

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

**INTERNATIONAL ALLIANCE OF THEATRICAL
STAGE EMPLOYEES, MOVING PICTURE
TECHNICIANS, ARTISTS AND ALLIED CRAFTS
OF THE UNITED STATES, ITS TERRITORIES
AND CANADA, AFL-CIO, LOCAL 99 (VARIOUS
EMPLOYERS)**

and

Case 27-CB-193546

BRUCE NELSON HELTMAN, An Individual

**COUNSEL FOR THE GENERAL COUNSEL'S BRIEF TO
THE ADMINISTRATIVE LAW JUDGE**

Todd D. Saveland, Esq.
Counsel for the General Counsel
National Labor Relations Board, Region 27
1961 Stout Street, Suite 13-103
Denver, CO 80294
(720) 709-7198

CASES

Air Line Pilots Assn. v. O’Neill, 499 U.S. 65 (1991)..... 12, 14, 17

IBEW Local 48 (Oregon-Columbia NECA), 344 NLRB 829 (2005) 19

International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators,
Local 720 (Lucas I), 332 NLRB 1 (2000)..... 12, 14, 17, 18

International Union of Operating Engineers Local 450 (Lathan), 267 NLRB 775 (1983)..... 12

International Union of Operating Engineers, Local 150 (Chiado), 352 NLRB 360 (2008) 12

Plumbers Local Union No. 342, (Contra Costa Electric), 336 NLRB 549 (2001)..... 12

Stage Employees IATSE Local 1412 (Various Employers), 312 NLRB 123 (1993). 19

Stagehands Referral Service, LLC, 347 NLRB 1167 (2006) 19

Teamsters Local 727, 358 NLRB 718 (2016)..... 13, 15, 18

Teamsters, Chauffeurs, Warehousemen & Helpers, Local 631, 340 NLRB 881 (2003) 12

Theatrical Wardrobe Union Local 769, 1ATSE (Broadway in Chicago), 349 NLRB 71 (2007) 12

TABLE OF CONTENTS

I. STATEMENT OF THE CASE 4

II. STATEMENT OF FACTS 5

 A. Hiring Hall 5

 B. June 2016 Suspension 6

 C. Events July through September 2016 7

 D. October 3, 2016 Meeting 8

 E. November 2016 through February 2017 10

 F. March 3, 2017 Meeting..... 10

III. ANALYSIS..... 11

 A. Respondent Owes Heltman a Duty of Fair Representation 11

 B. Respondent’s Delay in Reinstating Heltman was Unlawful 13

IV. REMEDY..... 18

V. CONCLUSION..... 19

VI. PROPOSED NOTICE TO EMPLOYEES..... 20

I. STATEMENT OF THE CASE

This is a single issue case: whether a Union operating an exclusive hiring hall must follow the established and written procedures it has laid out for a registrant to rejoin the dispatch list after a temporary suspension.

The Complaint in this case, issued by the Regional Director for Region 27 of the National Labor Relations Board, alleges that the IATSE Local 99 (Respondent): 1) operates an exclusive hiring hall, and 2) unlawfully continued the suspension of Charging Party Bruce Heltman (Charging Party or Heltman) between October 3, 2016 and March 3, 2017. At trial, Respondent amended its answer and stipulated that it operates an exclusive hiring hall. (Tr. 307).¹ A hearing was held on August 22 and 23, 2017 before Judge John Giannopolous (ALJ) in Salt Lake City, Utah. For the reasons discussed below, the ALJ is urged to find that Respondent violated §8(b)(1)(A) and §8(b)(2) of the Act, as alleged in paragraph 6 of the Complaint.

