No. 12-1586

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD

Petitioner

v.

TEAMSTERS "GENERAL" LOCAL UNION NO. 200, AN AFFILIATE OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Respondent

ON APPLICATION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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(29 U.S.C. § 151 et seq.)

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STATEMENT OF JURISDICTION

This case is before the Court on the application of the National Labor Relations Board ("the Board") for enforcement of a Board order issued against Teamsters "General" Local Union No. 200, an affiliate of the International Brotherhood of Teamsters ("the Union"). The Board had subject matter jurisdiction over the unfair labor practice proceeding under Section 10(a) of the National Labor Relations Act, as amended (29 U.S.C. §§ 151, 160(a)) ("the Act"). The Board's

Decision and Order issued on December 29, 2011, and is reported at 357 NLRB No. 192. (A 1-4.)[1] The order is final with respect to all parties. The Court has jurisdiction over this proceeding pursuant to Section 10(e) of the Act (29 U.S.C. § 160(e)); the unfair labor practices occurred in Milwaukee, Wisconsin. The Board filed its application for enforcement on March 7, 2012. That filing was timely; the Act imposes no time limits on the institution of proceedings to enforce Board orders.

STATEMENT OF THE ISSUES PRESENTED

1. Whether substantial evidence supports the Board's finding that the Union violated Section 8(b)(1)(A) of the Act by operating an exclusive hiring hall without consistently using objective criteria or factors in referring applicants for employment.

2. Whether substantial evidence supports the Board's finding that the Union violated Section 8(b)(1)(A) and 8(b)(2) of the Act by discriminatorily failing and refusing to refer Timothy Buban for employment with Bechtel Construction Company at the Elm Road Power Generating Station Project.

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[1] "A" refers to the Appendix filed by the Union, which includes the Board's decision and order. "Br." refers to the Union's brief. "SA" refers to the Board's Supplemental Appendix. References preceding a semicolon are to the Board's findings; those following are to the supporting evidence.

3. Whether substantial evidence supports the Board's finding that the Union violated Section 8(b)(1)(A) of the Act by refusing to provide Timothy Buban with information regarding the hiring hall.

STATEMENT OF THE CASE

Acting on unfair labor practice charges filed by Timothy Buban, the Board's General Counsel issued a complaint alleging that the Union's operation of its exclusive hiring hall and its failure to refer Buban for employment violated Section 8(b)(1)(A) and (2) of the Act (29 U.S.C. § 158(b)(1)(A) & (2)). Following a hearing, an administrative law judge issued a decision finding that the Union violated the Act, as alleged. The Union filed exceptions to the judge's decision. The Board adopted the majority of the judge's findings, but dismissed one allegation on due process grounds. The facts supporting the Board's decision and the Board's Conclusions and Order are summarized below.

STATEMENT OF THE FACTS

I. THE BOARD'S FINDINGS OF FACT

A. Timothy Buban's Intraunion Political Activities

Timothy Buban has been a member of the Union in the Milwaukee area for almost 30 years. For much of that time, Buban worked in warehouse jobs, including at Consolidated Freightways, where he worked for approximately 23

years as a loading dock forklift operator. (A 9-10, 20; SA 158, 179.) Buban actively participated in union politics, both locally and on the international level, where he has been involved with Teamsters for a Democratic Union, a dissident faction of union members and political rival to the Teamsters' international leadership. (A 9-10, 20; SA 158-60.) Buban's campaign materials always featured his experience as a forklift operator. (A 11, 20; SA 180.)

Buban held various local union positions. From 2004 to 2006, Buban served as the Union's secretary-treasurer, the highest elected office at the local level. As secretary-treasurer, Buban hired and assigned staff, administered finances, and represented the Union vis-à-vis employers. (A 9-10; SA 160.)

In February 2006, the Union held an election to determine who would represent it at the upcoming international convention. (A 10; SA 162.) Buban and his slate were opposed by "Teamsters 4 Teamsters," another slate of proposed convention delegates, which included long-time shop steward Michael Gurich. (A 10; SA 67, 123, 162-63.) Teamsters 4 Teamsters' campaign materials featured Gurich and the other candidates and attacked Buban:

- "Did you know that the reason Tim Buban and his slate [] want to go to the convention is so that Buban can have someone nominate him to run for Vice President of the International Brotherhood of Teamsters? Imagine his arrogance."

- "Ever wonder why your contracts don't get negotiated or grievances resolved? It could be because Buban has the staff spending their days giving away the farm."
- "Don't reward Buban for his failures and broken promises!"

(A 10; SA 53-57, 162-64.)

Nonetheless, Buban and his slate were elected as convention delegates. At the convention, Buban supported a rival of the Teamsters' international president James Hoffa, Jr. and nominated a candidate opposing Hoffa's running mate. Buban himself also ran unsuccessfully for an international vice-presidential position. (A 10; SA 164-65.)

In October 2006, Buban ran for reelection as the Union's secretary-treasurer. (A 10; SA 165.) Teamsters 4 Teamsters, headed by Tom Millonzi and Tom Bennett, opposed Buban's slate again. (A 10, 11, 20; SA 62, 166, 168.) Gurich campaigned for Buban's rivals. (A 10, 11, 20; SA 68, 168.) The campaign was highly contentious with involvement by international officers. (A 10, 20; SA 58, 62, 166-68.) This time, Buban's slate lost. He resigned as secretary-treasurer following the election. (A 10; SA 168-69.)

B. The Union's Referral System for Bechtel's Elm Road Project

After resigning his union position in October 2006, Buban went to work as a shuttle bus driver for Bechtel Construction Company at the Elm Road Power

Generating Station in Oak Creek, Wisconsin ("Elm Road" or "the Elm Road project"), where the Union represented the drivers and warehouse workers. (A 5-6, 10; SA 145, 169.) Since the Elm Road project began in 2005, Bechtel and the Union were parties to several collective-bargaining agreements. (A 5, 18; SA 73, 145-48.) The Area Construction Agreement and the parties' Addendum provide for referral of employees through the Union. (A 5; SA 4, 10, 71-73, 154-56.) Those agreements both state that, "[t]he Employer has the right to determine the number of employees required" and "[t]he Union administers and controls its referrals." (A 5; SA 4, 10.) The agreements further state that, "in the event the referral facilities maintained by the Local Unions do not refer the employees as requested by the Employer within a forty-eight (48) hour period after such request is made by the Employer … the Employer may employ applicants from any source." (A 5, 18; SA 4, 10, 155.)

