

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8**

**INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 18 (WELDED CONSTRUCTION, L.P.)**

and

Case 08-CB-138850

GARY LANOUX, an Individual

**INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 18 (PETE GOULD & SONS, INC.)**

and

Case 08-CB-138909

GARY LANOUX, an Individual

**BRIEF OF COUNSEL FOR THE GENERAL COUNSEL TO
ADMINISTRATIVE LAW JUDGE MARK CARISSIMI**

Counsel for the General Counsel, Melanie Bordelois, respectfully files this Brief with the Honorable Mark Carissimi, Administrative Law Judge. On September 14, 2015, the Acting Regional Director for Region 8 issued an Amended Consolidated Complaint and Notice of Hearing (the Consolidated Complaint) alleging violations of Section 8(b)(1)(A) of the National Labor Relations Act (the Act). This matter was heard by Judge Carissimi in Cleveland, Ohio on September 15 and 16, 2015. Counsel for the General Counsel will set forth the operative facts and legal theories upon which she relies to sustain the allegations of the Consolidated Complaint.

I. ISSUES PRESENTED

1. Whether Respondent violated Section 8(b)(1)(A) of the Act when it failed and refused to provide Lanoux with requested information concerning operating engineer Richard Groesser.
2. Whether Respondent violated Section 8(b)(1)(A) of the Act when it failed and refused to provide Lanoux with requested information concerning “key men” hired by Pete Gould.
3. Whether Respondent violated Section 8(b)(1)(A) when it failed and refused to provide Lanoux with requested “letters of request” submitted to it by Pete Gould.

Respondent violated Section 8(b)(1)(A) when it failed and refused to provide Lanoux with the above-described requested information. The requested information concerns the operation of Respondent’s exclusive hiring hall. Respondent admits that it did not provide Lanoux with any of the information and similarly admits that it did not give Lanoux any reason why it would not provide him with the information. Respondent has not met its burden of demonstrating that it had a substantial reason for refusing disclosure. Consequently, Respondent’s arbitrary failure to provide Lanoux with the requested information violates Section 8(b)(1)(A) of the Act.

II. FACTS

Respondent is a local affiliate union of the IUOE. (Tr. 32-33¹). Respondent’s geographical jurisdiction includes all Ohio counties except Columbiana, Mahoning and Trumbull, along with four counties in the State of Kentucky. (GC Ex. 3 and Tr. 32).

Respondent operates an exclusive hiring hall. (Tr. 40 and GC Ex. 3). The provisions of Respondent’s hiring hall are set forth in Article III of the Highway Heavy, which is a collective bargaining agreement between the Respondent and the Ohio Contractors Association. (GC Ex. 3 and Tr. 28).

¹ References to the official transcript of this proceeding will be referred to as Tr. ___. General Counsel’s exhibits will be referred to as GC Ex. ___. Respondent’s exhibits will be referred to as Resp Ex. ___.

The IUOE and the PLCA are parties to the NPA, which is a nationwide collective bargaining agreement. (GC 4 and Tr. 37-38). The NPA covers mainline pipeline installation and construction. (Tr. 37). Under the NPA, the IUOE local in whose geographical jurisdiction pipeline work is to be performed has the right to refer at least some of the operating engineers required for the project. (GC Ex. 4 and Tr. 38) In the case of pipeline work performed in Ohio, the percentage is fifty percent (50%). (GC Ex. 4 and Tr. 38 and 240). Furthermore, where the applicable local union has established an exclusive hiring hall system, a pipeline contractor must utilize that system to obtain the percentage that the local union is permitted to provide for the project under the NPA. (GC Ex. 4). The pipeline contractor directly hires the remaining percentage of operating engineers required for the project – thus, 50% in Ohio.² (GC Ex. 4 and Tr. 380). These latter operating engineers directly hired by the contractors are known interchangeably as “key men” or “regular employees”. (GC Ex. 4 and Tr. 50).

