

Plasterers & Cement Masons Local Union 394, Operative Plasterers & Cement Masons International Association and Arlee Haile. *Case No. 28-CB-245. November 21, 1963*

DECISION AND ORDER

On July 17, 1963, Trial Examiner Eugene K. Kennedy issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent 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 attached Intermediate Report. 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 Leedom, Fanning, and Brown].

The Board has reviewed the rulings of the Trial Examiner made 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.¹

[The Board dismissed the complaint.]

¹The Trial Examiner found that Respondent did not violate Section 8(b)(2) of the Act by refusing to refer Arlee Haile for employment with Prime Construction Co., Inc., on the dual grounds that no exclusive hiring hall agreement had been shown to exist between Respondent and Prime during the times material, and that the refusal to refer was occasioned by Haile's failure to register on Respondent's nondiscriminatory class "A" out-of-work list rather than because Haile was not a member of Respondent. Even were we to find, contrary to the Trial Examiner, that an exclusive hiring hall agreement, arrangement, or practice did exist between Respondent and Prime, we agree with the Trial Examiner that Haile's failure to register for the out-of-work list, rather than his lack of union membership, was the motivating factor behind his failure to obtain employment with Prime.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

The complaint¹ alleges that Respondent, Plasterers & Cement Masons Local Union 394, Operative Plasterers & Cement Masons International Association, on or about July 20, 1962, unlawfully caused Prime Construction Co., Inc., herein called Prime, to refuse employment to Arlee Haile on the basis that he was not a member in good standing of Respondent. The complaint also alleges that because of Haile's bad standing in Respondent Union, he has been accorded discriminatory treatment relative to referrals to other employers.

The answer of Respondent with respect to matters of significance constitutes a general denial.

A hearing in this matter was held before Trial Examiner Eugene K. Kennedy in Phoenix, Arizona, on May 2 and 3, 1963, and subsequent to that time Respondent and the General Counsel have submitted briefs which have been considered.

¹ Issued March 28 and amended on April 2, 1963, based on a charge filed by Arlee Haile, an individual, on November 2, 1962.

Upon the entire record in this case, including my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. JURISDICTION OF THE BOARD

Prime Construction Co., Inc. is the corporation which allegedly was caused to discriminate with respect to Haile's employment. It is an Arizona corporation doing business in Arizona and California. It is engaged in the general contracting business, and it annually purchases, from points outside the State of Arizona, equipment valued in excess of \$50,000. Prime Construction Co., Inc., is now, and has been at all times material herein, an employer engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Plasterers & Cement Masons Local Union 394, Operative Plasterers & Cement Masons International Association, herein called Respondent, is a labor organization within the meaning of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background and the events

Respondent Local 394 is signatory to a document entitled "Arizona Master Labor Agreement." The jurisdiction of Respondent, covering northern Arizona, includes the Phoenix, Winslow, and Flagstaff areas.

Also signatory to the same Arizona Master Labor Agreement is Local 395 of the Plasterers & Cement Masons, and a constituent local of the same International Union as Respondent Local 394. This local has jurisdiction over southern Arizona, including the Tucson area.

This master agreement provides for exclusive nondiscriminatory hiring halls to be administered by the signatory unions. It also contains provisions establishing "A," "B," and "C" out-of-work lists. The significance of the agreement, with relation to the facts involved herein, is that it provides that workmen who are properly qualified and whose names are properly registered and who have been employed for a period of at least 60 days by an individual employer signatory to the Master Labor Agreement may be requested by name by an employer, who is a signatory to the agreement, and such workman, according to the terms of the agreement, shall be referred to such employer. Workmen who meet these qualifications are on the "A" list. From the workman's standpoint, the advantage of being on the "A," as opposed to the "B" or "C," lists is that he is eligible to be selected by an employer out of rotation, which rotation is required by the "B" and "C" lists. The provisions of the agreement, spelling out the hiring hall arrangement and the dispatching procedures, are set forth in Appendix A. The agreement incorporating these provisions was in effect from 1959 until July 1962, and then was renewed until 1965.

