

**Wharf and Dock Builders Union, Local Union #454  
and James P. Keenan. Case 4-CB-1835**

March 14, 1972

**DECISION AND ORDER**

BY CHAIRMAN MILLER AND MEMBERS FANNING  
AND JENKINS

On December 21, 1971, Trial Examiner Phil Saunders issued the attached Decision in this proceeding. Thereafter, the Charging Party filed exceptions and a supporting brief, and the Respondent filed a brief in answer to the Charging Party'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 Trial Examiner's Decision in light of the exceptions and briefs and has decided to affirm the Trial Examiner's rulings, findings, and conclusions<sup>1</sup> 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 Trial Examiner and hereby orders that the complaint herein be, and it hereby is, dismissed in its entirety.

<sup>1</sup> We hereby correct the following inadvertent error in the Trial Examiner's Decision: In the second paragraph under "Conclusions" the dates should read November 13, 1970, to May 13, 1971, rather than November 17, 1970, to May 13, 1971.

**TRIAL EXAMINER'S DECISION**

**STATEMENT OF THE CASE**

PHIL SAUNDERS, Trial Examiner: The complaint, issued on June 30, 1971,<sup>1</sup> alleges that the Respondent Union engaged in unfair labor practices within the meaning of 8(b)(1)(A) and 8(b)(2) of the Act. Pursuant to notice, a hearing was held before me in Philadelphia, Pennsylvania, on September 23 and 24; all parties were afforded full opportunity to call, examine, and cross-examine witnesses, and thereafter to submit briefs.

**FINDINGS OF FACT**

**I. THE BUSINESS OF THE EMPLOYER**

The Wharf and Dock Builders Association of Philadelphia and Vicinity, herein called the Association, is an employer in both Pennsylvania and New Jersey, and is authorized by its employer-members to act as bargaining representatives in negotiating collective-bargaining agreements with Respondent Union. During the past year, the Association and its employer-members, in the course and conduct of their busi-

ness operations, purchased goods and materials valued at in excess of \$50,000 from firms located in States other than their own, and performed services valued at in excess of \$50,000 in States other than their own. The Association and its employer-members are, and have each been, employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

**II. THE LABOR ORGANIZATION INVOLVED**

Wharf and Dock Builders Union, Local Union #454, herein the Respondent Union or Local 454, is a labor organization within the meaning of Section 2(5) of the Act.

**III. THE UNFAIR LABOR PRACTICES**

For many years the Association has had a succession of collective-bargaining agreements with the Respondent Union—a local union of the Metropolitan District Council of Philadelphia and Vicinity of the United Brotherhood of Carpenters and Joiners of America—and the current collective-bargaining agreement between the Association and Local 454 is effective for the 5-year period from June 1, 1968, to May 31, 1973,<sup>2</sup> but the only provision in the current contract with reference to an employer contacting Respondent Union concerning employment vacancies is article XI, section 3, and which states the following:

(a) The parties of the second part will attempt to furnish qualified personnel to the Employer, within forty-eight (48) hours, Saturdays, Sundays and holidays excepted, after receipt by the parties of the second part of a request from the Employer for workmen. It is understood, however, that the Employer may also hire such other qualified personnel as may be required for his work.

The parties agree that the above hiring provision in the contract does not establish any form of "hiring hall," and further agree that frequently employer-members of the Association call Local 454 for employees in hopes of getting the most skilled men. There is also agreement between the parties that at certain times the Respondent Union is not able to meet the number of men required by the various employers of the Association, and under such conditions the members of the Association hire employees to perform wharf and dock building work by recruiting men from a variety of other sources.

Specifically, the complaint alleges that on or about March 1 and on or about May 4 the Respondent Union, through its Business Agents Harry (Whitey) Anderson and William (Jack) Gushue, failed and refused to refer and otherwise properly assist the Charging Party, James Keenan, in securing employment with employer members of the Association because of arbitrary, discriminatory, or bad-faith considerations.

