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

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO (PPF), LOCAL 502
(Ward Engineering Co., Inc.)

And Case 09-CB-205891

JOE WYSSBROD, AN INDIVIDUAL

Zuzana Murarova, Esq.,
for the General Counsel.
Ben Basil, Esq., and
David Leightty, Esq.
for the Respondent.

DECISION

STATEMENT OF THE CASE

MELISSA M. OLIVERO, Administrative Law Judge. This case was tried in Cincinnati, Ohio, on August 1, 2018. Joe Wyssbrod, an individual, filed a charge on September 7, 2017, and a first amended charge on November 3, 2017.[1] The General Counsel issued the complaint on April 30, 2018, and an Amendment to the complaint on August 1, 2018 (collectively referred to as the complaint). The complaint alleges that the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL−CIO (PPF), Local 502 (Local 502 or Respondent) violated Section 8(b)(1)(A) of the National Labor Relations Act[2] (Act) by removing the Charging Party from its referral list without apprising him of his current obligations under a union-security clause and without disclosing to him that he could be reinstated to the referral list by paying a hiring hall fee, and by failing and refusing to reinstate him to its referral list and failing and refusing to refer him to employment. (GC Exhs. 1(c), 2.) Respondent timely answered the complaint, denying that it violated the Act.[3] (GC Exh. 1(g).)

[1] All dates are in 2017, unless otherwise indicated.

[2] 29 U.S.C. §§151-169.

[3] The General Counsel filed an amendment to the complaint on August 1, 2018, prior to the hearing. (GC Exh. 2.) Respondent filed an answer to the amendment at the hearing, denying the relevant allegations. (R. Exh. 29.)

Respondent did not file a written answer to the complaint, but denied the allegations contained therein.

The parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. On the entire record,[4] including my own observation of the demeanor of the witnesses, [5] and after carefully considering the briefs filed by the parties, I make the following

FINDINGS OF FACT

I. JURISDICTION

Ward Engineering Co., Inc. (Ward Engineering or Employer), a corporation, has been engaged as a mechanical contractor in the construction industry at its facility in Louisville, Kentucky, where it annually purchases and receives goods valued in excess of $50,000 directly from points outside the Commonwealth of Kentucky. Local 502 admits, and I find, that Ward Engineering is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Local 502 further admits, and I find, that it is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Local 502's Agreement with the Association and Kentucky Law

At all material times, Local 502 and the Mechanical Contractors Association of Kentucky, Inc. (MCAKY), were signatory to a collective-bargaining agreement (agreement), effective August 1, 2012, through July 31, 2017. (GC Exh. 4.) A successor agreement is effective August 1, 2017, through July 31, 2022.[6] (GC Exh. 4.) Local 502 is the exclusive collective-bargaining representative of the following employees: All employees in the bargaining unit (Unit) described in Article 3 of the collective-bargaining agreement between the Mechanical Contractors Association of Kentucky, Inc., and Respondent. The agreement covers anyone performing plumbing and pipefitting work within several counties in central Kentucky. (GC Exh. 4.) Prior to the current collective bargaining agreement, there was no provision requiring a contractor to have just cause to terminate an employee. (Tr. 195.)

The agreement effective through 2017 contained a union security clause in Article 4, which states, inter alia

> All employees in the bargaining unit . . . must, as a condition of employment, maintain membership in good standing for the life of the Agreement.
> . . .

[4] The transcript in this case (Tr.) is mostly accurate, but I make the following corrections: Tr. 48, l. 20, "502" should be "Facebook"; and Tr. 116, l. 6, "MS. MURAROVA" should be "MR. BASIL."

[5] Although I have included citations to the record to highlight particular testimony or exhibits, my findings and conclusions are not based solely on those specific record citations, but rather on my review and consideration of the entire record for this case. My findings of fact encompass the credible testimony and evidence presented at trial, as well as logical inferences drawn therefrom.

[6] As discussed further herein, the union-security clause in the successor agreement was voided by Kentucky's right to work law, effective January 9, 2017.

> The Employer or the individual contracting firm agrees to notify the Union when additional or replacement employees are needed. The Union agrees to furnish applicants on a non-discriminatory basis to perform the necessary work when so notified, within 48 hours after receiving the request from the Employer. The decision, with regard to the hire and tenure of all employees, shall be made by the Employer. Loaning and/or borrowing employees from contractor to contractor will be prohibited.
>
> . . .
>
> The Union and the Employer mutually agree that they will not discriminate against anyone because of race, color, creed, age, sex, persons qualifying under the Americans With Disabilities Act, or national origin in accepting members, or in the selection and hiring of employees, and do further agree that they will comply with all State and Federal Laws and Regulations regarding Equal Employment Opportunity.
>
> No employee shall be discharged from employment for violation of this Article except for failure to pay union dues, initiation fees and assessments required by the Union.
>
> . . .

(GC Exh. 4, pp. 9−10.)

The collective-bargaining agreements further contain the following provision relating to the hiring of employees:

> **ARTICLE 41 – Hiring and Use of Employees**
>
> 142. For the purpose of this Agreement the words "Home Local Union" shall mean the local union having jurisdiction in the area of the Employer's place of business, and, therefore, is the local union which referred the employee to the Employer
>
> 143. The Employer will first request the home local union for qualified personnel. The local union, upon such request, agrees to furnish at all times to the Employer duly qualified Mechanical Equipment Service Journeymen, Servicemen, Service Apprentices and Tradesmen, including Journeymen with special skills, where applicable, in a sufficient number, as determined by the Employer to properly execute all work covered by this Agreement.
>
> 144. In the event the local union having jurisdiction is unable to supply the requested number of qualified and competent Service Journeymen, Servicemen, Service Apprentices or Tradesmen and other employees as herein described, the Union, upon request of the local union, agrees to notify its other local unions of the availability of work and will request these local unions to refer such qualified employees to the Employer.

