

UNITED STATES GOVERNMENT

**National Labor Relations Board
Region 27**



Memorandum

DATE: January 24, 2014

TO: Gary W. Shinnors
Executive Secretary

FROM: Leticia Peña
Deputy Regional Attorney
Region 27

SUBJECT: International Alliance of Theatrical Stage Employees,
Moving Picture Technicians, Artists and Allied Crafts
of the United States, Its Territories and Canada, AFL-CIO,
Local 838
Case 27-CB-093060

Earlier today our Office sent you, via email, a "Joint Motion to Transfer Proceedings to the National Labor Relations Board and Joint Stipulation of Facts" along with attachments.

When the documents that were sent to you were again reviewed by the Field Attorney assigned to the case, she noticed that a number of extra blank pages had inadvertently been included in the email. Additionally, she noticed that the support staff clerk assigned to serve the documents had incorrectly filed them via email instead of E-Filing. We would like to request that the Joint Motion to Transfer Proceedings to the National Labor Relations Board and Joint Stipulation of Facts that were emailed earlier today be withdrawn. The Region will E-File a correct version of the documents with the Executive Secretary's office.

Thank you for your consideration of the Region's request.

L.P. 

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
TWENTY-SEVENTH REGION**

**INTERNATIONAL ALLIANCE OF THEATRICAL
STAGE EMPLOYEES, MOVING PICTURE
TECHNICIANS, ARTISTS AND ALLIED CRAFTS
OF THE UNITED STATES, ITS TERRITORIES
AND CANADA, AFL-CIO, CLC, LOCAL 838**

and

CORY B. SWARTZ , an Individual

Case 27-CB-093060

and

FREEMAN DECORATING COMPANY

**JOINT MOTION TO TRANSFER PROCEEDINGS TO THE NATIONAL LABOR
RELATIONS BOARD AND JOINT STIPULATION OF FACTS**

JOINT MOTION TO TRANSFER PROCEEDINGS

Counsel for the General Counsel (General Counsel) for the National Labor Relations Board (Board), Cory B. Swartz (Charging Party), and Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada, AFL-CIO, CLC, Local 838 (Respondent or Union); collectively referred to as "the Parties," jointly move to transfer Case 27-CB-093060 to the Board pursuant to Section 102.35(a)(9) of the Board's Rules and Regulations. The Parties agree that the transfer of the case directly to the Board for a determination as to

whether a certain hiring hall rule is facially unlawful under the Act will effectuate the purposes of the Act and avoid unnecessary costs and delay.

If this motion is granted by the Board, the Parties agree to the following:

1. The record in this case shall consist of this Joint Motion and Joint Stipulation of Facts, which includes all the exhibits attached hereto, (including the Amended Charge, the Complaint, and certain documentary evidence), and each Party's statement of position. The record will also consist of the briefs of the Parties, once they are submitted to the Board.

2. The Parties waive their right to a hearing before an Administrative Law Judge and the presentation of any evidence other than that contained in the Stipulation of Facts and the attached Exhibits at this time in order to save the costs or delay of an administrative hearing, which may be unnecessary if the rule at issue is found to be facially unlawful as alleged by General Counsel.

3. Respondent specifically does not waive its right to make arguments to the Board that if the hiring hall rule at issue in this proceeding is found not to be facially unlawful as alleged by General Counsel, or not entitled to a presumption of illegality, the complaint and underlying amended charge should be dismissed with prejudice, or alternatively, that this matter should be remanded for hearing before an Administrative Law Judge to hear evidence to rebut or to justify the lawful reasons for the fine and the hiring hall rule at issue.

4. The Parties desire to file briefs with the Board and jointly request that the Board set a time for the filing of simultaneous briefs.

5. The Joint Stipulation is made without prejudice to any objection that any Party may have as to the relevance, materiality, or competency of any facts stated herein or documentary evidence attached as Exhibits.

GENERAL COUNSEL'S STATEMENT OF ISSUES

General Counsel asserts that the legal issues to be resolved in this matter are:

1. Whether Respondent violated Section 8(b)(1)(A) of the Act by maintaining an attendance rule in its Job Referral Procedure that conditions eligibility for dispatch/job referral upon the payment of fines to Respondent; and
2. Whether Respondent's attendance rule is facially unlawful in violation of Section 8(b)(1)(A) of the Act because it restrains and coerces employees in the exercise of the rights guaranteed in Section 7 of the Act.

RESPONDENT'S STATEMENT OF ISSUES

Respondent asserts that the legal issues to be resolved in this matter are:

1. Is the attendance rule and fine facially unlawful or per se illegal and if not, does the Complaint fail to state a claim upon which relief can be granted;
2. Is the maintenance of the attendance rule and fine entitled to any presumption of illegality under 8b(1)(A) of the Act, and if so, should the Complaint be dismissed or should the matter be set for hearing to allow Respondent to rebut such presumption under tests to be determined by the Board in this matter, such as a showing that the Union did not have an illegal motive or improper purpose in assessing the fines or that the attendance rule is maintained for valid reasons or is otherwise not unlawful and outweighs employees Section 7 rights; and,
3. Whether the attendance rule and fines are lawful because they do not restrain or coerce employees in the exercise of their Section 7 rights in the absence of a union security clause, when the fines are applied equally to members or non-members of Respondent in the legitimate operation of an exclusive hiring hall and under the stipulated facts and allegations in this matter which are not in genuine dispute.

JOINT STATEMENT OF FACTS

General Counsel, the Charging Party, and Respondent stipulate and agree to the following facts in Case 27-CB-093060:

1.

(a) The charge in this proceeding was filed by the Charging Party on November 13, 2012, and a copy was served by regular mail on Respondent on the same date. A copy of the charge is attached and marked as **Exhibit 1**.

(b) The amended charge in this proceeding was filed by the Charging Party on January 23, 2013, and a copy was served by regular mail on Respondent on January 24, 2013. A copy of the amended charge is attached and marked as **Exhibit 2**.

2.

On March 28, 2013, the Regional Director for Region 27 of the Board (Regional Director) issued a letter approving withdrawal of certain allegations contained in the amended charge referred to above in paragraph 1(b). A copy of the withdrawal letter is attached and marked as **Exhibit 3**.

3.

On March 28, 2013, the Regional Director issued a Complaint and Notice of Hearing in Case 27-CB-093060 pursuant to Section 10(b) of the Act, 29 U.S.C. § 151 et seq., and Section 102.15 of the Board's Rules and Regulations. A copy of the Complaint and Notice of Hearing is attached and marked as **Exhibit 4**.

4.

Respondent's Answer to the Complaint and attached documents was served on all Parties on April 10, 2013. A copy of Respondent's Answer to the Complaint and any attached documents is attached and marked as **Exhibit 5**.

5.

(a) At all material times, Freeman Decorating Company (Employer), has been a corporation headquartered in Dallas, Texas, with branch offices throughout the United States, and has been engaged in the business of producing special events, including trade shows in Salt Lake City, Utah.

(b) During the calendar year ending December 31, 2012, the Employer, in conducting its operations described above in paragraph 2(a), performed services valued in excess of \$50,000 in States other than the State of Utah.

(c) At all material times the Employer has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

6.

At all material times, Respondent has been a labor organization within the meaning of Section 2(5) of the Act.

7.

(a) Since at least May 13, 2012, the Employer and Respondent have maintained an agreement requiring that Respondent be the exclusive source of referrals of employees for employment with the Employer, which provides in relevant part:

The Company grants the Union the exclusive right to refer applicants to be employed by the Company to perform work covered by this Agreement and will communicate all labor needs exclusively to the Union Business Representative and the show site Job Steward.

(b) Since at least May 13, 2012, Respondent has maintained the following attendance rule in its Job Referral Procedure (attached and marked as **Exhibit 6**) (italic emphasis added, bold emphasis in original):

G. Suspension and Removal-from the Referral List

Any referent who fails to report to work on time will automatically be suspended from the referral list *until referent has paid a \$25.00 assessment*. Referents will be notified by regular mail of each offense and may request an appeal, in writing, before the Referral Committee within ten days of the date of the notice.

Any referent, who fails to report to work, will be suspended from the Referral procedure *until the Referent has paid a \$100.00 assessment*. Any Referent who fails to report to work the second time will automatically be suspended from the Referral list *until the Referent has paid a \$150.00 assessment*. Failure to report to work for the third time will cause the Referent to be automatically suspended from the Referral list *until the Referent has paid a \$200.00 assessment*. A Referent who fails to report to work for the fourth time will automatically be permanently removed from the referral list. **All frequency of offenses refers to the preceding twelve month period.** Referents will be notified by regular mail of each offense and may request an appeal, in writing, before the Referral Committee within ten days of the date of the notice. *All assessment [sic] must be paid before Referent is eligible for dispatch.*

8.

(a) The Parties stipulated that Utah and Idaho are “right-to-work” states, and are the only locations in which Respondent operates its hiring hall.

(b) The Parties stipulate that membership in Respondent is not a condition of employment or requirement to be eligible for referral for employment under Respondent’s Job Referral Procedure.

(c) The Parties stipulate that the General Counsel does not allege or contend that the assessment of the attendance rule fines is applied disparately against members and non-members of Respondent.

(d) The Parties stipulate the proviso of Section 8(b)(1)(A) guarantees a union the right "to prescribe its own rules with respect to the acquisition and retention of membership therein."

(e) The Parties stipulate that a union has the authority to reasonably discipline members who violate rules and regulations governing membership in order to maintain solidarity and be an effective representative of its members' economic interests.

(f) The Parties stipulate that maintaining an attendance rule addresses a legitimate concern of Respondent in the effective performance of its representative function as the administrator of the hiring hall.

(g) The Parties stipulate that Respondent contends that the attendance rule and resulting fines maintained in its Job Referral Procedure is necessary to the effective performance of its hiring hall referral function so as to preserve Respondent's reputation and relationship with employers to which it supplies labor.

(h) The Parties stipulate that the assessment of the attendance fine is only for violations of Respondent's Job Referral Program and not for a violation of any internal membership rule of Respondent's subject to members of Respondent only.