In January 2007, the executive board of the Union, now headed by Millonzi and Bennett, hired Gurich as a business agent and tasked him with making referrals and handling grievances for the Elm Road project. (A 11, 20; SA 67, 70.) The Union received calls from employees asking where they stood on the out-of-work list for the Elm Road project. (A 11, 15; SA 80, 194.) Gurich and Tom Benvenuto, another newly hired business agent, searched the Union's files and spoke to former

union officials and Bechtel employees, but could not locate an out-of-work list. (A 11-12, 15; SA 80, 195-97.)

Gurich created a new list and started it at number 41 because he guessed that there were approximately 40 drivers and warehouse employees already working at the Elm Road project. (A 13 n.41; SA 79, 81-82.) The Union did not post any information about the Elm Road project at the Union's offices or disseminate information to the membership about the out-of-work list. Further, there were no set rules for prospective employees to be added to the out-of-work list. (A 12; SA 74-78, 86-87.) If members or other potential employees asked to be placed on the list, a Union representative would tell them to leave their names, telephone numbers, and qualifications. (A 12; SA 74-77.) Gurich stated that he collected a pile of notes with applicants' information and qualifications and added them to the list in numerical order, but he also placed yellow sticky notes throughout the list with the names of other potential employees, without assigning numbers to those names. Eventually, Gurich stopped adding to the numerical list and kept an assortment of notes regarding applicants. (SA 79-81, 109-10, 14-48.)

The Union did not have written rules or policies governing referrals to Elm Road. Instead, Gurich operated an informal referral system that relied in part on his discretion. (A 12; SA 89-95.) It was not, in his words, "an exact science." (A

12, 18-19; SA 136.) Sometimes he referred employees in the order of the referral list; other times he looked at qualifications and layoff status; and sometimes he made referrals for other reasons, including his personal views of whether the employee should go back to work. (A 13; SA 94-95, 102-03, 109-22, 136-39.) For example, Gurich referred M. Anderson to the warehouse even though he could not operate a forklift, which Bechtel required for the position. Gurich picked Anderson because he had good attendance and would work overtime. (A 14-15, 18, 20; SA 12, 13, 69, 115-17, 138, 183.)

In March 2007, Gurich started handling Bechtel's requests for employees. (A 12, 18; SA 82, 124.) Initially, Bechtel's requisitions named individuals it wanted to hire. Each time, Gurich asked Bechtel representatives why they were requesting individuals by name and asserted that Union would refer people of its choosing. The Union also filed grievances claiming that Bechtel was violating the parties' agreement. (A 12; SA 49-50, 96-101, 151-53, 125-30.) In each case, Bechtel relented and hired the Union's referrals. (A 6, 12, 18; SA 130, 151.) In June 2007, the parties formally settled the grievances. Bechtel's labor relations manager, Greg Glynn, agreed to follow the agreements and give the Union up to 48 hours to send employees. (A 12, 18; SA 49-50, 100-01, 153-55.)

Despite these disagreements, the Union filled every request for referrals within 48 hours and Bechtel hired each person that the Union sent to Elm Road. (A 6, 12, 18; SA 109-22, 147, 149.) Bechtel never hired anyone off the street and gave anyone who inquired about work at Elm Road a list of the signatory unions to contact about getting on the out-of-work lists. (A 6, 18; SA 147-49.)

According to Gurich, he only added individuals who requested placement on the out-of-work list for Elm Road. (A 12; SA 84.) However, at least once, Gurich offered work at Elm Road to an employee not on the list. (A 14; SA 186-87.) Specifically, J. Gomaz worked as a driver at Elm Road from February 2006 until he was suspended due to an on-the-job altercation in November 2006. (A 14, 19; SA 185, 188-90.) Gomaz did not seek to return because he did not believe it was an option. He even sought to withdraw from the Union to avoid paying dues. (A 14; SA 192.) Yet, sometime around July 2007, Gurich called Gomaz and offered him a driving position at Elm Road, which Gomaz accepted. (A 14; SA 186, 189-90.) Gurich did not mention an out-of-work list or any referral rules. (A 14; SA 186-87.) Gomaz had never spoken with Gurich before and did not know who he was. (A 14; SA 193.)

C. Buban Files a Grievance Over His Layoff from Elm Road and Clashes With the Union Over Grievance Handling; After the Grievance Is Dropped, Buban Joins the Referral List

Buban worked for Bechtel at the Elm Road project as a shuttle bus driver until September 14, 2007, when he was laid off with a number of other "class B" drivers. (A 10; SA 133, 169-70.) Buban believed the layoff violated the parties' collective-bargaining agreement and filed a grievance. (A 10; SA 51-52, 104-05, 170.)

Gurich handled Buban's grievance against Bechtel. (A 10, 13, 20; SA 104-06, 170.) Buban frequently told Gurich over the phone and in person that he wanted to return to work as a bus driver, a 5-ton truck driver, or in the warehouse. (A 10; SA 171-73.) Gurich initially believed that Buban only wanted to return to driving the bus, but Buban corrected him and told him he would gladly take other jobs at Elm Road. (A 10; SA 171.)

Buban clashed with Gurich and the Union in letters regarding his grievance. (A 13 n.38, 20; SA 63-66, 134-35.) In October 2007, Buban wrote to the Union, alleging that it was responsible for his layoff from Elm Road. (A 20.) In response, Gurich denied any wrongdoing by the Union, described Buban's charges as "somewhat hysterical allegations," and noted that the Union discussed the charges with its outside counsel. (SA 63-64.) In later correspondence, Gurich wrote that he

was making an "out of the ordinary" request for Buban to provide a detailed narrative regarding his grievance because "grievances filed by former Secretary-Treasurers who have accused Local 200 of various wrongdoing via a 'draft letter' from their attorneys… are unusual." (SA 65.)

