

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
WASHINGTON, D.C.

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS LOCAL 509 (DEAR JOHN, LLC  
AND TOUCHSTONE TELEVISION  
PRODUCTIONS, LLC D/B/A ABC STUDIOS),

and

THOMAS TROY COGHILL, An Individual

CASE No. 11-CB-4020

**CHARGING PARTY THOMAS TROY COGHILL'S ANSWERING BRIEF TO  
RESPONDENT'S EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE'S DECISION**

Pursuant to § 102.46(d) of the Rules and Regulations of the National Labor Relations Board ("NLRB" or "Board"), 29 C.F.R. § 102.46(d), Charging Party Thomas Troy Coghill, by and through his undersigned counsel, hereby submits his Answering Brief to Respondent's Exceptions to the Administrative Law Judge's decision ("ALJD"):

**I. INTRODUCTION**

The sole issue in this case is the International Brotherhood of Teamsters Local 509's ("Local 509") arbitrarily and discriminatorily operated its exclusive hiring hall by refusing to place Charging Party Thomas Troy Coghill ("Coghill") on its Movie Referral List, and to refer him for employment on the third season of "Army Wives," thereby causing the Employer, Dear John, LLC, and Touchstone Television Productions LLC d/b/a ABC Studios ("Employer"), to discriminate against Coghill in violation of §§ 8(b)(1)(A) and (2) of the Act. 29 U.S.C. §§ 158(b)(1)(A) and (2). As discussed more fully herein, the Decision and Recommended Order

of Administrative Law Judge Michael Marcionese finding a violation, and granting all of the relief sought in Counsel for the General Counsel's Compliance Specification, should be sustained.

## II. STANDARD OF REVIEW

It is settled law that when a union departs from established hiring hall rules and thereby denies an individual employment, the union violates the duty of fair representation and §§ 8(b)(1)(A) and 8(b)(2) of the Act. *Plumbers Local 32 v. NLRB*, 50 F.3d 29, 31-35 (D.C. CIR.), **cert. denied**, 516 U.S. 974 (1995); *Boilermakers Local 374 v. NLRB*, 852 F.2d 1353, 1358-59 (D.C. CIR. 1988); *Radio-Electronics Officers Union v. NLRB*, 16 F.3d 1280, 1284 (D.C. CIR.), **cert. denied sub nom. Harris v. Radio-Electronics Officers Union**, 513 U.S. 866 (1994); *Operating Engineers Local 406 v. NLRB*, 701 F.2d 504, 510 (5TH CIR. 1983); *NLRB v. Bridge Workers Local 433*, 600 F.2d 770, 776-77 (9TH CIR. 1979). The Board has applied this law for decades, as well. *Operating Engineers Local 406 (Ford, Bacon & Davis Construction Corp.)*, 262 NLRB 50, 51 (1982) (unanimous); *Plumbers Local 230 (Associated Gen. Contractors, San Diego Chapter)*, 293 NLRB 315, 316 (1989) (unanimous); *Bridge Workers Local 118 (California Erectors, Bay Area)*, 309 NLRB 808, 808, 812 (1992) (unanimous); *Boilermakers Local 374 (Construction Eng'g)*, 284 NLRB 1382, 1396-99, 1410 (1987) (unanimous).

In developing this settled law, the Board and the Circuit courts have consistently reasoned that, although an exclusive hiring hall is not *per se* illegal, because of the potential coercion inherent in a union's operation of one, the union is held to a high standard of fair dealing. *Boilermakers Local 374*, 852 F.2d at 1358. No specific intent to discriminate on the basis of

union membership or activity is required to establish a violation of the duty of fair representation (“DFR”) and the Act. *Id.* By departing from objective criteria or otherwise wielding its power arbitrarily, and thereby affecting the employment status of those it is expected to represent, “the Union gives notice that its favor must be curried, thereby encouraging membership and unquestioned adherence to its policies.” *Id.* (**quoting** *Teamsters Local 519 (Rust Eng’g)*, 276 NLRB 898, 908 (1985)). Such a position is anathema when a union is placed in a position in which it is acting both as union and employer, and thus wields enormous power over those whom it purports to represent. There is therefore a presumption of illegality when a union departs from established hiring hall rules and thereby denies employment to an individual.

