

International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Local 720, AFL–CIO (AVW Audio Visuals, Inc.) and Steven Lucas.
Case 28–CB–4351

June 2, 2004

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS SCHAUMBER, WALSH, AND MEISBURG

On September 12, 2000, the National Labor Relations Board issued its Decision and Order in the above-captioned case.¹ Subsequently, Charging Party Steven Lucas filed a petition for review with the United States Court of Appeals for the Ninth Circuit. On April 16, 2003, the court issued its decision.² The court reversed the Board’s decision and remanded the case so that the Board may enter an appropriate remedial order in favor of Lucas.

Lucas had been expelled from the Respondent Union’s exclusive hiring hall system based on a charge of 15 years of misconduct. The Board found that the Union had neither breached its duty of fair representation nor engaged in an unfair labor practice encouraging union membership when, 10 months after Lucas’ expulsion, it refused to readmit Lucas to its hiring hall and refer him to a job with AVW Audio Visuals, Inc., an employer who had requested Lucas by name. The Board dismissed the complaint alleging violations of Section 8(b)(1)(A) and (2) of the Act.

The court reversed the Board’s dismissal of the complaint. The court concluded that the Board had applied an incorrect legal standard in dismissing to the extent it relied on the more deferential “wide range of reasonableness” standard articulated in *Air Line Pilots Assn. v. O’Neill*, 499 U.S. 65, 81 (1991), in assessing whether the union had breached its duty of fair representation in this case. *Id.* at 935. In this respect, the court held that a heightened duty of fair dealing applies to the union’s operations of an exclusive hiring hall (citing *Jacoby v. NLRB*, 233 F.3d 611 (D.C. Cir. 2000), and *Plumbers Local 32 v. NLRB*, 50 F.3d 29 (D.C. Cir. 1995)). *Id.* The court, however, found it unnecessary to remand this case to the Board for the purpose of “reconsider[ing] its decision under the correct legal standard.” *Id.*

The court concluded that the Union’s liability for an unfair labor practice turned on whether the Union’s refusal to refer Lucas from the hiring hall was necessary to the effective functioning of the hall. The court held that substantial evidence did not support the Board’s deter-

mination that “the Union’s refusal to readmit Lucas to its exclusive hiring hall was necessary to promote the efficiency and integrity of its hiring hall operations.” *Id.* Consequently, the court found that the Union’s refusal to readmit Lucas to its exclusive hiring hall violated Section 8(b)(1)(A) and (2) of the Act. The court remanded for entry of a Board Order in favor of Lucas.

On September 30, 2003, the Board advised the parties that it had accepted the court’s remand and would take appropriate action consistent with the court’s remand.

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

The Board has considered the Ninth Circuit’s remand, and has decided to accept the court’s decision as the law of the case and to issue the appropriate remedial order against the Union for the violations found. We adopt as our remedy and Order the recommended remedy and Order of the administrative law judge in this proceeding, as modified.³

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below and orders that the Respondent, International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Local 720, AFL–CIO, Las Vegas, Nevada, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Failing and refusing to register for referral Steven Lucas in accordance with its exclusive hiring hall agreement with AVW Audio Visuals, Inc., or any other employer with whom it has an exclusive hiring hall agreement.

(b) In any like or related manner breaching its duty of fair representation for all its members and other persons entitled to use its hiring hall.

³ See 332 NLRB at 9–10. We shall modify the judge’s recommended Order in accordance with our decisions in *Indian Hills Care Center*, 321 NLRB 144 (1996), and *Ferguson Electric Co.*, 335 NLRB 142 (2001). We shall substitute a new notice in accordance with our decision in *Ishikawa Gasket American, Inc.*, 337 NLRB 175 (2001), *enfd.* 354 F.3d 534 (6th Cir. 2004).

As the judge did (see 332 NLRB at 10), we shall leave to compliance for determination the nature and extent of Lucas’ employment opportunities at AVW Audio Visuals, Inc., after March 22, 1995, when the Respondent failed to refer Lucas. We also shall leave to compliance consideration of Lucas’ request that the Union reimburse him for the \$500 that he expended for psychological testing. See 333 F.3d at 937.

¹ 332 NLRB 1 (2000).

² *Lucas v. NLRB*, 333 F.3d 927 (9th Cir. 2003).

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

(a) Maintain and operate its hiring hall and job referral system in a nondiscriminatory manner, referring Steven Lucas for employment as appropriate for those jobs he is qualified to perform.

(b) Make Steven Lucas whole for any loss of earnings and other benefits he may have suffered as a result of the Respondent's failure and refusal to refer him from its exclusive hiring hall, with interest as set forth in the remedy section of the judge's decision.

(c) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days from the date of this Order, reinstate any of Lucas' cards listing those jobs for which he is qualified to be referred which were pulled by the Respondent or its agents from the Respondent's hiring hall register.

(e) Within 14 days from the date of this Order, remove from its files and records any reference to the unlawful failure and refusal to refer Steven Lucas from its hiring hall and, within 3 days thereafter, notify him in writing that it has done so and that it will not use the nonreferral against him in any way.

(f) Within 14 days after service by the Region, post at its business office and meeting places copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

⁴ 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."

(g) Within 14 days after service by the Region, sign and return to the Regional Director sufficient copies of the notice for posting by AVW Audio Visuals, Inc., if willing, at places where notices to employees are customarily posted.

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
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 Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist any union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to register for referral Steven Lucas in accordance with our exclusive hiring hall agreement with AVW Audio Visuals, Inc., or any other employer with whom we have an exclusive hiring hall agreement.

WE WILL NOT in any like or related manner breach our duty of fair representation for all our members and other persons entitled to use our hiring hall.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL maintain and operate our hiring hall and job referral system in a nondiscriminatory manner, referring Steven Lucas for employment as appropriate for those jobs he is qualified to perform.

WE WILL make Steven Lucas whole for any loss of earnings and other benefits he may have suffered as a result of our failure and refusal to refer him from our exclusive hiring hall, with interest.

WE WILL, within 14 days from the date of the Board's Order, reinstate any of Steven Lucas' cards listing those jobs for which he is qualified to be referred which were pulled by us or our agents from our hiring hall register.

WE WILL, within 14 days from the date of the Board's Order, remove from our files and records any reference to the unlawful failure and refusal to refer Steven Lucas from our hiring hall and, within 3 days thereafter, notify

him in writing that we have done so and that we will not use the nonreferral against him in any way.

INTERNATIONAL ALLIANCE OF THEATRICAL
STAGE EMPLOYEES AND MOVING PICTURE
MACHINE OPERATORS OF THE UNITED STATES
AND CANADA, LOCAL 720, AFL-CIO