

**Brede, Inc. and Drapery, Slip Cover, Window Shade, Venetian Blinds, Exhibition, Flag and Bunting Decorators Union, Local 17U, affiliated with United Steelworkers of America, AFL-CIO, CLC.**

**Brede, Inc. and Dan Brady**

**United Food and Commercial Workers Union, Local 653 (Freeman Decorating Company) and Dan Brady.** Cases 18-CA-13968, 18-CA-14373, 18-CA-14361, and 18-CB-3724

August 24, 2001

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS  
LIEBMAN AND TRUESDALE

On August 14, 1998, Administrative Law Judge John H. West issued the attached decision. Respondents Brede, Inc. (Brede), and United Food and Commercial Workers Union, Local 653 (Local 653), each filed exceptions and a supporting 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,<sup>1</sup> and conclusions as modified,<sup>2</sup> to adopt the remedy as amended, and to adopt

<sup>1</sup> Respondent Local 653 has implicitly 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), enf'd. 188 F.2d 263 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

<sup>2</sup> We have made two modifications to the judge's conclusions of law. Consistent with sec. 3 of this Decision, we have deleted Conclusion of Law par. 9 and renumbered the subsequent conclusions of law accordingly. Second, to conform Conclusion of Law par. 11 (now 10) to the violations pled, litigated, and established, and consistent with the judge's analysis, we have modified that paragraph to provide that Respondent Local 653 also violated Sec. 8(b)(1)(A) by failing and refusing to refer Daniel Brady, Dan Mulligan, Leverett Covington, and Don Jacobson to employment for Freeman Decorating Company (Freeman). The following replaces par. 11 of the judge's decision.

10. By, since on or about June 2, 1996, until about July 22, 1997, failing and refusing to refer Daniel Brady, Dan Mulligan, Leverett Covington, and Don Jacobson for employment with Freeman because the employees supported Drapery, Slip Cover, Window Shade, Venetian Blinds, Exhibition, Flag and Bunting Decorators Union, Local 17U, affiliated with Steelworkers of America, AFL-CIO, CLC (Local 17U) and/or complained about UFCW, Local 653's operation of its referral system, UFCW, Local 653 has been attempting to cause and is causing an employer to discriminate against its employees in violation of Sec. 8(a)(3) of the Act in violation of Sec. 8(b)(2) and (1)(A) of the Act.

the recommended Order as modified<sup>3</sup> and set forth in full below.

1. Respondent Brede excepts to the judge's finding that it violated Section 8(a)(5) and (1) by implementing changes in its procedures for hiring unit employees.<sup>4</sup> To the extent that the judge found that Brede made certain unilateral changes to the way the referral system operated, we agree that those changes were unlawful.<sup>5</sup> We also adopt the judge's further finding that Brede's unilateral act of taking the "hall call"<sup>6</sup> away from Local 653 and bringing it in-house was itself an unlawful unilateral change.

*A. Relevant Facts*

Brede is engaged generally in supplying decorator labor to trade show and convention promoters, and employs approximately 25 "regular decorators." When the number of decorators needed on a show exceeds Brede's pool of "regulars," Brede hires "extras." Local 653 represents Brede's "regulars." Local 653 does not represent the "extras," but previously negotiated their wage rate into the regulars' contract.<sup>7</sup> For over 30 years, Brede hired extras in-house. However, during the 1991 contract negotiations, Brede agreed to let Local 653 establish and operate a referral system for extras. During subsequent negotiations for a successor contract, the extras became concerned that Local 653 was sacrificing their wage rate to bolster the regulars' wage rate and sought union representation. On September 18, 1995,<sup>8</sup> Steel-

<sup>3</sup> We will modify the judge's recommended Order in accordance with our recent decision in *Ferguson Electric Co.*, 335 NLRB 142 (2001).

<sup>4</sup> Respondent Brede did not except to the judge's findings that it also violated Sec. 8(a)(5) and (1) by: (1) substantially increasing its reliance on sources of unit employees other than its traditional list of on-call employees; (2) substantially increasing its use of nonunit employees to perform unit work; and (3) refusing to treat an employee as a unit member and using that employee, rather than senior unit employees, to perform unit work at lower wages than those paid unit employees.

<sup>5</sup> The judge found that after Brede took the system back in-house, it relied on subjective (Mike Johnson's assessment of an individual's "known qualifications"), rather than objective (longevity-based) criteria in hiring. The judge further found that, given this change from objective to subjective criteria, extras would not be able to determine whether they were being discriminated against. Brede also changed the hiring procedure by: changing the call-in hours, shifting the burden of calling from the hall call operator to the employees, not using an answering machine, and penalizing employees for requesting time off. All of these procedural changes made it harder for certain employees to obtain work.

<sup>6</sup> The judge appears to use the term "hall call" interchangeably with referral system.

<sup>7</sup> The judge notes that Local 653 included in its contract the wage rate for the unrepresented extras. Brede President William Casey testified, without contradiction, that Local 653 negotiated with Brede over the extras' wage rate.

<sup>8</sup> Unless otherwise indicated, all dates are in 1995.

workers Local 17U (Local 17U), was certified as the extras' exclusive bargaining representative. Local 17U immediately requested bargaining with Brede and requested that "all labor calls [or] requests" for extras be handled by Local 17U.

On September 29, the parties met and exchanged some proposals and documents, including copies of a labor agreement used in Chicago, Illinois, and the Union's pension and welfare plans. The parties also briefly discussed the referral system. The representatives of Local 17U explained that the Union's referral plan worked by seniority and Brede's attorney, Joe Nierenberg, indicated that Brede used a call-in system under which employees would call or be called and then assigned work. A second negotiating session was planned for October 24. Shortly after the September 29 meeting, an internal jurisdictional issue arose within the Steelworkers International between District 11, the Steelworkers District covering Minnesota, and District 7, the Steelworkers District covering Illinois.<sup>9</sup>

By letter dated October 10, Nierenberg stated that Brede's president, William Casey, agreed with Local 17U that the referral system "requires substantial reform," but noted that Casey had intended to return to the company-directed referral system that had previously existed. Accordingly, Nierenberg stated that Brede did not agree "to implement the union referral program on an interim basis" and that "if the union wishes to discuss this matter further, it should be addressed at the conference of principals on October 24, 1995."

Subsequently, Local 17U's attorney, Jack Cerone, had a telephone conversation with Nierenberg. During this conversation, Cerone gave Nierenberg an update on the jurisdictional dispute and indicated that negotiations would have to be put on hold. Nierenberg agreed to a postponement of the October 24 bargaining session. Nierenberg indicated that Brede wanted to take the referral system in-house. Cerone responded that it was Local 17U's position that the referral system was one of its major proposals and that it was not waiving its position on the referral system. By letter dated October 25, Nierenberg advised Cerone of Brede's willingness to continue negotiations with the exclusive bargaining representative of the extras. District 11 requested a meeting with Brede, which Brede refused, noting that Local 17U

<sup>9</sup> As noted in the judge's decision, at issue was a geographic question between the Districts since the boundaries of Local 17U did not come all the way to Minnesota. By the end of December 1995, the Districts reached an agreement that, since the decorator business was different than what was customarily handled by the Steelworkers Locals and Local 17U did decorator work, Local 17U could continue negotiations with companies in the Minnesota area.

had been certified as the exclusive bargaining representative.

On December 1, Brede took the referral system in-house. Brede gave no notice to the affected employees of its actions, relying instead on "word-of-mouth" to spread the news. Although Brede had informed Local 17U that it contemplated a return to an in-house referral system, Brede made no specific proposal to the Union detailing how such a system would operate, nor did Brede indicate with any specificity when it intended to implement such a change.

### B. Analysis

The judge found that Brede did not demonstrate the existence of circumstances that required it to implement an in-house referral system at the time it did. The judge further found that Brede did not provide Local 17U with adequate notice and an opportunity to bargain over this change. As discussed below, we agree with the judge that Brede violated Section 8(a)(5) by unilaterally taking the referral system in-house.

On Local 17U's certification, Brede had a statutory obligation to provide notice and an opportunity for bargaining with Local 17U before making any changes in the existing terms and conditions of employment of the extras. Unilateral changes such as those made by Brede are permitted only by impasse on overall contract negotiations, waiver, or exigent circumstances. *RBE Electronics of S.D.*, 320 NLRB 80 (1995). Here, there is no claim of impasse. We agree with the judge that there has been no waiver by the Union. Local 17U never ceased objecting to Brede taking the referral system in-house and never ceased requesting that Brede bargain over this issue. We further find, in agreement with the judge, that Brede has failed to establish an economic exigency justifying its unilateral action.

Our dissenting colleague suggests that, due to the hold in negotiations, there was effectively no bargaining representative and, since it was facing "liability, customer dissatisfaction, and bad relations with Local 17U" by continuing to use the Local 653 referral system,<sup>10</sup> Brede

<sup>10</sup> With regard to these "risks" faced by Brede, we agree that they may have led to Brede's desire to alter the existing referral system, but we do not find them so compelling as to justify Brede's unilateral action. Cf. *Vincent Industrial Plastics*, 328 NLRB No. 40 (1999) (no showing that exigent circumstances required unilateral action), *enfd.* in relevant part 209 F.3d 727 (D.C. Cir. 2000). Brede's liability concern was speculative at best. The judge found that Brede President William Casey's testimony regarding customer dissatisfaction was uncorroborated and that the record contained no evidence of the magnitude of the problem, when it started, how long it had been going on, who was involved, and why it could only be remedied by taking the referral system in-house. Finally, if as our dissenting colleague suggests, Brede risked bad relations with Local 17U by continuing to use Local 653's

was somehow privileged to act unilaterally. The dissent elevates a temporary hold in negotiations due to an internal union matter into a complete inability of Local 17U to function as the bargaining representative of the extra employees. Contrary to our dissenting colleague, we do not find that the parties' agreement to a temporary hold in negotiations is a license to make unilateral changes in terms and conditions of employment.

Local 17U sought a temporary delay in negotiations while it resolved an internal union jurisdictional dispute. Local 17U did not disclaim interest in the unit, and it gave no indication that it was unable to bargain on its behalf. In fact, during the conversation regarding postponement of the October 24 bargaining session, Local 17U reiterated its position that the referral system was a major issue and it was not waiving its position. Brede neither objected to the hold on negotiations, nor gave any indication that the referral system was a pressing concern that needed to be addressed immediately. Even assuming that Brede's concern over the referral system increased during the hiatus in negotiations, Brede never attempted to find out if Local 17U could bargain. Brede simply acted unilaterally, and in our view unlawfully, by taking the referral system in-house.<sup>11</sup>

Accordingly, in all of these circumstances, we find that Brede violated Section 8(a)(5) by unilaterally taking the referral system in-house without affording Local 17U notice or an opportunity to bargain.<sup>12</sup>

2. Respondent Brede also excepts to the judge's proposed Order, designed to remedy the unlawful unilateral changes to the system of referring extras, to the extent that it orders Brede to:

[T]urn over to the Steelworkers the operation of the extra employee hall call strictly on a seniority basis, for a period of one year while Brede and the Steelworkers bargain over . . . how the hall call will eventually be handled.

Brede argues that the judge's remedy does not restore the status quo ante; that operation of the referral system was a keenly disputed bargaining proposal; and that the judge's

remedy imposes Local 17U's bargaining demand, which is impermissible under settled law.

We find merit in Brede's exception. The judge's proposed remedy does not restore the status quo ante. Local 17U never operated a hall call for Brede. By ordering that Local 17U operate the hall call, the judge essentially forces Brede to accede to Local 17U's bargaining demand that Local 17U operate the referral system. It is well settled that the Board "is without power to compel a company or a union to agree to any substantive contractual provision of a collective-bargaining agreement." *H. K. Porter Co. v. NLRB*, 397 U.S. 99, 102 (1970). Accordingly, we shall order Brede, on the request of Local 17U, to revoke the unlawful changes that it made (including taking the system in-house), and to bargain on request with Local 17U for any changes that Local 17U might seek (including who is to operate the hall).<sup>13</sup>

3. Finally, Brede excepts to the judge's conclusion that it violated Section 8(a)(2) by executing a Letter of Understanding with Local 653 which provided: "Brede will handle extra labor in-house." We find merit to this exception and reverse the judge accordingly.

As stated in section 1 above, Local 653 had been referring extras to Brede since 1991. As also stated in that section, after Local 17U became the extras' certified bargaining representative, it immediately requested bargaining, and focused on operation of the referral system as a key issue. When Local 17U informed Brede that it needed to put negotiations "on hold" pending resolution of the jurisdictional issue, Brede concurrently indicated that it wanted to take the hiring back in-house. Local 17U responded that its operation of the referral system was one of its major proposals and that it was not waiving its position. On January 4, 1996, without further notice to Local 17U, Brede executed a letter of understanding with Local 653. That letter, in addition to confirming a 1-year extension of the current contract with Local 653, provided: "Effective December 1, 1995, Brede will handle extra labor in-house." Employees soon learned that they needed to begin calling Brede for work.

referral system, we do not see how Brede's relations with Local 17U would be improved by taking unilateral action on an issue that Local 17U considered to be a central issue in negotiations.

<sup>11</sup> As discussed above, we do not think that Local 17U's request for and Brede's agreement to an accommodation during bargaining can reasonably be viewed as either an admission by Local 17U that it was impossible for it to bargain or a license for Brede's unilateral change.

<sup>12</sup> The subject of the establishment of a hiring hall is a mandatory subject for collective bargaining. *Houston Chapter (AGC)*, 143 NLRB 409, 411-413 (1963), *enfd.* 349 F.2d 449 (5th Cir. 1965), *cert. denied* 382 U.S. 1026 (1966); *Sage Development Co.*, 301 NLRB 1173, 1178 (1991); and *Star Tribune*, 295 NLRB 543, 557 (1989).

<sup>13</sup> We do not wish to place the hall in the hands of Local 653 over the objections of Local 17U, since it is Local 17U that is the bargaining representative. Under our Order, Local 17U will be able to choose between Brede and Local 653 (assuming Local 653's willingness) with respect to the operation of the hall pending bargaining and will be able to bargain for its own future control of the hall.

Contrary to our dissenting colleague, we see nothing inherently unlawful in returning the operation of the hiring hall to Local 653. To be sure, Local 653 is not the exclusive bargaining representative of the employees. Local 17U, however, is and the operation of the hiring hall would only be returned to Local 653 on Local 17U's request.

The execution of the letter of understanding reflected the parties' termination of their relationship as to the extras. By memorializing this termination, Brede did not "contribute financial or other support" to Local 653, or take any other action in violation of Section 8(a)(2).<sup>14</sup>

#### ORDER

A. Respondent Brede, Inc., of Minneapolis, Minnesota, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Implementing changes in its procedures for hiring unit employees without prior notice to the Steelworkers Local 17U and without affording the Steelworkers Local 17U an opportunity to bargain with Respondent with respect to this conduct. The appropriate unit is:

All on-call, casual, extra employees employed as journeypersons or helpers during at least two shows, exhibitions, and/or conventions at facilities located in the Minneapolis-St. Paul, MN, metropolitan area for at least five working days during the past twelve months or who have been employed at such events for at least 15 days within the past two years; excluding office clerical employees, professional employees, managerial employees, all other employees currently covered by other collective-bargaining agreements, and guards and supervisors, as defined in the National Labor Relations Act, as amended.

(b) Substantially increasing its reliance on sources of unit employees other than its traditional list of on-call employees without prior notice to the Steelworkers Local 17U and without affording the Steelworkers Local 17U an opportunity to bargain with Respondent with respect to this conduct.

(c) Substantially increasing its use of employees outside the unit to perform unit work as a substitute for unit employees without prior notice to the Steelworkers Local 17U and without affording the Steelworkers Local 17U an opportunity to bargain with Respondent with respect to this conduct.

(d) Refusing to treat unit employee Lenny Prouty as a member of the unit and, as a result, using him to perform unit work in lieu of other more senior unit employees and at less than the wages then and historically paid to unit employees, without prior notice to the Steelworkers Local 17U and without affording the Steelworkers Local 17U an opportunity to bargain with Respondent with respect to this conduct.

<sup>14</sup> Member Truesdale agrees with the judge that Brede violated Sec. 8(a)(2) and (1) by executing this letter of understanding with Local 653 and, therefore, dissents from his colleagues' dismissal of this allegation.

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

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

(a) On request by Steelworkers Local 17U, rescind all unilateral changes implemented by it following the certification of Steelworkers Local 17U to represent the unit described above and, on request, bargain with the Steelworkers Local 17U over how referrals will be handled.

(b) Make whole any employee who may have lost work because of Brede's above-described unlawful conduct since the certification of Steelworkers Local 17U in the manner set forth in the remedy section of the decision.

(c) Make whole Lenny Prouty for any loss he may have suffered as a result of Brede's above-described unlawful conduct toward him, in the manner set forth in the remedy section of the decision.

(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 places of business in Minneapolis, Minnesota, including its warehouse, copies of the attached notice marked "Appendix A."<sup>15</sup> Copies of the notice, on forms provided by the Regional Director for Region 18, after being signed by Brede, Inc.'s authorized representative, shall be posted by Brede, Inc. 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 facilities involved in these proceedings, Brede, Inc. shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent Brede, Inc. at any time since January 1, 1996.

<sup>15</sup> 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."

(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.

B. Respondent United Food and Commercial Workers Union, Local 653, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Selecting employees for employment with Freeman Decorating Company without reference to objective standards or criteria.

(b) Failing and refusing to refer Daniel Brady, Dan Mulligan, Leverett Covington, and Don Jacobson for employment with Freeman Decorating Company.

(c) In any like or related manner restraining or coercing Freeman Decorating Company's employees in the exercise of their rights guaranteed under Section 7 of the Act.

2. Take the following affirmative action which will effectuate the policies of the Act.

(a) Make whole any employee who may have lost work because of UFCW Local 653's above-described failure to use objective standards or criteria from June 22, 1996, to July 22, 1997, in the manner set forth in the remedy section of the decision.

(b) Make whole Daniel Brady, Dan Mulligan, Leverett Covington, and Don Jacobson for lost work because of UFCW Local 653's above-described unlawful refusal to refer from June 22, 1996, to July 22, 1997, in the manner set forth in the remedy section of the decision.

(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 union office and hiring hall in Minneapolis, Minnesota copies of the attached notice marked "Appendix B."<sup>16</sup> Copies of the notice, on forms provided by the Regional Director for Region 18, after being signed by United Food and Commercial Workers Union, Local 653's authorized representative, shall be posted by United Food and Commercial Workers Union, Local 653 and maintained for 60 consecutive days in conspicuous places including all places where notices to employees

and members are customarily posted. Reasonable steps shall be taken by the Respondent United Food and Commercial Workers Union, Local 653 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, Respondent United Food and Commercial Workers Union, Local 653 has gone out of business or closed its union office or hiring hall, it shall duplicate and mail, at its own expense, a copy of the notice to all current members and former members employed by Freeman Decorating Company at any time since June 2, 1996.

(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.

CHAIRMAN HURTGEN, dissenting in part.

I agree with my colleagues that Brede, Inc. (Brede) violated Section 8(a)(5) by implementing certain changes in its procedures for hiring unit employees. However, I disagree with my colleagues' further finding that Brede also violated Section 8(a)(5) by taking the hiring system back in-house.