> 145. If neither the local union nor the Union is able to supply competent and skilled Employees satisfactory to the Employer within forty-eight (48) hours, the Employer may hire such persons wherever available, subject to the provisions of Article 11 and train such persons to perform the work required. It is understood that consideration for such employment and training shall be given to Employees with previous experience in the plumbing and pipefitting industry and/or the mechanical equipment service and maintenance industry.
>
> 146. The Employer shall retain the right to reject any applicant referred by the union. The Employer shall retain the right to terminate any employee for just cause providing Employer so states in a termination notice.
>
> 147. The selection of applicants for referral to jobs shall be on a non-discriminatory basis and shall not be based on, or in any way affected by union membership, bylaws, rules, regulations, constitutional provision, or by any other aspect or obligation of union membership, policy, or requirement; no distinction in treatment should be made based on religion, color, age, national origin, sex, handicap status, Vietnam era, or disabled Veteran's status, or on any other basis prohibited by law.[7]

(GC Exh. 4, pp. 23−24.)

The Union maintains dispatching rules for its hiring hall. (GC Exh. 4, p. 5.) These rules allow contractors to request employees by name by making a written request. The rules further state that, "These rules do not prohibit a member from being requested or from soliciting his/her job." The rules further require, "Every member must have a referral to go to work." Lewis and Justin Wendler, a Union member, testified that employees solicit their own work outside of the hiring hall. (Tr. 134, 155.) If an employee solicits his or her own job, the contractor is still required to contact the hiring hall for a referral. (Tr. 196.) Contractors also call union members directly about jobs if they have been employed in the past.[8] (Tr. 112.) An employer must submit a request for a particular worker in writing. (Tr. 156.) The Union will also honor letters from employers indicating that they will not employ a particular employee. (Tr. 156.)

Members are supposed to be referred in the order of the job-referral list. (Tr. 150.) Prospective employers may ask to see who is on the referral list and the list is given to them in redacted form. (Tr. 151.) Sometimes members may be referred off the list out of order, such as when an employer is seeking an employee with a particular skill set (such as HVAC, welding, or plumbing). (Tr. 151.)

The constitution of the United Association of Journeymen and Apprentices of the Plumbing, Pipefitting and Sprinkler Fitting Industry of the United States and Canada (UA) contains

[7] The provisions of the current agreement are identical, but are numbered differently. (GC Exh. 4, pp. 57−58.)

[8] None of these practices (members soliciting their own jobs, contractors contacting employees directly, or contractors obtaining referrals for employees they have solicited directly or for employees who solicited their own work) are embodied in the agreements between MCAKY and the Union.

provisions dealing with the suspension and expulsion of members for non-payment of dues. (R. Exhs. 17, 18; Tr. 180.) The constitution states that a member owing more than 3 months' dues shall automatically be suspended from membership without notice of any kind. (R. Exh. 17.) A suspended member is denied all rights and privileges. Id. Any member in arrears for a 6 month period shall be expelled, and can only be reinstated after paying all of the money he legally owes and a new initiation fee. (R. Exh. 18.) The reinstating local union may require expelled members to produce proof of area residence for 2 years, as well as proof of current qualifications, before accepting the reinstatement. (R. Exh. 18; Tr. 190.) A local union may not deny reinstatement to any expelled member if he meets all of the requirements, unless granted specific permission to deny reinstatement by the General President of the UA. (R. Exh. 18.)

Local 502's bylaws and constitution also contain a provision related to suspension and expulsion. (GC Exh. 4; R. Exh. 1, Article XIX). A suspended member becomes in good standing and his or her suspension is lifted upon the payment of all back dues and a $50 reinstatement fee. Id. A list of suspended members is to be read to 2 consecutive meetings after the suspension.[9] Id. A member is expelled when in arrears for a period of 6 months or more. Id.

The Commonwealth of Kentucky maintains a "right to work" law. Ky. Rev. Stat. §336.130 (2017). The statute mandates that no employee shall be required, as a condition of employment or continuation of employment, to become or remain a member of a labor organization, or pay dues, fees, assessments, or similar charges of any kind or amount to a labor organization. KRS §336.130. (GC Exh. 3; R. Exh. 28.) Moreover, any agreement or practice between any labor organization and employer which violates an employee's rights as set forth in this statute are unlawful and void under Kentucky law. KRS §336.132. (R. Exh. 28.) This law does not apply to any collective bargaining agreement entered into before January 9, 2017, but does apply to any renewal or extension of an agreement entered into before that date. Id.

B. *The Union and the Charging Party's Union Membership*

Scott Lewis has been Local 502's business and financial secretary since December 2017. He previously served as a business agent and business manager for Local 502. Three business agents report to Lewis: Erik Elzy; Kent Jesse; and Ryan Kleber. (Tr. 144.) All four take phone calls from members. (Tr. 144−145.) Prior to Lewis, Danny DeSpain served as the Union's business manager and financial secretary.[10]

Charging Party Joseph Wyssbrod is a journeyman pipefitter. He became a member of Local 502 on September 2, 1986. (Tr. 27.) Wyssbrod was not a member during a period from 2016 until June 20, 2018, when his membership was reinstated. (Tr. 28.) He has been referred for work since his reinstatement. (Tr. 29.)

Wyssbrod was suspended from union membership in December 2016. (GC Exh. 4, p. 108.) Despite his dues arrearage and suspension, Wyssbrod's name remained on the Union's job-referral list through February 2017. (GC Exh. 4, pp. 116−121.)

[9] There is no evidence in the record that Wyssbrod's name was read at 2 consecutive meetings after his suspension.

[10] DeSpain did not testify at the hearing.

Wyssbrod was previously suspended from union membership for nonpayment of dues in 2012. (R. Exh. 10; Tr. 66.) Thereafter, Wyssbrod apparently tendered a check to the Union for what he thought what the amount required to be reinstated. (R. Exh. 10.) However, he did not pay the full amount of his arrearage or the $50 reinstatement fee. The Union sent Wyssbrod a letter advising him of the full amount owed. (Id.)

C. The Charging Party's Work History

Wyssbrod's last union job in 2016 was at the Ford Plant in Louisville, Kentucky (Kentucky Ford plant), for Ward Engineering. Prior to his work at the Kentucky Ford plant, Wyssbrod worked a number of jobs through the Union's referral hall. Most of these jobs ended with Wyssbrod being discharged. (R. Exh. 5.) Wyssbrod had a reputation for insubordination, tardiness, and absenteeism. (Tr. 88−89, 168.) Employers have contacted the Union and asked that Wyssbrod not be referred for work. (R. Exhs. 4, 12, 14; Tr. 101−102.) Wyssbrod has been nicknamed "Kentucky Joe" by some employers, who have asked that the Union not refer him for work. (Tr. 89.) Due to problems with Wyssbrod, Local 502 experienced difficulty in getting its members dispatched to other locals. (Tr. 179.)

