

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

INTERNATIONAL UNION OF OPERATING  
ENGINEERS LOCAL 181 (MAXIM CARE WORKS)

and

Case 25-CB-150584

RICKIE VANCE, An Individual

GENERAL COUNSEL'S BRIEF IN SUPPORT OF EXCEPTIONS  
TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

Respectfully submitted,

/s/ Raifael Williams

Raifael Williams  
Counsel for the General Counsel  
National Labor Relations Board  
Region Twenty-Five  
Minton-Capehart Federal Building, Room 238  
575 North Pennsylvania Street  
Indianapolis, Indiana 46204  
Phone: (317) 226-7409  
Fax: (317) 226-5103  
E-mail: raifael.williams@nlrb.gov

## **Table of Contents**

I. STATEMENT OF THE CASE	.4
II. QUESTIONS PRESENTED	.5
III. STATEMENT OF THE FACTS	.6
A. Respondent's Operations and Exclusive Hiring Hall.	.6
B. Rickie Vance's Requests to See the Out-of-Work List.	.8
IV. ARGUMENT.	.11
A. The Judge Erred by Finding and Concluding That Respondent's Refusal To Allow Rickie Vance The Opportunity To View the Out-of-Work List To Determine His Relative Position On The List About March 17 Did not Violate Section 8(b)(1)(A) Of The National Labor Relations Act (GC Exceptions 1).	.11
B. The Judge Erred by Finding and Concluding That Respondent's Refusal To Allow Rickie Vance The Opportunity To View the Out-of-Work List and Provide Copies To Him To Determine His Relative Position On The List About June 26 Did not Violate Section 8(b)(1) (A) Of The National Labor Relations Act (GC Exceptions 2).	.17
V. CONCLUSION.	.22

## Table of Cases

<u>Bartender's and Beverage Dispenser's Union (Nevada Resort Association), 261 NLRB 420 (1982).</u>	12, 15, 19, 20
<u>Boilermakers Local 197, 318 NLRB 205 (1995).</u>	.13
<u>Carpenters Local 35 (Construction Employers Assn.), 317 NLRB (1995).</u>	.19
<u>Hoisting and Portable Engineers Local 302, 144 NLRB 1449 (1963)</u>	.11
<u>International Alliance of Theatrical Stage Employees, 2015 WL 3879711 (2015).</u>	.19
<u>Ironworkers Local 27, 313 NLRB 215 (1993).</u>	.12, 13, 18, 19, 20
<u>Local No. 324, International Union of Operating Engineers, AFL-CIO (Michigan Chapter, Associated General Contractors of America, Inc., 226 NLRB 587 (1977)</u>	.12
<u>Service Employees Local 9 (Blumenfeld Enterprises), 290 NLRB 1 (1988).</u>	.18
<u>Stage Employees IATSE, Local 720, 341 NLRB 1267 (2004)</u>	.11
<u>Teamsters Local 282 (AGC of New York), 280 NLRB 733 (1986).</u>	.13
<u>Radio-Electronics Officers Union, 306 NLRB 43 (1992)</u>	.12
<u>NLRB v. Carpenters Local 608, 279 NLRB 747 (1986) enfd. 811 F.2d 149, (2d. Cir. 1987).</u>	.13,

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

INTERNATIONAL UNION OF OPERATING  
ENGINEERS LOCAL 181 (MAXIM CRANE  
WORKS)

and

RICKIE VANCE, an Individual

GENERAL COUNSEL'S BRIEF IN SUPPORT OF EXCEPTIONS  
TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

Comes now Counsel for the General Counsel and respectfully submits to the Board this Brief in Support of Exceptions to the Decision of the Administrative Law Judge issued on the above-captioned case on July 13, 2016.