Basically, the General Counsel takes the position that Keenan made known his availability for work as a dock builder on several occasions, but was told that there was no work available; yet, during the same periods, the Respondent Union referred other of its members to available jobs, and in particular the General Counsel points to the U. S. Steel job in Morrisville and the Raymond Concrete job.<sup>3</sup> Local 454 maintains that it does not operate any hiring hall—formally or informally—that the employers in the Association do most of their own hiring, but whenever any request from an em-

<sup>2</sup> Resp. Exh. 2.

<sup>3</sup> The General Counsel further maintains that as long as there is any hiring arrangement, even voluntarily undertaken, between Local 454 and the employers involved, Respondent Union's failure to refer Keenan to such employers restrains and coerces him, for having once undertaken the obligation of making some referrals, however few, Respondent Union also obligates itself to pursue this practice without discrimination.

<sup>1</sup> All dates are 1971, unless specifically stated otherwise.

ployer was known it was passed on to Keenan the same as it was passed on to anyone else.

The General Counsel produced background testimony through Keenan to the effect that he has been a member of the Respondent Union for 20 years, and in 1962 he ran unsuccessfully for office as business agent against Harry Anderson and William Gushue (Anderson and Gushue are also the present business agents for Local 454). Keenan testified that during the 1962 preelection period, Anderson made the statement at a union meeting that Keenan would never work at dock building so long as he was business agent, and testified that prior to this period he had received all of his dock building jobs and referrals for carpentry work through the business agents of Local 454. Keenan also stated that the jobs here in question are controlled by the business agents of Local 454 and that 95 percent of the men receive their jobs through the business agents.

Keenan further related that it was not only the fact of his running against Anderson and Gushue that lost his source of jobs through Local 454, but during the preelection period in 1962 he also campaigned against the Secretary-Treasurer of the District Council, of which Local 454 is but one Local, and on the basis of his statements that two of the Secretary-Treasurer's assistants were Local 454 officers who had covered up shortages and corruption in the Respondent Union, he was brought up on "charges" just a few weeks before he lost the election for business agent. It appears that Keenan was then fined and barred from attending meetings, but eventually was successful in getting the charges dismissed by appealing to the office of the International President. Keenan filed a suit under certain provisions of the Landrum-Griffin Act against the Metropolitan District Council of which Local 454 was a constituent member, as aforesaid.

From 1966 through the middle of 1970, Keenan worked with the Sprinkler Fitters Union, but in October 1970 he decided to return to Local 454 in an effort to get some dock building work because he had heard a rumor that anyone away from dock building for 2 years would lose all previously earned pension benefits.

On or about October 15, 1970, Respondent Union's Business Agent Anderson informed Keenan that the only work he had available was a possible job with Steers and Kiewit Company. Keenan was then successful in getting this job and worked for Steers continuously until January 15.

At a union meeting on January 15, Business Agent Anderson announced that "things are a little slow but there's enough work for all the book men. Anybody that's out of work, come and see me." After the meeting Keenan told Anderson he had just finished with the Steers job and was out of work, and Anderson then called over a foreman named Andy Roach and told him that Keenan would start working with him on Monday and to "layoff a permit man and put him to work." As a result of the above, Keenan worked for Buckley and Sons from January 18 until February 23.

On February 24, Keenan went down to the union hall and informed Anderson he was looking for work, and Anderson took down his name and phone number. The next day he returned to the Hall and Business Agent Gushue then asked him, "How about going over to Kauffman's job at Delair?" Keenan worked at Kauffman Construction until March 1, when a laborer's picket forced the job to close, and he then notified Gushue of this development and that he was out of work.