The evidence showed that Respondent, suspended Heltman for legitimate reasons related to the operation of the hiring hall, but then kept Heltman off of the hiring hall dispatch list even after he complied with Respondent's requirement that he appear before and meet with the Executive Board. Respondent sought to turn the trial and its asserted defenses into a lengthy exposition of the problems leading to Heltman's suspension. The General Counsel maintained throughout this litigation that the initial suspension was neither improper nor unlawful, leaving no dispute on the *material facts* of the case – that is – what occurred between October 2016 and March 2017. As such, there are no credibility issues that need to be resolved by the ALJ.

¹ References to the exhibits of Counsel for the General Counsel and Respondent are cited herein as "GCX___" and "RX___", respectively, followed by the appropriate exhibit number or numbers, and where appropriate, the page number(s). References to the official transcript of the instant hearing are cited as "Tr. ___", followed by the appropriate page numbers or number(s).

The General Counsel alleged in the Complaint and showed at trial that Respondent's 5-month delay in returning Heltman to the hiring hall list was arbitrary and/or discriminatory, and therefore violated §8(b)(1)(A) and §8(b)(2) of the Act.

II. STATEMENT OF FACTS

A. Hiring Hall

Respondent operates an exclusive hiring hall in Salt Lake City, Utah, where it dispatches labor for concerts, conventions, and theatre productions. (Tr. 15, 306, 307).² The Charging Party has been a member of Respondent's hiring hall since about 1978. (Tr. 16). Heltman is qualified to be dispatched for nearly all positions in the hiring hall, and is one of the most senior registrants on the dispatch list giving him ample work opportunities. (Tr. 16, 151). The day-to-day operations of the hiring hall were overseen by Murray Ennenga, who was Respondent's Business Agent for many years, ending in December 2016.³ (Tr. 7, 8) Individual dispatches were performed by the dispatcher (GC Ex 4, p.3). Mathew Thomas is Respondent's President, who oversees the union's meetings, committees, and deals with rules infractions within the local. (Tr. 170; 268-269).

Respondent maintains a list of rules for its hiring hall registrants. (Tr. 31). This document (portions thereof reprinted on the following page), entitled "Local 99 Infractions Policies Over the course of one year" makes frequent references to "infractions committee," "committee," and "board" without distinguishing between any of them. (Emphasis added, below):

² Respondent amended its answer at the Hearing, to admit to Complaint paragraphs 5(a) and 5(b).

³ All references will be to the year 2016, unless otherwise noted.

- For a 3rd late infraction, the rules impose a “mandatory meeting with **the infractions committee.**” (GCX 5, p. 1).
- The 4th late infraction notes that “disciplinary action to be decided by **committee.**” Id.
- For a 2nd offense for a “No Show” a registrant will get a \$100 fine, 2-week suspension and “must appear before **the board.**” Id.
- For a 3rd offense the registrant will get a \$100 fine, “must appear before **the board** possible suspension up [sic] 6 months.” Id.
- “Walking away from a call will be considered a no-show and will not be available for dispatch without appearing before **the Infractions committee.**” (GCX 5, p. 2)
- “Upon **committee** rulings and any suspension, there will be a six-month to one year probationary period.” Id.
- “[Suspended Registrants] can reapply to hiring hall after one year upon review from **committee.**” Id.
- “Any person becoming argumentative with Steward...will be required to come before **the infractions committee** with possible disciplinary action.” Id.
- “Conduct or behavior damaging the Locals contractual relations with employers, or conduct or behavior that disrupts or obstructs the referral or the local’s ability to carry out its duties and obligations. They will be required to come **before the infractions committee** with possible disciplinary action.” Id.

B. June 2016 Suspension

In June, Mr. Heltman missed two scheduled calls for work. The first occurred on June 2, when Heltman received a call from one of his coworkers, notifying him that he had been scheduled to work a call at Deer Valley. (Tr. 18). Heltman, who testified that he had not missed a work call before, then tried to contact the job steward but could not get through. (Tr. 19-20). He then contacted his doctor to make an appointment for the following day, June 3.

