**Independent Electrical Contractors of Houston, Inc. (I.E.C.) *and* Correct Electric, Inc. *and* Highrise Electrical Technologies, Inc. *and* International Brotherhood of Electrical Workers Local Union No. 716 a/w International Brotherhood of Electrical Workers, AFL–CIO.** Cases 16–CA–18821–2, 16–CA–19940, 16–CA–18879–1, 16–CA–19027, and 16–CA–19979

September 30, 2010

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS BECKER AND HAYES

On October 5, 2001, Administrative Law Judge Jane Vandeventer issued the attached decision finding, among other things, that Respondent Independent Electrical Contractors of Houston, Inc.'s (IEC) application referral service was unlawful; that IEC acted as an agent of Respondents Correct Electric, Inc. and Highrise Electrical Technologies, Inc., and that they too acted unlawfully by their use of IEC's referral service; and that Respondent Correct Electric unlawfully discharged employee A. Peter Kazolias.[1] The Respondents each filed exceptions and a supporting brief. The General Counsel and the Union each filed answering briefs, and IEC filed a reply brief.

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

The Board has considered the decision and the record in light of the exceptions and briefs, and has decided to affirm the judge's rulings, findings,[2] and conclusions as modified below, and to adopt her recommended Order as modified and set forth in full below.

The principal issue in this case is whether the application referral service operated by IEC, and used by Correct Electric and Highrise Electrical, was unlawful. As described below, this issue was fully litigated in *KenMor Electric Co.*, 355 NLRB No. 173 (2010). In that case, the operation of IEC's application referral service was similarly at issue. In fact, the periods during which the General Counsel alleges IEC operated the service in violation of the Act in the two cases overlap. In *KenMor,* the Board considered the operation of IEC's application referral service during the period of January 1996 to October 1997 (when the hearing in that case commenced). This case concerns the operation of the same referral service during the overlapping period of January 1997 to July 1999. Moreover, the parties most concerned with the legality of IEC's referral service—IEC, the General Counsel, and the Charging Party Union—are all parties here and were all parties in *KenMor* and actively litigated the issue.[3] Similarly, the complaint allegations and issues of law in the two cases are virtually identical, as was much of the material evidence. The facts found in *KenMor* and by the judge in this case establish that the service operated in largely the same manner throughout both time periods.

The one arguably significant change in the operation of the system was IEC's imposition of a $50 fee in September 1997 for each additional application that an individual filed within a 30-day period after filing an initial application. The fee requirement did not apply to applicants who had been laid off by an IEC member within the previous 30 days. *KenMor*, supra, slip op. at 2. IEC eliminated the fee in April 1998. Thus, the system operated without the fee and with the fee during the period at

[1] On September 11, 2009, the two sitting members of the Board, Chairman Liebman and Member Schaumber, granted the Charging Party Union's motion to withdraw charges and the parties' joint motion to dismiss the complaint with respect to three additional Respondent Employers—Central Electric Co., Lakey Electric, Inc., and Pollock Summit Electric, L.P.—and remanded the case for non-Board settlement with respect to them. Having carefully considered the matter, we affirm those earlier actions, and we have amended the caption accordingly. Further, in light of the settlement of the case against Lakey Electric, we deny as moot IEC's exception to having been named a "party in interest" in that case.

[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 findings.

We also deny IEC's and Highrise's exceptions to the judge's "failure" to strike the cross-examination testimony of two employees that was taken while those Respondents' lead counsel was absent due to illness. The record shows that neither IEC nor Highrise was prejudiced by the judge's action, and also that they waived their objections at the time.

There are no exceptions to the judge's dismissal of the refusal-to-hire allegations against Correct Electric and Highrise Electrical.

On May 24, 2010, the Union filed a Motion to Consolidate Cases and Solicit Briefs on issues raised by the Board's decisions in *Toering Electric Co.,* 351 NLRB 225 (2007); *Oil Capitol Sheet Metal, Inc.,* 349 NLRB 1348 (2007); and *Contractor Services, Inc.,* 351 NLRB 33 (2007). Specifically, the Charging Party requested that this proceeding be consolidated with *KenMor Electric Co.,* 355 NLRB No. 173 (2010), which was then pending before the Board, and that the briefs solicited address whether *Toering Electric, Oil Capitol,* and *Contractor Services* should be applied in these cases. Respondent IEC filed a response opposing the Union's motion except with respect to the common complaint allegations against it in both cases. In *KenMor,* supra, we denied both motions.

[3] Although the Respondent Employers in the two cases are different, they are all IEC members and stand in the same relationship to IEC.

issue in *KenMor* and the same is true for the period at issue in this case.[4]

In *KenMor*, we found that by operating the service IEC violated Section 8(a)(1) of the Act. Id., slip op. at 4–7. We further found that, in operating the service, IEC acted as an agent of its electrical contractor members, like Respondents Correct Electric and Highrise Electrical in this case, and, accordingly, that the contractor members "violated Section 8(a)(1) through their maintenance, support, and use of IEC's application referral system." Id., slip op. at 6.

The remedy we imposed in *KenMor* for the violation of the Act caused by the operation of the referral system was entirely prospective. It included a broad cease-and-desist order pursuant to *Hickmott Foods,* 242 NLRB 1357 (1979), ordering that IEC cease and desist from in any manner "interfering with, restraining, or coercing employees in the exercise of their Section 7 rights." Id., slip op. at 12. IEC was also specifically ordered to cease and desist from "Maintaining an application referral system for its member contractors that interferes with or coerces employees in the exercise of the right to engage in union activity." Id. We further ordered IEC to take the following affirmative action:

> (a) Maintain, for a 2-year period from the date of this Order, written records of the operation of its application referral system, including applications, hiring records, and information sufficient to disclose how employment applications are processed, marked, or segregated, and the basis for each referral or failure to refer an application to an employer seeking applications and, upon the request of the Regional Director for Region 16 or his agents, make available for inspection, at all reasonable times, any records relating in any way to the application referral system. [Id., slip op. at 12.]

In the present case, guided by our prior decision in *KenMor,* we would not grant any other form or any additional relief intended to remedy the violation arising out of the operation of the referral service even were we to proceed and find that its continued operation continued to violate the Act. Accordingly, we conclude that because the order in the prior case contains all the relief that we would grant in this case, it serves no statutory purpose to find a further violation of the Act during the latter, but overlapping, period when IEC continued to operate the referral service. A second finding combined with a second remedy would be entirely redundant. We therefore need not decide whether the elimination of the fee for submission of additional application alone would cure the violation caused by the operation of the referral service. We note, however, that IEC eliminated the fee, in part, because of the allegation in the prior case that it was an element of an unlawful system. The Respondents do not argue and we would not hold that Respondents have repudiated their unlawful conduct under the standards established in *Passavant Memorial Area Hospital*, 237 NLRB 138 (1978).

For these reasons, we dismiss the allegations concerning the operation of the referral service on the grounds that their adjudication would not further the remedial purposes of the Act.

Finally, we adopt the judge's finding that Correct Electric discharged Kazolias due to his union activity and affiliation, in violation of Section 8(a)(3).[5]

## AMENDED REMEDY

Having adopted the judge's finding that Correct Electric unlawfully discharged A. Peter Kazolias, we will order the standard reinstatement and backpay remedies. Backpay shall be computed in accordance with *F. W. Woolworth Co.,* 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded,* 283 NLRB 1173 (1987).

## ORDER

The National Labor Relations Board orders that the Respondent, Correct Electric, Inc., Houston, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging employees because of their union affiliation or activity.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their Section 7 rights.

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

[4] The only other change in the operation of the service was that in April 1998 IEC began posting online the employment applications it collected in addition to retaining hard copies for members' review. However, that change did not otherwise affect the character of the referral service.

[5] With respect to the Kazolias discharge, we do not rely, as did the judge, on the instruction Correct Electric's president, Don Hammons, gave to Kazolias' supervisor to "set him [Kazolias] up," as evidence of unlawful animus. The record does not confirm that this instruction referred to setting Kazolias up for discharge. However, the other evidence cited by the judge establishes that the discharge was unlawful.

(a) Within 14 days from the date of this Order, offer A. Peter Kazolias full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make A. Peter Kazolias whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the amended remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge of A. Peter Kazolias, and within 3 days thereafter notify him in writing that this has been done and that the discharge will not be used against him in any way.

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

(e) Within 14 days after service by the Region, post at its Houston, Texas facility, copies of the attached notice marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all employees employed by the Respondent on or at any time since July 1, 1997.

