

**United States Government  
National Labor Relations Board  
OFFICE OF THE GENERAL COUNSEL**

## Advice Memorandum

DATE: March 27, 2003

TO : Ronald K. Hooks, Regional Director  
Ruth Small, Regional Attorney  
Thomas H. Smith, Jr., Assistant to Regional Director  
Region 26

FROM : Barry J. Kearney, Associate General Counsel  
Division of Advice

SUBJECT: International Brotherhood of Electrical Workers,  
Local 474 (Cleveland Electric)  
Case 26-CB-4251

This case was submitted for advice as to whether the Union violated the Act by referring employees from its hiring hall in a manner that was inconsistent with the written referral procedures incorporated in the parties' collective bargaining agreement. We conclude that the Union violated Sections 8(b)(1)(a) and 8(b)(2) as alleged, and that a complaint should issue, absent settlement.

The facts are fully set forth in the Region's submission. Briefly, the collective bargaining agreement between the Union and the Memphis Chapter of NECA contains a hiring hall referral procedure that requires that individuals out of work for the longest time be given first referral priority. The contract lists certain exceptions to the rule - e.g., to fill an employer's request for specific skills or to permit an employer to call a foreman by name - and states that those are the "only exceptions" to in-order referrals. The Union made out-of-order referrals of six individuals, to a new signatory employer, which were not permitted by any of the written "exceptions." The Union asserts that its actions were consistent with a long-term unwritten practice regarding referrals to new signatories.<sup>1</sup> The Union further states that it made the out-of-order referrals because it wanted to supply a highly dependable employee core and thereby insure that the new signatory would be sufficiently pleased

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<sup>1</sup> The Charging Party disputes the Union's characterization of this past practice, and asserts that out-of-order referral had only been permitted in the past when local members started their own electrical contractor businesses; even in those cases, the companies, not the Union's call agent, selected up to four employees by name.

with its Union-supplied workforce so as to expand its use of the hiring hall in the future. The Union applied no objective criteria in making these out-of-order referrals, but relied upon subjective determinations as to which employees were the best, most dependable workers.

For the reasons stated in the Region's submission, we agree that the Union violated Sections 8(b)(1)(A) and 8(b)(2). The Union intentionally did not comply with the written referral procedure that was incorporated in the contract and published to hiring hall applicants.<sup>2</sup> Moreover, the Union applied no objective criteria in making the referrals, but relied on its subjective discretion as to the most hardworking and reliable employees.<sup>3</sup> The Union has not demonstrated that these actions were "necessary to the effective performance of its function of representing its constituency."<sup>4</sup>

Morrison-Knudson Company,<sup>5</sup> on which the Union relies, is inapposite. In that case, there were no written hiring hall procedures, there was an established past practice of referring applicants out-of-order based on employers'

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<sup>2</sup> Thus, this was not a situation where the Union inadvertently or negligently failed to comply with its written hiring hall procedures. See Plumbers & Steamfitters Local Union No. 342 (Contra Costa Electric, Inc.), 329 NLRB No. 65, slip. op at 4 (1999) ("[T]he Board in numerous cases has found violations of Section 8(b)(2) and (1)(A) when unions [deliberately] failed to follow established hiring hall procedures or made referrals on the basis of purely subjective criteria, even when the conduct complained of was not based on the discriminatee's membership or nonmembership in the union, and we continue to adhere to those decisions.")

<sup>3</sup> See Polis Wallcovering Co., 262 NLRB 1336, 1338-39 (1982) (business manager made referrals based on his subjective judgments regarding the qualifications of applicants he knew).

<sup>4</sup> See Operating Engineers Local 18 (Ohio Contractors Assn.), 204 NLRB 681 (1973), enf. denied on other grounds 496 F.2d 1308 (6<sup>th</sup> Cir. 1974).

<sup>5</sup> 291 NLRB 250 (1988).

stated needs for specific qualifications, and the referrals challenged were fully consistent with that past practice.

Accordingly, the Region should issue a complaint, absent settlement.

B.J.K.