Lanoux has been a member of Respondent since 2002. (Tr. 64). He has experience operating many kinds of construction equipment on pipeline and other construction projects. (Tr. 62-63). Lanoux regularly uses Respondent’s exclusive hiring hall to obtain work and registers on the hiring hall list from five to eleven times per year. (Tr. 66).

A. The Welded Job

In late Spring 2014, Lanoux became aware that one of his former employers, Welded, was preparing to begin a new phase of a pipeline project within Respondent’s jurisdiction. (Tr. 67-68, 77). On two occasions in late June and around July 12 or 14, 2014, at a time when he was registered on Respondent’s hiring hall list, Lanoux went to Welded’s warehouse in Caldwell, Ohio to see if Welded needed operating engineers. (Tr. 70-72). On his July visit, Lanoux learned that an operating engineer named Richard, whose last name he believed to be “Dosier”, was in the process

² This will be referred to in this Brief as the 50/50 ratio.

of being hired by Welded. (Tr. 80). Lanoux did not believe “Dosier” was a member of Respondent. (Tr. 80). Furthermore, under Article II, subsection (J) of the NPA defines “key men” as workers who are “regularly and customarily employed” by the applicable contractor. (GC. Ex. 4). And after speaking with “Dosier” and learning that he had not worked for Welded since 2009, Lanoux reasoned that “Dosier” did not qualify as a “key man” under the NPA. (Tr. 83 and GC Ex. 4). Thus, Lanoux concluded that “Dosier” had been referred to Welded through Respondent’s exclusive hiring hall. (GC Ex. 6 and Tr. 102).

Lanoux filed a grievance dated July 30, 2014 with Respondent, challenging “Dosier’s” status as a Welded key man, and asserting that “Dosier” was not registered on Respondent’s hiring hall list. (GC Ex. 6). By letter to Lanoux dated August 6, 2014, Respondent, by its then-President Richard Dalton, informed Lanoux that the operating engineer’s correct last name was Groesser and that Welded hired him as a key man. (GC Ex. 7). Respondent’s letter further asserted that as of Groesser’s hire date on July 28, 2014, less than 50% of Welded’s operators were key men and so the contractor was within its rights under the NPA to hire Groesser. (GC Ex. 7).

In a letter addressed to Dalton and attached to a grievance form dated September 3, 2014, Lanoux challenged Dalton’s assertion that Groesser’s start date with Welded was July 28, 2014. (GC Ex. 8). Thereafter, Lanoux requested the following documents regarding Groesser for the period July 1 – 31, 2014 in order “to establish and correct the error in your [Dalton’s] statement”: signed dues check off card; steward’s report; business agent’s report; date of urinalysis; and verification of Welded’s contribution to the health and welfare, pension, apprenticeship, safety and education, pipeline training, LMCT and EPEC funds. (GC Ex. 8). Respondent never provided Lanoux with any of the requested documents, nor did it provide Lanoux with any explanation for its refusal to disclose the requested documents. (Tr. 107, 347-349). Respondent did not refer Lanoux to work for Welded on the pipeline project. (Tr. 90).

B. The Pete Gould Job

In late July 2014, Respondent dispatched Lanoux to operate an excavator on a NPA-covered project for Pete Gould. (GC Ex. 10 and Tr. 108). The Pete Gould project was in Respondent's geographical jurisdiction. (Tr. 108). Lanoux worked for Pete Gould for two days. (Tr. 108).

Respondent sent Lanoux a letter dated July 29, 2014 in connection with his dispatch to Pete Gould. (GC Ex. 9). The letter informed Lanoux that Respondent was removing excavator from the list of equipment on Lanoux's referral card due to a letter it received from Pete Gould. (GC Ex. 9). By grievance and attached letter to Respondent dated August 11, 2014, Lanoux challenged Respondent's decision to remove excavator from his referral card. (GC Ex. 10). Also in his August 11, 2014 letter, Lanoux requested the following information: the names, dates of employment and position of all key men hired by Pete Gould; and any written requests Pete Gould made to Respondent for the referral of specific operators. (GC Ex. 10). Written requests made by contractors to Respondent for the referral of specific operators are commonly known as "letters of request". (Tr. 46). Respondent never provided Lanoux with any of the requested documents, nor did it provide Lanoux with any explanation for its refusal to disclose the requested documents. (Tr. 124).