In the unique circumstances of this case, where Drapery, Slip Cover, Window Shade, Venetian Blinds, Exhibition, Flag and Bunting Decorators Union, Local 17U, affiliated with United Steelworkers of America, AFL-CIO, CLC (Local 17U) was unable to bargain, I do not find that Brede acted unlawfully by taking hiring back in-house. Local 17U's inability to bargain in late 1995, because of its jurisdictional issue, did not diminish Brede's need to have a referral system in place. Thus, Brede was faced with: a continuing need to hire extras; a situation where a bargaining representative United Food and Commercial Workers Union, Local 653 (Local 653) had been bargaining terms and conditions of employment for extras without being their bargaining representative; allegations by Local 17U that Local 653's operation of the referral system was discriminatory; customer complaints about the quality of employees being referred by Local 653; and a certified bargaining representative (Local 17U), unable to bargain, which had simultaneously proposed operating the referral system itself while opposing its continued operation through Local 653.<sup>1</sup> Given these particular circumstances, Brede's reversion

<sup>1</sup> Brede made the change on or about December 1, 1995. On January 3, 1996, Local 17U told Brede that it *anticipated* that the jurisdictional issue would be resolved before the end of January. Thus, as of December 1, 1995, Brede was under the reasonable impression that the issue had not been resolved.

<sup>16</sup> See fn. 15, *supra*.

to its longstanding, historical practice of hiring in-house was not unlawful.

My colleagues seek to minimize the scope of Brede's problems. They say that the testimony concerning the problems was uncorroborated. However, it was also uncontradicted. My colleagues also say that there is no evidence of the magnitude of the problem. The "magnitude" of the problem was simply that Brede needed employees and, as indicated above, there was no viable outside source for same.

As noted, Local 17U's "jurisdictional dispute" was such that it could not negotiate about the referral system until the dispute was resolved. My colleagues say that I have suggested that "there was effectively no bargaining representative" during this period. Neither I nor Brede have taken that position. To the contrary, Brede clearly told Local 17U that it was willing to continue negotiations with Local 17U, notwithstanding Local 17U's jurisdictional problems. It was Local 17U that would not bargain, and there could be no resolution of the referral system issue so long as Local 17U's jurisdictional problem persisted. Brede needed a resolution of that problem. It needed employees; it could not deal with Local 653; and Local 17U could not negotiate on the problem. Thus, Brede resolved the issue by taking over the system itself.

My colleagues suggest that I have elevated a temporary hold in negotiations into a "complete inability . . . to function as a bargaining representative." I recognize that Local 17U did not disclaim interest in the unit and that it stated that it was not waiving its position on the referral system. However, the majority's position fails to account for the reality that the "postponement" in negotiations was not due, for example, to simple scheduling conflicts, but to something much more fundamental—the issue, as noted by the majority itself, of whether Local 17U could even "continue negotiations with companies in the Minnesota area." Thus, regardless of Local 17U's intentions, it clearly was in no position to enter into any substantive agreement with Brede regarding the referral system until its internal dispute was resolved. Moreover, my colleagues' assertion that Brede "never attempted to find out if Local 17U could bargain" ignores Joe Nierenberg's October 25 letter (i.e., after negotiations were put on hold) reaffirming Brede's willingness to continue negotiations with the exclusive bargaining representative. Thus, the ball was effectively in Local 17U's court to inform Brede when it was able to recommence negotiations. In fact, negotiations did not resume until February 1996.

My colleagues say that Local 17U requested "an accommodation during bargaining." In fact, Local 17U

asked for a postponement of bargaining. Further, contrary to the suggestion of my colleagues, I do not view this request as "an admission by Local 17U that it was impossible for it to bargain." I merely contend that Respondent had a current need for employees, and could not wait until Local 17U was ready and willing to bargain.

My colleagues also suggest that the certification of Local 17U did not force Brede to discontinue its arrangement with Local 653. However, in my view, Brede was between the proverbial "rock and a hard place." It had a prior relationship with Local 653, pursuant to which Local 653 referred employees and coestablished (through collective bargaining) their terms and conditions of employment. However, Local 17U then was certified. It would seem awkward, at best, to continue the arrangement with Local 653 when a representative had been selected. This is particularly so where, as here, Local 17U was objecting to the arrangement with Local 653. Without passing on whether continued dealing with Local 653 would have been unlawful under Section 8(a)(2) and/or Section 8(a)(5), there was at least the risk of such liability. In addition, there were allegations by Local 17U that Local 653's operation of the hall was discriminatory. Although Brede and Local 653 might have argued that the hall was a nonexclusive one, there was, again, a risk of liability. Finally, there were customer complaints about the employees referred by Local 653.

Based on all of the above, it was prudent of Brede to abandon the hall operated by Local 653. But, Brede continued to need employees, and it had to get them from *somewhere*. The two choices were: (1) Local 17U and (2) hiring directly (in-house). As noted above, Local 17U was unable to bargain about this matter, much less agree to an arrangement. Thus, Brede opted to hire directly. And, after Local 17U became able to bargain, Brede stood ready to bargain about transferring the hiring system to Local 17U.

I recognize that, in general, an employer is required to follow the status quo pending the completion of bargaining, i.e., impasse or agreement. However, as shown, in the unique circumstances of this case, Brede risked liability, customer dissatisfaction, and bad relations with Local 17U if it continued its arrangement with Local 653.

Because I believe this reversion to in-house hiring was not unlawful under the unique circumstances of this case, I would not require Brede to rescind that particular change as part of the remedy. However, accepting *arguendo* the view of my colleagues that there is a violation, I agree with my colleagues that the judge's pro-

posed remedy overstepped the Board's remedial bounds (by giving the referral system to Local 17U), and that Brede must, on request, bargain with Local 17U over how referrals will be handled.

However, the problem remains as to what system will prevail pending negotiations. Ordinarily, the status quo existing before the violation would be restored. However, that status quo was the system run by Local 653, a union which never was, and still is not, the certified bargaining representative of the extras. My colleagues' solution is to allow Local 17U to choose between Local 653's system and Brede's system. I would not permit Local 17U to dictate the choice. The matter is one for open bargaining. In my view, the lawful status quo, pending bargaining, is that Brede has control of the system (see the discussion, supra). That status quo should continue pending negotiations.

#### 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.

WE WILL NOT implement changes in our procedures for hiring unit employees without prior notice to the Drapery, Slip Cover, Window Shade, Venetian Blinds, Exhibition, Flag and Bunting Decorators Union, Local 17U, affiliated with United Steelworkers of America, AFL-CIO, CLC and without affording Local 17U an opportunity to bargain with us with respect to this conduct as the exclusive collective-bargaining representative of the employees in the following unit:

All on-call, casual, extra employees employed as journeypersons or helpers during at least two shows, exhibitions, and/or conventions at facilities located in the Minneapolis-St. Paul, MN, metropolitan area for at least five working days during the past twelve months or who have been employed at such events for at least 15 days within the past two years; excluding office clerical employees, professional employees, managerial employees, all other employees currently covered by other collective bargaining agreements, and guards and supervisors, as defined in the National Labor Relations Act, as amended.

WE WILL NOT substantially increase our reliance on sources of unit employees other than our traditional list of on-call employees without prior notice to Local 17U

and without affording Local 17U an opportunity to bargain with us with respect to this conduct.

WE WILL NOT substantially increase our use of employees outside the unit to perform unit work as a substitute for unit employees without prior notice to Local 17U and without affording Local 17U an opportunity to bargain with us with respect to this conduct.

WE WILL NOT refuse to treat unit employee Lenny Prouty as a member of the unit and, as a result, use him to perform unit work in lieu of other more senior unit employees and at less than the wages then and historically paid to unit employees, without prior notice to Local 17U and without affording Local 17U an opportunity to bargain with us with respect to this conduct.

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

WE WILL, on request by Local 17U, rescind all unilateral changes implemented by us following the certification of Local 17U to represent the unit described above, and, on request, bargain with Local 17U over how referrals will be handled.

WE WILL make whole any employee who may have lost work because of our above-described unlawful conduct since the certification of Local 17U.

WE WILL make whole Lenny Prouty for any loss he may have suffered as a result of our above-described unlawful conduct toward him.

BREDE, INC.

#### APPENDIX B

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

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

WE WILL NOT select employees for employment with Freeman Decorating Company without reference to objective standards or criteria.

WE WILL NOT fail and refuse to refer Daniel Brady, Dan Mulligan, Leverett Covington, and Don Jacobson for employment with Freeman Decorating Company.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL make whole any employee who may have lost work because United Food and Commercial Workers Union, Local 653 failed to use objective standards or

criteria from June 22, 1996, to July 22, 1997, in referring employees to Freeman Decorating Company.

WE WILL make whole Daniel Brady, Dan Mulligan, Leverett Covington, and Don Jacobson for lost work because of our unlawful refusal to refer them to work for Freeman Decorating Company from June 22, 1996, to July 22, 1997.

UNITED FOOD AND COMMERCIAL  
WORKERS UNION, LOCAL 653

*Joseph H. Bornong, Esq.*, for the General Counsel.

*Joseph B. Nierenberg, Esq. and Elizabeth L. Plitzuweit (Messerli & Kramer P.A.)*, of Minneapolis, Minnesota, for Respondent Brede, Inc.

*Carol A. Baldwin, Esq. and Roger A. Jensen, Esq. (Peterson, Bell, Converse & Jensen P.A.)*, of Minneapolis, Minnesota, for Respondent United Food and Commercial Workers Union, Local 653.

*Jack P. Cerone, Esq. (Erbacci, Cerone & Moriarty LTD.)*, of Chicago, Illinois, for Charging Party Drapery, Slip Cover, Window Shade, Venetian Blinds, Exhibition, Flag and Bunting Decorators Union, Local 17U affiliated with United Steelworkers of America, AFL-CIO, CLC.

*Duane G. Johnson Esq.*, of Minneapolis, Minnesota, for Intervener International Alliance of Theatrical Stage Employees and Motion Picture Machine Operators of the United States and Canada, Local 13, AFL-CIO.

DECISION

STATEMENT OF THE CASE

JOHN H. WEST, Administrative Law Judge. On charges filed by Drapery, Slip Cover, Window Shade, Venetian Blinds, Exhibition, Flag and Bunting Decorators Union, Local 17U affiliated with United Steelworkers of America, AFL-CIO, CLC (Steelworkers) and Dan Brady, an order consolidating cases complaint and notice of hearing issued in Cases 18-CA-13968, 18-CA-14373, and 18-CA-14361 on September 30, 1997, alleging that Respondent Brede, Inc. (Brede) violated Section 8(a)(1) and (3) of the National Labor Relations Act (the Act), in that Brede, without prior notice to the Steelworkers and without affording the Steelworkers an opportunity to bargain with Brede with respect to this conduct, (1) implemented changes in its procedure for hiring unit employees;<sup>1</sup> (2) substantially increased its reliance on sources of unit employees other than its traditional list of casual,

<sup>1</sup> It is admitted by Brede that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Sec. 9(b) of the Act:

All on-call, casual, extra employees employed as journeymen or helpers during at least two shows, exhibitions, and/or conventions at facilities located in the Minneapolis-St. Paul, MN, metropolitan area for at least five working days during the past twelve months or who have been employed at such events for at least 15 days within the past two years; excluding office clerical employees, professional employees, managerial employees, all other employees currently covered by other collective bargaining agreements currently covered by other collective bargaining agreements, and guards and supervisors, as defined in the National Labor Relations Act, as amended.

on-call employees, including hiring or referral services provided by unions other than the Steelworkers, for performance of bargaining unit work; (3) substantially increased its use of employees outside the unit to perform unit work as a substitute for unit employees; and (4) refused to treat unit employee Lenny Prouty as a member of the unit and, as a result, used him to perform unit work in lieu of other more senior unit employees and at less than the wages then and historically paid to unit employees. While Brede admits that (1) through (4) above relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining, it denies violating the Act as alleged.<sup>2</sup>

And on a charge filed by Brady in Case 18-CB-3724, a complaint and notice of hearing issued on September 30, 1997, alleging that Respondent United Food and Commercial Workers Union, Local 653 (the UFCW) violated Sections 8(b)(1)(A) and (2) of the Act, collectively, by selecting employees, through its named agent,<sup>3</sup> for employment with Freeman Decorating Company (Freeman), during a specified period, without reference to objective standards or criteria, and by failing and refusing to refer named individuals<sup>4</sup> for employment with Freeman because they were members or proponents of the Steelworkers and/or because these employees complained about the UFCW's operation of its referral system. The UFCW denies violating the Act as alleged and it alleges that in making referrals Sabas' actions were taken independently of the UFCW and, therefore, the UFCW is not liable for his actions; and that Sabas' referral procedures were at all times neutral.

By Order Further Consolidating Cases issued September 30, 1997, all of the above-described cases were consolidated.

A hearing was held on March 17, 18, 19, and 20, 1998, in Minneapolis, Minnesota. On the entire record<sup>5</sup> in this proceed-

<sup>2</sup> At the hearing herein the General Counsel moved to amend the complaint in Case 18-CA-13968, et al., by adding a new par. 10 which reads as follows:

On or about January 4, 1996, Respondent granted recognition to and entered into and since then, has maintained and enforced a partial collective bargaining agreement with UFCW Local 653 as the exclusive collective bargaining representative of employees of Respondent employed in the unit described above in paragraph 5 [in the complaint]. Respondent engaged in the conduct described above, even through UFCW Local 653 did not represent a majority of the employees in the unit.

The General Counsel indicated that this amendment is based on GC Exh. 12 which is a January 4, 1996, letter of understanding between Brede and the UFCW in which they agreed to do the hall call referrals in-house. The General Counsel also moves to amend to include a par. 12 which alleges that by the conduct described in par. 10, Respondent Brede has been rendering unlawful assistance and support to a labor organization in violation of Sec. 8(a)(1) and (2) of the Act Both Brede and the UFCW oppose the amendments. The parties were advised that I would rule on the motion in my decision.

<sup>3</sup> Kevin Sabas.

<sup>4</sup> Daniel Brady, Dan Mulligan, Leverett Covington, and Don Jacobson.

<sup>5</sup> The General Counsel's unopposed motion to correct the transcript herein is granted. The following changes are requested.

Tr. p. 518, 1.9—"grounds that this is really the client's information now." Should be: "grounds that this is really compliance information now."

ing, including my observation of the demeanor of the witnesses and consideration of the briefs filed by the General Counsel, Brede and the UFCW, I make the following

## FINDINGS OF FACT

### I. JURISDICTION

Brede, a Minnesota corporation, with an office and place of business in Minneapolis, Minnesota, has been engaged in providing service, equipment, and materials involved in setting up and dismantling trade show and convention exhibits. The complaint alleges, Brede admits, and I find that at all times material, Brede has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and the Steelworkers has been a labor organization within the meaning of Section 2(5) of the Act.

Freeman is an Iowa corporation with an office and place of business in Des Moines, Iowa, where it is engaged in the manufacture, rental, and installation of exhibits, decorations, booths, and equipment for conventions and trade shows. In the calendar year 1997, Freeman's Des Moines operations took in gross revenues in excess of one million dollars, from its Des Moines office it sold goods or services to out of state customers in value in excess of \$50,000, and its Des Moines office purchased goods or services valued in excess of \$50,000 from sellers outside of the State of Iowa. I find that at all material times Freeman has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and the UFCW has been a labor organization within the meaning of Section 2(5) of the Act.

### II. THE ALLEGED UNFAIR LABOR PRACTICES

#### The Facts

Eugene (Gene) Schultz, who worked for Brede for 32 years, testified that he is a member of UFCW Local 653 and he was elected steward and held that position from 1984 to 1996; that as a steward he was on the negotiating committee; that the job classifications at Brede in the second half of 1995 and early 1996 included journeyman 1st-, 2d-, 3d-, and 4th-year helpers and extras; that all of the employees, including the extras, are represented by Local 653 of the UFCW; that in that same period there were a total of about 25 journeymen, apprentices and helpers at Brede and that he worked 5 to 7 days a week, every week except when he was on vacation; that depending on the job, Brede could use from no extra helpers to 100 extras; that in the 1980s the extras got their assignments by calling in every day; that in 1992 a hall call was started as a result of contract negotiations with Brede agreeing at the bargaining table to let the UFCW do the hall call; that subsequently he participated in devising a procedure for assigning extra employees to work;

Numerous references to "Briht," particularly at the end of volume II (e.g., 439, 1.14; 44, 1.25; 442, 1.4, 1.24)—should be "Brede."

P. 531, 11.17 and 18—"LT grade" and "light grade" should be "LT grey" and "light grey."

P. 670, 1.24—"17 years" should be "17U."

P. 689, 1.16—"IFT" should be "LATSE."

Pursuant to permission granted at the hearing herein GC Exh. 43 has been submitted as a late-filed exhibit. It is received in evidence.

that he held a meeting with the extra helpers and a list was worked up from the hours the extra helpers had worked at Brede; that he obtained the hours from Brede's timekeeper; that August Zahn, Kevin Sabas, and Jerry Wilson, all of whom were on the bargaining committee, did not help him in devising either the list or any other procedures or requirements for operating this hall call; that he maintained the list for a while and then he gave this task to his daughter who operated the hall call out of his house; that there was a fee imposed on the extra helpers of \$15 a month; that his son also performed the hall call out of his, the father's, house; that subsequently his ex-wife performed the hall call out of her house which is about 4 miles from his house; that in 1995 he received about 20 percent of his wages from Freeman; that before the referral procedure was devised he probably telephoned the extras to work for Freeman and it was done on a seniority basis; that Freeman would send a correspondence indicating how many employees to call (GC Exh. 7); that he received the list (GC Exh. 8), back from his ex-wife in December 1995 and after that he took work orders from Freeman; that he added names to the list and he used it until Sabas took it over in October 1996 when he was elected steward at Brede; that neither Brady nor Mulligan telephoned him and asked to be placed back on the list after they stopped paying the \$15 fee; that negotiations for a collective-bargaining agreement between Brede and the UFCW began in January 1995 and Brede sought wage concessions and to be able to use more hall-call employees<sup>6</sup> in proportion to the journeymen; that Brede indicated that it had to achieve some cost savings in order to compete with a low-wage competitor called North American;<sup>7</sup> and that Brede and the UFCW Local 653 entered into a letter of understanding dated January 4, 1996 (GC Exh. 12), which extended the then current contract between Brede and the UFCW (GC Exh. 9).<sup>8</sup> On cross-examination Gene Schultz testified that the November 1995 seniority list which he used after his ex-wife gave it to him in December 1995 was not the only list she gave him but it was the latest; that when Sabas took over the hall call he got the list he used from the Union which he thought had received a faxed copy of Barbara Schultz' December 1995 list; that he crossed out names on General Counsel's Exhibit 8 because the telephone numbers were no longer valid; that when he took over the list from his ex-wife in December 1995 he did not continue the \$15 fee because there was not enough work to justify it in that Freeman did not come into the area that often; that he added names to the list when Freeman needed additional workers but he could not remember when in 1996 this occurred; that before December 1995 receipts were issued for the \$15 fee; that he obtained the blank receipts from Local 653 and they were for paying dues;

<sup>6</sup> In 1994, Brede's journeymen were getting \$17.31 and hour and hall-call employees were getting \$12 an hour.

<sup>7</sup> Zahn, who formerly was a business agent of Local 653, testified that he participated in negotiations with Brede in 1995; that with GC Exh. 10, Brede was proposing in the 1995 negotiations to bring the average hourly cost per employee down with three different proposals; and that GC Exh. 13 is his brief notes dealing with negotiations with Brede on July 20, 1995.

<sup>8</sup> The fifth and last numbered term of the understanding is "[e]ffective December 1, 1995, Brede will handle extra labor in-house."

that he did not collect dues at Brede as a union steward; that the \$15 fee was not dues and the UFCW Local 653 did not receive any part of the \$15; that neither he, his son, his daughter nor his former wife were paid anything by Local 653 to do the hall call prior to December 1995; that Local 653 did not tell him how to set up the hall call; that after December 1995 when he took over the hall call he was only doing it for Freeman and Excel<sup>9</sup> and he was not doing it for Brede during that period; that before Sabas took over the list he, Schultz, made calls for one show for Excel and three or four shows for Freeman with the largest calling for 40 and the smallest calling for 10 workers; that during the campaigning for the election described below, he campaigned for Local 653 but he never told workers that if they voted for the Steelworkers they could kiss their jobs goodbye; that extras always called in to find out if there was work even when he worked the hall-call list; that during the period he and his family members worked the hall-call list the extras did not have to telephone Brede but rather they telephoned him or his family members; that he did not get any instructions from Brede on how to operate the referral system; and that Stagehands first started working at Brede in the 1970s and they did the same jobs as Brede's journeymen.