9.

Attached and marked as **Exhibits 7 and 8**, respectively are documents relating to a different IATSE Local Union that were provided by Respondent as part of its defense. Exhibit 7 is the Region 10 Regional Director's dismissal letter in Case 10-CB-

9005. Exhibit 8 is IATSE Local 834 Rules and Regulations Governing the Referral of Exhibition Employees, which was at issue in Case 10-CB-9005. General Counsel does not object to inclusion of these two Exhibits as part of the record, but specifically objects to the relevance and materiality of Exhibits 7 and 8.

10.

The Parties agree that to the extent that there are minor variations between the allegations in the Complaint and the facts set forth in this Joint Stipulation, the Complaint is amended to conform to the Joint Stipulation.

11.

This Stipulation of Facts, including the attached Exhibits, contains the entire agreement between the Parties, there being no other agreement of any kind, oral or otherwise, expressed or implied, which varies, alters or adds to the Stipulation of Facts.

12.

Attached and marked as **Exhibit 9** is General Counsel's statement of position pursuant to Section 102.35(a)(9) of the Rules and Regulation of the Board.

13.

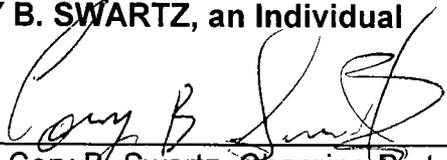
Attached and marked as **Exhibit 10** is Respondent's statement of position pursuant to Section 102.35(a)(9) of the Rules and Regulation of the Board.

14.

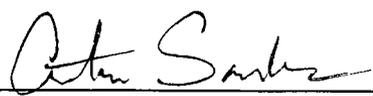
The Charging Party specifically waives the filing of a statement of position.

Respectfully submitted to the Board January 24, 2014.

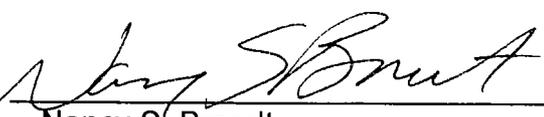
CORY B. SWARTZ, an Individual

By:  Date: 1-23-14
Cory B. Swartz, Charging Party
E-mail: scoobie66@comcast.net

**INTERNATIONAL ALLIANCE OF THEATRICAL
STAGE EMPLOYEES, MOVING PICTURE
TECHNICIANS, ARTISTS AND ALLIED CRAFTS
OF THE UNITED STATES, ITS TERRITORIES AND
CANADA, AFL-CIO, CLC, LOCAL 838**

By:  Date: 1-23-14
Arthur F. Sandack, Esq.
8 East Broadway, Suite 411
Salt Lake City, UT 84111
Telephone: (801) 595-1300
E-mail: asandack@msn.com

COUNSEL FOR THE GENERAL COUNSEL

By:  Date: January 23, 2014
Nancy S. Brandt
Counsel for the General Counsel
National Labor Relations Board - Region 27 Denver
Byron Rogers Federal Office Building
1961 Stout Street, Suite 13-103
Denver, CO 80294
Telephone: (801) 763-8138
E-mail: nancy.brandt@nlrb.gov

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 27**

**CERTIFICATE OF SERVICE OF: JOINT MOTION TO TRANSFER PROCEEDINGS TO THE
NATIONAL LABOR RELATIONS BOARD AND JOINT STIPULATION OF FACTS**

I, the undersigned employee of the National Labor Relations Board, state under oath that on January 24, 2014, I served the above-entitled document(s) by e-mail upon the following persons, addressed to them at the following addresses:

NATIONAL LABOR RELATIONS BOARD E-MAIL
1099 14TH STREET NW
WASHINGTON, DC 20005-3419
Solicitor@NLRB.GOV

WILLIAM TAYLOR, PRESIDENT E-MAIL
INTERNATIONAL ALLIANCE OF
THEATRICAL STAGE EMPLOYEES,
MOVING PICTURE TECHNICIANS,
ARTISTS AND ALLIED CRAFTS OF THE
UNITED STATES, ITS TERRITORIES AND
CANADA, AFL-CIO, LOCAL 838
230 W 200 S STE 2220
SALT LAKE CITY, UT 84101-3410

office@iastselocal838.org

ARTHUR SANDACK, E-MAIL
ATTORNEY AT LAW
8 E BROADWAY STE 411
SALT LAKE CITY, UT 84111-2272
asandack@msn.com

CORY B. SWARTZ E-MAIL
3395 S BEAVER ST
SALT LAKE CITY, UT 84119-2721
FREEMAN DECORATING COMPANY
PO BOX 660613
DALLAS, TX 75266-0613
Scoobies66@comcast.net

January 24, 2014

Georgette Maldonado, Designated Agent
of NLRB

Date

Name

/s/ Georgette Maldonado

Signature

**ERRATUM
UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 27**

CERTIFICATE OF SERVICE OF: MEMORANDUM DATED JANUARY 24, 2014, JOINT MOTION TO TRANSFER PROCEEDINGS TO THE NATIONAL LABOR RELATIONS BOARD AND JOINT STIPULATION OF FACTS

I, the undersigned employee of the National Labor Relations Board, state under oath that on January 24, 2014, I served the above-entitled document(s) by e-mail upon the following persons, addressed to them at the following addresses:

NATIONAL LABOR RELATIONS BOARD
GARY SHINNERS,
EXECUTIVE SECRETARY
1099 14TH STREET NW
WASHINGTON, DC 20005-3419
Gary.Shinners@nlrb.gov E-MAIL

DIVISION OF JUDGES
NATIONAL LABOR RELATIONS BOARD
901 MARKET, SUITE 300
SAN FRANCISCO, CA 94103 E-MAIL

WILLIAM TAYLOR, PRESIDENT
INTERNATIONAL ALLIANCE OF THEATRICAL
STAGE EMPLOYEES, MOVING PICTURE
TECHNICIANS, ARTISTS AND ALLIED CRAFTS
OF THE UNITED STATES, ITS TERRITORIES
AND CANADA, AFL-CIO, LOCAL 838
230 W 200 S STE 2220
SALT LAKE CITY, UT 84101-3410
office@iatselocal838.org E-MAIL

ARTHUR SANDACK,
ATTORNEY AT LAW
8 E BROADWAY STE 411
SALT LAKE CITY, UT 84111-2272
asandack@msn.com E-MAIL

CORY B. SWARTZ
3395 S BEAVER ST
SALT LAKE CITY, UT 84119-2721
FREEMAN DECORATING COMPANY
PO BOX 660613
DALLAS, TX 75266-0613
Scoobie66@comcast.net E-MAIL

January 24, 2014

Date

Monika Kurschen, Designated Agent of NLRB

Name

/s/ Monika Kurschen

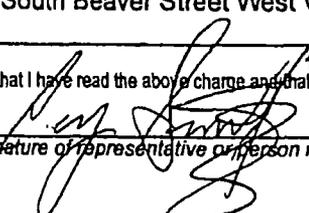
Signature

EXHIBIT 1

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
**CHARGE AGAINST LABOR ORGANIZATION
OR ITS AGENTS**

DO NOT WRITE IN THIS SPACE	
Case 27-CB-093060	Date Filed 11-13-12

INSTRUCTIONS: File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT			
a. Name I.A.T.S.E. Local 838		b. Union Representative to contact President Bill Taylor	
c. Address (Street, city, state, and ZIP code) 230 west 200 south # 2220		d. Tel. No. 801-320-0701	e. Cell No.
		f. Fax No. 801-320-0705	g. e-Mail
h. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) (list subsections) _____ of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.			
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) I am being charged in breaking the job referral procedure. The job steward said that I walked off the job. About two week after the job was done I was sent a letter from local 838's referral committee stating that I had been removed from the hiring hall work list and would not be put back on the list until I have paid a 100 dollar fine as well. The letter also said that I could appeal with in ten days of getting the letter . I did file the appeal in the allotted time and I have not gotten a response to this day. That's almost three months. No work, and no dispatches. I also asked to see the complaint from the employer and they did not have one. I have a copy of the steward's report that contradicts the charge against me.			
3. Name of Employer Freeman Decorating		4a. Tel. No.	b. Cell No.
		c. Fax No.	d. e-Mail
5. Location of plant involved (street, city, state and ZIP code) Salt Palace convention Center		6. Employer representative to contact	
7. Type of establishment (factory, mine, wholesaler, etc.) convention work	8. Identify principal product or service set up and take down trade show	9. Number of workers employed varies from job	
10. Full name of party filing charge Cory Swartz		11a. Tel. No. 801-963-4051	b. Cell No. 801-688-1966
		c. Fax No.	d. e-Mail
11. Address of party filing charge (street, city, state and ZIP code.) 3395 South Beaver Street West Valley City, Utah 84119			
12. DECLARATION I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief. By  Cory Swartz (signature of representative or person making charge) (Print/Type name and title or office, if any) 3395 So. Beaver st. West Valley City, Utah 84119 Address _____ (date) 11/8/2012		Tel. No. 801-963-4051 Cell No. 801-688-1966 Fax No. e-Mail scoobie66@comcast.net	

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Collection of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor

