

International Association of Heat and Frost Insulators and Asbestos Workers, Local No. 80, AFL-CIO (West Virginia Master Insulators Association) and Rick Endicott. Case 9-CB-5349

8 June 1984

DECISION AND ORDER

**BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER**

On 26 September 1983 Administrative Law Judge William F. Jacobs issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed a reply brief to the Respondent's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified.¹

Amended Conclusions of Law

We adopt the judge's conclusions of law, with the following modification:

Substitute the following for Conclusion of Law 3.

"3. By discriminatorily selecting from the preapprenticeship classification, for inclusion in a new classification of improver (apprentice), individuals who were close family members, and giving those individuals priority in referral over other preapprentices 27 September 1982 and thereafter solely and exclusively because they were family relations of members, the Union violated Section 8(b)(1)(A) and (2) of the Act."

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, International Association of Heat and Frost Insulators and Asbestos Workers, Local No. 80, AFL-CIO, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(a).

¹ Contrary to the findings of the judge, we do not find that the Respondent violated Sec. 8(b)(1)(A) and (2) by job referrals it made to members prior to 27 September 1982. Those referrals are not alleged to be violations in the complaint, the complaint was not subsequently amended to encompass such allegations, and the General Counsel specifically disclaimed the occurrence of any violation in referral before that date. In these circumstances, we find these matters were not fully litigated.

"(a) Discriminatorily selecting from the preapprenticeship classification, for inclusion in the classification of improver (apprentice), individuals who are close family relations of members, and giving said individuals priority in referral over other referral applicants 27 September 1982 and thereafter solely and exclusively because they are family relations of members."

2. Substitute the following for paragraph 2(c).

"(c) Make whole all referral applicants for any loss of earnings suffered as a result of the discrimination against them 27 September 1982 and thereafter by payment to them of sums of money equal to that which they normally would have earned as wages from the date of the discrimination against them, as limited by Section 10(b) of the Act, until such time as the Respondent Union properly refers them to employment in a nondiscriminatory manner pursuant to the lawful operation of a referral system based on objective criteria or standards, less net earnings during such period, backpay and interest thereon to be computed in the manner set forth in the section hereof entitled 'The Remedy.'"

3. Substitute the attached notice for that of the administrative law judge.

APPENDIX

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

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT select from the preapprentice classification, for inclusion in the classification of improver (apprentice), individuals who are close family relations of members, and give said individuals priority in referral over other referral applicants solely and exclusively because they are family relations of members.

WE WILL NOT in any other manner attempt to perpetuate the practice of basing priority of referral on family relationship.

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

WE WILL maintain and operate our exclusive job referral system in a nondiscriminatory manner based on objective criteria or standards without regard to family relationship.

WE WILL initiate and maintain a comprehensive recordkeeping system which will reflect all avail-

able job opportunities and referrals which will fully disclose the basis on which each referral is made, and make such records available to job applicants to enable them to determine for themselves that their referral rights are protected and that referrals are made in a fair and impartial manner.

WE WILL make whole all referral applicants for any loss of earnings suffered as a result of our discrimination against them, commencing 27 September 1982, with interest.

INTERNATIONAL ASSOCIATION OF
HEAT AND FROST INSULATORS AND
ASBESTOS WORKERS, LOCAL NO. 80,
AFL-CIO

DECISION

STATEMENT OF THE CASE

WILLIAM F. JACOBS, Administrative Law Judge. This case was tried before me on April 13 and 14, 1983, at Huntington, West Virginia. The charge was filed on August 23, 1982,¹ and amended on September 3 by Rich E. Endicott, an individual. Complaint issued December 21 alleging that International Association of Heat & Frost Insulators and Asbestos Workers, Local 80, AFL-CIO, hereinafter called the Union, inducted 13 new apprentice members,² who had not been accepted by the Joint Apprenticeship Committee, without publicizing its intention to consider new apprentice applicants; that the 13 new apprentices were chosen on the basis of their status as brothers, brothers-in-law, sons, or sons-in-law of Respondent's members; and that subsequently these new apprentices were referred to jobs on the basis of their new status before other job applicants were referred, thus resulting in certain named employers discriminating against the remaining job applicants, all in violation of Section 8(b)(1)(A) and (2). In its answer the Union denied the commission of any unfair labor practices.

