

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

In the Matter of

**INTERNATIONAL ALLIANCE OF THEATRICAL
STAGE EMPLOYEES, MOVING PICTURE
TECHNICIANS, ARTISTS, AND ALLIED CRAFTS
OF THE UNITED STATES, ITS TERRITORIES,
AND CANADA, PHILADELPHIA LOCAL NO. 8, AFL-CIO
(ELLIOTT LEWIS CONVENTION SERVICES, LLC)**

and

**Case 04-CB-216541
04-CB-221871**

MARTIN C. MCINTYRE, an Individual

David Rodriguez, Esq., for the General Counsel.

Regina C. Hertzog, Esq., (*Cleary, Josem & Trigiani, Philadelphia, Pennsylvania*)
for the Respondent.

DECISION

STATEMENT OF THE CASE

Arthur J. Amchan, Administrative Law Judge. This case was tried in Philadelphia, Pennsylvania on January 31, 2019. Michael C. McIntyre (aka Chris McIntyre) filed the charges giving rise to this case on March 14, and June 12, 2019. The General Counsel issued the complaint on September 25, 2018.

The General Counsel alleges that Respondent, IATSE Local 8, violated Section 8(b)(2) in causing an employer, Elliott-Lewis Convention Services, LLC, to remove Michael McIntyre from the house crew or core workforce at the Philadelphia Convention Center on March 6, 2018. He also alleges the Union violated Section 8(b)(1)(A) in bringing internal union charges against McIntyre on April 30, and June 6, 2018.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Charged Party Union, I make the following:

FINDINGS OF FACT

I. JURISDICTION

5 The Respondent Union, IATSE Local 8, is a labor organization within the meaning of
 Section 2(5) of the Act. It represents employees who work at the Philadelphia Convention Center
 (PCC). These employees' nominal employer, Elliott-Lewis Convention Services, LLC, and
 10 Freeman Decorating Company, for whom the Charging Party performed services at the PCC, are
 employers engaged in commerce with the meaning of Section 2(2), (6) and (7) of the Act.
 Elliott-Lewis, has an office in Pennsylvania and purchases and receives goods valued in excess
 of \$50,000 directly from points outside of Pennsylvania. Freeman has an office in New Jersey
 and has performed services valued in excess of \$50,000 outside of New Jersey.

II. ALLEGED UNFAIR LABOR PRACTICES

15 IATSE Local 8 began providing labor for employers at the PCC in 2003. Initially, these
 employees performed only audio-visual work. In 2014, however, the Union began supplying
 labor for many other functions at the PCC, such as trade shows. Its members began doing such
 20 work as laying carpeting, hanging signs and installing and dismantling trade show booths.

 The Union has a "Customer Satisfaction Agreement" with Elliott-Lewis, which is
 essentially a staffing agency for contractors working the Convention Center. Contractors request
 labor at the PCC by submitting a labor order form to Elliott-Lewis, which then procures the labor
 25 from IATSE Local 8. Pursuant to its agreement with Elliott-Lewis, the Union is allowed to
 designate a number of employees as a core workforce or "house crew." These employees have
 priority in getting work at the PCC over other union members. If more employees are needed at
 the PCC than are on the house crew, the Union refers them via its exclusive hiring hall.

30 In 2014, the house crew initially consisted of 15 union members plus Axel Barnes, the
 general foreman and union steward. Due to injuries to some of its members the crew increased
 to 18 members, plus Barnes, by 2016. The Charging Party, Michael "Chris" McIntyre, was the
 last person added to the house crew in September 2016. The crew did not have any new
 35 members until March 2018.

Removal of McIntyre from the House Crew

 McIntyre, a union member since 2002, has had disagreements with the union leadership.
 Some of these involved the staffing at the PCC, which he considers the most desirable job in the
 40 Union's jurisdiction. In September 2017, McIntyre complained to Pete Tzorgatos, a union
 member who serves as a general foreman at the PCC, about the house crew assignments. These
 complaints included concerns as to which members received overtime work. This prompted
 Michael Barnes, the President of Local 8, to send the following email to McIntyre on September
 19, 2017:

Dear Brother McIntyre,

5 Please be informed the seniority for the House Crew at the convention center is based on building seniority not industry seniority. This was explained to you when the job was offered. You may recall the job was offered to you on the condition you did not disrupt the stability of the crew. If this issue persist (sic), you will be replaced on the house crew.