I. STATEMENT OF THE CASE

Pursuant to a charge filed by Rickie Vance, an individual, a complaint was issued on August 31, 2015. The complaint alleged that the International Union of Operating Engineers Local 181, hereinafter referred to as the Respondent, violated Section 8(b)(1)(A) of the Act by refusing to provide Vance with hiring information maintained by Respondent to determine whether he had been treated fairly regarding job referrals since about March 17.<sup>1</sup>

A hearing was held regarding the allegations contained in the complaint before Administrative Law David Goldman on January 28, 2016. On July 13, 2016, Judge Goldman issued his decision dismissing the complaint in its entirety. In his decision, the Judge failed to

---

<sup>1</sup> These allegations are alleged in paragraphs 5(b) and 5(c) of the Complaint. (GCEx 1(c)). All dates refer to 2015 unless otherwise stated.

find and conclude that the Respondent violated Section 8(b)(1)(A) of the Act by refusing to allow Rickie Vance to view the out-of-work list maintained by Respondent to determine whether he had been treated fairly regarding job referrals about March 17 despite Vance's oral request (GC Exception 1). Also, the Judge failed to find and conclude that the Respondent violated Section 8(b)(1)(A) of the Act by refusing to allow Vance to view the out-of-work list and provide Vance with a copy of the out-of-work list to determine whether he had been treated fairly regarding job referrals about June 26 (GC Exception 2). Additionally, Counsel for the General Counsel excepts to Judge's concomitant failure to provide for an appropriate remedy and Notice provision regarding the above violations of the Act (GC Exceptions 3).

## II. QUESTIONS PRESENTED

1. Whether the Judge's findings and conclusions that the Respondent violated Section 8(b)(1)(A) of the Act by refusing to allow Rickie Vance to view the out-of-work list maintained by Respondent to determine whether he had been treated fairly regarding job referrals about March 17 despite Vance's oral request, is contrary to Board policy and existing law?
2. Whether the Judge's findings and conclusions that the Respondent violated Section 8(b)(1)(A) of the Act by refusing to allow Rickie Vance to view the out-of-work list and provide Vance with a copy of the out-of-work list to determine whether he had been treated fairly regarding job referrals about June 26 despite Vance's oral request, is contrary to Board policy and existing law?
3. Whether the Judge's concomitant failure to provide for an appropriate remedy and Notice regarding the above violations of the Act is contrary to Board policy and existing law?

### III. STATEMENT OF THE FACTS

#### A. Respondent's Operations and Exclusive Hiring Hall

The Respondent is a labor organization which represents operating engineers and apprentices (GC Ex 1(c); Joint Ex 2). The Respondent is divided into six separate districts, which are located mainly in Kentucky. District 1 is located in Henderson, Kentucky. District 2 is located in Evansville, Indiana. District 3 is located in Louisville, Kentucky. District 4 is located in Lexington, Kentucky. District 5 is located in Paducah, Kentucky. District 6 is located in Ashland, Kentucky (TR 21-22).

Business Manager Howard Hughes oversees the operation of each district. Most districts have an at least one district representative who refers Union members to various jobs. Most districts also have at least one business agent who meet with contractors and handle grievances. All business agents report to district representatives. The district representatives report to Hughes (TR 19-22).

District 1 does not have any district representatives or business agents. However, Business Manager Hughes works in District 1. District 2 has one district representative, Tom Litkenhaus, who also serves as Local President, and three business agents. District 3 has one district representative and three business agents. District 4 has one district representative and one business agent. District 5 has one district representative and two business agents. District 6 has one district representative and one business agent (TR 20-24).

The Respondent is a party to a collective-bargaining agreement with the Building Division-ICA, Inc. which is a multi-employer association. The Employer, Maxim Crane Works, is a member of the association. The most recent collective-bargaining agreement was effective from

March 13, 2012 to March 31. According to the terms of the collective-bargaining agreement, the Employer and other employers are required to utilize the Respondent as their first source of employment. Specifically, Article III of the collective-bargaining agreement states, in relevant part, that “the Employer shall give the Union twenty-four (24) hours' notice of its need for workers, and within such 24 hour period shall not hire persons not referred by the Union. If, however, the Union fails to refer workers within such 24 hour period after having been notified to do so, the Employer shall have the right to hire persons not referred by the Union. In notifying the Union of its need for workers, the Employer shall specify to the Union (a) the number of workers required, (b) the location of the project, (c) the nature and type of construction involved, (d) the work to be performed, and (e) such other information as may be necessary to enable the Union to make proper referral of applicants. The Employer shall have the right to determine the competency and qualifications of the employee referred by the Union, and the right to hire or not hire accordingly. The selection of applicants for referral to jobs shall be on a nondiscriminatory basis and shall not be based on, or in any way affected by Union membership, bylaws, rules, regulations, constitutional provisions or any other aspect or obligation of union membership, policies or requirements. The Union shall register and refer all applicants for employment on the basis of the priority groups listed below. Each applicant shall be registered in the highest priority group for which he or she qualifies” (TR 26-27; Joint Ex 2)