Lewis began keeping notes on his problems with Wyssbrod in 2010. (R. Exh. 5; Tr. 175.) Lewis intended to bring Wyssbrod before the Union's Executive Board on charges. (Tr. 176.) Lewis became familiar with Wyssbrod's reputation among mechanical contractors due to frequent calls and correspondence concerning his work habits. (Tr. 178−179.) Lewis has experienced problems dispatching Wyssbrod due to his reputation. (Tr. 178.)

Lewis received an email from Local 440 in Indianapolis, Indiana, regarding Wyssbrod in December 2015. (R. Exh. 6; Tr. 167.) Wyssbrod was terminated from a job in Local 440's jurisdiction for absenteeism and tardiness. ((Tr. 168.) Wyssbrod was eventually rehired by this same employer, but was discharged a second time for absenteeism and tardiness. (Tr. 170−171.) The employer provided Wyssbrod's time sheets at Local 502's request to establish the basis for his discharge. (Tr. 170.)

The Union received an email containing Wyssbrod's timesheets from Stanger Mechanical regarding Wyssbrod in December 2015. (R. Exh. 8; Tr. 171−172.) Wyssbrod had been terminated from a job at the Kentucky Ford plant for absenteeism and tardiness. (R. Exh. 8; Tr. 172.) The Union requested and received Wyssbrod's timesheets to verify the reasons for his discharge. (R. Exh. 8; Tr. 172−173.)

D. The Charging Party's December 2016 Discharge and Subsequent Efforts to Obtain Work Through the Union

Wyssbrod's most recent job at the Kentucky Ford Plant ended on December 28, 2016. On that date, the general foreman handed out paychecks and Wyssbrod received an envelope. Wyssbrod did not open the envelope at that time. (Tr. 33.) Wyssbrod opened the envelope the next morning. Inside the envelope was a check and a document indicating that he had been

terminated. (GC Exh. 6; Tr. 34.) Wyssbrod was discharged for disregarding direct orders from his foreman.[11] (GC Exh. 6.)

When Wyssbrod realized that he had been terminated, he called Erick Elzy, Local 502's assistant business manager. (Tr. 197.) Elzy told Wyssbrod that he wasn't aware of what had happened and would call him back. A day or 2 later, after not hearing back from Elzy, Wyssbrod called him at the union hall.[12] (Tr. 35.) Wyssbrod testified that he attempted to contact Local 502 every day for three of four months and stopped leaving messages after the first few weeks.[13] (Tr. 38−39.) Elzy testified that it was difficult to reach Wyssbrod because his phone would be off or he would not answer. (Tr. 199.) Wyssbrod left messages at Local 502's hall on at least 4 different occasions after his discharge by Ward Engineering. (GC Exh. 7.) There is no evidence that Elzy ever returned Wyssbrod's calls.

Ronald Hicks, a retired pipefitter and Union member of the Union, attempted to contact Union on Wyssbrod's behalf. (Tr. 81.) Hicks planned to loan Wyssbrod the money to be reinstated. (Tr. 81.) Hicks called DeSpain in July, but DeSpain told Hicks he would have to get back to him. (Tr. 81.) DeSpain never called Hicks. (Tr. 81.) Hicks went to a Union meeting later that month and asked DeSpain what it would cost to reinstate Wyssbrod. (Tr. 82.) DeSpain said he didn't think he wanted him [Wyssbrod] back. (Tr. 82.) DeSpain never told Hicks the amount owed for Wyssbrod's reinstatement. (Tr. 82.)

In August, Wyssbrod spoke with Lewis. (Tr. 51.) Wyssbrod asked why the Union did not want him. (Tr. 191.) Lewis told him because of past problems. (Tr. 191.) Wyssbrod asked for a "price" [for reinstatement] and Lewis responded that there was no price. (Tr. 191−192.) Lewis told Wyssbrod that the conversation was over and hung up.[14] (Tr. 192.) There is no evidence that Lewis spoke to Wyssbrod after the August telephone call.

Even before passage of Kentucky's right to work law, non-members were eligible to be placed on the Union's job-referral list. (Tr. 192.) After the MCAKY collective-bargaining agreement expired in 2017, the Union calculated the amount of a non-member fee required for placement on the list.[15] (GC Exh. 5; Tr. 193.) Lewis never told Wyssbrod that he could be

[11] Although Wyssbrod denies he was given an order by his foreman not to take a golf cart into the parking lot of the Kentucky Ford plant, I do not credit his testimony for reasons elucidated later in this decision.

[12] The General Counsel produced 3 pages of phone message slips, each slip containing 4 messages, which were largely ineligible. (GC Exh. 4.) Later, the General Counsel produced larger copies of 6 individual message slips pertaining only to Wyssbrod. (GC Exh. 7.) 4 of the slips post-date Wyssbrod's discharge by Ward Engineering. The slips contain 3 different call back numbers for Wyssbrod. In one message, Wyssbrod asks about a "reinitiation [sic] fee."

[13] I do not credit this testimony because I did not find Wyssbrod to be a credible witness. Furthermore, Wyssbrod testified that he had cell phone records to back up his claims, but did not produce those records. (Tr. 72.) Elzy was not asked about how many messages he received from Wyssbrod.

[14] I credit Lewis' version of this conversation over that of Wyssbrod. I found Lewis to be a more credible witness. In addition, despite considerable prodding by the General Counsel, Wyssbrod gave 3 vague, but different, versions of this conversation. (Tr. 51−53.)

[15] MCAKY and the Union entered into a successor agreement, effective from August 1, 2017, through July 31, 2022. (GC Exh. 4.)

placed on the list without being a union member. (Tr. 193.) Wyssbrod never asked about placement on the list as a non-member and the fee amount was never communicated to him. (Tr. 193.)