III. APPLICABLE LAW

A union's duty of fair representation arises from its fiduciary obligation as exclusive bargaining representative, and is designed to protect employees who have surrendered their rights to bargain with their employers on employment matters. *Vaca v. Sipes*, 386 U.S. 171, 182 (1967). A union breaches its duty of fair representation when its conduct towards a unit member is arbitrary, discriminatory, or in bad faith. *Id.* at 190. A union's conduct is arbitrary when, taking into account the factual and legal landscape existing at the time of the union's actions, the union's behavior is so

far outside a wide range of reasonableness as to be irrational. *Air Line Pilots Assn. v. O'Neill*, 499 U.S. 65, 67 (1991); *Letter Carriers Branch 6070 (Postal Service)*, 316 NLRB 235, 236 (1995).

Included in the union's duty of fair representation is the obligation to provide employees with requested information in relation to matters that affect their employment. *Letter Carriers Branch 529 (Postal Service)*, 319 NLRB 879, 881 (1995). Employees are entitled to such information so that they can understand their rights and determine whether the union is properly fulfilling its responsibilities as their exclusive bargaining representative. *Letter Carriers Branch 47 (Postal Services)*, 330 NLRB 667, 667 n.1 668 (2000), *enforced*, 254 F.3d 316 (2000) (unpublished table decision).

When a union operates an exclusive hiring hall, "absent some substantial reason for refusing disclosure, [it] is bound to comply with requests for referral data when [the information] may serve some useful purpose related to fair treatment." *Operating Engineers Local 513 (Various Employers)*, 308 NLRB 1300, 1303 (1992). The person requesting referral data does not bear a burden to show unfair treatment, rather, "it is enough to establish a right to hiring hall information that the applicant simply wishes to see it." *Id.* Accord: *Carpenters Local 35 (Construction Employers Ass'n)*, 317 NLRB 18, 23 (1995).

IV. RESPONDENT VIOLATED SECTION 8(b)(1)(A) OF THE ACT WHEN IT FAILED AND REFUSED TO PROVIDE LANOUX WITH REQUESTED INFORMATION CONCERNING OPERATING ENGINEER RICHARD GROESSER

Lanoux's July 30, 2014 grievance challenged Groesser's eligibility to be employed by Welded as a key man, and further alleged that Respondent violated its exclusive hiring hall rules if it referred Groesser to Welded at a time when he was not on the hiring hall list. (GC Ex. 6). Lanoux questioned the start date for Groesser as asserted by Respondent,³ and requested documents in connection with his July 30, 2014 grievance in order to establish Groesser's hire date. The items

³ Dalton admitted during the hearing that the July 28, 2014 was probably a typographical error, and that it should have been July 18, 2014. (Tr. 300-301).

Lanoux requested were in relation to a matter affecting his employment and also concerning fair treatment: if Groesser did not meet the requirements to be a key man or if Respondent dispatched him in violation of its hiring hall rules, Lanoux could have been adversely affected as an applicant on the hiring hall list at the time of Groesser's hire. The facts surrounding Lanoux's information request demonstrate that it was made in order to determine whether Respondent was properly fulfilling its responsibilities as his exclusive bargaining representative. See *Letter Carriers Branch 47*, 330 NLRB at 668 n.1.