In January 2008, Gurich told Buban that later that month there would be a meeting on his grievance and Buban's driver qualifications would probably be challenged. (A 10; SA 172-73.) Buban asked Gurich if there were any warehouse jobs available and stated he was willing to work in the warehouse. Gurich said that he did not believe there were openings in the warehouse at that time. (A 10; SA 173.) Gurich never suggested to Buban that he obtain additional driving experience or otherwise improve his qualifications. (A 11; SA 180.)

In April,[2] the Milwaukee Building and Trades Council, of which the Union is a member, dropped Buban's grievance. (A 10, 13; SA 133, 173-74.) Around that time, Buban's fellow union member and political ally, Carol Simon, told him that Gurich had told her that Buban "must not care about going back to work at Elm Road because he hasn't put his name on the out-of-work list." (A 10-11; SA 175.) Buban immediately called Gurich, who admitted that he told Simon that Buban was not on the list. Buban told Gurich, "so there's no confusion, please put my

[2] All dates are 2008 unless otherwise noted.

name on the out-of-work list. I will take any job I can get at Bechtel."[3] (A 10-11; SA 175.)

On approximately April 15, Gurich placed Buban on the out-of-work list, at number 113. (A 13 & n.39; SA 30, 107-08.) Next to Buban's name and telephone number, Gurich wrote a question mark. Others on the list had designations such as "ex-power plant," qualified, warehouse, and "class B only." (A 13 & n.39, 20; SA 82-85.)

D. The Union Refers Others to the Elm Road Project Over Buban; the Union Fails To Respond to Buban's Request for the Referral List and Other Referral Information

In Spring 2008, Gurich referred several warehouse workers to Elm Road using variable factors and did not inform applicants which factors he considered. (A 14, 19-20; SA 111-20; 136-39.) On May 12, after Gurich added Buban to the list, he referred S. Olson, M. Bonaparte, and A. Cheske to warehouse jobs. (A 20; SA 113.) Olson was a laid-off Bechtel driver with no warehouse experience there. (A 20; SA 117, 182.) Bonaparte could not operate a forklift, which Bechtel required for all warehouse positions, and had to be trained. (A 14-15, 20; SA 12, 13, 74, 150, 180-84.) Gurich referred Bonaparte because, after being laid off as a driver, she often called Gurich or came to the union hall and said that she wanted

[3] In his position as secretary-treasurer, Buban did not know if there was a referral list for Elm Road and was not responsible for it. (A 10; SA 174.)

to return. (SA 118.) Gurich referred Cheske to a warehouse position ahead of others considered more senior, including Buban, because Gurich believed that Cheske did not get a "fair shake" when he was initially laid off from Elm Road. (A 14 & n.42, 19; SA 119-20, 139.) A few months later, on September 12, Gurich also referred C. Pini to the warehouse although he had never worked at Bechtel before. (SA 142-44.)

Gurich did not consistently use his referral list. (A 19; SA 109-10; 113-14.) Olson's and Bonaparte's names only appear on yellow sticky notes on the back of a page in Gurich's notebook, not on the numerical list. (SA 18, 109, 110, 114.) Cheske was on the referral list when he was initially referred to Elm Road, but was not re-listed after his layoff before Gurich referred him again on May 12. (SA 139-42.)

On August 28, having not been referred for months, Buban went to the Union's offices to get information about referrals to Elm Road. (A 11, 19; SA 176-78.) He asked to speak with Gurich, the secretary-treasurer, or the president but they were not available. Randy Monroe, another business representative, spoke with Buban. Buban requested a copy of the referral list, any written rules, any notices posted at the hall, or any other information about the referral process for the Elm Road project. (A 11, 19; SA 177.) There was no general information about

Elm Road available at the Union's offices and Gurich was the only one at the Union who had regular access to the referral list. (A 12, 15 n.50, 19; SA 88, 197, 202-03.) Monroe did not give Buban any information but agreed to put a note on Business Representative Tom Benvenuto's desk. Buban never received a copy of the out-of-work list or any information about the referral process and the Union never responded to the request. (A 11, 19; SA 178.)

II. THE BOARD'S CONCLUSIONS AND ORDER

On December 29, 2011, the Board (Chairman Pearce and Members Becker and Hayes) found that the Union violated Section 8(b)(1)(A) and (2) of the Act. Agreeing with the judge, the Board found that the Union violated Section 8(b)(1)(A) by operating an exclusive hiring hall without consistently using objective criteria or factors in referring applicants for employment; violated Section 8(b)(1)(A) and (2) by discriminatorily failing to refer Timothy Buban for employment and attempting to cause Bechtel Construction Company to discriminate against him;[4] and violated Section 8(b)(1)(A) by failing and refusing to provide Buban with information about referrals to Elm Road that would have allowed him to protect his rights. However, the Board reversed the judge's finding that the Union violated Section 8(b)(1)(A) by failing to publicize and make known

[4] The Board deleted the judge's reference to possible discrimination against similarly situated union members. (A 1 n.2.)

the hiring hall criteria because the judge led the Union to reasonably believe that it would not have to defend against that allegation. (A 1-2.)

The Board's Order requires the Union to cease and desist from the unfair labor practices found and from, in any like or related manner, interfering with, restraining or coercing employees in the exercise of their Section 7 rights. Affirmatively, the Board's Order directs the Union to operate its exclusive hiring hall by using objective criteria when making referrals, refer Timothy Buban to Bechtel Construction Company in accordance with the applicable hiring hall rules and make him whole for any loss suffered as a result of its discrimination, and provide Buban with pertinent information he requested about the hiring hall. The Board's Order also requires the Union to post and, if appropriate, electronically distribute a remedial notice to its members. (A 1-2.)

STANDARD OF REVIEW

In reviewing the Board's decision, the Court gives substantial deference to the Board's findings of fact. The Board's factual determinations must be upheld if they are supported by substantial evidence on the record as a whole. Section 10(e) of the Act (29 U.S.C. §160(e)); *see Universal Camera Corp. v. NLRB*, 340 U.S. 474, 477 (1951); *FedEx Freight East, Inc. v. NLRB*, 431 F.3d 1019, 1025-26 (7th Cir. 2005). "Substantial evidence in this context means such relevant evidence that

a reasonable mind might accept as adequate to support the conclusions of the Board. The presence of contradicting evidence is not of consequence as long as substantial evidence supports the Board's decision." *L.S.F. Transp., Inc. v. NLRB*, 282 F.3d 972, 980 (7th Cir. 2002) (citation omitted); *accord Ryder Truck Rental v. NLRB*, 401 F.3d 815, 825 (7th Cir. 2005). In sum, the Court will not "interfere with the Board's choice between two permissible views of the evidence, even though [it] may have decided the matter differently had the case been before [it] de novo." *L.S.F. Transp.*, 282 F.3d at 980; *see generally Universal Camera*, 340 U.S. at 477, 488.