It is uncontroverted that Wyssbrod never received any calls from the Union after he was discharged from Ward Engineering (Tr. 43.) He was never informed of the amount of his dues arrearage, that he was facing expulsion or had been expelled, or that he could be placed on the Union's job referral list as a non-member by paying a hiring hall fee.[16]

DISCUSSION AND ANALYSIS

A. Witness Credibility

A credibility determination may rely on a variety of factors, including the context of the witness' testimony, the witness' demeanor, the weight of the respective evidence, established or admitted facts, inherent probabilities and reasonable inferences that may be drawn from the record as a whole. *Double D Construction Group,* 339 NLRB 303, 305 (2003); *Daikichi Corp.,* 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group,* 321 NLRB 586, 589 (1996)), enfd 56 Fed.Appx. 516 (D.C. Cir. 2003). Credibility findings need not be all-or-nothing propositions—indeed, nothing is more common in all kinds of judicial decisions than to believe some, but not all, of a witness' testimony. *Daikichi Corp.,* 335 NLRB at 622. Some of my credibility findings are incorporated into the findings of fact above.

I did not find Wyssbrod to be a credible witness. I observed him spend much of his time on the witness stand looking through documents when the documents were not being discussed, which led to his testimony seeming distracted. Furthermore, he sparred with Respondent's counsel under cross-examination and frequently contradicted himself.

For example, when asked whether he was able to obtain work without the Union's permission and help, Wyssbrod gave the following answer:

> No. I got no weight on anybody. That's their domain. That's their backyard. Have the BA call me. If I know someone is working at [a] contractor, hey, we are going to have a call for fifty guys tomorrow and I call home to see if this is good, I expect to have, at the best, forty-nine other Louisville hands with me. If it's only one or two guys from Louisville show up and I don't get to go. So until I got it nailed down all I can get information-wise and it's a sure thing. I've got to have a BA representing me calling another BA. They just don't let you call them to walk in their office. I know two Bas that I've worked with that I can call, but they'll still make it legal and tell your BA to call me.

[16] In response to the General Counsel's subpoena, pars. 3 and 4, Respondent stated that it had no documents indicating that it had advised Wyssbrod of the amount of his financial obligations, his suspension, his expulsion, or that he could be reinstated to the job-referral list as a non-member by paying a hiring hall fee. (GC Exh. 5.)

(Tr. 208−209.)

He further engaged in the following exchange with Respondent's counsel:

> Q. Are you denying that you got a paycheck?
> A. You didn't ask that.
> Q. Okay. Are you denying you got a paycheck -- let me finish the question. I want you to listen.
> A. You paused.
> Q. You got a paycheck for the time that you were working for Progressive?
> A. I don't think I've ever stated that.
> Q. Are you denying it or not?
> A. Am I denying that I got a paycheck from Progressive?
> Q. For your work on June 30.
> A. I don't know. I don't have the stub to look at. This is their time sheet from their office, I guess.
> Q. That's not –
> A. That's not my record of my time -- hours I got paid --
> Q. Let me finish.
> . . .
> A. I'm trying.

(Tr. 212−213.)

Wyssbrod further gave three different versions of a conversation he had with Lewis in August 2017, none of which fully described the conversation:

> My intent was to ask about the expulsion, but we got kind of shitty with each other before that could happen, so their stance was they was [sic] done. I stated that it was – they all worked for me and I'll decide if you're done or not. (Tr. 51, ll. 12−17.)

> Hi Joe, this is Scott. How is it going? I'm not worth a shit. What's up with the reinstatement? I don't remember the exact words. I was being refused or they didn't want my money and they were done. He hung up on me before I could -- (Tr. 52−53.)

> It was about 20 minutes. Never got to it [the amount owed for reinstatement]. It was what's the deal with the reinstatement or expulsion. They're done. They don't want my money. That's it. (Tr. 53.)

In his initial version of the conversation, Wyssbrod did not state that he asked about reinstatement or his expulsion from the Union, only that he intended to ask. In the second and third version, he testified that he asked, "What's up with the reinstatement?" or "[W]hat's the deal with the reinstatement or expulsion?" Despite considerable prodding from Counsel for the General Counsel, Wyssbrod was not able to give a cogent version of his conversation with Lewis. As such, I credit Lewis' version of this conversation.

He further testified:

> Q. You're well aware of the fact that you can get a job on your own without going through the hiring hall and you have done so; isn't that correct?
> A. I'm sure it's probably happened. Depends on your definition of soliciting. I'm soliciting I'm available, are you hiring. The business agent is who you call next.

(Tr. 60.)

I specifically did not credit Wyssbrod's testimony regarding learning of his dues arrearage from Local 502's Facebook page or Todd Crider, another union member. (Tr. 40−46.) Crider did not testify at the hearing and no record of any Facebook posting by a retired member was produced at the hearing. In fact, the only evidence of a Facebook posting was one made by Kleber on Wyssbrod's Facebook page in May, asking Wyssbrod to call him. (R. Exh. 23; Tr. 55.)

I do not credit Wyssbrod's version of why he was fired by Ward Engineering. His testimony appeared conflated and outlandish. Instead, I credit the version provided by Rockwood and contained in GC Exh. 6 and R. Exhs. 12 and 14. The documents indicate, and Rockwood explained, that Wyssbrod was fired for disobeying a direct order by taking a golf cart off of Ford property. (GC Exhs. 6; R. Exhs. 12, 14; Tr. 116.) Wyssbrod did not mention the incident with the golf cart at all during the General Counsel's direct examination. (Tr. 32−35.) He later denied any knowledge of the golf cart incident. (Tr. 60−62.) Later, on rebuttal, Wyssbrod testified

> Until today this is the first explanation of any cart or any reason I've got since I started calling after that termination. I didn't get a lunch. I didn't take a lunch. I didn't take a cart anywhere to lunch. Me and a guy named Brian were told to go to the other part of the paint with the cart and get a hundred-foot extension cord, a ladder, a port-a-band and some Hilti [sic] guns and bits because our foreman lost his keys and couldn't get the boxes open. On the way to the next building the cart dies in the middle of the road. Security comes up and asks us if we need some help, so we're trying to go to this building here, where can we plug it in. You can't leave it here. So we pushed it around the fence so they could reach it with a cord. After lunch it would have enough charge to surely drive around the back of the guard shack or forklift. I never asked to take the cart off the property. Nobody took it off the property. I asked if he could arrange a way to get by the turnstile, truck, golf cart or whatever so the guy I'm staying with could get his key. I was told to lay it on the paper -- newspaper box by the turnstile and paint. He was coming off a job in Jeffersonville and locked himself out. Nobody went -- I didn't have a lunch. I took the tools off the cart, drove my truck around the front of the plant, got the security guard and shoved about four thousand dollars' worth of Ward's tools under the fence so we could so something after lunch. Nobody asked me. Nobody told me anything about this until today.