While the documents requested by Lanoux are not hiring hall records, per se, nonetheless, they are documents whose request is "reasonably directed towards ascertaining whether [Lanoux] has been fairly treated with respect to obtaining job referrals." *Int'l Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 197*, 318 NLRB 205, 205 (1995), citing *NLRB v. Carpenters Local 608*, 811 F.2d 149, 152 (2d Cir. 1987), enforcing 279 NLRB 747 (1986). In this regard, it is notable that in response to Lanoux's grievance, Dalton instructed Business Agent Darren Morgan to find out if Welded was under its 50% maximum for key men on the date Groesser was hired. (Tr. 363). Additionally, Dalton admitted on cross-examination that, if Welded was not abiding by the 50/50 ratio, this would result in a lost job referral for one or more of Respondent's members/hiring hall applicants. (Tr. 365). In light of the above evidence adduced at the hearing, Counsel for the General Counsel asserts that Lanoux's request for documents concerning Groesser's hire date is related to the question of his fair treatment concerning referrals. Furthermore, Dalton's testimony demonstrates that Respondent had not policed the 50/50 ratio prior to Lanoux's grievance, giving more credence to Lanoux's legitimate need to ensure that the 50/50 ratio was being followed.

The record is clear that Respondent possesses some, but not all, of the classes of requested documents. Dalton admitted that Respondent possesses all dues check-off cards (Tr. 53-54, 347),

steward's reports (Tr. 325-326), and EPEC check-off forms (Tr. 347). Respondent's witnesses' testimony establishes that the foregoing documents would show Groesser's start date with Welded. Dalton testified that the dues and EPEC check-off forms are filled out by key men and Respondent's members "when they're hired in." (Tr. 346). According to Welded Vice President Donald Thorn, a Welded superintendent meets with Respondent's stewards daily to update them on where the 50/50 ratio stands. (Tr. 380). Dalton testified that the steward's report "lists the number of hours they [each operator] worked in a week.... It has a column and a box if somebody was hired in the week." (Tr. 326). Consequently, Respondent is in possession of some of the requested documents, and those documents would reflect Groesser's start date.

In light of Respondent's witnesses' testimony at trial, Counsel for the General Counsel expects that Respondent will argue that it did not have many of the documents Lanoux requested.⁴ However, Dalton also testified that he never informed Lanoux that Respondent was not in possession of these documents. (Tr. 347-349). Dalton testified that he did not know what an LMPT fund was (Tr. 333), but never asked Lanoux for clarification. (Tr. 349). Similarly, Respondent failed to inform Lanoux that the business agent's report is not a document that would contain any reference to the date of Groesser's hire. (Tr. 348).

Any reliance on a lack-of-possession defense would be fruitless however, since this is not a valid defense. The respondent-union made a similar argument in *Carpenters Local 35 (Construction Employers Ass'n)*, 317 NLRB 18 (1995). The administrative law judge in that case reasoned that the respondent-union was "not obliged to produce that which it does not possess. It however is obliged to say so when it receives a request for records over which it has no control." *Id.* at 24. In reliance on the above authority, Counsel for the General Counsel argues that

⁴ Dalton testified that a contractor like Welded directly submits to the applicable funds its contribution reports for the following payroll deductions: health and welfare, pension, apprenticeship, safety and education, and pipeline training. (Tr. 57). Furthermore, Dalton testified that only where an operator fails the urinalysis test will it receive a copy of the urinalysis report, (Tr. 329) and that contractors doing pipeline jobs are not mandated to produce certified payroll records (Tr. 347-348).

Respondent cannot escape its obligation to Lanoux. To the extent that Respondent does not possess the requested information, it was obligated to inform Lanoux of that fact.

Respondent may also argue that it did not provide Lanoux with the information pertaining to Groesser because of its concerns over the “pirating” of key men. Any such assertion would be disingenuous. Respondent elicited testimony at the hearing over the importance of keeping the names and current work locations of key men private. (Tr. 384-385). Yet, it was Respondent who, in its August 6, 2014 letter, informed Lanoux that the operator he thought was Richard “Dosier” was actually Richard Groesser. (GC Ex. 7). It provided Lanoux with this information at a time when it was cognizant that Lanoux already knew Groesser’s current work location. (GC Ex. 6 and 7). Further undercutting any confidentiality argument is the fact that Respondent’s letter asserts a specific date that Groesser began working for Welded. (GC Ex. 7). In light of all the information it divulged to Lanoux about Groesser in its August 6 letter, Respondent cannot now claim that its concern for the confidentiality of key men information prevents it from providing Lanoux with requested documents reflecting Groesser’s start date.⁵ This justification is irrational and therefore arbitrary.