Barbara Schultz testified that at the end of March 1995 her ex-husband, Eugene Schultz, asked her if she would be interested in taking over the hall call list and contacting people for work if there was work available for the people on the list<sup>10</sup>; that she was told by her ex-husband to follow the list which was like a seniority list; that those on the list paid her \$15 a month and if she did not work them twice during that month, the \$15 fee would pay for the following month or months until they did work twice in a month; that if those listed did not pay the fee they were taken off the list and when they again paid the fee they were placed on the bottom of the list; that when she started there were about 35 to 40 names on the list and the list increased to about 100 names; that General Counsel's Exhibit 5 is the lists she used in September, November, and December 1995;<sup>11</sup> that there was an election for the Steelworkers and some people did not pay the fee so they were dropped from her list in October or November 1995; that she telephoned Michael Johnson at Brede every day at 4 p.m. to find out if he had any work available; that if Johnson needed 10 people and he knew who the top 10 people on the list were he would tell her where to send the individuals he named; that Johnson never asked for a name that was further down the list than the number of jobs that he had; that typically Johnson would request 15 people; that in a situation where Brede indicated that it needed 15 people, those top 15 on the list had from 5 to 8 p.m. to telephone her and if they did not, she would try telephoning them; that if she did not reach them, she would go down the list until she had enough people to fill the call; that if someone on the list who was not in the top 15 telephoned in while she was trying to fill the call she would tell them that they would have to wait

until she could determine if the first 15 people on the list would take the jobs; that if by 8 p.m. she did not hear from someone who was in the top 15 she would go down the list until she found someone and she could be telephoning them after 8 p.m.; that when she started telephoning she started at the top of the list and she always left messages for people; that if she got a telephone call from Johnson at 4 p.m. and it was for a large call she would start right away contacting people starting at the top of the list instead of waiting for them to telephone her by 5 p.m.; that if she had 10 jobs she would stop the early calling at the tenth person and wait to see if the top 10 were going to take the jobs and if they did not, then after 8 p.m. she would continue on down the list; that if someone did not want to work the day she telephoned them or they wanted to take some days off this did not change their status or position on the list;<sup>12</sup> that Johnson told her not to send Sonny Covington, indicating that if he, Johnson, could not get people to work all day, he did not want them; that she did not take Covington off the list and later Johnson told her that she could again start working Covington for Brede; that Freeman would send a letter indicating its employment needs and she saw one but generally Gene Schultz would tell her how many people Freeman needed; that her operation of the hall call terminated when on December 6, 7, or 8, 1995, she telephoned Johnson to find out if there was any work for the next day and Johnson said that he was taking over the list at that time; that she faxed Johnson a copy of her sheet; and that but for Johnson's taking over the list she had no reason to stop performing this function. On cross-examination Barbara Schultz testified that she had never been a member of the UFCW or an employee for Local 653; that her former husband, Gene Schultz, is a member of Local 653 and was a steward for Brede; that the lists she worked with did not contain the names of journeymen decorators that work for Brede; that if Freeman requested decorators and Brede did not have work for the journeymen she would telephone them before she would telephone the people on the list; that she was told to do it this way; that she did not call any of the journeymen for Brede and believed that Johnson gave them their directions; that 10 to 15 people would be an average call; that the Steelworkers won the election in mid-September 1995 and subsequently some of the people who she identified with the Steelworkers stopped paying the \$15 fee;<sup>13</sup> that the \$15 fee was due on the 5th of the month and although those who did not pay the fee would stay on the list for 1 month, she would not telephone them after the 5th of the month if they did not pay; that those who did not pay by October 5, 1995, were removed from the list in November 1995 when they continued not to pay; that to get back on the list the extras only had to start again to pay the \$15 fee and they were not required to pay the \$15 fees that they did not pay in the past but they lost their place on the list, and when they went back on the list they went to the bottom of the list; that she performed the referral function for about 9 months; that after

<sup>9</sup> He testified that Local 653 had a collective-bargaining agreement with Excel.

<sup>10</sup> Previously, she had helped her daughter with the hall call when her daughter, who was in nursing school, was unable to do it.

<sup>11</sup> Barbara Schultz testified that some of the handwriting on the lists was not hers.

<sup>12</sup> She cited the example of Fred Griefenhagen who told her ahead of time that he was taking some days off and told her that he was going to let Johnson know.

<sup>13</sup> She named Dan Brady, Dan Mulligan, and Don Jacobson and his daughter.

June and July 1995 the work started dropping off; that people on the list telephoned her every day to see what work was available; that Gene Schultz and not Brede told her to charge the \$15 fee and that would be hers for doing the job; that there was no form of direction from Brede management with respect to how she used the list or took calls; that if someone did not call in to indicate their availability the day before the first day of a show, they would not be precluded from working that entire show if they called in their availability after the first day of the show; that she was not sure of the exact words Johnson used when he told her he was taking over the list; that she tried to manage the availability of employees for both Brede and Freeman; that she did not take a name off the list if they did not show up for a job; that she had no idea how or on what basis the list was originally made up; that she did not know if the list was affiliated with any labor organization; that there was no written dispatch policy; that when she faxed Johnson a copy of her list in December 1995 she also gave Gene Schultz whatever she had with respect to the list: that she telephoned Johnson at Brede every day at 4 p.m.; and that she controlled the list and no one asked her to change the names around on the list.

Johnson, the operations manager of Brede, testified that foremen tell the rank-and-file on site what to do; that the foremen do not have authority independently to discipline the employees who they are working with; that he recalled Barbara Schultz calling employees who worked at Brede sites; that Barbara Schultz stopped this function in December 1995; that he never told any of the employees that Barbara Schultz was going to stop this function; that Exhibits Plus is a related company or division of Brede and at the time of the hearing herein Prouty was its only employee; that Prouty's wage rate, \$9 an hour, was set in the collective-bargaining agreement with Local 653 of the UFCW; that he personally assigned Prouty to perform decorating work when his supervisor at Exhibits Plus did not have anything for him to do; and that while Prouty was not used by Brede in place of a UFCW journeyman, when he was available, he was used before the extra employees.

When called by Brede's attorney, Johnson testified that under the referral system as operated by Brede the extras call in between the hours of 3 and 4:30 p.m. Monday through Friday and there is either a person answering the phone telling them where to go or there is a recording and the recording notes to call the following day since there is no work, or the recording will indicate that the caller should try back again; that he will use qualified extras before he will use Stagehands or Teamsters because they are cheaper; that if somebody in the top 20 of the Schultz' list telephoned and there was work available, he would not hire the person if he did not consider them to be qualified; that if he had the opportunity, he would hire Brady and Mulligan but they were not consistent at times; that Brede took back the referral program in the beginning of 1996 because it was very slow in December 1995; that Respondent Employer's Exhibit 6 is a record beginning in 1996 of those extras who called in and who was sent out to work; that the extras learned to telephone Brede instead of Barbara Schultz by word of mouth; that Brede did not send notification of the change in call in procedure because he did not feel that it was necessary; and that following the increase in work in the beginning of 1996 the

extras were calling in regularly. On cross-examination Johnson testified that he makes the lists in Respondent Employer's Exhibit 6 each day for the next day's work; that the lists include both UFCW represented employees and the casual extra helpers that he intends to use the next day; that he makes these lists before he gets calls from people who indicate whether they are available or not; that he matches the people who call in with the people on the list to see if they are already on the list; that he also writes on the same list whether he expects to need stagehands before anybody calls in; and that he calls the stagehands for the number of employees that he wrote in the list.

Brede entered into a collective-bargaining agreement with the Teamsters which was effective from July 1, 1995, to June 30, 1999. Regarding the agreement, William Casey, the president and general manager of Brede, testified that the preceding agreement between Brede and the Teamsters did not specifically refer to decorating work; and that an affidavit he gave to the National Labor Relations Board (the Board) indicates that Brede signed a contract with the Teamsters in January 1996, he did not believe that the prior contract referred to decorating work but the Teamsters "got concerned with Local 17U's appearance over protecting this work and negotiated it into the contract." In answer to questions of Brede's attorney, Casey testified that he did not sign the 1995 Teamster contract; that Jay Trepp, the vice president of Brede, signed the 1995 Teamsters contract in "May 1996"; that as indicated by the last page of the agreement (R. Emp. Exh. 2) (excluding a letter of agreement signed May 3, 1996), the agreement was signed May 3, 1995, which was over 2 months before the Steelworkers filed a petition for an election on July 10, 1995; and that he did not attend the negotiations with the Teamsters.

When called by Brede's attorney, Casey testified that there is a long history at Brede of five different unions doing decorating work, viz, UFCW Local 653, which usually does the decorating work first, the Teamsters on occasion, the Stagehands on occasion, the extra helpers which are now represented by the Steelworkers Local 17U, and up until 1989 or 1990 Local 880, which apparently is the Signpainters; that the Teamsters have a 4-hour minimum and if they are done unloading, they are used to "kick" carpet or do limited decorating work; that as far as doing strictly decorating work, the extras at \$12 an hour are usually used before the Teamsters at \$13 an hour; that the Teamsters had heard that Brede was having labor problems and the Teamsters wanted Brede to start using them more to do more decorating work than what they were already doing; that there were complaints about the hall call system under Gene Schultz in that he was getting unqualified people who sometimes were under the influence of alcohol; that he was waiting for the end of the contract to change the hall call system back to the way that Brede had always done it, namely, assigning the workers itself; that he received complaints from Brede's salesmen and from Local 17U about how the Schultz' operated the referral system; that before negotiations with UFCW Local 653 started in January 1995 he had pretty much made up his mind to go back to the old referral system but he wanted to wait until after the contract negotiations; that he became concerned when he learned that some of the extras had stopped paying the \$15 fee and, in view of the possible company liability for not work-

ing people involved in Local 17U, he decided to take the hall call in house and work the 20 or 30 most experienced people, including Brady and Mulligan; that he never received complaints about the way the company was operating its "hiring" program; that he never received any demand to go back to the Schultz' system; that Brede lost a lot of regular work in the spring of 1996 in that Brede used to do all of the work in Minneapolis for GES Exposition Services (GES), which is the largest trade show company in the nation, but in April 1996 GES opened a show themselves after signing a contract with the Carpenters and hiring Brede's top salesperson and its number two production person;<sup>14</sup> that of the approximately 12 to 15 shows scheduled for GES for 1996 Brede did three or four and GES did the remainder; that the Freeman work subcontracted to Brede in 1996 did not compensate for the GES work that Brede lost; that Brede uses Stagehands under three conditions, namely, when it cannot fill its calls,<sup>15</sup> when Brede has a specific job with specific instructions from show managers that they want very competent people to do the work and there is a large show that a competitor is running; that while the need for Stagehands existed in 1997 and 1996 it did not in 1995 because Gene Schultz was able to come up with a large number of people, sometimes over 100 people, so there was less need to call the Stagehands; that Respondent Employer's Exhibit 4 is a record of Brede's use of Stagehands from 1991 through 1996 and it shows that (a) in 1996 Brede paid the Stagehands for a total of 4250 hours, including overtime hours, (b) in 1995 Brede paid the Stagehands for a total of 1410 hours, including overtime hours, (c) in 1994 Brede paid the Stagehands for a total of 213 hours, including overtime hours, (d) in 1993 Brede paid the Stagehands for a total of 2311 hours, including overtime hours, (e) in 1992 Brede paid the Stagehands for a total of 2093 hours, including overtime hours, and (f) in 1991 Brede paid the Stagehands for a total of 4439 hours, including overtime hours; that the reduced usage of the Stagehands in some of the years is due in large part to the large number of extras the Schultz' were able to call in; that the scheduling of shows, as to whether there is an overlap of shows, is also a reason for the reduced usage of Stagehands in some years; that Brede would rather use extras at \$12 an hour than Stagehands at \$19 an hour; and that Respondent Employer's Exhibit 5 is the agreement to pay Lenny Prouty the \$12 an hour for the hours he was doing decorators work and not Exhibits Plus' work. On cross-examination, Casey testified that in the negotiations in the beginning of 1995 he mentioned to Zahn, the chief negotiator of UFCW Local 653, that he was going to take the referral of the extras back in house albeit it was not a negotiating proposal.

Zahn, who was the principal spokesman for UFCW Local 653 during the 1991 negotiations with Brede, testified that before 1991 the extra helpers were called to work by Johnson and

Earl Taylor; that in 1991 Brede stopped doing the hall calls because it had come to his attention that there was no system regarding how extra helpers were used; that during negotiations it was agreed by the Company that if the Union believed that it could do a better job, the Union should give it a try; that Gene Schultz volunteered to set up the referral system; that to his knowledge no one from UFCW Local 653 appointed Gene Schultz to do the hall call; that previously the UFCW did not have a dues checkoff with Brede so Gene Schultz had a union receipt book to give receipts to the Brede employees when they paid their dues, and he authorized Schultz to use the forms as receipts for the \$15 fee; that neither he nor anyone else approved or instructed Gene Schultz regarding the monthly fee; that the 1991 collective-bargaining agreement between the UFCW and Brede, General Counsel's Exhibit 9, had a provision covering the wages for the hall-call extra helpers; that while it is unusual to have clause in a collective-bargaining agreement covering someone's wages who is not in the bargaining unit, the clause here was included so the hall-call people would know what they were getting and it was done for the out of state employers to show that there was a competitive rate; that in 1991 it was decided to let the Union do the hall call and if it did not work out, they might have to revert back to the old system or a different system; that effective December 1, 1995, after the term of the 1991 contract, Brede wanted to go back to its own referral system for the Brede shows; that with respect to the Freeman shows Freeman would normally send him a hall-call letter which he would give to Gene Schultz; that Freeman did not send the hall-call letter directly to Gene Schultz because if there were laid off Brede employees, they would get the work before the hall call extra helpers; and that Brede wanted to control the hall call of extra helpers in 1995 because they wanted to control who they were using for their own shows.

On September 11, 1995, the votes were tallied and the Steelworkers won the election with 52 votes to 5 votes for the UFCW Local 653.

By letter dated September 14, 1995 (GC Exh. 34), Brede's attorney, Joseph Nierenberg, advised the Steelworkers Local 17U's attorney, Jack Cerone, that "[a]lthough the decision makers for the company will not be present at the time" he, Nierenberg, would meet with the representatives of the Steelworkers the week of September 25, 1995, to review the Union's proposal and to discuss key issues.

On September 18, 1995, Certifications of Representative were issued in Cases 18-RC-15803 and 18-RC-15804, (GC Exhs. 20 and 21 respectively), indicating that elections had been conducted and that Local 17U is the exclusive collective-bargaining representative of the employees in the following units of Freeman and Brede, respectively.<sup>16</sup>

All on-call, casual, extra employees employed by the Employer as journeypersons or helpers during at least two shows, exhibitions, and/or conventions at facilities located in the Minneapolis-St. Paul, MN metropolitan area for at least five working days during the past twelve months or who have

<sup>14</sup> Brede's former employees took the Minnesota Telephone show, which Brede had done for 92 years in a row, with them when they left Brede.

<sup>15</sup> Casey testified that this can occur when Freeman has a show in town because, before its contract with Local 17U, Freeman paid 94 cents an hour more than Brede (to make up for the fact that Freeman did not pay for benefits) and the extras would rather, therefore, work for Freeman.

<sup>16</sup> The petitions for certification of representative were filed on July 10, 1995, in both cases.

been employed by the Employer at such events for at least 15 days within the past two years; excluding office clerical employees, professional employees, managerial employees, all other employees currently covered by other collective bargaining agreements, and guards and supervisors as defined in the National Labor Relations Act, as amended.

By letter dated September 26, 1995, (GC Exh. 35), Tommy Thomas, a business representative of Local 17U, invited Brede to begin formal negotiations of a collective-bargaining agreement. The letter also contains the following: "As of this date I am requesting that all labor calls [or] requests [involving] our unit of employees be given to Dan Brady, who can be contacted at . . ."

On September 29, 1995, Brede and the Steelworkers held their first bargaining session in Nierenberg's office. Present were Nierenberg for Brede and Thomas, who is described as president of Local 17U, extra helper Dan Brady, Larry Gedman, who is a steward in Local 17, and Cerone. There was an exchange of some proposals by the parties, and copies of a labor agreement used in Chicago, Illinois, the Union's pension and health and welfare plans were given to Nierenberg, and the referral plan was discussed. Cerone testified that Nierenberg asked if the Union had a copy of the Local 17U's referral plan to provide him with and the union representatives indicated that they did not; that he explained that the Union's referral plan, which is like a hiring hall plan, works by seniority; that Nierenberg indicated that Brede used a call in system whereby the employees would call or be called and then be assigned work; and that dates were discussed for the next meeting. Regarding this meeting Cerone testified on cross-examination that he and Brady spoke at length about specific abuses but he never requested that the referral system, the program of identifying employees, be given back to the Schultz'; and that after there was some notice and discussion about Brede's assuming the responsibility to identify the employees that would be assigned among the extra helpers, there was never any union demand by Local 17U to restore the status quo and give it back to the Schultz'.

By letter dated October 10, 1995, (GC Exh. 36), Nierenberg advised Cerone as follows:

I am writing with regard to two separate issues. One concerns your client's proposal that the employer, Brede, Inc., begin using the union's referral system at this time on an interim basis, while negotiations continue over a comprehensive collective bargaining agreement. I have discussed this issue with William Casey, Jr., Brede's President, who agrees with your client that the present system of referrals requires substantial reform.

However, my client had intended to go back to the system that had been in place for many years for the referral and hiring of on-call helpers. That system, which had apparently worked successfully, was run by the company directly, without the involvement of UFCW Local 653. Mr. Casey, while agreeing with the need to change the present system, does not at this time see any reason to prefer Local 17U's referral system over a company-directed one such as that which existed in previous years. Accordingly, the

employer does not agree to implement the union referral program on an interim basis. If the union wishes to discuss this matter further, it should be addressed at the conference of principals on October 24, 1995.

The second reason that I am writing concerns a call I received this morning from Scott Higbee, a Minneapolis attorney who practices with Jack Engberg. Mr. Engberg, as you may know, generally represents the USWA in this district. Mr. Higbee, while not fully aware of any details, indicated that his office was not involved and that the interests of the union would be represented by Bob Ratlidge, a Steelworkers staff representative from this newly redrawn district. I would appreciate your comments on who is representing the union as legal counsel and as business agent.

Cerone testified that the last paragraph of this letter involved a jurisdictional issue between District 11 which is the Steelworkers district in the Minneapolis area and District 7 which is the Steelworkers district down in the Illinois area; that District 11 covers Minnesota, Montana, North Dakota, and South Dakota and District 7 covers Wisconsin, Illinois, Indiana, and maybe Kentucky; that it was a geographical question between the districts since the boundaries of Local 17 did not come all the way to Minnesota; that District 11 took the position that Local 17 should not have organized a group in the Minneapolis area and that the group rightfully belonged to District 11; that the issue arose about the time of this letter; that with the intervention of the international there was an agreement between the districts that since the decorators business was different than what was customarily handled by the Steelworkers locals and since Local 17 did decorator work, they could continue their negotiations with companies in the Minnesota area; and that this issue was resolved in the end of December 1995.

On October 10, 1995, Mulligan filed charges against UFCW Local 653 in Case 18-CB-3613, and against Brede in Case 18-CA-13795 (GC Exhs. 26 and 25 respectively), alleging that the UFCW and Brede and Freeman have required that employees employed by these Employers pay a fee to the UFCW to be employed by these companies notwithstanding that Local 653 of the UFCW is not their bargaining representative. Both charges were subsequently withdrawn as indicated in the Regional Director's letters of October 26, 1995.