JT NOT EX-1

RECEIVED

2012 NOV 13 1 A 8 08

NLRB, REGION 27

EXHIBIT 2

UNITED STATES OF AMERICA		DO NOT WRITE IN THIS SPACE	
NATIONAL LABOR RELATIONS BOARD		Case	Date filed
AMENDED CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS		27-CB-093060	
INSTRUCTIONS: File an original of this charge with the NLRB Regional Director of the region in which the alleged unfair labor practice occurred or is occurring.			
1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT			
a. Name I.A.T.S.E. LOCAL 838		b. Union Representative to Contact BILL TAYLOR, PRESIDENT	
c. Address 230 W 200 S, STE 2220, SALT LAKE CITY, UT 84101-3410		d. Tel. No. (801)320-0701	e. Cell No.
		f. Fax No. (801)320-0705	g. e-Mail
h. The above-named labor organization or its agents have engaged in and are engaging in unfair labor practices within the meaning of section 8(b), subsection(s) (1)(A) and 8(b)(2) of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act, or are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.			
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)			
<p>Since about August, the above-named labor organization has restrained and coerced employees by operating an exclusive hiring hall in a manner that was arbitrary, discriminatory or in bad faith.</p> <p>On about August 23, the above-named labor organization fined and suspended Cory Swartz and has refused to refer him for employment for reasons other than the failure to tender uniformly required initiation fees and periodic dues.</p> <p>The above-named labor organization maintains a written policy that referents who have been suspended will not be dispatched until they pay a fine</p> <p>The above-named labor organization has not followed its job referral procedures regarding discipline and appeals.</p>			
3. Name of Employer FREEMAN DECORATING		4a. Tel. No.	4b. Cell No.
		4c. Fax No.	4d. e-Mail
5. Location of Plant Involved (street, city, state, and ZIP code) PO BOX 660613, DALLAS, TX 75266-0613		6. Employer representative to contact	
7. Type of Establishment (factory, mine, wholesaler) Convention work	8. Principal product or service Set up and take down trade shows	9. Number of Workers employed varies	
10. Full name of party filing charge CORY B. SWARTZ		11a. Tel. No. (801)963-4051	11b. Cell No.
		11c. Fax No.	11d. e-Mail
11. Address of party filing charge (street, city, state, and ZIP code) 3395 BEAVER ST, SALT LAKE CITY, UT 84119-2721			
12. DECLARATION			
I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.			
By:	(signature of representative or person making charge)	CORY B. SWARTZ	Tel No. (801)963-4051
			Cell No. 801-688-1966
		Print/type name and title or office, if any) Individual	Fax No.
Address: 3395 BEAVER ST, SALT LAKE CITY, UT 84119-2721		Date:	e-Mail scoobie66@comcast.net

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001) PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

ST MOT Ex. 2

EXHIBIT 3



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 27
600 17TH ST 7TH FL NORTH TOWER
DENVER, CO 80202-5433

Agency Website: www.nlrb.gov
Telephone: (303)844-3551
Fax: (303)844-6249

March 22, 2013

WILLIAM TAYLOR, PRESIDENT
I.A.T.S.E. LOCAL 838
230 W 200 S
STE 2220
SALT LAKE CITY, UT 84101-3410

Re: I.A.T.S.E. Local 838 (Freeman Decorating)
Case 27-CB-093060

Dear MR. TAYLOR:

This is to advise that I have approved the withdrawal of the portions of the charge alleging violations under Section 8(b)(1)(A) and (2) of the Act that the Charged Party unlawfully: (1) operated its hiring hall in a manner that was arbitrary, discriminatory or in bad faith; (2) fined, suspended, and failed to refer an employee; and (3) unlawfully failed to follow its job referral procedures regarding discipline and appeals.

The remaining portion of the charge alleging the Charged Party maintains a written policy that hiring hall referents will not be dispatched until they pay their fines, in violation of Section 8(b)(1)(A) of the Act, remains pending.

Very truly yours,

/s/ Wanda Pate Jones

WANDA PATE JONES
REGIONAL DIRECTOR

cc: CORY B. SWARTZ
3395 BEAVER ST
SALT LAKE CITY, UT 84119-2721

FREEMAN DECORATING
PO BOX 660613
DALLAS, TX 75266-0613

JT MOT EX-3

EXHIBIT 4

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 27

**INTERNATIONAL ALLIANCE OF THEATRICAL
STAGE EMPLOYEES, MOVING PICTURE
TECHNICIANS, ARTISTS AND ALLIED CRAFTS
OF THE UNITED STATES, ITS TERRITORIES
AND CANADA, AFL-CIO, CLC, LOCAL 838**

And

Case 27-CB-093060

CORY B. SWARTZ , an Individual

And

FREEMAN DECORATING COMPANY

COMPLAINT AND NOTICE OF HEARING

This Complaint and Notice of Hearing is based on a charge filed by Cory B. Swartz, an Individual (Swartz). It is issued pursuant to Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 151 et seq. (the Act) and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board), and alleges that International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada, AFL-CIO, CLC, Local 838 (Respondent) has violated the Act as described below:

JT MDT EX. 4

1.

(a) The charge in this proceeding was filed by Swartz on November 13, 2012, and a copy was served by regular mail on Respondent on the same date.

(b) The amended charge in this proceeding was filed by Swartz on January 23, 2013, and a copy was served by regular mail on Respondent on January 24, 2013.

2.

(a) At all material times, the Employer, Freeman Decorating Company, has been a corporation headquartered in Dallas, Texas, with branch offices throughout the United States, including one in Salt Lake City, Utah, and has been engaged in the business of producing special events, including trade shows.

(b) During the calendar year ending December 31, 2012, the Employer, in conducting its operations described above in paragraph 2(a), performed services valued in excess of \$50,000 in States other than the State of Utah.

(c) At all material times Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3.

At all material times, Respondent has been a labor organization within the meaning of Section 2(5) of the Act.

4.

(a) Since about May 13, 2012, the Employer and Respondent have maintained an agreement requiring that Respondent be the exclusive source of referrals of employees for employment with the Employer, which provides in relevant part:

The Company grants the Union the exclusive right to refer applicants to be employed by the Company to perform work covered by this Agreement and will communicate all labor needs exclusively to the Union Business Representative and the show site Job Steward.

(b) Since about May 13, 2012, Respondent has maintained the following policy, in relevant part, in its Job Referral Procedure that conditions eligibility for dispatch/job referral upon the payment of fines (*italic emphasis added, bold emphasis in original*):

G. Suspension and Removal-from the Referral List

Any referent who fails to report to work on time will automatically be suspended from the referral list *until referent has paid a \$25.00 assessment*. Referents will be notified by regular mail of each offense and may request an appeal, in writing, before the Referral Committee within ten days of the date of the notice.

Any referent, who fails to report to work, will be suspended from the Referral procedure *until the Referent has paid a \$100.00 assessment*. Any Referent who fails to report to work the second time will automatically be suspended from the Referral list *until the Referent has paid a \$150.00 assessment*. Failure to report to work for the third time will cause the Referent to be automatically suspended from the Referral list *until the Referent has paid a \$200.00 assessment*. A Referent who fails to report to work for the fourth time will automatically be permanently removed from the referral list. **All frequency of offenses refers to the preceding twelve month period.** Referents will be notified by regular mail of each offense and may request an appeal, in writing, before the Referral Committee within ten days of the date of the notice. *All assessment [sic] must be paid before Referent is eligible for dispatch.*

5.

By the conduct described above in paragraph 4(b), Respondent has been restraining and coercing 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.

6.

The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

The Acting General Counsel seeks, as part of the remedy for the unfair labor practices alleged in paragraph 4(b), an Order requiring Respondent to post the Board's traditional Notice to Employees and Members at its facility, as well as copy and mail, at its own expense, the Notice to Employees and Members to all current members and referents and those removed from the dispatch/referral list since May 13, 2012.

The Acting General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before April 11, 2013, or postmarked on or before April 10, 2013.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially

determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT commencing on **June 18, 2013, at 10:00 a.m.**, and on consecutive days thereafter until concluded, a hearing will be conducted in Salt Lake City, Utah, at a specific location to be designated later, before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding

the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Denver, Colorado, this 28th day of March 2013.

(S E A L)

/s/ Wanda Pate Jones

Wanda Pate Jones
Regional Director
National Labor Relations Board
Region 27
700 North Tower, Dominion Towers
600 Seventeenth Street
Denver, Colorado 80202
(303) 844-3551

ATTACHMENTS

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 27**

**INTERNATIONAL ALLIANCE OF THEATRICAL
STAGE EMPLOYEES, MOVING PICTURE
TECHNICIANS, ARTISTS AND ALLIED CRAFTS
OF THE UNITED STATES, ITS TERRITORIES
AND CANADA, AFL-CIO, CLC, LOCAL 838**

And

Case 27-CB-093060

CORY B. SWARTZ

And

FREEMAN DECORATING COMPANY

**AFFIDAVIT OF SERVICE OF: COMPLAINT AND NOTICE OF HEARING (with
forms NLRB-4338 and NLRB-4668 attached)**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **March 28, 2013**, I served the above-entitled document(s) by **certified or regular mail**, as noted below, upon the following persons, addressed to them at the following addresses:

**WILLIAM TAYLOR , PRESIDENT
I.A.T.S.E. LOCAL 838
230 W 200 S
STE 2220
SALT LAKE CITY, UT 84101-3410**

**CERTIFIED MAIL,
RETURN RECEIPT REQUESTED
7005 1820 0000 6897 8980**

**ARTHUR SANDACK ,
ATTORNEY AT LAW
8 E BROADWAY
STE 411
SALT LAKE CITY, UT 84111-2272**

REGULAR MAIL

**CORY B. SWARTZ
3395 BEAVER ST
SALT LAKE CITY, UT 84119-2721**

**CERTIFIED MAIL
7005 1820 0000 6897 8966**

**FREEMAN DECORATING
PO BOX 660613
DALLAS, TX 75266-0613**

**CERTIFIED MAIL
7005 1820 000 6897 8973**

March 28, 2013

Ashleigh Gillaspie Designated Agent of
NLRB

Date

Name

/s/ Ashleigh Gillaspie

Signature

EXHIBIT 5

ARTHUR F. SANDACK (2854)
8 EAST BROADWAY, STE 411
Salt Lake City, UT 84111
Telephone: (801) 595-1300
Attorney for the Respondent Labor Organization

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 27

INTERNATIONAL ALLIANCE OF
THEATRICAL STAGE EMPLOYEES,
MOVING PICTURE TECHNICIANS,
ARTISTS AND ALLIED CRAFTS OF
THE UNITED STATES, ITS
TERRITORIES AND CANADA, AFL-
CIO, LOCAL 838

Respondent,
And

CORY B. SWARTZ

an Individual,

And

Freeman Decorating Company, Inc.