Group A consists of applicants who have been operating engineers for the past four years and have been employed for an aggregate time of at least one year during the last four years for signatory employers. Group B consists of applicants who have been operating engineers for the past four years and have been employed for an aggregate time of at least six months during the last four years for signatory employers. Group C consists of applicants who have worked as

operating engineers for the past two years and maintained residence for the past year within the geographical area constituting the normal construction labor market. Group D consists of applicants who have been operating engineers for one year (Joint Ex 2).

The Respondent also maintains procedures concerning the operation of the Respondent's hiring hall which are posted on a bulletin board in each district office. The Respondent also maintains bylaws concerning the operation of the Union's hiring hall. The Respondent's bylaws and hiring hall procedures contain similar language as Article III of the collective-bargaining agreement (TR 28; Joint Ex 2; Joint Ex 4).

Generally, an applicant who has been laid off or placed out of work contact the Respondent's district that referred that person to work and report that that person is out of work pursuant to the hiring halls procedures and bylaws. That applicant is placed at the bottom of the Respondent's out-of-work list. That applicant moves up on the out-of-work list as other applicants, who were placed out-of-work first, are referred to other jobs. The out-of-work list contains applicants' names, places of residency, telephone numbers, skills, and comments from employers regarding their skills or drug testing (TR 29-50).

**B. Rickie Vance's Requests to See the Out-of-Work List.**

Ricky Vance is a member of Respondent. Vance has been a member for about 37 years. He reports to District 2 for job referrals. One of those job referrals involved the Employer. Vance began working for the Employer about May 12, 2014. The Employer laid him off about September 4, 2014. Sometime in September 2014, Vance called the Respondent and reported that he had been laid off and requested to be placed on the Respondent's out-of-work list (TR 62-64).

On March 17, Vance called District 2 Representative and Local President Litkenhaus and

asked to see the Respondent's out-of-work list because he had not received a job referral in about six months. Vance told Litkenhaus that he would like a long-term job. Vance also told Litkenhaus that the Rockport Power Plant job was coming up and he would like to make it to that job. Litkenhaus told Vance that he had been around long enough and knew how to get there. Vance asked Litkenhaus if he could come to District 2 to see the Respondent's out-of-work list. Litkenhaus told Vance that he would need to go to Henderson, Kentucky to see the out-of-work list. Litkenhaus also told Vance that he Business Manager Hughes was the only one that could show him the out-of-work list. Vance told Litkenhaus that he knew his rights and he should not have to drive over an hour to Henderson, Kentucky to see Hughes to see the out-of-work list. Litkenhaus told Vance that he was not going to get the answer that he wanted from him.

After Vance spoke to District 2 Representative and Local President Litkenhaus, he called Business Manager Hughes. Vance asked Hughes why he had to drive to Henderson, Kentucky to see the Respondent's out-of-work list. Vance told Hughes that he knew his rights and he should not have to drive over an hour to see the out-of-work list. Hughes told Vance he did not know as much as he thought that he did. Hughes also told Vance that there was more information on the out-of-work list than he knew. Hughes further told Vance that, if a person had been fired from a contractor and that person is on the contractor's no-hire list, the information is on the Respondent's out-of-work list. Additionally, Hughes told Vance that it would be embarrassing to the person to show what type of equipment that he cannot operate. Vance told Hughes that he had been around a long time and had never heard of that information. Vance also told Hughes that he would call the International Union to see what the International Union in DC would say if he called them to tell them this. Hughes told Vance that he was tired of his goddamn bullshit.

Vance apologized for making Hughes angry and told Hughes that he would call the International Union.

After Vance spoke to Business Manager Hughes, he called International Union Representative Todd Smart and explained that he had spoken to Hughes about seeing the Respondent's out-of-work list. Vance said that it was unbecoming of Hughes to talk like that to a Union brother. Smart agreed. Smart told Vance that he should contact the National Labor Relations Board (Board). Vance called Hughes back and told him that he had spoken with Smart and that Smart had agreed with him that Hughes should not talk the way he talked to him earlier.