Representatives of all parties were present and were given full opportunity to participate in the hearing. Briefs were subsequently filed by the parties. Based on the entire record including my observation of the demeanor of the witnesses and after due consideration of the briefs submitted, I make the following

FINDINGS OF FACT

The Union admits jurisdiction and its status as a labor organization. I so find.

The Unfair Labor Practices

The Union and the West Virginia Master Insulators Association, herein called the Association, have been parties to a series of collective-bargaining agreements

¹ All dates are in 1982 unless otherwise indicated.

² Hereinafter referred to as the favored 13, namely: Dennis Ball, Gary Burgess, Mark Burgess, David Dillon, James Dingess, Gregory Goodrich, Jack Hoffsted, Terrence Hopkins, James Hudson, Jimmy Mackey, James McLain, Daniel Surbaugh, and Danny Walker.

over a period of many years, the most recent relevant agreement covering the period June 1, 1980, through May 31, 1983. Article 16 of said agreement provides that "the Union shall be the sole and exclusive source of referrals of applicants for employment." The same article provides further:

5. The Union shall maintain a register of applicants for employment established on the basis of the groups listed below. Each applicant for employment shall be registered in the highest priority group for which he qualifies.

GROUP I shall include any employee who has been employed four (4) full years or more as an Asbestos Worker in the Building and Construction Industry within the area defined in Article III of this Agreement, as either a Mechanic or an apprentice, and who has passed a Mechanic examination given by a duly constituted Local Union of the Asbestos Workers International or a Trade Board to which a Local Union of the Asbestos Workers International is a party. The examination shall be waived for anyone employed as a Mechanic and otherwise qualified to be in Group I on the effective date of this Agreement. (Group I applicants shall have bumping privileges over Group II employees who are working for a signatory Employer.)

GROUP II shall include any employee who has been employed for a period of 2000 hours during the previous one (1) year as an Asbestos Worker in the Building and Construction Industry within the area described in Article III of the Agreement, and who has at least four (4) years experience as an Asbestos Worker in the Building and Construction Industry.

GROUP III all applicants for employment who have six (6) months' experience in the trade, as defined in Article III, are residents of the geographical area constituting the normal construction labor market and who have been employed for at least six (6) months in the last three years in the trade under a collective bargaining agreement between the parties to this Agreement. (Group III applicants shall have bumping privileges over Group IV employees who are working for a signatory Employer.)

Apprentice applicants must be high school graduates, of good moral character, who are physically fit, and successfully pass an aptitude and intelligence examination.

GROUP IV all other applicants for employment.

Despite the language of the contract quoted above, referrals, in practice, were made in a somewhat different order from described. Thus, after individuals in Group I and II were referred, individuals in Group III were referred next and this group consisted, historically, of apprentices³ who had been accepted by the Joint Appren-

³ Apprentices, according to the "Asbestos-Workers apprenticeship standards," do not have to meet the requirements outlined in the definition of Group III referrals insofar as experience in the trade is concerned.

ticeship Committee pursuant to the requirements of article V of the labor agreement. Following the referral of apprentices, those individuals in Group IV, pre-apprentices, were referred. This system of referral has been in effect for several years and was mutually agreed on with the establishment of the Joint Apprenticeship Committee which consists of an equal number of representatives from labor and management.

Since the establishment of the Joint Apprenticeship Committee (JAC) in 1970, it has evaluated apprentice applicants in accordance with preestablished criteria and selected those for the apprenticeship program based on standards formulated by the Association and the Union in cooperation with the U.S. Department of Labor Bureau of Apprenticeship and Training. Prior to the events described *infra*, since its inception, only the JAC selected apprentices and only those JAC selected apprentices were afforded Group III priority.