Employer

RESPONDENT'S ANSWER TO
COMPLAINT

Case 27-CB-093060

Comes now Respondent, IATSE Local 838, by and through counsel and

Answers the Complaint in the above matter as follows:

1. Respondent admits paragraph 1 of the Complaint.

2. In answer to paragraph 2 of the Complaint, Respondent denies the allegation in paragraph 2(a) of the Complaint that Employer Freeman has a branch office in Salt Lake City, Utah but otherwise admits the allegations in paragraphs 2(a) and (b) of the Complaint. Respondent denies the allegations in paragraph 2(c) of the Complaint and states that Respondent is a labor organization and not an Employer as therein alleged and is the only named Respondent in the Complaint.

3. Respondent admits the allegations in paragraph 3 of the Complaint.

4. In answer to paragraph 4 of the Complaint:

(a) Respondent admits the allegations in paragraph 4(a) of the Complaint insofar as it alleges Respondent is an exclusive source of referrals under an agreement with Employer but otherwise denies the allegations in paragraph 4(a) and states that the agreement, as quoted therein, is incomplete, and read as a whole, speaks for itself.

(b) Respondent admits it maintains a Job Referral Procedure but denies the remaining allegations in paragraph 4(b) of the Complaint as Paragraph G of the Job Referral Procedure and states that the Procedure has been inaccurately and incompletely quoted therein and characterized and, as a whole, speaks for itself.

5. Respondent denies the allegations in paragraph 5 of the Complaint.

6. Respondent denies the allegations in paragraph 6 of the Complaint.

7. Respondent denies each and every other allegations not specifically denied herein.

8. Respondent denies the allegations set forth in the Remedy portion of the Complaint as no unfair labor practices have been committed as alleged and the

requested remedy is improper and unwarranted for reasons set forth in this Answer and as will be shown at hearing.

FIRST DEFENSE

Respondent fails to state a claim upon which relief can be granted.

SECOND DEFENSE

The Complaint fails to conform to the scope of the amended charge.

THIRD DEFENSE

The Complaint and claims are unfounded, frivolous and not substantially justified.

FOURTH DEFENSE

The Respondent's Job Referral Program at paragraph G which suspends referrals from work for no shows until assessments made pursuant thereto are paid, is a lawful program based on neutral rules, clearly established and consistently applied, without discrimination or regard to membership in Respondent Union or its internal rules governing strictly members of Respondent, in a right to work state under an open shop agreement. Such program is within the sound discretion of the Respondent Union and is reasonable and necessary for the effective performance of the Respondent's functions to represent its constituency for legitimate business purposes.

FIFTH DEFENSE

The Respondent's Referral Program, as set forth in the preceding Defense, is not per se unlawful, inherently destructive or motivated by an improper purpose or animus by Respondent to violate the Act in any foreseeable way, and has no such improper natural consequences, and further is not arbitrary, discriminatory or in bad faith but is justified and solely carried out for substantial and legitimate business purposes.

SIXTH DEFENSE

The claims in the Complaint and charges underlying it are moot and have otherwise been dismissed, withdrawn and or waived.

WHEREFORE the Respondent prays that the Complaint be dismissed with prejudice, and that Respondent recover from the Board its attorney's fees, costs and related expenses, with interest, incurred in defending itself.

Dated this 10th day of April, 2013.

By:

s/ 
Arthur Sandack
Attorney for Respondent

CERTIFICATE OF SERVICE

I certify I filed the signed original of the foregoing Respondent Answer, in a PDF format, electronically through the Agency's website on this 10th day of April, 2013 and emailed a copy of the same to:

Cory Swartz
3395 Beaver St
Salt Lake City Utah 84119-2721
scoobie66@comcast.net

Mike Lamoreaux General Manager
Dawnn Repp General Counsel
Freeman Decorating Company
850 Spice Island Dr.
Sparks, NV 89431
mike.lamoreaux@freemanco.com
Dawnn.Repp@freemanco.com

s/ 
Arthur Sandack

EXHIBIT 6

**JOB REFERRAL PROCEDURE
SALT LAKE CITY EXHIBITION EMPLOYEES LOCAL NO. 838**

All persons who are available for referral to jobs within the geographic jurisdiction of Salt Lake City, Utah

Local Union No. 838, IATSE, hereinafter the Union, shall be placed on the A, B, C, D, or E List, as the case may be, and referred to available jobs in accordance with the following procedure:

A list: All persons who are available for referral to jobs within the Union's geographic jurisdiction who meet the following criteria. For initial placement on this list referents must meet the following requirements:

1. Be a resident living within the geographic jurisdiction of the Union for three (3) consecutive years.
2. Have three years experience as an exhibition employee consisting of 400 hours of work in the tradeshow industry for two consecutive years followed by 600 hours of work in the industry for one year. The one year of 600 hours of work does not have to be consecutive to the two years of 400 hours of work. These hours are to be derived through this- Job Referral Procedure.
- 3.

Be certified by the Joint Certification and Training Committee (JCTC) as a Journeyman.

This list will be arranged on the basis of years of service as an exhibition employee within the Union's geographic jurisdiction and persons will be referred beginning with the most senior person.

B list: All persons who are available for referral to jobs within the Union's geographic jurisdiction who meet the following criteria. For initial placement on this list referents must meet the following requirements:

1. Be a resident living within the geographic jurisdiction of the Union for two consecutive years.
2. Have two years experience as an exhibition employee consisting of 400 hours of work in the exhibition industry for two consecutive years. These hours are to be derived through this Job Referral Procedure.
3. Be certified by the JCTC as a Journeyman.

This list will be arranged on the basis of years of service as an exhibition employee within the Union's geographic jurisdiction and persons will be referred beginning with the most senior person.

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C List: All persons who are available for referral to jobs within the Union's geographic jurisdiction who meet the following criteria. For initial placement on this list referents must meet the following requirements:

1. Be a resident living within the geographic jurisdiction of the Union for one year.
2. Have one year experience as an exhibition employee consisting of 100 hours of work in the exhibition industry for the previous year. These hours are to be derived through this Job Referral Procedure.
3. Be certified by the JCTC as a Journeyman.

This list will be arranged on the basis of years of service as an exhibition employee within the Union's geographic jurisdiction and persons will be referred beginning with the most senior person.

D List: All persons who are available for referral to jobs within the Union's geographic jurisdiction who meet the following criteria. For initial placement on this list referents must meet the following requirements:

1. Be a resident living within the geographic jurisdiction of the Union for one year.
2. Have 500 hours of work in the exhibition industry derived through this Job Referral Procedure;
3. Or, have a passing grade on a Journeyman Qualification Test given by a duly constituted local union of the IA TSE.

This list will be arranged on the basis of years of service as an exhibition employee within the Union's geographic jurisdiction and persons will be referred beginning with the most senior person.

E List: All persons who are available for referral to jobs within the Union's geographic jurisdiction who meet the following criteria. For initial placement on this list referents must meet the following requirements:

1. Be a resident living within the geographic jurisdiction of the Union.
2. Have 250 hours of work in the exhibition industry derived through this Job Referral Procedure.
3. Have successfully completed Orientation Training.

This list will be arranged on the basis of years of service as an exhibition employee within the Union's geographic jurisdiction and persons will be referred beginning with the most senior person.

All new applicants will be placed on the list for which they meet the requirements or on the Emergency Call

List if they do not qualify for the A, B, C, D, or E List

The Referral Committee of the Union may waive the requirements of consecutive years of employment in the industry where it is shown to the Referral Committee's satisfaction that the employee has the requisite

Number of years of service and his failure to meet the requirement of consecutive years of employment is for good and sufficient reason, uniformly applied, such as illness, disability, service in the armed forces of the United States or other similar reason.

Referents that perform no work as an exhibition employee through this Job Referral Procedure for one (1) year or more except as a result of disability or service in the armed forces of the United States shall be dropped from the referral list on which their name appears and shall lose all accrued seniority for job referral purposes. Such persons may again be placed on the referral list but shall be considered as a new applicant; except that those referents who have been employed for more than five (5) years as an exhibition employee through this Job Referral Procedure shall retain all accrued seniority.

The Referral Committee of the Union may waive the break in service for referents where it is shown to the Committee's satisfaction that the break in service is for good and sufficient reason, uniformly applied, such as illness, disability, service in the armed forces of the United States or other similar reason.

A. Eligibility and Responsibilities.

All persons eligible to be referred by the Union for employment must sign a Referral Agreement with the Union. The Referral Agreement provides for payment of a reasonable referral fee, established by the Union, to cover the Union's costs of administering the referral system.

All referents must be at least 18 years of age and reside within the geographic jurisdiction of the Union. This jurisdiction is defined as that granted by Local 838's parent organization, the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories, and Canada, AFL-CIO, CLC.

Referents must maintain a working phone/cellular phone. It is the responsibility of each referent to keep the Union updated as to his/her current contact information. Phone number, Email.

B. Referral Operation.

In filling all job requests, the Union will first go to the A List. If all requests are not filled from available persons on the A List, the Union will go to the B List. If all requests are not filled from the B List, the Union will go to the C List. If all requests are not filled from the C List, the Union will go to the D List. If all requests are not filled from the D List, the Union will go to the E List. If all requests are not filled from available persons on the E List, the Union may go to the Emergency Call List or any other source to fill labor requests.

When an employer requests a referent having a particular skill (e.g. 1&D, rigger, forklift, electrician, etc.) the Union, at its sole discretion, will refer the next qualified person in order of Date of Hire regardless of list placement.

Calls will be made to the individual's phone/cell phone number. Individuals will have 5 hours to call back to confirm acceptance of the job referral.

In the event the Union fails to call a person in proper order, That Person shall file a complaint with the Referral Committee.

Quick Calls. Occasionally, employers request referrals on short notice. In such cases, in order to meet its contractual obligations, the Union shall have complete discretion to fill such calls with any available referents regardless of their position on the list. Quick Calls is defined as Calls that start in 24 hours or less.

Standby The Union may establish a standby list of available referents at or near the call location in order to have referents immediately available in cases of replacements, no-shows, and quick calls.