Later that day, Business Manager Hughes and International Union Representative Smart called Vance. Smart stated that he had not said that Hughes was unbecoming in the way he had talked to Vance. Hughes denied that he said "goddam shit" to Vance (TR 64-72, 112-114, 154-156). On April 22, Vance filed an unfair labor practice charge in the instant case (GC Ex 1(a)).

Pursuant to the discussions with the Board about settlement of the instant case, Respondent Attorney Berger sent a letter to the Board dated May 28 stating that Vance did not need to go to Henderson, Kentucky to see the Respondent's out-of-work list. The letter also stated that the Respondent was willing to show Vance where he was located on the out-of-work list including who was above and below him and their corresponding out-of-work dates. The letter further stated that the out-of-work list contained drug test results, discipline, contractor comments, and other information including telephone numbers. Additionally, the letter stated that District 2 Representative and Local President Litkenhaus directed him to Henderson, Kentucky to see the out-of-work list because Vance was difficult and unwilling to discuss the matter and made inaccurate, false accusations (Resp. Ex 3).

Also, pursuant to the discussions with the Board about settlement, Vance called Former Business Manager Fred Blaylock sometime in June and asked Blaylock if he would accompany him to the District 2 to see the Respondent's out-of-work list. About late June, Blaylock and Vance went to District 2 and spoke to District 2 Representative and Local President Litkenhaus. Vance asked Litkenhaus to see the out-of-work list. Litkenhaus told Vance that he had received an email from Respondent's Attorney Charlie Berger which stated that Vance would have to call and make an appointment and Berger would need to be present when Vance viewed the list. Vance also asked for copies of out-of-work list. Litkenhaus told Vance that he could not see the out-of-work list or have copies made of it (TR 79-80, 118-120).

#### IV. ARGUMENT

##### A. The Judge Erred by Finding and Concluding That Respondent's Refusal To Allow Rickie Vance The Opportunity To View the Out-of-Work List To Determine His Relative Position On The List About March 17 Did not Violate Section 8(b)(1)(A) Of The National Labor Relations Act (GC Exceptions 1).

In his decision, the Judge incorrectly found and concluded that Respondent's refusal to allow Rickie Vance the opportunity to view the out-of-work list to determine his relative position on the list did not violate Section 8(b)(1)(A) of the National Labor Relations Act (GC Exceptions 1). First, the Board has held that an exclusive hiring hall can be established by written agreement, oral agreement, or practice or course of conduct of the parties. Hoisting and Portable Engineers Local 302, 144 NLRB 1449 (1963). The Board has also held that a union's hiring hall is exclusive if it is an employer's initial or primary source of employees. Stage Employees IATSE, Local 720, 341 NLRB 1267 (2004).

Record evidence demonstrates that the Respondent operates an exclusive hiring hall which is established by written agreement. The evidence demonstrates that the Respondent is a party to

a collective-bargaining agreement with the Building Division-ICA, Inc. which is a multi-employer association. The Employer is a member of the association. The collective-bargaining agreement was effective from March 13, 2012 to March 31. According to the terms of the collective-bargaining agreement, the Employer and other employers are required to utilize the Union as their first source of employment. Specifically, Article III of the collective-bargaining agreement states, in relevant part, that “the Employer shall give the Union twenty-four (24) hours’ notice of its need for workers, and within such 24 hour period shall not hire persons not referred by the Union. If, however, the Union fails to refer workers within such 24 hour period after having been notified to do so, the Employer shall have the right to hire persons not referred by the Union (TR 26-27; Joint Ex 2). Thus, it is clear that the Respondent operates an exclusive hiring hall.

