

Lower Ohio Valley District Council of Carpenters, Millwrights Local Union No. 1080, United Brotherhood of Carpenters and Joiners of America, AFL-CIO and Timothy Louis Axley and Burch & Lamb Corp., Party to the Contract, and Evansville, Indiana, Area and Owensboro, Kentucky, Area Mechanical Contractors, Party to the Contract. Case 25-CB-3998

March 19, 1981

DECISION AND ORDER

On December 1, 1980, Administrative Law Judge Robert A. Giannasi issued the attached Decision in this proceeding. Thereafter, the Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in support of the Administrative Law Judge's Decision.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,¹ and conclusions² of the Administrative Law Judge and to adopt his recommended Order, as modified herein.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Lower Ohio Valley District Council of Carpenters, Millwrights Local Union No. 1080, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, its officers, agents, and representatives,

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

In finding that the Respondent violated Sec. 8(b)(1)(A) by failing to deal fairly with Axley's request for information about its referral list, the Administrative Law Judge relied on *Local No. 324, International Union of Operating Engineers, AFL-CIO (Michigan Chapter, Associated General Contractors of America, Inc.)*, 226 NLRB 587 (1976), in which Chairman Fanning dissented. Chairman Fanning agrees with the Administrative Law Judge because he finds this case distinguishable from *Local No. 324*, where the requested information was given but not in the form in which it was requested, whereas here, the information was refused without giving any reason for the refusal. Cf. *Laborers' International Union of North America, Local 252, AFL-CIO (Seattle and Tacoma Chapters of the Associated General Contractors of America, Inc.)*, 233 NLRB 1358, fn. 1 (1977).

² We agree with the Administrative Law Judge that the Respondent, in failing to refer Axley, did not act in reliance on an incident in which Supervisor Dale Goodman allegedly laid off Axley and another employee for taking too long to perform a particular job. We do not adopt the Administrative Law Judge's finding that the incident was "fabricated after the fact." While this incident apparently occurred, there is no credited evidence that the Respondent knew of it before the date of the hearing herein.

shall take the action set forth in the said recommended Order, as so modified:

1. Delete from paragraph 1(b), the word "reasonably" where it appears before the final words, "related to the failure to refer a particular applicant."
2. Delete from paragraph 2(b), the word "reasonably" where it appears before the final words, "related to the failure to refer a particular job referral applicant."
3. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE

TO ALL MEMBERS AND OTHER APPLICANTS
FOR JOB REFERRALS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT operate our exclusive hiring hall in a manner which discriminates against job referral applicants because they are not members of Lower Ohio Valley District Council of Carpenters, Millwrights Local Union No. 1080, United Brotherhood of Carpenters and Joiners of America, AFL-CIO.

WE WILL NOT arbitrarily refuse to provide job referral applicants with copies of the names, addresses, and telephone numbers of employees on our referral list and their dates of layoff where such information is related to our failure to refer such applicants.

WE WILL NOT refuse or fail to refer Timothy Louis Axley or any other qualified job referral applicant through our exclusive hiring hall because such applicant is not a member of Lower Ohio Valley District Council of Carpenters, Millwrights Local Union No. 1080, United Brotherhood of Carpenters and Joiners of America, AFL-CIO.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of their rights under Section 7 of the Labor Act.

WE WILL make Timothy Louis Axley whole for any loss of pay, plus interest, he may have suffered because of our discrimination against him because he was not one of our members.

WE WILL maintain permanent records of our hiring and referral operations which will be

adequate to disclose fully the basis upon which referrals are made and, upon request, make those records available to the National Labor Relations Board and to job referral applicants where such information is related to the failure to refer a job referral applicant.

WE WILL inform all job referral applicants that we maintain an out-of-work or referral register in connection with our exclusive hiring hall, which is and will be available to all qualified applicants whether or not they are one of our members.

LOWER OHIO VALLEY DISTRICT
COUNCIL OF CARPENTERS, MILL-
WRIGHTS LOCAL UNION NO. 1080,
UNITED BROTHERHOOD OF CARPEN-
TERS AND JOINERS OF AMERICA,
AFL-CIO

DECISION

STATEMENT OF THE CASE

ROBERT A. GIANNASI, Administrative Law Judge: This case was heard on June 23 and 24, 1980, in Evansville, Indiana. The complaint alleges that Respondent violated Section 8(b)(1)(A) of the National Labor Relations Act, as amended, herein called the Act, by operating an exclusive hiring hall in a discriminatory manner, by failing to refer Timothy Louis Axley for employment since July 1, 1979, because of his nonmembership in Respondent and for other unlawful reasons, and by refusing to provide Axley with information concerning Respondent's referral register. Respondent denied the essential allegations in the complaint. The parties filed briefs.¹