(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. September 30, 2010

Wilma B. Liebman, Chairman

Craig Becker, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER HAYES, concurring in part and dissenting in part.

The principal issue in this case is the same as in *Ken-Mor Electric Co.*, 355 NLRB No. 173 (2010), where a Board majority found Respondent IEC's operation of an application referral service for several nonunionized electrical contractors in the Houston, Texas area to be unlawful.[1] I concur with my colleagues' dismissal of the complaint allegations relating to the operation of the referral service here, but my reasons for doing so are quite different. They dismiss because the remedy is essentially redundant of the remedy for violations found in *KenMor*. I would dismiss because I find the Respondent's referral system lawful.

The majority in *KenMor* held that the application referral system in its totality interfered with the right of job applicants who were union members and "salts" to be hired on an equal basis with other nonunion applicants. It embraced this new theory of violation in an apparent attempt to circumvent both the lack of evidence of discriminatory motivation in the operation of the system and the legal barrier to disparate impact litigation under our Act.[2] It did so in spite of the facts that (1) this new theory of violation was neither plead by the General Counsel, nor fully litigated, and (2) with one exception,[3] each of the practices and procedures comprising the Respondent's system predate any union activity and is undisputedly lawful under Board precedent. This case simply addresses continuation of the Respondent's operations

[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."

[1] I join the majority in finding that Respondent Correct Electric violated Sec. 8(a)(3) and (1) by discharging employee A. Peter Kazolias and in affirming the September 11, 2009 Order in this case dismissing certain complaint allegations and remanding portions of this case for non-Board settlement.

[2] *Contractors' Labor Pool v. NLRB* , 323 F.3d 1051 (D.C. Cir. 2003), denying enforcement to 335 NLRB 260 (2001) ("the Board may not draw support for its decision from the [Title VII] disparate impact line of cases").

[3] I agree that the $50 fee for repeat filings by "outside applicants," which was implemented in response to the union salting campaign, violated Sec. 8(a)(3) and (1). That practice was terminated in 2008.

over a time period extending beyond the period covered by the *KenMor* litigation.

Of course, there is no statutory right for union members and salts to be hired on an equal basis with nonunion applicants, if what that really means is that union members and salts should be hired in the same number or percentage as other applicants. The Act only requires that employers conduct their hiring process on a nondiscriminatory basis, without regard to an applicant's support for or opposition to unions. There has been no showing that the Respondent IEC operated its system on a discriminatory basis. Even assuming the viability of an 8(a)(1) theory that a nondiscriminatory operation could still have the reasonable objective tendency to interfere with employees' Section 7 rights—and the similarity between that theory and disparate impact theory puts such an assumption very much in doubt—the Board still may not find a violation without first considering any asserted business justifications and balancing those considerations against the alleged invasion of employee rights in light of the Act and its policy. *ANG Newspapers*, 343 NLRB 564, 565 (2004). In this respect, the majority erroneously fails to give any weight to the substantial business justifications the Respondents have advanced for the IEC policies which, in any event, do not interfere with any cognizable Section 7 right.

Accordingly, I dissent.

Dated, Washington, D.C. September 30, 2010

Brian E. Hayes, Member

NATIONAL LABOR RELATIONS BOARD

APPENDIX

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

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fire employees because of their union affiliation or activities.

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

WE WILL offer A. Peter Kazolias full reinstatement to his former job as a journeyman electrician or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges to which he would have been entitled if he had not been discriminated against.

WE WILL make A. Peter Kazolias whole for any loss of earnings and other benefits that he has suffered as a result of our unlawful discharge of him, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any and all references to the discharge of A. Peter Kazolias, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that our unlawful conduct will not be used against him in any way.

CORRECT ELECTRIC, INC.

*Robert G. Levy, II, Esq.,* for the General Counsel.
*Frank L. Carrabba* and *Jennifer Soileau, Esqs. (Law Office of Frank L. Carrabba, P.C.)*, for Respondents Independent Electrical Contractors of Houston, Inc. and Highrise Electrical Technologies, Inc.
*Frederic Gover, Esq. (Canterbury, Stuber, Elder, Gooch & Surratt),* for Respondent Pollock Summit Electric, L.P., a subsidiary of Integrated Electrical Services, Inc.
*Judith Sadler and Charles Sykes, Esqs. (Sadler & Sykes),* for Respondents Lakey Electric, Inc., Correct Electric, Inc., and Central Electric Co.
*Patrick M. Flynn, Esq.,* for the Charging Party.

DECISION

STATMENT OF THE CASE

JANE VANDEVENTER, Administrative Law Judge. This case was tried on 13 days in March, May, and June 2001.[1] The complaints allege Independent Electrical Contractors of Houston, Inc. (Respondent IEC),[2] a trade association of electrical contractors in the greater Houston, Texas area, violated Section 8(a)(3) of the Act by operating a discriminatory employment application and referral service on behalf of its constituent members. It is further alleged in the pleadings that Correct Electric Co. (Respondent Correct) violated Section 8(a)(3) of the National Labor Relations Act (the Act) by using Respondent IEC's application and referral service, by refusing to hire

[1] The dates of trial were March 12 to 16, May 7 to 11, June 12, 14, and 15.

[2] In early 2001, Respondent IEC changed its name to Independent Electrical Contractors, Texas Gulf Chapter, Inc.

or to consider for hire three applicants, and by terminating the employment of one employee. It is alleged that Central Electric Co. (Respondent Central) violated Section 8(a)(3) of the Act by using Respondent IEC's application and referral service, and by refusing to hire or to consider for hire four applicants. It is further alleged that Lakey Electric, Inc. (Respondent Lakey) violated Section 8(a)(3) of the Act by using Respondent IEC's application and referral service, and by refusing to hire or to consider for hire two applicants. The pleadings allege that Pollock Summit Electric, L.P., a subsidiary of Integrated Electrical Services, Inc. (Respondent Pollock Summit) violated Section 8(a)(1) of the Act by instructing an employee to remove a union sticker from his hat, and violated Section 8(a)(3) of the Act by using Respondent IEC's application and referral service, using discriminatory hiring criteria, and by refusing to hire or to consider for hire two applicants. Finally, it is alleged that Highrise Electrical Technologies, Inc. (Respondent Highrise) violated Section 8(a)(3) of the Act by using Respondent IEC's application and referral service, and by refusing to hire or to consider for hire two applicants.[3] Each of the Respondents filed answers denying the essential allegations in the complaints. After the conclusion of the hearing, the parties filed briefs which I have read.

Based on the testimony of the witnesses, including particularly my observation of their demeanor while testifying, the documentary evidence, and the entire record, I make the following

## FINDINGS OF FACT

### I. JURISDICTION

Respondent IEC is a corporation with an office and place of business in Houston, Texas. It is a trade association which provides various services to its constituent member companies, including education and training, lobbying, networking, and an application and referral service for prospective employees. During a representative 1-year period, Respondent IEC derived gross revenues in excess of $250,000 annually from its programs. Accordingly, I find, as Respondent IEC stipulated at trial, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The other Respondents herein are all electrical contractors operating primarily in the Houston, Texas area. Each of them admits that it is engaged in commerce within the meaning of the Act, and is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and I so find.[4]

The Charging Party (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

### II. UNFAIR LABOR PRACTICES

#### *A. The Facts*

##### 1. Facts relating to Respondent IEC

Respondent IEC is a trade association of electrical contractors in the Houston, Texas, and surrounding area. The other Respondents are all members of Respondent IEC. For many years, Respondent IEC has served its members by, among other things, offering training to employees and managers, lobbying appropriate city or State governmental groups on issues of concern to its members, offering a forum for "networking" among its members, and providing a centralized employee application and referral service for the use of those members who choose to use it. According to Executive Director Bill Wilkerson, membership has traditionally been made up of electrical contractors who do not have a collective-bargaining agreement with the Charging Party Union (the Union). He testified that a few times over the past 10 or 12 years, a member of Respondent IEC has entered into a collective-bargaining agreement, and in every case that contractor has then let its membership in Respondent IEC lapse. In addition, at least one member has entered into a project agreement with the Union, that is, an agreement which is limited to one jobsite and limited to the duration of that project only. Overall, however, the electrical contractors who make up the membership of Respondent IEC are not signatory to collective-bargaining agreements with the Union.