Second, the Board has held that, a union which operates an exclusive hiring hall, under the doctrine of the duty of fair representation, must permit a referral applicant to view the Union’s referral records. Bartender’s and Beverage Dispenser’s Union (Nevada Resort Association), 261 NLRB 420 (1982) (citing Local No. 324, International Union of Operating Engineers, AFL-CIO (Michigan Chapter, Associated General Contractors of America, Inc., 226 NLRB 587 (1977))). The Board has also held that, as an operator of an exclusive hiring hall, a union owes a duty of fair representation to all applicants using that hall. Radio-Electronics Officers Union, 306 NLRB 43, 44 (1992). As part of its duty of fair representation, a union has an obligation to operate the exclusive hiring hall in a manner that is not arbitrary or unfair. Id. It is well-established that, along with that duty of representation, a union has an obligation to deal fairly with an employee’s request for job referral information and that an employee is entitled to access job referral lists to determine his relative position in order to protect his referral rights” Ironworkers

Local 27, 313 NLRB 215 (1993) citing with approval Teamsters Local 282 (AGC of New York), 280 NLRB 733, 735 (1986); see also Boilermakers Local 197, 318 NLRB 205 (1995). When such a request is reasonably directed toward ascertaining whether the member has been fairly treated and the request is arbitrarily denied, the union breaches its duty of fair representation and violates Section 8(b)(1)(A) of the Act. NLRB v. Carpenters Local 608, 279 NLRB 747 (1986) *enfd.* 811 F.2d 149, 152 (2d Cir. 1987), Ironworkers Local 27, *supra*.

As discussed above, record evidence demonstrates that the Respondent operates an exclusive Union hall (TR 26-27; Joint Ex 2). Record evidence also demonstrates that, about March 17, Vance called District 2 Representative and Local President Litkenhaus and asked to see the Respondent's out-of-work list because he had not received a job referral in about six months. Vance told Litkenhaus that he would like a long-term job. Vance also told Litkenhaus that the Rockport Power Plant job was coming up and he would like to make it to that job. Litkenhaus told Vance that he had been around long enough and knew how to get there. Vance asked Litkenhaus if he could come to District 2 to see the Respondent's out-of-work list. Litkenhaus told Vance that he would need to go to Henderson, Kentucky to see the out-of-work list. Litkenhaus also told Vance that he Business Manager Hughes was the only one that could show him the out-of-work list. Vance told Litkenhaus that he knew his rights and he should not have to drive over an hour to Henderson, Kentucky to see Hughes to see the out-of-work list. Litkenhaus told Vance that he was not going to get the answer that he wanted from him.

After Vance spoke to District 2 Representative and Local President Litkenhaus, he called Business Manager Hughes. Vance asked Hughes why he had to drive to Henderson, Kentucky to see the Respondent's out-of-work list. Vance told Hughes that he knew his rights and he should not have to drive over an hour to see the out-of-work list. Hughes told Vance he did not know as

much as he thought that he did. Hughes also told Vance that there was more information on the out-of-work list than he knew. Hughes further told Vance that, if a person had been fired from a contractor and that person is on the contractor's no-hire list, the information is on the Respondent's out-of-work list. Additionally, Hughes told Vance that it would be embarrassing to the person to show what type of equipment that he cannot operate. Vance told Hughes that he had been around a long time and had never heard of that information. Vance also told Hughes that he would call the International Union to see what the International Union in DC would say if he called them to tell them this. Hughes told Vance that he was tired of his goddamn bullshit. Vance apologized for making Hughes angry and told Hughes that he would call the International Union.

After Vance spoke to Business Manager Hughes, he called International Union Representative Todd Smart and explained that he had spoken to Hughes about seeing the Respondent's out-of-work list. Vance said that it was unbecoming of Hughes to talk like that to a Union brother. Smart agreed. Smart told Vance that he should contact the National Labor Relations Board (Board). Vance called Hughes back and told him that he had spoken with Smart and that Smart had agreed with him that Hughes should not talk the way he talked to him earlier.

Later that day, Business Manager Hughes and International Union Representative Smart called Vance. Smart stated that he had not said that Hughes was unbecoming in the way he had talked to Vance. Hughes denied that he said "goddam shit" to Vance (TR 64-72, 112-114, 154-156).

Based upon the foregoing, it is clear that Vance made a reasonable request to see the Respondent's out-of-work list about March 17 to determine his relative position in order to protect his referral rights because he believed that he had he had not received a job referral in

about six months. Vance testified that, about March, he called District 2 Representative and Local President Litkenhaus because he believed that another applicant, Jeff Foerster, had been referred to a job before him. Vance also testified that he thought that he was ahead of Foerster on the out-of-work list. Vance further testified that he subsequently discovered that he was wrong (TR 93-97). Despite Vance's mistaken belief, Vance was still entitled to access job referral lists to determine his relative position in order to protect his referral rights even though he may have had a mistaken belief that someone may have been improperly referred to a job before him.

