United Brotherhood of Carpenters, Local 43 and New England Regional Council of Carpenters (McDowell Building & Foundation, Inc.) *and* Kevin Lebovitz. Case 34–CB–3047

December 31, 2009

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBER SCHAUMBER

On July 7, 2009, Administrative Law Judge Wallace H. Nations issued the attached decision. The Respondents, the New England Regional Council of Carpenters and the United Brotherhood of Carpenters, Local 43, jointly filed exceptions, a supporting brief, and a reply brief. The General Counsel filed an answering brief.

The National Labor Relations Board[1] has considered the decision and the record in light of the exceptions and briefs, and has decided to affirm the judge's rulings, findings,[2] and conclusions only to the extent consistent with this Decision and Order.[3]

The Respondents are parties to a collective-bargaining agreement with the Employer, which includes a provision known as the "mobility clause." The mobility clause provides that an employer "shall have the right to employ any carpenter who is a member in good standing of any local affiliate of the New England Regional Council of Carpenters" if the carpenter "has worked a minimum of three (3) weeks for the employer in the previous five (5) months." It is undisputed that Respondent-Local 43 enforces the mobility clause against any individual who is not a member of Local 43. As relevant here, in December 2007, Respondent-Local 43 invoked the mobility clause to request that the Employer terminate employee Kevin Lebovitz, a member of Council Local 24, Local 43's sister local in Connecticut, and also directly asked Lebovitz to leave the Employer's jobsite. The Employer did not terminate Lebovitz. However, Lebovitz left his employment with the Employer after a Respondent-Local 43 official told him to do so.

The judge found that the Respondents' maintenance of the mobility clause violated Section 8(b)(1)(A) of the Act. We agree with the judge's finding, although our decision is based on a narrower ground. Simply put, on its face, the mobility clause encourages membership in a Council local by restricting an employer to hiring only those carpenters who are members in good standing of a Council local. Thus, the Respondents' maintenance of the provision restrains and coerces employees in the exercise of their Section 7 rights. Accordingly, we find that by maintaining an agreement containing such a provision, the Respondents have violated Section 8(b)(1)(A) of the Act. See *Bricklayers Local 1 (Denton's Tuckpointing)*, 308 NLRB 350, 356 (1992); and *Carpenters Local 2396 (Tri-State Ohbayashi)*, supra, 287 NLRB at 764. Moreover, insofar as Respondent-Local 43 invoked the unlawful mobility clause to request that the Employer terminate employee Kevin Lebovitz and to cause him to leave his employment with the Employer, Respondent violated Section 8(b)(2) and 8(b)(1)(A), respectively.[4]

[1] Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act. See *Narricot Industries, L.P. v. NLRB*,___F.3d___, 2009 WL 4016113 (4th Cir. Nov. 20, 2009); *Snell Island SNF LLC v. NLRB*, 568 F.3d 410 (2d Cir. 2009), petition for cert. filed 78 U.S.L.W. 3130 (U.S. Sept. 11, 2009) (No. 09-328); *New Process Steel v. NLRB*, 564 F.3d 840 (7th Cir. 2009), cert. granted ___S.Ct.___, 2009 WL 1468482 (U.S. Nov. 2, 2009); *Northeastern Land Services v. NLRB*, 560 F.3d 36 (1st Cir. 2009), petition for cert. filed 78 U.S.L.W. 3098 (U.S. Aug. 18, 2009)(No. 09-213); *Teamsters Local 523 v. NLRB*, ___F.3d ___, 2009 WL 4912300 (10th Cir. Dec. 22, 2009). But see *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, 564 F.3d 469 (D.C. Cir. 2009), petition for cert. filed 78 U.S.L.W. 3185 (U.S. Sept. 29, 2009) (No. 09-377).

[2] The Respondents have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the judge's findings.

In the absence of exceptions, we adopt the judge's finding that the Respondents' maintenance of the union-security clause in the relevant collective-bargaining agreement violated Sec. 8(b)(1)(A) because the clause requires compliance with the Respondents' constitution and bylaws as a condition of employment.

[3] We modify the judge's recommended Order to reflect the violations found and to conform to the Board's standard remedial language. We also substitute new notices to conform to the Order as modified.

We find without merit the Respondents' argument that they cannot revise the relevant collective-bargaining agreement to remedy the unlawful union-security and mobility clause provisions, as ordered by the judge, and can only be ordered to remove the provisions during negotiations for a successor agreement. As set forth in the Order and consistent with Board remedies, the Respondents are required to cease and desist, in a timely manner, from maintaining these unlawful provisions and to notify affected employers that the provisions will be given no further force or effect. See *Carpenters Local 2396 (Tri-State Ohbayashi)*, 287 NLRB 760, 764 (1987), enfd. 878 F.2d 1439 (9th Cir. 1989).

[4] Chairman Liebman finds it unnecessary to pass on the judge's additional findings that Respondent-Local 43 violated Sec. 8(b)(2) and 8(b)(1)(A), respectively, by invoking the unlawful mobility clause to request that the Employer discharge Lebovitz and cause Lebovitz to

ORDER

The National Labor Relations Board orders that the A. The Respondent, New England Regional Council of Carpenters, Boston, Massachusetts, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Maintaining in its collective-bargaining agreements a union-security clause requiring employees to comply with the Respondent's constitution and bylaws as a condition of employment.

(b) Maintaining in its collective-bargaining agreements a "mobility clause" restricting employers to hiring carpenters who are members in good standing of any local affiliate of the New England Regional Council of Carpenters.

(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 deemed necessary to effectuate the policies of the Act.

(a) Notify all employers bound by the Respondent's 2006-2010 collective-bargaining agreement with Connecticut Construction Industries Association, Inc. and the AGC/CCIA Building Contractors, Labor Division of Connecticut, Inc. (the 2006-2010 Connecticut Contract), by mailing each employer a signed copy of the attached notice marked "Appendix A" that:

> (i) Article V, Section 1 in the 2006–2010 Connecticut Contract, requiring members to comply with the Respondent's constitution and bylaws as a condition of employment, will be given no further force or effect; and
>
> (ii) Article VI, Section 3 in the 2006-2010 Connecticut Contract, the "mobility clause," restricting employers to hiring carpenters who are members in good standing of any local affiliate of the New England Regional Council of Carpenters, will be given no further force or effect.

(b) Within 14 days after service by the Region, post at its union offices located in Boston, Massachusetts, copies of the attached notice marked "Appendix A."[5] Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, 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 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.

(c) Sign and return to the Regional Director for Region 34 sufficient copies of "Appendix A" for posting at the premises and projects of McDowell Building & Foundation, Inc., if it is willing.

(d) 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.

B. The Respondent, United Brotherhood of Carpenters, Local 43, Hartford, Connecticut, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Maintaining in its collective-bargaining agreements a union-security clause requiring employees to comply with the Respondent's constitution and bylaws as a condition of employment.

(b) Maintaining in its collective-bargaining agreements a "mobility clause" restricting employers to hiring carpenters who are members in good standing of any local affiliate of the New England Regional Council of Carpenters.

(c) Invoking the unlawful mobility clause to cause or attempt to cause McDowell Building & Foundation, Inc., or any other employer, to discharge employees, including Kevin Lebovitz.

(d) Invoking the unlawful mobility clause to cause employees, including Kevin Lebovitz, to leave their employment with McDowell Building & Foundation, Inc., or any other employer.

(e) 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 deemed necessary to effectuate the policies of the Act.

(a) Notify all employers bound by the Respondent's 2006-2010 collective-bargaining agreement with Connecticut Construction Industries Association, Inc. and the AGC/CCIA Building Contractors, Labor Division of Connecticut, Inc. (the 2006–2010 Connecticut Contract), by mailing each employer a signed copy of the attached notice marked "Appendix B" that:

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leave his job because of his prior protected activities, as such additional findings would be cumulative and would not materially affect the remedy. Member Schaumber would adopt the judge's findings in this regard, but agrees with Chairman Liebman that doing so is unnecessary here.

[5] 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."

(i) Article V, Section 1 in the 2006-2010 Connecticut Contract, requiring members to comply with the Respondent's constitution and bylaws as a condition of employment, will be given no further force or effect; and

(ii) Article VI, Section 3 in the 2006-2010 Connecticut Contract, the "mobility clause," restricting employers to hiring carpenters who are members in good standing of any local affiliate of the New England Regional Council of Carpenters, will be given no further force or effect.

(b) Make Kevin Lebovitz whole for any loss of earnings or other benefits that he may have suffered as a result of the Respondent's action with regard to his employment with McDowell Building & Foundation, Inc., with interest, in the manner set forth in the remedy section of the judge's decision.

(c) Immediately notify McDowell Building & Foundation, Inc., in writing, that there is no objection to the employment of Kevin Lebovitz.