Loren Mann, a contractor, employed Haile as a cement mason in Flagstaff in the spring of 1960. At this time, Mann was signatory to the 1959 Arizona Master Labor Agreement which obligated Mann to use the referral system provided in such agreement. However, Mann employed Haile without a referral from Respondent. Haile at no time was registered on Respondent's out-of-work list.

Approximately in October 1960, Jesse Calhoun, one of the representatives of Respondent, came on Mann's job, and advised Mann that Haile was working without a referral. The upshot of the conversation was that Haile went to Phoenix the following Saturday for the purpose of attempting to get a referral.²

On his visit to Phoenix, according to Haile, Don Parker, Respondent's representative, refused to let him join the Union because he had been "scabbing" while working for Mann for 5 or 6 months. Also, according to Haile, Parker at this time made a threat that no other cement finishers would be working with Haile for Mann the following Monday. Haile testified that he did not join the Union that day and that he offered to sign. He omitted in his testimony the fact that he had signed two docu-

² At page 129 of the transcript there is an indication by Haile that this took place in the fall of 1962. In the context of the other testimony this is obviously an error, and the transcript should indicate that this was the fall of 1960, and the transcript is hereby corrected to that extent.

Haile's testimony that he discussed joining the Union with Calhoun on this occasion is not credited. For reasons noted elsewhere herein, Haile's testimony generally is not accepted as reliable when it conflicts with the testimony of Parker and Calhoun. In any event, the central issues in this case do not hinge on credibility evaluations.

ments, relating to dispatching procedures, which were offered into evidence by Respondent.

Parker refused to give Haile a referral to Mann because there were unemployed workmen on the "A" list. Haile was not registered on the out-of-work list since he was still employed with Mann. These events in 1960 are time-barred as bases for unfair labor practice claims.

Haile returned to work the following Monday and worked for Mann at least until the following Wednesday. Mann testified that Haile was made a foreman without any interruption in Haile's employment. Haile testified that he quit on Wednesday noon and was unemployed for about 3 days before he was reemployed as Mann's superintendent. Mann testified the reason he transferred Mann to foreman was because representatives of the Teamsters and Laborers Union had instructed him to take Haile off the job as cement finisher.³

Haile's version is that he left Mann's employment voluntarily on the Wednesday after his conversation with Parker in Phoenix. He also testified as follows with relation to a conversation with Mann on the Wednesday he claimed he quit:

Well, he asked me how things went, referring back to the Union in Phoenix that Saturday. I told him they refused to let me in. And he said "Why?" I told him the only reason that was mentioned was by me scabbing that five or six months on the job as Mr. Parker stated. And I said by Wednesday they will have to shut down if I'm still on the job. He said, "If you want to work you go ahead and work. Let them shut us down."

Haile's testimony seems implausible on this point and it squarely contradicts his employer Mann whose manner as a witness seemed more objective and careful than Haile's. Mann evidenced by his testimony and actions that he identified himself with Haile's problems. This portion of Haile's testimony is a consideration in assessing other conversations between Haile and representatives of Respondent considered elsewhere herein.

Haile worked as a foreman or superintendent for Mann, in Flagstaff, until about mid-December 1961, and then went to Tucson. While in Tucson, he joined Local 395, Plasterers & Cement Masons Union. In January 1961, he was referred by Local 395 to a job that Loren Mann had going in the jurisdiction of Local 395. After working in Tucson for about 2 weeks, he returned to work for Mann, in the Flagstaff area, and the jurisdiction of Respondent Local 394, where he continued to work from January 1961 until May 1962. During this time, Calhoun, the representative of Respondent, saw Haile on the job at various times. In the spring of 1961, Haile informed Calhoun he had received a referral from Local 395. Calhoun's testimony is credited to the effect that Haile did not ask him to have his book transferred to Local 394. Similarly, Calhoun's testimony, contrary to Haile's, is accepted as reflecting that Calhoun did not offer to take care of transferring Haile's union book to Local 394, or that he told Haile it would take \$250 in cash for Haile to get his book transferred into Local 394. However, Calhoun did discuss with Haile the benefits of belonging to Local 394 as contrasted to Local 395.