Cerone also testified that he had a telephone conversation with Nierenberg during which they discussed and agreed on the postponing of the October 24, 1995, negotiating session; that during this conversation he gave Nierenberg an update on what was happening between the two Steelworkers districts and indicated that the negotiations would have to be put on hold; that Nierenberg indicated that Brede wanted to take the hiring procedure in house; that he told Nierenberg that it was Local 17's position that that was one of its major proposals and Local 17 was not waiving its position on that and that the referral plan would probably work better for many reasons if it went through Local 17; that the only thing that Nierenberg said about Brede's approach was that the employees would have to call in to Brede to get assigned; that originally the Steelworkers asked for a seniority list from Nierenberg but it was not provided and Nierenberg did not say how Brede was going to rank the people; and that neither Brede nor Nierenberg has ever told the

and that neither Brede nor Nierenberg has ever told the Steelworkers in what order Brede was going to assign the extra employees.

By letter dated October 25, 1995, (GC Exh. 37), Nierenberg advised Cerone, in part, as follows:

This letter will reaffirm the Company's readiness and willingness to continue negotiations with the exclusive bargaining representative of the employees.

The certification from the National Labor Relations Board indicates that the certified union is Local 17U. The Company does not wish to engage in an unfair labor practice, such as a top down recognition of a local union, notwithstanding the inconsistent certification, might constitute. If you or a Minnesota representative of the Steelworkers has reason to believe that the Company's negotiating with an organization other than Local 17U on behalf of the on-call extra helpers is appropriate, I would appreciate receiving it.

On cross-examination, Cerone testified that a note on Respondent's copy of this letter (R. Exh. 3), viz, "on Jan 16th 1996 USWA gave Local 17 permission to begin negotiations" could be correct. By letter dated December 7, 1995 (GC Exh. 44), Nierenberg advised District 11 of the Steelworkers as follows:

As you are aware, the on-call extras at Brede voted for representation by Local 17U. After a mail ballot, the N.L.R.B. certified Local 17U as the exclusive bargaining representative. Brede then promptly entered into negotiations with representatives of Local 17U, including a union officer, a long time member from the local unit, and an attorney.

While I appreciate the fact that Local 17U is affiliated with the United Steelworkers of America, federal labor law is clear that when a certification runs in favor of a local, the International cannot be substituted for that local.

The Company wishes to continue negotiating with the proper representative of the employees. However, Brede cannot risk committing an unfair labor practice by terminating its negotiations with Local 17U and commencing negotiations with District 11 instead, when the only relationship between the two organizations is that Local 17U is affiliated with the U.S.W.A.

On cross-examination, Cerone testified that in a telephone conversation on January 3, 1996, he advised Nierenberg that counsel for the Steelworkers in Pittsburgh, Pennsylvania, was mediating a case between District 11 and Local 17U and that he anticipated that a resolution would be had before the end of January 1996; and that they discussed the problems raised regarding the referral system and Nierenberg advised Cerone that Brede planned to take the system in house.

By letter dated January 5, 1996 (GC Exh. 380), Cerone advised Nierenberg as follows:

I am sorry for the long delay in getting back to the bargaining table. I am sure that your clients are as anxious as anyone in finalizing the outstanding issues.

As you will remember when we met in September 1995, one of Local 17U's proposals was to handle that call-in list for the employer through the local union office.

At that time, we made you aware of some abuses that were taking place against Local 17U members i.e., not being called out to work, being sent home out of seniority, and not being given lunch breaks.

Since then we have been informed that Brede is calling Local 17U members to work along with non-Local 17U members. This has created many inequities and possibly unfair labor practices.

Local 17U proposes to handle all call-in for all Brede work in the jurisdictional area covered by this certification. Local 17U will assign people by seniority who have the skill and ability to perform the work required.

Only Local 17U members will be assigned to work for Brede. When that list has been exhausted then extras will be assigned. As of this date, Brede's referral agent refuses to employ Dan Brady, Dan Mulligan and Tony Cash.

Brede has disregarded the true seniority of the members and is calling workers at random.

There is no reverse seniority being used on layoffs. There is no grievance procedure to address these complaints. On the exhibit floor, Local 17U members are being discriminated against for job selections and assignments.

With Local 17U handling the call-in list, Brede will be insulated against any of the above practices because Local 17U will have the sole obligation to administer the call-in list.

Brede merely has to call in to the union office and tell the business agent how many people they need the following day. From that point on, it is the obligation of Local 17U to supply the number of qualified people requested.

There is no cost or burden to Brede. If Brede is not satisfied with the performance of some of the people assigned, they can be dismissed and additional people will be supplied.

Please call me upon receipt of this letter so that we can discuss in detail a smooth transition of this call-in procedure.

Cerone testified that he would not have written this letter unless he was authorized to do so by the Steelworkers; and that it was his understanding that the resolution of the jurisdictional dispute was formulated in December 1995 and on January 16, 1996, a stamp of approval was given as to what had been resolved in December 1995.

By letter dated January 22, 1996 (GC Exh. 39), Nierenberg advised Casey as follows:

Late Friday, I received a call from Jack Cerone, Local 17U's attorney, noting that he had not heard from any representative of the Company. I told Mr. Cerone that he should phone you directly, and I gave him your phone numbers in Brighton and Minneapolis.

Please phone me if there is anything we can do to assist in this matter.

Brady testified that he started working for Brede in 1990 or 1991 and he started working for Freeman in 1991; that when he first started working for Brede Johnson would call him or he

would call Johnson and later Gene Schultz would call him for jobs for Brede; that when Gene Schultz took over the call in 1992 a fee of \$15 a month was instituted and he was put on a list and given a roster number and called according to his seniority; that Gene Schultz also ran the hall for Freeman and it was understood that the extras would become union members in Local 653; that Gene Schultz, his daughter, his son, and his former wife all called and left messages or they left messages on their answering machine; that in 1995 he was working about 800 hours for Brede and about the same for Freeman; that when it became obvious that the extras were not going to become members of Local 653 he started contacting unions to represent the extra workers; that he telephoned Thomas at the Steelworkers in Chicago, Illinois, in January or February 1995 and they met in March 1995; that those who helped him distribute union authorization cards included Mulligan, Louie Ballweber, Howard Johnson, and Mary Camper; that he met with approximately 150 extras during the campaign; that before 1995 he never worked with the Stagehands on a Brede job and he did not know if the Stagehands ever worked on a Freeman job; that before 1995 the Teamsters delivered freight and moved it onto the exhibition floor; that beginning in 1996 he saw the Teamsters doing decorating work; that in 1995 and before Stagehands were employed by Brede on a couple of the larger shows, they did the carpeting and large displays, and usually they were called when Brede could not get any more people to do it; that he stopped paying the \$15 fee in September 1995 after the Steelworkers won the election; that up to September he worked fairly regularly but after the election he did not work again for Brede or Freeman until March 1996; that after the election he and Mulligan were elected to negotiate for the group; that after the union election he tried to get work at Brede and Freeman but when he telephoned Gene Schultz he was told that if he ever wanted to work for Brede or Freeman again, then he should call Tommy Thomas up so see if he could get him some work; that he telephoned Johnson the first part of October 1995 and told him that he wanted to work, and Johnson told him to call Casey; that he telephoned Casey and he talked with him about why the extras pursued Local 17U out of Chicago, some of the problems that existed with the hall call and with Gene Schultz, and indicated that he and other extras were not working and wanted to work; that Casey indicated that he realized that Gene Schultz and the hall call were a problem and he, Casey, would like to make some changes in the hall call, taking it in house and having Johnson do it; that he complained to Casey about the calling procedure being very discriminatory, about the Schultzs trying to cycle as many people as possible to get the \$15 fee and the extras were promised that they would become members of Local 653 and it did not happen; that he was told by other employees that Johnson had started calling people in November 1995 when he took the labor call away from Gene Schultz; that he used the telephone number for Brede in an attempt to get work and he either got a message that there was no work and to call back the next day or he was told by someone named Dave that there was no work for him; that he sent certified letters to Johnson and Casey indicating that he wanted to work; that he went in to see Johnson and in February 1996 Johnson agreed to put him back to work and he was put back to

work for Brede in March 1996; that in his attempt to get work with Freeman he called Zaugg in October 1995 and Zaugg told him that because of the internal problems with Local 17U Zaugg was going to stick with Local 653 with respect to making the calls; that in September 1996 when Sabas took over the hall call from Gene Schultz he gave Sabas his and Mulligan's telephone numbers and asked Sabas to call him; that Sabas, in view of the large Smithsonian Institution show which was coming up, asked him for the list of Local 17U employees and he told Sabas that he would have to check with Local 17U's attorney; that subsequently he told Sabas that he could not give him the list of Local 17U employees but he could give him a "bunch" of names and telephone numbers of people who agreed to work the Smithsonian show; that Sabas told him in a few weeks before the Smithsonian show in September 1996, with respect to the Freeman work, that Johnson controlled who was to be called for both companies and it was up to Johnson whether or not he, Brady, could work the Smithsonian show or any other Freeman show; that in 1996 he told Johnson in advance when he would not be able to work and Johnson told him that he had to give at least two days notice when he was not going to be able to work; that when he worked the auto show for Brede in the spring of 1996 he noticed that the supporters of Local 17U were not present and their jobs had been given to the Stagehands; that he had to train the Stagehands to do the decorator jobs; that in the spring of 1996 when he noticed Teamsters loading tables and taking down drapes and pipes he asked one of them, Ralph Gorsky, what they were doing and Gorsky said that there was a new contract which called for the Teamsters to do this kind of work; that when he complained about the Teamsters doing the work of the extras he was told that the Teamsters new contract entitled them to do decorating work; that when he told Jim Ladwig that if he was not related to Bill Kniefel he would not be working, Sabas advised him that he had spoken with Johnson and if Brady brought up the Union anymore, he was out of there; that late in the summer of 1996 Lenny Prouty, who worked for Exhibits Plus, an affiliate of Brede, began doing decorator work; that while Prouty did decorator work he did not receive the \$12 an hour decorators receive but rather he received his normal pay, \$8 an hour; that he has an answering machine and Sabas never telephoned him for the Smithsonian show; that when he saw Sabas and indicated his availability Sabas said that "Johnson tells me who can work"; that at the time of the Smithsonian show he was working for Brede "quite a bit"; that there have been times when he worked for one company for one shift and worked a different shift for another company on the same day and it used to be a common practice; that although in January 1997 he gave Johnson 2 days notice that he could not work on 2 days because he had to attend negotiating sessions, Johnson made an issue out of it and he did not work for Brede for several weeks after that; that after the election he worked for Freeman the first time in the middle of February 1997 on the Northwest Computers show when he telephoned Sabas and said that he wanted to work the following day; that Sabas asked him if he was working for Brede and he told Sabas that he was not; that he worked the Northwest Computer show for 3 or 4 days and after the first day John Barrett, who was the show supervisor and who told the employees if

they should come back the following day, in his presence, told Mulligan that the only reason that he was working there at the time was so that he would not file any charges; and that at one of the negotiating sessions Nierenberg said that if the extras failed to call in even 1 day, then they are no longer an employee of Brede. On cross-examination, Brady testified that he stopped paying the \$15 fee to Barbara Schultz on September 5, 1995, when that month's payment was due; that Local 17 was certified on September 15, 1995; that he worked quite steady for Brede during 1996 but there were periods when he was available for other work; that although he did not believe that he worked the equivalent of full-time hours for Brede, he believed that he worked more like three-quarter time; that Sabas told him Johnson decides who is going to work for Brede and who is going to work for Freeman, and Johnson lets Sabas know; that he could not dispute that he was working almost every week, 40 hours or thereabouts for Brede during the first week on September to the third week in November 1996 when the Smithsonian show was in town; that he did not know how many Freeman shows there were between the end of November 1996 and February 1997 when he started working for Freeman again; that the industry slows down during the Christmas Holidays; that he would not be surprised to know that the names he gave to Sabas of the people who would be interested in working the Smithsonian show are on Sabas' list; that at the time of the hearing herein he had not worked for Brede since the summer of 1997; that in 1995 he earned gross total wages from Brede in the amount of \$6438 and in 1996 he earned gross total wages from Brede in the amount of \$11,187; that since the summer of 1997 he has worked primarily for Freeman; that on the days he works for Freeman he cannot also work for Brede; that in 1993 through 1995 Stagehands only worked a couple of the bigger shows like the auto show; that he overheard Casey cancel a negotiating session because a decertification petition was pending; and that in his affidavit to the Board he indicated that there were more shows in April and May 1996 when there were Stagehands

Mulligan, who was a show decorator, testified that he worked for Brede, Freeman, and Excel; that during the organizing campaign he contacted extras to determine if they would support a union and if they would attend union meetings; that after the election he stopped paying the \$15 fee to Barbara Schultz; that after the election Mark Grant, who is a full-time employee of Brede, a member of the UFCW and runs or supervises shows for Brede told him that they all blew their jobs at Brede and Brede was just going to get rid of the whole lot and start over at the labor hall, and train new people; that before the election Bill Kniefel, who is a full time employee of Brede, a member of the UFCW and runs or supervises shows for Brede, told him that the Steelworkers were not going to do anything for the extras in Minneapolis; that when he heard that Brede was taking the hall call back in house he telephoned Johnson at Brede on December 7, 1995, and Johnson told him that there was nothing at that time but he should call back at the end of the month; that when he called back at the end of December 1995 Johnson was not there and he spoke with John Barrett, who was a journeyman with Brede; that Barrett told him that he, Brady, and Tony Cash were not on the list of extras that

Brede had obtained from Barbara Schultz and was using; that Barrett told him that if he wanted to get some work he should contact the Steelworkers; that subsequently Johnson apologized indicating that he had failed to tell Barrett that he could add names to the list; that Johnson told him to call in at 3:45 p.m. and he probably would be able to talk to a person and not a machine; that he telephoned Brede every day at 3:45 p.m. and, with the exception of three times, he got a machine; that the recording indicated that the work list had been filled, call back tomorrow; that he was not told by Johnson or anyone else to keep calling in spite of the message; that on occasion he would leave a message indicating his availability; that in February 1996 there was a meeting at Brede with Casey where it was indicated that the hiring procedure was to go by qualifications; that when he called in to Brede the day of the meeting he was told to go to work the next day at the convention center; that on one occasion he questioned Johnson over the fact that Brede worked extra Jeff Beldon who Mulligan believed was less qualified than he was and Johnson said the this was done because Mulligan did not call in the day before for work; that on this occasion he told Johnson that he did indeed call in at 3:25 p.m. and got a recording which indicated that work was full; that he then called Casey who set up a three way conversation with Johnson participating and Casey gave Mulligan Johnson's telephone number to call every day; that his level of work after that with Brede was irregular; that on May 4, 1996, he had a disagreement with Sabas,<sup>17</sup> and he left the job and went to Johnson to complain about Sabas; that Johnson told him to go home and cool off<sup>18</sup> and call in on Monday; that when he called in on Monday Johnson told him that he had discussed the matter with Casey and it was concluded that Mulligan walked off the job and quit; that when he heard that Sabas became the steward for Local 653 he asked Brady to give his telephone number to Sabas and to tell him that he was available for work; that he was not called for the Smithsonian show in September 1996; that in February 1997 he was called by Sabas to work a 3- or 4-day show for Freeman; that Barrett from Brede was running the Freeman show and he said to him, Mulligan, that he should come back to work the following day "so don't run down to the NLRB and cry, if you didn't run to the NLRB and cry all the time, you wouldn't [have] been here"; that he subsequently took a job with DHL Airways and he turned down Sabas when he subsequently telephoned with a job; that he has had an answering machine for years and it has never been out of order; and that during the Smithsonian show, when he did not hear from Sabas, he worked for 5 or 6 days for the Heritage Display Group. On cross-examination, Mulligan testified that he quit paying the \$15 fee to Barbara Schultz shortly after the election victory of the Steelworkers in September 1995; that a

<sup>17</sup> Sabas did not deny that he told Mulligan, "Mr. Mulligan, you get to go over to the Hyatt and work with your Steelworkers Buddy Mr. Brady." Mulligan is credited.

<sup>18</sup> Mulligan testified that at one point in his conversation with Johnson he, Mulligan, said:

[Y]ou are the one that is sticking them Stagenhands down our throat right now. Just to rub our nose in the fact that you won't give us any more money but you will hire people at a rate of pay that you pay them greater than what you pay your own journeymen.

business agent of the Steelworkers, Thomas, told him that he no longer had to pay the fee; that between the end of the Smithsonian show in November 1996 and February 1997 he believed that there were 5 Freeman shows; that he was 14th on the Schultz' list when he stopped paying the fee; that he never had to call the Schultz' to get work; that he first worked for Brede in 1991; and that before the Steelworkers' election at Brede he never worked with stagehands who were doing pipe and drape. On redirect Mulligan testified that he filed a failure to represent charge against Local 17U when bargaining broke off with Brede because of a dispute in the Steelworkers regarding jurisdiction.

Griefenhagen testified that he has been a decorator for Brede and Freeman since 1990; that he is a member of the Steelworkers; that before the Steelworkers election in late 1995 he got his work assignments for Brede or Freeman by calling Gene Schultz or a member of his family or they called him and let him know if there was work the next day; that he paid \$15 a month to stay on the list and he was given receipts for the payments; that the receipts have the United Food and Commercial Workers Local 653 and its address at the top of the receipt; that before the Steelworkers election in late 1995 he would let Barbara or Gene Schultz know if he was not going to be available for a number of days and then he would telephone them when he was ready to go back to work; that after the Steelworkers election he was told by Gene or Barbara Schultz that if he wanted a day off he would have to let Johnson know ahead of time and sometimes if he wanted a day off he might end up getting a week off instead of the day he asked for; that in November 1995 Barbara Schultz telephoned him, informed him that Johnson took the hall call back and gave him the telephone number to reach Johnson; that when he telephoned Johnson for work Johnson told him that he was to call between 3 and 4:30 p.m. and if there was work available, he would be referred to a jobsite; that when he telephoned Brede he usually spoke to Dave Grenieri or there were various recordings of him or Johnson; that in 1996 he worked for Freeman with the last time being on the Smithsonian show in August or September; that Sabas telephoned him and asked him to work the Smithsonian show and after working 1 day he turned down working for the rest of the show; that after he worked in October 1997 for Freeman he did not work at Brede for 3 months even though he telephones daily; and that the regulars from the UFCW work for Brede along with the extras, the Stagehands, who have been around since the early 1990s and since 1995 have regularly done decorating work, and the Teamsters, who—if they do not have enough work with the freight—will assist in decorating. On cross-examination, Griefenhagen testified that after Barbara Schultz ceased doing the hall call he no longer had to pay the \$15; that between the time Barbara Schultz stopped doing the hall call and when Sabas was elected steward and called him about Freeman's Smithsonian show, Gene Schultz telephoned him a few times to work for Freeman only; that after the Smithsonian show he worked regular enough for Brede so that he turned down Freeman work; and that Sabas was aware that he supported the Steelworkers. On redirect Griefenhagen testified that he never telephoned Sabas to try to get work for Freeman; that when he worked for Freeman a couple of days Johnson

started working him less and less; and that in 1992 all of the casuals had a meeting in Brede's rug room with Gene Schultz and Zahn, and they discussed the fact that a list was compiled based on the hours the extras had accumulated since 1990 based on payroll records.