Upon reporting to the standby report area referents desiring to standby will sign lists corresponding to their classification. Journeymen will sign a Journeyman stand-by list, Helpers will sign a Helper stand-by list, and New Hires will sign a New Hire stand-by list. Standby referents will be assigned in the following order: Journeyman, Helper then New Hire. Referents will be arranged on their respective lists on the basis of this referral system.

C. Work Rule.

1. All persons are requested to report to the Job Steward at the job site 15 minutes prior to the announced starting time.
2. All persons are required to remain at the job site until released by the Job Steward. Any person who leaves a job site without approval from the Job Steward prior to release shall be reported to the Union and shall be treated as a no show.
3. Cutbacks or layoffs shall be done in reverse Date of Hire on a first-in-last-out basis according to the Steward's call list. Except in cases of job or work continuity or in cases of contract provisions to the contrary.
4. Referents may not quit one job in order to take another unless requested to do so by the Union. Job jumping will not be allowed.
5. All persons are required to arrive at work calls with sufficient tools to perform assigned jobs. Failure to have the required tools at report time may subject the person to removal from the call with no compensation. The tools must be in working order. Sufficient tools for general decorating calls are defined as the following.

Hammer	Adjustable Wrench
Phillips head screwdriver	Slot head screwdriver
Arrow IT-21 Staple gun	Tape measure (25' minimum)
Utility knife	Pencil
Pliers	Tool belt or apron
Pry Bar	Wire Cutters
Top or bottom carpet cutter	
Battery operated screw gun	
Allen wrenches, Rota Lock keys	

These are the minimum required tools. Most workers bring a variety of extra tools that help them do their job more efficiently. Workers on special skill calls must bring any tools needed to do their jobs.

6. Referents must report to work wearing clean and neat clothing. Clothing must pose no safety problems. Clothing must not have holes or tears in them. This is for safety purposes. Long pants (no oversized) must permit climbing ladders. Shorts are permitted on show production days only and must be knee length. Shorts are not permitted on first day of show beginning or the last day of show end. Shoes must cover the foot, have the appropriate sole and must be appropriate for kicking carpet, climbing. And working for long periods.

No work out pants, tight, leotards, short shorts, loose baggy clothing, sleeveless shirts or inappropriate foot wear is allowed. T-shirts are not allowed except for Union T-shirts, solid color T-shirts or T-shirts with employer logos; otherwise, collared shirts must be worn. No shirts, hats or other apparel containing lewd, vulgar or offensive language or message are permitted. Referents are not to wear clothing or identification of an employer who is not their present employer. For safety reasons, large jewelry is not permitted and long hair must be tied back. Some employers may require that specific apparel be excluded or included on their jobs. Personal hygiene is essential when working long hours and closely with other workers.

Failure to have appropriate attire at report time may subject the person to removal from the call with no compensation.

7. The Union is not an employer. Individual employers have different pay schedules, if there are any questions as to the expected date of pay, these should be referred to the Job Steward. Most paychecks for work gained through the Union's referral system are sent by the employer to the Union for disbursement. All paychecks will be mailed to the referent. It is the responsibility of each referent to keep the Union updated as to his/her current mailing address.
8. Referents obtaining exhibition work within the Union's geographic jurisdiction without being referred by the Union or without permission of the Business Representative will be removed immediately from the referral system.
9. Job Steward shall enforce all work rules.

D. Special Skills

An individual will be required to submit proof of possession of any claimed special skills, abilities or experience, including taking classes and passing a test or other demonstrations established by the Union.

E. Job Stewards

1. Job Stewards represent the Union. The Union shall appoint, train, and certify its Job Stewards in its sole discretion. Job Stewards must be and remain members in good standing of the Union. The Union reserves the right to cancel the tenure of a Job Steward at anytime.
2. Job Stewards shall be appointed at the sole discretion of the Business Representative.

3. A Job Steward who calls off of a call without a reasonable excuse will be removed from the steward list.

F. Referral Committee.

1. The President of the Union shall appoint a Referral Committee consisting of five Union members in good standing. The term of office shall be for three years. The Committee shall select from its membership a chairman and a secretary who shall retain voting privileges. Referral Committee members who miss three consecutive committee meetings without a reasonable excuse shall be automatically removed from the committee.
2. The Referral Committee shall be responsible for hearing complaints regarding the operation of this Referral System and shall hear all appeals concerning these rules. The Referral Committee shall not have the authority to change these rules.
3. Three members of the Referral Committee shall constitute a quorum.
4. All decisions shall be made by a majority vote of those members present at any meeting.
5. The Referral Committee shall meet at least once a month.

G. Suspension and Removal from the Referral List.

Any referent who fails to report to work on time will automatically be suspended from the referral list until the referent has paid a \$25.00 assessment. Referents will be notified by regular mail of each offense and may request an appeal, in writing, before the Referral Committee within ten days of the date of the notice.

Any referent, who fails to report to work, will be suspended from the Referral procedure until the Referent has paid a \$100.00 assessment. Any Referent who fails to report to work the second time will automatically be suspended from the Referral list until the Referent has paid a \$150.00 assessment. Failure to report to work for the third time will cause the Referent to be automatically suspended from the Referral list until the Referent has paid a \$200.00 assessment. A Referent who fails to report to work for the fourth time will automatically be permanently removed from the referral list. **All frequency of offenses refers to the preceding twelve month period.** Referents will be notified by regular mail of each offense and may request an appeal, in writing, before the Referral Committee within ten days of the date of the notice. All assessment must be paid before Referent is eligible for dispatch.

The Referral Committee may set aside the aforementioned penalties only in cases of verifiable emergencies.

All decisions of the Referral Committee may be subject to appeal to the Executive Board and then to the Body. The Body's decision shall be final and binding on all parties.

In addition to the penalties expressly provided under the various sections of this Referral Procedure, any person who engages in conduct or behavior damaging to the Union's contractual relations with employers, or conduct or behavior that disrupts or obstructs the referral system or the Union's ability to carry out it's

Duties and obligations shall be subject to appropriate discipline. This behavior includes but is not limited to:

Major offenses:

1. Conviction of a felony related to work.
2. Fighting.
3. Theft at work.
4. Threatening harm to any referent, Union employee, Job Steward, Union official, or employer representative while at work, or in connection with work. This includes threatening or abusive language to employees at the Union office.
5. Consumption of alcohol or controlled substances at work or being under the influence of alcohol or controlled substances at work.

Minor offenses:

1. "Giving" your assigned job to another person or referral.
2. Harassment

Major offenses will result in permanent removal from the referral list. Minor offenses will be treated as a No-show.

The Job Steward and/or Lead Person on the call shall be responsible for reporting any infractions of the above regulations although any referent may do so. Any person becoming disruptive or argumentative with the Job Steward or any other referent may be replaced on the job at the Job Steward's request and may be required to appear before the Referral Committee for further disciplinary action. Failure by the Job Steward to report infractions can result in disciplinary action against the Job Steward.

Any referent that is voluntarily or involuntarily removed from the Referral List, who later wishes to return to the Referral List, shall be required to notify the Union in writing of their desire to be reinstated.

H. Appeals.

1. A referent may appeal any penalty to the Referral Committee. Appeals of penalties for late or no-shows must be based on a verifiable emergency.
2. Appeals must be filed in writing and received at the Union office within ten (10) calendar days of the date of the notice of the reported infraction. The written appeal must clearly and specifically describe the subject matter of the appeal and the remedy desired. The written appeal should indicate if the appellant wishes to appear in person before the Referral Committee. Appeals for late or no-shows must be accompanied by documentation of a verifiable emergency.
3. The Referral Committee, upon notice to the appellant, shall hold a hearing on the appeal within thirty (30) days of receipt of the appeal, except for extenuating circumstances. The

Referral Committee will notify the appellant of the date, time and place of the hearing if the appellant has requested to appear at the hearing or if the Referral Committee is requesting the appellant to appear at the hearing. Appellants who fail to appear at the hearing shall have their appeal dismissed.

4. The Referral Committee will make a determination as to the guilt or innocence of the appellant.

I. Complaints

1. A Referent may file a complaint concerning any alleged violation of the terms of this Job Referral Procedure to the Referral Committee.
2. Such complaint must be filed in writing and received (at the Union office within ten (10) calendar days of the date of the alleged violation of the terms of this Job Referral Procedure. The written complaint must clearly and specifically describe the subject matter of the complaint including the section or sections alleged to have been violated and the remedy desired.
3. The Referral Committee, upon notice of the complainant, shall hold a hearing on the complaint within thirty (30) days of receipt of the complaint, except for extenuating circumstances. The Referral Committee will notify the complainant of the date, time and place of the hearing. Complainants who fail to appear at the hearing shall have their complaint dismissed.
4. The Referral Committee will make a determination as to the merits of the complaint and determine an appropriate remedy in cases where a remedy is warranted.

J. Amendment of Job Referral Procedure

This Job Referral Procedure may be amended through the following steps:

1. The proposed amendment must be submitted in writing at a regular monthly meeting. The amendment will be read, discussed and/or amended. The proposed amendment will be mailed to all members no later than seven days before the next regular monthly meeting.
2. At the next regular monthly meeting the amendment will be discussed and voted on. No modifications are allowed and two-thirds (2/3) of the members present are required to approve the amendment.

I.A.T.S.E. LOCAL 838
230 West 200 South
Suite 2220
Salt Lake City UT 84101-3414
801-320-0701

EXHIBIT 7



United States Government

NATIONAL LABOR RELATIONS BOARD
Region 10
233 Peachtree Street, NE
Harris Tower, Suite 1000
Atlanta, Georgia 30303-1531
Telephone: (404) 331-2896
Fax: (404) 331-2858

May 27, 2010

Mr. R. Keith Womack
1096-A Herndon Street, Apt. A
Atlanta, GA 30318

Re: International Alliance of Theatrical Stage
Employees, Exhibition Employees Local
834 (Shepard Convention Services, Inc.)
Case 10-CB-9005

Dear Mr. Womack:

The Region has carefully investigated and considered your charge against International Alliance of Theatrical Stage Employees, Exhibition Employees Local 834 alleging violations under Section 8 of the National Labor Relations Act.