Counsel for the General Counsel has demonstrated that Lanoux’s request for documents reflecting Groesser’s start date may serve a useful purpose related to fair treatment. For its part, Respondent cannot demonstrate that it had a substantial reason for refusing disclosure. Respondent’s refusal to provide Lanoux with the requested information concerning Groesser violates Section 8(b)(1)(A) of the Act.

⁵ It is conceivable that Respondent may also contend that it did not believe Lanoux wanted the Groesser-related information because Lanoux’s August 11, 2014 letter indicates that he understands Respondent will not process his grievance any further. (GC Ex. 8). What Lanoux’s letter goes on to say, however, is that he will seek relief from the NLRB or through “possible civil action”. (GC Ex. 8). A member’s right to relevant information is not affected by the forum in which he chooses to seek redress. See, *Letter Carriers Branch 47*, 330 NLRB at 668 n. 1, 668 (employee could not know whether he would file a grievance or an unfair labor practice until he had reviewed the overtime list and determined whether he had been incorrectly charged with the overtime hours or been treated disparately).

V. RESPONDENT VIOLATED SECTION 8(b)(1)(A) OF THE ACT WHEN IT FAILED AND REFUSED TO PROVIDE LANOUX WITH REQUESTED INFORMATION CONCERNING “KEY MEN” HIRED BY PETE GOULD

Lanoux’s August 11, 2014 grievance requested the names, dates of employment and positions of all key men hired by Pete Gould for the pipeline project within Respondent’s jurisdiction in around July 2014. Lanoux requested the foregoing information to assist him in policing the 50/50 ratio. (Tr. 114). As explained *supra*, Respondent is in possession of the requested information regarding key men.

A contractor’s violation of the 50/50 ratio, by the hiring of extra key men, has a deleterious effect on Respondent’s hiring hall applicants. Thus, Lanoux’s request for key men information is for a purpose related to ensuring fair treatment in referrals.

Respondent will undoubtedly argue that it does not release the names, positions and dates of employment of key men because it would permit them to be “pirated” by other contractors. In support of its position, it is anticipated that Respondent will rely on the Board’s recent decision in *International Union of Operating Engineers, Local 18 (Precision Pipeline, LLC)*, 362 NLRB No. 176 (August 20, 2015).

At issue in *Precision Pipeline* was whether Respondent had unlawfully refused to provide copies of “pre-job reports” to Lanoux and charging party Stephen Wiltse. Slip op. at 1. The Board affirmed Administrative Law Judge Goldman’s decision that Respondent did not violate Section 8(b)(1)(A) by its refusal to provide the charging parties with the “pre-job reports”. Slip op. at 1. Judge Goldman first found that Respondent’s denial was based upon a good faith, rational policy for non-disclosure – namely, that it had a legitimate interest in protecting the competitiveness of unionized contractors and PLCA members, and the confidentiality of information in the pre-job system. Slip op. at 8. Furthermore, Judge Goldman concluded that the charging parties had failed to

demonstrate any “legitimate need” for the “pre-job reports”. Slip op. at 9. Absent this demonstration, Judge Goldman concluded that,

even accepting the proposition that the ‘rationality’ of the local union’s policy must be evaluated in terms of the importance of the requesting employee’s interest in the pre-job report, here the employee’s interest is unidentifiable...

Slip op. at 9. Judge Goldman noted the contents of a “pre-job report” could be considered central to the requester’s “grievance or concern”, and in that case the analysis would be whether the union’s “policy must give way”. Slip op. at 9.