### **III. FACTS OF THE CASE**

This case involves the hiring of drivers for a cable television series called “Army Wives,” a production of Dear John, LLC, and Touchstone Television Productions LLC d/b/a ABC Studios (“Employer”). The series pilot in and around Charleston, South Carolina, in 2006, and has been produced in successive years in the same general area, with each series’ “season” roughly corresponding to the calendar year (Season One in 2007; Season Two in 2008, *etc.*). “Army Wives” was, at the time of hearing, in production of its fourth season.

Charging Party Thomas Troy Coghill is an experienced driver in the movie industry, having begun working on various productions in 1997. I Tr. 137-38 (Thomas Troy Coghill).<sup>1</sup> His first work in the industry was in Wilmington, North Carolina, where he became and remains

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<sup>1</sup> References to the transcript of the hearing held in the instant case shall be referred to in the following format: “[day of proceeding] Tr. [page]:[line]-[line] ([witness]).”

a member in good standing of Teamsters Local 71 (paying \$50 monthly dues, I Tr. 148 (Coghill)), and also initially became acquainted with Lee Siler. I Tr. 138-40 (Coghill). It was because of this acquaintance and mutual work experience that Siler hired Coghill to work on the first two seasons of “Army Wives.” I Tr. 55, 62 (Siler).

When working in Local 509’s “jurisdiction,” Coghill completed and submitted an “Application and Notice for Membership” and a memorandum agreeing to pay to Local 509 two percent (2%) of his gross earnings, including health and welfare benefits and meal allowances (I Tr. 142-43, 147, 174 (Coghill) & 220 (L.D. Fletcher)) for the privilege of utilizing Local 509’s hiring hall. However, and notwithstanding Coghill’s repeated efforts, Local 509, through its President, L.D. Fletcher, refused to allow Coghill to become a union member. I Tr. 149-59 (Coghill) & 220 (Fletcher), and General Counsel’s Exhibits 6, 7, & 11. Indeed, Fletcher misrepresented to Coghill the substance of the operations of Local 509’s hiring hall arrangements. I Tr. 159 (Coghill) (representing that Local 509 would accept Coghill’s application and fee — having already accepted referral fees for the first two years of his work on “Army Wives” — and would put his name on a “B” list). Of course, Local 509 does not maintain a “B” list.” I Tr. 250-51, II Tr. 397, 425 (Fletcher).

Sometime in January 2009, after months of requests, Coghill received from Local 509, completed, and returned to the union an “Application and Notice for Membership,” showing a South Carolina address (Coghill has previously maintained his formal residence in Fredericksburg, Virginia), a copy of his Commercial Driver’s License, a completed Movie Referral Request seeking placement on Local 509’s “movie referral list” (“MRL”), and a check in payment of the \$100.00 initial fee and \$15.00 for the first month’s administrative fee to

maintain his name on the MRL. I Tr. 161-62 (Coghill) & General Counsel’s Exhibit 9.

Coghill’s application and request were rejected by Local 509 by letter dated 30 January 2009. Tr. 166 (Coghill) & General Counsel’s Exhibit 10.

Local 509 administers a referral service (“hiring hall”) for drivers who seek employment in the television and motion picture industry within its area. Local 509’s “jurisdiction” consists of all of South Carolina save for five counties in the northern part of the State. I Tr. 182:5:13 (Fletcher). The remaining counties are covered by Teamsters Local 71, which is not a party to these proceedings. *Id.*

Local 509’s President and Business Agent, L.D. Fletcher (“Fletcher”) administers the hiring hall, and negotiates contracts with television and motion picture production companies working within Local 509’s jurisdiction. To this end, Local 509 maintains — in accord with a movie referral policy — a “movie referral list” (“MRL”) containing the names of 35-40 union members (*i.e.*, members of Local 509) who want to work in the television and motion picture industry. II Tr. 416:18-20 (Fletcher).

Members seeking to be placed on the list must submit an “Application and Notice for Membership” and a \$100 initiation fee. Upon receipt of this document and the fee, Local 509 places the driver on the MRL without regard to any other criteria. I Tr. 191-198 (Fletcher).