(d) Within 14 days after service by the Region, post at its union offices and hiring hall located in Hartford, Connecticut or any other such hiring halls or union offices located in other Connecticut locations, copies of the attached notice marked "Appendix B."[6] Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, 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 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.

(e) Sign and return to the Regional Director for Region 34 sufficient copies of "Appendix B" for posting at the premises and projects of McDowell Building & Foundation, Inc., if it is willing.

(f) 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.

Dated, Washington, D.C. December 31, 2009

Wilma B. Liebman, Chairman

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX A

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 Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain on your behalf with your employer

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT maintain in our collective-bargaining agreements a union-security clause requiring employees to comply with our constitution and bylaws as a condition of employment.

WE WILL NOT maintain in our collective-bargaining agreements a "mobility clause" restricting an employer to hiring carpenters who are members in good standing of a local affiliate of the New England Regional Council of Carpenters.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights listed above.

WE WILL notify employers bound by our 2006–2010 collective-bargaining agreement with Connecticut Construction Industries Association, Inc. and the AGC/CCIA Building Contractors, Labor Division of Connecticut, Inc. (the 2006–2010 Connecticut Contract) that article V, section 1 of that contract, requiring members to comply with our constitution and bylaws as a condition of employment, will be given no further force or effect.

WE WILL notify employers bound by the 2006-2010 Connecticut Contract that article VI, section 3 of that contract, the "mobility clause," restricting an employer to hiring carpenters who are members in good standing of a local affiliate of the New England Regional Council of Carpenters, will be given no further force or effect.

[6] 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."

NEW ENGLAND REGIONAL COUNCIL OF CARPENTERS

APPENDIX B

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 Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain on your behalf with your employer

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT maintain in our collective-bargaining agreements a union-security clause requiring employees to comply with our constitution and bylaws as a condition of employment.

WE WILL NOT maintain in our collective-bargaining agreements a "mobility clause" restricting an employer to hiring carpenters who are members in good standing of a local affiliate of the New England Regional Council of Carpenters.

WE WILL NOT invoke the unlawful mobility clause to cause or attempt to cause McDowell Building & Foundation, Inc., or any other employer, to discharge its employees.

WE WILL NOT invoke the unlawful mobility clause to cause employees, including Kevin Lebovitz, to leave their employment with McDowell Building & Foundation, Inc., or any other employer.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights listed above.

WE WILL notify employers bound by our 2006–2010 collective-bargaining agreement with Connecticut Construction Industries Association, Inc. and the AGC/CCIA Building Contractors, Labor Division of Connecticut, Inc. (the 2006–2010 Connecticut Contract) that article V, section 1 of that contract, requiring members to comply with our constitution and bylaws as a condition of employment, will be given no further force or effect.

WE WILL notify employers bound by the 2006-2010 Connecticut Contract that article VI, section 3 of that contract, the "mobility clause," restricting an employer to hiring carpenters who are members in good standing of a local affiliate of the New England Regional Council of Carpenters, will be given no further force or effect.

WE WILL make Kevin Lebovitz whole for any loss of earnings or other benefits that he may have suffered as a result of our actions with regard to his employment with McDowell Building & Foundation, Inc., with interest.

WE WILL immediately notify McDowell Building & Foundation, Inc., in writing, that there is no objection to the employment of Kevin Lebovitz.

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 43

Thomas E. Quiqley, Esq., for the General Counsel.
Christopher N. Souris, Esq., of Boston, Massachusetts, for the Respondent Union.

DECISION

STATEMENT OF THE CASE

WALLACE H. NATIONS, Administrative Law Judge. This case was tried in Hartford, Connecticut, on March 4 and 5, 2009. The charge was filed by Kevin Lebovitz, member of United Brotherhood of Carpenters and Joiners, Local 24, on December 26, 2007, and an amended charge was filed by him on February 20, 2008. A second amended charge was filed by Lebovitz on September 29, 2008. Region 34 issued complaint and notice of hearing in this matter on December 23, 2008. The complaint alleges that the United Brotherhood of Carpenters, Local 43 and New England Regional Council of Carpenters (Respondent, the Union, or Local 43) engaged in conduct in violation of Section 8(b)(1) and (a) and (2) of the National Labor Relations Act (the Act) and attempted to cause the involved Employer, McDowell Building & Foundation, Inc. to discriminate against its employees in violation of Section 8(a)(3) of the Act. The Union filed a timely answer to the complaint wherein, inter alia, it admits the jurisdictional allegations of the complaint.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the Respondent Unions and the General Counsel, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Employer, McDowell Building & Foundation, Inc., a corporation, with an office and place of business in West Hartford, Connecticut, engages in the building and construction industry as a building and foundation contractor. It is admitted and I find the Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Respondent Union Local 43 and the New England Regional Council of Carpenters are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Complaint in this Proceeding Alleges the Following

1. At all material times, the following individuals held the positions with Respondent Local 43 which are set forth opposite their respective names, and have been agents of Respondent Local 43 within the meaning of Section 2(13) of the Act:[1]

Martin Alvarenga	Business Representative
John Haggerty	Job Steward

2. The Connecticut Construction Industries Association, Inc. (CCIA) and the AGC/CCIA Building Contractors Labor Division of Connecticut, Inc. (AGC) have been organizations composed of employers engaged in the construction industry and exist for the purpose, inter alia, of representing its employer members in the negotiating and administering collective-bargaining agreements.

3. On or about August 30, 2006, United Brotherhood of Carpenters and Joiners of America, New England Regional Council of Carpenters, Locals 24, 43, 210 and 1121[2] (collectively referred to as the Union) entered into a collective-bargaining agreement with the CCIA and the AGC (the Association) covering all carpenter employees of members of the Association performing carpentry work in the State of Connecticut (the unit). Such agreement (the Agreement) is effective by its terms from May 1, 2006, to April 30, 2010.

4. (a) On or before August 30, 2006, the Employer granted recognition to the Union as the exclusive collective-bargaining representative of the unit, and since that date the Union has been recognized as such representative without regard to whether the majority of the Union had ever been established under the provisions of Section 9(a) of the Act.

(b) For the period from May 1, 2006, to April 30, 2010, based on Section 9(a) of the Act, the Union has been the limited exclusive collective-bargaining representative of the unit.

5. (a) Since on or about March 29, 2006, Respondent Regional Council and Respondent Local 43 have maintained in article V, Union Security, section 1 of the Agreement, the following security provision, as a condition of employment:

> The Employer agrees that all employees covered by this agreement shall, as a condition of employment, become and remain members of the Union in good standing. No worker shall be refused admittance and the right to maintain membership in the Union provided he/she qualifies and complies with the Constitution and Bylaws of the Union.

(b) Since on or about December 20, 2007, Respondent Regional Council and Respondent Local 43 have maintained in article VI, section 3 of the Agreement, the following provisions, herein called the mobility clause:

> Section 3.
>
> Notwithstanding any language to the contrary in any area collective bargaining agreement for work in Connecticut, Massachusetts and Rhode Island and for work in Maine, New Hampshire and Vermont, the Employer shall have the right to employ any carpenter who is a member in good standing of any local affiliate of the New England Regional Council of Carpenters pursuant to the following conditions:
>
> a. The carpenter employee has worked a minimum of three (3) weeks for the employer in the previous five (5) months.
>
> b. If the Employer fails to notify a local prior to commencing work on a project in that local's geographical jurisdiction, the Employer shall lose the mobility of manpower privileges for that project, and the Employer shall be restricted in its employment of carpenters to those carpenters who normally work in the geographical area of the local union where the project is located.

c. By engaging in the conduct described above in paragraphs 5(a) and (b), Respondent Regional Council and Respondent Local 43 caused the employer to encourage its employees to join the Union.

6. (a) In 2003, Kevin Lebovitz, refused to make payments into the "PAC" fund maintained by Respondent Local 43.[3]

(b) In 2003, Lebovitz filed an unfair labor practice charge in Case 34–CB–2627 against Respondent Local 43.

7. (a) On or about December 20, 2007, Respondent Local 43, by Haggerty, at the Employer's Rocky Hill Connecticut jobsite, told Lebovitz not to come back to the jobsite that day, and threatened to have Lebovitz removed from the Rocky Hill jobsite because he was not a member of Respondent Local 43.

(b) On or about December 24, 2007, Respondent Local 43, by Alvarenga at the Employer's Rocky Hill jobsite, told Lebovitz not to come back to the job after that day, and threatened to have Lebovitz removed from the Rocky Hill jobsite because he was not a member of Respondent Local 43.

8. (a) On or about December 20, 2007, Respondent Local 43, by Haggerty at the Employer's Rocky Hill jobsite, demanded that the Employer terminate Lebovitz from the Rocky Hill jobsite.

(b) On or about December 21 and 22, 2007, Respondent Local 43, by Alvarenga at the Employer's Rocky Hill jobsite, demanded that the Employer terminate Lebovitz from the Rocky Hill jobsite.