¹ The complaint alleges that the operation of the hiring hall and the failure to refer Axley were violative of the Act not only because they were discriminatory on the basis of lack of membership in Respondent, but also because of other unspecified arbitrary and discriminatory criteria, including "adherence to the desires and policies of the officers of the Respondent." This latter theory was not developed or articulated at the hearing and indeed seems to have been abandoned by counsel for the General Counsel nor was it presented in the brief of the General Counsel which was limited to establishing that the referral procedure, in general and as specifically applied to Axley, discriminated against nonmembers. Although the brief alludes to the confusing testimony of Respondent's officials concerning operation of the referral system, the General Counsel did not contend that Respondent utilized any unlawful criteria other than union membership in referring workers. There was no reference in the brief to the line of cases which establish a violation by virtue of a union's operation of an exclusive hiring hall without any objective criteria or standards. See *Local 394, Laborers' International Union*, 247 NLRB No. 5, fn. 2 (1980).

I do not believe such a theory was fully or adequately litigated on this record notwithstanding the broad language of the complaint. Certainly the parties did not focus on this theory. In any event, were I to reach the issue, I would conclude that the General Counsel had not proved the allegations by a preponderance of the evidence. The hiring hall was established by contract and ostensibly operated in accordance with the objective standards set forth in the contract. Moreover, Respondent did utilize referral slips, work ledgers, and an out-of-work or referral register which purported to follow the contractual referral procedure. Although the testimony of Respondent's representatives, Keown and Rideout, indicated that the referral procedure was operated in a less than precision-like manner, their testimony was very unclear and ambiguous. They testified

Upon the entire record, including the testimony of the witnesses and my observation of their demeanor, I hereby make the following:

FINDINGS OF FACT

I. THE LABOR ORGANIZATION

Respondent is a labor organization within the meaning of Section 2(5) of the Act.

II. THE UNFAIR LABOR PRACTICES

A. The Facts

1. Background: operation of the hiring hall

Respondent is a millwright local and one of five local unions which comprise the Lower Ohio Valley District Council of Carpenters. The remaining four local unions are carpenter locals. Respondent has about 170 members. The Council has about 750 members. Respondent is a signatory to collective-bargaining agreements with the Evansville Area and Owensboro Area Mechanical Contractors. The agreement for the period May 30, 1979, to April 30, 1980, contains a hiring procedure which has been in effect for many years and was retained in the parties' new agreement which was recently negotiated. During the past few years Respondent has contracted with four major local contractors: Burch & Lamb Corp., Lloyd Mechanical Erection, Harpe & Sons, and Brunner Mechanical Erection.

The contract provides for a referral procedure and an exclusive hiring system operated by Respondent.² Article III of the contract reads as follows:

that they accommodated employers who recommended nonmembers for employment or who asked for referrals by name or by skill. In and of itself, this evidence does not controvert the contractual procedure or establish nonadherence to objective criteria. Likewise, evidence that Rideout, particularly, referred employees from his home on an emergency basis or referred people without also filling out a referral slip is insufficient to establish a violation. There is no evidence that such referrals were incompatible with the objective procedure established in the contract, except insofar as they discriminated against nonmembers of Respondent. On that point, Respondent's apparent failure to make available to nonmembers its out-of-work or referral register is best resolved in the context of the issue of whether Respondent discriminated against nonmembers. Accordingly, I would conclude that the General Counsel has not established by a preponderance of the evidence that the referral procedure in general or as it impacted on Axley was violative of the Act because it was operated in an arbitrary manner or in the absence generally of objective criteria.

² Although Respondent made a feeble argument at the hearing to the effect that, despite the contractual language, its hiring system was not exclusive, it has not repeated this contention in its brief. Its brief contains arguments that Respondent was required by the contract to furnish competent journeymen and to permit the employers, under certain circumstances, to request individuals by name or skill. Thus, Respondent essentially relies on the contractual provisions governing the operation of the hiring system to argue that it was not operated discriminatorily. The evidence, however, fully supports the finding, which I make, that the hiring system was operated as an exclusive hiring hall in accordance with the contract. Notwithstanding that employees were sometimes recommended for hire by the employer or that the employer asked for particular employees by name or skill, the employers called the Respondent prior to hiring any employees. Kenneth Butler, vice president of Burch & Lamb, made this clear in his testimony. He has never hired people on his own. He testified, "I deal through the Local." Other employer representatives testified essentially to the same effect.

Hiring Procedures

District Council United Brotherhood of Carpenters and Joiners of America agrees to furnish competent Journeymen selected for reference to jobs upon a non-discriminatory basis, such furnishing to be made upon request of the Employer and with the Employer retaining the right to reject or accept the applicants for employment.