The JAC, in January, interviewed, evaluated, and selected a new group of applicants for the apprenticeship program and notified the Union of its choices the following February 18. There were 30 names on the list. In March the Union held an executive board meeting and a general membership meeting at which the JAC's list of successful apprenticeship applicants was discussed. Dissatisfaction was voiced at both meetings at the failure of the JAC to choose a sufficient number of relatives of the membership for the apprenticeship program, particularly by Joel Ross, the Union's business manager, who told Rick Endicott, the Charging Party herein, that he was "mad as hell" about how the JAC had run things. At the March 13 regular meeting of the union membership, the Union's vice president reported that the Federal Bureau of Apprenticeship and Training had approved the selection of the new apprentices and suggested that the new class be accepted by the body. He stated further, however, that several problems had arisen concerning the new selection, and that as a result, a question had been asked about forming a new classification of improvers.⁴ Later during the meeting, Ross also commented on the selection of the new apprentices and stated that he felt that the time had come to consider no longer having a joint apprenticeship program and replacing it with an apprenticeship program operated solely by the Union. He stated that he felt that this was necessary due, in part, to the most recent selection of apprentices by the JAC. He then made the following motion which was seconded and carried:

Effective March 15, 1982 Local 80 will establish an IMPROVERS CLASSIFICATION for referral purposes. IMPROVERS will be referred on a priority basis after Mechanics and Apprentices. To qualify for the IMPROVER CLASSIFICATION an employee must have performed work for a signatory contractor for at least 1,900 hours during the last thirty (30) month period.

⁴ Though the contract did not contain such a classification at the time, there had been such a classification in use some years before.

Between March 15 and April 2, pursuant to the motion, a sheet entitled "Improver Classification"⁵ was circulated for signature. During this period of time the document was signed by 8 individuals, 7 of whom are among the favored 13. During the same period, the favored 13 all filed application forms for membership in the Union as improvers.

According to Ross' testimony the applications for membership filed by the favored 13 had not been solicited nor had the fact been publicized that the Union had any intention of considering new applications for membership. The favored 13 had all been classified as pre-apprentices prior to their filing for membership as improver members and Ross admitted during his testimony that their qualifications were no better than other pre-apprentices. Thus, the 13 individuals later accepted into membership in the Union, in the new improver classification, were in no way different from other pre-apprentices prior to their reclassification as improvers, except insofar as they were closely related to members.

On April 3 the 13 applicants, all sons, sons-in-law, or stepsons of members, were voted into membership as improvers.⁶ This included the seven who had signed the improver classification referral sheet plus six others.

Following the signing of the improvers classification referral sheet by the first eight individuals, a 10-day period elapsed before additional signatures were placed on the document. Then between April 12 and May 17, 10 more individuals signed it. None of these were among the favored 13 and in fact the remaining 6 sons of members, by this time improver members of the Union, never did bother to sign the improver classification referral sheet.

Similarly, during this same approximate period most of those individuals who signed the improver classification referral sheet between April 12 and May 17 also filed applications for improver membership in the Union. No action, however, was ever taken on their applications despite the fact that eight out of the nine applicants met the 1900-hour requirement.

Meanwhile on March 16, at a meeting of the Association, Ross told the employer representatives that the Union was in favor of eliminating the JAC and instituting a union-run apprenticeship program. As noted above, however, steps had already been taken to implement the move.

Back in January when the JAC held its examination for applicants for apprenticeship, those who took the examination were all in the Group IV pre-apprentice classification. When 30 of the applicants were chosen as apprentices these, in accordance with historic precedent, were placed in Group III while those applicants who were unsuccessful remained as Group IV pre-appren-

⁵ This document has been mistakenly regarded by the General Counsel as an actual referral sheet. Apparently relying on this document and the testimony of Ross, which I reject, the General Counsel concluded that simply because certain individuals who signed this sheet were subsequently referred to jobs, they were referred to those jobs as improvers. Analyses of the actual referral cards, discussed *infra*, indicates that only the favored 13 sons of members received referrals as improvers while the others were referred as pre-apprentices—helpers and material handlers.

⁶ The right of the Union to receive new members is not in issue.

tices. In his letter of February 18, John Martin, secretary of the JAC, advised Ross that the attached list of 30 apprentices was to be referred for employment in the order of the numbered listing.⁷ He added:

Those applicants who were not selected for the Apprenticeship Program will comprise the new pre-apprentice referral list. This list will be maintained in the Office of the Secretary of the Joint Apprenticeship Committee. If and when you have need to refer pre-apprentices for employment please contact the Secretary and the information will be available for your disposal.