Local 509 does not update the list on a scheduled basis; a new list is issued whenever a member’s name is added or deleted. I Tr. 198-99 (Fletcher).

Until January 2010, all individuals listed on the MRL were members of Local 509. I Tr. 196 (Fletcher). In accord with its movie referral policy, Local 509 assured these members that it “... will insist that producers and coordinators exhaust the Local 509 Referral List before the

employer hires people who are not on the Local 509 Referral List.” Joint Exhibit 3 at item 12.

As relevant to this case, producers deciding to film in South Carolina will frequently contact Local 509 to obtain a current MRL, and to negotiate a collective bargaining agreement (“CBA”) requiring the hiring of all transportation employees, including drivers with Commercial Drivers Licenses (“CDLs”) and noncommercial licenses from Local 509’s MRL. All productions filming in South Carolina use drivers supplied by Local 509; typically, they will contact Local 509, which sends them its MRL and a standard contract (to which the parties can negotiate changes ) requiring producers to hire transportation employees from Local 509’s MRL. I Tr. 182, 193 (Fletcher). Producers have the unfettered right to select any driver on the MRL in a system designated as “producer’s choice,” *id.* at 191; **see, e.g.**, *Miami State Employees, Local 545 (Greater Miami Opera Ass’n)*, 310 NLRB 763 (1993) (arrangement giving employer right to request employees by name constituted a valid referral system), and makes direct contact with employees on the list (which includes contact information). When each driver is hired, the producer provides him or her with Local 509’s “Application and Notice” and dues checkoff authorization card. I Tr. 203 (Fletcher).<sup>2</sup>

“Army Wives” was no exception to these practices. Since it began production with its “pilot” episode in 2006, and through the time of hearing, the Employer’s officials have been Barbara D’Alessandro (Unit Production Manager for all four seasons), Harry Bring (Executive Producer), Audrey Gelb (Vice-President of Production), and Lee Siler (Transportation Coordinator/Department Head). Siler is a member of Teamsters Local 399, in Los Angeles,

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<sup>2</sup> While this is plainly a violation of the Act, *Rochester Mfg. Co.*, 323 NLRB 260, 262 (1997), no charge was filed against the producer herein.

California. II Tr. 287-88 (Barbara D’Alessandro). Siler hired Robert Gillis, a member of Teamsters Local 71, as the captain, to run the daily set operations, without objection from Local 509. I Tr. 20, 44, 86 (Siler), 202 (Fletcher). Siler also hired drivers from outside Local 509’s jurisdiction to operate specialized equipment. *Id.* at 201. Fifteen to twenty drivers are hired each day, based upon the needs of the production and the day’s shooting schedule. I Tr. 51 (Siler), 289, 289, 291 (Fletcher).

While a CBA had not been executed, the Employer nevertheless contacted Local 509 when it arrived in South Carolina to begin production on “Army Wives,” and requested, received, and utilized Local 509’s MRL. I Tr. 205 (Fletcher). While availability of drivers from the MRL was limited by a busy production schedule in the state at the time the “Army Wives” pilot was filmed, following completion of the “pilot” episode of the series, the Employer and Local 509 negotiated, and retroactively applied, a CBA. The CBA or CBAs from the time of the pilot through season four of “Army Wives” provide that:

The Producer recognizes the Union as the “exclusive collective bargaining representative” of all classifications of drivers including chauffeurs, truck drivers, mechanics, dispatchers, gang bosses, captains, and stewards.

Joint Exhibits 1, 1(a), & 2. Moreover, the initial agreement negotiated between the Respondent and the Employer for *Army Wives* contained the following referral language:

Article V  
Employment

- (a) The parties hereto recognize the conditions in this industry require frequent hiring of drivers on a daily non-continuing basis. For this purpose, the Union shall maintain, for the convenience of the Producer and the employee, a referral service which shall in all respects comply with all applicable provisions of law.
- (b) The producer agrees to request referrals for all drivers required for work covered by the Agreement, from the Union.

A side letter to the agreement negotiated before the start of production on season one, but after completion of the pilot, contained the following language modifying Article V:

It is understood in *Article V Employment*, that the Producer retains the right to reject any applicant referred from the Union.