It is observed that the significance of the question of Haile's standing as a union member concerns whether his lack of good standing in Respondent Local 394 played a part in causing him not to be employed by Prime Construction Co., Inc. It is clear that he did not comply with the provisions of the Union's International constitution, in failing to notify Respondent of his working for Mann in Respondent's jurisdiction, and his failure to pay the service or "dobie" charges. Pertinent provisions of the International constitution are as follows:

SEC. 44: All members of the International Association from Local Unions other than the Local Union in whose jurisdiction they have obtained work or are seeking work, shall notify the secretary or business agent of the Local Union before going to work, giving International registration number and other pertinent information, if the Local Union has established an office or published in the Journal a place where such notification may be made.

SEC. 48 (a): When a member goes into the jurisdiction of another Local Union without his Traveling Card but with paid up dues book and without being eligible for the provisions of Section 43 and secures employment, he shall

³ At the hearing, a ruling was reserved with respect to the relevancy of the Teamsters and Laborers' representatives instructing Mann to take Haile off the job. Respondent contends there is nothing in the record to tie in Respondent with the action of the Teamsters and the Laborers. Although Respondent's contention is regarded as correct, a ruling is hereby made permitting this testimony to stand, primarily to point up the different versions of Haile and Mann with reference to Haile's employment status.

be subject to all the laws of said Local Union and may be charged dues less per capita tax from the first of the following month plus a service charge of not more than \$1 00 per day for each day worked, 50 percent of which fee shall be returned to the member if he deposits Traveling Card within 30 days of going to work.

Haile acknowledged that he realized that he owed the service or "dobie" fee, and in view of the time that he worked for Mann without complying with these provisions, he owed a substantial amount of money to Local 394 in order to comply with the provisions of the International constitution.

Haile was charged with violations of the Union's constitution. He received copies of the charges about July 23, 1962, advising him of a hearing on these charges scheduled August 2, 1962. Haile did not appear and he was subsequently advised of his expulsion from the Union.

Charges were also filed by Local 394 against Mann for his breach of the provisions of the Arizona Master Labor Agreement relative to violating the dispatching procedure provisions in the agreement. The charge was based on Mann's employment of Haile without a referral in 1960.

Because of Mann's financial difficulties, Haile quit his employment in May 1962. It is appropriate at this point of events to examine the practice of Respondent in making referrals in Flagstaff.

Respondent's Dispatching Procedure in Flagstaff and the Authority of Steward William Confer

An examination of the dispatching procedure is necessary because of the General Counsel's contention that Haile, by virtue of his employment with Mann, was qualified on the "A" list and was eligible for referral from such list which the General Counsel claims was maintained in Flagstaff. This question is preliminary as to whether or not there was discrimination caused by Respondent in connection with Haile's proposed employment by the Prime Construction Co., Inc.

Under the terms of the 1959 agreement, to which both Respondent and Mann were signatory, the hiring or dispatching hall in the jurisdiction of Local 394 was located in Phoenix. In 1961, Parker, the secretary-treasurer of Respondent Local 394, appointed William Confer as steward in the Flagstaff area, located 150 miles from Phoenix, and authorized him to issue referrals for seven or eight "A" list workmen in the Flagstaff area. He was furnished with referral slips, requisition pads, stamps, and envelopes. Haile was not included in the individuals that Parker authorized Confer to refer in the Flagstaff area.

Haile's testimony suggests that he and Confer had a friendly relationship. They had worked together for several months. Haile referred to a conversation in a bar when he mentioned to Confer that he needed a job and Confer said that he was keeping his eye open for him. Haile heard about an employer named Merrick needing a cement finisher, and he went to Merrick's office and asked for a job. Merrick said he would call Confer and get a referral. Following the telephone conversation, Haile went to work for Merrick as a cement finisher for the period between May 22 and June 1, 1962. Haile never did receive a written referral slip, nor did Merrick receive one from Phoenix, which he did in the other instances when he called on Confer to have an individual referred to him.

