UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 24
(MONA ELECTRIC)

and Case 5-CB-10616

JOHN D. REECHEL,
an Individual

COUNSEL FOR THE GENERAL COUNSEL'S
ANSWERING BRIEF IN RESPONSE TO RESPONDENT'S EXCEPTIONS AND BRIEF

Johnda Bentley
Counsel for the General Counsel
National Labor Relations Board
Region 5

Dated: June 16, 2010

Counsel for the General Counsel files this brief to respond to several points raised by the Respondent Union's Exceptions and Brief in Support of Exceptions filed on June 2, 2010.

A. Richardson's Charge in 5-CB-10557 Did Not Allege Same Issue as Here

Respondent incorrectly asserts that the charges Willard Richardson filed in 5-CB-10557 alleged that the Union engaged in unlawful conduct by refusing to allow Richardson to review hiring hall records. It is true that Richardson filed charges in 5-CB-10557 that were dismissed by the Regional Director and denied on appeal, but the charge alleged the Union violated the Act by its refusal to allow Richardson to sign referral Book 1, not for denying him the right to review hiring hall records. The dismissal letter of Richardson's charge in 5-CB-10557 and the letter denying appeal are jointly in evidence as R. Exh. 1. The letter denying Richardson's appeal states: "You alleged that the Union violated its duty to fairly represent you by refusing to permit you to sign Book 1 for work referrals." With respect to both Richardson and Reechel, the violation alleged in 5-CB-10557 and 5-CB-10598 was refusal to allow them to sign Book I, and both charges were dismissed.[1]

The complaint in this matter, Case 5-CB-10616, alleges that the Union unlawfully prohibited applicants from copying information from hiring hall records. There is no inconsistency among the instant matter and the dismissal of 5-CB-10557 and 5-CB-10598; an applicant has a right to review and copy referral records if he *reasonably believes* he was referred unfairly, regardless of whether he was in fact referred unfairly. See *Operating Engineers Local 513 (Various Employers)*, 308 NLRB 1300, 1303 (1992) (Board ordered union to provide referral records to charging party even though judge found no evidence of unfair referral); *Bartenders' & Beverage Dispensers' Union, Local 165*, 261 NLRB 420, 423 (1982) (same).

[1] Though the charge for 5-CB-10557 is not in evidence, the language was similar to the charge filed by Charging Party John Reechel in 5-CB-10598, which is in evidence as part of R. Ex. 2.

B. Respondent Received Due Process Regarding Allegations Related to Richardson

Respondent's argument that it had no notice that allegations related to Richardson would be raised at the hearing is incorrect because the complaint included facts that specifically related to Richardson. The facts involving Reechel and Richardson are distinct. Richardson was told in late January 2009 that while he could copy some information from referral records, he could not copy telephone numbers (ALJD 5:10-14). Reechel was told on May 21, 2009 that while he could review the referral records, he could not record *any* information from the referral records (ALJD 4:40-42). Respondent had notice in Paragraph 8 of the complaint that one allegation included announcement and enforcement of a rule since January 26, 2009 prohibiting applicants from recording phone numbers from referral records (GC Ex. 1). Paragraph 9 describes the facts related to Reechel, namely the instruction on May 21, 2009 that employees may not record any information from the referral records. While Paragraph 8 does not include Richardson's name, the General Counsel is not required to name every witness who will testify to each allegation in its complaint.

Even if the complaint had no facts related directly to the Respondent's unlawful actions towards Richardson, it is well-settled that the Board may find and remedy a violation even in the absence of a specified allegation if the issue is closely connected to the subject matter of the complaint and has been fully litigated. *Pergament United States*, 296 NLRB 333, 334 (1989), efd. 920 F.2d 130 (2d Cir. 1990). Telling one applicant to not record phone numbers from referral records in late January of 2009 is very closely related to telling another applicant not to record any information from referral records in late May of 2009. Further, Respondent took the opportunity to cross-examine Richardson at the hearing, so the issue was fully litigated.

Therefore, Respondent was afforded due process in accordance with *Pergament United States*, id.

C. Judge Correctly Found Richardson Reasonably Believed He Was Referred Unfairly

The judge correctly relied upon documentary evidence and testimony to conclude that Richardson informed the Respondent that he believed the hiring hall referral rules were improperly administered. The Respondent's brief mischaracterizes the record to claim otherwise.

The Respondent incorrectly states that Richardson's written request to review referral records (GC Exh. 23), relied upon by the judge, does not claim that the referral rules had been improperly administered and negatively affected his referral for work opportunities. In fact, the first sentence of GC Exh. 23 states: "I have reason to believe that the local union has improperly administered the referral procedure, to my disadvantage, during the period from 01/01/1999 to 01/11/2009."

The Respondent also takes Richardson's testimony out of context to conclude that he never testified that he reasonably believed that the referral rules were administered improperly. Though Richardson admitted he did not meet the literal Book I language, he also testified: "Well, I know what Book I language says, but I felt and still feel that there were people who were in the same situation as I was that were allowed to sign Book I" (Tr. 207).

D. The LMRDA Does Not Limit Rights to Referral Records Under NLRA

The Respondent argues that Reechel and Richardson should not have access to the phone numbers of members because they are seeking the information for political purposes, and in the political context, access to the information is limited by the Labor Management Reporting and Disclosure Act (LMRDA). There is no evidence in the record that Reechel or Richardson

requested the records for political purposes. Furthermore, the Board has already addressed the specific issue of the LMRDA and the NLRA in this respect and correctly found that they are not in conflict:

> Particularly since the overall purpose of the LMRDA is to protect rank-and-file members from potential abuse by union officials, it cannot reasonably be construed to prohibit a union from disclosing membership information to its members in appropriate circumstances. Clearly the intent of the statute is to provide a minimum amount of disclosure in an election campaign, not to prevent a union from doing so, or authorizing a union to decline to do so in appropriate situations.

Carpenters Local 608 (Various Employers) 279 NLRB 747, 758 (1986).

CERTIFICATE OF SERVICE

I hereby certify that the General Counsel's Exceptions to the Decision of the Administrative Law Judge and Counsel for the General Counsel's Brief in Support of Exceptions to the Administrative Law Judge's Decision were electronically filed on June 16, 2010, and, on that same day, copies were electronically served on the following individuals by email:

John Singleton, Esq.
The Singleton Law Group
400 Redland Court, Suite 107
Owings Mills, MD 21117
Telephone: 410-902-0073
Fax: 410-902-7372
jmsingleton@sgt-law.com

Clark D. Brown
Employment Law Specialist
6003 Springhill Dr. #403
Greenbelt, MD 20770
Telephone: 301-982-0979
brownie1894@yahoo.com

/s/ Johnda D. Bentley
Johnda D. Bentley
Counsel for General Counsel
Region 5 – Washington Resident Office
1099 14th Street, NW – Suite 5530
Washington, DC 20570-0001
Ph: 202-208-3180
Fax: 202-208-3013
johnda.bentley@nlrb.gov