The application and referral service has been available to members for more than 10 years, since at least 1989. Wilkerson described the operation of this service from about 1997 to the present. Member contractors who do not desire to accept employment applications directly from applicants, either because of their small size or limited office staff, may direct applicants to Respondent IEC, where a standard application form may be filled out. Respondent IEC maintains these applications in three categories: journeymen electricians, apprentice electricians, and "green," that is, applicants who are untrained or inexperienced in electrical work. This case is concerned only with journeymen electricians. When an application is 30 days old, it is removed from the application files. Member employers may come to the headquarters of Respondent IEC and look over the applications, or they may pick up copies of applications, or they may ask to have applications faxed to them at their offices. For the past several years, since April 1998, the applicants have also been listed on Respondent IEC's web site, along with certain pertinent information from the applications. Members may review the applicants on the web site. If a member hires an applicant, the member is asked to report this fact to Respondent IEC, so that that application may be removed from the file of available employees, but Wilkerson testified that this is not always done. For this reason, among others, many member employers choose to look at only very recent applications, from 1 day to several days. Respondent IEC keeps no record of which member employers use the application and referral service, or which applications they gain

[3] This proceeding was originally consolidated with one other case, entitled Highlights of Houston, Inc., Case 16–CA–18821–1. That case was settled during the first week of the proceedings, and was severed from the remaining cases.

[4] Respondents Highrise, Lakey, and Central each purchased and received materials valued in excess of $50,000 from points outside Texas during a representative 1-year period. Respondent Pollock Summit performed services valued in excess of $50,000 for entities located outside Texas during a representative 1-year period. Respondent Correct performed services valued in excess of $50,000 for a general contractor engaged in commerce during a similar period. Thus, each of these companies meets the Board's jurisdictional standards.

access to by any of the available methods. Wilkerson testified that Respondent IEC's staff is instructed not to screen applications or withhold particular applications from a member who asks to look at applications. Instead, they are instructed to provide all the applications for the category of employee and time period requested. All Respondent IEC members may use the application and referral service, whether they also accept applications directly or not.

In addition to the application and referral service, Respondent IEC members may also participate in the "Shared Man Program," which enables one contractor to borrow one or more employees for a stated period of time from another contractor. Wilkerson explained that this enables the lending contractor to retain an employee instead of having to lay him off, and enables the borrowing contractor to get temporary help when needed without having to hire new employees.

At about the same time the application and referral service was begun at Respondent IEC and the Shared Man Program was formalized, according to the testimony of Respondent Central's vice president, James Kuykendall, some member contractors discussed with one another their views about hiring policies and priorities. They evolved a list of hiring priorities which is followed, with some individual variations which will be noted below, by all the Respondents herein (other than Respondent IEC). Under this system, the contractor who needs to employ additional electrical workers looks first to former employees (who were satisfactory employees), secondly to individuals recommended by its current personnel, and if these two sources of workers are insufficient, then thirdly to applications on file with Respondent IEC.

In early September 1997, Respondent IEC imposed a $50 fee for the second and each succeeding application filed by an individual during a 1-month period of time. Any employee of a member contractor who came into Respondent IEC to file an application was, however, exempt from the rule. Wilkerson testified that this fee was imposed because the program was costing too much, but he admitted that no analysis was done either before or after the imposition of the fee to determine if the rule was accomplishing its asserted goal. Wilkerson admitted that for about 6 months prior to the imposition of the fee, Ray Rath, Troy Lockwood, and Jojn Gafford had filed applications with Respondent IEC on numerous days each month, and implied that he considered this as burdensome to the application and referral service. These applicants testified that they did so in order to keep their applications fresh, since they were aware that many contractors requested applications for only a day or a few days. Wilkerson testified that no applicant ever paid the $50 fee in order to be allowed to file a second application in a 1-month period. In early 1998, Respondent IEC discontinued the $50 fee, and substituted instead a rule flatly prohibiting a second application during a 1-month period, excepting only employees who had been laid off after working for a member contractor for less than a month from their first application.

During the period 1997 to the time of the hearing, all the witnesses agreed that electrical workers were in high demand for most of that time, with perhaps occasional short lulls. This fact influenced member contractors, according to the testimony of several of them, to request applicants from Respondent IEC for only the current day or a few days. They reasoned that most of the applicants would secure jobs so quickly that it would be a waste of time to contact or to interview any applicant who had had a few days in which to secure a job. They believed that applicants would be snapped up by other contractors within a few days.

Respondent IEC publishes a monthly newsletter for its members. In the March 1994 issue of the newsletter, a former president of Respondent IEC, Jon Pollock, authored an article advising fellow member contractors on techniques best calculated to avoid hiring any union members and/or union employees who intend to try to organize their fellow employees. In a related article which echoed some of these sentiments and advice, and attributed some of the openly antiunion statements to Robert Wilkerson, he testified that he was quoted inaccurately, and that the material attributed to him actually came from Pollock's article. Wilkerson admitted, however, that he never corrected or disclaimed the supposed misquotations in the newsletter or otherwise.

2. The Union's salting campaign

During 1997 and subsequently, the Union engaged in a "salting" campaign among some of Respondent IEC's member contractors. Certain electricians would apply to these contractors, either directly or through the application and referral service, and would overtly state that they were members of the Union and intended to engage in organizing activities among the employees, if hired. The Union referred to such applicants as "overt salts." At times, other electricians would apply, sometimes on the same day as an overt salt, and would not include on his application his union-identified apprenticeship or past job experience. These applicants were called "covert salts." Most salts who were hired were expected to discuss the Union with other employees and sometimes to engage in other organizing activities such as wearing a union pin or picketing.

Jack Smith, Ray Rath, Troy Lockwood, and John Gafford are four applicants who are alleged to have been passed over for consideration or for hire by certain of the Respondents. Each one testified to his experience and qualifications as an electrician. Smith has been a qualified journeyman since 1977, is licensed by the city of Houston, and is experienced in commercial and industrial electrical work. Rath, Lockwood, and Gafford are also licensed as journeymen by Houston, experienced in all types of electrical work, and each has 20 or more years of experience as an electrician. In order to keep their licenses current, each of these individuals attends refresher training courses at least every 3 years. Rath and Smith testified that they continue to perform electrical work from time to time, and that they have no difficulty in performing electrical work when they do so. At the time of the trial, Gafford was working full time as a journeyman electrician.

It was stipulated that each of them filed applications with Respondent IEC on numerous dates. The dates each filed such applications in January through September 1997 are set forth in the following chart.

| Name | January | February | March | April | May | June | July | August | September |
|---|---|---|---|---|---|---|---|---|---|
| Troy Lock-wood | 3 | 5, 12, 13, 17, 18, 20, 21, 24, 24, 26, 27 | 3, 4, 5, 6, 7, 10, 11, 13, 14, 17, 18, 19, 20, 21, 24, 31 | 1, 2, 3, 4, 7, 8, 9, 10, 14, 15, 16, 21, 22, 23, 24, 28, 29, 30 | 1, 2, 7, 9, 12, 13, 14, 15, 16, 19, 20, 23, 27, 28, 29 | 2, 3, 4, 5, 9, 10, 11, 12, 13, 18, 19, 23, 25, 26, 27, 30 | 14, 16, 17, 21, 23, 24, 25, 30, 31 | 4, 11, 12, 13, 25, 26, 27, 29 | 2, 3, 4, 5, 8 |
| Jack Smith | | | 19, 24, 31 | 1, 7, 8, 9, 10, 14, 15, 16, 18, 21, 22, 23, 24 | 6, 8, 12, 14, 15, 16, 19, 23, 28, 29 | 2, 3, 5, 6, 9, 11, 12, 16, 17, 18, 23, 26 | 3, 7, 8, 10, | | 10 |
| John Gafford | 6 | 5, 12, 13, 14, 17, 18, 24, 25, 27, 28 | 3, 4, 5, 6, 7, 10, 12, 14, 17, 18, 19, 20, 21, 24, 31 | 1, 2, 3, 4, 7, 8, 9, 10, 14, 15, 16, 17, 18, 21, 22, 23, 25, 28, 29 | 2, 5, 6, 7, 12, 13, 14, 15, 19, 20, 23, 27, 28, 29, 30 | 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 16, 17, 18, 19, 20, 23, 24, 25, 27, 30 | 1, 2, 3, 7, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 28, 30, 31 | 1, 4, 5, 6, 11, 12, 13, 15, 20, 22, 25, 26, 27, 28, 29 | 3, 4, 5, 8 |
| Ray Rath | 3 | 5, 12, 13, 17, 18, 19, 20, 21, 24, 25, 26, | 3, 4, 5, 6, 7, 13, 14, 17, 18, 19, 20, 24, 25, 31 | 1, 2, 7, 9, 10, 14, 15, 18, 21, 22, 23, 25, 28, 30 | 1, 2, 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 19, 20, 23, 27, 28, 29, 30 | 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 16, 17, 23, 25, 26, 27, 30 | 1, 2, 3, 7, 8, 9, 10, 11,14, 15, 17, 22, 23, 25 | 1, 11, 13, 14, 18, 19, 20, 25, 26, 27 | 2, 3, 4, 5, 8 |