ALJD at 2:21-39.

The Record establishes that the availability of members on Local 509's list was spotty, at best, throughout the first two seasons of "Army Wives," and the Employer was therefore compelled to hire drivers from other Teamsters Locals (71 & 391), I Tr. 35, 52-54, 126 (Siler), including Charging Party Coghill. I Tr. 54, 55, 56 (Siler) & 296 (D'Allessandro) for both seasons, ending in mid-September 2008. Nevertheless, on 14 June 2008, Local 509's executive board voted to cease adding employees to the MRL in order to "preserve" work for its members. II Tr. 396 (Fletcher); General Counsel's Exhibit 22.

Local 509's campaign against non-Local 509 employees of "Army Wives" began in earnest when he learned that two members had opted to be part-time employees of that production, rather than full-time employees on a production entitled "Nailed." Upon learning of these facts, Local 509 President Fletcher threatened Vice-President and Counsel for ABS Studios, Laura Legge, with picketing the production if Siler did not terminate all non-members of Local 509 and hire employees from the MRL. I Tr. 65, 66 (Siler), 207, 209 (Fletcher). However, Siler refused to terminate Coghill. I Tr. 66 (Siler). Other threats to "shut [the production] down" were made at a 13 May 2008, meeting between Fletcher, Siler, and two others, I Tr. 69 (Siler), 211-212 (Fletcher). Following that meeting, Fletcher also filed grievances attacking the Employer's payment of housing and/or *per diem* payments to employees from out of town. I Tr.

72 (Siler) & 215 (Fletcher), General Counsel's Exhibits 17 & 18. Of course, all of those employees were **not** members of Local 509.

All of these events were background for what occurred in season three of "Army Wives," when — upon pressure applied by Local 509's President Fletcher because Coghill's name was not on the MRL, and because Local 509 refused to admit him into union membership (or actually, to transfer from one Teamsters Local to another) — Siler did not hire Coghill. I Tr. 90 (Siler) & 296 (Fletcher). Siler testified unequivocally that he would have hired Coghill if his name had appeared on the MRL, based upon his experience, credentials, and past work history on "Army Wives," in which crew typically returned from year to year. Coghill was not employed by "Army Wives" at all during its third season.

On or about 9 February, and upon the facts stated above, Coghill filed an unfair labor practice charge against Local 509. His Charge was consolidated with two others (since settled), and alleges that Local 509's operation of its hiring hall violates §§ 8(b)(1)(A) and (2) of the Act, 29 U.S.C. §§ 158(b)(1)(A) and (2).

The fourth season of "Army Wives" began filming on January 2010. Subsequent to season three, and at least partially because of his pending unfair labor practice charges, Coghill's name was added to the MRL, and he was hired as a part-time employee for the production. I Tr. 136-37 (Coghill).

#### **IV. UNFAIR LABOR PRACTICES AND ALJ DECISION**

The General Counsel has issued an Amended Complaint and Compliance Specification challenging Local 509's administration of its hiring hall, and seeking backpay for Charging Party

Coghill in the amount of \$55,467.62. Respondent Local 509 has filed an Answer admitting most of the factual allegations of the Charge. General Counsel Exhibit 1(ff). While Local 509 denied that it operated an exclusive hiring hall (*id.*, ¶¶ 12, 14, & 15), or that it had arbitrarily denied Coghill placement on the list (*id.*, ¶ 16(f)), and vigorously contested the legal conclusions stated therein, the ALJ found that:

General Counsel has met the burden of proving the existence of an exclusive hiring hall arrangement in this case. The language in the collective bargaining agreement negotiated for season 2, which applied to the hiring for season three at the time Siler began hiring for that season, clearly stated that the Employer was required to request referrals from the Union for all drivers to be covered under the contract. Although the Employer negotiated a modification to retain the right to reject any referral, what the Respondent describes as “producer’s choice”, it was clearly expected that the Union would be the first source of employees. The contract negotiated for season three made this even more explicit, requiring the Employer to offer employment to persons on the list before offering employment to persons not on the list, and requiring the employer to contact the Union for additional names if it exhausted the first list of referrals. Significantly, nothing in either contract explicitly gave the Employer the right to hire drivers directly off the street. The fact that the Employer hired a captain, a couple of specialty drivers, and other non-list individuals to fill positions when there were an insufficient number of available qualified drivers on the referral list, does not negate the exclusive nature of the arrangement, as found by the Board in the cases cited above. Moreover, Fletcher’s communications with the Employer, his actions in filing grievances during his dispute with Siler over Coghill’s employment, and his testimony at the hearing, made clear his intention and understanding of the contract as requiring employers to hire drivers off the movie referral list before giving work to other applicants.