Decision to Dismiss: Based on that investigation, I have concluded that further proceedings are not warranted, and I am dismissing for the following reasons:

As a result of the investigation, it does not appear further proceedings are warranted. In your charge you contend that the Union has threatened you with suspension and levied fines against you for failing to follow the referral hall's no-show/call-in requirements because of your criticism of the Union's business agent, Faye Parker.

The investigation revealed that the Union applied Section 5.A. of its referral rules governing "no-shows" for work, for your failure to follow the rules on January 26 and 31, 2010. You admittedly did not call the Union's call agent on January 26, 2010, as required by Section 5.A., nor did you call and notify the Union on January 31, 2010 when you failed to appear for the work assignment. In addition, Section 5.N. of the referral rules provides for a suspension from the referral list for failure to pay a levied fine. The documentary evidence submitted by the Union established that fines for "no-shows" are uniformly applied to all members who fail to follow the established rules. Under these circumstances, the evidence was insufficient to establish that the Union had an improper or illegal motive in assessing the fines.

Though not specified in your charge, you further contend that the Union has prohibited you from coming to the union hall to conduct business. The investigation revealed that you may present at the Union hall on Friday of every week or when you present pursuant to a previously

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scheduled appointment. While this arguably might be an inconvenience to you, it was concluded that the Local Union's decision in this regard was purely an internal union matter, and did not violate the proscriptions enumerated in Office Employees Local 251 (Sandia), 331 NLRB 1417 (2000). Thus, the limitation on when you may conduct business at the hall does not raise an issue amenable to resolution under the National Labor Relations Act. Accordingly, I am refusing to issue complaint in this matter.

Your Right to Appeal: The National Labor Relations Board Rules and Regulations permit you to obtain a review of this action by filing an appeal with the GENERAL COUNSEL of the National Labor Relations Board. Use of the Appeal Form (Form NLRB-4767) will satisfy this requirement. However, you are encouraged to submit a complete statement setting forth the facts and reasons why you believe that the decision to dismiss your charge was incorrect.

Means of Filing: An appeal may be filed electronically, by mail, or by delivery service. Filing an appeal electronically is preferred but not required. The appeal **MAY NOT** be filed by fax. To file an appeal electronically, go to the Agency's website at www.nlr.gov, click on **E-GOV**, select **E-Filing**, and follow the detailed instructions. To file an appeal by mail or delivery service, address the appeal to the General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1099 14th Street, N.W., Washington D.C. 20570-0001. Unless filed electronically, a copy of the appeal should also be sent to me.

Appeal Due Date and Time: The appeal is due on **June 10, 2010**. If you file the appeal electronically, it will be considered timely filed if the transmission of the entire document through the Agency's website is accomplished **no later than 11:59 p.m. Eastern Time** on the due date. If you mail the appeal or send it by a delivery service, it must be received by the General Counsel in Washington, D.C. by the close of business at **5:00 p.m. Eastern Time** or be postmarked or given to the delivery service no later than **June 9, 2010**.

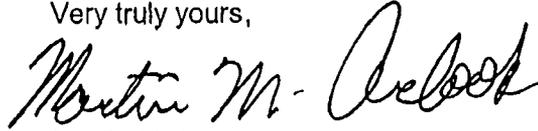
Extension of Time to File Appeal: Upon good cause shown, the General Counsel may grant you an extension of time to file the appeal. A request for an extension of time may be filed electronically, by fax, by mail, or by delivery service. To file electronically, go to www.nlr.gov, click on **E-Gov**, select **E-Filing**, and follow the detailed instructions. The fax number is (202) 273-4283. A request for an extension of time to file an appeal **must be received on or before the original appeal due date**. A request for an extension of time that is mailed or given to the delivery service and is postmarked or delivered to the service before the appeal due date but received after the appeal due date will be rejected as untimely. Unless filed electronically, a copy of any request for extension of time should be sent to me.

Confidentiality/Privilege: Please be advised that we cannot accept any limitations on the use of any appeal statement or evidence in support thereof provided to the Agency. Thus, any claim of confidentiality or privilege cannot be honored, except as provided by the FOIA, 5 U.S.C. 552, and any appeal statement may be subject to discretionary disclosure to a party upon request during the processing of the appeal. In the event the appeal is sustained, any statement or material submitted may be subject to introduction as evidence at any hearing that may be held before an administrative law judge. Because we are required by the Federal Records Act to keep copies of documents used in our case handling for some period of years after a case closes, we may be required by the FOIA to disclose such records upon request, absent some applicable exemption such as those that protect confidential source, commercial/financial information or personal privacy interests (e.g., FOIA Exemptions 4, 6, 7(C) and 7(d), 5 U.S.C. § 552(b)(4), (6), (7)(C), and (7)(D)). Accordingly, we will not honor any

requests to place limitations on our use of appeal statements or supporting evidence beyond those prescribed by the foregoing laws, regulations, and policies.

Notice to Other Parties of Appeal: You should notify the other party(ies) to the case that an appeal has been filed. Therefore, at the time the appeal is sent to the General Counsel, please complete the enclosed Appeal Form (NLRB-4767) and send one copy of the form to all parties whose names and addresses are set forth in this letter.

Very truly yours,



Martin M. Arlook
Regional Director

Attachments

cc: Office of the General Counsel
National Labor Relations Board
Washington, D.C. 20570

George N. Davies, Esquire
Nakamura, Quinn & Walls
2700 Highway 280 East, Suite 380
Birmingham, AL 35223

Ms. Corinthia Faye Harper
International Alliance of Theatrical Stage
Employees, Exhibition Employees Local 834
500 Bishop Street NW, Suite F-1
Atlanta, GA 30318

Mr. Ercan Kuşal
Shepard Convention Services
1424 Hills Place, NW
Atlanta, GA 30318

EXHIBIT 8

IATSE LOCAL 834 RULES AND REGULATIONS

GOVERNING the REFERRAL of EXHIBITION EMPLOYEES

These Rules and Regulations govern the referral of all employees who are referred by the Union to exhibition, convention, and trade show industry employers within the Union's jurisdiction.

1. Referral Lists

- A. The Union maintains referral lists of qualified employees to service the trade show industry. Currently, the Union has a General referral list and a Freight referral list. The Union may create additional referral lists as the need arises.
- B. **General Referral List.** The General list is composed of three classifications: Journeyman, Apprentice, and Extra. The minimal qualifications for each classification are as follows:

Journeyman:

- I. A minimum of 2,000 hours of experience in the industry
- II. Application to and approval by the Joint Classification and Training Committee (JCTC).
- III. For Apprentices advancing to Journeyman, the JCTC will schedule the applicant for Journeyman testing. Upon the completion and passing of all tests, the applicant will advance to Journeyman classification, to be effective five working days from the test date.

Apprentice:

- I. A minimum of 750 hours of experience in the industry.
- II. Application to and approval by the JCTC. Advancement to Apprentice classification will be effective five working days from the date of JCTC approval.

Extra:

- I. New applicants with minimal industry experience are automatically classified as Extras, unless the JCTC approves and certifies the applicant for a higher classification.

Freight Referral List

- A. The Freight Referral list is composed of three classifications: Groundman/Loader, Checker/Forklift, and Lead Person/Rigging Freight. To be classified as a Forklift Driver, the employee must show that he or she has been certified as a Forklift Driver through an OSHA-approved program.
- B. The referral lists are meant to identify individuals who are actively seeking employment in the trade show and exhibition industry. An individual who has worked less than 150 hours in any calendar year may be classified as inactive and not called, unless a leave of absence has been obtained pursuant to these Referral Rules and Regulations.
- C. It is up to the employee seeking advancement to a different classification to prove the required hours of experience or provide other necessary documentation to the satisfaction of the JCTC, pursuant to the rules adopted by the Committee.

2. Referral Agreement

- A. Each employee must sign a Referral Agreement with the Union in order to be referred from any referral list. The Referral Agreement provides for payment of a reasonable referral fee to cover the costs and expenses of the Union's administration of the referral service. The Union has the right to set and to change the amount of the referral fee from time to time. All such changes will be posted at the Union's offices.
- B. Payroll Deduction Referral Fee. Most collective bargaining agreements provide that the employer will automatically deduct and withhold from each employee's pay check the referral fees due to the Union, provided the employee has authorized such deduction in writing. In all other cases, or if the employee has failed to authorize such payroll deduction, the employee is

responsible for paying the referral fee to the Union at the end of each payroll period. Failure to tender such referral fee at such time will result in the employee's immediate suspension from the referral list.