Confer also sent Haile out to work for an employer named Gene Thompson on July 12, 1962. In this instance, also, Haile did not get a written referral nor did Thompson subsequently get one by mail from Phoenix. The testimony of both Merrick and Thompson confirms Parker's testimony that the Phoenix dispatching office maintains copies of the referral slips, whether issued from Phoenix or by Confer, and there was no record of Haile's being given a written referral. The fact that Confer did not give Haile written referrals, and that there was no record of Haile's referrals in the Phoenix office, suggests that Confer was aiding Haile as a personal favor and was concealing his assistance to Haile by the device of not using written referrals, copies of which, if issued, would appear in the Phoenix office. That Haile realized Confer was aiding him in getting employment without reference to the Union dispatching procedures is suggested by the fact he was never given a written referral by Confer. Haile had received a written referral from Local 395 in 1960. The Arizona Master Labor Agreement requires that a written referral be given on each occasion when a workman is dispatched to a job. Haile's testimony concerning his written referral from Local 395 in connection with working for Mann suggests an awareness of this requirement in the Master Labor Agreement.

Haile testified that Confer told him that he, Confer, would take care of registering Haile in the Phoenix office after Haile quit Mann. Haile's testimony is not credited

in this respect. The record reflects that the written statements given the Board by Haile, contained several inaccuracies of substance reflecting, at the minimum, carelessness in relating events. This, along with the conflict in Haile's and Mann's testimony, and the fact that Haile was unique in not receiving written referrals, would require a considerable degree of credulity to accept the proposition that Haile believed Confer had properly registered him at Phoenix or had the authority to do so. Supporting this view is Haile's version of a telephone conversation he initiated with Parker after being refused employment by Prime in July 1962. Haile asked Parker about transferring his union book into Local 394. Parker informed him that before his book could be transferred, Haile had charges to answer. There is no evidence that the subject of registering, or being registered, on an out-of-work list was mentioned in the conversation. Haile received charges about July 23, 1962, signed by Calhoun, for violating the Union constitution. He then put in a telephone call to Calhoun but talked to Parker.⁴ The burden of the conversation was that the charges contained an erroneous date, and Haile regarded them as false because of this. Haile did not advert to the referral procedure or out-of-work list in this conversation as far as the record reflects. In one of the telephone conversations, Haile claimed that Parker ordered him back to Tucson. Parker testified that because of Haile's attitude, he should return to Tucson. This was said in the context of discussion concerning Haile's transferring his union book from Tucson to Phoenix. Whether Parker's or Haile's version is accepted relative to the subject of Haile's returning to Tucson, it is found that the evidence does not support a finding that it would have been a futile act for Haile to attempt to become "properly registered" on Respondent's "A" list. The record reflects Parker was offended at Haile's flouting union rules. However, Parker's distaste at the prospect of Haile's becoming a member of Local 394 is an inadequate basis to conclude that Haile would have been denied any rights he may have had with respect to registering on an out-of-work list.

Since the record is barren of any indication of an attempt by Haile to register on the "A" out-of-work list at Phoenix, it is unnecessary to reach the question of his rights had he attempted to do so and had he been requested by a signatory employer to the master agreement.

Continuing the consideration of Confer's authority, Respondent did nothing to place Confer in a position of authority other than to refer workmen on the "A" list. Nothing Respondent did would invest Confer with apparent authority to register workmen in Phoenix. Hence, even assuming, *arguendo*, Confer did tell Haile he would take care of registering Haile in Phoenix, and Haile so relied, this record does not contain evidence that would fasten on Respondent responsibility for Confer's statement to Haile about Haile's registration.

With reference to the episode involving the alleged discrimination affecting Haile in connection with being denied employment by the Prime Construction Co., the record reflects that in about mid-July 1962, Haile had another conversation with Confer in a bar. Confer indicated to Haile that he was still on the lookout for a job for him. On or about July 20, 1962, Haile applied for a job with the Prime Construction Co., talking to the foreman, Jim Gurnicz. Gurnicz informed Haile that a job was available, and Haile gave Gurnicz Confer's name to call to get a referral. Gurnicz had advised Haile he would require a referral before employing him. Gurnicz refused to employ Haile because, after calling Confer, he was informed that Haile had failed to clear through the local union.⁵

Haile's status on the "A" list

Reference to the portion of the agreement, including dispatching procedures, reflects that in order to qualify for the "A" list, workmen's names must be properly registered. The other workmen in Flagstaff on the "A" list were registered in the Phoenix hiring hall. Consequently, it seems clear that Haile did not comply with

⁴ Parker denies he had two telephone conversations with Haile. I am inclined to believe Haile's memory is more accurate with reference to these conversations, and so find.