Keenan stated he then waited at home for a week or so, but on March 8 he went to the union hall and Anderson told him, "I'm trying to get hold of the Spencer-White job there. I'll let you know how I make out." On March 9, Keenan started

working at Spencer, White & Prentis and continued there until April 23.<sup>4</sup>

Keenan testified that after he finished his work on the Spencer-White job he waited around for a week, but on May 4 and 5 he went down to the union hall looking for work and on both occasions Business Agent Gushue informed him there was no work available. Keenan further related that at a meeting of Local 454 on the evening of May 5, another member of Local 454 told him that earlier in the day Gushue had been around looking for men to work on a job for Raymond Concrete at the Philadelphia Gas Works. On May 6 Keenan went to the Regional Office of the National Labor Relations Board and spoke to someone there who advised him that the best way to work out his problem was with the business agent. Keenan returned to the union hall on Friday, May 7, but Gushue again told him there was no work available. Keenan then informed Gushue he had gone to the Labor Board, and Gushue told Keenan to go ahead and do what he wanted, and that there were 40 men out of work, "and you're the forty-first."

On Monday morning, May 10, Keenan went directly to the Raymond Concrete jobsite, and he testified that at 8 o'clock 20 "book men" from Local 454 were hired by Raymond replacing men who had been working on "permits." Among the book men hired was "John Szumski's son," whom Keenan had seen speaking with Gushue at the union hall on May 4. Keenan then put in a phone call and informed Anderson about these hirings at the Raymond Concrete site and asked Anderson, "Where did all of these men come from when there was no work available on Friday when I was at the Union Hall?" Keenan also mentioned to Anderson that he had already contacted the National Labor Relations Board. Anderson first replied, "do as you please," and told Keenan they had already sent too many men down to the Raymond job, but then asked him if he wanted a job. Keenan's reply was "What do you think I've been . . . going to the Hall for?" Anderson then told him to see Ray Canew at the J. E. Brenneman yard. Keenan did so, was hired and is still working at this job.<sup>5</sup>

The General Counsel maintains that on or about March 1, the Respondent Union should have referred Keenan to Brenneman's U. S. Steel job at Morrisville, Pennsylvania, because this job was hiring men and Keenan was out of work from March 1 to March 9. The General Counsel introduced testimony through Patrick Lewis to the effect that he had heard rumors about hirings at the U. S. Steel job in Morrisville and called Anderson to find out if these rumors were true. Lewis testified that Business Agent Anderson then suggested to him that he go up to the jobsite. Lewis was hired on March 4, and since it was an emergency job he worked 12 hours a day—7 days a week. John Cole received a call at his home from Anderson inquiring if he wanted to work on the U. S. Steel job, and was then hired on March 4. Cole was still working on another job when he went on the U. S. Steel project. Nathan Bewley was also called by Anderson and told to report to the U. S. Steel job and was hired on March 9. John Lapiska heard that men were being hired on the U. S. Steel job so he called the union hall to verify if they needed welders and Anderson told him to go up to the job and find out for himself. He was hired on March 9. William McLean asked Anderson about the availability of work on the U. S. Steel job. He was initially told there was probably nothing available, but Anderson then called him at home and told McLean that

<sup>4</sup> On May 1 the Philadelphia Operating Engineers struck many employers in the area and the strike lasted for several weeks.

<sup>5</sup> This Brenneman job is known as the "Esso" job and is not to be confused with the Brenneman U. S. Steel job.

if he "wanted to take a chance" he could go up to the jobsite. He was hired at this job on March 9 as a welder. James Snyder had also heard rumors about possible work on the U. S. Steel job and called the union hall to get further information. Anderson then told Snyder to go up to Morrisville "and see if they are hiring." Snyder was hired on March 4 and did dock building work. John Smith was down at the union hall and in talking with both Anderson and Gushue mentioned that he was interested in the U. S. Steel job because it was close to where he was already working. He was then told, "Well, you can go up and try." He was hired on March 4.

The General Counsel also contends that the Respondent Union should have referred Keenan to the Raymond Concrete job during the May 4 to May 10 period as Keenan was out of work during the time while other man from Local 454 were referred.