1. The District Council shall establish and maintain open and non-discriminatory employment lists for the use of individuals desiring employment.

2. All individuals desiring employment shall register at the District Council office by appearing personally and shall indicate name, address, telephone number and Social Security account number, qualifications and type of work desired.

3. Employers shall first call upon the District Council and submit job orders. District Council then calls the Local Union having area jurisdiction of work indicating the number of individuals desired, qualifications of each individual, and location of the job, and the reporting date and time. If an Employer requests individuals by name pursuant to Section 5, hereof, he shall advise the District Council of the location of the last job worked and the termination date thereof, with respect to such individuals. Job orders shall be submitted not less than forty-eight (48) hours (Saturdays and Sundays and recognized holidays excluded) prior to the hour when the Employer wishes them to report for work.

4. If the District Council is unable to refer the number of individuals desired within forty-eight (48) hours after the submission of such job order, the Employer may procure additional Employees up to the desired number from any other source, provided however, that the Employer shall immediately notify the Local Union of the names of the Employees hired and the job location.

5. Individuals available and qualified to fill the job order shall be referred in the following order:

(a) First, individuals in the order of their registration who within two (2) years immediately preceding the job order performed work of the type covered by the Collective Bargaining Agreement in the geographical area of the Local Union.

(b) Next, all other individuals, in the order of their registration.

(c) Provided, an Employer may request by name individuals formerly employed by him on work performed in the geographical area of the District Council, who within two (2) years immediately preceding the job order performed work of the type covered by the Collective Bargaining Agreement in the geographical area of the District Council.

6. Available for employment means that the individual shall be currently registered and shall be either present at the Local Union office or present at a location where he can be reached by telephone.

7. Dispatching hours shall be from 7:30 a.m. to 10:00 a.m. daily. (Saturdays, Sundays, and recognized holidays excluded)

8. Each individual, upon being referred, shall receive a referral slip to be transmitted to the Employer representative at the job site.

9. To insure the maintenance of the registration list, all individuals shall re-register as soon as possible after the termination of their current employment.

10. Individuals shall be removed from the registration list for the following reasons:

(a) When an Employee is dispatched to job—except that any individual who is rejected by the Employer, or fails to complete two (2) full days work shall retain his position on said list.

(b) Failing to accept suitable employment one (1) time during the current week at the time of dispatch. Employment which cannot be reached by an individual because of lack of transportation shall not jeopardize his standing on the Employment list.

(c) Any individual dispatched to a job who fails to report to work.

Individuals removed from the registration list must re-register promptly in order to be considered available for employment.

11. Any individual who believes he has been discriminated against with respect to the operation of these procedures shall be entitled to appeal therefrom within twenty-four (24) hours of the alleged discrimination by filing in writing with an impartial arbitrator, selected by the Local Union and the Employer.

12. The impartial Umpire shall consider the appeal and render a decision which shall be final. He is authorized to modify any provisions of these procedures.

13. A copy of procedures shall be posted at the Local Union Office and at each job site covered by the Collective Bargaining Agreement.

The foregoing is applicable in all jurisdictions subject to the Taft-Hartley Act.

In effectuating its referral procedure, Respondent utilizes an out-of-work book or referral register which is located at its Owensboro office. Employees sign the register along with their date of layoff. There is a separate list for apprentice members of Respondent. There is no other book or register whereby out-of-work employees can notify Respondent of their status and of their availability for work.

Employees are referred generally in order of their appearance in the referral register by either Respondent's representatives, J. C. Keown, Charles Lanny Rideout, or the secretary, Connie Puckett. Puckett makes most of the referrals. According to Keown, she is the only person in the office at all times and she "runs" the office "most of the time." She is fully knowledgeable of Respondent's referral procedures and answers incoming calls. She also issues working permits to employees who are not mem-

bers of Respondent. In these circumstances, I find that Puckett is an agent of Respondent within the meaning of Section 2(13) of the Act.

There is testimony, primarily from Keown and Rideout, that employers with whom Respondent has contracts often call Respondent not only for a specific number of men for a job but also for specific named individuals and for people with specific skills. The contract requires Respondent to provide qualified employees, but it also provides that requests by employers of named employees be for individuals formerly employed by them who within the prior 2 years performed millwright work in the jurisdiction. However, the evidence shows that often an employer will call Respondent and recommend the hiring of a particular individual who is not a member of Respondent or otherwise known to Respondent. In such a case Respondent invariably refers the recommended individual and takes care that the individual obtains a working permit for which he pays a fee.