In 1998, three of the same individuals filed applications with Respondent IEC on the following dates:

| Name | Jan. | Feb. | Nov. | Dec. |
|---|---|---|---|---|
| Troy Lockwood | 29 | | | |
| Jack Smith | | 9 | 11 | 7 |
| Ray Rath | | 2 | 2 | 7 |

In 1999, two of these individuals filed applications with Respondent IEC on the following dates:

| Name | Jan. | Feb. | March | April | May | June | July |
|---|---|---|---|---|---|---|---|
| Jack Smith | 12 | 12 | 19 | 19 | 19 | 21 | 20 |
| Ray Rath | 13 | 12 | 19 | 19 | 19 | 21 | 20 |

Danny Tilley, an applicant who openly stated on his application that he would organize other employees on nonworktime, filed an application at Respondent IEC on February 4, 1998. Tilley had 25 years' experience in the trade, and was a city of Houston licensed electrician.

3. Facts relating to Respondent Correct

Don Hammons, the president of Respondent Correct, testified that its hiring priorities are as follows:

1. former employees;
2. recommendations from current employees; and
3. applicants to Respondent IEC.

Hammons stated that Respondent Correct is part of the formal Shared Man Program, but did not state where its use may fit into the hiring priorities. Hammons also testified that he was familiar with Lockwood, Rath, and Gafford, and knew that they were electricians who were also organizers for the Union.

According to Hammons, during 1997, it secured all its employees except one without resort to the third-hiring priority. The one employee hired through an IEC application was Peter Kazolias in July 1997. According to Kazolias, he was interviewed and hired by Hammons as a journeyman at a pay rate of $15 per hour. Kazolias had been a foreman on some past jobs, but according to his testimony, he informed Hammons during the initial interview that because of some family duties, he did not want to be a supervisor. Kazolias recalled that Hammons commented that the people who run his jobs get paid more than $15 an hour.[5] Kazolias worked as a journeyman for 2 months without incident.

[5] Hammons stated that Kazolias was hired as a foreman, although he had no clear memory of the interview. He based his statement on the pay rate of $15 an hour, stating that he would not pay a mere journeyman $15 an hour. However, when applying this criteria to a list of his workers, he stated that he employed 14 foreman and 22 journeymen. Hammons admitted that not all of the foremen had jobs to superintend. Witness Kaiser could not corroborate Hammons, and simply stated that he did not remember what the pay levels were for different categories of employee. In addition, Hammons initially denied knowledge of Kazolias' picketing activity, before admitting that he had been told about the picketing. Kazolias, while appearing to be an individual who thinks highly of himself, was straightforward in testimony and recalled

In September, Kazolias participated in picketing Respondent Correct's jobsite at the lunchbreak along with an organizer from the Union, Troy Lockwood. Hammons admitted that he was told that Kazolias was picketing on behalf of the Union. About a week later, Hammons instructed Ken Kaiser, Respondent Correct's vice president, to assign Kazolias as a foreman to a jobsite at a considerable distance. Kaiser, in testifying, said that Hammons had told him to "set him up," referring to Kazolias. Kazolias testified that when Kaiser told him about the assignment as foreman, he protested that his mother's illness made it difficult for him to spend more time on the job than he was doing as a journeyman. He mentioned that the greater distance of the new jobsite and the increased duties that a foreman had to do would take too much time. According to Kazolias, Kaiser told him that he could either take the foreman's job, or his pay would be cut. When Kazolias said that he would take a pay cut, Kaiser asked him to wait, and left. When he came back, he simply told Kazolias that he was being terminated. The termination slip in Respondent Correct's files states that Kazolias had quit, but a subsequent letter from Kaiser stated that Kazolias had been terminated because he refused a foreman's job assignment. No explanation was offered for this discrepancy.[6]

4. Facts relating to Respondent Lakey

Kyle Gilmore, Respondent Lakey's superintendent for the past 7 years, testified concerning its hiring policies and actions during 1997 and 1998. Respondent Lakey's hiring priorities are as follows:

1. former employees;
2. referrals from current employees;
3. loaned employees (not from Shared Man Program); and
4. applicants from Respondent IEC.

Gilmore later added two glosses on category two, stating that recommendations from former employees or from other contractors were considered to be referrals within the second priority. Respondent Lakey is not a participant in the formal Shared Man Program, but does, according to Gilmore, have informal arrangements with a few other contractors to borrow or lend employees.

Lakey hired four journeymen electricians in February 1998, and two in March 1998.[7] Gilmore testified that he begins to look for employees 2 or 3 weeks ahead of the time that he needs to hire them. He also had a practice at that time of having all the journeyman applications which Respondent IEC received faxed to him every day. Gilmore testified that while he believed it was up to the employees to have a union campaign, but he didn't want to "bring in" union organizers.

5. Facts relating to Respondent Central

Respondent Central has operated as a nonsignatory electrical contractor since about 1983. James Kuykendall testified that its hiring priorities are:

1. former employees;
2. individuals "who are compatible with our shop's philosophy" recommended by current employees;
3. Shared Man Program; and
4. Applications from Respondent IEC.

During his testimony, Kuykendall stated that Respondent Central wants to remain union free.

Respondent Central hired a journeyman electrician (Pablo Rios) on July 19, 1997, and another journeyman electrician (Steve Shelton) on February 16, 1999. Both these employees were contacted through their applications filed at Respondent IEC. Rios had only 5 years of experience doing residential wiring, and none at all in industrial and commercial work, which is the bulk of Respondent Central's work. Shelton had about 20 years of experience, and was not a member of any union. Admitted Supervisor David Templeman interviewed and hired him. Kuykendall testified that Templeman was the representative of Respondent Central who procured applications from Respondent IEC, interviewed, and hired employees. Templeman is no longer in Respondent Central's employ and did not testify.

As detailed above, Gafford, Lockwood, and Rath all had timely applications on file at Respondent IEC throughout July 1997. All three of these employees had longer experience in the trade than did Rios as well as being experienced in commercial and industrial work. Rath and Smith had timely applications on file at Respondent IEC on February 16, 1999. None of these four applicants were contacted or interviewed by Respondent Central.

Kuykendall testified that Respondent Central hired both Rios and Shelton because their applications showed "stability," i.e., that they were stable employees, unlikely to leave Respondent Central's employment. Shelton remained employed at Respondent Central for only a few months.

6. Facts relating to Respondent Highrise

Paul Blount, president of Respondent Highrise since 1993, testified that his company's hiring priorities are:

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details without difficulty. His testimony stood up well under cross-examination. For all these reasons, I credit Kazolias over Hammons.

[6] Kaiser's version of this conversation differed in his attribution of the option of taking a pay cut to Kazolias. Kaiser testified that being a foreman did not require spending additional time on the job, despite the extra duties of ordering materials, filling out timesheets, laying out the job, and directing other employees' work. His answers were often vague or even evasive, especially on cross-xamination, and his memory was not good, even on basic facts which were within his area of responsibility, such as the wage rates paid employees. I credit Kazolias over Kaiser.

[7] The record reflects that Respondent Lakey hired Joe Elizondo and Joe Fenn on February 13, 1998; Neil Howland in early February 1998; Paul White on February 20, 1998; Scott Lee on March 4, 1998; and Alan Dalton on March 9, 1998. Respondent Lakey filed a motion to correct the record as to a stipulation and in the alternative to take administrative notice of a document contained in a regional office investigative file. I decline to take administrative notice of a document in an investigative file. In addition, because the record as a whole, both testimony and exhibits, is sufficiently clear as to the employees hired by Respondent Lakey, I find that the ambiguous stipulation is not controlling, and I deny Respondent Lakey's motion to correct the record in that regard.

1. former employees;
2. individuals recommended by current employees; and
3. applications from Respondent IEC.