Also, even assuming that the Respondent offered to refer Vance to various jobs and he refused them, Vance testified that he did not recall receiving calls from the Respondent concerning job referrals. He also testified that he did not believe that he worked more than three days based on job referrals from Respondent (TR 86-90). He further testified that he was looking for long-term jobs (TR 94). Even assuming that Vance refused short-term jobs, his refusal to work short-term jobs because he was looking for long-term jobs does not negate his right to see the Respondent's out-of-work list to determine whether there were long-term jobs available and whether other applicants were receiving them. Ultimately, his request to see the Respondent's out-of-work list was to determine whether he was being treated fairly, which was his right under Board law. Additionally, even assuming that Vance's request was somehow unreasonable, the Respondent was still obligated to show Vance the out-of-work list as an operator of an exclusive hiring hall under the doctrine of the duty of fair representation. Bartender's and Beverage Dispenser's Union (Nevada Resort Association), supra.

In response to Vance's request, District 2 Representative and Local President Litkenhaus initially required Vance to drive to the Respondent's union hall located in Henderson, Kentucky to see Respondent's out-of-work list even though Vance received his job referrals from

Respondent's Union hall located in Evansville, Indiana. Litkenhaus also told Vance to contact Business Manager Hughes. When Vance called Hughes and requested to see the Respondent's out-of-work list, Hughes refused. As noted above, Respondent Attorney Berger's May 28 letter stated that District 2 Representative and Local President Litkenhaus directed Vance to Henderson, Kentucky to see the out-of-work list because Vance was difficult and unwilling to discuss the matter and made inaccurate, false accusations (Resp. Ex 3). Such action was clearly arbitrary on the part of the Respondent.

Also, Business Manager Hughes testified that, prior to the filing of the instant charge, the only person who could make redactions to the out-of-work list worked in Henderson, Kentucky (TR 44-45, 177-184). District 2 Representative and Local President Litkenhaus testified that Vance was directed to Vance Henderson, Kentucky to see the out-of-work list because personal information was on the list (TR 154-156). However, Hughes testified that, sometime after the filing of the instant charge, the Respondent changed its practice concerning allowing members of Respondent to view the out-of-work list. Specifically, pursuant to requests to view the out-of-work list, each business representative can now print out the list, manually mark out personal comments on the list, recopy the list and allow members of Respondent to view the list (TR 175-184). This change by Respondent demonstrates that arbitrary nature of its prior policy that only Hughes could redact confidential information from the out-of-work list. There was no need to artificially limit who could redact the list and thereby impose additional burdens on members requesting to see the out-of-work list. The Respondent could have made changes to its practice earlier and allowed Vance to view the out-of-work list in Evansville, Indiana. However, the Respondent chose not to do so. Thus, requiring Vance to drive to Hendersonville, Kentucky rather than Evansville, Indiana was arbitrary and disingenuous.

Furthermore, in his decision, the Judge found and concluded that the Respondent's requirement that Vance drive to Henderson, Kentucky was not unduly burdensome or arbitrary. The Judge also found and concluded that Vance lived in Dale, Indiana which was 57 miles from Henderson, Kentucky, while Evansville, Indiana was 53 miles from Dale, Indiana (Decision, p. 10, line 35-45). However, as noted above, the real reason that the Respondent required Vance to drive to Henderson, Kentucky was because Vance was difficult and unwilling to discuss the matter and made inaccurate, false accusations (Resp. Ex 3). In addition, Respondent's prior rule regarding who could redact confidential information from the out-of-work list was itself arbitrary for the reasons set forth above. Thus, Respondent's action in requiring Vance to drive to Henderson, Kentucky to see the out-of-work list was arbitrary regardless of the distance Vance was required to drive. Therefore, it is also clear that the Respondent's arbitrary behavior and clear refusal to allow Vance to see the Respondent's out-of-work list violated Section 8(b)(1)(A) of the Act (TR 64-72, 154-156).

B. The Judge Erred by Finding and Concluding That Respondent's Refusal To Allow Rickie Vance The Opportunity To View the Out-of-Work List and Provide Copies To Him To Determine His Relative Position On The List About June 26 Did not Violate Section 8(b)(1) (A) Of The National Labor Relations Act (GC Exceptions 2).