Though Martin thus offered to supply the Union with the names of pre-apprentices as needed, the Union rejected this offer and instead requested that the JAC supply it with the full list of pre-apprentices. It also took the action described above, namely, the creation of the new improver classification and the filling of that classification, as of April 3, with the 13 close relatives of members.

On April 22 Ross wrote a letter to several contractors listing the names of the 13 sons of members and requesting the contractors to make vacation deductions from their pay in accordance with these employees' prior authorizations, thus drawing attention to their new status as members to be given priority over temporary pre-apprentice employees. On April 27 Ross sent the following letter to the Association and to all contractor members thereof:

Gentlemen:

During the last few weeks there has been a great deal of speculation and rumors circulating concerning some new members of Local 80. I hope that by means of this communique we will be able to dispel any and all myths as to these rumors.

First, let me give a little background on these new members. They are employees who are employed by the Association Members and have been used as a supplemental work force by employers throughout the Local's jurisdiction. All of these employees have the qualification required by the Joint Apprenticeship Committee. They are part of a training program established by the local Union to provide skilled employees for the industry.

As you are aware the primary function of any labor organization is to supply competent and skilled employees to the employers and clientele they service. One way of doing this is through training programs. The Union will see that these new members are trained in all phases of the insulation industry available, including any and all new methods.

Since these new members are not a part of the present program they will not be afforded any more favorable treatment than the indentured apprentice presently recognized by the employers. Furthermore, it is not the intent of the Local for these new

members to have priority over the indentured apprentice.

Since the employers have been employing these employees now for some time, I would assume you would have no objection to continue using them now that they have become members and are undertaking a training program to prepare them for the future along with their fellow members who are in the Joint Apprenticeship Program. By using these young people we will not only be adding to the available work force qualified personnel but also be able to compete economically with any force in the insulation business. They should also help in securing future maintenance contracts for our employers, since this provides us with approximately 80 apprentices. As has been previously stated our goal is to have these members working at the trade and eventually we will all be able to see worthwhile results of this venture.

I would like to set down with the Association members and further discuss this in detail and outline our objectives for these new members at your earliest convenience.

Your prompt response to this matter will be greatly appreciated.

Sincerely,
/s/ Joel Ross
Business Manager

Thus, in short, Ross herein advises all contractors that the new members, the 13 favored sons of members, are to be regarded as apprentices, on an equal par with the apprentices selected through the JAC the previous January. It should be noted that the letter nowhere mentions the term "improver," nor does it allude to the new classification. Clearly, the request for special treatment was meant to be limited to just the 13 relatives of members and not to just any pre-apprentices who might consider themselves eligible for acceptance into the new improver classification.

The record contains no documentation or other evidence covering referrals that may have been made in April or May. It does, however, contain referral sign-in sheets for June and months following. Ross described these sheets⁸ as a "list of those that's been referred out." These referral sheets have three columns. The first column is a list of mechanics. The second column is entitled "Apprentice"⁹ and lists apprentices including many selected in January by the JAC but none¹⁰ of the individuals who signed the improver classification referral sheets¹¹ discussed herein. The third column entitled "Improver" lists the names of 11 individuals—all new improver members,¹² but none of the individuals who

⁸ G.C. Exh. 11.

⁹ So entitled on four of five pages; it is entitled "Apprentice and Imp." on the first page.

¹⁰ Many names are illegible.

¹¹ G.C. Exh. 8.

¹² The two new improver members not on the list, David Dillon and Dennis Ball, were working already. See G.C. Exh. 8.

⁷ In order of their scores.

signed the improver classification sheets who were not of the favored 13. The dates and names of the improvers were placed on this mechanic-apprentice-improver list from June 4 through July 26. Thus, the names of the favored 13 were maintained by the Union on the same list as journeyman mechanics and JAC selected apprentices. This list indicates that after all of the JAC apprentices had been referred to jobs, the last one on August 13, Mark Burgess, Danny Walker, and James McLain were referred to jobs on August 16 and Greg Goodrich was referred out on August 26 and October 29. Referral cards for these referrals were not placed in evidence. The names of no pre-apprentices appear on this mechanics-apprentice-improver list.