Referrals are memorialized by referral slips which are usually issued by the secretary pursuant to referrals made by either Keown or Rideout and in accordance with contractual referral procedures, including reference to the referral register. Referrals are also found in ledger books kept by Respondent for the purpose of recording working assessments. Such assessments are paid by each employee who works for a covered employer for over 2 days. The ledger books show not only the referral dates, as do the referral slips, but also the layoff date. Individuals who sign the referral register also place their layoff date in that book.

Portions of Respondent's referral register were placed into evidence. The entries for late 1978 and most of 1979 show over 100 names, most of whom were referred. Only five of those individuals, excepting apprentices, do not also appear on Respondent's membership list. There is no indication as to whether the others were travelers from other jurisdictions, i.e., members of other millwright locals, or members of other carpenter locals which comprise the District Council.³

The above figures support the inference that the referral register was utilized only for members who were out of work. This inference is supported by other evidence. Tim Axley, a permit man, spoke to Puckett and she told him there was no list for permit men to sign for work. Both Keown and Rideout spoke to Axley during periods when he was seeking work and they admittedly never told him about the existence of an out-of-work or referral register. Keown himself first identified the referral register as being for members. He later changed his testimony and both he and Rideout were ambiguous and evasive in testifying about the availability of the register to nonmembers to indicate their desire for work. In these circumstances, and considering the specific evidence concerning the refusal and failure to refer Tim Axley, a

permit man and a nonmember of Respondent, I find and conclude that Respondent's referral register, from which it referred millwrights pursuant to its exclusive contractual referral procedure, was generally available only to members of Respondent and was not generally available to permit men and nonmembers.

There is also testimony from Kenny Butler, vice president of Burch & Lamb, that he had an understanding with Respondent's officials Keown and Rideout that the order of layoff on a particular job would be as follows: (1) white card men, whom he identified as belonging to no union; (2) permit men whom he identified as being members of other millwright locals; and (3) members of Respondent. Support for this testimony comes from Dale Goodman, a supervisor for Burch & Lamb, who testified that he had never laid off bookmen while permit men were retained. Keown and an employer representative, Don Lloyd, disputed this testimony. Lloyd said he had laid off members before white card men, but he did not elaborate. His testimony is suspect because later, on cross-examination, he conceded he had no way of knowing whether an individual was a permit man or a white card man. He also exhibited, in my view, a propensity to support Respondent's position when he testified in an exaggerated manner as to the numbers of individuals he requests from Respondent by name. Keown professed surprise at Butler's testimony and denied any such arrangement. I credit Butler who appeared to me to be an honest witness who had no real interest in the outcome of this proceeding. Keown, on the other hand, was evasive on this and other issues. His answers to Butler's testimony were an unresponsive quip that "I don't think Mr. Butler knows when a layoff is going to occur" and an equally unresponsive and quixotic statement that "he has laid off as many as 10 people on one job and has called the hall for five on another job." Keown's testimony that the referral register was available to Axley was equally evasive and unbelievable. Accordingly, I credit Butler's testimony that Respondent had a discriminatory layoff policy which gave preference to members and which was enforced among employers with whom Respondent had contractual relations.

2. The treatment and employment history of Tim Axley

Tim Axley was initially referred by Respondent to a job with Burch & Lamb after Burch & Lamb's supervisor, Larry Luttrull, Axley's half brother, recommended him for employment. Someone from Burch & Lamb called Respondent's office and Respondent agreed that Axley could be hired. Axley went to Respondent's office in Owensboro to pick up his working permit and referral slip. He also made appropriate payments to Respondent for the working permit and a special assessment. At his first job, Axley, who had been an aviation mechanic in the Navy, performed various functions including welding. He provided his own handtools. When he was laid off in late September or early October, he called Respondent's office and the secretary told him there was no work available.

³ Of the five nonmembers, Rudd Hale and Kenny Beckman sometimes had the notations "will call" after their names. Micky Hall appears once on the out-of-work list. A person named Horn had the notation "suspended 1-31" after his name. Tony Owens shows up on several occasions with the notation "will call" after his name. There is an individual on the membership list named Herbert Owens. It is unclear whether this is the same person as Tony Owens or whether they are related.

Axley was referred by Respondent on October 3, 1978, to a job for Acco Construction Company. He worked for a few days and was laid off. He again called Respondent's hall for work, and, after about a 10-day hiatus, was referred to a job for Burch & Lamb. He worked until January 10, 1979, for Burch & Lamb at various jobsites. He performed general duties, but also precision work and welding. After another layoff, he was again referred by Respondent to Brunner, receiving, as in all referrals, a referral slip and a work permit. Axley paid all fees, dues, and assessments required of a so-called permit man, that is a person who worked out of Respondent's jurisdiction who was not a union member. He never joined Respondent.

