

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 12**

INTERNATIONAL ALLIANCE OF THEATRICAL  
STAGE EMPLOYEES, MOVING PICTURE  
TECHNICIANS, ARTISTS AND ALLIED CRAFTS  
OF THE UNITED STATES, ITS TERRITORIES  
AND CANADA, LOCAL 835, AFL-CIO, CLC

and

DAWN GENTRY, an Individual

12-CA-233694

And

LUIS LUGO, an Individual

12-CA-233788

GENERAL COUNSEL'S CORRECTED BRIEF TO  
THE ADMINISTRATIVE LAW JUDGE

Steven Barclay  
Counsel for the General Counsel  
National Labor Relations Board  
Region 12  
201 East Kennedy Blvd., Suite 530  
Tampa, Florida 33602-5824  
(813) 228-2238

## I. INTRODUCTION

International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada, Local 835, AFL-CIO, CLC operates an exclusive hiring hall which refers members and referents to work for various convention industry employers in the Orlando, Florida area. Luis Lugo and Dawn Gentry are both members of the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada, Local 835, AFL-CIO, CLC (Respondent or Union), and have been for 10 years.

On August 27, 2018, Luis Lugo received a call from Union Business Agent Mark Hardter notifying him that he was suspended from working for Global Experience Services (GES) and under investigation for allegedly taking its property without permission. (Tr. 18 to 19).<sup>1</sup> During the call, Mr. Lugo requested that the Union file a grievance on his behalf, and he asked for a copy of that grievance. (Tr. 19). Mr. Lugo would go on to ask for the grievance another six times, both verbally and in writing. (Tr. 20:21 to 21:4; Tr. 21:8 to 22:2; Tr. 24 to 25:5 and R 1; Tr. 26 to 27 and GC 3; Tr. 28 to 29:25 and GC 4; and Tr. 31:12 to 23). Despite the multiple requests, Respondent failed to provide Mr. Lugo with a copy of his grievance. (Tr. 32:5 to 7).

On or about November 14, 2018, Respondent suspended Dawn Gentry from using its hiring hall for a period of six months. (Tr. 68). Soon thereafter, Freeman Decorating Co. (Freeman) suspended Ms. Gentry from working for it for a period of six months. (Tr. 68). Both suspensions were issued as a result of an incident which occurred on November 7, 2018. (GC 6 and Tr. 68 to 73). On or about November 14, 2018, and continuing thereafter, Dawn Gentry asked Respondent

---

<sup>1</sup> As used herein, the numbers following "Tr." refer to the page and line numbers of the transcript. For example, "Tr. 68:19 to 22" refers to transcript page 68, lines 19 to 22. In addition, "GC" refers to General Counsel's exhibits and "R" refers to Respondent's exhibits.

for a copy of her writeup by Freeman, complaints against her, and Respondent's report regarding the November 7 incident. (Tr. 72 to 74; GC 7; and GC 8). Despite her multiple requests, Respondent refused to provide Ms. Gentry with any of the information. (Tr. 81:2 to 4)

Respondent has breached its duty of fair representation in violation of Section 8(b)(1)(A) of the National Labor Relations Act (Act) by failing to provide Luis Lugo a copy of his grievance, and by failing to provide Dawn Gentry with a copy of her writeup, complaints against her, and Respondent's report regarding the November 7, 2018, incident. The following sections of this brief will set forth the procedural history, a description of the issues presented, and a detailed discussion of the facts. That will be followed by a section regarding the witness' credibility and a discussion of relevant case law and legal argument.

## **II. Procedural History**

Luis Lugo filed the original charge in Case 12-CB-233788 on January 8, 2019, and an amended charge on February 4, 2019. (GC 1(d) and GC 1(g)). Dawn Gentry filed the original charge in Case 12-CB-233694 on January 7, 2019, and an amended charge on March 28, 2019. (GC 1(a) and GC 1(j)). An Order Consolidating Cases, Consolidated Complaint and Notice of Hearing issued on April 29, 2019. (GC 1(m)). On May 14, 2019, Respondent filed an answer denying that it failed to provide Dawn Gentry and Luis Lugo with the information they requested. (GC 1(o)). In Respondent's answer, it admitted the complaint allegations concerning service of the charges, jurisdiction, labor organization status, and that it operated an exclusive hiring hall. (GC 1(o)). An Order Withdrawing a Portion of the Consolidated Complaint and Dismissing a Portion of the Charge in Case 12-CB-233694 issued on May 14, 2018. (GC 1(p)). Respondent filed a Motion to Sever on June 17, 2019, and Counsel for the General Counsel filed an Opposition to Respondent's Motion to Sever on June 20, 2019. (GC 1(r) and (s)). Respondent's Motion to Sever