There is in the record also a pre-apprentice referral sign-in list with referrals dating between August 27 and February 1983. This list contains the names of pre-apprentices but includes several individuals whose names appear on the improver classification referral sheets but who are not among the favored 13. A comparison of referral lists clearly indicates that of those who applied for membership as improvers and who may or may not have signed the improvers classification referral list, only the favored 13 were placed on the special mechanics-apprentices-improvers referral list whereas those individuals who were not accepted as members were placed on the pre-apprentice referral list even though they had applied for improver membership and had signed the improver classification referral list.

Inspection of referral cards¹³ placed in the record by the General Counsel reveals that the favored 13 were all referred out to jobs with their union membership registration numbers indicated in the blank reserved for that purpose and all classified on their referral cards as apprentices.¹⁴ On the other hand, the referral cards¹⁵ issued to those individuals who signed the improver list and who applied for improver membership but who were not accepted indicate that those people were not issued registration numbers and were classified as temporary employees (helpers or material handlers) rather than apprentices. Each of their referral cards bore the notation that they were to receive \$11.01 per hour, 30 cents per hour below the apprenticeship wage.

Thus, it is apparent that the only improvers being sent out on referral in that category were the sons, sons-in-law, and stepsons who made up the category of accepted improver members. All others were sent out as pre-apprentices. From the history of the case, the testimony, the correspondence, and the documentation, it is clear that after the JAC, in January, failed to select a sufficient number of the members' relatives for the apprenticeship program, the Union created a new classification of individuals, comparable to apprentices, made up of close relatives of members, more particularly of sons of members and placed this group of 13 pre-apprentices, called im-

provers, above their fellow pre-apprentices in the referral priority to the detriment of the latter group's right to equal treatment.

After segregating the names of the 13 relatives and placing them in the special classification of improver, Ross, on June 10, wrote a letter to the JAC requesting it to send its list of pre-apprentices.¹⁶ Martin did not immediately send the requested list but rather, on August 20, sent letters to the individuals on his pre-apprentice list, inquiring as to whether they wished to continue to be considered as pre-apprentices. As a result of Martin's inquiry a revised pre-apprenticeship list was sent by him to the Union, the first part on September 14 and the rest on October 5. The revised pre-apprentice list no longer included the names of the 13 new improver members because they were considered apprentices by the Union and had been placed beginning June 4 on the mechanics-apprentice-improver referral list. The revised pre-apprentice list sent by Martin did, however, include the names of 8 of the 11 pre-apprentices who had signed the improver classification referral list but who had not been accepted as improver members.

With the receipt of the revised pre-apprentice list, referrals continued to be made on the same basis as they had been since the favored 13 had been admitted into membership.¹⁷ The new improver members, i.e., the 13 sons of members, continued to receive priority treatment over pre-apprentices. The pre-apprentice classification included, as before, those individuals who unsuccessfully had applied for improver membership whether or not they had signed the improver classification referral list. According to Ross, since the favored 13 were admitted to membership and issued membership cards indicating that they were apprentices, none of them had been out of work. The same cannot be said of the pre-apprentices who were not granted such favored treatment.

Analysis and Conclusions

I have found that the Union created an entirely new classification called "Improver" and selected only the sons, sons-in-law, and stepsons, 13 in number, to fill this new classification. I have also found that the Union subsequently gave the favored individuals selected for inclusion in the new classification priority in referral over all other pre-apprentices. I find the establishment of this new classification for the benefit of relatives of members and the priority in referral awarded to them to be arbitrary, invidious, and irrelevant to legitimate union interests. *Miranda Fuel Co.*, 140 NLRB 181 (1962).¹⁸ By giving priority in referral to some applicants because of their special relationship to union members and denying access to others because they do not have such a relationship, the Union is classifying applicants on an arbi-

¹³ G.C. Exhs. 12a-q.

Only a few of the referral cards were placed in evidence. Referral cards for referrals made prior to September were for the most part not offered into evidence.

¹⁴ One of Terrence Hopkins' referral cards was not checked as to classification. Gary Burgess' card mistakenly classified him as a journeyman.

¹⁵ G.C. Exh. 19.

¹⁶ The record indicates that Ross made several oral requests before sending the June 10 letter.