9. By the conduct described above in paragraph 8, Respondent Local 43 attempted to cause the Employer to terminate Lebovitz.

10. By the conduct described above in paragraphs 7 and 8, Respondent Local 43 caused the termination of Lebovitz from his position with the Employer at the Rocky Hill jobsite.

11. Respondent Local 43 engaged in the conduct described above in paragraphs 7 through 10 because Lebovitz engaged in the activity described above in paragraph 6, and for reasons other than Lebovitz' failure to tender uniformly required initiation fees and periodic dues.

[1] Respondent Local 43 admits the allegations in pars. 1, 2, 3, and 4 of this section of the decision.

[2] Though not mentioned in testimony, Local 1121 is a signatory to the involved collective-bargaining agreements.

[3] PAC refers to the Respondent's political action committee.

12. Respondent Local 43 engaged in the conduct described in paragraphs 7, 8, 9, and 10 because Lebovitz was not a member of Respondent Local 43, and in order to enforce the mobility clause.

13. By the conduct described above, Respondent Local 43 has engaged in conduct in violation of Section 8(b)(1)(A) of the Act and by Local 43's attempting to cause an employer or causing an employer to discriminate against its employees in violation of Section 8(a)(3) of the Act, Respondent Local 43 has violated Section 8(b)(2) of the Act.

B. Relevant Facts

1. Facts related to the mobility clause

Glenn Marshall is district manager for the New England Regional Council of Carpenters and president and business manager of Local 210. There three Carpenters Locals in Connecticut, Local 43, 24, and 210. He testified that since 1999, all three Connecticut Locals have the same collective-bargaining agreement and that agreement also covers the other New England states. In order to gain approval of the six State agreements, the Union made what it terms concessions on the mobility of workers. As contractors in New England became more regionalized and less local, they wanted the ability to move their employees from State to State and from local geographical jurisdiction to other local geographic jurisdiction. Before 1999, that was difficult as each local had its own hiring rules. Under the agreement reached, mobility of the contractors' work force is now governed by what is referred to in this decision as the mobility clause. It reads:

ARTICLE VI

HIRING

SECTION 1. When the Employer needs additional or new employees, he shall give the Union equal opportunity with all other sources to provide suitable applicants, but the Employer shall not be required to hire those referred by the Union.

SECTION 2. No Employer shall subject applicants for employment or employees to any testing, examination, questionnaires, or other forms requiring disclosure of information that violates Federal or State law or regulation.

SECTION 3. Notwithstanding any language to the contrary in any area collective bargaining agreement, effective, April 1, 1999 for work in Connecticut, Massachusetts, and Rhode Island and October 1, 1999 for work in Maine, New Hampshire and Vermont, the Employer shall have the right to employee any carpenter who is a member in good standing of any local affiliate of the New England Regional Council of Carpenters pursuant to the following conditions:

a. The carpenter employee has worked a minimum of three (3) weeks for the Employer in the previous five (5) months.

b. If the Employer fails to notify a local union prior to commencing work on a project in that local's geographical jurisdiction, the Employer shall lose the mobility of manpower privileges for that project, and the Employer will be restricted in its employment of carpenters to those carpenters who normally work in the geographical area of the local union where the project is located.

c. No employee shall be required to work in a geographical jurisdiction outside of his/her home state.

d. Employers shall not retaliate or discriminate against employees who refuse to work outside their home state.

e. If there is no available work, other than work outside the geographical jurisdiction of this Agreement, the Employer shall lay off that employee so that she/he is eligible to apply for unemployment benefits.

Marshall testified that the clause is enforced differently depending on which local is doing the enforcement. He testified that Local 43 enforces it the most, with Local 24 enforcing it to a lesser degree and Local 210 enforcing it the least. Until the recession, there was more work in Local 210 than were workers to do the work. In 2007, the Hartford area also had a lot of big projects underway. Marshall was unaware of anyone kicked off a job in Local 43's jurisdiction for violating the mobility clause other than Lebovitz. In the month preceding this hearing, Local 210 had 650 members employed in its jurisdiction and 350 members of Local 24 employed there.

George Meadows is an officer with the New England Regional Council of Carpenters and president and business manager of Local 43. With respect to the mobility clause, Meadows testified that his local enforces it. He testified that the local relies on its jobsite stewards to check the workers credentials and make sure they are members in good standing of a Carpenter's local and meet the guidelines of the mobility clause. They can prove they have worked 3 weeks out of the last 5 months for the employer by showing pay stubs. If the worker is from another local and does not meet the guidelines, he is reported by the steward to the employer and ordinarily the worker leaves the job at the end of the day and does not return until he meets the guidelines. In some cases, the contractor has a job going in another local and can put the worker on that job until he qualifies for mobility. If this cannot be done, the worker is out of a job. If the worker does not voluntarily leave, the steward would call in the local's business representative, Martin Alvarenga. If the worker has not left the job by this point, Meadows testified that he would file charges against the contractor. He has never had to take this step over the mobility issue. He can also file charges against the worker who refused to leave the job. Respondent submitted a document that shows checking for mobility is one of the steward's duties. This document was prepared at the same time of the December 2007 incident with Lebovitz that is the focal point of this hearing. The document was prepared and presented to the local's membership at the same time Lebovitz was being urged to abandon his job because of the mobility clause. There were no similar documents in existence when this one was prepared.

Meadows testified that are circumstance where mobility is waived. One such instance would be if the worker not meeting the guidelines possesses a skill needed by the employer and no one on Local 43's out of work list possesses that skill. The discretion to change the clause as written is evidently within Meadows authority. Meadows estimated that in December

2007, there were about 160 members on the local's out of work list, including workers skilled in concrete. Meadows testified that he gets involved in mobility issues only two to four times a year as these problems are usually solved by the stewards. He cited an instance in the summer of 2007 where a contractor hired a nonunion carpenter for a job who lived in the area of Massachusetts Local 108, which is contiguous to Local 43. In that instance, he waived the mobility guidelines as he had no member to send to the job. The worker got in touch with Local 108, satisfied their requirements, and continued working. The requirements of Local 108 would obviously require the person to join the Union and become current on dues payments. Again, this variance from the written words of the mobility clause was within Meadow's discretion.

Three workers on one job refused to show their pay stubs to prove mobility. The Union was able to verify that they had mobility, but brought charges against them for not cooperating with the union steward. The workers were Andrew McLeod-Hagberg, Craig Aubin, and Leacroft Mason. The charges against these workers were filed in March 2008. The charges were settled by the workers attending a member orientation meeting. These instances are the only charges filed because of mobility since 1999. Though Meadows testified that a number of workers have been removed from jobsites in Local 43's jurisdiction over the years, he could not name any particular person other than Lebovitz who had been removed from a job for lack of mobility. There is no written documentation of a worker being removed from a jobsite for lack of mobility before the Lebovitz incident in December 2007.

John Kendzierski is the owner of Professional Drywall Construction, Inc., which does commercial carpentry and drywall work throughout western New England. The company employees approximately 80 carpenters at present though it has employed up to 150 in better economic times. Though the company originally worked mostly in western Massachusetts, over the last few years, it has seen its business in Connecticut grow to about 50 percent of its volume. Most of this work is in the jurisdiction of Local 43, with the remainder in the jurisdiction of Local 24. In Connecticut, it usually has five or six jobs going at all times, with the jobs typically lasting about a year each. It has been Kendzierski's experience that Local 43 enforces all contract rules, including mobility, stringently. He testified that on his first project in Local 43's jurisdiction, he had at least one employee that did not satisfy the mobility requirements and the worker had to leave the job. He testified that of all the jurisdictions in which his company works, Local 43 is the most rigid enforcer of the mobility rules.

Robert Fitch is president of New Haven Partitions, a union drywall contractor. His company typical has from 150 to 250 carpenter employees. It performs work primarily in the jurisdiction of Local 24, but also works in the jurisdictions of Locals 43 and 210. He testified that local 43 had enforced the mobility rules on two or three of his jobs in the jurisdiction of Local 43 and he had to layoff the affected employees and fill their jobs with Local 43 members. He also testified that the mobility rule is not enforced in the jurisdiction of Local 210 because of the difficulty in finding enough works in that jurisdiction.

The parties stipulated that in 2007–2008, the levels of employment ranged from full employment in the summer of 2005 to about 70 employees on the out-of-work list at the end of December 2007, a number that peaked at about 130 during the winter of 2008.

2. Facts related to Respondent's actions involving Lebovitz

a. The Employer is asked to terminate Lebovitz' employment

Daniel Carvalho is vice president of operations for McDowell Building & Foundation, Inc. He testified that the Employer primarily constructs concrete foundations. He is the person responsible for the hiring and dismissing of employees and their overall direction. In a typical year, the Company employees from about 25 or fewer employees in the winter and up to about 40 employees in the better weather months. At the time of hearing, the Company had five jobs in some phase of construction. The Company is a union contractor with collective-bargaining agreements with several unions, including the Union in this case. Carvalho characterized his Company's relationship with the Respondent Local 43 as a good one. He deals primarily with Martin Alvarenga when he needs to contact the local.