(Tr. 205−206.) Wyssbrod then went on to deny that he was terminated from Ward Engineering. (Tr. 206.) Wyssbrod spent much of his cross-examination denying any incident involving a golf cart. Then, on the first time during rebuttal, he gave the testimony above. Documents provided by Ward Engineering and the testimony of Rockwood clearly establish that Wyssbrod was terminated from Ward Engineering for the incident involving the golf cart. Wyssbrod's testimony was contradictory, confusing, and wholly incredulous.

In sum, Wyssbrod was a difficult witness and his testimony was confusing and difficult to believe. Based upon Wyssbrod's demeanor, contradictory testimony, embellishment, and quibbling with Respondent's counsel, I do not credit his testimony except where it was corroborated by other evidence or the testimony of a credible witness, or was inherently plausible.[17]

I found Ronald Hicks to be a generally credible witness. He testified in an earnest and direct manner and his brief testimony had the ring of truth. Thus, I credit Hicks' testimony that he twice contacted the Union in 2017 to find out the amount of Wyssbrod's arrearage, but was never provided with the information.

I found Scott Lewis to be a credible witness. He testified in a calm and focused manner. He candidly testified regarding his frustration with Wyssbrod and his testimony was supported by documentary evidence and the testimony of other witnesses. For example, testimony and numerous documents support Lewis' testimony that Wyssbrod was discharged from several jobs and that contractors did not want to rehire him. (See R. Exh. 4, 5, 7, 12; Tr. 101, 116.) In addition, the testimony of Dubey and Rockwood corroborate Lewis' testimony regarding Wyssbrod's work problems. As such, I credit Lewis' testimony.

I found Jim Dubey to be a credible witness. He gave his testimony in a forthright and steady manner and he did not waver under cross-examination. He testified regarding Wyssbrod's poor work habits. However, his testimony concerned Wyssbrod's work in June 2018, after he had been reinstated to the Union. Although Dubey appeared credible on the witness stand, much of his testimony was not relevant to Wyssbrod's work before his discharge by Ward Engineering or while the Union was refusing to reinstate him.

I further credit the testimony of Mike Rockwood. Rockwood testified in a straightforward and measured fashion. He conceded his belief that the collective-bargaining agreement does not allow employers to contact employees directly for hire, however, he admitted he has done so. He further testified that Wyssbrod has called him directly seeking work.[18] His testimony regarding the circumstances of Wyssbrod's discharge was supported by documentary evidence. He did not change his testimony under cross-examination. Thus, I credit Rockwood's testimony.

I found Justin Wendler to be a credible witness. He was soft spoken, but he seemed sure of his testimony. He did not waver under cross-examination. Wendler admitted that union

[17] Although I find that Wyssbrod was significantly less than a model employee and found his testimony largely unworthy of belief, my findings herein finding that the Union violated the Act are supported by other testimony and documentary evidence.

[18] Wyssbrod did not refute this testimony.

members directly solicit contractors for work and that he has hired employees who have done this. He readily conceded that he is not familiar with the collective bargaining agreement at issue in this case, as he works under a different agreement. Therefore, I credit Wendler's testimony.

I further found Eric Elzy to be a credible witness. Elzy's very brief testimony concerned several phone message slips regarding calls from Wyssbrod. His testimony was not contradicted and he was not asked about how many times he was called by Wyssbrod. As such, I credit Elzy's testimony.

B. Respondent Operated an Exclusive Hiring Hall

The General Counsel's allegations rest upon the premise that Respondent operates an exclusive hiring hall. (GC Exh. 2, par. 7.) I find, based upon the record evidence, that Respondent operated an exclusive hiring hall.

An exclusive hiring hall relationship generally exists where a union operates as the sole source of all of the employees of an employer. *Operating Engineers Local 406 (Ford, Bacon & Davis Construction Corp.),* 262 NLRB 50, 57 (1982) (citations omitted). The Supreme Court has stated that the word "exclusive," with respect to a union's job referral system, denotes the degree to which hiring is reserved to the union hiring hall. *Breininger v. Sheet Metal Workers International Association Local Union No. 6*, 493 U.S. 67, 71 fn. 1, 110 S.Ct. 424, 428 (1989). Hiring is deemed to be "exclusive" if, for example, the union retains sole authority to supply workers to the employer up to a designated percentage of the work force or for some specified period of time, such as 24 or 48 hours, before the employer can hire on his own. Id. The party asserting the existence of an exclusive hiring hall bears the burden of proof. *Carpenters Local 537 (E. I. duPont)*, 303 NLRB 419, 420 (1991).

A union's hiring hall is exclusive if it is an employer's initial or primary source for employees. *International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada, Local 720, AFL-CIO, CLC (Tropicana Las Vegas, Inc.),* 363 NLRB No. 148 (2016), citing *Stage Employees IATSE, Local 720 (AVW Audio Visuals, Inc.),* 341 NLRB 1267 (2004), and *Denver Theatrical Stage Employees Union No. 7*, 339 NLRB 214, 219 (2003). Furthermore, an exclusive hiring hall may be created by written or oral agreement or by practice. *International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada Local No. 151 (SMG and the Freeman Companies),* 364 NLRB No. 89 (2016), citing *Southwest Regional Council of Carpenters (Perry Olsen Drywall),* 358 NLRB 1, slip op. at 1 fn. 2 (2012)(citations omitted). When an employer has the right to reject individuals referred by a union or has a contractual right to use a certain number or percentage of its own employees for a job, an exclusive hiring hall still exists. *Breininger* at 71, fn. 1; *Local 334 (Kvaerner Songer, Inc.),* 335 NLRB 597, 599−600 (2001); *Teamsters Local Union No. 174 (Totem Beverages, Inc.),* 226 NLRB 690, 690 (1976).