Axley was laid off from Brunner on February 27, 1979. He was not referred again by Respondent until July 31, 1979. Many other individuals were referred by Respondent during this period. Axley called Respondent's office, as he had in the past, and talked to Respondent's secretary, Connie Puckett. He called three or four times a week beginning on the Monday after he was laid off. In this respect, Axley's testimony is corroborated by documentary evidence of long-distance calls from his home to Respondent's office in Owensboro. In response to his inquiries about referrals, Puckett told him that "book men" were "on the bench" and that "permit men" like Axley could not be referred until after the "book men." Another permit man, John Holloman, Axley's cousin, testified that he received the same response from Respondent's secretary when he called the office. On one occasion, Axley asked if there were a book which permit men could sign to get referrals and Puckett replied there was no such book. This testimony was not contradicted. Puckett was not called by Respondent as a witness.

Axley went to Wyoming on May 11, 1979, to look for work. He returned on June 30, 1979. Upon his return, he resumed his calls to Respondent's office for work. He received the same reply from Puckett or whoever answered the phone, namely, that there was no work, that book men were "on the bench," and that permit men could not be referred until after the book men were referred.

On July 31, 1979, Axley called Vice President Kenny Butler of Burch & Lamb. He told Butler he was looking for work and asked if Butler needed any help. Butler said he did and he agreed to call Respondent on Axley's behalf. Shortly thereafter and as a result of Butler's request, Axley was referred by Respondent to a Burch & Lamb job. He worked for a couple of weeks and then was laid off. He was referred once again for 3 or 4 days but was finally laid off for the last time on August 20, 1979. Thereafter, Axley continued, as before, to call Respondent's office and he received the same response from Puckett as he had in earlier calls, namely, that there were "book men on the bench" and thus there was no work for him. In early October, Axley went to Respondent's office in Owensboro with his father. He talked to Rideout about Respondent's failure to refer him. Rideout said he received complaints whenever he failed to put a permit man to work.

3. Axley's attempt to obtain information

In early November 1979, Axley called Respondent's office and asked Puckett for a copy of the applicable collective-bargaining agreement. She said there was only a limited supply available and that they were for members only. Later in November, he wrote a letter to Respondent requesting a copy of the contract and Respondent responded by letter that there were limited copies and failed to provide him a copy.

On January 10, 1980, Axley prepared and mailed a letter to Respondent requesting information concerning the names, addresses, and phone numbers of all employees on Respondent's referral list together with their dates of layoff. Respondent replied that it could not provide such information and the information was never provided. At the hearing, Respondent did not deny receiving the letter and did not give any reason for failing to provide Axley with the requested information.

Axley was never referred by Respondent from August 20, 1979, to the time of the hearing in this case.

4. Documentary evidence of referrals during periods when Axley was looking for work

Documentary evidence showed that many members of Respondent who were laid off after Axley in 1979 were referred to jobs by Respondent at times when Axley was available for work but was not referred despite his frequent calls to Respondent's office. The evidence also showed that other individuals who were apparently members of other unions or other locals were also referred during these periods. Burch & Lamb Vice President Butler testified that his firm had work available after August 20, 1979, of the type for which Axley was qualified. Some of the documentary evidence is set forth below.

Documentary evidence, including referral slips and entries in the referral register and the ledger, shows that the following members were referred during the period Axley was seeking work even though they were laid off after Axley:

<i>Name</i>	<i>Date of Layoff</i>	<i>Date of Referral</i>
Michael Dickinson	3/2/79	3/5/79
John Bell	3/6/79	3/7/79 3/14/79 3/14/79
Ronald Goetz	between 2/28 & 3/7/79	3/7/79
Garmon Porter	between 2/28 & 3/12/79	3/12/79
H. T. Kennedy, Jr.	3/12/79	3/14/79
David E. Isabell	3/12/79	3/14/79
Hugh W. Harper	3/12/79	3/14/79 3/20/79 3/20/79
Tony Gist	3/12/79	3/14/79
Ronnie Pope	3/15/79	3/21/79
Tom Morris	3/8/79	3/17/79
Howard Moran	3/12/79	3/17/79
Steve Sunderland	3/12/79	3/17/79

Name	Date of Layoff	Date of Referral
Jerry L. Tudor	3/22/79	3/22/79

These members were laid off subsequent to Axley and referred while he was seeking employment. Respondent has not established that any of them were requested by name. The parties stipulated that Ronnie Pope had not been referred to Burch & Lamb, where he was referred on March 21, 1979, in the 2-year period prior to March 19, 1979.

The March 1979 referrals also show the referral of at least seven individuals⁴ who do not appear on the referral register, but who appear to be members of other local unions. Their names, with the exception of Miller, appear on Respondent's ledger with the notation of a number on the left-hand side which appears to be the number of a local union. Except for Miller, none of these individuals had been referred by Respondent in the years 1977, 1978, or 1979.⁵ Thus, it was not contractually permissible for the employer to request them by name.