William J. Gushue, the son of Business Agent Jack Gushue, was told by his father that men were going down to Raymond for jobs on May 10 and he should go if he wanted to "take a shot at it." Young Gushue was hired on May 10. William Walsh went to the union hall, inquired about the availability of a job, and was told by one of the business agents that the Raymond job was working and it "was possible" that if he went to the jobsite he would be hired. Walsh also went to work for Raymond on May 10. John Smith was out of work and went to the union hall on May 7. Gushue told him to go to the Raymond job for work, and he was hired the same day. Frank McAneny knew about the Raymond job because his home is in the area where the work was being done. McAneny stayed around the union hall for a few days until a business agent for Local 454 told him to go up and "take a shot at it" and if there was a job "maybe" he would be hired. McAneny was then hired on May 10. Harry Ellis was told by a business agent at the union hall on May 7 that there was work available at Raymond and that Ellis should go up to the job and inquire. He did so on May 10 and was hired.

Raymond's general superintendent, Richard Senchak, stated that his employer started out this particular job with their own crew, and then, as the work progressed, hired men who were well known to them from past experiences, but in situations where Raymond was still short of help, they would then call the union hall. Sanchak testified that the number of men on this job from Local 454 varied from 4 employees to 30 employees.

The General Counsel called Business Agent Gushue and solicited testimony from him to the effect that it is the business agent's responsibility to inform the members about the availability of work and in so doing he will call them at home or speak to them while they work on other jobs. Gushue said that the agents are made aware of job openings through calls to them from various companies or by their constant policing of the jobsites within their jurisdiction. Gushue said that in some months they would get as many as 50 calls from employers asking for men, but during other months they would receive only 5 to 10 calls. Gushue also testified that some of the members of Local 454 would specify certain particular jobs they wanted, said that some men wanted breaks or vacations between jobs, that no written lists or records of any kind are kept of men seeking work, and said that on occasions when he received calls he would send whoever was then present at the union hall. Gushue went on to state that seniority plays no part in referring members to jobs and that he also refers men to companies not members of the Association. Gushue admitted that, during the periods in question, Brenneman's superintendents on the U.S. Steel job and Raymond's superintendent called on various occasions and told him they needed men. He also admitted that work of this kind

is of such an intermittent nature that procuring a succession of jobs becomes very important.

In his brief the General Counsel concluded his argument by stating that Anderson and Gushue ignored Keenan's work requests because of the Respondent Union's animus toward him—from the initial threats in 1962 through charges, law suits, and failures to refer—right up to silencing him during a meeting in August 1971, for pursuing N.L.R.B. charges.

### Conclusions

This record clearly reveals that the referral system here in question operates with great flexibility, and the sources from which employers obtain workers are many and varied. Moreover, this record further shows that on numerous occasions the employer himself will control virtually all of the hirings, and this appears to be in accordance with the related contractual provisions between the parties, as previously set forth herein.<sup>6</sup> But when members of Local 454 do obtain information or hear rumors about possible jobs openings they frequently contact the Respondent Union to see whether or not the information is true. Furthermore, if agents of Local 454 know that a particular employer is in need of employees they then relay this information to its members and to those who have inquired about possible jobs.

The two main instances and intervals relied on by the General Counsel must also be viewed in relation to the fact that from November 17, 1970, to May 13, 1971, Respondent did inform Keenan of five different job opportunities, as fully detailed earlier herein, and notwithstanding labor tie-ups and unemployment during this period, Keenan, nevertheless, did obtain five different jobs as a result of the information which Anderson and Gushue passed along to him.

Turning now specifically to the Brenneman U. S. Steel job. Instead of being referred to this work, Anderson told Keenan about the job with Spencer, White & Prentiss where Keenan was hired and worked until April 23. It is true that Nat Bewley was referred by Anderson to the U. S. Steel job, but Bewley testified that the foreman on this job, Herb Danner, had specifically asked Anderson for him. John Cole stated that, while he had not checked on the U. S. Steel job prior to being called, he had worked for Brenneman on many occasions and said that he and Foreman Herb Danner always got along very well together.