Carvalho testified that Lebovitz was hired in December 2007 to work on a project in Rocky Hill, Connecticut, that was starting in December 2007. Lebovitz was recommended to Carvalho by another carpenter who had worked with Lebovitz. As a concrete contractor McDowell had a need for a specialized kind of carpenter and Lebovitz possessed those skills needed to do McDowell's work. The Rocky Hill job is referred to as the Burris project and began in late 2007 and ran into the year 2008 until about October when it ended. The General Counsel introduced an exhibit comprised of timesheets and reports that reflect the carpenters and supervisors who worked on the Burris project for the period December 9 through 29, 2007. Lebovitz started on this project at its inception on December 10. Although Carvalho was aware that Lebovitz was a union carpenter, he was unaware when he hired him exactly which local Lebovitz belonged to. Most of the carpenters on this job were members of Local 43, though the foreman is a member of Local 24.

At the outset of the project, there was not a union steward on the job. Carvalho spoke with Alvarenga and John Haggerty was put on the job as steward in the second week which was the week of December 16. Haggerty had served in this role on an earlier project Carvalho had worked on in the Union's jurisdiction. On December 20, Haggerty spoke with Carvalho about Lebovitz. Haggerty told Carvalho that Lebovitz was not allowed on the job due to the mobility clause rule in the collective-bargaining agreement. Carvalho essentially ignored this information and went about his duties. Carvalho testified that until this occasion he had never heard of the mobility provision.

On the next day, December 21, Carvalho spoke with Alvarenga on the telephone. Alvarenga repeated Haggerty's message that Lebovitz could not work on the project because of the mobility rule. Carvalho responded by saying that Lebovitz was one of the best workers on the project and that he was not going to ask him to leave. Alvarenga then mentioned something to the

effect that Carvalho would be brought up on charges. Carvalho just brushed aside this threat. Carvalho then asked why all this was happening and Alvarenga mentioned something about Lebovitz on another project, the Science Center project in Hartford, Connecticut. Carvalho repeated that he was not going to remove Lebovitz from the Burris project. Alvarenga said he could send him to another job not in Local 43's jurisdiction and bring him back 3 weeks later. However, Carvalho did not have another job where Lebovitz would be needed. Additionally, the only Connecticut locations he could use Lebovitz would have been on jobs in the jurisdiction of Local 24. The mobility provision would on its face bar Lebovitz from working in other jurisdictions in Connecticut. Carvalho had no projects underway in the jurisdiction of Local 24. The conversation ended with Carvalho telling Alvarenga that he could tell Lebovitz to leave, but that he was not going to do it.

Later that day, Carvalho approached Lebovitz and asked him what was going on. Lebovitz started telling him about an internal union problem he had and Carvalho backed away as he did not want to get involved in that. Lebovitz mentioned the mobility provision and the fact that he and the Union had issues from the past. Lebovitz also told him that he would leave if Carvalho wanted him to leave. Carvalho replied that he did not want Lebovitz to leave.

On the following Monday, Carvalho was informed by his carpenter foreman that Alvarenga had come on the job and had Lebovitz leave the project. Carvalho believes the mobility clause was the reason Lebovitz was taken off the job by the Union. Carvalho did not fire Lebovitz. Other than this one event, he has not experienced the Union removing a worker from one of his projects before or after this occasion.

Salvatore Morello is McDowell's carpenter foreman. He is a member of Carpenters Local 24. In December 2007, he was working on the Rocky Hill jobsite, having begun on that job on December 3. Beginning on the week of December 9, laborers and carpenters were added to the work force on the job. A week later, a union steward, John Haggerty from Local 43, was hired on the job. On the Thursday or Friday just before Christmas Haggerty approached Morello and asked that Lebovitz be removed from the job as he was violating the mobility clause in the labor contract. Haggerty noted to Morello that there had been issues with Lebovitz on another job. He did not elaborate about these issues. Following this conversation, Morello called a Local 24 organizer and inquired about the mobility clause, telling the organizer that Local 43 was attempting to remove a worker from the jobsite. Morello was informed that the clause existed, but that not all the locals covered by it enforced the clause.

On the following day, Local 43's business agent, Martin Alvarenga, came to the job and spoke with Morello. He asked about Lebovitz' employment record with McDowell. He also asked Morello if McDowell had another project out of the jurisdiction of Local 43 where they could transfer Lebovitz for 3 weeks and then bring him back to the Rocky Hill site. Morello noted that the only other job that McDowell had going was in Danbury Connecticut. Morello related this conversation to Carvalho.

On the following Monday, Alvarenga returned to the jobsite and asked to speak with Lebovitz. Alvarenga and Lebovitz had a conversation, then Lebovitz told Morello that that day would be his last on the jobsite. This was the first time that Morello had ever seen an employee removed from a job because of the mobility clause. He had also never seen an employee leave a job and return after 3 weeks.

b. Facts surrounding Lebovitz' interaction with Respondent Local 43

Lebovitz is a journeyman carpenter and a member of the Local 24 since 1999. Local 24 has two union halls, one in New London and one in Wallingford. Of the three Carpenters Locals in Connecticut, Locals 24, 43, and 210, Local 24 is the largest with some 2800 members. The jurisdiction of Local 210 is roughly the southwest portion of Connecticut. Local 43's jurisdiction is roughly the north central portion of Connecticut. Local 210's jurisdiction is roughly the southwest portion of Connecticut. Lebovitz has worked in the jurisdiction of Local 43 off and on for about 6 years. Lebovitz primarily gets work by networking with other carpenters who tell one another when they hear of a job coming up. He has made limited use of Local 24's hiring hall.

He testified that Martin Alvarenga is business agent for Local 43 and that George Meadows is the local's president. In 2002, Lebovitz was working on a large construction project in Hartford in Local 43's jurisdiction, called the Adrian's Landing or the Connecticut Science Center project. His employer was a contractor called Manafort Brothers. He was transferred by Manafort to this job from one he had been on for this employer in East Hartford. On the Hartford job, John Haggerty was the union steward. The two men had an incident of the job on October 23 and 24, 2002. Haggerty came on the site and tried to get carpenters on that job to sign a card authorizing the Local to withhold 5 cents an hour of their pay for the unions political action fund rather than having the money go to their vacation fund. Lebovitz had signed such a card in the past and lost his vacation pay. Lebovitz did not want to give up that pay and believed that by not signing the card, he would begin receiving the vacation pay.[4] The two men had a conversation about the card and Lebovitz refused to sign the portion of the card authorizing a deduction for the Union's PAC. Haggerty called him a troublemaker. He also threatened Lebovitz that he would be on the first layoff list on the job.

Lebovitz then asked his Employer's superintendent if the Union could get him laid off and was assured by the Employer that it could not. Lebovitz denied following Haggerty around the jobsite encouraging other workers not to sign the PAC deduction card. He did admit to telling other employees who asked him how to fill out the card and receive their vacation pay.

John Haggerty testified that in October 2002 in his role as steward, he was trying to get new employees on the jobsite to which he was assigned to sign a membership card and/or the portion of the card that allowed the Union to deduct 5 cents an

[4] He subsequently learned that to revoke the earlier authorization, he needed to give written notice to the Union.

hour for the Union's PAC. When he approached Lebovitz in this regard, Lebovitz complained that he had signed such a card in the past and was having difficulty reversing that situation so that he received the nickel an hour rather than the PAC fund. Haggerty testified that Lebovitz followed him around the jobsite encouraging workers not to sign the PAC authorization. Haggerty then called Meadows and informed him of the problem. Following the call, either the same day or the next, Meadows and Alvarenga came to the job to deal with the situation. Haggerty pointed out Lebovitz to the two officials and heard Meadows tell him not to harass Haggerty. After this comment, Haggerty left.

On this topic, Lebovitz testified that the next day, he was visited on the job by Haggerty, Alvarenga, and Meadows. Lebovitz was notified by the three men that he was being brought up on charges by the Union over the card incident. Lebovitz said the Union could not retaliate because he did not sign the card. He and Alvarenga then got into an argument with Alvarenga telling him to shut up. They continued to exchange heated words for a while longer. Alvarenga threatened that the Union would throw Lebovitz out and he would never work as a carpenter again and would be fined. Lebovitz replied saying he would file charges against Alvarenga with the Union. According to Lebovitz, Alvarenga responded saying the Union was his friend and the charges would be dismissed. At this point, the conversation ended.