In his decision, the Judge incorrectly found and concluded that Respondent's refusal to allow Rickie Vance the opportunity to view the out-of-work list to determine his relative position on the list did not violate Section 8(b)(1)(A) of the National Labor Relations Act (GC Exceptions 2). Record evidence demonstrates that, on April 22, Vance filed an unfair labor practice charge in the instant case (GC Ex 1(a)). Record evidence also demonstrates that, pursuant to the discussions with the Board about settlement, Respondent Attorney Berger sent a letter to the Board dated May 28 stating that Vance did not need to go to Henderson, Kentucky to see the

Respondent's out-of-work list. The letter also stated that the Respondent was willing to show Vance where he was located on the out-of-work list including who was above and below him and their corresponding out-of-work dates. The letter further stated that the out-of-work list contained drug test results, discipline, contractor comments, and other information including telephone numbers. Additionally, the letter stated that District 2 Representative and Local President Litkenhaus directed him to Henderson, Kentucky to see the out-of-work list because Vance was difficult and unwilling to discuss the matter and made inaccurate, false accusations (Resp. Ex 3).

Record evidence further demonstrates that, pursuant to discussions with the Board about settlement, Vance called Former Business Manager Blaylock sometime in June and asked Blaylock if he would accompany him to the District 2 to see the Respondent's out-of-work list. About late June, Blaylock and Vance went to District 2 and spoke to District 2 Representative and Local President Litkenhaus. Vance asked Litkenhaus to see the out-of-work list. Litkenhaus told Vance that he had received an email from Respondent's Attorney Berger which stated that Vance would have to call and make an appointment and Berger would need to be present. Vance also asked for copies of out-of-work list. Litkenhaus told Vance that he could not see the out-of-work list or have copies made of it (TR 79-80, 118-120).

The Board has held that the union can be required to copy and furnish the referral information to a member requesting it. Service Employees Local 9 (Blumenfeld Enterprises), 290 NLRB 1 (1988); Ironworkers Local 27, supra. The Board has also held that, when a member seeks photocopies of hiring hall information because he reasonably believes he has been treated unfairly by the hiring hall, the union acts arbitrarily by denying the requested photocopies, unless the union can show the refusal is necessary to vindicate legitimate union interests. Carpenters

Local 608, supra. See also Carpenters Local 35 (Construction Employers Assn.), 317 NLRB 18 (1995). An employee's request to be provided with the out of work list outweighs any claim of confidentiality the union may want to assert. Ironworkers Local 27, supra, and International Alliance of Theatrical Stage Employees, 2015 WL 3879711 (2015).

As discussed above, it is clear that Vance made a reasonable request to see the Respondent's out-of-work list and obtain copies about June 26 to determine his relative position in order to protect his referral rights because he believed that he had he had not received a job referral in about six months. Even assuming that Vance's request was somehow unreasonable, the Respondent was still obligated to show Vance the out-of-work as an operator of an exclusive hiring hall under the doctrine of the duty of fair representation. Bartender's and Beverage Dispenser's Union (Nevada Resort Association), supra. Furthermore, it appears that the Respondent required Vance to undergo the additional burden of calling and making an appointment with Union Attorney Berger in order to see the Respondent's out-of-work list because Vance filed an unfair labor practice charge. There is no evidence demonstrating that the Respondent has ever required any member of the Respondent to call and make an appointment with Union Attorney Berger in order to see the Respondent's out-of-work list. Thus, Respondent's actions violated the Act because such action was taken because Vance had filed an unfair labor practice charge. Even assuming that Respondent's actions were not motivated by Vance's filing of an unfair labor practice charge, the Respondent's actions were clearly arbitrary and punitive and thus violated 8(b)(1)(A) of the Act. The Respondent also acted arbitrarily by refusing to provide Vance with copies of the Respondent's out-of-work list in violation of 8(b)(1)(A) of the Act (TR 79-80, 118-120).

Additionally, even though Vance's visit to the Respondent to view and obtain copies of the out-of-work list about June 26 was made pursuant to settlement discussions, Vance had the right to examine the out-of-work list and obtain copies of such regardless of any settlement discussions. Thus, the Respondent's requirement that Vance call and make an appointment with Union Attorney Berger in order to see the Respondent's out-of-work list placed an unduly burdensome condition on Vance.