10 On March 5, 2018, McIntyre apparently believed that another IATSE employee was doing work that should have been assigned to him. He sent a text message complaining about this to two members of the Union's Executive Board.

15 In response, Union President Michael Barnes sent McIntyre the following email on March 6:

20 On September 19, 2017 you were sent the attached email. Based on additional information reported to this office after this email was sent, you are being removed from the house crew at the convention center.

25 On March 17, 2018, 11 days after removing McIntyre from the house crew, the Union added Joseph McAlee, a union member with far less seniority than McIntyre, to the house crew. The Union contends this was done to replace member Tim Yowler, who stopped working in February due to illness. However, when Yowler returned to work in August 2018, McAlee remained on the house crew.

30 Despite this "smoking gun" establishing that McIntyre was removed from the house crew for complaining about losing work to another member. Respondent has proffered a non-credible pretextual explanation for McIntyre's removal from the house crew.

35 Union President Michael Barnes testified that the reason that he removed McIntyre from the house crew was that the Union decided to reduce the number of members on the PCC house crew from 18 to 15. There are a number of reasons why I decline to credit this testimony. First, Barnes' March 6 email does not give any such reason for McIntyre's removal.

40 Secondly, there is no documentary corroboration for Barnes' testimony in this regard. There is also no documentation that 2 other employees were removed from the house crew at the same time. In fact, Barnes' testimony appears to establish that Jim Gilroy and Vince Messina were removed from the house crew at times unspecified for reasons other than a non-discriminatory decision to reduce the size of the house crew. At Tr. 198 Barnes testified that Gilroy was removed from the house crew because he regularly wanted to work elsewhere. Moreover, Gilroy was still on the house crew when McAlee joined it on March 17. Barnes's testimony also indicates that Gilroy may have been removed in part to objecting to the addition of McAlee to the house crew, Tr. 206. Barnes testified that Messina was removed due to
45 disciplinary problems and challenging the basis of adverse incident reports.

Moreover, Barnes admitted that McIntyre's questioning of job assignments was a factor in his decision to remove McIntyre from the house crew, Tr. 198.

The filing of internal union charges

On April 30, 2018, Local 8 President Michael Barnes filed 2 internal union charges against McIntyre alleging that he violated the Constitution and By-Laws of the Union by 1) failing to exhaust internal remedies to resolve a decision by a local officer and 2) soliciting referral jobs using the Union's hiring hall procedure.

As to the first charge, McIntyre's union personnel file describes the offense as "filed charges with the NLRB before exhausting internal remedies." I find that Barnes would not have filed either charge had McIntyre not filed his unfair labor practice charge on March 14, 2018.

The Union dropped both charges without explaining the reason(s) to McIntyre.

On June 6, 2018, Joseph Baliski, the Union's recording secretary, filed another internal union charge against McIntyre, accusing him of leaving work at the PCC 50 minutes early on May 2, 2018 without the consent of his steward or head of his department. On May 3, Union President Michael Barnes told McIntyre that he would have to appear before the Union's Executive Board as a result of the May 2 incident because he already had union charges pending against him. Barnes told another employee, who was also accused of leaving work early, that he had nothing to worry about since it was his first violation of union rules. Recording Secretary Baliski confirmed at this hearing that whether a member is brought up on internal union charges depends of their prior history and that McIntyre was brought up on charges on June 6, at least in part due to the charges that were subsequently withdrawn, Tr. 166-67.¹

Analysis

Removal from the House Crew

Since the Respondent Union operates an exclusive hiring hall, it owes a duty of fair representation to its members. Once the General Counsel establishes union interference with a member's employment status, the union bears the burden of establishing the such interference was made pursuant to a valid hiring-hall provision, or that its conduct was necessary for effective performance of its representational function, *IATSE Local 151 (SMG and the Freeman Cos., d/b/a Freeman Decorating Services)*, 364 NLRB No. 89, slip opinion at p. 2 (2016).²

