

**00123 UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

TRUCK DRIVERS, CHAUFFEURS AND	:	
HELPERS LOCAL UNION NO. 100,	:	
AFFILIATED WITH THE	:	
INTERNATIONAL BROTHERHOOD OF	:	
TEAMSTERS (Wicked Films, LLC),	:	
	:	
Respondent,	:	CASE NO. 9-CB-214166
	:	
and	:	
	:	
SAMUEL J. BUCALO, AN INDIVIDUAL,	:	
	:	
	:	
Charging Party.	:	
	:	

**RESPONDENT’S EXCEPTIONS TO THE RECOMMENDED DECISION
AND ORDER OF ADMINISTRATIVE LAW JUDGE ANDREW S. GOLLIN**

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board (“Board”), Respondent Teamsters Local Union No. 100, an affiliate of the International Brotherhood of Teamsters, (“Respondent,” “Local 100” or “the Union”) (referred to in the case caption as Truck Drivers, Chauffeurs and Helpers Local Union No. 100) hereby files its Exceptions to the Recommended Decision and Order (“Decision”) of Administrative Law Judge Andrew S. Gollin (“ALJ”) issued in the above-captioned matter on September 11, 2018. (JD-55-18) The bases for these exceptions are set forth in Respondent’s Brief in Support of Exceptions to the Decision of Administrative Law. The Respondent excepts to the ALJ’s Decision as follows:

1. **Decision, pp. 2-3, lines 33-32:** “In early January 2011, after he was elected, Bucalo was forced to retire from UPS and thereafter began receiving pension benefits.”

2. **Decision, p. 3, lines 45-48:** “Some of the individuals Bucalo criticized filed internal charges against him. A summary of those charges and their statuses were published in the official

Union newsletter prior to the 2016 elections. (G.C. Exh. 2). According to Bucalo, publicizing the statuses of these charges against him was unprecedented.”

3. **Decision, p. 8, lines 27-30:** “As previously stated, the parties stipulated the Union’s unwritten practice is to refer from these two lists. According to the stipulation, the Union first refers drivers, in order, from the out-of-work active list, and then refers drivers, in order, from the retiree list after the active list is exhausted. (Jt. Exh. 1, par. 6). Metzger, however, has deviated from this practice.”

4. **Decision, p. 8, Lines 32-34:** “Metzger has deviated from this practice to honor specific requests from producers. For example, if a producer needs a driver with mechanic skills, he will refer Bill Lloyd, who is a driver/mechanic, even if it means sending him out of order.

5. **Decision, p. 9, lines 31-42:** “Bucalo Not Referred to *Extremely Wicked*, Despite Being Requested. ... Haller told Ruiz that she would love to work with Bucalo again. Ruiz wrote down Bucalo’s name and said he would see what he could do, but there were no guarantees. (Tr. 207). At some point before the holidays, Ruiz called Craig Metzger and told him that Haller wanted to know if Bucalo could be referred out to be the set decoration driver on *Extremely Wicked*. Metzger told Ruiz the Union had the active list and the retiree list, and that Bucalo was on the retiree list.”

6. **Decision, p. 10, lines 9-19:** “At some point, Rick Whaley informed Metzger that he needed to have emergency surgery and could no longer work. Whaley stopped working on January 27. Metzger needed to find a replacement for Whaley. Rather than contact individuals off the retiree referral list, Metzger contacted the Union to see if there were any out-of-work active construction drivers interested in working on films. At some point, Union President Webster informed Metzger that Joe Hensley, an out-of-work active construction driver, was looking for work. Hensley had previously contacted Metzger about getting referred out, but, at the time,

there was no work available. Metzger called Hensley to see if he was available. Hensley was interested and available. At the time, Hensley was not on the out-of-work active (film and television) referral list, so Metzger added his name and referred him out to replace Whaley.”

7. **Decision, p. 10, lines 20-23:** “At some point during the project, the Employer needed a second set decoration driver. There were no available drivers on the out-of-work active referral list. Again, rather than turn to the retiree referral list, Metzger contacted Dan Matthews, an out-of-work active construction driver.”

8. **Decision, p. 11, lines 24-27:** “I found the General Counsel’s witnesses (Bucalo, Haller, and Matthews) to be more credible than the Union’s witnesses (Webster, Metzger, and Lilly). General Counsel’s witnesses appeared to be sincere and honest in their demeanors, and their recollections were clear, consistent, and reliable.”