The Respondent has argued that it has a right to refuse to allow applicants to view the Respondent's out-of-work list because it contained purported confidential information such as applicants' names, places of residency, telephone numbers, skills, and comments from employers regarding their skills or drug testing (TR 29-50). Despite the Respondent's assertion, the Board has rejected the argument that telephone numbers and addresses are confidential in the context of a request for hiring hall information because the allegedly confidential information was likely available in the telephone directory. Bartenders' and Beverage Dispenser's Union, Local 165, supra. The Board has also held that certain types of information can be disclosed by the exclusive hiring hall pursuant to the duty of fair representation to verify the accuracy of hall data and ensure that the hall's hiring operations are not conducted in a discriminatory manner. In that regard, the names, addresses, telephone numbers of list registrants, dispatch records, and dates of referral are producible and a union's refusal to supply members with this type of information may pose a violation of Section 8(b)(1)(A). Ironworkers Local 27, supra.

Also, as stated above, the Respondent, as an operator of an exclusive hiring hall, has an obligation to deal fairly with an employee's request for job referral information and that an employee is entitled to access job referral lists to determine his relative position in order to protect his referral rights. Since the Respondent was obligated to show the out-of-work list to

applicants, including Vance, and provide copies upon request, the Respondent acted at its own peril by placing information that it thought was confidential on the out-of-work list such as applicants' places of residency, telephone numbers, skills, and comments from employers regarding their skills or drug testing. Thus, the Respondent's claim of confidentiality should not outweigh applicants' rights to see the out-of-work list and obtain copies of such to determine their relative position in order to protect their referral rights.

Furthermore, record evidence demonstrates that the Respondent would have refused any applicant's request to view and/or make copies of Respondent's out-of-work list regardless of the reason for the request. During the hearing, Business Manager Hughes testified that, prior to the filing of the instant charge, the Respondent maintained a policy prohibiting applicants from seeing the Respondent's out-of-work list. Hughes also testified that, after the filing of the instant charge, the Respondent established a rule whereby Business agents show the out-of-work list to applicants, upon request, and walk them through the list. Hughes further testified that the Respondent has always maintained a policy prohibiting applicants from obtaining copies of the out-of-work list (TR 177-184). Thus, based upon Hughes' testimony, it is clear that the Respondent would have refused any applicant's request to see the Respondent's out-of-work list regardless of the reason prior to the filing of the instant charge. Also, based upon Hughes' testimony, the Respondent would have refused any applicant's request for copies of the Respondent's out-of-work list regardless of the reason. In fact, as discussed above, the Respondent refused Vance's requests to see the Respondent's out-of-work list about March and June and his request to make copies of the out-of-work list in June. Such actions are clearly arbitrary and violate Section 8(b)(1)(A). Thus, the Respondent's possible defenses for refusing

Vance's requests to view and have copies made of the Respondent's out-of-work list are pretextual and disingenuous.

V. CONCLUSION

For the above-stated reasons, the Counsel for the General Counsel respectfully requests that General Counsel's Exceptions to the Decision of the Administrative Law Judge be granted and that an appropriate order issue.

DATED at Indianapolis, Indiana, this 15th day of August, 2016.

Respectfully submitted,

/s/ Raifael Williams

Raifael Williams  
Counsel for General Counsel  
National Labor Relations Board  
Region Twenty-Five  
Room 238, Minton-Capehart Federal  
Building  
575 North Pennsylvania Street  
Indianapolis, Indiana 46204  
Phone: (317) 226-7409  
Fax: (317) 226-5103  
E-mail: [raifael.williams@nlrb.gov](mailto:raifael.williams@nlrb.gov)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing GENERAL COUNSEL'S EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE AND BRIEF IN SUPPORT OF EXCEPTIONS was filed with the Executive Secretary electronically and was electronically served upon the following person on this 15th day of August 2016:

Electronic Submission

Charles Berger  
Berger & Berger, LLP  
4424 Vogel Road, Suite 405  
Evansville, IN 47715

Rickie Vance  
10522 East State Road 68  
Dale, IN 47523

/s/ Raifael Williams  
Raifael Williams  
Counsel for General Counsel  
National Labor Relations Board  
Region Twenty-Five