A union's duty of fair representation applies to all union activity. A union may not treat a unit employee in a manner that is arbitrary, discriminatory or in bad faith, *Vaca v. Sipes*, 386 U.S. 171 (1967); *Steelworkers v. Rawson*, 495 U.S. 362 (1992); *Air Line Pilots Assn. v. O'Neil*,

¹ Respondent has the burden of showing that Barnes was referring to charges other than those filed illegally, if that was the case. It did not do so. As the General Counsel points out, Baliski's contention that he was unaware that McIntyre had filed a ULP charge is not credible.

² Although this cited case deals with referrals, the principle logically applies to removal of a union member from his job as well.

499 U.S. 65 (1991). The Union’s conduct with regard to Chris McIntyre was arbitrary, discriminatory and in bad faith. It is not necessary for the Union to effectively perform its representative functions to punish McIntyre for complaining about his assignments or questioning whether the Union is operating its hiring hall fairly.

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There is no question but that McIntyre was removed from the house crew for questioning whether the Union was treating him fairly with regard to work assignments. Union President Michael Barnes admitted this was at least a factor in removing McIntyre. Thus, the Union violated the Act in removing McIntyre from the house crew. Contrary to the assertions of Respondent in its brief at page 17, it violated its duty of fair representation regardless of whether McIntyre’s complaints concerned only his personal situation, *Operating Engineers Local 627*, 359 NLRB 758, 766 (2013); 361 NLRB 908 (2014) enfd. 635 Fed. Appx. 480 (10th Cir. 2015); *Teamsters Local 657 (Texia Productions, Inc.)* 342 NLRB 637 (2004); *Plasterer’s Local 21*, 264 NLRB 192 (1982).

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The Board will not seek to quantitatively analyze the effect of the unlawful cause once it has been found. “It is enough that the employees’ protected activities are causally related to the employer action which is the basis of the complaint. Whether that ‘cause’ was the straw that broke the camel’s back or a bullet between the eyes, if it were enough to determine events, it is enough to come within the proscription of the Act.” *Wright Line*, 251 NLRB 1083, at 1089 fn. 14; accord: *Bronco Wine Co.*, 256 NLRB 53, at 54 fn. 8 (1981).

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Filing Internal Union Charges Against Michael McIntyre

It is a violation of Section 8(b)(1)(A) for a Union to file internal charges against a member for filing an unfair labor practice charge, *IBEW Local 34*, 208 NLRB 639, 641-42 (1974). This is so even if the member has failed to exhaust internal union procedures, *Western Exterminator Co.*, 223 NLRB 1270, 1282 (1976). This record makes it clear that the Union would not have filed the charges against McIntyre or brought him up before the Executive Board but for the fact that he had filed the initial charge in this case. Therefore, the April 30, 2018 and the June 6, 2018 charges were filed and pursued in violation of the Act.

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CONCLUSIONS OF LAW

Respondent IATSE Local No.8 violated Sections 8(b)(1)(A) of the Act in removing Michael “Chris” McIntyre from the house crew at the Philadelphia Convention Center and effectively reducing his employment opportunities at that location.³

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Respondent IATSE Local 8 violated Section 8(b)(1)(A) by filing 2 internal union charges on April 30, 2018 and another charge on June 6, 2018 against Michael McIntyre because he filed an unfair labor practice charge over his removal from PCC house crew.

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³ The General Counsel alleges that Respondent violated Section 8(b)(2) in causing Elliott Lewis to remove McIntyre from the house crew. However, the Union, not Elliott Lewis removed him. The facts, which were fully litigated establish a violation of 8(b)(1)(A), *Pergament United Sales*, 296 NLRB 333, 334 (1989) enfd. 920 F. 3d 130 (2d Cir. 1990).