The Court applies "a similarly deferential standard in determining whether the Board's legal conclusions have a reasonable basis in law." *FedEx Freight*, 431 F.3d at 1026. In addition, the Court gives particular deference to the Board's credibility findings, which cannot be disturbed absent "extraordinary circumstances." *Id.* (citations omitted).

SUMMARY OF ARGUMENT

When a union and an employer have an exclusive hiring hall arrangement – where workers can obtain employment only through the union's referral – the union has a duty to exercise that power responsibly. Therefore, it is well settled

that a union operating an exclusive hiring hall must refer individuals for employment based on consistent, objective criteria.

Substantial evidence supports the Board's finding that the Union had an exclusive hiring hall arrangement with Bechtel and the Union operated it unlawfully by failing to consistently use objective criteria. The parties' collective-bargaining agreement stated that Bechtel would rely on the Union to provide drivers and warehouse workers for the Elm Road project and both parties consistently adhered to that agreement. Bechtel hired only union referrals and the Union protested whenever Bechtel attempted to deviate from the process. However, when Union Business Agent Gurich referred employees to Elm Road, he did not consistently use objective criteria and made some referrals on clearly subjective grounds.

The Union argues primarily that the parties' agreement did not establish an exclusive hiring hall; both the agreement and the parties' practice negate that position. Also, Union cannot demonstrate that it lawfully operated the hiring hall – Gurich's haphazard referrals speak for themselves.

Substantial evidence also supports the Board's findings that the Union unlawfully discriminated against union dissident Buban by failing to refer him for employment and unlawfully failed to provide him with information to protect his

referral rights. As secretary-treasurer, Buban led the Union until Gurich's allies ousted him in a bitterly contested election. Gurich actively campaigned against Buban and Buban's opponents hired him as a business agent. Even as Gurich handled Buban's grievance, the two clashed over Buban's charges of union wrongdoing. The Board found ample evidence that the Union harbored animus against Buban and discriminated against him for his protected intraunion activities by failing to refer him back to work at Elm Road. The Board further found that the Union failed to respond to Buban's request for information about referrals to Elm Road. The Union's defenses lack record and case support.

ARGUMENT

I. SUBSTANTIAL EVIDENCE SUPPORTS THE BOARD'S FINDING THAT THE UNION VIOLATED SECTION 8(b)(1)(A) OF THE ACT BY OPERATING AN EXCLUSIVE HIRING HALL WITHOUT CONSISTENTLY USING OBJECTIVE CRITERIA

A. Exclusive Hiring Halls and the Duty of Fair Representation

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 or coerce … employees in the exercise of the rights guaranteed in [S]ection 7 of the Act."[5] That provision encompasses a union's duty to conduct fairly its activities on behalf of the employees it represents.

[5] Section 7 of the Act (29 U.S.C. §157) grants employees the right "to form, join, or assist labor organizations, … and also … to refrain from any or all such activities…."

Kesner v. NLRB, 532 F.2d 1169, 1174 (7th Cir. 1976); *NLRB v. Teamsters Local 282*, 740 F.2d 141, 144-46 (2d Cir. 1984); *see also Teamsters Local Union No. 435 v. NLRB*, 92 F.3d 1063, 1068-69 (10th Cir. 1996) (a breach of the duty of fair representation violates Section 8(b)(1)(A)). The duty of fair representation prohibits union conduct toward its members that is "arbitrary, discriminatory, or in bad faith." *Airline Pilots Ass'n, Int'l v. O'Neill*, 499 U.S. 65, 67 (1991) (quoting *Vaca v. Sipes*, 386 U.S. 171, 190 (1967)); *accord NLRB v. Int'l Bhd. of Elec. Workers, Local 16*, 425 F.3d 1035, 1039 (7th Cir. 2005).

The duty of fair representation applies to exclusive hiring hall arrangements, such as the one found in this case, "under which workers can obtain jobs only through union referrals." *Boilermakers Local 374 v. NLRB*, 852 F.2d 1353, 1358 (D.C. Cir. 1988); *accord Int'l Bhd. of Elec. Workers, Local 16*, 425 F.3d at 1040. "The union's 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 representing those who seek to be referred out for employment ….'" *Boilermakers Local 374*, 852 F.2d at 1358; *accord Breininger v. Sheet Metal Workers Int'l Ass'n Local Union No. 6*, 493 U.S. 67, 87-89 (1989); *Miranda Fuel Co.*, 140 NLRB 181, 184 (1962).

B. The Union Operated an Exclusive Hiring Hall for Referrals to Elm Road

To determine whether a union and employer have established an exclusive hiring hall, the Board will examine the parties' course of conduct as well as written or oral agreements. *See Laborers Local 135 (Bechtel Corp.)*, 271 NLRB 777, 779 n.8 (1984) (finding testimony of employer regarding practices between the parties established exclusive hiring hall), *enforced mem.*, 782 F.2d 1030 (3d Cir. 1986); *Local Union No. 174, Teamsters (Totem Beverages, Inc.)*, 226 NLRB 690, 690-91 (1976). If a union and an employer operate a referral system wherein the employer first looks to the union for labor and does not hire employees off the street, a "de facto" exclusive hiring hall is created even with no written agreement. *See, e.g.*, *Iron Workers Local 10 (Guy F. Atkinson Co.)*, 196 NLRB 712, 712 & n.3 (1972) (finding exclusive hiring hall where employer cleared all hires through union), *enforced mem.*, 1973 U.S. App. LEXIS 10228, 83 L.R.R.M. (BNA) 2409 (8th Cir. 1973); *Local 215, Int'l Bhd. Elec. Workers*, 136 NLRB 1618, 1619 (1962) (implicit agreement established exclusive hiring hall even where exclusivity language was omitted in subsequent written agreement), *enforced mem.*, 322 F.2d 1022 (2d Cir. 1963).

