

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

**INTERNATIONAL ALLIANCE OF  
THEATRICAL STAGE EMPLOYEES, LOCAL 62  
(SHEPARD EXPOSITION SERVICES, INC.)**

**and**

Cases 27-CB-184181  
27-CB-190753

**RONALD GORDON SMYTHE, an Individual**

*Todd Saveland, Esq.,*

for the General Counsel.

*Naomi Y. Perera, Esq. (The Kelman Buescher Firm),*

for the Respondent Union.

**DECISION**

**JEFFREY D. WEDEKIND, Administrative Law Judge.** The complaint in this case alleges that IATSE Local 62 has operated an exclusive hiring hall since March 2016 in an arbitrary and/or discriminatory manner in violation of Section 8(b)(1)(A) and (2) of the National Labor Relations Act. Specifically, it alleges that the Union unlawfully maintained separate member and nonmember referral lists for employment with Shepard Exposition Services, Inc. and other employers; granted priority to its members for job referrals to Shepard and other employers; refused to refer nonmembers, including Ronald Gordon Smythe (the Charging Party) and others to Shepard and other employers; and removed Smythe from its out-of-work list and refused to refer him for work with Shepard or any other employer.

In its original answer, the Union admitted that it operated an exclusive hiring hall during the relevant period, but denied all of the remaining substantive allegations. However, at the hearing on April 11, the Union amended its answer to either admit or plead *nolo contendere* to all of the complaint allegations. Specifically, the Union admitted complaint paragraphs 1–5 and 6(a)–(c), and pleaded *nolo contendere* to paragraphs 6(d)–(h), and 7–9.<sup>1</sup>

Given the foregoing amendment, the Union and the General Counsel agreed that there was no need to take any evidence at the hearing. The General Counsel instead requested that a decision be issued on the pleadings finding the alleged violations and ordering an appropriate remedy, including requiring the Union to make whole the affected employees and to post and mail a notice to members and employees. The Union voiced no objection to the General

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<sup>1</sup> By pleading *nolo contendere*, the Union did not deny those allegations (Tr. 6). See also *Intersystems Design*, 267 NLRB 1310, 1311 (1983).

Counsel’s request. Both the Union and the General Counsel also waived the right to file posthearing briefs.

Accordingly, based on the complaint, amended answer, and stated positions of the parties, the following decision finds that the Union violated the Act as alleged and orders it to fully remedy those violations in the manner requested by the General Counsel.<sup>2</sup>

#### FINDINGS OF FACT

Shepard is a corporation in Colorado Springs, Colorado that produces trade shows and other special events. At all material times, Shepard and the Union have maintained and enforced a collective-bargaining agreement setting forth terms and conditions of employment for Shepard employees in certain classifications, and have maintained an agreement and practice requiring that the Union be the exclusive source of referrals of employees for employment with Shepard (complaint par. 5).

At all material times, the Union has maintained separate member and nonmember lists for making job referrals through its exclusive hiring hall for employment with Shepard and other employers (par. 6(a)).

Since about March 2016, the Union has discriminated against nonmember employees by granting priority to its members for job referrals for employment with Shepard and other employers, and has failed and refused to refer Smythe and other nonmember employees from its exclusive hiring hall to Shepard and other employers (par. 6(b), (c)). The Union has done so for unfair, arbitrary, and invidious reasons (par. 6(g)), and has thereby attempted to cause and has caused Shepard and other employers to discriminatorily fail to employ employees because of their status as non-union members or because of other improper considerations (par. 6(h)).

Since about July 2016, the Union has removed Smythe from its out of work list and has refused to refer him for work with Shepard or any other employer (par. 6(d), (e)). The Union has done so because Smythe filed unfair labor practices against it and for reasons that are unfair, arbitrary, and invidious (par. 6(f), (g)), and has thereby attempted to cause and has caused Shepard and other employers to discriminatorily fail to employ Shepard because he is not a union member or because of other improper considerations (par. 6(h)).

#### CONCLUSIONS OF LAW

1. The Union has violated Section 8(b)(1)(A) of the Act by maintaining separate member and nonmember lists for making job referrals through its exclusive hiring hall for employment with Shepard and other employers (par. 7).

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<sup>2</sup> Commerce jurisdiction under Section 2(2), (6), and (7) of the Act is undisputed and established by the admitted factual allegations (complaint par. 2). The Union also admits that, at all material times, it has been a labor organization within the meaning of Section 2(5) of the Act, and that its business agent, Gina R. Salamon, has been its agent within the meaning of Section 2(13) of the Act (pars. 3, 4).

2. The Union has violated Section 8(b)(1)(A) and (2) of the Act by:

5 a. Discriminating against nonmember employees by granting priority to its members for job referrals for employment with Shepard and other employers since March 2016;

10 b. Failing and refusing to refer Smythe and other nonmember employees from its exclusive hiring hall to Shepard and other employers since March 2016; and

c. Removing Smythe from its out-of-work list and refusing to refer him for work with Shepard or any other employer since July 2016 (pars. 7, 8).

15 3. The Union’s unfair labor practices described above affected commerce within the meaning of Section 2(6) and (7) of the Act (par. 9).