REMEDY

Having found that the Respondent, IATSE Local 8 has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. It shall make Michael McIntyre whole for any loss of earnings and other benefits, computed on a quarterly basis from March 6, 2018 to the date McIntyre is restored to house crew, less any net interim earnings, as prescribed in *F.W. Woolworth*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁴

ORDER

Respondent, IATSE Local Union 8, Philadelphia, Pennsylvania its officers, agents, and representatives, shall

1. Cease and desist from

(a) Removing employees from the Philadelphia Convention Center house crew for arbitrary, discriminatory and/or bad faith reasons, including their objections or criticisms as to how the Union operates its hiring hall.

(b) Bringing internal union charges against any employee or member because he or she has filed an unfair labor practice charge against it.

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

2. Respondent IATSE Local 8 shall take the following affirmative action necessary to effectuate the policies of the Act.

(a) Respondent IATSE Local 8 shall restore Michael McIntyre to the PCC house crew without prejudice to his seniority or other rights or privileges previously enjoyed within 14 days of this Order and shall notify Elliott Lewis Convention Services and Freeman Decorating in writing that it is doing so.

(b) Respondent IATSE Local 8 shall make Michael McIntyre whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of the decision.

(c) Respondent IATSE Local 8 shall compensate Michael McIntyre for any search-for-work and interim employment expenses regardless of whether those expenses exceed

⁴ 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.

his interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

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(d) Respondent shall within 14 days of this Order remove from its files any reference to the unlawful removal from the house crew and unlawful union charges, and within 3 days thereafter, notify Michael McIntyre, in writing that this has been done and that the reasons for his removal from the house crew, the removal from the house crew, his filing of an unfair labor practice charge and the illegal internal union charges will not be used against him in any way.

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(e) Within 14 days after service by the Region, Local 8 shall post its offices and hiring hall in Philadelphia, Pennsylvania copies of the attached notices marked “Appendix”⁵ Copies of the notice, on forms provided by the Regional Director for Region 4, 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 employees and/or 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the office involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all members and other persons who have signed up at the hiring hall at any time since March 6, 2018.

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(f) Respondent Local 8 shall 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 payroll records, social security payment records, timecards, personnel records and reports, and all other records, 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.

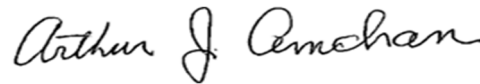
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⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing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

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(g) Within 21 days after service by the Region, Respondent Local 8 shall 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 Respondents have taken to comply.

10 Dated, Washington, D.C. March 11, 2019



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Arthur J. Amchan
Administrative Law Judge

APPENDIX

NOTICE TO 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 on your behalf with your employer
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT remove you from the Philadelphia Convention Center house crew or otherwise discriminate against you for objecting or complaining about the manner in which we operate our exclusive hiring hall.

WE WILL NOT bring internal union charges against you for filing an unfair labor practice charge against IATSE Local 8.

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

WE WILL make Michael McIntyre whole for any loss of earnings and other benefits resulting from his removal from the PCC house crew, less any net interim earnings, plus interest compounded daily.

WE WILL remove from our files any reference to our unlawful removal of Michael McIntyre from the house crew and the unlawful internal union charges filed against him, and within 3 days thereafter, **WE WILL** notify Michael McIntyre, in writing that this has been done and that the reasons for his removal from the house crew, the removal from the house crew, his filing of an unfair labor practice charge and the illegal internal union charges will not be used against him in any way.

WE WILL compensate Michael McIntyre for any search for work expenses regardless of whether those expenses exceed his interim earnings.

WE WILL file a report with the Social Security Administration allocating backpay to the appropriate calendar quarters.

WE WILL compensate Michael McIntyre the adverse tax consequences, if any, of receiving one or more lump-sum backpay awards covering periods longer than 1 year.

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AND CANADA, PHILADELPHIA LOCAL
NO. 8, AFL-CIO**

(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. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies 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. You may also obtain information from the Board's website: www.nlr.gov.

The Wanamaker Building, 100 East Penn Square, Suite 400
Philadelphia, PA 19007
(215) 597-7601, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at www.nlr.gov/case/04-CB-216541 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



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, (215) 597-5354.