(Tr. 20). Around 5:00 p.m., Heltman contacted the dispatch office to get off of the June 3 call for The Cure. (Tr. 21). The following day, however, Heltman received a call from the assistant steward notifying him that he had missed his scheduled shift. (Tr. 25).

On June 8, Respondent's Executive Board sent Heltman a letter stating that he was a "No Show" for the June 2 Deer Valley call and the June 3 The Cure call. The letter indicated that if the infraction was not successfully appealed, Heltman would accrue a \$100 fine and removal from the hiring hall until the fine is paid. He was invited to attend the next Executive Board meeting on July 11 at 2 p.m. (GCX 2).

Heltman testified that he was not in a clear state of mind in June 2016, and his problems at work continued. (Tr. 27). On June 30, he was emailed a letter from Respondent's Business Agent Ennegna, notifying him that he was being temporarily suspended from Respondent's Hiring Hall. (Tr 28, GCX 3). Heltman was invited to appeal the suspension before the Executive Board meeting on July 13. (GCX 3).

The General Counsel concedes that Respondent was within its rights to temporarily suspend Heltman in June for the various complaints and infractions incurred over the preceding weeks. It is therefore unnecessary to go into every detail of every complaint made against Heltman (and, surely, Respondent will expound upon each of these in its brief).

C. Events July through September 2016

Even though Heltman had been invited to attend Respondent's Executive Board meetings on July 11 and July 13, he attended neither, as he was furious, hurt, and offended with being suspended from the hall. (Tr. 37). Rather than attend the meeting, Heltman filed internal union charges against the entire Executive Board. (Tr. 37; GCX 6). Heltman testified that there Respondent's Executive Board meets monthly on the first Monday, unless

there is a holiday. (Tr. 53). Nonetheless, Heltman did not attend any Executive Board meeting in August.

At the end of August, Heltman went to Respondent's Union hall to tender a payment to satisfy the \$100 fine for the missed Deer Valley call and that payment was accepted by Office Manager Donna Marcotte. (Tr. 46-47; GCX 9). After paying the \$100 fine, Heltman's name was not returned to the hiring hall list. (Tr. 48).

In about September, Heltman delivered a letter to the Executive Board dated September 9, 2016, seeking to resolve the no-show violation for The Cure call. (Tr. 49, GCX 10). That letter included a doctor's note indicating that Heltman was with his doctor during the June 3 The Cure call, and also provided phone records from AT&T showing that Heltman contacted Respondent's hiring hall dispatcher at about 4:57 p.m. on June 3. (Tr. 49; GCX 10). Heltman received no response to the September 9 letter and attachments. (Tr. 50).

D. October 3, 2016 Meeting

On October 3, Heltman went to Respondent's hall and met with members of Respondent's Executive Board, President Thomas and Vice President Dustin Stephens (Stephens). (Tr. 53). Heltman recorded the meeting with his phone, the audio of which was entered as an exhibit on a portable USB drive. (Tr. 56, GCX 13).

After exchanging pleasantries, Heltman asked Thomas and Stephens: "What do you need to know from me, or want to know from me, or care to know from me?" (GCX 13 at 00:57-01:03). Heltman, Thomas, and Stephens then proceeded to discuss the Deer Valley and The Cure no-shows (GCX 13 at 5:48 – 6:08). Thomas stated that the Deer Valley call was "taken care of." (GCX 13 at 8:30 – 8:33). Thomas then stated that Respondent would "pass the hundred bucks" and excused the no-show for The Cure call. (GCX 13 at 9:58-10:08). At

the end of the meeting, Heltman asked “There’s nothing else we need to talk about, is there?” (GCX at 10:12-10:17). Thomas responded, “I don’t think so, as far as that goes.” (GCX 10:17-10:20). Thomas then started talking about Heltman’s internal union charges and a response he had written and was going to send to Heltman. (GCX 13, 10:30-10:40). Thomas and Stephens asked no further questions of Heltman, who provided another copy of a doctor’s note and then left. (Tr. 65).