#### REMEDY

20 The proper remedy for the foregoing violations is an order requiring the Union to cease its unlawful conduct and to take certain affirmative action. As requested by the General Counsel, among other things, the Union must make whole Smythe and other employees affected by its unlawful conduct for any loss of earnings or other benefits they suffered as a result of the discrimination against them in a manner consistent with *IATSE Local 151 (Freeman Decorating Services, Inc.)*, 364 NLRB No. 89, slip op. at 1 n. 3 (2016). As set forth in that decision, 25 backpay will be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest compounded daily as prescribed in *New Horizons*, 283 NLRB 1173 (1987), and *Kentucky River Medical Center*, 356 NLRB 6 (2010). In accordance with *King Soopers, Inc.*, 364 NLRB No. 93 (2016), the Union must compensate Smythe and other employees affected by 30 its unlawful conduct for their search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings. The expenses will be calculated separately from taxable net backpay, with interest compounded daily as prescribed in *New Horizons*, supra, and *Kentucky River*, supra. The Union must also post and mail a notice to employees and members advising them of their rights and its remedial obligations under the order.<sup>3</sup>

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<sup>3</sup> As indicated above, the Union voiced no objection at the hearing to a make-whole order consistent with *IATSE Local 151*. The Union also voiced no objection to the requested notice posting and mailing requirement. In fact, the Union and the General Counsel jointly submitted a proposed notice (Jt. Exh. 1). That notice has been adopted here verbatim, except that: 1) its caption has been changed from “NOTICE TO MEMBERS” to “NOTICE TO EMPLOYEES AND MEMBERS” consistent with both the General Counsel’s request (Tr. 7) and *IATSE Local 151*; and 2) standard language has been added at the end describing how to obtain a copy of this decision. Although the complaint requested that the Union also be required to read the notice at a union meeting, the General Counsel is no longer seeking that additional remedy.

ORDER<sup>4</sup>

The Respondent, International Alliance of Theatrical Stage Employees, Local 62, its officers, agents, and representatives, shall

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## 1. Cease and desist from

(a) Maintaining separate member and nonmember lists for making job referrals for employment through its exclusive hiring hall.

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(b) Discriminating against nonmember employees by granting priority to its members for job referrals for employment from its exclusive hiring hall.

(c) Removing and/or failing and refusing to refer employees from its exclusive hiring hall because they filed unfair labor practice charges or for discriminatory, arbitrary, unfair, and invidious reasons.

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(d) Causing or attempting to cause Shepard Exposition Services, Inc. or any other employer that is signatory to a collective-bargaining agreement with it to discriminatorily fail to employ employees because of their status as non-union members or because of other improper considerations.

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

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

(a) Create a referral list based on objective, nondiscriminatory criteria.

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(b) Operate its exclusive hiring hall using objective, nondiscriminatory referral criteria.

(c) Make Ronald Gordon Smythe and other employees whole for any loss of earnings and other benefits suffered as a result of its unlawful conduct, in the manner set forth in the remedy section of the decision.

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(d) Compensate Smythe and other employees who receive backpay under this order for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 27, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year.

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<sup>4</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all hiring hall and referral records, and any other records and documents, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

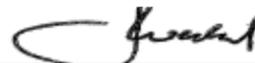
(f) Within 14 days after service by the Region, post at its office and hiring hall in Colorado Springs, Colorado, copies of the attached notice marked "Appendix."<sup>5</sup> Copies of the notice, on forms provided by the Regional Director for Region 27, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its members by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Within 14 days after service by the Region, sign and return to the Regional Director sufficient copies of the notice for physical and/or electronic posting by Shepard and other employers to which nonmembers were not referred due to the Union's unlawful conduct, if willing, at all places or in the same manner as notices to employees are customarily posted.

(h) Within 14 days after service by the Region, duplicate and mail, at its own expense, a copy of the signed notice to the last known address of all members and nonmembers who registered for a job referral through the Union's exclusive hiring hall at any time since March 1, 2016.

(i) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., April 27, 2017



Jeffrey D. Wedekind  
Administrative Law Judge

<sup>5</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

**NOTICE TO EMPLOYEES AND MEMBERS**

**Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

**FEDERAL LAW GIVES YOU THE RIGHT TO**

**Form, join, or assist a union  
Choose representatives to bargain with us 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** operate our exclusive hiring hall without using objective, nondiscriminatory criteria in referring applicants for employment with Shepard Exposition Services, Inc. (Employer), or any other employer.

**WE WILL NOT** maintain separate member and nonmember lists from which referrals for employment with the Employer and other employers are made through our hiring hall.

**WE WILL NOT** discriminate against nonmember employees by granting priority to member employees for job referrals for employment with the Employer and other employers.

**WE WILL NOT** fail to refer employees for work with the Employer, or any other employer, for arbitrary or discriminatory reasons including because they filed unfair labor practice charges.

**WE WILL NOT** cause or attempt to cause the Employer, or any other employer that is signatory to a collective-bargaining agreement with us, to discriminatorily fail to employ employees because of their status as non-union members or because of other improper considerations.

**WE WILL NOT** in any like or related manner interfere with your rights under Section 7 of the Act.

**WE WILL** operate our exclusive hiring hall using objective, nondiscriminatory referral criteria.

**WE HAVE** created a referral list based on objective, nondiscriminatory criteria.

**WE WILL** make employee Ronald Smythe and all affected employees whole for any loss of earnings and other benefits for failing to refer them from our hiring hall or resulting from us granting priority to union members for job referrals to the Employer, and any other employers.