Blount stated that he normally views only applications from the past few days, since employees who filed applications of any earlier dates are likely to have secured jobs already. The evidence shows that one employee, John Easton, was interviewed by Blount for a position at some time during July 1999, but that he was told by Blount a few days later that another individual had been hired. This testimony was not contradicted by Blount. He simply did not recall exactly when he had hired a journeyman, but thought it was around July 1999.

Blount also testified that when he began the company in 1993, he told fellow union electricians who were considering coming to work for him that he had "decided" to operate the company nonunion.

7. Facts relating to Respondent Pollock Summit

James Roberts, Respondent Pollock Summit's vice president for field operations, testified concerning its hiring policies and priorities. They are as follows:

1. current employees;
2. former employees;
3. recommendations of supervisors;
4. recommendations of employees; and
5. applicants to Respondent IEC.

Roberts testified that he customarily requests from Respondent IEC only those applications filed on the day he visits the office. He picks up copies in person. Respondent Pollock Summit called a business consultant, G. Whitney Smith, to testify as an expert on the subject of hiring policies. He testified that Respondent Pollock Summit's hiring priorities constitute a rational system. G. W. Smith's experience in the construction industry and his knowledge of its particular needs was extremely slight. The testimony of this witness was no more informative than a general text on the subject of human resources management. I find that it was too general to be of value in determining the issues in this case, and I accord it very little weight.

Respondent Pollock Summit hired two journeymen in April 1999 (John Easton and Taylor), one in May and one in July. Roberts testified that Taylor was hired as a service truckdriver. Although he does not recall seeing the applications filed by Rath and Smith in April, he testified that their applications do not reflect experience in the particular job of service truckdriver, and that hence they would not have been as well qualified as the employee who was hired.

Employee John Easton was hired on the basis of an application he filed on April 19, 1999. Both Ray Rath and Jack Smith filed applications on the same date. Easton testified that he applied as a "covert" salt, omitting any past experience which would identify him as a union supporter or member. After a few weeks of employment at Respondent Pollock Summit, Easton began wearing a sticker bearing the name of the Union on his hardhat. According to Easton, a few days after he began wearing the sticker, Roberts approached him and told him that it was against company policy to wear union stickers on hardhats, and ordered him to remove the sticker. Easton asked for a copy of the Company's policy. Roberts testified that the Company owns the hardhats, and does not allow certain stickers to be placed on them, such as stickers bearing the name of another company, but it does allow safety-related stickers and flag stickers on the hats.[8]

Some weeks later, employee Michael Frazier observed that a sign reading "No Solicitation" in 2-inch high letters was posted on the jobsite trailer following a visit to the jobsite by some individuals picketing on behalf of the Union.

*B. Discussion and Analysis*

1. The applicable law

The lead case concerning the elements which must be established and rebutted in refusal to hire or refusal to consider for hire cases is *FES*, 331 NLRB 9 (2000). In that case, the Board found that to establish a prima facie case, the General Counsel must show: "(1) that the respondent was hiring, or had concrete plans to hire, at the time of the alleged unlawful conduct; (2) that the applicants had experience relevant to the announced or generally known requirements of the positions for hire, or in the alternative, that the employer has not adhered uniformly to such requirements, or that the requirements were themselves pretextual or were applied as a pretext for discrimination; and (3) that antiunion animus contributed to the decision no to hire the applicants." *FES*, supra at 12. If these elements are established, the burden then shifts to the respondent, under *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir 1981), cert denied 455 US 989 (1982), to establish that it would not have hired the applicants in any case.

With respect to an allegation of refusal to consider for hire, the elements which must be established are: "(1) that the respondent excluded applicants from a hiring process; and (2) that antiunion animus contributed to the decision not to consider the applicants for employment." *FES*, supra at 15.

Also relevant here, is a line of cases decided by the Board which concern exclusionary hiring systems. In these cases, where a respondent devises a scheme which excludes union members or union supporters from basic eligibility for hire because of antiunion animus, and in order to avoid hiring individuals who support a union, the Board has found the scheme to be discriminatory, regardless of asserted business reasons supporting the "reasonableness" of the scheme. See, e.g., *D.S.E. Concrete Forms*, 303 NLRB 890 (1991), enfd. 21 F.3d 1109 (5th Cir. 1994); *Fluor Daniel, Inc. (Fluor Daniel III),* 333 NLRB 427 (2001); *M & M Electric Co.*, 323 NLRB 361 (1997); *Eldeco, Inc.*, 321 NLRB 857 (1996).

The General Counsel argues, among other things, that Respondent IEC's application and referral service, taken as a whole, is an unlawful exclusionary scheme, citing not only Board cases, but the decisions rendered by Administrative Law

[8] To the extent that Roberts' version of his conversation with Easton differs from that of Easton, I credit Easton. Roberts was not an impressive witness and his denial of having seen applications of Rath and Smith on April 19, 1999, the very day for which he requested copies of all applications filed, is incredible.

Judge Howard I. Grossman in two cases which involved member contractors of Respondent IEC.[9] While the ALJ decisions are instructive, they are not binding, and the analysis which follows relies upon Board precedent.

The Charging Party argues that the hiring scheme herein is "inherently destructive" of employee rights. Citing *NLRB v. Erie Resistor Corp.*, 373 U.S. 221, 227 (1963), and *NLRB v. Great Dane Trailers, Inc.*, 388 U.S. 26, 33 (1967), the Charging Party Union argues that a finding of antiunion animus motivating the hiring scheme is therefore unnecessary.

Respondents argue that Respondent IEC's application and referral service is supported by rational business considerations, and is motivated solely by those considerations, not by any antiunion animus.

2. Respondent IEC

Respondent IEC was originally established to assist its member contractors, essentially all of whom are nonunion, that is, have unrepresented work forces. As is made clear by evidence concerning the history, activities, and objectives of the association, one of its aims is to assist its members in remaining nonunion. While I do not attach great weight to the articles authored by a former president of Respondent IEC which unashamedly set forth suggestions for avoiding having to hire any union members or salts, it is entitled to some weight. The article can fairly be said to demonstrate that former Respondent IEC president, Jon Pollock, at least, displayed antiunion animus. When viewed in conjunction with the record evidence as a whole, it bolsters the conclusion that one of the objectives of Respondent IEC is indeed to assist its contractor members in remaining nonunion.

The elements of Respondent IEC's hiring scheme include: (1) the centralized acceptance of employment applications by Respondent IEC on behalf of all its member contractors and the communication of those applications to member contractors;[10] (2) the formulation and administration of the Shared Man Program; (3) the methods used in administering these programs, which include the rules regarding frequency of application and the lack of recordkeeping or provision of any information about the operation of the system; and (4) the commonly formulated and similar hiring priorities which all the Respondents herein utilize in some variation or another.[11]

There can be little doubt that the use of this system as a whole has the effect, and the predictable and foreseeable effect, of reducing the probability that a union member or union-associated employee will ever by considered for employment by a member contractor utilizing the scheme. The first tier (former employees or in some variations current and former employees) comes from a group of employees who are know to be unrepresented by a union and to have been so for many years. The second tier (recommendations from employees or in some variations supervisors and employees) is most likely to consist of employees who come from an unrepresented environment, especially if these employees are expected to be "compatible" with the nonunion "philosophy" of the member contractors. In some variations of the priorities, employees from the Shared Man Program are the next tier. These employees are guaranteed to come from a nonunion environment, as they are employees of other Respondent IEC contractors, and virtually all its members are nonunion contractors. Finally, after exhausting the supply in all these tiers, the final resort is to the applications filed with Respondent IEC. If priority is given to employees who have worked for other Respondent IEC member contractors at that step, as was suggested by some witnesses, these employees too will almost certainly come from a nonunion employer. By this time, the cumulative impact of insuring that each source of potential employees is always a nonunion or unrepresented environment, is multiplied at each step, reducing the probability of having any union members or supporters applying to these contractors to an extremely small one.

Thus, the first opportunity that any union member or union-associated applicant has to be considered is at the last step of the three to five step priority system. In this case, the record shows that four openly union members—Jack Smith, Rath, Lockwood, and Gafford—applied many, many times to Respondent IEC at a time when experienced journeymen like themselves were in high demand, and were generally snapped up by employers within a very few days, but they were never contacted or interviewed by any of the Respondents, or by any other Respondent IEC member contractor. This fact suggests that at this final and only chance for union-identified applicants to enter the employment of one of these contractors, no contractor would willingly choose, in Kyle Gilmore's words, to "bring in" union employees who intended to try to organize other employees. Another factor buttressing this inference is the complete lack of any recordkeeping or accountability in the application and referral service.