On direct examination, Thomas testified that the infractions committee and the Executive Board are made up of the same people and “they are one in the same.” (Tr. 182). In response to a question from the Judge, Thomas testified that the purpose of the infractions committee is to determine “if the infraction occurred” and so the employee “can plead their case.” (Tr. 183). After the infractions meeting, the Executive Board meets to discuss in finer detail what is going to be presented at the general meeting. (Tr. 182). According the hiring hall rules, infractions cannot be appealed to the general membership. (GCX 5, p. 2). Thomas testified that he was “taken by surprise” that Heltman showed up to the October 3 meeting, as this was the first time that Stephens and Thomas headed the meeting without Business Agent Ennenga. (Tr. 242). On cross-examination, Thomas conceded that that: 1) there is no quorum requirement for the infractions committee; 2) there is no bylaw or constitutional requirement that would have prevented Thomas or Stephens from reviewing any matter that Heltman came there to appeal; and 3) Thomas could have readmitted Heltman that day. (Tr. 256). Vice-President Dustin Stephens testified that Thomas was chairing the meeting and was in a position to ask the questions at the meeting. (Tr. 268-269).

Despite attending the October 3 meeting, Heltman “expected to be” but was not returned to the hiring hall list. (Tr. 72). The Union did not further communicate with Heltman during the month of October.

E. November 2016 through February 2017

In November, Heltman did not attend any Executive Board meeting. (Tr. 72-73). Instead, he wrote a letter dated November 17 to Respondent’s President Thomas asking to be reinstated. (GCX 14). Heltman never received a response to the letter. (Tr. 78).

In December, Heltman did not hear anything from Respondent and did not attend any meetings. In January 2017, Heltman hired an attorney through a local law firm to help with his dispute with Respondent. (Tr. 78-79). Heltman’s attorney, Andrew Stavros (Stavros), exchanged correspondence with Respondent’s attorney, Russell Monahan (Monahan), regarding Heltman’s suspension and setting up another meeting with Respondent’s Executive Board. (Tr. 80; GCX 15, 16, 17, 18). Respondent and Stavros ultimately settled on a meeting date of February 10 at 9:00 a.m. (GCX 18, p. 1). Unfortunately, Stavros misread the emails, thinking the appointment was for 10:00 a.m., so Respondent’s Executive Board left prior to meeting with Stavros and Heltman. (GCX 18, p. 2). Respondent’s President Thomas wrote to Monahan that the Executive Board was excused after waiting for 25 minutes, followed by “The next infractions committee meeting is on March 6th at 2 p.m.” (GCX 18, p. 2).

F. March 3, 2017 Meeting

Heltman was finally able to meet with the Executive Board on March 3, 2017. Heltman attended the meeting with another attorney from the Stavros law firm, Andrew Egan. In attendance for Respondent was the newly elected Business Agent Jim Phelps, recording

secretary Chuck Blackner, wardrobe representative Joclyn Rood, and Vice President Dustin Stephens. (Tr. 80-81).

Heltman brought in the June 30 letter that had been sent by Respondent, as well as copies of the IATSE Trial Procedures. The meeting was chaired by Business Agent Jim Phelps. (Tr. 81, 88). Heltman testified that at the outset of the meeting he stated that he would not sign anything because he did not do anything wrong. Heltman did not recall any questions being asked about the events that led to his suspension. Nothing was brought up about the no-shows from June 2016 or about the other issues leading up to Heltman's suspension. (Tr. 90-91). One of the Executive Board members provided a letter to Heltman which was signed by Respondent's President Thomas, who was not in attendance. (Tr. 93, GCX 19). Heltman was asked by one of the members of the Executive Board whether he agreed with the contents of the letter, which laid out a series of expectations for Heltman to rejoin to hiring hall. (Tr. 94, GCX 19). Heltman agreed. At the end of the ten to fifteen minute meeting, there was no vote, the Executive Board simply agreed to reinstate Heltman to the hall. After a few days, Heltman began receiving dispatches from the hall and has been working consistently ever since. (Tr. 94-96).