Referral information concerning individuals referred for work in July 1979 shows the following members were referred even though the documentary evidence shows they were laid off after Axley:

Name	Date of Layoff	Date of Referral
Terry Tudor	7/3/79	7/6/79
John Bell	6/20/79	7/2/79
Michael Ziemer (apprentice)		7/6/79 7/19/79 7/20/79
John Strobel, Jr.	7/20/79	7/20/79
Billy Strobel	7/19/79	7/20/79
Richard Jones	7/20/79	7/24/79
Corbitt Rather	7/23/79	7/25/79 7/25/79 7/26/79
Gary C. Popp	7/25/79	7/26/79
Larry Moore	7/25/80	7/27/79
Elwood Rogers	7/25/79	7/30/79
Darryl Warren	7/6/79	7/16/79
Jerry Jackson	7/5/79	7/17/79
Tony Gist	7/11/79	7/18/79
Leonard Sigler	7/16/79	7/19/79
Dinzie Rogers	7/19/79	7/19/79

Axley was not referred until July 31, 1979, and then only after he had called Butler who in turn apparently asked for Axley. Respondent did not show that any of these employees were requested by name. The parties stipulated that Terry Tudor had not been referred to Logan Conveyor, where he was referred July 5, 1979, in the

⁴ Toney Embrey, referred 3/5; William Rigdon, referred 3/5; Tim Lamb, referred 3/5; Carl Muffett, referred 3/14; Larry Miller, referred 3/14; Wm. Case, referred 3/14; and George Boone, referred 3/21.

⁵ Their names appear on a document, Jt. Exh. 2, which states that they were not referred in 1977 or 1978 and the 1979 ledger sheets do not list a prior referral in 1979.

prior 2 years. Thus, he could not have been referred, under the contract, on the basis of a request by name.

The July referrals also show two individuals who appear to be members of other local unions. Their names did not appear in the referral register but they were referred in July 1979. Robert Hodge and M. L. McIntyre have Georgia addresses and the notation "Local #256" on their ledger sheets. Neither had been referred by Respondent in 1977, 1978, or in 1979 previous to their July referrals to Burch & Lamb. Their referrals thus could not have been permissible requests by name.

Similar referral patterns appear in documentary evidence showing the referral of Respondent's members in late August, September, and early October at times when Axley was looking for work. In addition, McIntyre and Hodge, members of other locals, continued to be referred during this period even after their layoffs on August 21, 1979. Hodge was referred to a job on August 28 and McIntyre on September 5. Axley, who had been laid off earlier, on August 20, was not referred despite, as the record shows, his calls to Respondent on August 27, 30 and September 4, 1979.

B. Discussion and Analysis

It is well settled that a union violates Section 8(b)(1)(A) if it operates an exclusive hiring hall in a fashion which discriminates against nonmembers. See *Iron Workers Local Union No. 290, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO (Mid-States Steel Erection Company, et al.)*, 184 NLRB 177 (1970), *enfd.* 443 F.2d 383 (6th Cir. 1971); *United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 633, AFL-CIO*, 178 NLRB 398, 399 (1969), *enfd.* 436 F.2d 1386 (6th Cir. 1971).

In the instant case, the evidence shows that Respondent operated its hiring hall in a discriminatory fashion. Respondent's agent Puckett made clear in responses to Axley's inquiries for work that permit men, that is, nonmembers, could not be referred as long as "book men," members, were "on the bench." This was repeated not only to Axley, but also to Holloman, Axley's cousin, who also called Respondent's office for work. Respondent's own records show that Axley was not referred and members who were laid off after him were referred. In addition, Puckett told Axley there was no procedure whereby a permit man could sign an out-of-work book. Keown's testimony concerning the unavailability of the referral register for nonmembers and his failure to even mention the existence of such a register to Axley when he spoke to Axley on several occasions when Axley was looking for work confirms that it was utilized only for union members. The notations in the register itself for late 1978 and most of 1979 illustrate that few, if any, nonmembers signed the book. Finally, Respondent's policy of forcing employers to lay off nonmembers before union members establishes a discriminatory motive in employment matters which confirms the other evidence of discriminatory referrals. In these circumstances, I find that Respondent violated Section 8(b)(1)(A) of the Act, as alleged in the complaint, by op-

erating a referral procedure which discriminated against nonmembers.