John Lapiska and William McLean inquired about the possibility of working on this job and were both welders. Other witnesses testified they had heard about this job and then called the union hall. Furthermore, it appears that the job openings at U. S. Steel were a matter of common knowledge. General Counsel's own witness, James Snyder, stated that the U. S. Steel project was an emergency job and because of this fact "everybody" would hear about it. Robert Kelly, counsel for the Association, testified:

If there is any man who worked as a wharf and dock builder in the eastern half of Pennsylvania and the state of Delaware and the state of New Jersey who didn't know about the U. S. Steel job, he must have been critically ill at the time . . .

We were, I think, hiring everybody. I think we hired a lot of people who had never been wharf and dock builders . . .

From this testimony it is reasonable to assume that Keenan must have known about the U. S. Steel job, but never made any specific inquiry about it. Moreover, had he so desired he

<sup>6</sup> Many members do not make any contact with the Respondent Union, but instead they go directly to an employer's jobsites and obtain information and/or employment strictly on their own.

could have gone directly to the jobsite and he would have been hired. In the final analysis, Keenan did not go near the union hall or contact Local 454 until March 8, and starting on the very next day Anderson secured a job with Spencer & White for him.

Keenan stated that he went to the Union Hall on May 4, 5, and 7 and at which time Gushue told him there were no job openings, but testified that on May 10 he observed "book men" from Local 454 being hired by Raymond Concrete on the Philadelphia Gas Works job, as aforesated.

Initially, this situation from April 23 to May 11 must be viewed with the additional understanding that, at a union meeting in the early part of May, Keenan specifically asked Gushue some question relating to his home and procedures to follow in the raising and repair of his kitchen floor. Gushue stated that because of these circumstances he assumed Keenan was not looking for work during the few weeks here in question. Other members of the Respondent Union hired by Raymond heard about this job in one way or another and then specifically made inquiries at the union hall about this particular work because it was of some special interest to them—for instance McAneny and Walsh lived in the area. Prior to May 10 there is no evidence in this record that Keenan even asked to be considered for this job even though he had known about it ever since the union meeting on May 5, as aforesated. It is also noted that when Keenan went to the union hall on May 4, 5, and 7—there were other men at the hall also looking for work, and certainly it is conceivable that business agents might not have remembered to contact each and every man, especially when there are no written list of names or other procedures to follow.

General Counsel refers to the work at U. S. Steel and at Raymond Concrete as "premium" work, while maintaining that the jobs to which Keenan was referred were unsuitable in many respects and were not the normal jobs which dock builders prefer. Keenan stated that on the Steers job he was working at 140 feet by the time he left and that on the Spencer job he had the "bull work," and he said that on his present

Esso job and others the crews were short-handed, which made the jobs more difficult for those working. However, other than the contention by the General Counsel that the two jobs in question were "premium," and the above testimony by Keenan as to what he did on the jobs he worked—there is nothing in this record, other than very broad work categories or classifications, which actually reveal the precise type of duties and risks involved on the Raymond and U. S. Steel jobs.

In the final analysis, this record fails to support the contention that there existed personal animus toward Keenan on the part of Business Agents Gushue and Anderson. As has been pointed out, during the critical periods Keenan was given work availability information which resulted in five jobs for him. Furthermore, when Keenan was at one time fired from his job with Spencer, White & Prentis, the Respondent Union interceded on his behalf and Keenan was returned to his job. Finally, Keenan received information about his present job at Brenneman Esso at the same time as Business Agent Jack Gushue's nephew received the same information. Keenan obtained a job when he went to the jobsite, but Gushue's nephew did not.

Since a preponderance of the probative evidence does not establish that the Respondent Union committed any unfair labor practice—I will recommend that the complaint be dismissed.

#### CONCLUSIONS OF LAW

1. The Association and its employer-members are engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Respondent Union is a labor organization within the meaning of Section 2(5) of the Act.
3. The Respondent Union has not engaged in unfair labor practices alleged in the complaint.

#### RECOMMENDED ORDER

It is hereby recommended that the complaint be dismissed in its entirety.