III. ANALYSIS

A. Respondent Owes Heltman a Duty of Fair Representation

Under Board law, a union's operation of its hiring hall can violate the Act under two distinct legal theories.

First, it is well established that any departure from established hiring hall procedures that results in a denial of employment inherently encourages union membership and violates Section 8(b)(1)(A) and (2) of the Act. International Union of Operating Engineers, Local 150 (Chiado),

352 NLRB 360, 360 (2008); Plumbers Local Union No. 342, (Contra Costa Electric), 336 NLRB 549, 552 (2001), *enfd.* 325 F.3d 301 (D.C. Cir. 2003). The Board’s reasoning is that “such departures encourage union membership by signaling the union’s power to affect the livelihoods of all hiring hall users, and thus restrain and coerce applicants in the exercise of their Section 7 rights.” Contra Costa Electric, 336 NLRB at 550. When the General Counsel establishes that a union has departed from established hiring hall procedures, a violation is established unless the union comes forward with rebuttal evidence that the departure was justified based on a valid union-security clause or is necessary to the effective performance of the union’s representative function. *Id.*; International Union of Operating Engineers Local 450 (Lathan), 267 NLRB 775, 795 (1983). The overall burden of persuasion remains with the General Counsel. 267 NLRB at 795. In determining whether a union has established its necessity defense, the Board looks to whether the union’s conduct was arbitrary. International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators, Local 720 (Lucas I), 332 NLRB 1, 4 (2000).

Second, the traditional duty of fair representation law applies to exclusive hiring hall operations. Teamsters, Chauffeurs, Warehousemen & Helpers, Local 631, 340 NLRB 881, 881 fn. 4. (2003) (clarifying that the Board has not adopted the “heightened duty” standard articulated by the D.C. Circuit). Therefore, in operating a hiring hall, a union must not make decisions that are “arbitrary, discriminatory, or in bad faith.” Air Line Pilots Assn. v. O’Neill, 499 U.S. 65 (1991). *See also* Theatrical Wardrobe Union Local 769, 1ATSE (Broadway in Chicago), 349 NLRB 71, 75 (2007) (concluding that the union violated Section 8(b)(1)(A) and (2) by suspending the discriminatee from the referral system based on her challenge to the executive board where she was treated differently than other similarly situated employees).

At trial, Respondent amended its answer to admit Complaint paragraphs 5(a) and (b) which alleged that it operated an exclusive hiring hall. (Tr. 307). Respondent and Employer UTP maintain a collective agreement requiring that all job referrals come from Respondent's hiring hall. (GCX 22, p. 2). Respondent and Employer Freeman Audio Visual maintain a collective agreement showing that Employer Freeman recognizes that Respondent is the Section 9(a) representative of stagehands employed within Respondent's jurisdiction. (GCX 23, p. 1). Because Respondent operates an exclusive hiring hall, it owes all users of the hall – including Heltman – a duty of fair representation.” Boilermakers Local 374 (Combustion Engineering), 284 NLRB 1382, 1383 (1987).

B. Respondent's Delay in Reinstating Heltman was Unlawful

In an exclusive hiring hall case, the Board held that a Union must adequately notify workers of rules governing the hiring hall that could result in their removal from any out of work list. Teamsters Local 727, 358 NLRB 718, 724 (2016). In that case, the Union adopted a rule which required hiring hall registrants to make themselves available for work for at least one show per year, rather than remaining in “will call” status beyond one year. 358 NLRB at 723. The “will call” rule was not specifically set forth or posted anywhere in writing. 358 NLRB at 724. Employees testified that they had never heard of anyone being disciplined from the hiring hall list for being on the “will call” list too long. *Id.* The Board, affirming the ALJ, found that the Union, in suspending a registrant for violating the unpublished rule, violated the duty of fair representation owed to the hiring hall users in violation of §§8(b)(1)(A) and (2). 358 NLRB 718, 724, fn 2. (Finding that removal from hiring hall opportunities violates both §§8(b)(1)(A) and 8(b)(2)).