was denied at the beginning of the hearing. (Tr. 8 to 9). Respondent filed a Motion for Hearing Continuance on July 23, 2019, and Counsel for the General Counsel filed an Opposition to Respondent's Motion for Hearing Continuance on July 25, 2019. (GC 1(t) and (u)). An Order Denying Respondent's Motion for a Postponement issued on July 25, 2019. (GC 1(v)). The unfair labor practice hearing was held on August 7, 2019, in Kissimmee, Florida before Hon. Judge Donna N. Dawson.

### **III. Issues Presented**

The questions to be resolved are whether Respondent breached its duty of fair representation in violation of Section 8(b)(1)(A) of the Act by failing to provide Luis Lugo with a copy of his grievance, and by failing to provide Dawn Gentry with a copy of her writeup from Freeman confirming her six-month suspension, a copy of Respondent's report and investigation concerning the November 7 incident which led to her suspension, and a copy of complaints that were lodged against her, as alleged in the complaint. As discussed in detail below the record evidence establishes that Respondent violated the Act as alleged in the complaint.

The following section of this brief sets forth a detailed description of the facts. Then, the brief will address the witness' credibility. This will be followed by a discussion of relevant Board law which explains why Your Honor should conclude that Respondent violated the Act as alleged in the complaint. Finally, the brief will outline appropriate remedies for Respondent's unfair labor practices.

## IV. FACTS

### A. LUIS LUGO INFORMATION REQUEST

#### i. Luis Lugo Background Information

Luis Lugo has been a member of the Union since 2008, approximately 11 years. (Tr. 17:4 to 6). Respondent, an exclusive hiring hall, referred Mr. Lugo to work with Global Experience Specialists as a carpet lead.<sup>2</sup> (Tr. 17 to 18 and GC 1(o)). Mr. Lugo's job duties included obtaining, sizing, and cutting carpet, and sending it to various conventions to be installed. (Tr. 17 to 18). On or about August 27, 2018, Luis Lugo received a call from Business Agent Mark Hardter, informing him that he was suspended pending investigation for allegedly taking property without permission. (Tr. 18 to 19).

#### ii. Luis Lugo's August and September Information Requests

During the August 27, 2018 call between Mr. Lugo and Business Agent Mark Hardter, Mr. Lugo denied GES' assertion that he took carpet without permission and requested that Mr. Hardter file a grievance on his behalf disputing the discipline.<sup>3</sup> *Id.* Mr. Lugo also specifically asked Mr. Hardter to provide him with a copy of the grievance. (Tr. 19:5 to 13). Mr. Hardter told Mr. Lugo that he "was on it," but did not provide Mr. Lugo with a copy of his grievance. (Tr. 19). Mr. Hardter personally undertook responsibility for processing Mr. Lugo's grievance as Mr. Lugo was unfamiliar with the grievance process.

Luis Lugo contacted Respondent Business Agent Mark Hardter again a few days after the August 27, 2018 telephone conversation to inquire about the status of his grievance: (Tr. 20). Mr.

---

<sup>2</sup> Respondent referred Mr. Lugo to work for GES and to other employers, pursuant to the terms of its collective-bargaining agreements. (Tr. 17:16 to 20; Tr. 31; Tr. 122; and R 4). (Tr. 31). Respondent also filed a grievance on Mr. Lugo's behalf, and is processing the grievance to arbitration. (Tr. 147). It is apparent that Mr. Lugo is a rank and file employee and any argument that he is a supervisor within the meaning of Section 2(11) of the Act must fail.

<sup>3</sup> Hardter testified that Mr. Lugo first requested a copy of his grievance on August 10, 2018, which is even earlier than Mr. Lugo recalled. (Tr. 143:15 to 24).

Hardter explained that he was on it and that they needed to meet with GES. (Tr. 20:21 to 23). During the conversations, Mr. Lugo renewed his request for a copy of his grievance and Mr. Hardter again told Lugo that he was on it. (Tr. 20:21 to 21:7).