Here, the Board found (A 18) that, as of January 2007, when Gurich assumed responsibility for the Elm Road referral list, the Union operated an

exclusive hiring hall. The Board relied on the parties' agreements and practice. (A 18.) The contract states that Bechtel will make requests for drivers and warehouse workers to the Union and the Union will administer and control its referrals. (A 5; SA 5, 10.) The Board found that the "only limit to exclusivity was … the requirement that the right be exercised within 48 hours." (A 18.)

Further, the Board concluded that, based on Gurich's and fellow Union Business Agent Benvenuto's testimony, the Union believed it was entitled to be the sole source of referrals. (A 18; SA 96-101, 198-201.) When Bechtel requested employees by name, Gurich immediately protested. Bechtel relented and hired employees chosen and referred by the Union. (A 18; SA 96-101, 130, 153-55.) The Union also filed grievances whenever Bechtel declined certain referrals. The grievances were resolved when Bechtel agreed to abide by the language of the parties' agreements and accept any referrals the Union made within 48 hours. (A 18; SA 96-101, 153-55.) Finally, the Board credited Bechtel Labor Relations Manager Glynn's testimony that Bechtel only hired through the Union and directed all applicants to the Union to be placed on the out-of-work list. (A 18; SA 147-49, 151, 156-58.)

The Union concedes (Br. 10) that the Board must examine both the language of the agreements and the parties' conduct to determine exclusivity. Nevertheless,

the Union looks only to the contract language and does not contest the Board's factual finding (A 18) that the parties' practice demonstrates an exclusive hiring hall. Moreover, the authority cited by the Union (Br. 10), *Local Union No. 174, Teamsters (Totem Beverages, Inc.)*, 226 NLRB 690, 690 (1976), directly counters its argument that its hiring hall was nonexclusive based solely on the language of the collective-bargaining agreement. In that case, the Board found that the contract's "literal language" did not create an exclusive hiring hall but, nonetheless, under the "totality of the circumstances," the hiring hall was exclusive. *Id.* There, as here, the union viewed its referral system as exclusive and protested when the employer deviated from it; as here, the employer acquiesced by accepting all the union's referrals for full-time employees. *Id.* at 691.

The Union also incorrectly claims (Br. 10-11) that contract language giving the Union 48 hours to refer employees negates the hiring hall's exclusivity. The Board, however, has often found exclusive hiring halls where unions were given a limited amount of time to refer employees. *See, e.g., Int'l Bhd. of Elec. Workers, Local 48 (Oregon-Columbia Nat'l Elec. Contractors Ass'n)*, 342 NLRB 101, 128 & n.7 (2004) (exclusive hiring hall despite employers' ability to hire independently after 48 hours); *Iron Workers Local 111 (Steel Builders)*, 274 NLRB 742, 746 (1985) (same), *enforced in relevant part*, 792 F.2d 241 (D.C. Cir. 1986).

The Union's cited cases (Br. 10-11) do not hold that a time limit for union referrals is dispositive of a nonexclusive hiring hall. Although in those cases the hiring halls had similar 48-hour referral windows, that fact played no part in the Board's conclusions on exclusivity.[6] Accordingly, the Union provides no support for its view that the 48-hour referral window rendered this hiring hall nonexclusive.

The Union fares no better with its improper reliance (Br. 11-12) on a Board regional director's letter finding a nonexclusive system and dismissing a separate case against the Union. A regional dismissal determining not to prosecute an unfair-labor-practice charge is not a final agency adjudication or Board precedent. *See Ball Corp.*, 322 NLRB 948, 951 (1997) (regional director's dismissal is not adjudication on merits); *Kelly's Private Car Serv.*, 289 NLRB 30, 39 (1988) (same), *enforced sub nom. NLRB v. WAD Rentals Ltd.*, 919 F.2d 839 (2d Cir.

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[6] *Boilermakers, Local Lodge No. 587 (Stone & Webster Eng'g)*, 233 NLRB 612, 614 (1977) (parties stipulated to exclusive hiring hall; 48-hour window mentioned only in passing); *Local No. 78, United Bhd. of Carpenters (Murray Walter)*, 223 NLRB 733, 735 (1976) (exclusive hall based on contract and practice of union referring virtually all employees; no discussion of 48-hour window); *Mountain Pacific Chapter, Associated Gen. Contractors*, 119 NLRB 883, 894 (1958) (48-hour period "immaterial" to finding of unlawful exclusive hiring hall), *enforcement denied*, 270 F.2d 475 (9th Cir. 1959) *and overruled by Local 357, Int'l Bhd. of Teamsters v. NLRB*, 365 U.S. 667, 673-74 (1961) (hiring halls are not unlawful absent discrimination).

1990); *see also B.A.F., Inc.*, 302 NLRB 188, 193 (1991) (no res judicata from dismissal before merits adjudication), *enforced*, 953 F.2d 1384 (6th Cir. 1992) (table). Also, the administrative law judge rejected that 2006 dismissal letter because there was no evidence that the system at issue in this case, that Gurich created in 2007, was the same as that considered in the 2006 dismissed case. Thus, this record supports the Board's finding that the Union operated an exclusive hiring hall based not only on the contractual language, but also on the parties' actual practice for referrals.

C. The Union Violated the Duty of Fair Representation and the Act By Failing to Consistently Use Objective Considerations in Its Hiring Hall Referrals

As discussed *supra*, a union operating an exclusive hiring hall has extensive control over employees' livelihoods and violates the duty of fair representation if it exercises that control in an arbitrary or discriminatory manner. *See Breininger*, 493 U.S. at 87-89. It follows that, "a union commits an unfair labor practice if it administers the exclusive hall arbitrarily or without reference to objective criteria" because "[b]y wielding its power arbitrarily, the [u]nion gives notice that its favor must be curried, thereby encouraging membership and unquestioned adherence to its policies." *Boilermakers Local 374 v. NLRB*, 852 F.2d 1353, 1358 (D.C. Cir. 1988) (citation omitted); *see also Plumbers & Pipefitters Local Union No. 32 v.*

NLRB, 50 F.3d 29, 35 (D.C. Cir. 1995) (union violated duty of fair representation and Act by operating hiring hall without consistent objective standards); *NLRB v. Gen. Truckdrivers, Warehousemen & Helpers*, 778 F.2d 207, 213 (5th Cir. 1985) (union violated Section 8(b)(1)(A) by operating exclusive hiring hall without reference to objective standards or criteria).