In International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators, Local 720 (Lucas I), Charging Party Steven Lucas had been permanently barred from seeking referrals from the Union's exclusive hiring hall due to "alleged misconduct in relation to fellow employees, employers, and clients" over a 15-year period". 332 NLRB 1, 1 (2000). Ten months after the initial expulsion, Charging Party Lucas volunteered for and submitted to a psychological exam. Id. Lucas sent a letter to the Union requesting reinstatement, and attached a letter written by a psychologist indicating that there "should be no reason, from a psychological stand point, that [Charging Party] Lucas should not be considered fit and able to be employed at this time." Id. At about the same time, Charging Party Lucas contacted a signatory employer and indicated his availability for work. Id. at 2. The Employer, in turn, contacted the hiring hall and requested Lucas by name to be dispatched for work. Id. at 2. The Union refused, maintaining its position that Charging Party Lucas had been permanently barred from the use of its hiring hall. Notably, the General Counsel did not allege that the initial expulsion was unlawful, but that the failure to consider his request to rejoin the hall was a violation. 332 NLRB at 3.

The Board dismissed the complaint, finding that the General Counsel failed to show that the union acted in a way that is "so far outside a 'wide range of reasonableness' ... as to be irrational." Air Line Pilots v. O'Neill, 499 U.S. at 67. Further, the Union's failure to refer Charging Party Lucas was "necessary to protect the representative role that it performs in administering an exclusive hiring hall." Id. at 3. Finally, the Board found that the letter that Charging Party Lucas had sent, along with a letter from a psychologist, triggered no obligation to reconsider the *permanent expulsion* from the hiring hall and therefore did not act without a rational basis. 332 NLRB at 1.

The Board noted that the Union did not have any written rules governing readmission to the hiring hall, and Board law requires none. Id. at 4. Without such rules, the Board turned their inquiry into whether the Union acted arbitrarily in its treatment of Lucas, because the Union's operation of an exclusive hiring hall must comport with the duty of fair representation. Id. Charging Party Lucas' letter did not trigger any obligation on the part of the Union to reconsider the permanent expulsion from the hiring hall, nor did the letter show that circumstances had changed in the intervening months that it would be totally irrational for the Union to fail to reconsider the expulsion. Id. at 4. The Board concluded that the Union did not act without a rational basis or arbitrarily. Id. at 4.⁴

In this case, Respondent was under an obligation to adequately notify registrants of the hiring hall of rules pertaining to disciplinary rules of the hall and to follow those rules. Teamsters Local 727, 358 NLRB 718, 724 (2016). Respondent published and maintains a list of hiring hall infractions that all users must be familiar with. (Tr. 31, GCX 5).

The June 8 "No Show" letter sent to Heltman required him to "appear at the Executive Board meeting." (GCX 2). The June 30, 2016 suspension letter sent to Heltman stated that he has "the right to appeal this before the E-board." (GCX 3). The hiring hall infractions rules interchangeably use "board" or "infractions committee" to address "No Shows," and state that suspended registrants can seek review from "committee." (GCX 5, p. 1-2). Respondent's President Thomas testified that Heltman's behavior was detrimental to the operation of the hiring hall, the shows, and employers. (Tr. 248). According to the rules for "behavior damaging the

⁴ On appeal to the 9th Circuit, the Court remanded, finding that the Board did not have substantial evidence to support the Board's determination that "the Union's refusal to readmit Lucas to its exclusive hiring hall was necessary to promote the efficiency and integrity of its hiring hall operations." Lucas v. NLRB, 333 F.3d 927 (9th Cir. 2003). On remand, the Board entered a judgment and remedy in favor of Charging Party Lucas. IATSE Local 720, (Lucas II), 341 NLRB 1267 (2004).