ALJD at 8: 28-46.<sup>3</sup>

As a result, ALJ Marcionese concluded that Local 509 “violated Section 8(b)(1)(A) and 8(b)(2) of the Act by its actions toward Coghill,” ALJD at 10:19, and issued his conclusions of law, recommended remedy, and proposed order. *Id.* at 12-14.

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<sup>3</sup> ALJ Marcionese found evidence of the hiring of drivers not on Local 509’s list to be “irrelevant to the decision in this case.” ALJD at 9:1-13 & n.7.

Consolidated with the Complaint was a Compliance Specification, upon which ALJ Marcionese determined that Coghill was entitled to full back pay, having satisfied his duty to mitigate his damages. ALJD at 10-12.

ALJ Marcionese issued his decision on 9 March 2011. Respondent Local 509's exceptions were timely, and challenge only ALJ Marcionese's finding of a violation.

## **V. ARGUMENT**

Section 7 of the Act guarantees employees the "right to self organization, to form, join, or assist labor organizations, and to bargain collectively through representatives of their own choosing, and to refrain from any or all such activities...." 29 U.S.C. § 157. Section 8(b)(1)(A) of the Act, 29 U.S.C. § 158(b)(1)(A), makes it an unfair labor practice for a union "to restrain and coerce employees in the exercise of the rights guaranteed in Section 7," and § 8(b)(2) of the Act, 29 U.S.C. § 158(b)(2), makes it an unfair labor practice for a union:

to cause or attempt to cause an employer to discriminate against an employee in violation of Section 8(a)(3) of this section or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fee uniformly required as a condition of acquiring or retaining membership;

29 U.S.C. § 158(b)(2). The primary purpose of these provisions is to "insulate employees' jobs from their organizational rights, thereby guaranteeing that employees may exercise those rights without imperiling their livelihood." *Radio Officer's Union v. NLRB*, 347 U.S. 17, 40 (1954).

Here, the evidence establishes beyond question that Local 509 operates an exclusive hiring hall, and that it refused to put Coghill on its MRL because he was not a member of Local

509, in violation of §§ 8(b)(1)(A) and (2).

**A. Local 509 Operates An Exclusive Hiring Hall.**

Local 509 plainly operates an exclusive hiring hall; its President's testimony alone nails this conclusion to the mast. I Tr. 187-89 (Fletcher) (notwithstanding efforts at evasion, union president confirmed that hiring hall was exclusive); **see also** General Counsel's Exhibit 20 (letter from counsel).<sup>4</sup>

Unions that operate an exclusive hiring hall violate §§ 8(b)(1)(A) and (2) of the Act, 29 U.S.C. §§ 158(b)(1)(A) and (2), by refusing to refer applicants to employment because they are not union members. *International Longshoreman Ass'n, Local 1423*, 306 NLRB 942, 946 (1992). Here, by admission, in practice, and by the plain language of the CBAs governing the bargaining unit, Local 509 and the Employer demonstrated that Local 509's hiring hall was, and was intended to be, "exclusive," and that the Employer was therefore obliged to hire drivers from Local 509's MRL.

Notwithstanding this frank admission, and the plain language of the CBAs,<sup>5</sup> Local 509 argue, Memorandum at 20-23, that the Employer's authority to reject applicants from its MRL defeats exclusivity. This, however, is not the law. **See** *Plumbers Local 17 (FSM Mechanical Contractor)*, 224 NLRB 1262, 1263 (1976), **enfd**, 575 F.2d 583 (6TH CIR. 1976) (hiring hall

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<sup>4</sup> Exclusivity can be established by contract or by practice, or by a combination thereof. *IATSE, Local 143*, 248 NLRB 1245 (1980), **enfd as modified**, 649 F.2d 610 (8TH CIR. 1981).