In this case, the collective-bargaining agreement between the MCAKY and the Union created an exclusive hiring hall. The agreement required that an employer first request the home local union for qualified personnel. If the local union was unable to supply the requested number of

qualified and competent employees, the union agreed to notify other local unions of the availability of work and to request these local unions to refer qualified employees. If the local unions were not able to supply competent and skilled employees within 48 hours, employers could hire such persons wherever available. Thus, employers bound by the collective-bargaining agreement were required to first request employees from the Union's hall and, only after 48 hours, could hire others if the Union or other locals could not supply the requested employees. Additionally, employers could reject or terminate, for just cause, employees referred by the Union. Signatory contractors retained the right to reject any applicant referred by the Union and further retained the right to terminate any employee for just cause.

However, these conditions do not defeat my finding of exclusive hiring hall status. Pursuant to the collective-bargaining agreement, the Union was to be the initial and primary source of employees for signatory contractors. These contractors were required, under the agreement, to first contact the union for employees. Only if the Union, or another local, could not provide qualified employees within 48 hours, were the employers able hire off the street. Hiring is deemed exclusive if the union retains sole authority to supply workers to the employer for some specified period of time, such as 24 or 48 hours, before the employer can hire on his own. *Breininger*, 493 U.S. 67, 71 fn. 1, 110 S.Ct. 424, 428 (1989). Moreover, when an employer has the right to reject individuals referred by a union, an exclusive hiring hall still exists. *Breininger* at 71, fn. 1. Thus, despite the caveats contained in the collective bargaining agreement regarding contractors hiring off the street after 48 hours and being able to reject applicants referred by the Union, I still find that the hiring hall is exclusive.

The plain language of the collective-bargaining agreements in this case establishes the existence of an exclusive hiring hall. The Union's hiring hall procedures allowing for direct solicitation of work by members were not agreed to by MCAKY and are not referenced anywhere in the agreements. Thus, I find that these procedures do not render the hiring hall system at issue here to be non-exclusive. Instead, I find that the General Counsel has established the existence of an exclusive hiring hall by the language of the collective-bargaining agreements.

Respondent asserts that the Union's practice of allowing members to solicit work directly from contractors, and contractors hiring such workers, created a non-exclusive hiring hall. I disagree. Initially, I note that in other contexts, the Board places the burden of establishing a past practice upon the party asserting it. See e.g. *Consolidated Communications Holdings, Inc.,* 356 NLRB 1221 (2018). Even if the General Counsel is required to show the *absence* of a past practice, I would find that the General Counsel has done so. Imprecise and vague testimony was given on the existence of a past practice. Some witnesses, including Elzy, were not asked about the practice at all. Dubey testified that he only directly hires supervisors. (Tr. 97−98.) Wendler testified that he is asked almost monthly about jobs with his employer, but was only able to name one other employee who was hired as a result of direct solicitation. (Tr. 134−135.) Given this vague and seemingly contradictory testimony, I cannot find the existence of a past practice regularly allowing for direct solicitation of work by Union members.

Moreover, the Board has found that collective-bargaining agreements that allow employer to seek employees by name may still establish exclusive hiring halls. For example, in *Teamsters, Chauffers, Warehousemen & Helpers, Local 631 (Vosburg Equipment, Inc. and Bechtel Nevada, Inc.),* 340 NLRB 881 (2003), the Board affirmed a judge's finding that the union operated an

exclusive hiring hall, which allowed employers to request specific employees by name. See also, *Millwrights and Machinery Erectors Local Union No. 2834,* 268 NLRB 150, 156 (1983) (respondent operated an exclusive hiring hall for the referral of employees and workers were dispatched after either specific name requests or open calls.) Thus, I find that the Union's allowing contractors to request specific employees and allowing employees to solicit their own work does not defeat my finding of the existence of an exclusive hiring hall.

C. Respondent Violated the Act by Removing Wyssbrod from its Referral List without Advising him of his Obligations

In paragraph 8(b) of the complaint, as amended, the General Counsel alleges that Respondent removed Wyssbrod from its job-referral list without apprising Wyssbrod of his obligations under the union security clause. (GC Exh. 2.) Section 8(b)(1)(A) of the Act "prohibits labor organizations, when acting in a statutory representative capacity, from taking action against any employee upon considerations or classifications which are irrelevant, invidious, or unfair." *Local 553, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Miranda Fuel)*, 140 NLRB 181, 185 (1962). This prohibition extends to a union's operation of a hiring hall. *Miranda Fuel*, 140 NLRB at 184.

It is undisputed that Wyssbrod was removed from the Union's referral list in April 2017 for failing to pay his dues. It is further undisputed that he Union did not inform Wyssbrod of the amount he needed to pay to be reinstated at any point before June 2018.

The Board requires unions to inform members, "In explicit terms exactly what [their] current obligation [is] under the union-security contract to qualify for registry on its out-of-work list and referral from its hiring hall." *International Association of Heat and Frost Insulators and Asbestos Workers, Local No. 5, AFL-CIO (Insulation Specialties Co),* 191 NLRB 220, 221 (1981). In *Asbestos Workers Local 5,* the union operated an exclusive hiring hall. 191 NLRB at 220. The charging party in that case filled out an application for union membership, but failed to tender the required initiation fee. Id. The union then rejected his membership application and sought his discharge under a union-security clause. Id. Almost 2 years later, the charging party sought a job with his former employer, but the employer told him that he needed clearance from the union. Id. The union refused to place the charging party's name on its out-of-work list. Id. The Board found that the union in that case violated the Act by refusing to advise the charging party of what he was required to do in order to qualify for placement on the out-of-work list. Id.

Furthermore, the Board has found that unions owe a fiduciary duty to inform members or those seeking work of their financial obligations. *Brand Mid-Atlantic*, 304 NLRB 853 (1991). In *Brand Mid-Atlantic*, the union operated a non-exclusive hiring hall. 304 NLRB at 853. However, the union did control a member's ability to seek referral in a specific status. 304 NLRB at 854. The Board found that, "In these circumstances, where members depend exclusively on the [u]nion for access to a higher referral status . . . we find that the [u]nion has a fiduciary duty to deal fairly with its members .in processing their applications to become mechanics." Id. As part of its fiduciary duty, the Board found that the union had an affirmative duty to advise a member the specific amount he owed the union, including a dues arrearage, and the process by which he could pay before the union could refuse to refer him. Id. Analogously,

in this case, by operating its exclusive hiring hall, the Union owed Wyssbrod a fiduciary duty to inform him of his specific obligations.