Theresa Ballweber worked as an extra in the convention decorating industry for Freeman, Brede, and Excel. She testified that when she first started working she was called by Barbara Schultz; that after the Steelworkers election she had to call Johnson to get work; that every time she called Johnson he said that there was no work available and to try again tomorrow or she would get an answer machine which would indicate that there was no work available or request that she leave her name; that she has not worked for Brede since the Steelworkers' election; and that when she was working a show for Freeman in August 1995 about 1 month before the Steelworkers' election Gene Schultz told some of her coworkers who were talking about the Steelworkers, in her presence, "[y]ou guys vote that union in you can all kiss your jobs good-bye." On cross-examination, Ballweber testified that in the election held in the fall of 1995 there were three choices, namely, no union, Local 653 of the UFCW or the Steelworkers; that when she telephoned Sabas to work in the Smithsonian show he told her that he could not use her because she had to work the full length of the show and she was not able to work the full length; that she could have made a total of \$84 from Brede in 1994 and a total of \$360 from Brede in 1995; and that she could have been in the 60s on the seniority list which was utilized by the Schultz'.<sup>19</sup>

Jean Olson testified that she started working trade shows in May 1995; that she paid Barbara Schultz \$15 a month and her name was placed on a list; that she telephoned Barbara Schultz at 6 p.m. to find out if there was work for the next day; that in January 1996, Barbara Schultz told her that henceforth she would have to telephone Johnson at Brede and she gave her the telephone number; that she telephoned Johnson every day for approximately 2 months and kept getting, with two exceptions, a recording; that she spoke with Johnson twice and during one of the conversations he asked her if she had even worked for Brede; that she had worked approximately 200 to 300 hours for Brede before that time; that subsequently she worked on trade shows for North American and for Freeman on the Smithsonian show after Sabas telephoned her; and that she stopped working trade shows in February 1998. On cross-examination, Olson testified that she worked for North American after the Smithsonian show; that she was not aware of any Freeman shows between the end of November 1997 when they moved the Smithsonian show out and February 1998 when she stopped working trade shows to become a custodian; that she began working for Brede in 1995; that she did not work for Brede in 1996; that her estimation of the 200 to 300 hours worked for Brede in 1995 came from her W-2; that Brede's payroll records show that she worked a total of 87 hours in 1995 earning gross wages of \$1044 which is the same amount indicated on her W-2; that during the 2 months that she telephoned Brede she was told by Barbara Schultz to call Johnson at 3 p.m. and she did

<sup>19</sup> She is number 60 on GC Exh. 4.

for every day until there were two big shows and she was not given work; and that she telephoned Brede an average of 5 days a week.

Leverett (Sonny) Covington testified that he started working as a decorator in 1994 for Freeman; that he was on the extra list and Barbara Schultz would call him and ask him if he could work and tell him where to report; that shortly after the Steelworkers won the election Barbara Schultz was removed from making referrals and he was told to call Brede at their office; that he telephoned Brede every day "until it became ridiculous"; that when he telephoned Brede he was told either by a person or by a recording to call back; that Kevin Sabas telephoned him and asked him if he wanted to work the Smithsonian show; that he was in an automobile accident which delayed his starting to work on the Smithsonian show; that he received a doctor's release on October 29, 1995, and when he telephoned Sabas he was put on the tear down crew for the Smithsonian show; that after he worked 2 days on the Smithsonian show Foreman Kniefel told him that he had been cut; that when he objected he was told to telephone Sabas; that when he telephoned, Sabas said, "[Y]ou've been badmouthing me"; that he explained to Sabas that he said that when Barbara Schultz was running the call list it was run more fairly and he was getting more work; that Sabas said the Freeman was worried that he would sue it over the back injury he had suffered in the car accident; that when he told Sabas that he had a doctor's release Sabas told him to bring it down and he told Sabas that he would bring it down the following day; that the following day he took the release to Brede and gave it to someone in the office; that when Sabas gave him his paycheck for the Smithsonian show Sabas asked him to sign a Local 653 authorization card saying that Covington would be working and he would call him; and that he signed the authorization card but Sabas did not call him. On cross-examination, Covington testified that Sabas could not have called him before the Smithsonian show because this was the first show that Sabas made calls on; that he did not give the doctor's release to Freeman; and that September through the end of the year is typically a slow season. Subsequently Covington testified that Sabas works for Brede and was not at the Smithsonian show; and that when he dropped off the doctor's release at Brede he told the person he handed it to that Sabas had requested it.

David Hiben testified that he started working for Brede and Freeman in 1990 as a decorator; that he was the foreman on some of the shows; that he made \$18,000 in total gross income in 1995 working for these two companies; that in 1996 he was unable to show up for work at the scheduled time for Brede because of car trouble; that subsequently when he telephoned Brede for work he would get a recorder or would be told to call back in a couple of days; that in 1997 he grossed \$800 with Brede; that he was junior foreman on Freeman's Smithsonian show and worked every day; that Kniefel was the other foreman on the Smithsonian show; and that he did not have any problems of a disciplinary nature with Covington on the Smithsonian show.

Kniefel testified that he worked for Brede for over 9 years as a convention decorator; that during the 9 years he has also worked for Excel Decorators, Freeman Decorating, and Hoff

Exposition Services; that he has "chosen not to" work for Freeman after the completion of the Smithsonian show in November 1996;<sup>20</sup> that prior to November 1996 from time to time he worked as foreman for crews that were working for Freeman; that he was a foreman on the Smithsonian show for Freeman and David Hiben was his assistant; that on the Smithsonian show job he told Covington to provide a doctor's note to be given light duty and Covington never provided the information; that Sabas told him to get the doctor's note from Covington that he told Covington to bring the note to him or give it to Sabas; that he never received the doctor's note; that Sabas made the decision not to have Covington come back and he implemented it by not assigning Covington to the job list; that Hiben said something to Covington about being late on the second day he worked on the Smithsonian show; that Jacobson complained to him and Sabas that he was not getting enough hours on the Smithsonian show; that Sabas wanted to pull Jacobson off of the Smithsonian show and have him work on an Excel job; that Jacobson refused indicating that he was in a position to get overtime on the Smithsonian show job and if he went to the Excel job he would be getting straight time; that he could not think of an instance where an employee worked for both Brede and another employer on the same day; and that a Brede employee with a day off could have worked on the Smithsonian show if it did not require bumping someone off a display.

Jacobson testified that he has worked as a decorator setting up shows for Brede, Freeman, North American, and Heritage;

<sup>20</sup> Annette Richter, who is an on-call decorator who works for Brede, Freeman, Excel, and North American, testified that in November 1996 she worked for Freeman on the Smithsonian show and Kniefel, who was the foreman, sexually harassed her the entire show; and that on November 18, 1996, at the end of the day, Kniefel, in her presence, pulled down his pants and bent over. Richter forwarded a letter to Freeman and she received a reply from Freeman, GC Exh. 46. Pertinent portions of her letter read as follows:

Starting from the first day I worked as a decorator on October 4, 1996 through the end of the show on November 19, 1996 there were sexual comments and sexual overtones made nearly every day I worked.

On Monday November 18th the sexual language was extremely uncomfortable for me, at the end of my shift as I was leaving there was a very rude gesture made by Bill Kniefel by the toolroom near the break table. In front of about 8 people, both men and women, he unzipped his pants, pulled them down and bent over.

Jim Zaugg, the general manager of Freeman, replied, in part, as follows:

When contacted about this incident, Kniefel admitted this misconduct.

Freeman Decorating Company cannot and will not condone this type of conduct by anyone in our employment. In view of these circumstances, effective immediately we are removing Bill Kniefel from any and all of our call lists for six months. Any repetition of this conduct by Kniefel will result in his being permanently removed from our call list.

The law firm that represents the UFCW Local 653 herein represented Kniefel on the disorderly conduct charge brought by the State of Minnesota, GC Exh. 45.

that he first worked for Brede 10 years or more before the hearing herein; and he first worked for Freeman in 1990 or 1991; that to get work for Brede he would call in to Gene or Barbara Schultz and he got work for Freeman from them; that when he paid \$15 a month to stay on the list he received receipts (GC Exh. 19);<sup>21</sup> that when Johnson took over the hall call he called Brede's office and he worked a few days here and there; that he stopped telephoning Brede in July or August 1996 when he was not given work; that he worked 5 or 6 days for Freeman on the Smithsonian show after he telephoned Sabas; that after the 5 or 6 days on the Smithsonian show he told the crew chief, Kniefel, that he had to take a few days off; and that when he received his paycheck from Sabas for the Smithsonian show Sabas asked him to sign a union card and when he refused Sabas said, "I guess some people just don't want to work for Brede any more." On cross-examination, Jacobson testified that he might have stopped paying the \$15 fee to stay on the hall call list right after the Steelworkers' election in September 1995 when Brady told him to stop paying the fee; that Sabas took over the extra referral list a couple of weeks before he, Jacobson, worked on the Smithsonian show; that he worked a total of 16 days on the Smithsonian show; that he believes that Sabas passed him over during the Smithsonian show because of his affiliation and support of the Steelworkers; that he believes that he could have worked more hours on the Smithsonian show; that after looking at Respondent Union's Exhibit 1, which is the daily timesheet for all employees working for Freeman on the Smithsonian show, he was unable to show an additional day where he could have worked; that in 1997 he called Sabas about a show and Sabas said that he had given Jacobson's spot away to Brady; that his name (misspelled but with his correct telephone number) appears on the last page of the referral list which Sabas had (GC Exh. 14); that his name also appears on the list after the number 65 but it is crossed off; that he started working as an extra in 1983 and at the time he had to telephone Brede to get his assignments; that he continued to telephone Brede to get assignments until 1991; and that since the early 1990s he has seen Local 13 Stagehands working for Brede and they were performing the same functions as decorators.

Sabas, who has worked for Brede for about 18 years as a trade show decorator, when called by counsel for the General Counsel, testified that after 10 to 12 years of service his employment with Brede became fairly regular; that he is a journeyman and is a member of UFCW Local 653; that he has also worked for Freeman, Badger, and Excel; that he tries to work for Freeman a day or two a year to keep his name on their list; that he has worked as a foreman for Brede; that he was elected steward in September 1996 replacing Gene Schultz; that he is on the contract negotiating committee and he participated in the negotiations in 1991 and 1995; that Brede agreed at the bargaining table to let the UFCW handle the referral of employees; that Gene Schultz subsequently did the calling; that before he started the calling he got assignments to work for Freeman by

<sup>21</sup> The receipts are numbered and have "United Food & Commercial Workers-Local 653" at the top. At the left side of the receipt there are a column of entries, namely, "Retiring Cd, Dues, Initiation, Return R.C., Assessments, Total." The \$15 was entered on the total line only.

telling Gene Schultz that he was available and he would get an assignment if it got to his name on the list; that after he was elected steward, Gene Schultz made it known that he did not want to make the labor calls anymore; that he told Zahn that he would make the labor calls;<sup>22</sup> that he was unable to "connect" with Gene Schultz so Zahn gave him a copy of a list that he had (GC Exh. 14); that the Smithsonian show had two shifts, day and night, and he had to determine who would work day and who would work nights so he placed an asterisk in the margin of the list; that he wrote additional names on the list; that Zahn sent him Freeman's job call, i.e. (GC Exh. 15); that before he made the fairly large labor call for the Smithsonian show he asked Johnson who he was going to have working; that Johnson gave him a list of people who Brede would be working (GC Exh. 16); and Johnson indicated that it was okay to use these people if they were not working for Brede but he had first "dibs" on them; that he added names to the list whenever anyone asked if they could work on the Smithsonian show; that some of the people gave him pieces of paper with names and telephone numbers on them; that the Smithsonian was the first show that he called for; that before the Smithsonian show started Brady told him that he and Mulligan were interested in working the Smithsonian show; that Brady said that he would give him a list of Steelworkers who were interested in working the Smithsonian show; that he telephoned Mulligan and Brady on a number of occasions during the Smithsonian show but he did not keep track of who he called and he could not recall on what dates he made the calls; that when people called it was his judgment call which one of them he would tell to work and which ones he had to put off until after 7 p.m.;<sup>23</sup> that during the Smithsonian show he had a call for an Excel job and he ended up nine people short even after calling all of the people he had on the list; that his affidavit to the National Labor Relations Board (the Board) indicates that he telephoned Brady once from the time he started working the list until December 12, 1996 and he called Mulligan twice;<sup>24</sup> that he left a message on Mulligan's answering machine indicating that there was work available and with Brady there was no answer; that he telephoned Mulligan and Brady after the Smithsonian show to let them know that there was work available; and that during the 1995 negotiations Brede asked for significant wage concessions pretty much across the board. On cross-examination, Sabas testified that no one at UFCW asked him to take over the hall call and he was not given any training by the UFCW; that he was not paid by anyone for doing the hall call and the UFCW did not reimburse him for his expenses; that he changed the procedure that Gene Schultz used in that he had to call the peo-

<sup>22</sup> Zahn testified that UFCW did not have anything to do with Sabas being assigned to do the hall call after he was elected as the union steward; that he did not pay Sabas any extra money to take over that responsibility; that he did not reimburse Sabas for any of his expenses or pay him for the time he spent for doing the hall call; and that he did not give Sabas any instructions on how he should do the hall call.

<sup>23</sup> Subsequently, he testified that usually with the Smithsonian show even though he told somebody to hold until 7 p.m., he ended up giving them a job anyway.

<sup>24</sup> The affidavit also indicates that he spoke to Brady on a number of occasions on the show floor.

ple because he did not have people calling him regularly; that he told the people that they had to call him between 5 and 7 p.m. and he would put them on the list, and after 7 p.m. he would fill the call with the next people on the list who he could get hold of; that he told the people 5 p.m. because that was the earliest that he could get home to receive the telephone calls; that once a worker started on the Smithsonian show the foreman on the job told the worker whether he should come in the next day; that on the Smithsonian show there were some who did the setup who they wanted to do the take down because of their familiarity with the packing of the valuable artifacts; that with the Smithsonian show Freeman “upped” (increased) the number of people they needed and there were “many” times he could not get more people because they just were not available;<sup>25</sup> that 2 weeks before the Smithsonian show set up Brady told him that he had a list of people that were involved with the Steelworkers and he asked him if he would work them; that Brady never did give him the list and before the Smithsonian show began he asked Brady about the list and Brady said that he contacted the Steelworkers and their lawyer told him not to supply the list to him; that at that time he got the telephone numbers for Brady and Mulligan and he told Brady that he knew that he was working for Brede at the time but if he became available he should call him; that Mulligan was working for Local 880 for Heritage Displays at the Smithsonian show; that he might have called Brady and Mulligan more than once or twice as he indicated in his affidavit because he was calling numbers trying to find people to fill the calls and many of the people on the list were known advocates or members of the Steelworkers; that Jacobson worked on the Smithsonian show virtually every time there were people working; that Olson, who told him that she was a Steelworkers supporter, worked the Smithsonian almost every day also; that after the Smithsonian show he gave up the procedure where people would call in between 5 and 7 p.m. and he began calling them; that he believed that he filled the calls for six to eight Freeman and Excel shows between the Smithsonian show and when the Steelworkers began filling the calls in 1997; that the people highlighted in green on the list Johnson gave him work full time or regularly for Brede; that he referred Covington, who he believed is a Steelworkers, to the Smithsonian show; that Hiben told him that Covington would not lift anything on the Smithsonian job after his car accident; that he asked Covington to give him a doctor’s release and if he was 100 percent he would be put back to work; that he remembered that Covington did come in with a doctor’s slip stating that he could work; that he never refused to refer Brady, Mulligan, Covington, or Jacobson for employment with the Employer; that even though Jacobson walked off the job one night he sent him back the next day;<sup>26</sup> that he believed

<sup>25</sup> This testimony was given after the witness testified that there were pretty much only 1 or 2 days at the beginning and at the takedown when he was marking calls and that he should, in light of this testimony, recant certain of his testimony and change his testimony, recant certain of this testimony and change his testimony to “there . . . [were] a couple of days during the show when . . . [Freeman] upped . . . [the number of people they needed].”

<sup>26</sup> Sabas explained that he had Kniefel tell Jacobson that he was to go from the Smithsonian job to an Excel job and Jacobson that he was

that there were about 60 people in the go in and tear out at the Smithsonian and this consisted of one journeyman who was the foreman and 59 extras; and that Stagehands have been hired by Brede to supplement its other workers, this goes back 10 years, and the Stagehands do the same type of work as the decorators. On redirect, Sabas testified that he was not sure what the green dots on General Counsel’s Exhibit 14 meant.<sup>27</sup>

When called by the UFCW, Sabas testified that Respondent Union’s Exhibit 3 is the original list with green highlighting that he received from Johnson; that he told the highlighted extras that if they were laid off from Brede they should contact him and if there was work available, he would put them to work;<sup>28</sup> that Respondent Union’s Exhibit 4 consists of the daily timesheets and the labor call from Freeman, dated January 21, 1997, for the Northwest Computer Show to which he referred Brady and Mulligan in February 1997; that of the 4 days worked on this job, February 17, 18, 19, and 20, 1997, Brady worked 3 and Mulligan worked 4;<sup>29</sup> that he has worked for Brede for 18 years and he has never heard of anyone working a full schedule for Brede 1 day and then working for Freeman on the same day if both Brede and Freeman had shows on that day; that on jobs like the Smithsonian the employee has to stay until the display he is working on is done and if he does not, the supervisor would not want him back the following day; that as far as working weekends, quite often Brede works weekends; that as far as working on his day off from Brede during the week, while Brede employees do occasionally get a day off during the week he would not break up an existing crew to accommodate someone who had a day off at Brede; that he did not recall Brady calling him on his day off from Brede and

to go from the Smithsonian job to an Excel job and Jacobson refused indicating that he was in a position to get overtime at the Smithsonian job; and that when overtime was later offered to Jacobson on the Smithsonian job Jacobson refused it.

<sup>27</sup> At p. 3, L. 11 of his December 12, 1996 affidavit to the Board, GC Exh. 18, Sabas indicated, “The green dots are the people Mike [Johnson] said I could call . . .” Over one page of the seven page affidavit deals with the question of his referring or not referring Brady and Mulligan.

<sup>28</sup> Those highlighted included Brady.

<sup>29</sup> The General Counsel introduced a letter from the Board to the attorney for UFCW dated February 13, 1997, GC Exh. 41, which contains the following:

Finally, the Regional Director found sufficient evidence to support a finding that the referral service is operating in a discriminatory manner in violation of Sec. 8(b)(2). We are still in the process of identifying potential discriminates. So far, we have sufficient evidence to support a complaint concerning Dan Brady, Dan Mulligan, and Don Jacobson. This finding is based on evidence of Sabas’ failure to follow objective criteria in making referrals; those three employees’ leading roles in organizing on behalf of Steelworkers Local 17U, statements by Sabas indicating anti-Steelworkers Local 17U animus; and payroll records supplied by the Employer that indicate a large number of new employees have lately been called to work by Sabas in preference to those individuals, who have a long history of employment. Statements evidencing animus include an argument in May 1996 that immediately preceded Dan Mulligan’s discharge from employment with Brede, Inc., and solicitation of employees to sign authorization cards for Local 653 with the explicit or implicit threat that if they did not, they would not work any more for Freeman Decorating Co.

saying that he was available; and that he did not recall Brady telling him that he wanted to work on the Smithsonian show. On redirect, Sabas testified that he never heard that there was a probable cause finding issued by the Board and he was never told that he should refer Brady and Mulligan. Subsequently he testified that at the time of the Northwest Computer Show in February 1997 he did not know that there was an unfair labor practice charge filed against the UFCW regarding the referrals of Brady and Mulligan.

Johnson, Brede's operations manager, also testified that he did not talk to Sabas about his function of referring employees to Freeman;<sup>30</sup> that he did discuss a list with Sabas so that both Brede and Freeman could operate; that the list indicates which people he wanted to keep available for Brede; and that Griefenhagen was among the people he asked Sabas to leave alone. Johnson answered, "[n]o" to the following question of Brede's attorney's: "[Y]ou never meant in any discussions with . . . Sabas to preclude his using any employees for any extended period of time, did you?" Subsequently Johnson testified that he did not recall giving Sabas a list and he did not recall highlighting in green any of the names on the list. Johnson did concede that it was his handwriting on the list received as General Counsel's Exhibit 16. Also he testified that above the number 13 on the list were journeymen and below that were the extras.