<sup>5</sup> Language in seasons three and four was added to require the Employer to request additional lists from Local 509, if the initial MRL was exhausted before the Employer's needs were satisfied. **See** Joint Exhibit 2, Article V. Even if there were some doubt about the exclusivity of the hiring hall for the first two seasons of the production, it is removed by these provisions.

was exclusive even though employer retained sole right to choose from among names of those available to work); *Morrison-Knudsen*, 291 NLRB 250, 258 (1988) (employer’s authority to reject individuals does not bear on exclusivity analysis) & 258-59 (requirement that employer go to the union first is a determinative factor in establishing exclusivity).

Neither is it relevant to the analysis that — as suggested by Local 509 in its Memorandum at 12-13 & n.13 — the CBA for season three of “Army Wives” was not executed until well into the season (15 May 2009; Union’s Exhibit 9). As plainly demonstrated by the CBA itself, the Employer dates the contract “as of Jan 1, 2009.” *Id.* Likewise, there is no dispute about the timing of the negotiation of the agreement in January 2009, or that it was approved on March 2009. III Tr. 447-48 (Laura Legge). Most importantly, Local 509 expected the Employer to hire drivers from its MRL, and conveyed those expectations — and threats of adverse consequences were they not satisfied — to the Employer, III Tr. 429 (Legge), and in fact, the Employer hired **all** of its drivers from the MRL for season three of “Army Wives.” I Tr. 91 (Siler).<sup>6</sup>

It is therefore beyond question that Local 509 operated an exclusive hiring hall.

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<sup>6</sup> It is likewise of no moment to the exclusivity analysis that Coghill was himself hired independently from the list. An occasional departure from established procedures does not refute the existence of an exclusive hiring hall scheme. *Longshoremen Local 1408*, 258 NLRB 132 (1981), **enfd**, 705 F.2d 1549, 1552 (11TH CIR. 1983) (hiring hall was legally “exclusive,” even though employers rarely hired employees directly); *Theatrical Wardrobe Union Local 769 (Broadway in Chicago)*, 349 NLRB 71 (2007) (exclusive hiring hall found even though evidence presented of occasions where exhaustion of list forced employer to hire from other sources).

**B. Local 509 Operated Its Exclusive Hiring Hall In An Arbitrary And Discriminatory Manner In Violation Of § 8(b)(1)(A) And (2) Of The Act.**

Unions operating exclusive hiring halls own a heightened duty of responsibility to users. This is due to the fact of the unusual role assumed by the union, one more akin to an employer controlling the employment opportunities available to employees. Because the limitations of §§ 8(b)(1)(A) and (2) of the Act, 29 U.S.C. §§ 158(b)(1)(A) and (2) “apply fully to exclusive hiring hall arrangements, under which workers can obtain jobs only through union referrals,” and “because of its potential coerciveness, the union is held to a high standard of fair dealing.” *Boilermakers Local 473*, 284 NLRB 1382 (1987), **enfd**, 852 F.2d 1353, 1358 (D.C. Cir. 1988); **accord** *Breining v. Sheet Metal Workers Int’l Ass’n Local 6*, 493 U.S. 67, 87-88 (1989). This “tremendous authority and the workers’ utter dependence create ‘a fiduciary duty on the part of the union not to conduct itself in an arbitrary, invidious, or discriminatory manner when representing those who seek to be referred out for employment....’” *Id.*; **accord** *Breining*, 493 U.S. at 73, 87-88 & n.11 (union operating exclusive hiring hall owns employees fiduciary duty), **quoting** *Vaca v. Sipes*, 386 U.S. 171, 177 (1967) (finding that NLRA imposes duty of fair representation on monopoly bargaining representative). Thus, when a union “wields additional power in a hiring hall by assuming the employer’s role, its responsibility to exercise that power fairly increases....” *Breining*, 493 U.S. at 89.