Here, the Board found (A 18-19) that the Union failed to consistently apply objective criteria as it operated the exclusive hiring hall for the Elm Road project. While the Union lists (Br. 12) the criteria Gurich considered in making referrals, the record does not show any consistency or objective application of those factors. Instead, as the Board found, Gurich sometimes used objective criteria such as seniority or applicant qualifications, but on other occasions, disregarded these criteria and resorted to "clearly subjective criteria or facts." (A 19; SA 109-22, 139.)

In many instances, Gurich's whims controlled the referrals. For example, Gurich decided that A. Cheske should skip ahead of more senior former employees because he believed Bechtel did not give Cheske a "fair shake." (A 14 & n.42, 19; SA 119-20, 139.) Gurich also cold-called J. Gomaz and referred him to Elm Road, although Gomaz had been suspended for misconduct on that project and never even asked to be placed on the out-of-work list. (A 14, 19; SA 185-87.) Gurich

referred M. Anderson and M. Bonaparte to warehouse jobs though neither had experience operating a forklift as Bechtel required for that work. Instead, Gurich chose Anderson because he had good attendance and Bonaparte because she often called Gurich or came to the union hall to seek work. (A 14; SA 12, 13, 69, 115-17, 138, 150, 183.) And although Gurich claimed that layoffs from Elm Road played a key role, he referred C. Pini, who never worked there, in September 2008 over Buban, who was laid off from Elm Road in September 2007. (SA 143-44.)

Further, the numbers on the list were meaningless. Although Gurich sometimes added names to the list in numerical order, he did not always refer individuals in that order and thus any knowledge of their spot would not help potential employees understand their chances of referral. (A 18; SA 13-14, 109-10.) In a vast understatement, Gurich admitted that his system was not an "exact science." (A 12, 18-19; SA 136.)

Finally, it is undisputed that the Union had no written referral rules. If a union fails to maintain written referral rules, it runs the risk that referrals will be left to the "unbridled discretion" of union officials. *Laborers Local 394* (*Bldg. Contractors Ass'n*), 247 NLRB 97, 97 n.2 (1980), *enforced*, 659 F.2d 252 (D.C. Cir. 1981). Although failure to maintain written referral rules does not violate the Act *per se*, it is evidence that the union operated the hall without objective

standards. *Id; see also Gen. Truckdrivers*, 778 F.2d at 213 (referral system without written procedures creates potential for subjective treatment). Without any written criteria or rules to follow, the Board found that Gurich employed different criteria on different occasions and other times simply used subjective considerations (A 18-19), leading to the type of unbridled discretion with which the Board was concerned in *Laborers Local 394*, 247 NLRB at 97 n.2. Gurich used objective criteria such as seniority on some occasions and then ignored such criteria at other times, disregarded the numerical order, and used completely subjective considerations on other occasions. Accordingly, the evidence amply supports the Board's conclusion that the Union unlawfully failed to consistently use objective criteria, violating the duty of fair representation and Section 8(b)(1)(A) of the Act.

While acknowledging that a union operating an exclusive hiring hall must use objective criteria (Br. 12), the Union conflates the standards for determining if a union failed to consistently do so with a failure to refer a specific individual from the hall. In *Jacoby v. NLRB*, cited by the Union (Br. 12), the D.C. Circuit affirmed the Board's conclusion that a union's inadvertent mistake in failing to refer one individual from its hiring hall did not violate the Act. 325 F.3d 301, 310 (2003). There was no claim in *Jacoby* that the union operated its hiring hall on the whole

unlawfully. To the extent that the Union argues that the failure to refer Buban was unintentional, that argument will be addressed in Section II.

In contrast to well-established precedent regarding systemic arbitrariness in a hiring hall, the Union offers only inapposite cases involving different issues: the one-off mistake in a referral in *Jacoby* and a union's unlawful failure to represent a specific grievant in a Sixth Circuit unpublished case (Br. 13), *NLRB v. Local 1640 AFSCME*, 2006 WL 2519732 (6th Cir. 2006).

II. SUBSTANTIAL EVIDENCE SUPPORTS THE BOARD'S FINDING THAT THE UNION UNLAWFULLY FAILED TO REFER TIMOTHY BUBAN FOR WORK BECAUSE OF HIS PROTECTED INTRAUNION ACTIVITY

A. A Union Operating an Exclusive Hiring Hall Cannot Refuse To Refer a Member Because of Protected Activity

A union operating an exclusive hiring hall violates Section 8(b)(1)(A) and 8(b)(2) of the Act (29 U.S.C. §158(b)(2))[7] when it fails to refer an employee for employment because of the employee's protected activity. *Gen. Truckdrivers*, 778 F.2d at 214 (refusal to refer members for intraunion political activity violated Section 8(b)(1)(A) and 8(b)(2)); *see also NLRB v. Local 90, Operative Plasterers,*

[7] Under Section 8(b)(2), it is an unfair labor practice for a labor organization "to cause or attempt to cause an employer to discriminate against an employee in violation of [Section 8](a)(3)…." In turn, Section 8(a)(3) (29 U.S.C. §158(a)(3)) makes it unlawful for an employer "by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization."

606 F.2d 189, 191 (7th Cir. 1979) (refusal to refer member who filed Board charges against union). When a member has engaged in dissident union activity or political rivalry, a union cannot punish the member for this protected activity by interfering with employment opportunities. *Gen. Truckdrivers*, 778 F.2d at 214; *Int'l Union of Operating Engineers, Local 18 (C.F. Braun Co.)*, 205 NLRB 901, 911-13 (1973) (dropping one member to bottom of referral list and refusing to refer another because of their opposition to incumbent union leadership violated Section 8(b)(1)(A) and 8(b)(2)), *enforced*, 500 F.2d 48 (6th Cir. 1974); *see also Operating Engineers Local 137 (Various Employers)*, 317 NLRB 909, 911 (1995) (union violated Act by failing to refer political opponents in order of nonexclusive referral list).