By position statement dated March 13, 1996 (GC Exh. 28), Brede's attorney indicated in part as follows:

Since the end of December 1995, the Employer has hired Extra Helpers in the following manner:

a) Mike Johnson, an employee working in the City Desk department, assesses the work for the next day.

b) If it appears that there will be enough work to justify hiring individuals on a temporary basis outside the Local 653 bargaining unit, i.e., hiring Extra Helpers, then Johnson will record the number of additional employees needed and the names of any individuals known to him who are particularly suited to the available work.

c) Meanwhile, individuals who want to work the next day phone in to report their availability. Their names are taken by Dave Grennier (a/k/a Opie), a nonsupervisory employee who assists Johnson. A log has been kept of call-ins since February 27, 1996.

d) If the individuals, show Johnson recorded as having known qualifications for the next day's work, phone in their availability, then Johnson or Grennier will give them their assignment over the telephone.

e) If a certain number of the individuals whom Johnson recorded as having known qualifications for the next day's work do *not* call in their availability, then Johnson will call up that number of other Extras who (i) are qualified and (ii) had previously phoned in their availability.

f) If there is no work available for the next day, a voice mail message will notify callers that there is no work. Occasionally, individuals phoning in their availability may also get that message when the phone is in use. Messages are not retrieved from this voice mail; this has been com-

municated to Dan Mulligan, one of the individuals named in one of the charges.

g) If individuals are working on particular show one day, and it is known that the show will continue into the next day, those individuals—if they will be available—will be assigned to continue on that show. They may also be carried forward to the next day to work on another show.

The criteria for determining qualifications is clear and unambiguous, although some of the measures are subjective. The criteria are:

a) the individual's availability, as indicated by his or her phoning in;

b) the individual's availability, as indicated by his or her being available when the Employer representative phones back, if applicable, to assign the employee to a particular show;

c) the individual's transportation, i.e., whether it is adequate to get to the show site;

d) the employee's tenure with the Employer, essentially his or her seniority;

e) the individual's past performance;

f) the individual's strengths and limitations, i.e., the type of work at which he or she shows greatest reliability and results;

g) the amount of work that is available.

The individuals whom . . . Johnson records as being preferable for certain jobs are the most qualified based on the preceding criteria. Seniority is a factor, but not the only factor. A candidate's support of Local 17U is not a criterion for hiring or assignment, nor does the Employer have any way to know the level of sympathy or support a particular candidate may have toward the union. [Emphasis in original.]

In his supplemental position statement dated April 12, 1996 (GC Exh. 29), Brede's attorney indicated, in part, as follows:

Although the employer has not provided notice to the employees that the referral procedure changed, substantially all of the employees who previously worked with the Local 653/Schultz referral system now report directly to the employer. Accordingly, the employer did not consider it necessary to meet its labor requirements, to provide additional notices.

. . . .  
The employer did bargain with the certified union over the subject of the unfair labor practice, i.e., taking the referral and hiring system for extra helpers away from Local 653 and Gene Schultz; that employer acceded to the union's request, during bargaining, that the Local 653/Schultz referral system be terminated; the certified union waived any rights it had in this matter, at the time of the employer's change, because it gave notice that it would discontinue bargaining for an indefinite period of time (which stretched over many months) due to an internal union dispute; and finally, once the employer agreed to the union's demand to discontinue the Schultz referral system, there was no pre-existing standard of conduct that

<sup>30</sup> Johnson's actual response was "I'd have to say no."

limited the employer's choices, such as an expired collective bargaining agreement.

It is the primary position of the employer that it did not act unilaterally in this matter because it acted pursuant to the union's demands in the course of negotiations. However, even if one could view the employer's actions as unilateral, the union waived its rights. First, it waived its rights by not having objected in any, let alone a timely, manner. In addition, the union waived its rights because it expressly and unilaterally discontinued bargaining.

Moreover, in addition to the bargaining history of the parties and the union's waiver, the fact remains that there was no standard of performance from which the employer deviated, other than that which the union demanded the employer abandon. There was no expired collective bargaining agreement. The employer had no obligation to utilize Local 17U's referral system, once it abandoned Local 653's.

By cover letter dated August 20, 1996 (GC Exh. 30), Brede's attorney forwarded a memorandum to the Board which includes the following:

According to Mike [Johnson], prior to January 1, 1996, when Brede needed casual workers a call was put in to a representative of 653 as to the specifics of how many and what kind of workers were needed as well as the time they were needed for. In order to give Brede more discretion in the hiring process, as of January 1, 1996, a separate phone line was installed at Brede and people who want to be considered for casual employment were requested to dial this phone number between 3 and 4PM on a daily basis. Jobs are then assigned based on matching who calls in to work with what Brede's particular needs are for a specific job, and other relevant employment factors. Some of these factors include availability as to time and date, employee experience level and qualifications for a specific type of job, and past experience with a particular employee's reliability and job performance.

By letters dated December 30, 1996 (GC Exhs. 23 and 24), respectively, the Acting Regional Director for Region 18 of the Board dismissed petitions for decertification in Case 18-RD-2151, Freeman Decorating Company and Case 18-RD-2152, Brede Exposition Services, because there were allegedly unremedied unfair labor practices which precluded the existence of a question concerning representation.

Zaugg, who is the general manager of Freeman and is in charge of its Des Moines office, testified that Freeman does not station any permanent employees in the Minneapolis area; that for its shows in the Minneapolis area it gets employees by sending a letter<sup>31</sup> to the labor supplier, UFCW; that it has had a series of 1-year collective-bargaining agreements with the UFCW<sup>32</sup> which contracts indicate "[l]abor force shall be supplied by [UFCW] Local #653 if full-time union labor is available"; that the UFCW supplies decorators who put up the tables, chairs, carpets, and drapes; that some of the decorators are

represented by the Steelworkers; and that those decorators who are represented by the Steelworkers were extra helpers and were not full-time employees. On cross-examination, Zaugg testified that after July 8, 1997, the Steelworkers made the referrals of the extra helpers; that presently Freeman sends a letter to the UFCW requesting available employees and then it sends a letter to the Steelworkers if UFCW cannot supply all of the employees needed; that when Freeman does a job itself it is the employer and when Freeman subcontracts a job to Brede the latter supplies the work force and the equipment, and Brede is the employer; that there are some weeks when Freeman is doing a show itself in the Minneapolis area and it also subcontracts a show to Brede; that considering the size, complexity, and duration, Respondent Brede's Exhibit 1 shows an increase from 1995 to 1996 and 1996 to 1997 in both Freeman's own shows in the Minneapolis area and in the shows it subcontracts to Brede; and that the Stagehands have worked for Freeman hanging special signs and doing special rigging. On Redirect, Zaugg testified that Freeman did not distinguish in its job calls between full time and extras; and that when he sent a letter to Zahn prior to the Steelworkers becoming involved in 1997, and requested a certain number of decorators he expected to get journeymen first and if there were not sufficient journeymen available, to get the extra helpers next.

By letter to the Board dated February 21, 1997 (GC Exh. 31), Brede's attorney indicated as follows:

Enclosed please find a letter from Brede's President, William Casey, III, concerning the aggregate number of hours worked by Stagehands' referrals during the past six years. As the numbers indicate, the referrals dropped by more than half from 1991 to 1992; increased slightly in 1993; decreased by approximately 90% from 1993 to 1994; increased by approximately 600% from 1994 to 1995; and then increased another 200% from 1995 to 1996. Mr. Casey's letter indicated the two primary reasons why the numbers increased so dramatically from 1995 to 1996. One is the Smithsonian Exhibit, for which Freeman Decorating utilized a substantial number of the extra helpers; and the other is Freeman's increase in direct business in this region in 1996. In any event, however, the 1996 levels are still lower than those of 1991.<sup>33</sup>

By letter dated April 7, 1997 (GC Exh. 27), the attorney for UFCW forwarded a position statement to the Board and in it he indicated that Covington had a verbal incident with Hiben, a "name call" foreman and that Covington worked every day that he wanted to during the Smithsonian show.<sup>34</sup>

<sup>33</sup> Casey's enclosed letter indicates that the stagehands worked the following hours for Brede:

1996	4250 hours
1995	1410 hours
1994	213 hours
1993	2311 hours
1992	2093 hours
1991	4439 hours

<sup>34</sup> On brief the General Counsel renews his objection to the admission of any part of opposition statement or affidavits which were not specifically identified as admissions, prior inconsistent statements, of their necessary context. Regarding this renewed challenge, that state-

<sup>31</sup> See GC Exh. 7.

<sup>32</sup> See GC Exh. 3.

Cerone testified that there were a total over 20 meetings between the Steelworkers and Brede and Freeman; that the last one was held in June 1997; that Brede and Freeman made proposals with the major difference between the proposals being that Brede refused to agree to the referral program for Local 17U while Freeman did, and Brede had some language concerning other unions in the Minneapolis area it had not been doing business with and Brede wanted language in the contract that allowed them to use help from some of the other unions in lieu of Local 17U people; and that Local 17U presented the company proposals to the membership of Local 17 for ratification vote; and that on July 8, 1997, the Freeman contract was accepted and the Brede contract was rejected. On cross-examination, Cerone testified that Brede's proposal was to use members of other labor organizations as they had been used in the past.

Griefenhagen testified that in October 1997 he started receiving telephone calls from the Steelworkers to work for Freeman; and that Freeman signed a contract with the Steelworkers and when Freeman is in town he will work for Freeman.

General Counsel's Exhibit 40 is a listing of all the charges that have been filed against Brede or Freeman or Local 17U or UFCW Local 653 that are not included herein.

Matt Rice, who works as a stagehand and is a business agent for the stagehands, testified that the stagehands work off a referral list of a little over a thousand people; that his Local, Local 13, does work for Brede sharing jurisdiction with Local 653 as far as doing pipe, drape, and rug and building the displays and booths; that his Local has exclusive jurisdiction to do the rigging, lights, sound, and something described only as "AV"; that Local 13 of the stagehands has been doing this type of work for Brede for as long as he could remember and he has worked as a stagehand for 25 years; and that Respondent Employer's Exhibit 4 is the approximate numbers that the stagehands records reflect.

General Counsel's Exhibit 4 consists of documents produced under subpoena by Freeman. Included is a printout showing employee name, date of hire, union affiliation, and sign in sheets for the period January 29 to February 8, 1998.

#### Analysis

Paragraph 9(a) of the consolidated complaint in Case 18-CA-13968 et al., alleges that on or about January 1, 1996, Respondent Brede implemented changes in its procedures for hiring unit employees, specifically including but not limited to changing from a seniority- or longevity-based priority order to an order determined by a multitude of factors in addition to seniority or longevity with Respondent and requiring employees to call to inquire about work instead of having employees wait to be called.

On brief, the General Counsel contends that there were numerous and substantial changes in Brede's procedures and criteria for calling up extras; that the change in the administrator of the program is a unilateral change in a condition of employment; that Brede materially changed the hours of operation of the system which could have made it more difficult for these

employees, known to commonly have other jobs, to make contact; that under Brede's in-house system employees sometimes had only a few minutes at around 3 p.m. to call before the next days work list might be filled by others who called earlier or more often or just got lucky enough to get past the answering machine; that while Barbara Schultz took and left messages and sometimes left assignments on her answering machine, Brede did not leave messages for employees since it did not call out, and it refused to take messages from employees calling in; that, unlike the Schultz system, employees risked being blackballed by Brede if they took time off; that another material change was the switch from an objective ranking of employees based primarily on longevity to a subjective system based on Johnson's evaluation of the employees' past performance and abilities as well as availability and seniority; that despite Johnson's initial insistence that every qualified person who called got work, the truth was that calling in on any particular day made no difference—all the employees were preselected before anyone called in; that unilateral changes in a first contract situation like this are permitted only by impasse in overall contract negotiations, waiver, or "exigent circumstances," *RBE Electronics of S.D.*, 320 NLRB 80 (1995), and *Bottom Line Enterprises*, 302 NLRB 373 (1991); that there is no claim or evidence of impasse and there is no evidence Local 17U waived its right to bargain over the referral procedure; that Local 17U, at every opportunity, explicitly objected to Brede's proposal to take the referral system in house and Local 17U's expressions of dissatisfaction with the Schultz system is a far cry from blanket authorization to make any and all changes desired by Brede; that Brede implemented the change by December 6, 1995, or in about 6 weeks after Local 17U put the negotiations on hold; that after Local 17U was certified and it requested a meeting with Brede, a similar length of time passed before Brede made a representative with real authority to bargain available; that Brede should be precluded from making the claim that the "hold" placed on the negotiations by Local 17U constituted an implicit waiver or "exigent circumstances" sufficient to justify the involved changes because it failed to notify Local 17U in advance of any immediate intention to make changes while negotiations were on hold; that Brede did not give Local 17U a deadline or a timetable or a detailed proposal of what it meant and as soon as Local 17U found out about the timetable and the details, it demanded a meeting; that even if Local 17U's "hold" on the negotiations was found unreasonable in length, Brede was still obligated to make a detailed proposal before it could lawfully make unilateral changes, *Stone Boat Yard*, 264 NLRB 981 (1983), *enfd.* 715 F.2d 441 (9th Cir. 1983), *cert denied* 466 U.S. 937 (1984); that Casey's concern for those who stopped paying the \$15 fee can hardly justify the changes in the hours of operation of the referral system or the change in who ultimately had to call whom; that the new call-in procedure severely hampered employees' ability to get through and express interest in work, and it established new subjective criteria for work that further reduced the number of employees available; and that with respect to the changes, the General Counsel seeks make whole relief for any employee, identities unknown at this time, who suffered a loss as a result of the changes, and restora-

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ments and affidavits will be considered to the extent they do provide the necessary context.

tion of the status quo to the extent Local 17U requests, *Pierelli Cable Corp.*, 323 NLRB 1009 (1997).

Brede, on brief, argues that the totality of the circumstances determines whether there was an unlawful unilateral change, *Westinghouse Electric Corp.*, 150 NLRB 1574 (1965); that here (a) the system for selecting and assigning extra helpers has been performed in-house for decades, with the exception of a very few years, (b) the extras previously phoned the Schultzs and now they phone Johnson, (c) there has been no complaint that someone did not know who to call, (d) under the Schultz', there was a weighting toward experienced workers, but not absolute seniority on an industry or company basis, and under Brede's Johnson there is a similar weighting without absolute seniority, and (e) Brede's motivation was to ensure the availability of qualified workers and to avoid losing qualified workers who, because they supported Local 17U and stopped paying a referral fee to the Schultzs, would no longer be referred to Brede; that Brede acquiesced to the concerns of Local 17U, fulfilled a legal obligation, and cannot be held to have violated Section 8(a)(5); that even if the employer's action would have been unilateral, Local 17U waived its right to bargain; that a union having sufficient notice of the employer's unilateral change will be deemed to have waived its bargaining rights if it fails to make a timely request for bargaining, *W-I Forrest Products Co.*, 304 NLRB 957 (1991); that here Local 17U at no time requested that the employer restore the status quo ante; that there is no evidence in the hearing herein of antiunion animus on the part of Brede; that the General Counsel should not be allowed to argue that the change was already implemented and that, therefore, any notice to the Union was insufficient; that it is not necessary that there be "formal and full" notice, only "actual notice," *YHA, Inc.*, 307 NLRB 782 (1992); that Local 17U took itself out of the bargaining arena by having unilaterally declared a hiatus while it addressed its internal problems over identifying who would be authorized to "deal" with Brede; that Local 17U's lawyer refrained from requesting to bargain over the restoration of the in-house program; that Local 17U did not object to taking the referral system away from the Schultz' but rather Local 17U wanted the system to be taken over by Local 17U and the parties negotiated over this issue; that the change in the selection process was de minimis; and that there is no requirement to bargain about the change where, as here, all workers not covered by other collective-bargaining agreements or otherwise excluded by the certification continued to be represented by Local 17U, a seniority weighted preference continued in effect, and no one testified at the hearing herein that he or she would have been hired under the Schultz' referral system but was not hired under Johnson.

As pointed out by the General Counsel there were numerous substantial changes when Brede took the hall call for the extras in house in December 1995. One need only compare the summary of the testimony of Barbara Schultz and Johnson as set forth above. Barbara Schultz testified as follows:

that in a situation where Brede indicated that it needed 15 people, those top 15 on the list had from 5 p.m. to 8 p.m. to telephone her and if they did not, she would try telephoning them; that if she did not reach them, she would go down the list until she had enough people to fill the call; that if someone

on the list who was not in the top 15 telephoned in while she was trying to fill the call she would tell them that they would have to wait until she could determine if the first 15 people on the list would take the jobs; that if by 8 p.m. she did not hear from someone who was in the top 15 she would go down the list until she found someone and she could be telephoning them after 8 p.m.; that when she started telephoning she started at the top of the list and she always left messages for people; that if she got a telephone call from Johnson at 4 p.m. and it was for a large call she would start right away contacting people starting at the top of the list instead of waiting for them to telephone her by 5 p.m.; that if she had 10 jobs she would stop the early calling at the tenth person and wait to see if the top ten were going to take the jobs and if they did not, then after 8 p.m. she would continue on down the list; that if someone did not want to work the day she telephoned them or they wanted to take some days off this did not change their status or position on the list[.]<sup>35</sup>

Johnson testified as follows:

that under the referral system as operated by Brede the extras call in between the hours of 3 p.m. and 4:30 p.m. Monday through Friday and there is either a person answering the phone telling them where to go or there is a recording and the recording notes to call the following day since there is no work, or the recording will indicate that the caller should try back again; . . . that he makes the lists . . . each day for the next day's work; that the lists include both UFCW represented employees and the casual extra helpers that he intends to use the next day; that he makes these lists before he gets calls from people who indicate whether they are available or not; that he matches the people who call in with the people on the list to see if they are already on the list; that he also writes on the same list whether he expects to need stagehands before anybody calls in; and that he calls the stagehands for the number of employees that he wrote in the list.

The list used by the Schultz' was drafted in 1992 from the hours the extra helpers had worked for Brede. Consequently, the sole criterion at that time was seniority, which is clearly an objective criterion. Modifications to the list based on whether the extras paid the \$15 fee is also an objective criterion. As noted above, on brief Brede argues that a "seniority-weighted preference" continued in effect when Brede took the hall call in house in December 1995. Also as noted above, in its position statement of March 13, 1996, Brede conceded that some of the criteria it used for determining qualifications once it took the hall call in house are subjective. After all is said and done, it comes down to the fact that there were objective criteria utilized when the Schultzs ran the hall call. Once Brede took the hall call in house in December 1995, the criteria, when considered as a whole and as presented by Brede, can only be de-

<sup>35</sup> Compare this to the testimony of Brady and Griefenhagen with respect to Johnson's notice requirements and the unrefuted consequences they suffered at the hands of Brede when they took time off after the Steelworkers' election. Also Nierenberg did not deny that during negotiations with the Steelworkers he said that if the extras failed to call in even 1 day they would no longer be an employee of Brede.

scribed as subjective. Brede set up a system under which it was totally in control and extras would not be in a position, in terms of objective criteria, to determine whether they were being discriminated against.