Counsel for the General Counsel submits that the facts in this case lead to a different outcome than the one in *Precision Pipeline*. The *Precision Pipeline* charging parties’ asserted need for the “pre-job reports” was outweighed by Respondent’s legitimate policy for non-disclosure. By contrast, here Lanoux’s uncontroverted testimony was that he required the information about key men to police the 50/50 ratio. Welded Vice President Donald Thorn testified that to monitor the 50/50 ratio, a Welded representative and one of Respondent’s stewards do a daily review of all operators and this information is recorded and in Respondent’s possession. (Tr. 380-381). Lanoux has demonstrated that he needs the key men information in order to do his own monitoring.

Without the key men information, it is not possible to calculate the 50/50 ratio or verify that contractors are complying with the 50/50 ratio. Access to the key men information is also the only way to ensure that Respondent is fulfilling its duty on behalf of members and hiring hall applicants to monitor contractor compliance with the 50/50 ratio. Consequently, the key men information is critical to resolving Lanoux’s concern about compliance with the 50/50 ratio. Lanoux’s need to police contractor compliance and the Respondent’s fiduciary duty to him is a legitimate and significant one. Respondent’s policy must give way.

The only way for Lanoux to police the 50/50 ratio is with the requested information. Respondent’s policy cannot impose a total bar on access to key men information in light of

Lanoux's demonstrated need for its disclosure. Therefore, Counsel for the General Counsel urges the administrative law judge to find that Respondent violated Section 8(b)(1)(A) of the Act by refusing to provide Lanoux with requested information about Pete Gould's key men.⁶

VI. RESPONDENT VIOLATED SECTION 8(b)(1)(A) OF THE ACT WHEN IT FAILED AND REFUSED TO PROVIDE LANOUX WITH REQUESTED "LETTERS OF REQUEST" SUBMITTED TO IT BY PETE GOULD

At the same time Lanoux requested that Respondent provide him with information regarding Pete Gould's key men, Lanoux also sought the letters of request Pete Gould submitted to Respondent regarding the same job.

Letters of request *are* hiring hall records. And their existence can substantiate the otherwise out-of-order referral of operating engineers, while their non-existence can demonstrate a possible violation of Respondent's exclusive hiring hall procedures. Therefore, a request to Respondent for letters of request, as Lanoux made on August 11, 2014, seeks documents related to fair treatment. See, *Operating Engineers Local 513*, 308 NLRB at 1303. They must be provided, upon request and without any specific justification demonstrated, unless Respondent can demonstrate that it has a substantial reason for non-disclosure. *Id.* Respondent cannot meet this burden.

Article III of the Highway Heavy permits signatory contractors to request that Respondent refer a particular operating engineer who is registered on its hiring hall list. (GC Ex. 3). Business Manager Richard Dalton testified that NPA-signatory contractors are also permitted to submit letters of request to Respondent under Article III of the Highway Heavy. (Tr. 45-47). Operating engineers referred following a letter of request are counted towards Respondent's 50% share of the workforce on NPA jobs and are not direct hires or key men. (Tr. 49). Upon receipt of a contractor's oral request, Respondent's dispatcher confirms that the requested operating engineer

⁶ Counsel for the General Counsel notes Respondent's concerns about the pirating of key men that may take place in pipeline construction. However, the Board has taken such privacy and confidentiality concerns into consideration in other cases in fashioning remedies. See, e.g., *International Union of Operating Engineers, Local Union No. 12 (Nevada Contractors Ass'n)*, 344 NLRB 1066, 1066 n.2 (2005) (ordering that social security numbers be removed from documents prior to disclosure).

has been on the hiring hall list for at least ten days. (Tr. 46). Operators are limited to one letter-of-request referral in any four-month period. (GC Ex. 3). Once the foregoing is confirmed by the dispatcher, the contractor must send a letter, on its letterhead, to Respondent confirming the oral request. (GC. Ex. 3 and Tr. 46). Once a week, the dispatchers post a list of all referrals made for the week. (Tr. 289). The dispatcher will check a box indicating “letter of request” by the operator’s name if the operator was referred from Respondent’s hiring hall pursuant to a contractor’s letter of request. (Tr. 289). However, Dalton testified that the letters of request themselves are not posted. (Tr. 349).