Meadows testified about the October 2002 incident with Lebovitz. He testified that Haggerty told him that Lebovitz was harassing him on the jobsite. According to Meadows, Haggerty told him Lebovitz was following him around the jobsite encouraging other workers not to sign the cards that Haggerty was distributing. He went to the job the next day with Alvarenga. According to Meadows, they found Lebovitz and Meadows told him they were not there because Lebovitz did not sign the PAC checkoff, but were there because Lebovitz was harassing Haggerty and to tell him to let other workers make up their own minds about signing that checkoff. According to Meadows, Lebovitz declined and the two union officials left the site. Meadows testified that Alvarenga did not participate in this conversation. Meadows then filed internal union charges against Lebovitz.

Alvarenga testified that he was just an observer at the meeting with Lebovitz in October 2002. He did remember telling Lebovitz to talk to other employees on his own time and not bother the steward while he is doing his job. He remembers Lebovitz agreeing to do what Meadows told him.

To the extent there is a credibility issue raised by this conversation, I credit the testimony of Lebovitz over the two union officials. Lebovitz had a clear and fairly detailed memory of the event whereas the versions given by the officials are contradictory of one another. They also would indicate that the "problem" was solved during the conversations and that nothing more had to be done. But that was not the case.

On October 28, Lebovitz received official notice that charges had been brought against him by Local 43. He then filed internal counter charges with the Union and they were dismissed as Alvarenga had predicted. These were the only charges ever filed by a worker against Local 43's leaders.

On February 6, 2008, Lebovitz filed charges about this matter with the NLRB. In May 2008, a settlement of these NLRB charges was reached and all internal charges against Lebovitz were withdrawn and Lebovitz withdrew the Labor Board charges. A part of the settlement included the Union returning the money it had deducted from Lebovitz' pay for the PAC contribution. Lebovitz continued to work for Manafort on the Hartford project until 2004 when he shifted to other Manafort projects and stayed on Manafort's payroll until he was laid off in late November 2007. Other than the incident in 2002, Lebovitz encountered no problems with the Union in his subsequent employment with Manafort.

Following his layoff from Manafort, a friend of his suggested that Lebovitz call McDowell seeking work. He did and was hired for the Rocky Hill job, which is in Local 43's jurisdiction. Lebovitz' first day on this job was December 10. The following week, Haggerty came onto the job as union steward. On December 20, Haggerty spoke with Lebovitz. Haggerty asked what Lebovitz was doing on that job and responded that he was working. Haggerty informed him that he was not in Local 24's jurisdiction and that he did not belong there. Haggerty asked how long he had worked for McDowell and Lebovitz said 1 week and 4 days. When Haggerty confirmed that Lebovitz did not meet the requirements of the mobility clause, he informed Lebovitz that the next day would be his last on that job. He noted the mobility clause. Lebovitz then went back to work. The next day, Lebovitz had a conversation with Carvalho. Carvalho told Lebovitz that he had had a conversation with Alvarenga and that Alvarenga had tried to intimidate him and wanted him to fire Lebovitz. Carvalho added that Lebovitz was a good worker and he would not fire him.

Late in that same day, Carvalho approached Lebovitz and told him the union hall had called to see if Carvalho had terminated Lebovitz. He told Lebovitz he had informed the Union that he had not. He also noted that the Union, through Alvarenga, had said it would remove Lebovitz from the job on Monday. Lebovitz reported to the job on Monday, December 24. At about 10 a.m., Alvarenga came to the job and told Lebovitz that he had to leave the job, citing the mobility clause as the reason. Lebovitz agreed to leave the job. Lebovitz testified that Alvarenga stated that he did not want to hurt Lebovitz' livelihood, but that if he let Lebovitz stay on the job, he would have to let everyone ignore the mobility clause. He again told Lebovitz to leave the job and not come back. Lebovitz left fearing that internal union charges would be brought against him if he ignored Alvarenga's directive. Alvarenga then told Morello that Lebovitz could not return to the job. Lebovitz also testified that Local 24 will not send him to a job in its jurisdiction though he is at the top of the out-of-work list. He blames his 2002 problems with Local 43 for this situation. Lebovitz not only filed charges over his being forced off the McDowell job with the NLRB, he also complained of the mobility rule in a letter he sent to the Union's national headquarters in Washington, D.C.

Lebovitz testified that a carpenter named Kerry Harris was a Local 24 member who worked for Manafort in Local 43's jurisdiction without satisfying the mobility clause and was not removed from the job he was working on. He gave another

example of nonenforcement of this clause. He pointed to a carpenter named Doug Sturgis who was a member of Local 43 working in the jurisdiction of Local 24 and did not meet the requirements of the clause. The steward on the job spoke to him about it and Sturgis threatened to get an attorney and the matter was dropped and he continued working on the job.

Alvarenga gave testimony about the December events. He testified that he rarely gets involved in mobility issues as they are usually solved by the stewards. He said problems with mobility arose mostly at about the time the clause was first instituted. As people have become aware of the clause, fewer problems arise.

When Alvarenga learned of the problem with Lebovitz, he called Carvalho and told him that Lebovitz had to leave the jobsite, but could be put on a job in another local's jurisdiction and be brought back to the job in 3 weeks. As noted earlier, Carvalho had no other jobs to which he could send Lebovitz which would not also violated the mobility clause. According to Alvarenga, Carvalho said that Lebovitz was a good worker and he wanted to keep him. Alvarenga agreed that Lebovitz was qualified. He said when he approached Lebovitz on the job and informed him that he did not meet the mobility requirements, Lebovitz agreed and asked if he should leave the job immediately. At a Local 43 meeting in late December, Alvarenga told the members that 70 members were out of work at that time.

With respect to the Rocky Hill job, Haggerty testified that he came to the job after it had started. When he saw Lebovitz, he knew he was not a member of Local 43 and asked Lebovitz if he had mobility. Lebovitz said no. Haggerty asked him how long he had been on the job and Lebovitz said a week. Haggerty then told him that if he did not have mobility, he had to leave the job. Haggerty then told Morello that Lebovitz did not have mobility and would have to leave the job. Haggerty then reported Lebovitz' status to the local's leadership.

C. Findings and Conclusions

The General Council asserts that Union's security clause and the mobility rule as written are facially unlawful, and further, that the enforcement of the mobility clause its enforcement in the case of Lebovitz constituted unlawful discrimination. I agree on both points for the reasons asserted by the General Counsel, which I adopt.

1. Is the mobility clause unlawful as written?

As Respondent Local 43's enforcement of the mobility clause clearly resulted in Lebovitz' loss of employment, its conduct raises a presumption that it is unlawful unless the union can show that it was "necessary to the effective performance of its function of representing its constituency." *Acklin Stamping Co.,* 351 NLRB 1263 (2007); *Operating Engineers Local 18 (Ohio Contractors Assn.),* 204 NLRB 681 (1973). In this regard, a union may lawfully request the termination of an employee if it is done to ensure that lawful contractual provisions are not being violated, or that the rules of a legitimate hiring hall are not being circumvented. See *Operating Engineers Local 181(Raymond Construction),* 269 NLRB 611, 627 (1984); *Boilermakers Local 40,* 266 NLRB 432 (1983). Moreover, Section 8(f) makes it lawful for employers and unions in the construction industry to enter into agreements that require notice to unions and provide the unions the opportunity to refer employees, and to give "a priority in opportunities for employment based on . . . length of service in the particular geographical area." See *Bricklayers No. 28 (Plaza Builders, Inc.),* 134 NLRB 751 (1961).

It is also lawful to frame the rights of travelers to work in a particular jurisdiction based on their service in another geographical are covered by other collective-bargaining agreements, as long as it is not based on union membership. See *Bechtel Power Corp.,* 229 NLRB 613 (1977); *Plumbers Local 469 (Mackey Plumbing Co.),* 228 NLRB 298 (1977); *Construction, Building Materials & Miscellaneous Drivers Local 83 (Various Employers in the Construction Industry),* 243 NLRB 328, 328–331 (1979).

It is also well established that in the absence of an exclusive hiring hall, unions cannot seek the termination of employees who were not referred by the hall. *Kvaemer Songer, Inc.,* 343 NLRB 1343, 1346 (2004); *Sheet Metal Workers Local 16 (Parker Sheet Metal),* 275 NLRB 867 (1985); *Operating Engineers Local 17 (Combustion Engineering),* 231 NLRB 1287, 1289 (1977).

As noted above, geographical hiring preferences are lawful so long as they are not based on union membership. However, the mobility clause in this case clearly requires that in order for an employer to employ a carpenter outside a local's geographical jurisdiction, the carpenter must be a "member in good standing" of another Carpenter's local in New England. Thus, on its face, the mobility clause requires union membership in order for a carpenter to work in Local 43's geographic jurisdiction, which violates Section 8(b)(1)(A) of the Act. *Bricklayers Local 1 (Denton's Tuckpointing, Inc.),* 308 NLRB 350, 351 (1992) (finding that union violated Section 8(b)(1)(A) "simply by maintaining an agreement" which contained a provision granting unlawful preference in employment to union members). Even absent specific examples of discrimination, the Board will find unlawful a contractual clause that on its face discriminates based on union membership or conditions employment on union membership. See *Ann Arbor Fire Protection, Inc.,* 312 NLRB 758, 758 (1993) (finding that union, by maintaining a facially unlawful contractual provision giving preference In layoffs to union members, violated Section 8(b)(1)(A).