3. **Referral Procedure**

- A. **Rotation.** In general, the Union refers employees in rotating order beginning where the last call left off. This rule does not apply in cases of employer requests, quick calls, replacements, or emergencies which prevent the Union from making a normal rotation call. In addition, the Union will not refer employees classified as Extras in rotation order, but has discretion to refer them based upon the Union's determination of the employee's qualifications and experience needed for the call.
- B. **Telephone Notification.** The Union will attempt to notify employees of available work by telephone, except in cases where this is not practical. When telephoning employees, the Union will follow these procedures:
1. **First Sequence:**
Each individual will be telephoned at their first designated telephone number. If not reached, the individual will be immediately telephoned at a second alternative telephone number designated by the referral.
 2. **Second Sequence:**
Individuals will be telephoned in the same manner within 30 minutes of the first telephone sequence **only** if the Union is unable to leave a message during the first sequence (**no answer or no answering machine**). No other telephone call will be made unless the list rotates completely around.
- C. Except in cases of emergencies, replacements, and quick calls, the Union will not put out calls earlier than 11:00 AM each day.
- D. When contacting employees for a work call, the Union will provide the name of the work call (show name), name of employer, work site and location, report date and time, Job Steward name, employer supervisor name, and whether the work call is a request call or rotation call.
- E. Referrals shall have two hours to confirm acceptance of the call. It is possible that the call could already be filled by the time the employee makes a return call to confirm acceptance.
- F. An employee may confirm in advance the next call to such employee, if such call is to be made the next day, provided that the individual has the means of receiving and recording the Union's report message for such call.
- G. Employees will be placed on the job list in the order of confirmation received.
- H. If the call is not filled by 6:00 PM on the day before report, the call will be converted to a "Quick Call" and covered pursuant to the rules governing "Quick Calls".
- I. The employee listed is the only person who can accept a referral call.
- J. All employees seeking work must keep the Union informed of all telephone numbers by calling the Union's office during normal office hours. **Individuals whose telephone numbers are disconnected and/or out of service are not eligible to be called in the normal rotation until such time as they have informed the Union in writing as to their new number(s).**
- K. If an employee has accepted or been placed on a call, the Union shall not contact the employee for any work that would interfere or conflict with the call. If an employee is cut or released early from a call, it is his or her responsibility to inform the Union office as to his or her availability.
- L. **Employer Requests.** The Collective Bargaining Agreement may grant the employer the right to request employees by name from the Union's referral lists. In such cases, the Union will attempt to fill all employer requests first. Thereafter, the Union will fill the call in the normal manner, starting with Journeymen. Employer requests for Specialists will be filled in the same manner.
- M. **Specialists.** The JCTC has authority to certify employees as Specialists in certain areas, e.g. sign rigging. Specialists will be so identified on each referral list. If an employer's call includes Specialists, then the next employee that is a certified Specialist in such skill will be referred beginning with Journeymen. Specialists who are referred to work in such manner do not otherwise lose their position on the referral list.
- N. **Quick Calls.** Defined as a call received by the Union with less than eight (8) hours to report. The Union has complete discretion to select employees to refer to Quick Calls. Employees accepting a Quick Call do not lose their place on the referral list.
- O. **Replacement.** Defined as a person referred to replace an existing employee on a call. The Union has complete discretion to select employees to refer as replacements. Employees referred as replacements do not lose their place on the referral list. **Replacements will be added to the bottom of the work list as a new referral.**

- P. Cuts and Layoffs. Cuts and layoffs in any call are governed by the Collective Bargaining Agreement. If the Agreement does not specify a cut and layoff procedure, or if the Employer requests the Union to make the cut, then cuts and layoffs shall be made in reverse order of referral, provided the call maintains a minimum of 50% Journeymen and a maximum of 15% Extras.
- Q. In the event the Union has inadvertently failed to refer an employee in accordance with these Rules, the remedy will be that the Union will offer such employee first priority on the next two calls.
- R. Daily Availability ("Stand-By") List. The Union may establish a daily availability list for any job. If for any reason the Union cannot fill a call through the other referral procedures contained in these Rules or the call is short, the Union has complete discretion to refer employees who have signed the Daily Availability List. Add-ons to any call may also be filled from the Daily Availability List. Employees signing the Daily Availability List are not guaranteed work from the list and do not lose their position on the general referral list; however, pursuant to Paragraph K above, the Union will not be obligated to contact them for another call if such would interfere with the job they are working.
- S. Upon request, the Union has the right to provide information to employers concerning the qualifications, skill, and experience of employees on its referral lists. Employees are encouraged to submit resumes showing their particular qualifications and experience.

4. Job Stewards

- A. The Union will appoint, train, and certify its Job Stewards at its sole discretion. The Job Steward will be the second person referred by the Union on each call.
- B. The Union will maintain a separate referral list of its Job Stewards listed alphabetically. The Union will refer its Job Stewards from this list in regular rotating order, however the Business Representative reserves the right to place stewards, at his or her discretion, on job calls based on the needs of the call.
- C. Job Stewards will not lose their position on the other referral lists during the tenure of their appointment and may continue to be referred from the other lists.
- D. Job Stewards must be available for assignments at all times. If a Steward is working elsewhere when needed by the Union, or if the Union determines that a Steward is not properly representing it, the Union may suspend or remove the Steward from the Steward's List.

5. Enforcement

- A. No-Shows. Once an employee has accepted a call, should the employee need a replacement for any legitimate reason during the call cycle, the Union's call agent must be notified by 8:00 a.m. the day before the relevant report time. Under no circumstances will any employee be permitted to replace him or herself. Employees violating this rule will be charged \$25.00 for the first offense, \$50.00 for the second offense, and \$150.00 for the third offense. Employees violating this rule more than three times will be suspended from the referral list for 30 days for the fourth offense, 60 days for the fifth offense, and one year for the sixth offense. These offenses accumulate within a one-year cycle.
- B. Lateness. Once an employee has accepted a call, the employee is required to report to work at the scheduled report time. An employee will be considered late if he or she does not report at the scheduled report time. Employees violating this rule will be charged \$25.00 for reporting to work late three times in 30 days, \$50.00 for reporting to work late six times in 60 days, and \$100.00 dollars for reporting to work late nine times in 90 days. Employees will be suspended from the referral list for 30 days if they report for work late 12 times in 120 days. Employees will be suspended from the referral list for one year if they report for work late 13 times in 121 days. These offenses accumulate within a one-year cycle.
- C. Leaving Early. If an employee fails to obtain approval in writing from the employer for an early departure from a call, the employee will be suspended from the referral list for 30 days for each occurrence.
- D. Misconduct. Any person who creates a disturbance or engages in disorderly, abusive or threatening conduct at the referral hall or at a worksite or who intentionally interferes with or disrupts the administration of the referral hall will be subject, at the discretion of the Union's Business Representative, to a suspension from the referral list. Any person suspended from the referral list for misconduct will have the right to appeal that suspension pursuant to Section 6 of these rules and regulations
- E. Leave of Absence. Employees may obtain a leave of absence by giving written notice to the Union. While on leave of absence, the employee will be considered inactive and shall be removed from the referral list for the duration of the leave. Upon the expiration of the leave, or sooner if written request is made, the employee will be automatically reinstated to the referral list.
- F. Refusing or Failing to Respond to Calls. If an employee refuses or fails to respond within three (3) consecutive months without a written leave of absence, such employee may be considered inactive and may be removed from the referral list. The

Union will not be required to give notice of removal to such employees. In order to be reinstated, the employee must give written notice of availability to the Union.

- G. Any person reporting for work who has not been referred to the Employer by the Union in accordance with these Rules will not be allowed on the job.
- H. All referral hall participants must accept bargaining unit work (as defined by IATSE Local 834's Collective Bargaining Agreements) with signatory employers within IATSE Local 834's geographical jurisdiction only via referral from IATSE Local 834's referral halls. No referral hall participant may accept bargaining unit work within IATSE Local 834's geographical jurisdiction directly from any signatory employer without prior written permission from IATSE Local 834's Business Representative. Employees who accept bargaining unit work within IATSE Local 834's geographical jurisdiction directly from any signatory employer without prior written permission from IATSE Local 834's Business Representative, including "protected list" employees, shall be subject to removal from the referral list for up to one year for each violation of circumventing the referral hall process. Upon request, written permission from the Business Representative to accept work directly from signatory employers will not be unreasonably withheld from "preferred list" employees.
- I. Any person who has left a call without permission and has secured other work at the same convention, show, or exhibition without being referred by the Union will be suspended immediately from the referral list for six (6) months.
- J. Unfair Employers. Any employee who has accepted work with an employer declared unfair by the Union while the Union has work ongoing shall be immediately suspended and removed from the referral list for a period of not less than one (1) year. The Union shall notify employees of any and all employers declared unfair.
- K. Failure to Pay Referral Fee. Employees who fail to pay the referral fee when due will be immediately suspended from the referral list. The Union will notify the employee by mail of the amount due. If the employee fails to pay the amount due within 30 days of mailing, the employee will be removed from the referral list. The employee may apply for reinstatement by tendering the full amount due plus a late penalty of 25%.
- L. Failure to Reimburse Union Referral Hall for Legal Expense in Defending Garnishment Actions involving Referral Hall Participants. Referral hall participants are employed by the signatory employers subject to the Collective Bargaining Agreements, not by the Union referral hall. Any referral hall participant who causes the Union referral hall to be sued in a "continuing garnishment action" against the referral hall participant's employer shall be required to provide an affidavit to the Union referral hall in defense of said garnishment action and within 30 days written notice of the amount due, will be required to promptly reimburse the Union referral hall for all reasonable legal expenses incurred by the referral hall in defending said continuing garnishment action. If the employee fails to pay the amount due within 30 days of mailing of the legal fee and expense bill, the employee will be removed from the referral list. The employee may apply for reinstatement by tendering the full amount due.
- M. Work Tools. Any employee reporting to work without the required work tools, or who has been released from the job for not having the required tools, will be fined \$25.00 for the first offense, \$50.00 for the second offense, and \$150.00 for the third offense. These offenses accumulate within a one-year cycle.
- N. Failure to Pay Fine. The Union will notify the employee by mail of any fine. If the employee fails to pay the fine in full within 30 days of mailing, the Union will immediately suspend the employee from the referral list. The employee may apply for reinstatement by tendering the full amount due plus a late penalty of 25%.
- O. Theft and Drugs. Any employee arrested for and convicted of theft or possession of illegal drugs on a worksite will be immediately removed from the Union's referral list. The employee may apply for reinstatement one year after the date of discharge.
- P. Notice of Rules Violation. The Union will mail to the employee, at his or her last known address, written notice of the employee's fine, suspension, or removal from the referral list pursuant to these Rules. The employee will not have more than ten (10) calendar days from the date of the notice in which to file a written appeal to the Referral Appeals Committee in the manner set forth in these Rules.

6. Referral Appeals Committee

Any employee who has been given written notice of suspension or removal from the referral list as provided in these Rules may appeal to the Referral Appeals Committee. The employee must file the appeal with the Union, in writing, within ten (10) working days of the date of such notice. The appeal must state all the reasons why the employee believes he or she should not be suspended or removed from the referral list and must list all witnesses and attach all supporting documents, if any.

Upon receipt of the appeal, the Union will schedule a hearing before the Referral Appeals Committee. The appeal shall be heard by the Committee as soon as possible. Employees will be entitled to no more than one postponement.