⁵ Gurnicz testified that Confer had told him Haile could not be referred because he was in bad standing with the Union.

In October 1962, in an affidavit given to the Board, Gurnicz stated Confer told him he could not refer Haile because "he hadn't cleared through the local or words to that effect."

Gurnicz acknowledged his memory of the conversation was more clear when he gave the affidavit than when he testified in May 1963, but added that, from his standpoint, both statements attributed to Confer meant the same to Gurnicz. On this basis, it is found that the version in the affidavit is probably the most accurate.

the requirement of the agreement to become qualified on the "A" list, as he was not "properly registered."

Although Haile did qualify for the "A" list insofar as the time worked for an employer who was signatory to the agreement, his failure to become "properly registered" was a condition that he did not accomplish, and thus the argument is rejected that he was qualified as a workman on the "A" list under the terms of the Arizona Master Labor Agreement. It also follows that if he was not qualified under the "A" list, that there was no contractual obligation on the part of Respondent to refer Haile under the terms of the dispatching procedures included in the Arizona Master Labor Agreement.

Even assuming that the record does establish that Haile was a workman qualified on the "A" list in Flagstaff, the violation claimed by the General Counsel is still not established by this record for another basic reason.

The question of a hiring arrangement between Prime Construction Co., Inc.
and Respondent, Local 394

Prime Construction Co., Inc. was signatory to the 1959-62 Arizona Master Labor Agreement, which expired on May 31, 1962. Prime had not, at the time of the hearing in this matter, become a signatory to the 1962-65 agreement. It is an essential element of the General Counsel's case to establish that Prime was obligated to obtain its workmen exclusively through Respondent's hiring hall.

In view of the fact that the record reflects the Prime Construction Co., Inc., was not a signatory to the 1962-65 Master Labor Agreement, it is incumbent upon the General Counsel to establish by other evidence in what manner Prime Construction Co., Inc., was obligated to obtain its workmen through Respondent's hiring hall exclusively. This calls for evidence establishing an implied agreement obligating Prime Construction Co., Inc., to use the hiring hall.

The General Counsel relies on evidence in the record that reflects that after Prime Construction Co., Inc., no longer was bound by the terms of the 1959-62 agreement, it did hire one employee subsequent to May 1962 through the hiring hall. Prime also continued payments to the health and welfare fund for employees represented by the crafts that were signatory to the Master Labor Agreement. To sustain the General Counsel's position, it must be found that Prime was obligated to use the dispatching facilities of Respondent. It is found that all that the evidence establishes is that Prime voluntarily continued payments into the health and welfare fund and, on one occasion, called upon Respondent to furnish a workman. This falls far short of establishing an obligation on the part of Prime to secure its workmen through Respondent.

The specific claim of discrimination alleged in the complaint refers to the failure of Respondent, acting through Confer, to issue a referral to Haile to work for Prime. Because, as has been found, Haile was not qualified on the "A" list and because Prime was not obligated to utilize the exclusive hiring hall dispatching procedures, it is found that the General Counsel has failed to establish that Respondent acted unlawfully in connection with Haile's failure to obtain employment with Prime.

The complaint also alleges in general terms that since July 20, 1962, Respondent has refused to, and is refusing to, clear Haile for employment, pursuant to the collective-bargaining agreement, and to place him on the "A" list.

The evidence relating to this is that Haile's book had cleared through the International in about May 1961 and that he took no steps for approximately a year after that to have his book transferred into Local 394. When Haile quit Mann's employment in May 1962, he telephoned Parker and asked him about transferring his book, and, on this occasion, Parker told him that he had charges that he would have to answer to, and Haile said that he would have charges of his own. The conversation was acrimonious in that it reflected Parker's disinclination to have Haile's book transferred into Local 394, and Haile's statement to Parker that he would work without the Union. However, there is nothing in the record which reflects any attempt on the part of Haile to have his name put on any out-of-work list. As previously indicated, since the record does not establish Haile requested his name be put on the "A" list after he quit Mann, the question is not reached here as to what his rights would have been had his application been rejected.