An argument could be made that "members in good standing" should not be read literally, but should be interpreted in light of the statute, i.e., financial core membership. Such an interpretation fails to legitimize the clause because a union cannot cause discrimination against employees based on their union-security delinquencies outside the bargaining unit. See *Iron Workers Local 433,* 272 NLRB 530 (1984), enfd. 767 F2d. 1438 (9th Cir. 1985); *Carpenters Local 740 (Tellman Constructors),* 238 NLRB 159 (1978). The mobility clause clearly permits Respondent Local 43 to restrict employers from bringing in employees who have worked at least 3 weeks in the past 5 months based on the employees' failure to be current in dues obligations in another bargaining unit. A union cannot, as a condition of employment, enforce dues obligations incurred outside the bargaining unit. See *Iron Workers Local 433,* supra;

Iron Workers Local 433, 266 NLRB 154, 157 (1983), enfd. mem. 730 F.2d 768 (9th Cir. 1984); *Tallman Constructors,* supra, 238 NLRB at 160–161. Moreover, an employee's contractual obligation to pay dues under a valid union-security clause cannot be imposed until the contractual grace period has expired. Id. at 161.

Here, the mobility clause forbids employers from hiring workers who are not members in good standing of their home locals. Lebovitz credibly testified that when working in Local 43's jurisdiction he continues to pay regular monthly dues to his home local, Local 24. Given these facts, the mobility clause would require Local 43 to ascertain whether those dues are in fact paid, and whether the traveler is a member in good standing of his home local. Thus, the clause makes dues payment—for dues incurred outside the bargaining unit—a condition of employment, in violation of Section 8(b)(1)(A). The mobility clause is invalid for these two reasons alone.

The mobility clause is also an unlawful restriction on travelers. It is not unlawful to base a referral preference on the objective criteria of area residence. In *J. Willis & Son Masonry,* 191 NLRB 872, 874 and fn. 6 (1971), the Board found lawful contractual language that could be construed to give preference to area residents. In *Metropolitan District Council,* 194 NLRB 159 (1971) *(MDC)*, the Board found no violation where a Carpenters local caused the discharge of three carpenters who had been hired from another geographical area. However, *MDC* is distinguishable because there was no contractual provision relied upon by the local union in that case, nor was there any type of hiring hall. The Board found no violation because there was insufficient evidence to establish that the local union caused the discharge of the three carpenters because they were not members of the local union. The Board found the local geographical preference lawful because there was no evidence that the union's objective was to gain preferred treatment for members of one local over another, as is the case here. Moreover, it is well settled that unions cannot discriminate in referrals or employment on the basis of membership or nonmembership in the union. *Sachs Electric Co.,* 248 NLRB 669, 670 (1980), enfd. sub nom. *NLRB v. Electric Workers Local 453* (*Sachs Electric),* 668 F.2d 991 (8th Cir. 1982).

Read literally, the mobility clause prohibits an employer from hiring union member employees unless they have worked 3 weeks in the previous 5 months for that employer before they were hired. The clause thus makes a distinction, with respect to eligibility for employment, between members of Respondent Council and all other applicants. More significantly, in practice, the parties use the clause, with respect to employment eligibility, between members of the local in whose jurisdiction the work is performed and members of other locals (so-called "travelers"). Thus, although the mobility clause literally applies to all members of the New England Regional Council, the parties apparently interpret the clause as a restriction only on travelers.

During the hearing, Respondent asserted through testimony that the mobility clause was a permissible hiring preference. It adduced testimony that the pre-1999 master contract included standard local hiring preferences, but in a concession to the Association for agreeing to be bound by local contracts throughout New England, Respondent agreed to substitute the mobility clause. The clause, by Respondent's account, allows an employer to bring in his own crew, provided that the crew satisfies the requirements of the mobility clause. A close reading of the clause does not support Respondent's claim. The collective-bargaining agreement provides for a nonexclusive hiring hall and explicitly allows employers to hire any applicant. The only restrictions on hiring are that the Union must be given an equal opportunity to refer workers for a position and the mobility clause must be satisfied. The mobility clause, on its face, restricts only hiring members of the New England Regional Council. Local 43 did not produce any evidence that the clause had been applied to exclude nonmembers.

Furthermore, the only reference to a local hiring preference in the agreement is Section 3(b) of the Agreement which takes effect only if an employer fails to notify the local union of a new project in that local's geographical jurisdiction. The parties stipulated that this is not a "notice" case. Thus, as construed by the parties, the mobility clause gives preference to members of the local in whose jurisdiction the work will be performed over travelers. Indeed, nonunion members also receive a preference over travelers because employers can hire any worker without restriction, unless that worker is a union member. The clause therefore violates Section 8(b)(1)(A) as it discriminates against travelers. Therefore, the mobility clause is fundamentally flawed. On its face, it discriminates based on union membership, it unlawfully requires a local union, prior to enforcing it, to seek the employee's "member in good standing" status in a bargaining unit outside the local area, and it impermissibly discriminates against travelers, such as Lebovitz.

2. Did Local 43 violate the Act by attempting to have the Employer terminate Lebovitz' employment?

As Respondent Local 43 relied upon a facially unlawful rule in admittedly seeking Lebovitz' discharge from the Rocky Hill jobsite, such conduct violated Section 8(b)(2) of the Act. See *Stage Employees IATSE Local 219 (Hughes-Avicom International),* 322 NLRB 1064 (1997) (enforcement of a contractual provision limiting welfare and pension benefits to union members violates Section 8(b)(2)).

It is also established that a union violates Section 8(b)(2) when it attempts to cause an employer to fire or lay off employees for reasons other than their failure to pay dues and fees under a valid union-security clause, including attempts to have employers fire travelers for no other reason than their status as travelers. *Plumbers Local 392 (Oberle-Jorde Co.),* 273 NLRB 786, 793 (1984) (finding that a "bare request" that an employer discriminate against a traveler, even when that request is unaccompanied by threats and ultimately ignored by the employer, violates Section 8(b)(2)). Asking an employer to comply, even when that employer refuses, violates the Act where there is "no legitimate basis for the request, which was premised solely on the Union's desire to employ the local members at the expense of the travelers." Id. See also *Glaziers Local 513 (National Glass & Glazing, Inc.),* 299 NLRB 35, 43–44 (1990).

Here, it is undisputed that Alvarenga demanded that Carvalho fire Lebovitz because he did not satisfy the mobility clause and threatened to bring Carvalho "up on charges" if he

refused. Although Carvalho refused to fire Lebovitz, Alvarenga's demand that he enforce an unlawful contract provision violated Section 8(b)(2). The record evidence fully supports such a finding. See *Oberle-Jorde,* supra, 273 NLRB at 793; *National Glass,* supra, 299 NLRB at 43–44.

3. Did Local 43 violate the Act by coercing Lebovitz to quit his employment?

Although the Employer did not discharge Lebovitz pursuant to Local 43's request, Lebovitz clearly left the job because of pressure from Local 43 and the fear of charges being brought against him by the Local. Maintaining an unlawful contract provision, such as the mobility clause in this case restrains and coerces employees in the exercise of their Section 7 rights and violates Section 8(b)(1)(A). Enforcing that clause further violates Section 8(b)(1)(A). See *Denton's Tuckpointing,* supra, 308 NLRB at 351–52 (union violated Section 8(b)(1)(A) and (2) by maintaining and enforcing a contract provision giving unlawful preference in employment to union members). See *Kvaerner Songer, Inc.,* 343 NLRB 1343, 1343 (2004) (finding that union violated Section 8(b)(1)(A) and (2) by telling employer it could not hire employees who had not been referred by the union where there was no exclusive hiring hall arrangement); *National Glass,* supra, 299 NLRB at 44 (finding same violation where union with nonexclusive hiring hall attempted to have employer fire a worker who had not been referred by the union.

In addition, it is established that a union violates Section 8(b)(1)(A) through "threats and coercion designed to force travelers into quitting their jobs so that the jobs can be filled by local union members." *National Glass,* supra, 299 NLRB at 43: *Oberle-Jorde,* supra, 273 NLRB at 786 (union violated Section 8(b)(1)(A) when its steward asked travelers to quit, threatened them with sanctions, and told travelers he "would not want to be a traveler and still be on the job on Monday").