Brede did not take the hall call in house until Local 17U had been certified as the exclusive representative of the extras. What Casey testified he may or may not have thought about doing before December 1995 is not controlling. What is controlling is what was done, why was it done and when was it done. As Brede's own attorney demonstrated with respect to the 1995 Teamster contract, Casey either is not a reliable witness or he is not a credible witness.<sup>36</sup> Regarding Casey's expressed reasons for taking the hall call in house, one appears to be bogus and the other is not corroborated. More specifically, on the one hand, Casey testified that he became concerned when he learned that some of the extras had stopped paying the \$15 fee and, in view of the possible company liability for not working people involved in Local 17U, he decided to take the hall call in-house and work the 20 or 30 most experienced people, including Brady and Mulligan. On the other hand, when Mulligan telephoned Brede at the end of December 1995 Barrett told him that neither he nor Brady was on the extra helper list that Brede was using, and that if he wanted work he should contact the Steelworkers. Barrett did not testify and while Johnson testified, he did not deny that he later told Mulligan that he failed to tell Barrett that he could add names to the list. If Casey were truly concerned about making sure that Brady and Mulligan were worked by Brede after it took the hall call in-house, their names would have been put back on the list by Brede without them specifically asking that it be done. While Casey testified that there were complaints about the hall call system under Gene Schultz in that he was getting unqualified people who sometimes were under the influence of alcohol and that he received complaints from Brede's salesmen, no one who allegedly complained specifically corroborated Casey on this point. The Brede salesmen did not testify. Johnson did testify but he did not specifically testify about this assertion. If there was a problem, the record does not contain evidence of the magnitude of the problem, exactly when it started, exactly how long it had been going on, who was involved, why Brede waited until Local 17U was certified as the exclusive bargaining representative

<sup>36</sup> It did not appear to be merely a mistake on Casey's part regarding when the agreement was finalized for he testified that the Teamsters "got concerned with Local 17U's appearance over protecting this work [decorating] and negotiated it into the contract." At one point Casey testified that the contract was signed in May 1996. On brief, the General Counsel raises the question of whether the contract was backdated. Trepp was never called to testify as to when he signed the contract. If indeed the Teamsters contract was signed months before Local 17U even filed its position for an election, this apparent inconsistency was not explained on the record herein. It is noted that Brady first met with Thomas in March 1995. And it is noted that on brief, the General Counsel states that "Local 17U's organizing campaign started earlier than that [July 10, 1995, when the petition for an election was filed], and was never a secret." However, there is no evidence of record indicating exactly when the campaign openly began and when the employer and others knew of the campaign. It is noted that Casey also testified that the Teamsters had heard that Brede was having "labor problems" and decorating work than what they were already doing.

of the extras to assertedly do something about it, and why this problem—if it in fact existed—could not have been remedied with some action other than Brede taking the hall call in-house. With respect to Local 17U's expressed concerns about the Schultz' system, Local 17U wanted the system operated strictly on a seniority basis. Certainly Brede does not take the position that this is what occurred when Brede took the hall call in house in December 1995.

As pointed out by the General Counsel on brief, unilateral changes such as those which Brede made herein in a first contract situation are permitted only by impasse on overall contract negotiations, waiver or exigent circumstances. *RBE Electronics of S.D.*, 320 NLRB 80 (1995). Brede is not claiming impasse. As noted above, Brede does, however, claim waiver. As indicated by the evidence summarized above, Local 17U never ceased objecting to Brede taking the hall call in house and Local 17U never ceased requesting that Brede bargain over this central issue. The 6 weeks from the time Cerone put the negotiations on hold to resolve the geographic dispute to the time Brede took the hall call in house were not a delaying tactic engaged in by Local 17U. No one disputes that there was a valid geographic question between two Steelworkers districts. And while Brede, on brief, argues that "[t]here is no basis for the General Counsel to suggest that an employer must ignore the press of business while a union dithers," the press of business, whatever that means in a legal context, is not the standard involved herein. As pointed out by the Board on *RBE Electronics of S.D.*, supra at 81:

In cases subsequent to *Bottom Line [Enterprises]*, 302 NLRB 373 (1991), the Board has characterized the economic exigency exception as requiring a heavy burden, and as involving the existence of circumstances which require implementation at the time the action is taken or an economic business emergency that requires prompt action. [Footnotes omitted.]

With respect to Brede taking the hall call in-house, it has not been shown that such action involved the existence of circumstances which required the implementation at the time the action was taken. Additionally, before the action was taken Brede did not provide Local 17U with adequate notice and an opportunity to bargain over this change. Brede violated the Act as alleged in paragraph 9(a) of the consolidated complaint in Case 18-CA-13968, et al.

Paragraph 9(b) of the consolidated complaint in Case 18-CA-13968 et al., alleges that since about January 1, 1996, and continuing to date, Respondent Brede has substantially increased its reliance on sources of unit employees other than its traditional list of casual on-call employees, including hiring or referral services provided by unions other than Local 17U, for the performance of bargaining unit work. Paragraph 9(c) of the consolidated complaint in Case 18-CA-13968, et al., alleges that since about January 1, 1996, and continuing to date, Respondent Brede has substantially increased its use of employees outside the unit to perform unit work as a substitute for unit employees. And paragraph 9(d) of the consolidated complaint in Case 18-CA-13968, et al., alleges that since about August 1996 and continuing to date, Respondent Brede has refused to treat unit employee Lenny Prouty as a member of the unit and,

as a result, has used him to perform unit work in lieu of other more senior unit employees and at less than the wages then and historically paid to unit employees.

On brief, the General Counsel contends that Brede's use of stagehands supports paragraph 9(b); that Brede's use of Teamsters supports paragraph 9(c); that the Prouty situation supports paragraphs 9(c) or (d) but not both; that in 1995, before Local 17U's election to represent extra employees, Brede utilized employees called from the Stagehands' union for essentially one show, the Auto Show, Brede's biggest of the year; that as Casey acknowledged in 1995 Brede looked first to Schultz' people and when they were "done" Brede turned to the stagehands; that the reduction in the number of stagehands used by Brede in 1992 through 1995 were the result of Brede having turned the referral of extras over to Local 653; that in 1996, after Local 17U's election, on the other hand, (a) Brede increased its calls to the stagehands almost four-fold, and they worked substantial amounts on eight different shows, (b) stagehands became a primary source and Johnson admitted that he started calling stagehands with reasonable notice, before knowing how many extras would be available from Brede's own extra pool, and (c) at the same time many people from the existing extra pool were out of work; that while Brede always used stagehands, it is still a unilateral change to substantially change the proportion of employees obtained from the stagehands; that Brede's change to calling stagehands reduced the number of hours available to the extra pool employees, and contributed to complete alienation from employment with Brede for some; that the status quo for 8(a)(5) purposes is established reasonably immediately before Local 17U's certification in September 1995; that before Local 17U's election the Teamsters did no decorating work but beginning in 1996, the Teamsters started working substantial time decorating; that the Teamster contract negotiated before Local 17U's appearance does not mention decorating work (GC Exh. 43(b)); that in the 1995-1999 contract, decorators appear for the first time, Respondent Employer Exhibit 2, article 1; that Freeman's payroll records show that Freeman did not employ a substantial number of employees in 1996 until August (GC Exh. 4), which is 9 months after the unilateral changes occurred, after the changes alienated a substantial number of employees from continuing to call in; that, on the record as it is, Prouty should be found to be a nonunit employee performing unit work in that (1) he was hired and worked for many months exclusively in a nonunit position for Exhibits Plus, and (2) even after starting on unit work, he was primarily responsible to Exhibits Plus and available to the extra bargaining unit when Exhibits Plus could spare him; and that the settlement between Brede and Prouty provides (a) no remedy to Local 17U or to the extra pool employees who may have lost work as a result of Prouty's use, and (b) no cease and desist remedy for using nonunit employees to do unit work.

Brede, on brief, argues that the evidence indicates that Brede did not change its manner of hiring from outside the unit; that the General Counsel put forth no evidence of a change in criteria for Brede's hiring stagehands, teamsters, or any other class of individuals excluded from the scope of Local 17U's representation; that the evidence also indicated that the type of shows, i.e., large shows, requiring stagehands, increased, in part

because of congested show schedules, Freeman's increased business, a particularly large show of Freeman's, or other market conditions; that on its own the fact that Brede hired more stagehands in 1996 than in the previous few years is meaningless; that the fact that Brede hired more stagehands in 1996 than in previous years was explained by the evidence concerning the nature of the trade shows and need for workers in numbers that the unit employees could not satisfy, as well as by evidence that in prior years the Employer had hired even more stagehands; and that in any event, even the aggregate numbers do not support a finding of a violation, they are de minimis and they total less than one full-time equivalent position.

Regarding paragraph 9(b), Brede's documentary evidence indicates that under the Schultz hall call Brede drastically reduced its use of stagehands. This did not change until Local 17U was certified as the exclusive representative of the extras. Once the extra hall call was taken in house by Brede the stagehands were used not as a matter of necessity but rather, as Johnson testified, as a matter of routine. Brede has not demonstrated that there were not enough extras available to meet its needs. And as pointed out by the General Counsel, the determination whether Brede substantially increased its reliance on sources of unit employees other than its traditional list of casual on-call employees focuses on a comparison of the situation just before and after Local 17U was certified as the exclusive collective-bargaining representative of the employees in the involved unit. Brede violated the Act as alleged in paragraph 9(b) of the consolidated complaint in Case 18-CA-13968 et al. The extent of this violation will be treated at the compliance stage.

With respect to paragraph 9(c), as noted above there was some question as to when Brede and the Teamsters entered into their 1995 contract. At one point, Casey testified that the contract was signed in January 1996 and that the Teamsters "got concerned with Local 17U's appearance over protesting this work and negotiated [decorating] language into the contract." At another point, Casey testified that the contract was signed in May 1996. Then Casey testified that he did not sign the contract but he noted that Brede's vice president, Trepp, signed the document and it is dated May 3, 1995. Trepp was not called as a witness to testify as to when he signed the contract. No one from the Teamsters was called as a witness. No documentary evidence was introduced herein showing the extent the Teamsters were used for decorating before Local 17U was certified as the exclusive bargaining representative of the unit. And Johnson did not testify on this point. Brady's testimony that in the spring of 1996 he complained about the Teamsters doing the work of extras was not refuted. Brady, who had worked for Brede since 1990 or 1991, had never before seen the Teamsters doing the work of extras. No one who was a reliable witness and in a position to have personal knowledge of the situation regarding what Teamsters did before Local 17U was certified refuted this. I found Brady to be a credible witness. Brede has not shown that there was any real need to use the Teamsters to do work which the extras could have done. Brede violated the Act as alleged in paragraph 9(c) of the consolidated complaint in Case 18-CA-13968 et al.

Regarding paragraph 9(d), private settlements are not binding on the Board. Brede violated the Act as alleged in para-

graph 9(d) of the consolidated complaint in Case 18–CA–13968 et al.

Paragraph 9(e) of the consolidated complaint in Case 18–CA–13968 et al., alleges that the subjects set forth in paragraphs 9(a) through (d) relate to wage, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining. Brede admitted this.

Paragraph 9(f) of the consolidated complaint in Case 18–CA–13968 et al., alleges that Respondent Brede engaged in the conduct described above in paragraphs 9(a) through (d) without prior notice to Local 17U and without affording Local 17U an opportunity to bargain with Respondent with respect to this conduct. The evidence of record, as set forth above, demonstrates that Brede did in fact engage in the conduct described above in paragraphs 9(a) through (d) without adequate prior notice to the Local 17U and without affording Local 17U an opportunity to bargain with Respondent with respect to this conduct.

As noted above, the General Counsel moved at the hearing herein to amend the consolidated complaint in Case 18–CA–13968 et al., to add paragraph 10 alleging that on or about January 4, 1996, Respondent granted recognition to and entered into and since then, has maintained and enforced a partial collective-bargaining agreement with UFCW Local 653 as the exclusive collective-bargaining representative of employees of Respondent employed in the unit described above in paragraph 5 [in the complaint]. Respondent engaged in the conduct described above, even though UFCW Local 653 did not represent a majority of the employees in the unit. The General Counsel also moves to amend to include a paragraph 12 which alleges that by the conduct described in paragraph 10, Respondent Brede has been rendering unlawful assistance and support to a labor organization in violation of Section 8(a)(1) and (2) of the Act.

On brief, the General Counsel contends that the agreement in question, General Counsel’s Exhibit 12, first came to the attention of the General Counsel when it surfaced in documents subpoenaed by the General Counsel; that Casey, who signed the agreement, testified herein; that Brede did not demonstrate any prejudice resulting from late notice; that the agreement speaks for itself and requires no parole evidence to establish a violation; that the 8(a)(2) violation is closely related to the other allegations of the complaint; that just because negotiating the referral system with Local 563 was likely illegal when instituted does not give Brede carte blanche to cease using it at any time; that whatever happened before September 18, 1995, after that, Brede had an obligation to deal exclusively with Local 17U regarding its referral practices for extra employees and it was unlawful to agree to these changes with Local 653 instead; and that in the circumstances existing here the amendment should be granted, *Children’s Mercy Hospital*, 311 NLRB 204 at 204 fn. 2 (1993).

As noted above, paragraph 5 of the agreement in question reads as follows: “Effective December 1, 1995, Brede will handle extra labor in-house.” For the reasons given by the General Counsel, as set forth in the next preceding paragraph, the motion to amend the consolidated complaint in Case 18–CA–

13968 et al., is granted. Additionally, for the reasons given by the General Counsel, as set forth in the next preceding paragraph, Brede violated the Act as alleged in paragraphs 10 and 12 of the amended consolidated complaint in Case 18–CA–13968 et al.

On brief, the General Counsel seeks to further amend this complaint by renumbering amended paragraphs 10 to 10(a) and adding a new paragraph 10(b) as follows:

On an unknown date in 1997, Respondent Brede, Inc., entered into and since then has maintained and enforced a partial collective bargaining agreement with IATSE Local 13 as the exclusive collective bargaining representative of employees employed in the Unit described above in paragraph 5 [of the complaint]. Respondent Brede, Inc., engage in this conduct even though IATSE Local 13 did not represent a majority of the Unit.

On brief the General Counsel contends that, in effect, he first learned, after the close of the hearing herein when Brede finally complied with his subpoena and provided all of its contracts with other unions, that Brede also has continued to negotiate with the stagehands since Local 17U’s certification; that a finding should be made herein that General Counsel’s Exhibit 43(g), is in violation of Section 8(a)(2) of the Act “for the same reasons as does the interim agreement with Local 653”; that since September 18, 1995, there has only been one lawful representative of “all on-call, casual extra employees” (emphasis in original), Local 17U; that there is still room for the stagehands to represent a separate unit of employees with special skills or duties in the area of rigging and sign hanging; that there is also nothing illegal in Brede’s using the Stagehands’ referral service as a source of extra employees, consistent with past practice and its bargaining obligations to Local 17U; that since Local 17U’s certification, however, it is not permissible to bargain terms and conditions of employment for extra employees with the stagehands, and that is what General Counsel’s Exhibit 43(g) shows, namely, that Brede has negotiated terms and conditions or employment for extra employees referred by the Stagehands union since Local 17U’s certification; that despite the fact that no notice of this violation is given in the complaint, it should be found to have been fully litigated; that “[i]t is well settled that the Board may find and remedy a violation even in the absence of a specified allegation in the complaint if the issue is closely connected to the subject matter of the complaint and has been fully litigated,” *Pergament United Sales*, 296 NLRB 333, 334 (1989), *enfd.* 920 F.2d 130 (2d Cir. 1990); that it is within the Board’s prerogative to find a violation fully litigated despite its absence in the complaint, even if the General Counsel did not request it, *Independent Metal Workers Local 1 (Hugh Tool Co.)*, 147 NLRB 1573, 1577 (1964); that the General Counsel now requests it; that the stagehands’ duties and historical uses were fully litigated and the only element of the violation not addressed in the record is the contract (GC Exh. 43(g)); that Brede’s having offered the contract would seem to preclude any possible attempt to rebut the existence or validity of General Counsel’s Exhibit 43(g); and that an 8(a)(2) violation for contracting with the Stage-

hands after Local 17U's certification should be found fully litigated.

The copy of General Counsel's Exhibit 43(g), which was received with a group of late-filed exhibits, is not a contract. The name of the employer is not provided, the document is not signed and the date the alleged agreement was entered into is not specified. The document does indicate a specified term. Nonetheless, in the circumstances existing here, the motion of the General Counsel to further amend the consolidated complaint in Case 18-CA-13968 et al., to include the above-described paragraph 10(b) is denied.

UFCW Local 653 admits paragraph 5 of the complaint in Case 18-CB-3724 which alleges that since before January 1, 1993, a more exact date being unknown to the General Counsel, until about July 22, 1997, Respondent UFCW Local 653 and Freeman have maintained an agreement or understanding requiring that Respondent be the exclusive source of referrals of employees for employment with Freeman in the Minneapolis-St. Paul, Minnesota area.

Paragraph 6 of the complaint in Case 18-CB-3724 alleges that from about June 2, 1996, until about July 22, 1997, Respondent, through its agent Kevin R. Sabas, selected employees for employment with the Freeman without reference to objective standards or criteria.

On brief, the General Counsel contends that referring employees to work through an exclusive hiring hall without following objective criteria violated Section 8(b)(1)(A) as a matter of restraint and coercion, not just a violation of a union's breach of duty of fair representation, by demonstrating a union's power over a hiring hall applicant's employment, *Teamster Local 5 (Leonard B. Herbert Jr. & Co.)*, 272 NLRB 1375 (1984); that a union that fails to keep written records, standards and procedures has the burden of demonstrating that objective criteria were followed, *Laborers Local 394 (Bldg. Contractors Assn. of New Jersey)*, 247 NLRB 97 at 97 fn. 2 (1980), enf. 659 F.2d 252 (DC Cir 1981), cert denied 454 U.S. 861 (1981); that Freeman's payroll records show that between December 1995, when Gene Schultz took over making referrals, and the Smithsonian show—the first show that Sabas called for—16 new employees, who had never worked for Freeman before, worked as extras;<sup>37</sup> that these 16 people are not on the list Schultz submitted to the Board (GC Exh. 8), nor are they on the list Sabas used after Schultz quit doing the referrals (GC Exh. 14); that there is no explanation for how they worked ahead of the people on the list and, therefore, their presence at the jobsite is not explained by objective criteria; that Sabas testified that it was pretty much a judgment call as to who he would tell could work and who he would hold off until after 7 p.m.; that making people call in is a nonobjective criteria even if Sabas blindly make assignments in the order the calls were received; that Sabas did not blindly make assignments in the order the calls were received; that out of the 105 different extras who appear in Freeman's payroll records between September 25 and No-

vember 21, 1996, 44 are not on Sabas' list or the post-it notes offered as evidence of Sabas' system; that most of them never worked for Freeman before August 1, 1996; that Sabas' description of the order in which he made the referrals fails to explain by any objective standard the order in which those new people were called or how they got called ahead of the people on the list; that the referral system for Brede and Freeman started at the bargaining table with an agreement to use Local 653 as their source of employees; that Gene Schultz' and Sabas' authority came from Local 653, they performed a collective-bargaining function for Local 653 with Local 653's knowledge, permission and assistance; that the employees thought that Gene Schultz was an agent for Local 653 for every month their receipt for the monthly payment was on a Local 653 form that Zahn knew about and permitted; that Zahn supplied Sabas with the list from which he was supposed to make the calls; and that in view of the fact that his December 12, 1996, affidavit to the Board deals with the question of whether he was unlawfully refusing to refer Brady and Mulligan, it was an outright fabrication when Sabas testified at the hearing herein that he did not know that there was a charge filed over this matter when he referred Brady and Mulligan to a show in February 1997.

UFCW Local 653, on brief, argues that while the law requires that a union be able to explain its criteria, there is no requirement that the criteria be written; that Sabas was elected by his coworkers to the position of shop steward; that Sabas volunteered to call the extras; that neither Local 653 nor Business Agent Zahn had anything to do with selecting Sabas to perform the involved task; that Sabas was not acting as Local 653's agent in calling in the extras; that Sabas was not acting in concert with Local 653 and Local 653 did not instigate, support, ratify, or encourage him; that assuming for the purposes of argument that Sabas was Local 653's agent, the manner in which he maintained and used the list was proper; that Sabas was able to articulate the objective criteria for his operation of the referral service; that Sabas' un rebutted testimony was that he started at the top of the list and worked his way down to the last added name each time he made the call; and, therefore, he used an objective criteria, known to all, and did not discriminate against any individual.