The Union failed and refused to advise Wyssbrod of what he needed to do to regain his membership in the Union or qualify for placement on its job-referral list. Wyssbrod called the Union at least once and specifically left a message asking what he needed to do in order to be reinstated. Phone message slips establish that Wyssbrod called or stopped in on at least 3 other occasions. The Union failed to return Wyssbrod's calls or messages. Hicks' efforts to discover the amount of Wyssbrod's arrearage were similarly rebuffed. Wyssbrod spoke to Lewis in August 2017 and asked about the "price" or reinstatement. The Union did not advise Wyssbrod of his obligations until about June 2018. Therefore, I find that the Union's failure to advise Wyssbrod of his obligations to obtain reinstatement for over a year violated Section 8(b)(1)(A) of the Act.

D. The General Counsel did not Establish that Respondent Violated the Act by Failing to Advise Wyssbrod that he Could be Placed on the Referral List as a Non-Member by Paying a Hiring Hall Fee

In paragraph 8(c) of the complaint, as amended, the General Counsel alleges that Respondent violated the Act by failing to advise Wyssbrod that he could be placed on the referral list as a non-member by paying a fee. (GC Exh. 2.)

In support of this allegation, the General Counsel cites *Asbestos Workers Local No. 5,* 191 NLRB at 221, and *International Union of Operating Engineers Local 406, AFL-CIO (Ford, Bacon & Davis Construction Corp.),* 262 NLRB 50, 51 (1982). In *Operating Engineers Local 406,* the Board found that the union failed to give timely notice of a change in its referral policy to those using its exclusive hiring hall. 262 NLRB at 51. The Board specifically stated that, "This failure to give timely notice of a significant change in its referral procedures was arbitrary and a breach of its duty to represent job applicants fairly by keeping them informed about matters critical to their employment status." Id. The General Counsel argues that Respondent here had a duty to disclose information critical to Wyssbrod's employment status, i.e. that he could be placed on the job referral list as a non-member by paying a hiring hall fee. I do not find this argument availing. There was no change in referral procedures or rules in this case. Instead, I find that Respondent's duty was, as set forth above, to specifically advise Wyssbrod of his obligations so that he could obtain reinstatement.

Furthermore, in *Asbestos Workers, Local 5,* the Board found that, "[i]t was incumbent upon Respondent to advise [the discriminatee] in explicit terms exactly what his obligation was under the union-security contact to qualify for registry on its out-of-work list and to refer him for employment." 191 NLRB at 221. The obligations referenced in that case were an initiation fee and dues. Id. The initiation fee and dues were owed because the discriminatee was seeking union membership for placement on its job-referral list. These findings are distinguishable from the General Counsel's argument that the Union owed a duty to inform Wyssbrod that he could have been placed on the job-referral list as a non-member by paying a hiring hall fee. In fact, I could find no Board case that supports the General Counsel's argument.

I find that the General Counsel has not established that Respondent owed a duty to Wyssbrod to advise him that he could have been placed on the job-referral list as a non-member by paying a hiring hall fee. Therefore, I recommend that this complaint allegation be dismissed.

E. Cases Cited by Respondent are Inapposite to the Instant Case

The cases cited by Respondent in its brief are distinguishable from the instant case. For example, Respondent cited *Carpenters Local 53),* 303 NLRB 419 (1991), in support of its argument that the Union did not operate an exclusive hiring hall. (R. Brf. p. 15.) In *Carpenters Local 537,* the union's contract with the employer specifically allowed the employer to hire applicants who were not referred by the union. 303 NLRB at 419. In stark contrast to the arrangement in *Carpenters Local 537,* the agreement in this case requires employers to first request employees from the Union's hall and, only after 48 hours, could the employer hire others if the Union or other locals could supply the requested employees. Such an arrangement was found to create an exclusive hiring hall by the Supreme Court in *Breininger*. 493 U.S. 67, 71 fn. 1. Thus, I find *Carpenters Local 537* distinguishable from this case.

In *Local 334, Laborers International Union of North America, AFL−CIO (Kvaerner Songer, Inc.),* 335 NLRB 597 (2001), the Board affirmed a judge's finding that a union operating a non-exclusive hiring hall. (R. Br. p. 15.) In that case, the collective-bargaining agreement only required the employer to give the local union in the area an opportunity to supply employees. 335 NLRB at 598. In addition, the union there only referred a small fraction of employees for employment. Id. However, in the instant case, the collective-bargaining agreements require employers to obtain all employees from the Union or other locals, except under limited circumstances discussed herein. The General Counsel has established that the plain language of the collective-bargaining agreements establishes an existence hiring hall. Thus, I find *Local 334, Laborers Union of North America* inapposite to this case.

Finally, Respondent cites *Radio-Electronics Officers Union v. NLRB,* 16 F.3d 1280 (D.C. Cir. 1994), for the proposition that removing a member from a job-referral list for failing to pay dues did not violate the Act. (R. Br. p. 17.) However, the court noted that the arrangement in that case did not involve a collective-bargaining agreement containing a union-security clause. 16 F.3d at 1286. Without a union-security clause, the court reasoned, the union was not required to notify a member of a delinquency. Obviously, in this case, a union-security clause existed. As such, extant Board law requires that the Union provide notice of specific financial obligations to a member seeking to use its hiring hall. Therefore, I find *Radio-Electronics Officers Union* distinguishable from the instant case.[19]

[19] Furthermore, it is well settled that administrative law judges of the National Labor Relations Board are bound to follow Board precedent which neither the Board nor the Supreme Court has reversed, notwithstanding contrary decisions by courts of appeals or district courts. *Waco, Inc*., 273 NLRB 746, 749 fn. 14 (1984); *Pathmark Stores, Inc*., 342 NLRB 378 fn. 1 (2004). In *Radio-Electronics Officers Union,* 306 NLRB 43 (1992), the Board found that the union had a duty to notify members and other applicants for employment of any dues or fees they owe before removing their names from its referral registers. 273 NLRB at 44, enf. denied, 16 F. 3d 1280.