The evidence discussed above also establishes a violation of the Act with respect to the failure to refer Tim Axley from July 1 to July 31, 1979, and after August 20, 1979. Axley made numerous calls to Respondent's office asking for work and was told of Respondent's discriminatory referral policy. In addition, documentary evidence shows that numerous members of Respondent who were laid off after Axley were referred during the period he was seeking referrals. Although some may have been requested by skill and by name it is unlikely that all of them were. Significantly, Respondent has failed to show that this was the case in any of the referrals of union members. Moreover, the evidence shows that some of the members could not have been requested by name under the collective-bargaining agreement because they had not worked for the employer within the prior 2 years. Indeed, it appears that even members of other local unions were referred in advance of Axley during periods when he was seeking referrals.⁶

Respondent defends the allegation that it discriminated against Axley on two grounds: First, that employers requested individuals by name or skill and thus Axley was not referred, and, secondly, that he was not a qualified millwright. Both contentions are without merit.

Respondent has failed to show that any of its referrals during the periods when Axley was seeking work was a response to a request for a named employee or a particular skill which would be permissible under the collective-bargaining agreement. There was no specific showing that employees assigned in preference to Axley were requested by name. All Respondent has shown is that, as a general matter some employers do, at times, request employees by name or by skill. Three employer witnesses testified concerning requests by name. The testimony of Kenneth Butler, who was the most reliable of the three and who testified candidly and in detail, said that whenever he would call the union hall for a referral he would get the man from the top of the list. The testimony of the other two employer witnesses, on which Respondent chiefly relies, was less reliable and does not even support Respondent's position as a general matter. Wendel Harpe testified that since January 1979 he had not asked for employees by name because of the contractual requirement that they must have worked for the Employer in the past 2 years. Don Lloyd did testify to asking for individuals by name on direct examination, but, on cross, he conceded that on an upcoming project which required 50 millwrights about 28 would not be called for by name. Nor was Respondent's Representative Rideout's testimony reliable. His assertion that at times local contractors would call for individuals by name 75 percent of the time was self-serving and unsupported by any other believable wit-

⁶ Some of the evidence of discriminatory referrals related to periods prior to July 31, 1979, when Axley was last referred to Burch & Lamb. The evidence shows that Axley was available for employment between February 27, 1979, when he was laid off, until July 31, except for the period he was in Wyoming in May and June 1979. The complaint alleges a violation for the failure to refer after July 1, 1979. Evidence of discrimination prior to July 1, 1979, is relied on as background to show Respondent's discriminatory conduct in July 1979 and after August 20, 1979.

ness. His testimony on this point was also generalized, conclusory, and ambiguous. In any event, none of the testimony showed that the referrals which were made during the period Axley was seeking work were contractually permissible referrals by name or skill.

Respondent's contention that Axley was not referred because he was not qualified is also without basis. Respondent first attacked the adequacy of Axley's tool complement. However, Rideout admitted that he received many reports from his stewards that journeymen and other millwrights lacked tools. Nor is there any evidence that any employer complained to Rideout or any other official of Respondent about any perceived tool deficiency on Axley's part. Indeed, although Respondent attempted to show Axley was not a competent millwright, it failed to establish that any employer complained about Axley's work to Respondent until the development of this litigation. Rideout claimed that he was told by a Burch & Lamb supervisor, Dale Goodman, that Axley and another employee, Lohman, a member of the District Council, had taken too long to perform a particular job and were laid off for that reason. This testimony was exposed as false when Goodman denied he told anyone—not Rideout and not even Axley—why these employees were laid off until the day of the hearing in this case. Nor is it likely that the layoffs were for such reason since Lohman was referred to Burch & Lamb within a few days of the alleged work deficiency. I perceive this alleged incident was fabricated after the fact, but, in any event, Respondent was not notified of it. Nor was Axley told by Respondent or its officials of his alleged lack of competence even though he called Respondent's office numerous times and talked to Keown and Rideout during this period of time. What he was told was that he could not be referred because there was no work, and, when there was, bookmen would be referred before him. Finally, even assuming, as Respondent alleges, that Axley was qualified only for unskilled or "bullwork," the testimony of three employers, Harpe, Lloyd, and Butler, indicates that over half of their jobs required such workers. Butler testified quite clearly that after August 1979, when Axley was seeking work, Burch & Lamb had work of the type Axley could perform. Butler also testified that he had never turned down a referral of Axley and was not dissatisfied with his work. In short, Respondent has failed utterly to show that it failed to refer Axley because he was not a competent employee.

