, his opinion was meaningless. But, assuming the contrary, Barr foreclosed any resolution of that subject by declining employment. Further, while it is well settled that a labor organization may not use the referral card or system as a device to deny employment to an employee, I am unaware of any authority which holds that a labor organization must grant a referral card to an employee where it has made no attempt whatever to prevent his employment by an employer. In my opinion the Employer and the Respondents complied fully with their statutory obligations in respect to the employment of

Barr.[2] I, therefore, find that the Respondents have not engaged in any unfair labor practices in violation of Section 8(b)(1)(A) and (2) of the Act.

At the hearing the General Counsel seemed to stress the point that although Barr's book was returned to him on February 2, his job application card was not handed to him, but retained by Local 694. This is true, but I fail to see how it lends any support to the contention that Barr was discriminatorily denied employment with the Employer. By withdrawing his book Barr clearly indicated he was no longer interested in obtaining employment through Local 694 and this position is substantiated by the fact that he made no further visits or inquiries concerning work after February 2. I do not consider Barr's failure to ask for his card, or the local's failure to return it to him, as evidence that he was still seeking employment with the Employer. This incident strikes me as an oversight on Barr's part, or an afterthought to bolster his claim of discrimination.

Here the complaint alleges that since about January 1, the Respondents and the Employer have maintained an illegal hiring arrangement. Colley testified that he started the Alcoa project on January 19, with a crew of five or six men, but there is no testimony that he called upon the Respondents for these men or that their employment was conditioned upon referral or clearance by the Respondents. Indeed, Wellmeyer testified he did not give Colley a copy of the contract until about January 26. Clearly, this evidence refutes the idea that the Employer and the Respondents were operating under any illegal hiring arrangement, and I so find. Actually, about all the General Counsel was able to establish was the fact that Local 694 maintained a hiring list, in the form of a referral card file, described above. In view of my findings with respect to Barr and the four or five other men, plus the initial hirings, the evidence shows nothing more than Local 694 maintained a hiring list, which, as I see it, was not even used insofar as the Employer was concerned. Nor is there any allegation that the Respondents, by means of the hiring list, illegally refused to refer men to other employers in the area. Certainly, mere possession of such a list does not constitute evidence of an illegal hiring practice.

The Court of Appeals for the Ninth Circuit in *N.L.R.B.* v. *Mountain Pacific Chapter of Associated General Contractors, Inc., et al.*, 270 F. 2d 425, refused to enforce the Board's order and remanded the case to the Board for further consideration. The court ruled that the Board cannot hold illegal, as a matter of law, a hiring clause which does not in terms give job preference to union members absent evidence that the union has in fact given them preference. Although the court recognized (as did the Board) that the record contained abundant evidence that the unions referred nonmembers only if no members were available, it nonetheless concluded that it could not enforce the order *sua sponte*, the Board's conclusion not having been based on that ground. The court also refused to enforce portions of the order based on findings that one job applicant had been denied employment since the Board's conclusion was not based upon a finding that the applicant had been denied employment because he was not a member of the local union. In its Supplemental Decision and Order (127 NLRB 1393), the Board accepted the remand and, upon consideration of the entire record, found that even though the hiring provision did not, on its face, give job preference to union members, the parties in fact gave them such preference. The record in the instant case is insufficient to support such a finding.

There is no evidence at all to sustain the allegation of the complaint that the Respondents collected moneys, such as initiation fees and dues, from employees of the Employer pursuant to an illegal arrangement or agreement between the Respondents and the Employer.

Upon the basis of the foregoing findings of fact, and upon the entire record, I make the following:

CONCLUSIONS OF LAW

1. The operations of the Employer occur in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Respondents are labor organizations within the meaning of Section 2(5) of the Act.
3. The Respondents have not engaged in unfair labor practices as alleged in the complaint within the meaning of Section 8(b)(1)(A) and (2) of the Act.

[Recommendations omitted from publication.]

---

[2] See: *County Electric Co., Inc., et al.*, 116 NLRB 1080, 1086; and *Victory Construction Co.*, 127 NLRB 400.