9. **Decision, p. 11, lines 45-49:** “Webster was asked if this was the first time Anderson had been added to the list and referred out, and Webster replied that he thought Anderson was already on the referral list. But, moments later, Webster again feigned ignorance and disinterest, stating ‘I didn’t know their status, I didn’t know when they could drive, what they couldn’t drive ‘cause I didn’t really deal with it. I just gave them Craig’s number.’ (Tr. 292)”

10. **Decision, p. 12, lines 39-40:** “... Metzger and Webster had conflicting recollections about if they ever discussed the Employer’s request to refer Bucalo to work on *Extremely Wicked*.”

11. **Decision p. 15, lines 20-26:** “The Union breached its duty of fair representation when it *actively* prevented Bucalo from working on *Extremely Wicked* by denying the Employer’s request to refer him, without a legitimate reason for doing so. The Union defends that it was simply following its ‘established’ practice of first referring, in order, from its out-of-work active list and

then, in order, from its retiree list. Assuming this was the Union's established practice, Metzger regularly deviated from this practice, both before and after the Employer requested Bucalo."

12. **Decision, pp. 15-16, lines 39-51:** "The Union also discriminatorily failed or refused to refer Bucalo to work on *Extremely Wicked* because of his dissident union activity and for reasons other than the failure to tender periodic dues and initiation fees uniformly required for membership. The Union was well aware of Bucalo's dissident activity, which, as previously stated, is protected under Section 7 of the Acct. Webster expressed hostility toward that activity when he 'commented' on Bucalo's Facebook post criticizing Webster and his administration. ... [T]he Union's claimed defense that it was simply acting in accordance with its established practice when it did not honor the Employer's request to refer Bucalo is pretext for its discriminatorily motive. Based on this finding of pretext, I find the Union cannot establish it would have taken the same action against Bucalo in the absence of his protected activities."

13. **Decision, p. 16, lines 7-10:** "... the Union violated Sections 8(b)(1)(A) and 8(b)(2) of the Act when it, in the operation of its exclusive referral service, breached its duty of fair representation when it discriminatorily failed or refused to refer Bucalo out to work for the Employer on *Extremely Wicked*."

14. **Decision, p. 16, note 14:** "The Union attempts to distinguish the Employer's request for Bucalo from these other requests by arguing it was not a valid request, because he 'pressed' Haller to request him."

15. **Decision, p. 17, lines 44-47:** "The Union breached its duty of fair representation when it discriminatorily failed or refused to refer Samuel J. Bucalo to employment with the Employer because of his dissident union activity or for reasons other than failure to tender periodic dues and initiation fees uniformly required for membership in the Union."

16. **Decision, p. 17, lines 49-51:** “The Union discriminatorily failed or refused to refer Samuel J. Bucalo to employment with the Employer because of his dissident union activity or for reasons other than failure to tender periodic dues and initiation fees uniformly required for membership in the Union.”

17. **Decision, p. 18, lines 2-5:** “The Union caused or attempted to cause the Employer that is signatory to a collective bargaining agreement with it to discriminatorily fail to employ Bucalo because of his dissident union activity or for reasons other than failure to tender periodic dues and initiation fees uniformly required for membership in the Union.”

18. **Decision, 18, lines 7-9:** “By engaging in the unlawful conduct set forth above, the Union has engaged in an unfair labor practices affecting commerce within the meaning of Sections 8(b)(1)(A) and 8(b)(2) of the Act.”

19. **Decision, p. 18, lines 11-12:** “The foregoing unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.”

20. **Decision, p. 18, lines 14-15:** “The Union shall pay to Bucalo net backpay of \$23,283, plus interest computed and compounded daily.”

Respectfully submitted,

DOLL, JANSEN & FORD

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Exceptions to the Recommended Decision and Order of the Administrative Law Judge was filed electronically with the National Labor Relations Board, and was served by electronic mail on NLRB Region 9 Regional Director Garey E. Lindsay (garey.lindsay@nlrb.gov), Counsel for the General Counsel Kevin Luken (kevin.luken@nlrb.gov) and Charging Party Samuel J. Bucalo (sammo1245@aol.com), on this 8th day of October, 2018.

Julie C. Ford