Counsel for the General Counsel submits that in light of the evidence above, letters of request are, intrinsically, hiring hall records. While the letters are created and submitted by a contractor, their existence and use are dictated by the exclusive hiring hall procedures contained in Article III of the Highway Heavy. Respondent clearly utilizes them in operating its exclusive hiring hall.

Since letters of request are the documents underlying Respondent’s authority to diverge from the normal first-in-first-out referral rule (Tr. 47-48), a request to review letters of request relates to the question of fair treatment. Their existence or non-existence can either disprove or confirm a referral violation.

Lanoux sought the letters of request in connection with a job to which Respondent referred Lanoux. Respondent did not provide Lanoux with the Pete Gould letters of request, nor did Respondent inform Lanoux why it would not do so. (Tr. 124). At trial, none of Respondent’s witnesses gave an explanation why Respondent did not provide Lanoux with Pete Gould’s letters of request. Dalton, without explanation, testified simply, “I don’t know that I would allow somebody to have a letter of request if it didn’t pertain to them.” (Tr. 345). In this connection and as Judge Goldman concisely stated: “[a]rbitrary means no reason.” *Operating Engineers Local 18*, 362

NLRB No. 176, *10.⁷ Respondent's actions in refusing to provide Lanoux with Pete Gould's letters of request are arbitrary and therefore violate Section 8(b)(1)(A) of the Act.

Respondent may argue that the referral information posted at Respondent's district offices each week notes when a hiring hall applicant is referred pursuant to a letter of request, and thus Lanoux does not need to see the actual letters of request. As letters of referral are themselves hiring hall records, Lanoux is entitled to view the documents underlying Respondent's posted referral information.⁸ Respondent has presented no reason why the letters of request themselves cannot be provided. Lanoux should be entitled to review the actual documents that give Respondent the authority to refer certain operating engineers ahead of others who were on the hiring hall list for a longer period of time.

Counsel for the General Counsel anticipates that Respondent will further argue that it should not be required to provide Lanoux with information about referrals by letter of request because Lanoux can visit one of Respondent's district offices to see the dispatch information posted. This argument must fail.

Requiring Lanoux, and future requesters, to visit Respondent's district offices to view dispatch information creates an unnecessary burden for those individuals. Dispatch information is only posted for a period of two weeks. (Tr. 289). Dalton admitted that a hiring hall applicant would need to visit the district office every two weeks to see all referrals dispatched under a letter of request. (Tr. 349-350). Lanoux testified that his work location could be 80 miles from the

⁷ See also, *Letter Carriers Branch 529 (Postal Service)*, 319 NLRB 879, 882 (1995) (union's conclusory explanation that it did not provide a member with grievance forms because it was following a "policy", that itself had no apparent rationale, was arbitrary conduct).

⁸ Unions have been found to favor hiring hall applicants by falsely claiming that an employer made requests for specific workers. See, e.g., *Iron Workers Local No. 433 (The Associated General Contractors of California, Inc.)*, 228 NLRB 1420 (1977) (union falsely characterized job calls as by-name requests for specific individuals thus preventing other applicants from bidding on those jobs), enforced, *NLRB v. International Ass'n of Bridge, Structural, and Ornamental Iron Workers, Local 433*, 600 F.2d 770 (9th Cir. 1979), cert denied, *International Ass'n of Bridge, Structural, and Ornamental Iron Workers, Local 433 v. NLRB*, 445 U.S. 915 (1980).

district office. (Tr. 149-150). Conversely, Respondent has presented no evidence of any undue burden that would be borne by it if required to provide Lanoux with the letters of request.⁹