Sabas was acting as an agent for UFCW Local 653. Section 2(13) of the Act provides as follows:

In determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

A union is liable for acts within the authority (actual or apparent) of its agent if it surrounds that agent, here a shop steward, with indicia of authority. As pointed out by both Zahn and Eugene Schultz, during negotiations in the early 1990s, it was agreed that UFCW Local 653 would do the hall call. Zahn, as business agent of UFCW Local 653, authorized Eugene Schultz to use UFCW receipt forms to acknowledge payment of the \$15 fee. While the forms were no longer in use when Sabas took over the hall call for Freeman after being elected steward, he continued performing the same tasks as Eugene Schultz in re-

<sup>37</sup> Debra Potvin, Don Saxum, Joe Taubert, Andy Deluca, Erich Comett, David Hammond, Brian Berthiaume, Shanon Comett, Bob Goble, Travis Ristow, Jason Bonnett, Justin Bonnett, Chris Bass, Yvone Flanders, Lance Lemieux, and Thomas White.

gard to the hall call. Employees had no reason to view him any differently than they viewed Eugene Schultz. Zaugg of Freeman looked to UFCW as the labor supplier of both journeymen and, before the Steelworkers certification and resolution of the geographic dispute, extras. Freeman did not indicate that it looked to the individual Eugene Schultz as the labor supplier. As noted above, Eugene Schultz ran the hall call for Freeman extras until Sabas was elected steward in September 1996. The fact that Sabas may have volunteered for the task is not controlling. As pointed out by the General Counsel, Sabas' authority came from UFCW Local 653, and Sabas performed a collective-bargaining function for Local 653 with Local 653's knowledge, permission and assistance. Sabas and Eugene Schultz were acting within the authority UFCW had conferred. Both were agents of UFCW Local 653.

Sabas selected employees for employment with Freeman without reference to objective standards or criteria. Since Sabas did not maintain any records other than the list (GC Exh. 14), one is put in the position of having to rely on Sabas' explanation of how he conducted the hall call. I find no problem with relying on Barbara Schultz' explanation of how she conducted the hall call because she impressed me as being a credible witness. She did not have an interest in this matter. On the other hand, I do not believe that Sabas is a credible witness. He is a member of Local 653 which opposed the election of Local 17U. Sabas personally engaged in antiunion animus against Local 17U. Sabas was incapable of conceding that in February 1997 when he referred Brady and Mulligan to a show, he was aware of the charge against UFCW regarding referrals of Brady and Mulligan. Sabas took this position notwithstanding the fact that he gave an affidavit to the Board on December 12, 1996, dealing, in part, with the question of whether he unlawfully refused to refer Brady and Mulligan. The evidence of record indicates that Sabas did not select employees for employment with Freeman by referring to objective standards or criteria. Since, as concluded above, Sabas is an agent of UFCW, UFCW Local 653 violated the Act as alleged in paragraph 6 of the complaint in Case 18-CB-3724.

Paragraph 7(a) of the complaint in Case 18-CB-3724 alleges that since about June 2, 1996, until about July 22, 1997, Respondent UFCW Local 653 has failed and refused to refer Daniel Brady, Dan Mulligan, Leverett Covington, and Don Jacobson for employment with the Employer. And paragraph 7(b) alleges that Respondent engaged in the conduct described above in paragraph 7(a) because the employees were members or proponents of another union, Steelworkers Local 17U, and/or because the employees complained about Respondent's operation of its referral service.

On brief, the General Counsel contends that discrimination against any particular individual is supported by evidence of failure to follow objective standards, but liability requires particularized evidence of a refusal to refer to departure from standards for the individual in question; that there are few named discriminatees in this case because of the difficulty of proving an intentional refusal to refer when the lack of work can be the result of a missed phone call; that Schultz told a group of extra employees that supporting Local 17U would cost them their jobs; that Sabas also expressed his anti Local 17U union ani-

mus also; that Eugene Schultz refused to put Brady on the list that he was using after the hall call was taken from Barbara Schultz even though Brady asked to be referred; that Schultz started referring employees who were not on the list when it closed in December 1995; that contrary to his testimony, which was not in accord with his affidavit, Sabas never called Brady or Mulligan; that there is no material issue in which Sabas deserves credit; that Sabas assigned employees right off the floor of one job to another job during the Smithsonian show; that 14 of the extras which Johnson indicated he had first "dibs" on also worked during the Smithsonian show and some were assigned more than once to the Smithsonian show; that Griefenhagen, who was on Johnson's first "dibs" list, was called by Sabas three or four times despite the fact that he told Sabas that he wanted the time off and he was not interested in working the Smithsonian show; that at the same time Brady was begging for work; that during the Smithsonian show there were at least 8 different days on which Sabas had to make a substantial number of calls to get people lined up for the next day or two; that Covington's immediate referral late in the Smithsonian run supports finding that Sabas was on the phone a lot more than he admitted; that 36 people, which is more than half the crew working the "out" at its peak, who did not work the "in" on the Smithsonian show, were hired by Sabas for the "out"; that the fact that Eugene Schultz and Sabas called some Local 17U supporters does not rebut the evidence of animus against Brady and Mulligan because Schultz and Sabas could not have blackballed all the Local 17U supporters or they would not have had anyone left to work; that 39 different extra employees started working at the Smithsonian before Mulligan started with Heritage, and 42 more new extra employees started working at the Smithsonian after Sabas saw Mulligan working for Heritage; that Brady gave Sabas Mulligan's telephone number; that Mulligan is the only one for whom failure to call in is even asserted as a disqualifying factor; that Mulligan and Brady were referred by Sabas in February 1997 offers no solace since Sabas knew in December 1996 when he gave his affidavit that there was a question of whether Brady and Mulligan had unlawfully been refused referrals; that Barrett indicated that this was the reason that Sabas called Brady and Mulligan; that Sabas did not deny that after the Smithsonian show he told Jacobson that if he did not want to sign a Local 653 authorization, he must not want to work; that the next time Freeman had work in town, the Northwest Computer show, Jacobson called Sabas for an assignment and Sabas told him that he had given the job to Brady; that Sabas did not deny that this occurred; that this was done notwithstanding the fact that Jacobson at that time was ahead of Brady on the list; that Sabas' threat and this incident compel a finding of discrimination against Jacobson; that Covington's testimony establishes that protected concerted activity, "bad mouthing" Sabas and /or Local 653's referral practices, contributed to his discharge from the Smithsonian job; that but for the protected concerted activity, Covington would not have been discharged; that even if there was a timely expressed concern about Covington's back, the record fails to support finding this was a legitimate and nondiscriminatory reason for Covington's dismissal since Sabas testified that a doctor's slip stating that Covington could work was supplied; that after Covington's

discharge, four days of substantial work remained on the Smithsonian job; that it should be inferred that lingering animus contributed to the fact that Covington only worked 2 days the following spring; that in light of the direct evidence that Covington was relieved in retaliation for protected concerted activity and the paucity of work opportunities he had thereafter, it should be found that Local 653 discriminated against Covington.

UFCW Local 653, on brief, argues that Brady and Mulligan were added to the list when Brady gave Sabas the telephone numbers just before the start of the Smithsonian show; that Covington was sent home from the Smithsonian show because of Freeman's safety concerns and told to get a release from his doctor; that Covington provided the release to Brede and not Freeman; that the list used by Sabas reflects the names of Local 17U supporters and many Local 17U supporters, including Jacobson, Olson, Richter, and Covington, were called by Sabas and worked on the Smithsonian show; that the fact that some Local 17U members or supporters were available to work on days subsequent to the initial call proves nothing in that once the initial call was made, the Freeman foreman at the show would tell the extras working from the initial call, which ones he wanted to return for subsequent set up and take down days; and that the fact that Sabas solicited the names of available Local 17U members and supporters from Brady belies the claim that he discriminated against individuals who were Local 17U supporters or members.

When Brady asked Eugene Schultz for referrals after Local 17U was certified, Schultz told him that if he ever wanted to work for Brede or Freeman again, he should call Thomas at the Steelworkers to see if Thomas could get him some work.<sup>38</sup> In the approximately next year before Sabas took over the extra hall call, Eugene Schultz made calls for 1 show for Excel and 3 or 4 shows for Freeman with the largest calling for 40 and the smallest calling for 10 workers. When Sabas took over the hall call Brady asked him to be referred out. Shortly thereafter Sabas made a number of calls for the Smithsonian show, along with some other shows. Yet he did not call Brady.<sup>39</sup> Not until February 1997, after Brady had filed a charge against UFCW and Sabas gave an affidavit to the Board regarding that matter,

<sup>38</sup> Schultz did not specifically deny saying this. And his assertion that Brady did not telephone him and ask him to be put back on the list is not credited. While Brady may not, in Schultz' opinion, have said whatever magic words it might have taken, it was obvious to Schultz that Brady wanted work. If in effect was what he was asking for.

<sup>39</sup> Sabas' testimony, to the extent that it might be interpreted to mean that he called Brady and Mulligan for the Smithsonian show or for the Excel show which occurred during the Smithsonian show (were he ended up nine people short), is not credited. I did not find Sabas to be a credible witness. Also, Brady and Mulligan use an answer machine and Sabas concedes that he never left a message for Brady. While Sabas testified that he did leave a message for Mulligan, Mulligan testified that his answer machine has never been out of order and during the Smithsonian show he did not hear from Sabas. Mulligan is credited. I found him to be a credible witness. I did not find Sabas to be a credible witness. There is no credible evidence of record that Sabas tried to contact Brady or Mulligan for work with Freeman until February 1997 for the Northwest Computer show, which was after Brady filed a charge with the Board.

did Sabas refer Brady out to a Freeman show. And then Barrett, who was the supervisor on the show, told Mulligan, in Brady's presence, that the only reason that he was working there was so that he would not file any charges.<sup>40</sup> When Jacobson called Sabas about working this February 1997 Freeman show, Sabas told him that he had given the job to Brady.<sup>41</sup> Brady is listed four places below Jacobson on the list Sabas supposedly was using. As indicated by the General Counsel, (1) between the time Eugene Schultz took over the hall call for Freeman in December 1995 and when Sabas took over this function after he was elected steward 16 new employees who had never worked for Freeman before worked as extras, and (2) most of the extras on Johnson's first "dibs" list worked the Smithsonian but Brady and Mulligan (who was not on the first "dibs" list), albeit they asked to, did not. UFCW Local 653 failed and refused to refer Brady and Mulligan because of their activities on behalf of Local 17U.

Sabas did not deny that when Jacobson refused to sign a Local 653 authorization card after he received his paycheck for the Smithsonian show, he, Sabas, said to Jacobson, "I guess some people just don't want to work for Brede anymore."<sup>42</sup> Jacobson's testimony is credited. Subsequently, as noted above, when Freeman was in town the next time and Jacobson called Sabas for work Jacobson was told by Sabas that he had given Jacobson's job to Brady. Apparently Sabas believed that with the same job he could accomplish two things. He could demonstrate that he would refer Brady notwithstanding the fact that Brady was responsible for bringing Local 17U to Minneapolis. And Sabas could punish Jacobson for supporting Steelworkers 17U and refusing to sign the UFCW Local 653 authorization card. It was icing on the cake for Sabas to be able to tell Jacobson that his job was given out of turn to the leader of the Local 17U contingent. As alleged, UFCW Local 653 failed and refused to refer Jacobson for employment with Freeman because he supported Local 17U and would not sign a UFCW Local 653 authorization card.

Sabas asked Covington to provide a doctor's release during the Smithsonian show. Sabas testified that he told Covington that if he did, he would be put back to work. Sabas also testified that Covington did come in with a doctor's slip stating that he could work. Yet Covington was not put back to work on that show. Kniefel testified that Sabas made the decision not to have

<sup>40</sup> Mulligan was more specific in testifying that Barrett said, "[S]o don't run down to the NLRB and cry, if you didn't run to the NLRB and cry all the time, you wouldn't [have] been here." As noted above, on May 14, 1996, Sabas told Mulligan that he was going to "get to go over to the Hyatt and get to work with your Steelworkers buddy Mr. Brady." Barrett was telling one "buddy" something in the presence of the other "buddy" who actually filed the charge with the Board.

<sup>41</sup> Sabas gave Brady's name because he was the one who was responsible for getting the Steelworkers involved. Mulligan was also working on this show and he too was listed below Jacobson (and above Brady) on the list that Sabas was supposedly using.

<sup>42</sup> While Sabas referred to Brede, Jacobson had to interpret this to mean that he would not be referred to Freeman jobs while UFCW Local 653 was doing the hall call. He had just finished working on a Freeman job, the Smithsonian show, he was being paid for his work on that show when the conversation took place, Sabas referred him to the Freeman show and Sabas referred extras to Freeman shows and not Brede shows.

Covington come back and he implemented it by not assigning Covington to the job list. No lawful reason was shown for taking this action against Covington. Sabas took this action because he believed that Covington “bad mouthed” him regarding Local 653’s referral practices since the hall call was taken away from Barbara Schultz. As alleged in paragraph 7 of the complaint in Case 18–CA–3724, UFCW Local 653 failed and refused to refer Covington for employment with Freeman because he supported Steelworkers Local 17U and he complained about UFCW’s operation of its referral system.

#### CONCLUSIONS OF LAW

1. Respondent Brede is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. Steelworkers Local 17U is a labor organization within the meaning of Section 2(5) of the Act.
3. UFCW Local 653 is a labor organization within the meaning of Section 2(5) of the Act.
4. Freeman is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
5. The following described unit or Respondent Brede’s employees is an appropriate one for collective-bargaining purposes:

All on-call, casual, extra employees employed as journeymen or helpers during at least two shows, exhibitions, and/or conventions at facilities located in the Minneapolis-St. Paul, MN, metropolitan area for at least five working days during the past twelve months or who have been employed at such events for at least 15 days within the past two years; excluding office clerical employees, professional employees, managerial employees, all other employees currently covered by other collective bargaining agreements, and guards and supervisors, as defined in the National Labor Relations Act, as amended.

6. On September 18, 1995, the Steelworkers Local 17U was certified as the exclusive collective-bargaining representative of the unit.
7. At all times since September 18, 1995, based on Section 9(a) of the Act, the Steelworkers 17U has been the exclusive collective-bargaining representative of the unit.
8. By (a) implementing changes in its procedures for hiring unit employees, (b) substantially increasing its reliance on sources of unit employees other than its traditional list of on call employees, (c) substantially increasing its use of employees outside the unit to perform unit work as a substitute for unit employees, and (d) refusing to treat unit employee Lenny Prouty as a member of the unit and, as a result, using him to perform unit work in lieu of other more senior unit employees and at less than the wages then and historically paid to unit employees, without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to this conduct, Respondent Brede has violated Section 8(a)(1) and 8(a)(1) and (5) of the Act.
9. By on or about January 4, 1996, granting recognition to and entering into and since then, maintaining and enforcing a partial collective-bargaining agreement with UFCW Local 653 as the exclusive collective-bargaining representative of em-

ployees of Respondent Brede employed in the unit described above even though UFCW Local 653 did not represent a majority of the employees in the unit, Brede had been rendering unlawful assistance and support to a labor organization in violation of Section 8(a)(1) and (2) of the Act.

10. By selecting employees for employment with Freeman from about June 22, 1996, until about July 22, 1997, without reference to objective standards or criteria Respondent UFCW Local 653 has restrained and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(b)(1)(A) of the Act.

11. By, since on or about June 2, 1996, until about July 22, 1997, failing and refusing to refer Daniel Brady, Dan Mulligan, Leverett Covington, and Don Jacobson for employment with Freeman because the employees supported Steelworkers Local 17U and/or complained about UFCW’s Local 653’s operation of its referral system, UFCW Local 653 has been attempting to cause and is causing an employer to discriminate against its employees in violation of Section 8(a)(3) of the Act in violation of Section 8(b)(2) of the Act.

12. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

#### THE REMEDY

It having been found that Respondent Brede violated Section 8(a)(1), (5), and (2) of the Act and Respondent UFCW Local 653 has violated Section 8(b)(1)(A) and 8(b)(2) of the Act, I shall recommend that Brede be directed to cease (a) implementing changes in its procedures for hiring unit employees, (b) substantially increasing its reliance on sources of unit employees other than its traditional list of on call employees, (c) substantially increasing its use of employees outside the unit to perform unit work as a substitute for unit employees, (d) refusing to treat unit employee Lenny Prouty as a member of the unit and, as a result, using him to perform unit work in lieu of other more senior unit employees and at less than the wages then and historically paid to unit employees, without prior notice to the Steelworkers Local 17U and without affording the Steelworkers Local 17U an opportunity to bargain with Respondent with respect to this conduct, and (e) granting recognition to and entering into and maintaining and enforcing a partial collective-bargaining agreement with UFCW Local 653 as the exclusive collective-bargaining representative of employees of Respondent Brede employed in the unit described above even though UFCW Local 653 did not represent a majority of the employees in the unit, and UFCW be directed to cease (a) selecting employees for employment with Freeman Decorating Company without reference to objective standards or criteria, and (b) failing and refusing to refer Daniel Brady, Dan Mulligan, Leverett Covington, and Don Jacobson for employment with Freeman Decorating Company.

It is further recommended that Brede, on request by Steelworkers Local 17U, rescind all unilateral changes implemented by it following the certification of Steelworkers Local 17U to represent the unit described above. Normally, with respect to the hall call, this would mean the returning to the status quo ante before Brede took the hall call away from Barbara Schultz.

However, here neither side wants the Schultz' to continue to handle the hall call. I do not believe that even if it could be done under the circumstances existing here, that it would be appropriate to require that UFCW Local 653 again handle the extra employee hall call. Brede unlawfully, unilaterally took over the hall call after the Steelworkers were certified and Brede, since it has operated the hall call after taking it away from Barbara Schultz, has operated it in an unlawful manner. In these circumstances, I believe that it would be appropriate to have the Steelworkers operate the extra employee hall call strictly on a seniority basis<sup>43</sup> for a 1-year period while Brede and the Steelworkers bargain over, inter alia, how the hall call will eventually be handled.<sup>44</sup> Nothing herein shall require Brede to rescind any increases or improvements in wages or benefits.

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<sup>43</sup> This would be done with the understanding that if Brede has a valid problem with a referral the Steelworkers Local 17U will make another referral. Also no separate fee would be charged to the employees for the hall call referrals.

<sup>44</sup> As noted above, Brede agreed to let UFCW Local 653 operate the extra employee hall call in 1992. In other words, Brede allowed a union to operate the hall call until the Steelworkers came into the picture. With the extra employee hall call operated strictly on a seniority basis and with the fact that no fee will be charged, some of the perceived problems with the way UFCW Local 653 operated the hall call for Brede will no longer exist.

It is further recommended that Brede make whole, with interest,<sup>45</sup> any employee who may have lost work because of Brede's above-described unlawful conduct since the certification of Steelworkers Local 17U.

It is further recommended that Brede make whole, with interest as authorized by *New Horizons*, supra, Lenny Prouty for any loss he may have suffered as a result of Brede's above-described unlawful conduct toward him.

It is further recommended that UFCW Local 653 make whole, with interest, as authorized by *New Horizons*, supra, any employee who may have lost work because of UFCW Local 653's above-described failure to use objective standards or criteria from June 22, 1996, to July 22, 1997.

And it is further recommended that UFCW Local 653 make whole, with interest, as authorized by *New Horizons*, supra, Daniel Brady, Dan Mulligan, Leverett Covington, and Don Jacobson for lost work because of UFCW Local 653's above-described unlawful refusal to refer from June 22, 1996, to July 22, 1997.

[Recommended Order omitted from publication.]

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<sup>45</sup> Interest as authorized by *New Horizons for the Retarded*, 283 NLRB 1173 (1987).