In this regard, the Board has previously concluded that similar "requests" that travelers quit their jobs are coercive, reasoning that travelers are "undoubtedly" aware that the requests come from union officials who "control, and will continue to control, the travelers livelihoods." *Oberle-Jorde,* supra, 273 NLRB at 793 (quoting *Sachs Electric,* supra). The Board has long held that union requests to travelers that they quit, even in the absence of direct threats, can violate the Act. In *Sachs Electric,* supra, the union operated an exclusive hiring hall. The "requests" included local union agents' statements that a number of the respondent local's members were out of work, and that he was looking for volunteers to relinquish their jobs to them; that local members were "on the bench," and that the local wanted travelers to quit; and that if he was in someone else's jurisdiction and was asked to leave, he would certainly do so. In explaining why the conduct was coercive, the Board cited its findings in a prior case that IBEW commonly requests that travelers quit for such reasons, and that these occasionally have been enforced by violence and the threat of violence. The Board stated that:

> Additionally, travelers asked to quit under circumstance such as those present in the instant case undoubtedly are aware that the requests come from union officials who, by virtue of their responsibilities in administering the hiring hall, control, and will continue to control the traveler's livelihoods within the hiring hall's jurisdiction. Thus, it should not come as a surprise if these "requests" are construed by traveler employees as more than mere solicitations for "volunteers".

The Board found that under the circumstances, the local union's requests that certain "travelers" from other locals quit their jobs in favor of unemployed members of the respondent local were coercive, and violated Section 8(b)(1)(A) and warranted a make whole remedy.

Although there is no exclusive hiring hall in the instant case, as there was in *Sachs Electric,* supra, the *Sachs* rationale is equally applicable here. Respondent Local 43's efforts to have the Employer discharge Lebovitz made it obvious that it might try to exercise control over his employment at future jobsites, even though McDowell in this case refused to accede to Local 43's demands.

Respondent's requests to Lebovitz to leave the Rocky Hill jobsite clearly were coercive. Respondent Local 43's steward Haggerty told Lebovitz that he did not belong there and had to leave by Friday (although Lebovitz made it to the following Monday). Alvarenga made it to the jobsite personally to inform Lebovitz that although he could finish the day Monday, he should not come back. Moreover, in 2002 Haggerty and Alvarenga each had threatened Lebovitz that he would never work in Local 43's jurisdiction again, and Local 43's top official had filed internal charges against him. In light of this conduct, it was entirely reasonable for Lebovitz to conclude that he had no choice about remaining with McDowell at the Rocky Hill jobsite. In addition, it was entirely reasonable for Lebovitz to interpret these statements as meaning that he would subject to internal union charges if he continued working for McDowell at the Rocky Hill jobsite, especially given the fact that Local 43 had filed internal union charges against Lebovitz in the past. I find that the Respondent Local 43 violated Section 8(b)(1)(A) by unlawfully coercing Lebovitz to quit his job at McDowell.

4. Was Local 43 motivated by Lebovitz' prior concerted and charge filing activities?

Regardless of the validity of the mobility clause, there is sufficient evidence to support the complaint allegation that Respondent Local 43 enforced the mobility clause against Lebovitz due to his previous concerted and charge filing activities. The strongest evidence of unlawful motive lies in the fact that, according to McDowell's representatives, Local 43's representatives mentioned Lebovitz' past conflicts with Local 43 during the conversations where they sought Lebovitz' removal from the job because he did not satisfy the mobility clause. In this regard, Morello testified that after Haggerty citied the mobility clause, Haggerty referred to a past problem with Lebovitz. Carvalho stated that when Alvarenga pressed him to remove Lebovitz from the job based on the mobility clause, and Carvalho resisted, Alvarenga mentioned something about Lebovitz at the job where Lebovitz had the confrontation with Local 43's officials in 2002. This testimony was neither rebutted nor contradicted.

In addition, Respondent also revealed animus toward Lebovitz protected activities in October 2002 when Local 43's pre-

sident immediately filed internal union charges against him, and its agents threatened they were going to throw him out of the union and warned that he would never work again. Again, this testimony was not rebutted. Haggerty failed to deny calling Lebovitz a troublemaker in 2002, a term the Board has long recognized in the labor context reveals animus against protected activities. See *New Haven Register,* 346 NLRB 1131, 1145 (2006).

Lebovitz also offered some specific testimony, albeit anecdotal and limited, that fellow union carpenters violated the mobility rule and escaped discipline. Thus, the record contains some evidence revealing that Respondent has not historically enforced the mobility rule in a consistent manner. Even Respondent's witnesses confirmed this, with Respondent presenting testimony that Local 43 is more consistent in enforcing its rules than the other two Carpenter locals in Connecticut. Given the fair amount of discretion that is accorded to each steward (and local unions) in enforcing the mobility clause, and noting that both Haggerty and Alvarenga mentioned Lebovitz' previous "problems" with Local 43 in their dealings with Carvalho and Morello, it appears that Respondent vigorously enforced the clause against Lebovitz in retaliation for his previous concerted and charge filing activities. Meadows confirmed that no other carpenter has ever filed internal union charges against him. From the credible evidence, I find that Respondent Local 43 was unlawfully motivated in enforcing the mobility clause against Lebovitz based upon its animus against his prior protected activities.

Moreover, Respondent Local 43's suggestion that Lebovitz be transferred to another jobsite until he could satisfy the mobility clause at the Rocky Hill jobsite appears to me to be disingenuous. After being told by Carvalho on Friday that a transfer was not possible, Alvarenga inexplicably raised the transfer option again to Morello on Monday. That is, although Alvarenga asked whether Lebovitz could be transferred to other jobs—ostensibly suggesting that he was just following an established rule—he asked the same question of both Carvalho and Morello. Alvarenga's questioning of Morello suggests that he was only attempting to provide a plausible cover for his actions. In light of Local 43's demonstrated hostility and its disparate treatment of Lebovitz, Alvarenga's questions are insufficient to establish an affirmative defense.

Finally, Local 43 provided no documentation regarding its general testimony that prior to the December 2007 incident involving Lebovitz, its stewards routinely inquired into the mobility data of employees on the job. In this regard, Meadows, Alvarenga and Haggerty each testified that Respondent Local 43 stewards routinely check into whether workers on the job satisfy the mobility clause. However, the record also revealed that, despite having been in existence since 1999, the first evidence of any written training materials concerning the mobility clause that were provided to stewards by Local 43 occurred at a membership meeting held on Thursday, December 20, 2007. This date happens to coincide with the exact date Haggerty confronted both Carvalho and Morello about mobility.

Moreover, Meadows was forced to admit that the only pre-December 2007 case for which Respondent could produce records concerned the case at hand. Respondent could not point to a single other pre-Lebovitz case in which it had documented evidence of having enforced the mobility clause though the clause had been in existence since 1999. Curiously, several months after the enforcement against Lebovitz, in early 2008, Respondent Local 43 stewards filed separate internal union charges against four non-Local 43 members working in other job sites, ostensibly for non-compliance with the mobility rule.

Meadows admitted that Local 43 uses its discretion in enforcing the clause noting that there are circumstances when mobility is waived. Meadows explained that one exception would be if a contractor required a certain job skill that none of the out of work Local 43 members possessed. Meadows also testified that another such situation occurred in the summer of 2007 at the Cigna project when the "cupboard" (employees on the out of work list) was bare, and a Local 108 member was permitted to remain on the job despite not meeting the mobility rule. Other evidence shows that Local 210 was "most lenient" in enforcing the clause due to difficulty in manning jobs in the jurisdiction of that Local. Local 24 was characterized as also being more lenient than Local 43 in enforcing the clause. The discretion exercised by each of the three Connecticut locals in enforcing the mobility rule, and especially the discretion exercised in this regard by Local 43, only supports my belief that the rule was enforced against Lebovitz because of animus and no other reason. Thus, I find that Respondent has unlawfully discriminated against Lebovitz by enforcing the mobility clause and causing him to leave his job.

5. Is the union-security clause facially unlawful?

Finally, the union-security clause in article V is facially unlawful. The union-security clause explicitly requires compliance with the Union's constitution and bylaws, a requirement which violates Section 8(b)(1)(A). See *Stackhouse Oldsmobile, Inc. v. NLRB,* 330 F.2d 559, 560 (6th Cir. 1964) (finding that employer did not violate the Act by refusing to sign a collective-bargaining agreement in which the union-security clause unlawfully required compliance with the union's constitution and bylaws); *Electrical Workers Local 3 (White Plains),* 331 NLRB 1498, 1500 (2000) (finding facially unlawful a union rule requiring hiring hall users to comply with internal rules to maintain their position on the referral list).

While unions are free to enforce properly adopted rules against their members, Section 8(b)(1)(A) prohibits unions from restraining or coercing employees in the exercise of rights guaranteed in Section 7 of the Act, including the right to refrain from joining a union. See *Scofield v. NLRB,* 34 U.S. 423, 430 (1969) (unions are "free to enforce a properly adopted rule which reflects a legitimate union interest, impairs no policy Congress has imbedded in the labor laws, and is reasonably enforce against union members who are free to leave the union to escape the rule"). Thus, employees must be free to resign their union membership and escape the rule. The rule here, however, requires employees to comply with the Union's constitution and bylaws as a condition of employment. Such a requirement violates the Act.