Local's contractual relations with employers," Heltman would have to come before the infractions committee. (GCX 5, p.2). Respondent's President Thomas testified that the infractions committee and executive board are "one in the same." (Tr. 182). When Heltman missed the February 2017 reinstatement meeting, Thomas wrote to their attorney, Monahan, stating that "the next infractions committee meeting is on March 6th at 2 p.m." (GCX 18, p. 2).

It should come as no surprise that Heltman, taking into account the hiring hall rules, the two June letters, and Respondent's practice, understood that appearing before the infractions committee on October 3, 2016, satisfied his obligation to "appeal this before the E-board" as indicated in the June 30 letter. When Heltman appeared at the October 3 meeting of the infractions committee, he wanted to "find out why I was still suspended." (Tr. 148). Heltman "expected to be" reinstated after that meeting. (Tr. 72). While Respondent purportedly "took care of" the two no-show infractions, Heltman was not placed back on the list. (Tr. 73).

Consistent with his stated purpose of attending the October 3 meeting, Heltman asked whether Thomas and Stephens needed anything further from him, stating "there's nothing else we need to talk about, is there?" (GCX 13, 10:12-10:17). Thomas told Heltman, "I don't think so, as far as that goes" and then proceeded to talk about Heltman's internal charges. (GCX 13 10:17-10:40). Based on Thomas' response, there would be no reason for Heltman to think he was somehow omitting something that the Union wanted to know, as he was answering every question posed to him. Indeed, as testified by Stephens, it was Thomas who was chairing the meeting, and Thomas who was in the position to ask any questions during the meeting. (Tr. 268-269).

Just as the Union in Lucas I was not alleged to have unlawfully removed Charging Party Lucas from its hiring hall list, Respondent in this case was not alleged to have unlawfully

removed Heltman from its hiring hall list. IATSE Local 720, (Lucas I), 332 NLRB 1, 1 (2000). However, the Union in Lucas I *permanently barred* the Charging Party Lucas from re-registering with the hiring hall, while Respondent merely issued a temporary suspension to Heltman. Id. The Board found that there were no written rules or procedures that required the Union to reconsider Lucas' application to rejoin the hiring hall, and thus the Union did not breach its duty of fair representation by rejecting his application. 332 NLRB at 4.

When Heltman appeared before the infractions committee – which President Thomas describes as “one in the same” as the executive board – Heltman was entitled to treatment that was neither arbitrary nor unfair. Air Line Pilots Assn. v. O’Neill, 499 U.S. 65 (1991). Respondent had explicit procedures that it laid out both in its hiring hall rules and in the letters it sent to Heltman. In this regard, the hiring hall rules interchangeably refer to the “infractions committee” and “board” as being the entity charged with dealing with discipline or infractions in the hall. (GCX 2, 3, 5). It offered Heltman the opportunity to address the board via letter, if he chose to do so. GCX 2. He paid a \$100 fine one absence, and he provided a doctor’s note for another. (GCX 9, 10). The Union acknowledged neither and Thomas and Stephens could not find Heltman’s paperwork when he appeared on October 3. (Tr. 268, GCX 13 at 3:23 – 5:00) Finally, if Respondent *actually distinguishes* between the infractions committee and the executive board, it failed to adhere to that distinction when Heltman’s no-shows were cleared up *by the infractions committee*, even though the June 8 letter stated that Heltman had to appeal the violations before the executive board. (GCX 2).