Finally, it is uncontested that Respondent failed to provide Axley with requested information concerning the collective-bargaining agreement and individuals who had been referred by Respondent. The latter request, which was the subject of the complaint allegation, asked for a list of names, addresses, and telephone numbers of employees on the referral list and their dates of layoff. Respondent gave no adequate reason for either refusal. Respondent claimed only limited copies of the contract were available and that those were for union members.⁷

⁷ Significantly, art. III of the collective-bargaining agreement provides for an impartial umpire to consider allegations of discriminatory oper-

Continued

It failed to provide information about the referral list. In the circumstances of this case, Respondent was required to provide Axley with such information in aid of his efforts to determine whether Respondent was operating its contractually established hiring hall in a proper manner. Axley had used the referral system in the past and was a member of the bargaining unit. He was not referred despite his frequent attempts to seek employment. Thus, the information requested was reasonably related to the question of whether Axley was being properly treated in the matter of referrals either under the applicable collective-bargaining agreement or under the Labor Act's requirements that such referrals do not discriminate in favor of union members. Respondent's failure to provide such information in the circumstances of this case was a violation of Respondent's duty to fairly represent all employees who are subject to its referral procedures and to its collective-bargaining agreement. See *Local No. 324, International Union of Operating Engineers, AFL-CIO (Michigan Chapter, Associated General Contractors of America, Inc.)*, 226 NLRB 589 (1976) (see also discussion at 595-599).

CONCLUSIONS OF LAW

1. By operating its exclusive hiring hall in a manner which discriminated against nonmembers, Respondent violated Section 8(b)(1)(A) of the Act.

2. By failing to refer Timothy Louis Axley for employment during July 1979 and after August 20, 1979, because he was not a member of Respondent, Respondent violated Section 8(b)(1)(A) of the Act.

3. By refusing to supply Timothy Louis Axley with names, addresses and telephone numbers of employees on Respondent's referral list and their dates of layoff, Respondent violated Section 8(b)(1)(A) of the Act.

4. The above violations are unfair labor practices which affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

I shall recommend that Respondent cease and desist from the unfair labor practices found in this case and take certain affirmative action which is necessary to effectuate the purposes of the Act. A significant factor in the implementation of Respondent's unlawful conduct was its failure to make its referral or out-of-work register available for signature by nonmember job referral applicants. In addition, Respondent refused to provide information in the register on other employees to Axley in order for him to determine whether he was being discriminated against or whether Respondent was living up to its obligations in operating its exclusive hiring hall. Accordingly, I shall order Respondent to inform applicants of the availability of its register and information therein where it reasonably relates to the failure to refer them.

ation of the hiring hall. The contract also provides that a copy of the hiring procedures be posted at the Union's office and at each jobsite. Because Axley was never given a copy of the contract, he was obviously unaware of the manner in which he could contest the failure to refer him.

Since work was available for Axley through Respondent's hiring hall and since he was not referred because of Respondent's unlawful conduct, Respondent will be responsible for paying Axley what he would have earned had he been referred in a nondiscriminatory fashion by Respondent in July 1979 and after August 20, 1979, less net earnings during that period with interest thereon to be computed in accordance with *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).⁸

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

ORDER⁹

The Respondent, Lower Ohio Valley District Council of Carpenters, Millwrights Local Union No. 1080, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Operating its exclusive hiring hall system in a manner which discriminates against applicants for job referrals because they are not members of Respondent.

(b) Arbitrarily refusing to provide applicants for job referral under Respondent's exclusive hiring system, upon request, information concerning the names, addresses, telephone numbers, and dates of layoff of employees on Respondent's referral register where such information is reasonably related to the failure to refer a particular applicant.

(c) Refusing and failing to refer Timothy Louis Axley or any other qualified person for employment through its exclusive hiring system because that person is not a member of Respondent.

(d) Failing to inform job referral applicants that Respondent maintains an out-of-work or referral register which is available for signature and use to all qualified applicants regardless of membership in Respondent.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them under Section 7 of the Act.

2. Take the following affirmative action which will effectuate the policies of the Act:

(a) Make whole Timothy Louis Axley for any loss of pay he may have suffered by virtue of the discrimination practiced against him as set forth in the Remedy section of this Decision.

(b) Maintain permanent written records of its hiring and referral operations which will be adequate to disclose fully the basis on which referrals are made and, upon request, of the Regional Director for Region 25 or his agents, make available, at reasonable times, any records relating in any way to the hiring and referral

⁸ See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

⁹ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

system. Such records shall also be made available, on request, to job referral applicants where such information is reasonably related to the failure to refer a particular job referral applicant.

(c) Inform all job referral applicants who are not members of Respondent that Respondent maintains an out-of-work or referral register which is available on a nondiscriminatory basis to qualified job applicants whether or not they are members of Respondent.¹⁰

(d) Post at its principal office and its hiring hall copies of the attached notice marked "Appendix."¹¹ Copies of

¹⁰ The collective-bargaining agreement provides that a copy of the hiring procedures be posted at the Union's office.

¹¹ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursu-

said notice, on forms provided by the Regional Director for Region 25, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members and other applicants for referral are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 25, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

ant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."