¹⁷ All apprentices had been referred out by August 13 and certain improvers on the mechanic-apprentice-improver list (G.C. Exh. 11) had been sent out on August 16. Finally, after the lists of available mechanics, apprentices, and improvers had been exhausted, the first pre-apprentice on the new list was referred out on August 27.

¹⁸ *Enf. denied* 326 F.2d 172 (2d Cir. 1963).

trary basis.¹⁹ Respondent has the duty to refrain from such conduct where it adversely affects the employment status of applicants for employment whom they are expected fairly to represent. I find that the Union, under the circumstances of this case, has violated Section 8(b)(1)(A) and (2) of the Act.

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 Union is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

3. By discriminatorily selecting from the pre-apprenticeship classification, for inclusion in a new classification of improver (apprentice), individuals who were close family relations of members, and thereafter giving those individuals priority in referral over all other pre-apprentices solely and exclusively because they were family relations of members, the Union violated Section 8(b)(1)(A) and (2) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Union gave priority to applicants for referral on the basis of family relationship, and having further found that the establishment of such an arbitrary classification is in violation of Section 8(b)(1)(A) and (2), I shall recommend that the Union be ordered to cease and desist from such activity.

Having found that the Union discriminatorily selected from the pre-apprenticeship classification, for inclusion in a new classification of improver (apprentice), individuals who were close family relations of members, and thereafter gave said individuals priority in referral over all other pre-apprentices solely and exclusively because they were family relations of members in violation of Section 8(b)(1)(A) and (2), I shall recommend that it make all referral applicants who were adversely affected whole for any loss of earnings suffered as a result of the discrimination against them by payment to them of sums of money equal to that which they normally would have earned as wages from the date of the discrimination against them, as limited by Section 10(b) of the Act, until such time as Respondent Union ceases to give improver priority to the referral of the 13 relatives of members named in the complaint and herein, and reestablishes a nondiscriminatory system of referral based on objective criteria or standards, less net earnings during such period, backpay and interest thereon to be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and *Florida Steel Corp.*, 231 NLRB 651 (1977).²⁰

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²¹

ORDER

The Respondent, International Association of Heat & Frost Insulators & Asbestos Workers, Local No. 80, AFL-CIO, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Discriminatorily selecting from the pre-apprenticeship classification, for inclusion in the classification of improver (apprentice) individuals who are close family relations of members, and giving said individuals priority in referral over other referral applicants solely and exclusively because they are family relations of members.

(b) In any other manner attempting to perpetuate the practice of basing priority of referral on family relationship.

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

(a) Maintain and operate its exclusive job referral system in a nondiscriminatory manner based on objective criteria or standards without regard to family relationships.

(b) Initiate and maintain a comprehensive recordkeeping system which will reflect all available job opportunities and referrals which will fully disclose the basis on which each referral is made, and make such records available to job applicants to enable them to determine for themselves that their referral rights are protected and that referrals are made in a fair and impartial manner.

(c) Make whole all referral applicants for any loss of earnings suffered as a result of the discrimination against them by payment to them of sums of money equal to that which they normally would have earned as wages from the date of the discrimination against them, as limited by Section 10(b) of the Act, until such time as Respondent Union properly refers them to employment in a nondiscriminatory manner pursuant to the lawful operation of a referral system based on objective criteria or standards, less net earnings during such period, backpay and interest thereon to be computed in the manner set forth in the section hereof entitled "The Remedy."

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all hiring hall records, dispatch lists, referral cards, and other documents necessary to analyze and compute the amounts of backpay due under the terms of this Order.

(e) Post in its main office and hiring hall in Huntington, West Virginia, copies of the attached notice marked "Appendix."²² Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent Union's authorized representa-

²¹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

²² If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

¹⁹ *Longshoremen ILWU Local 13 (Pacific Maritime Assn.)*, 183 NLRB 221 (1970), 549 F.2d 1346; 210 NLRB 952 (1974); 192 NLRB 260 (1971).

²⁰ See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).

tive, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to members or applicants for referral are customarily posted. Reasonable steps shall be taken by the Respond-

ent to ensure that the notices are not altered, defaced, or covered by any other material.

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