A union is **presumed** to have acted illegally whenever it prevents an employee’s hire or causes his discharge, because doing so demonstrates the union’s power to affect the employees’ livelihood in so dramatic a way as to encourage union membership among **all** employees. *Carpenters Local 1102 (Planet Corp.)*, 144 NLRB 798, 800 (1963). Applying that principle to

the facts here, Local 509 violated the §§ 8(b)(1)(A) and (2) of the Act by refusing to refer Coghill for employment because he was not a union member. *See, e.g., Int'l Longshoremen Ass'n Local 1423*, 306 NLRB at 946; *Plumbers Local 17*, 224 NLRB at 1262 (union not “entitled to differentiate between members and nonmembers in its referral practices”); *Morrison-Knudsen*, 291 NLRB at 250 (same).

Plainly, this demonstration of Local 509’s power for impermissible purposes violates §§ 8(b)(1)(A) and (2) of the Act, 29 U.S.C. §§ 158(b)(1)(A) and (2), here. Local 509 arbitrarily, discriminatorily, and in complete bad faith denied Coghill access to its MRL, and caused him harm by interfering with his employment opportunities for season three of “Army Wives.” Moreover, Local 509 made no pretense at offering legitimate justification for its actions. Indeed, what perhaps comes across most plainly from Local 509’s actions is the lengths to which it was willing to go against Coghill to demonstrate its overbearing power.

Moreover, Local 509 does not even argue that its actions caused no harm, particularly since a representative of the Employer made it clear that only Local 509’s intransigence caused them to refuse to hire Coghill for season three of “Army Wives.” Indeed, the fact that he was a valued employee can hardly be manifested more decisively than in the fact that he was hired immediately upon his placement on Local 509’s MRL.

**C. Even If Local 509’s Hiring Hall Was Not Exclusive, It Violated The Act By Prohibiting The Employer From Hiring Coghill.**

Whether or not Local 509’s hiring hall was exclusive, ALJ Marcionese’s decision must still be upheld because “it is settled that, absent an exclusive hiring hall arrangement, a union

violates Sections 8(b)(2) and 8(b)(1)(A) if it interferes or attempts to interfere with an individual's employment for union-related reasons." *Pile Drivers, Local 2396 (Tri-State Ohbayashi)*, 287 NLRB 760, 762 (1987), **enf'd**, 878 F.2d 1439 (9TH CIR. 1989); *IATSE Local 665 (Columbia Pictures)*, 268 NLRB 570, **enf'd**, 751 F.2d 290 (9TH CIR. 1984). Local 509's actions in causing the employer to refuse to hire Coghill for "Army Wives" season three because he was not a member of its local, or because he was a member of a competing local, violates §§ 8(b)(1)(A) and (2) of the Act.

Thus, as in *Teamsters, Local 17 (Universal Studios and Warner Brothers, Inc.)*, 251 NLRB 1248 (1980), Local 509 has violated § 8(b)(2) of the Act by causing the Employer to fail or refuse to hire members of a rival union. **See also** *Kvaerner Songer, Inc.*, 343 NLRB 1343 (2004) (union may not seek discharge of nonmembers in absence of exclusive hiring hall arrangement); *Teamsters Local Union 676*, 172 NLRB 948, 948 n.1 (1968), **enf'd**, 491 F.2d 1274, 1274-75 (3D CIR. 1969) (same); *Laborers Int'l Union, Local 83*, 205 NLRB 399, 401 (1973), **enf'd**, 497 F.2d 1337, 1338 (6TH CIR. 1974) (union may not insist upon hiring of union members absent exclusive hiring hall).

## VI. CONCLUSION

Respondent Local 509's actions in preventing the Employer from hiring Coghill violated §§ 8(b)(1)(A) and (2) of the Act, whether the hiring hall was exclusive, or not. The evidence here plainly establishes that Local 509 denied Coghill reasonable access to its MRL, while at the same time, lobbied diligently to have his employment relationship with "Army Wives" terminated. Therefore, ALJ Marcionese's decision sustaining the General Counsel's Complaint

should be adopted in full by the Board.

DATED: 20 April 2011

Respectfully submitted,

/s/ W. James Young

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**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the foregoing **Post-Hearing Brief of Charging Parties Thomas Troy Coghill** were sent *via* e-mail and FedEx, delivery costs pre-paid, addressed to:

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