It is a clearly predictable and foreseeable effect of the system that union employees will be virtually excluded from employment. When this effect is so obvious, and there is, as here, other evidence of antiunion animus, the inference that this predictable effect was *intended* by the member contractors and Respondent IEC in creating the system is virtually inescapable. It is not necessary to reach, as the Charging Party argues, the issue of whether the system is "inherently destructive" of employee rights by excluding union members from the possibility of being hired. There is sufficient evidence of antiunion animus, and evidence from which inferences of antiunion animus can be drawn, to support a finding that such antiunion animus exists, and is one motivation for the application and referral service scheme as a whole.

[9] Those decisions are entitled *Houston Stafford, et al.*, JD(ATL)-72–98 and *Pollock Electric*, JD(ATL)-50–98.

[10] Member contractors may have applications communicated to them, as noted above, by any of several means, among which are personal perusal of the original applications, obtaining copies of the applications, having applications send by datafax, and perusing applications on the website of Respondent IEC. Respondents have denied that Respondent IEC is their agent for the purpose of collecting and communicating these applications on their behalf. In view of their reliance upon Respondent IEC for this purpose and the entire record in this proceeding, it is overwhelmingly clear that Respondent IEC acts as the agent for its member contractors in the operation of the application and referral service in all its aspects.

[11] The variations in the hiring priorities utilized by each Respondent are set forth below.

3. Respondent Correct

Respondent Correct, as found above, hired Peter Kazolias as a journeyman, and believed he did good work for about 2 months. At that time, Kazolias began to engage in union activities such as picketing, and within a week, Hammons terminated his employment, having instructed his vice president to "set him up." Kazolias had informed Hammons when he was hired about his mother's illness and consequent inability to supervise a job or travel long distances to a jobsite. Hammons was well aware that Kazolias would have to quit if given such an assignment. He essentially decided to terminate Kazolias. That Hammons was motivated by antiunion animus in making this decision is shown by the timing of the "Hobson's Choice" presented to Kazolias, only a week after he began to engage in union activities, by the irrationality of discharging an admittedly good worker at a time when they were difficult to find, by his instruction to Kaiser to "set up" Kazolias, and by the inconsistency in Respondent Correct's records. Respondent Correct's asserted defense, that Kazolias had been hired as a foreman, is not credited. I find, therefore, that Respondent Correct's discharge of Kazolias violated Section 8(a)(3) of the Act.

Respondent Correct asserts that it hired only one employee, Kazolias, through Respondent IEC's application and referral service in 1997, and that any others were hired through recommendations or were former employees. Rath, Lockwood, and Gafford, certainly did have applications on file with Respondent IEC through most of 1997, and were qualified journeymen. However, as there is no record evidence to show if and when Respondent Correct actually did hire employees other than Kazolias in 1997, I decline to find that it violated Section 8(a)(3) of the Act by refusing to hire Rath, Lockwood, and Gafford. However, I find that by its participation in and use of Respondent IEC's discriminatory hiring system, Respondent Correct violated Section 8(a)(3) of the Act.

4. Respondent Lakey

As stated above, Troy Lockwood filed an application with Respondent IEC on January 29, 1998, and Danny Tilley filed an application there on February 4, 1998. Both are qualified and licensed electricians. Kyle Gilmore testified that he receives all applications filed with Respondent IEC, and that he begins to look for qualified employees about 2 or 3 weeks ahead of his staffing needs. The record reflects that Gilmore hired three journeymen within the first 2 weeks of February 1998. By his own description of his method, then, both Lockwood and Tilley's applications would have been among those he reviewed. I therefore do not credit Gilmore's denial that he saw Lockwood's and Tilley's applications.

Gilmore's testified that he hired Joe Elizondo, Joe Fenn, and Neil Howland because they had recent experience and showed "stability." Two of the three, however, listed on their applications no electrical employment for the preceding 6 months. Both Elizondo and Fenn had completed their electrical training in 1986, and had less experience as journeymen than did Lockwood or Tilley. Gilmore testified that he hired Howland, a covert union salt, because his application was the best one. When shown Tilley's application, Gilmore testified that it was better than Howland's application. The fact that Gilmore hired Howland rather than Tilley can only be explained by Gilmore's unwillingness to hire an employee who intends to engage in union activities and seek to organize other employees. Gilmore's testimony to the effect that he didn't want to "bring in" union organizers also shows that this was the reason he did not hire Tilley, despite his better application. This fact gives rise to the inference that his reason for declining to hire Lockwood, despite his lengthy experience, was also motivated by antiunion animus.

Gilmore defended his decisions on the basis that, in his experience, it takes an employee 2 or 3 weeks to become an efficient worker, both physically and mentally, if the employee has not been working in the trade recently. This is belied by the fact that two of the three employees he did decide to hire in February 1998 had not been employed doing electrical work for at least 6 months. In addition, Jack Smith, Troy Lockwood, and Ray Rath, who have resumed electrical work repeatedly over the last few years, testified that they had no difficulty resuming electrical work, and did not require 2 or 3 weeks to get reacclimated to the work. I find that Respondent Lakey has failed to rebut the prima facie case, and violated Section 8(a)(3) of the Act by failing to hire Troy Lockwood and Danny Tilley. I find further that Respondent Lakey, by its use of Respondent IEC's discriminatory application and referral service, has violated Section 8(a)(3) of the Act.

5. Respondent Central

With respect to Respondent Central, the General Counsel has shown that Jack Smith, Rath, Gafford, and Lockwood all had timely applications on file with Respondent IEC in July 1997, when Pablo Rios was hired, and that they were all qualified. The third element, antiunion animus, has been demonstrated as well. Kuykendall limited his willingness to accept recommended employees to those "who are compatible with our shop's philosophy." The only reference to any philosophy in Kuykendall's testimony was that the Company was operated "union free" and wanted to continue in that fashion. One additional indication of animus contributing to the hiring decision is the fact that Respondent Central passed over four highly qualified journeymen in July 1997 in order to hire an individual with only 5 years of experience, and that only in residential wiring. Rios was an unlicensed electrician with no experience in commercial or industrial work. Respondent Central's asserted defense, that he promised "stability" cannot be accepted. No amount of stability could outweigh a significant deficiency in qualifications for the work, and this defense does not rebut the prima facie case. In the case of Shelton, it was not specified what in his experience promised stability, but in fact, he did not prove to be a stable employee. As Templeman, the superintendent who made the hiring decision, was not present to state with more precision exactly why he chose Shelton over applicants Ray Rath and Jack Smith in February 1999, the prima facie case is unrebutted. I therefore find that Respondent Central violated Section 8(a)(3) of the Act by failing to hire Jack Smith in July 1997 and February 1999, and failing to consider for hire Troy Lockwood, John Gafford, and Ray Rath. I further find that Respondent Central, by its use of Respondent IEC's

discriminatory application and referral service, has violated Section 8(a)(3) of the Act.

6. Respondent Highrise

The evidence establishes that Respondent Highrise hired one journeyman in July 1999. Both Smith and Rath had applications of file with Respondent IEC which had not expired. However, these applications were at least a week old by the beginning of July 1999. If Blount examined only a few days worth of applications, he most likely did not review the applications of Smith and Rath. While it is arguable that Respondent IEC's limitation on the filing of multiple applications during a month, coupled with its refusal to keep records of the operation of its referral system and its refusal to supply applicants with any information about the fate of their applications should give rise to a presumption that all applications on file have been viewed by member contractors who use the system, I do not presume that the applications were viewed by Blount. Even assuming that Blount did see the applications, there is a failure of proof as to the third necessary element, the required showing that antiunion animus contributed to the decision not to hire the applicants. Here, the only evidence of Blount's animus is the remote statement that he had "decided" to operate his Company nonunion. Not only is this statement remote in time, it is ambiguous when examined for the purpose of showing antiunion animus. In any case, I find that little weight should attach to the statement, and find that the General Counsel has failed to establish that antiunion animus was a contributing factor to Blount's failure to hire or consider Smith and Rath in July 1999. I therefore dismiss that portion of the complaint with respect to Respondent Highrise which alleges that it violated Section 8(a)(3) of the Act by failing to hire or to consider for hire Jack Smith and Ray Rath.

I shall find, however, in common with the other Respondents herein, that Respondent Highrise's use of Respondent IEC's discriminatory application and referral service violates Section 8(a)(3).