The Referral Appeals Committee will consist of three (3) persons appointed by the Union. The Committee will have the authority to investigate all appeals, to determine the facts upon a hearing, and to make whatever adjustments in penalties it deems appropriate based on the facts. The Committee shall be entitled to adopt its own operating procedures consistent with these Rules and Regulations.

7. Joint Classification and Training Committee (JCTC)

The Union and employers will establish a Joint Classification and Training Committee (JCTC). The JCTC will consist of an equal number of representatives appointed by the Union and the employers. The JCTC will qualify all new applicants for placement on the Union's referral list, shall certify all specialists, and shall certify and approve the advancement of all employees on the referral list. In case of dispute, the applicant or referral may be required to take and pass a test, such test to be developed and administered by the JCTC. The JCTC shall have final authority in all cases.

The JCTC has authority to develop and implement a training program.

Absent agreement, the Joint Classification and Training Committee shall not certify any applicant who was discharged by the employer prior to or during the term of this agreement; provided, however, that after three (3) years from the date of such discharge the discharged individual shall be entitled to apply as any other new applicant.

Business Representative
IATSE Local 834

Date

NOTES:

EXHIBIT 9

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
TWENTY-SEVENTH REGION**

**INTERNATIONAL ALLIANCE OF THEATRICAL
STAGE EMPLOYEES, MOVING PICTURE
TECHNICIANS, ARTISTS AND ALLIED CRAFTS
OF THE UNITED STATES, ITS TERRITORIES
AND CANADA, AFL-CIO, CLC, LOCAL 838**

and

Case 27-CB-093060

CORY B. SWARTZ , an Individual

and

FREEMAN DECORATING COMPANY

COUNSEL FOR THE GENERAL COUNSEL'S STATEMENT OF POSITION

Counsel for the General Counsel, Nancy S. Brandt, respectfully submits this Statement of Position marked as Exhibit 9, and attached to the Joint Motion to Transfer Proceedings to the National Labor Relations Board and Joint Stipulation of Facts (Joint Stipulation).

Preliminarily, General Counsel notes that the facts of the instant case are not in dispute. Respondent admits to maintaining the attendance rule at issue during all relevant times.¹ While General Counsel acknowledges that Respondent has a

¹ Respondent's entire Job Referral Procedure is attached to the Joint Stipulation as Exhibit 6. Section G. Suspension and Removal-from the Referral List, contains the rule alleged to be facially unlawful:

Any referent who fails to report to work on time will automatically be suspended from the referral list until referent has paid a \$25.00 assessment. . . .

Any referent, who fails to report to work, will be suspended from the Referral procedure until the Referent has paid a \$100.00 assessment. Any Referent who fails to report to work the second time will automatically be suspended from the Referral list until the Referent has paid a \$150.00 assessment. Failure to report to work for the third time will cause the Referent to be automatically suspended from the Referral list until the Referent has paid a \$200.00 assessment. A Referent who fails to report to work for the fourth time will automatically be permanently removed from the referral list.

legitimate interest in ensuring that referred employees show up for work on time, General Counsel alleges that maintenance of this attendance rule, which, as currently constructed, conditions future job referrals on payment of assessments to the Union, violates Section 8(b)(1)(A) of the Act because it interferes with employees' Section 7 rights. Thus, this case solely presents an issue of law regarding whether Respondent's attendance rule is facially unlawful.

Section 8(b)(1)(A), along with other parts of the Act, prohibits unions from affecting members' employment status to enforce unions' internal rules. "The policy of the Act is to insulate employees' jobs from their organization rights." *Radio Officers' Union of the Commercial Telegraphers Union, AFL v. NLRB*, 347 U.S. 17, 40 (1954). See also *NLRB v. Allis-Chalmers Manufacturing Co.*, 388 U.S. 175, 195 (1967)("[T]he repeated refrain throughout the debates on 8(b)(1)(A) and other sections [was] that Congress did not propose any limitations with respect to the internal affairs of unions, aside from barring enforcement of a union's internal regulations to affect a member's employment status.") Thus, while a union "may freely fine a member for violation of a membership rule," enforcement of payment of the fine through "an employment-related sanction" violates Section 8(b)(1)(A). *Intl. Longshoremen's & Warehousemen's Union, Local 13 (Pacific Maritime Association)*, 228 NLRB 1383, 1385 (1977), *enforced*, 581 F.2d 1321 (9th Cir. 1978), *cert. denied*, 440 U.S. 935 (1979).

In general, when a union operating an exclusive hiring hall prevents an employee from being hired or causes an employee's discharge, the effect of the union's action is to unlawfully encourage union membership because the union has displayed to all users of the hiring hall its power over their livelihoods. *Stage Employees IATSE Local 720*

(*AVW Audio Visual*), 332 NLRB 1, 2 (2000), *revd. on other grounds*, 333 F.3d 927 (9th Cir. 2003). While that presumption may be rebutted where the union's action was pursuant to a lawful union security clause or was necessary to the effective performance of its representative function, the Board has consistently held that a union may not refuse to refer an employee for employment to enforce the collection of a fine and/or assessment. *ILWU, Local 13*, *supra* at 1385 (union violated Section 8(b)(1)(A) by refusing to dispatch member for failing to pay fines and assessments); *Fisher Theater*, 240 NLRB 678, 691-92 (1979) (union unlawfully refused to refer members for failure to pay union fines imposed for violation of union's no-bumping policy).

Because Respondent's rule effectively denies employment to employees, not for failing to show up for work on time or at all, but rather for failing to pay an assessment or fine to the Union, General Counsel asserts that Respondent is unlawfully maintaining an employment-related sanction in violation of Section 8(b)(1)(A).

Respectfully submitted to the Board January 24, 2014.



Nancy S. Brandt
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EXHIBIT 10

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
TWENTY-SEVENTH REGION**

**INTERNATIONAL ALLIANCE OF THEATRICAL
STAGE EMPLOYEES, MOVING PICTURE
TECHNICIANS, ARTISTS AND ALLIED CRAFTS
OF THE UNITED STATES, ITS TERRITORIES
AND CANADA, AFL-CIO, CLC, LOCAL 838**

and

Case 27-CB-093060

CORY B. SWARTZ , an Individual

and

FREEMAN DECORATING COMPANY

COUNSEL FOR RESPONDENT'S STATEMENT OF POSITION

Counsel for Respondent/Union, Arthur Sandack submits this Statement of Position on the issues, marked as Exhibit 10, attached to the Joint Motion to Transfer Proceedings to the National Labor Relations Board and Joint Stipulation of Facts (Joint Stipulation).

The General Counsel position is that Respondent's Job Referral Procedures (JRP) conditioning job referrals until an assessment for not showing up to work is paid to the Union, violates Section 8(b)(1)(A), stating:

"While the General Counsel acknowledges that Respondent has a legitimate interest in ensuring that referred employees show up for work on time, General Counsel alleges that maintenance of this attendance rule, which, as currently constructed, conditions future job referrals on payment of assessments to the Union, violates Section 8(b)(1)(A) of the Act because it interferes with employees' Section 7 rights. Thus, this case solely presents an issue of law regarding whether Respondent's attendance rule is facially unlawful." See General Counsel's Statement of the Issues pp. 1-2.

The scope of Section 8(b)(1)(A) is relatively narrow such that violations of other parts of the Act, such as Section 8b(2), do not give rise to a derivative violation of 8(b)(1)(A). *National Maritime Union Texas Co.*, 78 NLRB 971, 985. *NLRB v Teamsters, Local 639(Curtis Brothers)* 362 U.S. 274, 290. However, the cases cited and contentions made by the General Counsel, rely on derivative violations, principally Section 8(b)(2) of the Act. Yet there is no allegation Section 8b(2) has been violated, and in any case, it's prohibition is against causing:

“an employer to discriminate against an employee in violation of Section 8(a)(3) or to discriminate against an employee to whom membership in a labor organization has been denied or terminated on some other ground other than his failure to tender periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership”

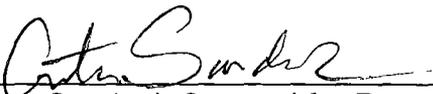
This provision has no application because the assessment fee at issue is not a union internal rule or regulation governing strictly internal union affairs to which Section 8(b)(2) or 8(b)(1) should be applied. Rather, it is an external rule applied without discrimination to referents under the Job Referral Program, regardless as to whether they belong to Union or not. It has no bearing on Section 7 rights. Under the JRP, referents commit to showing up for work. The policy of enforcing and policing this commitment is plainly vital to the functioning of the hiring hall, and a fine or assessment is a valid means of doing so. It is not as harsh as suspension or removal from the hiring hall list itself which would be lawful. It does not violate the Act or its policies. This is particularly so in Right to Work states where it operates, as there is no union security agreement requiring the payment of Union membership periodic dues and initiation fees uniform required as a condition of acquiring assessment, in order to be referred to or to keep a job. Respondent's legitimate interest is representing its contingency and

performing its duty and service to referents, the needs of the hiring hall and signatory employers which the assessment serves in a rational way, outweighing any Section 7 rights. The Act's proscription of fines to enforce Union rules apply to rules which only have only to do with the burdens of membership, not applicable in this case.

Moreover, the General Counsel's reliance on 8(b)(2) and case law to contend the assessment is facially unlawful, rejects Respondent's right to rebut presumptions allowed under that same case law, to show it is justifiable and lawful.

The General Counsel is blindly applying statutes, case law and policy, out of context, that were plainly never intended to apply to fines and assessments which solely govern the hiring procedures themselves and not membership rules. If anything there should be no presumption of illegality in this case, and the rule cannot be facially or per se unlawful; or if there is a presumption of illegality, it is rebuttable and accordingly the Complaint fails to state a claim upon which relief can be granted. Nor has the General Counsel alleged a breach of the duty of fair representation in operating the hiring hall or any discrimination in violation of 8(b)(2) of the Act. The contention the no show assessment is facially unlawful should be rejected.

Respectfully submitted to the Board January 24, 2014.

sl 
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