CONCLUSIONS OF LAW

1. Respondents United Brotherhood of Carpenters and Joiners of America, Local 43, and New England Regional Council

of Carpenters are labor organizations within the meaning of Section 2(5) of the Act.

2. McDowell Building & Foundation, Inc. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

3. Respondents' mobility clause unlawfully restricts employment based upon union membership and thus facially violates Section 8(b)(1)(A) of the Act.

4. Respondent Local 43's attempt to cause Lebovitz' termination based upon the mobility clause violated Section 8(b)(2) of the Act.

5. Respondent Local 43 violated Section 8(b)(1)(A) because it coerced Lebovitz to leave his job with the Employer at the Rocky Hill jobsite.

6. Respondent Local 43 violated Section 8(b)(1)(A) and (2) by discriminatorily enforcing the mobility clause against Lebovitz in retaliation for his previous concerted and charge filing activities.

7. The Respondents' union-security clause is facially unlawful in violation of Section 8(b)(1)(A) because if requires compliance with the Respondent's constitution and bylaws.

8. Respondents' violation of the Section 8(b)(1)(A) and (2) affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, I find that they must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent Local 43 has discriminatorily and unlawfully enforced the facially unlawful mobility clause to cause Kevin Lebovitz to leave his employment with McDowell Building & Foundation, Inc. at its Rocky Hill Connecticut jobsite, Respondent Local 43 should be ordered to make Lebovitz whole for any loss of earnings and other benefits, computed on a quarterly basis from the date he was coerced into leaving his job until the date his employment would have ended on that job without Respondent's unlawful coercion, less any net interim earnings, as prescribed in *F. W. Woolworth Co.,* 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded,* 283 NLRB 1173 (1987).

Having found that Respondents have maintained a facially unlawful union-security clause and mobility clause in their collective-bargaining agreements, they should be ordered to revise these clauses to bring them in compliance with the Act.

Respondent Local 43 should be ordered to notify McDowell Building & Foundation, Inc. that it is free to employee Kevin Lebovitz for jobs taking place within its geographical jurisdiction.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[5]

ORDER

The Respondents, United Brotherhood of Carpenters and Joiners of America, Local 43, and New England Regional Council of Carpenters, Hartford, Connecticut, their officers, agents, and representatives, shall

1. Cease and desist from

(a) Maintaining in their collective-bargaining agreements any union-security clauses, or any other provision, that requires members to comply with their constitutions and bylaw in order to keep your job.

(b) Maintaining in their collective-bargaining agreements any "mobility" clause, or any other provision, that restricts members' right to work on jobs covered by that agreement if the members have not paid their membership dues and fees under a different collective-bargaining agreement.

(c) Maintaining in their collective-bargaining agreements any "mobility" clause, or any other provision, that prevents employees from working within the jurisdiction of Carpenters Locals 24, 43, 210, or 1121 because they are members of a local affiliate of the New England Council of Carpenters other than the local in whose jurisdiction the work is being performed.

(d) Causing employees to quit their jobs by enforcing a "mobility" clause that prevents employees from working within the jurisdictions of Carpenters Locals 24, 43, 210, or 1121 because they are members of a local affiliate of the New England Council of Carpenters other than the local in whose jurisdiction the work is being performed.

(e) Attempting to cause McDowell Building & Foundation, Inc., or any other employer to fire an employee or discriminate against an employee in any other manner for any of the following reasons:

(1) The employee has had disputes with Respondents.

(2) The employee filed unfair labor practice charges against Respondents with the Board.

(3) The employee is not a member of the local union in whose jurisdiction a job is located.

(4) The employee does not meet the requirements of a "mobility"clause that prevents the employee from working within the jurisdiction of Carpenters Locals 24, 43, 210, or 1121 because the employee is a member of a local affiliate of the New England Council of Carpenters other than the local in whose jurisdiction the work of being performed.

(5) For reasons other than the employee's failure to pay membership dues and fees required by lawful contract provisions.

(f) In any like or related manner interfering with, coercing, or restraining members in the exercise of rights guaranteed by Section 7 of the Act.

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

(a) Revise the terms of their 2006–2010 collective-bargaining agreement with Connecticut Construction Industries Association, Inc. and the AGC/CCIA Building Contractors, Labor Division of Connecticut, Inc. (the 2006–2010 Connecticut contract), by removing any provisions that require members to comply with their constitution and bylaws in order to keep their jobs.

[5] 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.

(b) Revise the terms of article VI, section 3 as it was originally contained in the 2006–2010 Connecticut contract by removing the unlawful portions of the "mobility" clause that prevents members from working on jobs covered by that contract because the employee is a member of a local affiliate of the New England Regional Council of Carpenters other than the local in whose jurisdiction the work is being performed.

(c) Revise the terms of article VI, section 3 as it was originally contained in their 2006–2010 Connecticut contract by removing any provision that restricts a member's right to work on jobs covered by that contract if the member has not paid membership dues and fees under a different collective-bargaining agreement.

(d) Notify McDowell Building & Foundation, Inc. that Respondents have no objection to their employing Kevin Lebovitz on their jobs.

(e) Make Kevin Lebovitz whole for wages and other benefits he lost as a result of Respondent Local 43's unlawful and coercive action which caused Lebovitz to leave employment with McDowell Building & Foundation, Inc. in December 2007.

(f) Within 14 days after service by the Region, post at its union offices and hiring hall located in Hartford, Connecticut, or any other such hiring halls or union offices located in other Connecticut locations, copies of the attached notice marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondents' authorized representatives, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

(g) 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 Respondents has taken to comply.

Dated, Washington, D.C. July 7, 2009

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

FEDERAL LAW GIVES YOU THE RIGHT TO

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

WE WILL NOT do anything to interfere with these rights. More specifically,

WE WILL NOT maintain in our collective-bargaining agreements any union-security clause, or any other provision, that requires you to comply with our constitution and bylaws in order to keep your job.

WE WILL NOT maintain in our collective-bargaining agreements any "mobility" clause, or any other provision, that restricts your right to work on jobs covered by that agreement if you have not paid your membership dues and fees under a different collective-bargaining agreement.

WE WILL NOT maintain in our collective-bargaining agreements any "mobility" clause, or any other provision, that prevents you from working within the jurisdiction of Carpenters Locals 24, 43, 210, or 1121 because you are a member of a local affiliate of the New England Regional Council of Carpenters other than the local in whose jurisdiction the work is being performed.

WE WILL NOT cause you to quit your job by enforcing a "mobility" clause that prevents you from working within the jurisdiction of Carpenters Locals 24, 43, 210, or 1121 because you are a member of a local affiliate of the New England Regional Council of Carpenters other than the local in whose jurisdiction the work is being performed.

WE WILL NOT attempt to cause McDowell Building & Foundation, Inc., or any other employer, to fire you or discriminate against you in any other manner for any of the following reasons:

You had disputes with us.
You filed unfair labor practices charges against us with the National Labor Relations Board.
You are not a member of the local jurisdiction in whose jurisdiction a job is located.
You do not meet the requirements of a "mobility" clause that prevents you from working within the jurisdiction of Carpenters Locals 24, 43, 210, or 1121 because you are a member of a local affiliate of the New England Regional Council of Carpenters other than the local in whose jurisdiction the work is being performed.
For reasons other than your failure to pay membership dues and fees required by Lawful contract provisions.

WE WILL NOT in any similar way restrain or coerce you in the exercise of your rights under Federal Law set forth above.

WE WILL revise the terms of our 2006–2010 collective-bargaining agreement with the Connecticut Construction Industries Association, Inc. and the AGC/CCIA Building Contractors, Labor Division of Connecticut, Inc. (our 2006–2010 Connecticut contract), by removing any provisions that require you comply with our constitution and bylaws in order to keep your job.

WE WILL revise the terms of article VI, section 3 as it was originally contained in our 2006–2010 Connecticut contract by removing the unlawful portions of the "mobility" clause that

[6] 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."

prevent you from working on jobs covered by that contract because you are a member of a local affiliate of the New England Regional Council of Carpenters other than the local in whose jurisdiction the work is being performed.

WE WILL revise the terms of article VI, section 3 as it was originally contained in our 2006–2010 Connecticut contract by removing any provision that restricts your right to work on jobs covered by that contract if you have not paid your membership dues and fees under a different collective-bargaining agreement.

WE WILL notify McDowell Building & Foundation that we have not objection to their employing Kevin Lebovitz on their jobs.

WE WILL pay Kevin Lebovitz for the wages and other benefits he lost as a result of his loss of employment with McDowell Building & Foundation, Inc. in December 2007.

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 43 AND NEW ENGLAND REGIONAL COUNCIL OF CARPENTERS