On this record it would appear that Haile erroneously equated union membership with special employment privileges. The undenied and credited testimony of Parker establishes that about 50 percent of the "A" list workmen in Flagstaff and about 10 percent of the "A" list registrants were not union members.

The charges that Respondent preferred against Haile for failing to comply with the terms of the International constitution were mentioned by Parker in connection

with Haile's indication of his wish to have his book transferred. Because it appears from a reading of the Union constitution's pertinent provisions, which were set forth above, that there was a basis for the charges against Haile, it cannot be assumed that Parker, Respondent's representative, was acting in an arbitrary manner not consistent with the rules of his organization. In any event, the distinction must be kept in mind that union membership and the availability of the dispatching procedures are distinct and separate as far as this record goes. Haile's expulsion from the Union in no way affected his right to utilize the dispatching procedures set up under the Master Labor Agreement. Consequently, because Haile was not "properly registered," in Respondent Local 394's out-of-work list, he was not eligible for that reason alone to be referred from the "A" list. The allegation of the complaint that, since July 20, 1962, Respondent has refused to clear Haile for employment or to place him on the "A" list is not supported by any substantial evidence.

Although it is undoubtedly true that Haile incurred the hostility of the representatives of Respondent by his maneuvering to become qualified on Respondent's "A" list, the findings herein are not based upon any dereliction that Haile may have been guilty of with respect to following union regulations. As a general proposition, Haile's position is one that may evoke sympathy in his efforts to earn a livelihood. In this case, however, his efforts are regarded as being based on miscalculations and a misunderstanding as to what his rights were, particularly in terms of the Arizona Master Labor Agreement. Since it is well settled that a nondiscriminatory hiring hall, operated exclusively by a union, is lawful⁶ and since there is evidence in this record that nonunion members were referred by Respondent through its hiring hall, the failure of the General Counsel to establish unlawful discrimination in the case of Haile rests upon his noncompliance with the terms of the lawful exclusive hiring arrangement insofar as qualifying Haile to be selected by a signatory employer and, secondly, upon the fact that the specific instance of discrimination claimed was in connection with an employer who was not shown by the evidence to have been bound by the terms of the exclusive hiring arrangement.

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

CONCLUSIONS OF LAW

1. Prime Construction Co., Inc., is engaged in commerce within the meaning of the Act.
2. Respondent Plasterers & Cement Masons Local Union 394, Operative Plasterers & Cement Masons International Association, is a labor organization within the meaning of the Act.
3. Respondent did not commit unfair labor practices involving discrimination with respect to the employment of Arlee Haile.

RECOMMENDED ORDER

Upon the basis of the above findings of fact and conclusions of law, and upon the entire record in this case, it is recommended that the complaint be dismissed in its entirety.

⁶ *Local 357, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Los Angeles-Seattle Motor Express) v. N.L.R.B.*, 365 U.S. 667.

APPENDIX A

ARTICLE II—Recognition and Dispatching

A. That the CONTRACTORS hereby recognize the UNIONS who are signatory hereto as the sole and exclusive collective bargaining representatives of all employees of the CONTRACTORS signatory hereto over whom the UNIONS have jurisdiction, as such jurisdiction is defined by the Building and Construction Trades Department of the American Federation of Labor—Congress of Industrial Organizations as of the date of this Agreement, excluding executives, superintendents, assistant superintendents, civil engineers, and their helpers, master mechanics, all supervisory employees such as general foremen, timekeepers, messenger boys, and office workers. The UNIONS hereby recognize the Contractor Associations who are signatory hereto as the sole and exclusive collective bargaining representatives of their members.

B. (1) The individual contractors shall requisition all workmen who are to be employed in the bargaining unit from the local hiring hall of the Union having area jurisdiction of the particular craft or skill involved. The Union will immediately dispatch such workmen as have been requisitioned on a non-discriminatory basis in

accordance with the dispatching rules as stated in paragraph E hereof. However, it is understood and agreed that all such dispatching and the operation of any hiring halls that may be maintained by the Unions shall be subject to, and shall be governed by, the following conditions:

(a) Selection of applicants for referral to jobs shall be on a non-discriminatory basis and shall not be based on or in any way affected by Union membership, by-laws, rules, regulations, constitutional provisions, or any other aspect or obligation of Union membership, policies or requirements, or on race, color, religion, national origin or age.