Where, as here, a union is alleged to have singled out an employee for disparate treatment, an inquiry into the union's motive is essential. *Local 357, Int'l Bhd. of Teamsters v. NLRB*, 365 U.S. 667, 675 (1961). To analyze motive, the Board applies the framework set out in *Wright Line, Inc.*, 251 NLRB 1083, 1089 (1980), *enforced on other grounds*, 662 F.2d. 889 (1st Cir. 1981); *see also NLRB v. Transportation Management Corp.*, 462 U.S. 393, 398 (1983) (approving Board's framework for resolving issue of motive). Although *Wright Line* typically applies to cases brought against employers, it is equally applicable to cases where a

union's motivation is at issue. *See, e.g., Town & Country Supermarkets*, 340 NLRB 1410, 1411 (2004); *Paperworkers Local 1048 (Jefferson Smurfit Corp.)*, 323 NLRB 1042, 1044 (1997). The General Counsel must show that the employee engaged in protected activity, the union had knowledge of that activity, and animus or hostility towards this activity was a motivating factor in the union's decision to take adverse action against the employee. *Transportation Management Corp.*, 462 U.S. at 398. If the General Counsel can make this showing, the burden of persuasion then shifts to the union to prove its affirmative defense that it would have taken the same action even if the employee had not engaged in protected activity. *Id.*

The question of motivation in a *Wright Line* analysis is a factual matter for the Board to determine in the first instance. *See NLRB v. So-White Freight Lines, Inc.*, 969 F.2d 401, 408 (7th Cir. 1992). The Board may properly rely on circumstantial evidence, and a reviewing court must defer to the Board's reasonable inferences of motive drawn from such evidence. *See NLRB v. Link-Belt Co.*, 311 U.S. 584, 597 (1941); *So-White*, 969 F.2d at 408.

B. Substantial Evidence Supports the Board's Finding that the Union Violated Section 8(b)(1)(A) and (2) of the Act by Failing and Refusing To Refer Timothy Buban for Employment at Elm Road Because of His Protected Activities

Applying *Wright Line*, the Board found (A 20-21) that Buban engaged in protected activity, the Union had knowledge of that activity, and that animus or hostility towards this activity was a motivating factor in the Union's decision not to refer Buban for employment at Elm Road. Further, the Board found (A 21) that the Union presented no meaningful affirmative defense and therefore failed to meet its burden to show that, irrespective of Buban's protected activities, it would not have referred him for employment to Elm Road.

Buban's long-standing intraunion activity and political rivalry with the Union's current leadership is well known and undisputed. As described above (pp. 4-5), Buban had repeatedly opposed the current union leadership, which Gurich favored, in hostile internal union elections. And the animosity between Buban and Gurich intensified over Buban's grievance concerning his layoff from the Elm Road project. As described above (pp. 10-11), Buban accused Gurich and other union officers of causing his layoff and improperly handling his grievance. Gurich retorted that Buban's accusations were "somewhat hysterical." (SA 64.) When the Building and Trades Council dropped his grievance, Buban asked Gurich to add his name to the referral list. In operating his capricious referral "system," Gurich

never referred Buban for work and, as described above (pp. 12-13), instead selected others far less qualified or experienced for the warehouse, which had been Buban's bread-and-butter work for years. On this record, the Board found (A 20-21) Gurich's animus against Buban, based on his protected activity, established that the Union unlawfully discriminated against Buban by failing to refer him to Elm Road. Therefore, the General Counsel met his burden and the burden shifted to the Union to prove it would not have referred Buban even absent his protected activity. (A 21.)

C. The Board Rejected the Union's Defenses as Lacking the Support of Credible Evidence

The Union asserts several factual defenses, all of which were expressly rejected by the Board because they were inconsistent with credible evidence. The Union's first defense – that it ran a nonexclusive hiring hall and thus owed no duty to refer Buban (Br. 10-12) – is meritless as shown above (p. 20-24).

Second, the Union claims (Br. 14) that it reasonably believed that Buban only sought a "class B" driver position. The Board credited Buban's testimony that he had ample warehouse experience, which was widely publicized in his campaign literature. (A 11, 20; SA 180.) The Board discredited Gurich's testimony that he did not know Buban's qualifications. (A 20.) Further, Buban credibly testified that he asked Gurich about warehouse jobs at Elm Road in January 2008 and in April

2008 when he joined the referral list. He also told Gurich "he would take any job" there. (A 10-11, 21; SA 175.) The Union has not directly challenged those factual findings or claimed that any of the Board's credibility determinations should be overturned. Thus, the Union has not shown that Gurich was unaware of Buban's qualifications or interest in a warehouse position.

Next, the record does not support the Union's factual assertion (Br. 7) that Gurich followed the order of the list when he failed to refer Buban. (A 21; SA 109-10, 113-19, 139-42.) Not all of the referred employees were "ahead" (Br. 7) of Buban. Neither S. Olson nor M. Bonaparte was even on the numerical portion of the list. (SA 109-10, 113-14.) Although A. Cheske was listed for his original referral to Elm Road, after his layoff he was not re-listed before his repeat referral in May 2008. (SA 139-42.) Furthermore, Gurich admitted he sometimes deviated from the numerical order and claimed that he usually went by *seniority* not by the numerical order. (A 12-13; SA 111, 115-16, 118-19.)

Similarly, even following seniority order (Br. 14), Buban should have been referred. Gurich conceded that Buban had more seniority than others he referred, including Cheske (A 16; SA 121.) And Gurich referred C. Pini, who had never worked at Elm Road, over Buban. (A 16, 20; SA 143-44.) While the Union also claims (Br. 14) Gurich reasonably referred foreman-requested employees –

presumably, Cheske – Gurich filed grievances over Bechtel's requests in 2007 for named individuals in order to protect the Union's choice of referrals. (A 12; SA 49-50, 96-101, 125-30, 153-55.) Further, the Board credited Gurich's testimony that he actually referred Cheske because he believed Cheske had not received a fair shake when Bechtel laid him off. (A 12, 19; SA 120, 139.) Thus, contrary to the Union's view, in failing to refer Buban, Gurich did not adhere to the purported criteria in his "system," even assuming one existed. Indeed, it is difficult to even make sense of the Union's defenses when Gurich's referral rationales were so erratic that he seemingly had a different reason for each referral.