CONCLUSIONS OF LAW

1. By removing Joe Wyssbrod from its hiring hall job-referral list without first advising him of his specific financial obligations (i.e., dues arrearage and reinstatement fee), United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL−CIO (PPF), Local 502 (Union), has violated Section 8(b)(1)(A) of the National Labor Relations Act (Act.)

2. The unfair labor practice committed by Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

3. The Union did not otherwise violate the Act as alleged in the complaint.

REMEDY

Having found that Respondent has engaged in an unfair labor practice, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, the Union will reinstate Joe Wyssbrod to the job-referral list, if he has not already been reinstated, unless the Union has advised him of his financial obligations for reinstatement and/or hiring hall fee required for referral and he has not met these obligations and/or paid the fee.[20] Backpay shall be computed in accordance with *F.W. Woolworth Co.,* 90 NLRB 289 (1950), with interest compounded daily as prescribed in *New Horizons,* 283 NLRB 289 (1950), and *Kentucky River Medical Center,* 356 NLRB 6 (2010), minus tax withholdings required by Federal and State law. Interest and tax liability shall continue to accrue until the date of payment.

In addition, Respondent shall, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, file a report allocating backpay with the Regional Director for Region 9. Respondent will be required to allocate backpay to the appropriate calendar years only. The Regional Director will then assume responsibility for transmission of the report to the Social Security Administration at the appropriate time and in the appropriate manner. *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016).

Respondent shall also compensate Wyssbrod for the adverse tax consequences, if any, of receiving one or more lump-sum backpay awards covering periods longer than 1 year. *Don Chavas, LLC d/b/a Tortillas Don Chavas,* 361 NLRB 101 (2014). In addition, the Union will be required to post a notice in accordance with *J & R Flooring, Inc.,* 356 NLRB 11 (2010).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[21]

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[20] As indicated above, the union-security clause in Respondent's contract with MCAKY was voided by Kentucky's right to work law when the contract expired in July 2017. As such, in order to be reinstated to the job-referral list, Wyssbrod could do so as a Union member or as a non-member by paying a hiring hall fee.

[21] 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.

ORDER

Respondent, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL−CIO (PPF), Local 502, its officers, agents, and representatives, shall

1. Cease and desist from

   (a) Failing or refusing to inform members or persons using its hiring-hall of how they can fulfill their financial obligations required for placement on or reinstatement to its job-referral list.

   (b) Removing anyone from its job-referral list because of a failure to meet financial obligations, without first advising them of their specific financial obligations.

   (c) In any like or related manner restraining or coercing members or persons using its hiring hall in the exercise of the rights guaranteed by Section 7 of the Act.

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

   (a) Advise those using its hiring hall, who have been removed from the job-referral list for nonpayment of dues or fees, of the amount of their current liabilities (i.e. dues arrearages and/or fees required for reinstatement).

   (b) Within 14 days from the date of this Order, reinstate Joe Wyssbrod to the job-referral list, if he has not already been reinstated, unless Respondent has advised him of his financial obligations for reinstatement and he has not met these obligations.

   (c) Within 14 days of this Order, remove from their files any reference to Wyssbrod's unlawful removal from the job-referral list and, within 3 days thereafter, notify Wyssbrod in writing that this has been done and that the removal will not be used against him in any way.

   (d) Make Joe Wyssbrod whole for the wages and other benefits he suffered as a result of being removed from the job-referral list without first advising him of his obligations, with interest.

   (e) Compensate Joe Wyssbrod for the adverse tax consequences, if any, of receiving one or more lump-sum backpay awards covering periods longer than 1 year.

   (f) Within 21 days of the Board's order, file a report allocating backpay to the appropriate calendar years with the Regional Director for Region 9. The Regional Director will then assume responsibility for transmission of the report to the Social Security Administration at the appropriate time and in the appropriate manner.

(g) 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.

(h) Within 14 days after service by the Region, post at its union office and hiring hall in Louisville, Kentucky, copies of the attached notice marked "Appendix."[22] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by Respondent's authorized representative, shall be posted by 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 Respondent customarily communicates with its employees and members by such means. Reasonable steps shall be taken by 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, Respondent has ceased operating the hiring hall involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all individuals whose names appeared on Respondent's hiring hall job-referral list at any time since April 1, 2017.

(i) Sign and return to the Regional Director sufficient copies of the notice for physical and/or electronic posting by Ward Engineering Co., Inc., if willing, at all places or in the same manner as notices to employees are customarily posted.

(j) 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 Respondent has taken to comply.

Dated, Washington, D.C. March 20, 2019

Melissa M. Olivero
Administrative Law Judge

[22] 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 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 fail or refuse to inform those using our hiring-hall of how they can fulfill their financial obligations (i.e. dues arrearages and/or fees required for reinstatement) required for placement on or reinstatement to our job-referral list.

WE WILL NOT remove you from our job-referral list because of your failure to meet financial obligations, without first advising you of your specific financial obligations.

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

WE WILL advise those using our hiring hall, who have been removed from our job-referral list for nonpayment of dues or fees, of the amount of their current liabilities (i.e. dues arrearages and/or fees required for reinstatement).

WE WILL make Joe Wyssbrod whole for the wages and other benefits he suffered as a result of being removed from our job-referral list without first advising him of his obligations, with interest.

WE WILL compensate Joe Wyssbrod, for the adverse tax consequences, if any, of receiving lump-sum backpay awards covering periods longer than 1 year.

WE WILL file a report with the Regional Director allocating backpay to the appropriate calendar years. The Regional Director will then transmit this report to the Social Security Administration at the appropriate time and in the appropriate manner.

WE WILL reinstate Joe Wyssbrod to the job-referral list, if he has not already been reinstated, unless we have advised him of his financial obligations for reinstatement and he has not met these obligations.

WE WILL remove from our files any reference to Wyssbrod's unlawful removal from the job-referral list and, within 3 days thereafter, notify Wyssbrod in writing that this has been done and that we will not use the removal against him in any way.

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO (PPF), LOCAL 502

(Union)

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.nlrb.gov.

550 Main Street, Federal Building, Room 3003, Cincinnati, OH 45202–3271
(513) 684–3686, Hours: 8:30 a.m. to 5:00 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/09-CB-205891 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, (513) 684–3750.