7. Respondent Pollock Summit

Employee John Easton, a "covert salt," was hired by Respondent Pollock Summit in April 1999. When, a few weeks later, he wore a union sticker on his hardhat, James Roberts told him that his "union sticker" was prohibited by company policy and that he must remove it. Respondent Pollock Summit argues that its no solicitation policy, pursuant to which Roberts was presumably acting, did not single out union stickers. Whether the written policy is or is not lawful is beside the point. Roberts singled out Easton's union sticker for removal. His oral instruction was coercive, and violates Section 8(a)(1).

With respect to Respondent Pollock Summit, the General Counsel has shown that it did hire four journeymen during April through July 1999, a period in which both Ray Rath and Jack Smith, qualified journeymen, had active applications on file with Respondent IEC. More precisely, it was shown that both Rath and Jack Smith filed applications on April 19, 1999, the very same day as John Easton, and individual who was hired by Respondent Pollock Summit. This was admittedly the day when James Roberts picked up applications for *only* April 19. In addition, the General Counsel has shown, through Roberts' coercive instructions to Easton concerning his union sticker, that Respondent Pollock Summit possessed antiunion animus. I rely on the Roberts-Easton incident rather than on Frazier's testimony concerning a large "No Solicitation" sign he observed a couple of months later in the wake of picketing in order to find antiunion animus. I find that the General Counsel has established a prima facie case that Respondent Pollock Summit failed to hire Jack Smith and Ray Rath because of their union associations.

Respondent Pollock Summit has asserted in defense that one of the jobs it filled was a service truckdriver, which required specialized experience not possessed by Rath or Smith. Even assuming that this is a valid defense, Respondent hired three other journeymen, and raised no defense concerning these three positions. The General Counsel's prima facie case remains with respect to those jobs.

With respect to its hiring priorities, which were specifically alleged to be discriminatory, the General Counsel argues that because the sources of employees in the first four steps of the priority scheme were so very unlikely to contain any union-associated applicants, it can be inferred that the system was designed to exclude union-associated applicants, and violates Section 8(a)(3) of the Act. This is a cogent argument. Respondent Pollock Summit defends against this argument with the assertion that the priority system is a "rational" business practice. As pointed out by the Board in *Fluor Daniel, Inc. (Fluor Daniel III),* 333 NLRB 427 (2001), "'Reasonableness' is not the standard by which the Board assesses an employer's hiring system." *Fluor Daniel III*, supra at 437. As set forth above, the entire scheme, level-by-level, acts to screen out more and more effectively most union-associated applicants, greatly reducing the probability that any union-associated applicants will reach the point of having their applications reviewed or of being interviewed. I find that the hiring system used by Respondent Pollock Summit is discriminatory and violates Section 8(a)(3) of the Act. I also find, in common with the other Respondents herein, that Respondent Pollock Summit's use of Respondent IEC's discriminatory application and referral service, including its own variation of exclusionary hiring priorities, violates Section 8(a)(3).

CONCLUSIONS OF LAW REGARDING RESPONDENT IEC

1. By its maintenance of a discriminatory and exclusionary application and referral service, Respondent IEC has violated Section 8(a)(3) and (1) of the Act.

2. The violation set forth above is an unfair labor practice affecting commerce within the meaning of the Act.

THE REMEDY

Having found that Respondent IEC has engaged in certain unfair labor practices, I shall recommend that it be required to cease and desist therefrom and to take certain affirmative action necessary to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[12]

[12] 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

ORDER

The Respondent, Independent Electrical Contractors, Texas Gulf Coast Chapter, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Operating a discriminatory application and referral service for its member contractors.

(b) Refusing to hire or to consider for hire employees because of their union activities.

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

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

(a) Within 14 days after service by the Region, post at its Houston, Texas location copies of the attached notice marked "Appendix A."[13] Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent IEC's authorized representative, shall be posted by the Respondent IEC and maintained for 60 consecutive days in conspicuous places including all places where notices to employees 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since 1997.

(b) 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.

CONCLUSIONS OF LAW REGARDING RESPONDENT CORRECT

1. By discharging an employee because of his union activities, Respondent Correct has violated Section 8(a)(3) and (1) of the Act.

2. By its use of Respondent IEC's application and referral service, including exclusionary hiring priorities, Respondent Correct has violated Section 8(a)(3) and (1) of the Act.

3. The violations set forth above are unfair labor practices affecting commerce within the meaning of the Act.

THE REMEDY

Having found that Respondent Correct has engaged in certain unfair labor practices, I shall recommend that it be required to cease and desist therefrom and to take certain affirmative action necessary to effectuate the policies of the Act.

I shall also recommend that Respondent Correct be ordered to remove from the employment records of A. Peter Kazolias any notations relating to the unlawful action taken against him, to offer him reinstatement to his former position, and to make him whole for any loss of earnings or benefits he may have suffered due to the unlawful action taken against him, in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in accordance with *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[14]

ORDER

The Respondent, Correct Electric, Inc., Houston, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Using the discriminatory application and referral service operated by the IEC.

(b) Refusing to hire or to consider for hire employees because of their union activities.

(c) Discharging employees because of their union activities.

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

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

(a) Within 14 days from the date of this Order, offer A. Peter Kazolias full reinstatement to his her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make A. Peter Kazolias whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge of A. Peter Kazolias and within 3 days thereafter notify the employee in writing that this has been done and that the discharge will not be used against him in any way.

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

(e) Within 14 days after service by the Region, post at its Houston, Texas location copies of the attached notice marked "Appendix B."[15] Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees

by the Board and all objections to them shall be deemed waived for all purposes.

[13] 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."

[14] See fn. 12, supra.

[15] See fn. 13, supra.

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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 1, 1997.

(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.

CONCLUSIONS OF LAW REGARDING RESPONDENT LAKEY

1. By its use of Respondent IEC's application and referral service, including exclusionary hiring priorities, Respondent Lakey has violated Section 8(a)(3) and (1) of the Act.

2. By refusing to hire Troy Lockwood and Danny Tilley, Respondent Lakey has violated Section 8(a)(3) and (1) of the Act.

3. The violations set forth above are unfair labor practices affecting commerce within the meaning of the Act.

THE REMEDY

Having found that Respondent Lakey has engaged in certain unfair labor practices, I shall recommend that it be required to cease and desist therefrom and to take certain affirmative action necessary to effectuate the policies of the Act.

I shall also recommend that Respondent be ordered to make Troy Lockwood and Danny Tilley whole for any loss of earnings or benefits they may have suffered due to the unlawful action taken against them, in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in accordance with *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[16]

ORDER

The Respondent, Lakey Electric, Inc., Houston, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Using the discriminatory application and referral service operated by the IEC.

(b) Refusing to hire or to consider for hire employees because of their union activities.

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

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

(a) Within 14 days from the date of this Order, offer Troy Lockwood and Danny Tilley employment in the positions for which they applied, if that job no longer exists, to a substantially equivalent position, and make them whole in the manner set forth in the remedy section above.

(b) Within 14 days from the date of this Order, remove from its files any reference to its consideration of the applications of Troy Lockwood and Danny Tilley, and within 3 days thereafter notify the employees in writing that this has been done and that its prior actions will not be used against them in any way.

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

(d) Within 14 days after service by the Region, post at its Houston, Texas location copies of the attached notice marked "Appendix C."[17] Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 1, 1998.

(e) 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.

CONCLUSIONS OF LAW REGARDING RESPONDENT CENTRAL

1. By its use of Respondent IEC's application and referral service, including exclusionary hiring priorities, Respondent Central has violated Section 8(a)(3) and (1) of the Act.

2. By refusing to hire Jack Smith and refusing to consider for hire Ray Rath, Troy Lockwood, and John Gafford, Respondent has violated Section 8(a)(3) and (1) of the Act.

3. The violations set forth above are unfair labor practices affecting commerce within the meaning of the Act.

THE REMEDY

Having found that Respondent Central has engaged in certain unfair labor practices, I shall recommend that it be required to cease and desist therefrom and to take certain affirmative action necessary to effectuate the policies of the Act.

I shall recommend that Respondent Central be ordered to consider for future employment Troy Lockwood, Ray Rath, and John Gafford in accord with nondiscriminatory criteria, and notify them and the Union and the Regional Director for Region 16 of future openings in positions for which the discriminatees applied or substantially equivalent positions. If it is shown at a compliance stage of this proceeding that, but for the

[16] See fn. 12, supra.