(b) The Employers retain the right to reject any job applicant referred by the Union.

(c) The parties to this agreement shall post in places where notices to workmen and applicants for employment are customarily posted, all provisions relating to the functioning of the hiring arrangement.

(d) Employment shall be deemed to commence only upon acceptance by the employer. Provided, however, if applicant is rejected he shall be entitled to receive expense allowance and such other benefits as are herein provided. Provided further that if such applicant shall, at the time he first shows up for work at the project, not be ready, able and willing to perform the work for which he has been referred, then and in such event he shall not be entitled to any compensation hereunder.

(2) If the Union shall fail to furnish the requisitioned workmen within forty-eight (48) hours after the requisition is brought to the Union's notice, then and in that event, the individual employers may secure such workmen from any other source available. However, in such event, the individual employers will notify the Unions immediately when such workmen are hired and shall make arrangements for proper referral.

(3) Each of the Unions agrees to hold each of the other Unions signatory hereto harmless from any money damages or penalties assessed against any of them by the National Labor Relations Board because of any deviation from the non-discriminatory hiring hall procedure where such deviation was proximately and solely caused by any one of the individual Unions.

* * * * *

E. Dispatching Procedures. The following procedures shall be forthwith placed in effect at all Union dispatching offices pursuant to the provisions of the Master Labor Agreement covering construction in the State of Arizona:

(1) The individual employers have agreed that they will first call the Dispatching Office for all men. If Union agents are asked to supply men, they shall promptly relay such request to the appropriate Dispatch Office for servicing the request. Union dispatching offices shall normally remain open from 7 a.m. to 5 p.m. Monday through Friday and one-half day on Saturday (holidays listed herein excluded); however, this provision shall be satisfied where, if such hours are not maintained, an alternate phone number has been made reasonably available to the contractor.

(2) A written REFERRAL will be given to each workman, dispatched to a job. This is not a Union "clearance" but, rather, written evidence in the workman's possession that he has been dispatched in accordance with the applicable Labor Agreement.

(3) Each Dispatching Office shall maintain appropriate registration lists or cards, kept current from day to day, and referrals will be made in the following order of preference:

(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 employers signatory to the Master Labor Agreement in a craft covered by this Agreement in the State of Arizona within the immediately preceding two (2) years.

(1) Individual employers 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. (For purposes of this paragraph, Millwrights and Carpenters shall be considered separate crafts. Mason Tenders and Plasterer Tenders shall also be considered separate crafts within the Laborers' jurisdiction.)

(b) When Group (a) is exhausted, 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 forty-five (45) days by any individual employers signatory to this Agreement in a craft covered by the Master Labor Agreement in the State of Arizona within the past four (4) years and who have been residents of the State for the immediately preceding three (3) months.

(c) When Group (b) is exhausted all other workmen who are properly qualified, (as hereinafter provided) whose names are properly registered and who are available for employment.

(4) When the individual employer needs foreman,* key men** or specialized men** there shall be a conference at which the foremen or key or specialized workmen and the date of the commencement of their employment shall be stated by the individual employer and the individual employer may hire such men. Such a workman shall be dispatched by the craft according to the usual dispatching procedures. Abuse by any individual employer of the privilege granted in this paragraph shall subject him to withdrawal of the privilege for an appropriate period through the procedure established in Article V. It shall not be considered abuse by any craft where a contractor has in his employ one person who was hired under the provisions of this paragraph; nor where a contractor has one additional man so hired for each twenty-five (25) craftsmen employed.

(5) There shall be complete right of inspection of dispatching operations by authorized representatives of signatory contractor associations; such right to be subject to reasonable restrictions such as written notice to authorities in charge, reasonable hours, and no harassment.

(6) Where a workman is not called by name the Union Dispatcher shall be delegated the authority to qualify him under the classification ordered. The qualification discretion hereby specifically delegated to the Union Dispatching Office shall include ranking workmen according to previous experience, such as length of employment in the type of work sought and information regarding previous individual employers; and also according to job performance and job tenure. Individual employers may delegate to the Union Dispatching Office other selection qualifications from time to time, as specifically designated by them.

(7) 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 3 and 4 hereof.