While Respondent’s President Thomas testified that he was “taken aback” and “surprised” by Heltman’s appearance at the October 3 meeting, neither he nor Vice-President Stephens requested that Heltman come back at another time. (Tr. 242). They did not ask him

any questions about his suspension. Even though this was the first time Thomas ran the infractions committee meeting without Business Agent Ennenga, there was no requirement that Ennenga be present. (Tr. 242-256). Thomas was chairing the meeting and was in a position to ask questions. (Tr. 268-269) Instead, Thomas placed the blame on Heltman for not raising the allegations that resulted in his initial suspension. All the while, the June 30 letter – *the only* document referencing his suspension – did not put him on notice of the specific allegations regarding his behavior. (Tr. 243; GCX 3). When Heltman and Respondent finally managed to schedule a meeting with the executive board for March 2017, no one posed any questions to Heltman about the events leading up to his suspension. (Tr. 90-91).

Heltman did what was asked of him, according to the Respondent's rules, and according to Respondent's practice. The minutiae of each complaint leading to Heltman's suspension are not relevant. If they were, surely in the five months after the October meeting someone from Respondent's Executive Board would have asked Heltman about any one of them, *but no one ever did*. Instead, Respondent strung Heltman along for an additional 5 months between October 2016 and March 2017 for no discernible reason and with no apparent purpose. That is both unfair, arbitrary, and was not "necessary to protect the representative role that it performs in administering an exclusive hiring hall" and thus violates §8(b)(1)(A) and §8(b)(2). Teamsters Local 727, 358 NLRB 718, fn. 2 (2016); International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators, Local 720 (Lucas I), 332 NLRB 1, 4 (2000).

IV. REMEDY

The appropriate remedy in this case is to make Heltman whole for all lost work opportunities between the October 3, 2016 meeting and when he was returned to the hiring hall list on or about March 3, 2017. The standard remedy ordered by the Board for unlawful refusals

to refer employees from exclusive hiring halls is that “the Union shall make [the employee] whole for any loss of earnings and benefits sustained by him as a result of the Union’s failure and refusal to refer him for employment.” Stage Employees IATSE Local 1412 (Various Employers), 312 NLRB 123, 127 (1993)(union unlawfully and arbitrarily banned employee from the exclusive hiring hall). *See also* Stagehands Referral Service, LLC, 347 NLRB 1167, 1172 (2006); IBEW Local 48 (Oregon-Columbia NECA), 344 NLRB 829, 830 (2005).

V. CONCLUSION

Respondent violated §8(b)(1)(A) and §8(b)(2) as alleged in the Complaint by keeping Heltman on suspension for an additional 5 months after appearing before the infractions committee.

DATED AT Denver, Colorado, this 27th day of September 2017.

Respectfully Submitted,



Todd D. Saveland, Esq.
Counsel for the General Counsel
National Labor Relations Board, Region 27
1961 Stout Street, Suite 13-103
Denver, CO 80294
(303) 844-3554

VI. PROPOSED NOTICE TO EMPLOYEES

(To be printed and posted on official Board notice form)

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative 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.

(To be printed and posted on official Board notice form)

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 fail to refer Bruce Nelson Heltman, or any other employee, for employment through our exclusive hiring hall system for arbitrary, discriminatory or invidious reasons.

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 make Bruce Nelson Heltman whole for any loss of earnings and other benefits resulting from our failure to refer him for employment from October 3, 2016 to March 3, 2017, less any net interim earnings, plus interest.

WE WILL remove from our files any reference to the unlawful refusal to refer Bruce Nelson Heltman for employment from our exclusive hiring hall and **WE WILL** notify him in writing that we have done so and that we will not use his non-referral against him in any way.

IATSE LOCAL 99

(Labor Organization)

Dated: _____ **By:** _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-866-667-NLRB (1-866-667-6572). Hearing impaired persons may contact the Agency's TTY service at 1-866-315-NLRB. You may also obtain information from the Board's website: www.nlr.gov.

Byron Rogers Federal Office Building
1961 Stout Street, Suite 13-103
Denver, CO

Telephone: (303)844-3551
Hours of Operation: 8:30 a.m. to 5 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office's Compliance Officer.