[17] See fn. 13, supra.

failure to consider them, they would have been selected for any other openings, I shall recommend that Respondent Central be ordered to hire them for any such positions and make them whole, with interest, as set forth below, for any loss of earnings or benefits.

I shall also recommend that Respondent Central be ordered to make Jack Smith whole for any loss of earnings or benefits he may have suffered due to the unlawful action taken against him, in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in accordance with *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[18]

ORDER

The Respondent, Central Electric Co., Houston, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Using the discriminatory application and referral service operated by the IEC.

(b) Refusing to hire or to consider for hire employees because of their union activities.

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

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

(a) Within 14 days from the date of this Order, offer Jack Smith employment in the position for which he applied, if that job no longer exists, to a substantially equivalent position, and make him whole in the manner set forth in the remedy section above.

(b) Consider for future employment Troy Lockwood, Ray Rath, and John Gafford in accord with nondiscriminatory criteria, and notify them and the Union and the Regional Director for Region 16 of future openings in positions for which the discriminatees applied or substantially equivalent positions.

(c) Within 14 days from the date of this Order, remove from its files any reference to its consideration of the application of Jack Smith and within 3 days thereafter notify the employee in writing that this has been done and that its actions will not be used against him in any way.

(d) Make Troy Lockwood, Ray Rath, and John Gafford whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

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

(f) Within 14 days after service by the Region, post at its Houston, Texas location copies of the attached notice marked "Appendix D."[19] Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 1, 1997.

(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 Respondent has taken to comply.

CONCLUSIONS OF LAW REGARDING RESPONDENT HIGHRISE

1. By its use of Respondent IEC's application and referral service, including exclusionary hiring priorities, Respondent Highrise has violated Section 8(a)(3) and (1) of the Act.

2. The violation set forth above is an unfair labor practice affecting commerce within the meaning of the Act.

THE REMEDY

Having found that Respondent Highrise has engaged in certain unfair labor practices, I shall recommend that it be required to cease and desist therefrom and to take certain affirmative action necessary to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[20]

ORDER

The Respondent, Highrise Electrical Technologies, Inc., Houston, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Using the discriminatory application and referral service operated by the IEC.

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

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

(a) Within 14 days after service by the Region, post at its Houston, Texas location copies of the attached notice marked "Appendix D."[21] Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees 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. In the event that, during the

[18] See fn. 12, supra.

[19] See fn. 13, supra.

[20] See fn. 12, supra.

[21] See fn. 13, supra.

pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 1, 1999.

(b) 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.

### CONCLUSIONS OF LAW REGARDING RESPONDENT POLLOCK SUMMIT

1. By instructing an employee to remove a union insignia, Respondent Pollock Summit has violated Section 8(a)(1) of the Act.

2. By its use of Respondent IEC's application and referral service, including exclusionary hiring priorities, Respondent Pollock Summit has violated Section 8(a)(3) and (1) of the Act.

3. By refusing to hire Jack Smith and refusing to consider for hire Ray Rath, Respondent Pollock Summit has violated Section 8(a)(3) and (1) of the Act.

4. The violations set forth above are unfair labor practices affecting commerce within the meaning of the Act.

### THE REMEDY

Having found that Respondent Pollock Summit has engaged in certain unfair labor practices, I shall recommend that it be required to cease and desist therefrom and to take certain affirmative action necessary to effectuate the policies of the Act.

I shall recommend that Respondent Central be ordered to consider Ray Rath for future employment in accord with nondiscriminatory criteria, and notify him and the Union and the Regional Director for Region 16 of future openings in positions for which the discriminatee applied or substantially equivalent positions. If it is shown at a compliance stage of this proceeding that, but for the failure to consider him, he would have been selected for any other openings, I shall recommend that Respondent Central be ordered to hire him for any such positions and make him whole, with interest, as set forth below, for any loss of earnings or benefits.

I shall also recommend that Respondent be ordered to make Jack Smith whole for any loss of earnings or benefits he may have suffered due to the unlawful action taken against him, in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in accordance with *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[22]

### ORDER

The Respondent, Pollock Summit Electric, L.P., a subsidiary of Integrated Electrical Services, Inc., Houston, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Using the discriminatory application and referral service operated by the IEC.

(b) Refusing to hire or to consider for hire employees because of their union activities.

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

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

(a) Within 14 days from the date of this Order, offer Jack Smith employment in the position for which he applied, or if that job no longer exists, to a substantially equivalent position, and make him whole in the manner set forth in the remedy section above.

(b) Consider Ray Rath for future employment in accord with nondiscriminatory criteria, and notify him and the Union and the Regional Director for Region 16 of future openings in positions for which the he applied or substantially equivalent positions.

(c) Within 14 days from the date of this Order, remove from its files any reference to its consideration of the application of Jack Smith and within 3 days thereafter notify the employee in writing that this has been done and that its actions will not be used against him in any way.

(d) Make Ray Rath whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of this decision.

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

(f) Within 14 days after service by the Region, post at its Houston, Texas location copies of the attached notice marked "Appendix F."[23] Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 1, 1999.

(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 Respondent has taken to comply.

Dated at Washington, D.C. October 5, 2001

[22] See fn. 12, supra.

[23] See fn. 13, supra.

APPENDIX A

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

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

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT operate a discriminatory application and referral service to assist our member contractors to hire employees.

WE WILL refuse to consider you for hire or refuse to hire you because of the union or your union affiliation or your protected concerted activities.

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

INDEPENDENT ELECTRICAL CONTRACTORS, TEXAS GULF COAST CHAPTER, INC.

APPENDIX B

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

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

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT use a discriminatory application and referral service to hire employees and WE WILL NOT refuse to consider you for hire or refuse to hire you because of the union or your union affiliation or your protected concerted activities.

WE WILL NOT terminate your employment because you engage in union activities.

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

WE WILL offer reinstatement to A. Peter Kazolias, and WE WILL make him whole for any loss of pay or other benefits he may have suffered because of our discrimination against him.

WE WILL remove from our records all references to our discharge of A. Peter Kazolias, and inform him in writing that this has been done and that our prior actions will not be used as the basis for future discipline of him.

CORRECT ELECTRIC CO.

APPENDIX C

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

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

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT use a discriminatory application and referral service to hire employees.

WE WILL NOT refuse to consider you for hire or refuse to hire you because of the union or your union affiliation or your protected concerted activities.

WE WILL in any like or related manner interfere with, restrain, or coerce you in the exercise of rights guaranteed you by Section 7 of the Act.

WE WILL offer employment to Troy Lockwood and Danny Tilley, and WE WILL make them whole for any loss of pay or other benefits they may have suffered because of our unlawful refusal to consider them for hire or to hire them.

LAKEY ELECTRIC, INC.

APPENDIX D

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

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

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT use a discriminatory application and referral service to hire employees.

WE WILL NOT refuse to consider you for hire or refuse to hire you because of the union or your union affiliation or your protected concerted activities.

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

WE WILL offer employment to Jack Smith, and WE WILL make him whole for any loss of pay or other benefits he may have suffered because of our unlawful refusal to consider him for hire or to hire them.

WE WILL consider Ray Rath, Troy Lockwood, and John Gafford for future employment in accord with nondiscriminatory criteria, and notify them and the Union and the Regional Director for Region 16 of future openings in positions for which the discriminatees applied or substantially equivalent positions.

CENTRAL ELECTRIC CO.

## APPENDIX E

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

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

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT use a discriminatory application and referral service to hire employees, and WE WILL NOT refuse to consider you for hire or refuse to hire you because of the union or your union affiliation or your protected concerted activities.

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

HIGHRISE ELECTRICAL TECHNOLOGIES, INC.

## APPENDIX F

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

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

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT use a discriminatory application and referral service to hire employees.

WE WILL NOT refuse to consider you for hire or refuse to hire you because of the union or your union affiliation or your protected concerted activities.

WE WILL NOT tell employees that they must remove union insignia from their clothing.

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

WE WILL offer employment to Jack Smith, and WE WILL make him whole for any loss of pay or other benefits he may have suffered because of our unlawful refusal to consider him for hire or to hire them.

WE WILL consider Ray Rath for future employment in accord with nondiscriminatory criteria, and notify him and the Union and the Regional Director for Region 16 of future openings in positions for which he applied or substantially equivalent positions.

POLLOCK SUMMIT ELECTRIC, L.P. A SUBSIDIARY OF INTEGRATED ELECTRICAL SERVICES, INC.