(8) It is the responsibility of the Dispatcher to determine, in the first place, the proper group in which to place the registrant. This normally will be based upon information or papers which the man supplies. If any doubt exists as to the registrant's proper placement, the Dispatcher may call prior employers or make other prompt investigations to get the facts needed. Similarly, the Dispatcher should make an appropriate notation where necessary, of the qualifications of the applicant, or his related experience, to assist in sending men meeting the individual employer's stated requirements. Any dispute which may arise relative to which list a registrant should be placed upon or as to competency, shall be settled as follows:

(a) The registrant shall file with the dispatching office a written request for review of the disputed matter within ten (10) days after the dispute arises. He shall also, at that time, deposit with the dispatching office a cash bond in the sum of ten dollars (\$10 00), which sum shall be used solely toward paying his share in the referee's fees

(b) The Local Union will initiate and the Area Labor Management Committee will arrange to have an impartial referee review the dispute within ten (10) days after the written request has been filed. Time and place of an informal hearing will be fixed by the referee and notice thereof will be given to the registrant by the Union, as soon as practicable.

(c) The referee will examine all material evidence submitted by the registrant and the Union and will conclusively decide which group the registrant should be placed in and as to what qualifications the registrant has. The Union will then register and classify the registrant accordingly. Nothing contained herein, however, may be interpreted to permit or grant power to the referee to alter, amend, modify or otherwise change any term or condition of the collective bargaining agreement or these dispatching procedures.

(d) The referee will be selected from the clergy or from some other group not directly associated with management or labor.

(e) The referee's fees will be borne equally by the Union and the registrant, except that the registrant shall in no circumstance be required to pay a sum in excess of ten dollars (\$10 00). The registrant's share shall be taken out of the ten dollars (\$10.00) bond on file with the Dispatching Office and any excess shall be returned to the registrant as soon as possible.

(9) Dispatchers shall hand each registrant on lists (b) and (c) a copy of "Dispatching Rules" and registrant should sign and return such form to indicate his

*But a man so hired can remain on the job in the "foreman" classification only.

**Workman possessing special mental or mechanical skills.

awareness of the Rules. Received Rules should be kept for a period of six months, filed by dates.

(10) If registrants inquire, they should be informed if workmen are registered who are higher in preference than they.

(11) "Available for work" means that the registrant must be present at the time and place uniformly required for dispatchment and be ready, able and willing to go to the job site and perform the work for which he is being dispatched. The practice of each Dispatching Office shall be uniform as to all registrants with respect to physical presence in the office at given hours, or telephoning in, being available at a telephone, etc., and registrants shall be informed of the practice.

(12) Appropriate notations shall be made opposite the registrant's name when his name is reached for dispatchment, showing the job and classification to which he is dispatched, his lack of availability, or other reason that he has been passed over. If inquiry is made by the registrant, he shall be given exactly the same information as to reasons, etc., as appears on the notation.

(13) In such cases, or any other cases which may lead to a dispute, the Dispatcher should immediately make notes on the facts upon which he or she based his or her decision to dispatch or not to dispatch the man.

(14) No fees shall be required as a condition of registration or dispatchment.

Taxicab Drivers Union, Local 777, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Crown Metal Manufacturing Company. Cases Nos. 13-CB-1383 and 13-CB-1414. November 26, 1963

DECISION AND ORDER

On July 24, 1963, Trial Examiner John F. Funke issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Intermediate Report. Thereafter, the Respondent filed exceptions to the Intermediate Report and a brief.¹ The General Counsel filed a brief in support of the Intermediate Report.

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

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed.² The Board has considered the Inter-

¹ Respondent's request for oral argument is denied as, in our opinion, the entire record, including the exceptions and briefs, adequately presents the issues and the positions of the parties.

² Respondent contends that there was prejudicial error in the Trial Examiner's denial of its motion of July 2 to strike the proceedings held on June 26, on the ground that such proceedings were held without Respondent's participation. The record shows that on June 5 the Trial Examiner had issued notice that the hearing would be reconvened on June 25, by agreement of the parties. On June 21 one of Respondent's counsel moved for a continuance on the ground that he would be engaged in the U.S. district court on June 25; and Respondent's other counsel made a similar request on the ground that he,