The Union also asserts (Br. 15) that the Board failed to find intentional union misconduct. The Board's *Wright Line* analysis, however, directly addresses whether the Union intended to discriminate. As shown (pp. 29-31), the Board found (A 20-21) that Gurich failed to refer Buban because he harbored animus against Buban for their long-standing political rivalry and for Buban's accusations that Gurich and the Union mishandled his grievance. This is not, as the Union argues (Br. 15), "discrimination in effect" but rather a specific finding, supported by the record, that the Union discriminatorily refused to refer Buban because of his protected activity. To the extent that the Board's language – that the Union's actions were "discriminatory in effect" (A 21) – reflects Gurich's shoddy hiring-

hall management and suggests that Buban could have been overlooked for that reason, that failure to consistently use objective criteria is no defense to a specific discriminatory referral. *See generally Bishop v. NLRB*, 502 F.2d 1024, 1029 (5th Cir. 1974) ("it would surely controvert the spirit of the Act to allow [a party] to profit by his own wrongdoing"). As the Second Circuit observed, "a union may not cloak an act of illegal discrimination with the pretense of enforcing hiring hall rules when the record demonstrates that the union inconsistently or selectively enforced those rules." *NLRB v. Local 46, Metallic Lathers Union*, 149 F.3d 93, 103 (2d Cir. 1998).

Lastly, the Union's argument (Br. 15) that the Board did not identify evidence of intentional discrimination appears to raise the standard of proof. While there is no *direct* evidence of motive, the Board properly relied on circumstantial evidence of the Union's animus and incongruous referrals of other union members to find an unlawful motive, as discussed above. The Supreme Court recognized that discriminatory intent may be inferred from the natural and foreseeable consequences of the union's conduct and not only specific evidence. *Local 357, Int'l Bhd. of Teamsters v. NLRB*, 365 U.S. 667, 675 (1961) (citing *Radio Officers Union v. NLRB*, 347 U.S. 17, 45-49 (1954)).

III. SUBSTANTIAL EVIDENCE SUPPORTS THE BOARD'S FINDING THAT THE UNION UNLAWFULLY FAILED TO PROVIDE TIMOTHY BUBAN WITH INFORMATION REGARDING THE HIRING HALL

As this Court has recognized, the duty of fair representation requires unions to "deal fairly with an employee's request for information as to his relative position on the out-of-work register for purposes of job referral through an exclusive hiring hall." *NLRB v. Local 139, Int'l Union of Operating Engineers*, 796 F.2d 985, 993 (7th Cir. 1986) (citations omitted). The Board has often held that an employee who suspects his or her referral rights have been violated, is entitled not only to the referral list but to dispatch records and other information that would help determine if referrals have been made in a lawful fashion. *See, e.g., Boilermakers Local 197 (Northeastern State Boilermaker Employers)*, 318 NLRB 205, 205 (1995). In *Local 139*, where an employee suspected that the Union violated his referral rights, this Court stated that the employee was, "completely dependent on the union for protection of his job referral rights" and therefore was entitled to examine the union's referral list. 796 F.2d at 993.

Likewise here, the only means available to Buban to protect his referral rights was information from the Union. As of August 2008, Buban had been laid off for almost a year and had languished on Gurich's referral list for Elm Road for over four months. (A 10-11; SA 107-08, 133, 169-70.) Buban went to the union

hall and requested the referral list and any other information about the hiring hall. Monroe, the Union's business agent, did not provide any information, nor did the Union ever contact Buban regarding the request. (A 11, 19; SA 176-78.)

The Union does not dispute its basic obligation to provide employees with referral information. Instead, while broadly claiming "each" applicant received information about the "referral process and criteria" (Br. 16), the Union overlooks the undisputed fact that Buban requested specific referral information to which he was entitled and received no response.

To mitigate its burden, the Union mistakenly claims (Br. 16) that its failure is lawful unless it had discriminatory intent. This Court, however, acknowledged that the Supreme Court, in *Airline Pilots Ass'n, Int'l v. O'Neill*, 499 U.S. 65 (1991), rejected that narrow reading of the duty of fair representation and held that union conduct that is arbitrary, discriminatory, or in bad faith breaches the duty. *Ooley v. Schwitzer Div., Household Mfg. Inc.*, 961 F.2d 1293, 1302 (7th Cir. 1992). Moreover, to the extent that intent is relevant or required, this Court in a similar case inferred it. In *Local 139*, where the union retaliated against a former union officer for dissident union activity, the Court concluded that "one could reasonably infer that its refusal to release the [referral] information [to the employee] was also motivated by bad faith." 796 F.2d at 993.

Lastly, the Union's factual defenses are equally unavailing. The Board found it immaterial that Gurich did not directly receive Buban's request for documentation (Br. 16). (A 19.) Buban made the request to an admitted union agent (in the absence of Gurich or any other Union official) who agreed to pass it on. Yet, Buban received nothing in the months following. Additionally, the Union's provision of information to Buban's political allies (Br. 16) does not fulfill its obligation to give Buban the information *he* requested.

In sum, the record evidence supports each of the Board's conclusions: the Union ran an exclusive hiring hall through which Bechtel hired its employees; Gurich's referral process depended on his whims not the consistent application of objective criteria as precedent requires; Gurich's animus against his intraunion adversary cost Buban a job at Elm Road; and the Union refused to give Buban the requisite information to protect his referral rights. The Union therefore breached its duty of fair representation and violated Section 8(b)(1)(A) and 8(b)(2) of the Act.

CONCLUSION

For the foregoing reasons, the Board respectfully requests that the Court enter a judgment enforcing the Board's order in full.

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National Labor Relations Board
July 2012

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	*	
	*	
Petitioner	*	No. 12-1586
	*	
v.	*	
	*	Board Case No.
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	*	
	*	
	*	
Respondent	*	
	*	

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C), the Board certifies that its brief contains 8,635 words of proportionally-spaced, 14-point type, and the word processing system used was Microsoft Word 2007.

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Dated at Washington, DC
this 19th day of July, 2012

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Respondent	*	
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CERTIFICATE OF SERVICE

I hereby certify that on July 19, 2012, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the appellate CM/ECF system.

I certify foregoing document was served on all those parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not by serving a true and correct copy at the addresses listed below:

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Dated at Washington, DC
this 19th day of July, 2012