Letters of request are records that Respondent maintains and uses as part of its hiring hall referral process. Their existence can confirm that Respondent is making out-of-order referrals properly. Therefore, the documents relate to the question of fair treatment. The record evidence in this case demonstrates that Respondent has presented no reason for its refusal to provide Lanoux with the requested letters of request. Consequently, Respondent violated Section 8(b)(1)(A) when it failed to provide Lanoux with the letters of request submitted by Pete Gould in connection with the job it was doing in Respondent's jurisdiction in around July 2014.¹⁰

VII. CONCLUSION

Lanoux asked Respondent to provide him with documents that concern the operation of Respondent's exclusive hiring hall. Faced with Lanoux's requests, Respondent provided Lanoux with nothing – refusing to even reply to his requests. Respondent has not met its burden of demonstrating that it had a substantial reason for refusing to provide Lanoux with the documents he requested.

On the basis of the entire record, particularly the facts referred to above, and the applicable law, Counsel for the General Counsel requests that the Administrative Law Judge find that Respondent violated Section 8(b)(1)(A) of the Act as set forth in the Consolidated Complaint. Counsel for the General Counsel requests that the Administrative Law Judge issue the attached

⁹ See, e.g., *Carpenters Local 35 (Construction Employers Ass'n)*, 317 NLRB 18, 24 (1995) (positing that there may be situations where a union could demonstrate "undue inconvenience" in providing documents but concluding that respondent-union had not presented such evidence).

¹⁰ Respondent may try to justify its refusal to provide Lanoux with requested information based on its concerns about the pirating of key men. The pirating concern has no relation to the disclosure of letters of request. Operating engineers referred pursuant to letters of request are not key men.

proposed order¹¹ and require Respondent to post and mail the attached proposed notice to members.¹²

Respectfully submitted,

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¹¹ Attached as Exhibit A.

¹² Attached as Exhibit B.

CERTIFICATE OF SERVICE

This will certify that the Brief of Counsel for the General Counsel was filed electronically with the Division of Judges of the National Labor Relations Board and served by electronic mail, as designated below, on this 13th day of November 2015:

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EXHIBIT A: PROPOSED ORDER

The Respondent, International Union of Operating Engineers, Local 18, its officers, agents, and representatives, shall

1. Cease and desist from
 - a) Refusing to make available to Gary Lanoux the information requested in his August 11 and September 3, 2014 letters.
 - b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act.
 - a) Make available to Gary Lanoux the information requested in his August 11 and September 3, 2014 letters.
 - b) Within 14 days after the date of this Order, post at all its district offices in the State of Ohio copies of the attached notice. Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members and hiring hall applicants are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In addition, Respondent will also copy and mail, at its own expense, a copy of the attached notice to all current hiring hall applicants and members and former hiring hall applicants and members who were applicants or members at any time since August 11, 2014.¹³ The Respondent will

¹³ The record evidence in this case is that operators work long hours and in remote locations far from one of the Respondent's district offices. (Tr. 100-101, 149-150 and 261). Consequently, members and hiring hall applicants may not have an opportunity to see the Notice if it is only posted at the Respondent's district offices.

provide the Regional Director written confirmation of the date of mailing and a list of names and addresses of members/applicants to whom the Notices were mailed.

- c) Within 21 days after the date of this Order, file with the Regional Director a sworn certification of a responsible official of the Respondent on a form provided by Region 8 attesting to the steps that the Respondent has taken to comply with this Order.

EXHIBIT B: PROPOSED NOTICE TO MEMBERS

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative to bargain with your employer on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT refuse to provide hiring hall applicants and/or members with requested information concerning the operation of our hiring hall.

WE WILL NOT, in any like or related manner, restrain or coerce you in the exercise of your rights under Section 7 of the Act.

WE WILL provide Gary Lanoux with the following information he requested on August 11 and September 3, 2014: documents reflecting contractor Pete Gould & Sons, Inc. “key men” and that contractor’s requests to us for specific operators made in connection with a pipeline project in Monroe County, Ohio in around July 2014; and documents reflecting the start date of an operator who worked for contractor Welded Construction, L.P. on a pipeline project in Noble County, Ohio in around July 2014.