Mr. Lugo attended a meeting with Respondent and GES to discuss his discipline sometime in August or September 2018. (Tr. 21). After the meeting with GES concluded, Mr. Lugo approached Mr. Hardter to ask about some belongings that were left at GES. (Tr. 21:8 to 22:2). Near the end of their conversation, Mr. Lugo asked Business Agent Mark Hardter for a copy of his grievance (his third verbal request). (Tr. 21:8 to 22:2). Mr. Hardter again responded that he was on it, but Respondent failed to provide Mr. Lugo with a copy of his grievance. (Tr. 22:21 to 22:13).

### **iii. Luis Lugo's October Information Requests**

After making three separate verbal requests for a copy of his grievance and waiting over a month, Mr. Lugo sent Union Business Agent Mark Hardter a text message on October 2, 2018. (Tr. 24). The text message from Mr. Lugo to Mr. Hardter states in part, "I tried reaching out to you several times and left several messages and you have not returned my phone call. I'm calling you because I need a copy of my grievance and a copy of the statement of the just cause from GES leading them to my termination. I have my statement, which I'm turning in this week, but I want a copy of my grievance and the statement from GES leading them to my termination." (Tr. 24 to 25:5 and R 1). Mr. Hardter did not reply, or respond in any manner, to Mr. Lugo's text message, nor did he provide Mr. Lugo with a copy of the grievance. (Tr. 24:5 to 25:9 and R 1).

On October 3, 2018, Mr. Lugo sent an email to Mr. Hardter, and lead call steward Kevin Harmon requesting a copy of his grievance. (Tr. 26 and GC 3). In the email, Mr. Lugo states, "I have also requested a copy of my grievance and any statements against me from GES leading to

my termination and I have not received any documentation from you Mark. I also called your cell phone left voice messages along with a text message but still have not received any responses.” (GC 3). Mr. Hardter replied to Mr. Lugo on October 4, 2018 with an update on the status of the grievance and to ask Mr. Lugo for documentation, but he did not provide Mr. Lugo with a copy of his grievance. (GC 3 and Tr. 26:13 to 27:5).

Mr. Lugo went to the Union’s office on October 8, 2018 to meet with Hardter to provide him with documents to support his grievance and to provide a statement. (Tr. 27 to 29:4). During this meeting, Mr. Lugo again asked Mr. Hardter for a copy of his grievance. (Tr. 28 to 29:4). This was Mr. Lugo’s sixth request, and second in-person request, for his grievance. Mr. Hardter stated the he was on it. While Mr. Lugo was there, he asked Mr. Hardter if he had received GES’s evidence regarding his termination. (Tr. 28:6 to 14). Mr. Lugo and Mr. Hardter reviewed GES’s evidence packet, and when they were through Mr. Hardter asked Administrative Assistant Bonnie Cone to make Mr. Lugo a copy of the packet of GES’s evidence supporting Mr. Lugo’s discharge. (Tr. 28). Mr. Hardter testified that he “believed” a copy of the grievance was in the packet and that it “should” have been included. (Tr. 145:9 to 16 and Tr. 160:21 to 22). Mr. Lugo, on the other hand, testified credibly and unequivocally that the documents introduced in evidence as General Counsel Exhibit 4 were the only documents provided to him and that the packet did not include a copy of the grievance letters. (Tr. 29 and GC 4). Once again, Hardter failed to provide Mr. Lugo with a copy of the grievance. (Tr. 28:9 to 29:25).

Mr. Lugo saw Mr. Hardter the following day, October 9, 2018, while working at a convention. (Tr. 31:10 to 16). During a brief conversation between Mr. Hardter and Mr. Lugo, Mr. Lugo asked Mr. Hardter about the status of his grievance, the likely outcome, and for a copy of his grievance. (Tr. 31:10 to 23). Mr. Hardter, as he had so frequently done in the past, said that he

was on it, but failed to provide Mr. Lugo with a copy of his grievance, even though the grievance consisted of two letters which were readily accessible. (Tr. 31:12 to 32:7; Tr. 140:17 to 141:1; and Tr. 145:20 to 23).

Luis Lugo asked Respondent to provide him with a copy of his grievance at least seven times from August 27, 2018 to October 9, 2018, verbally, by text, and by email. (Tr. 19:5 to 13; Tr. 20:21 to 21:4; Tr. 21:8 to 22:2; Tr. 24 to 25:5 and R 1; Tr. 26 to 27 and GC 3; Tr. 28 to 29:25 and GC 4; and Tr. 31:12 to 23). Despite his numerous requests, Respondent never provided Mr. Lugo with a copy of his grievance. (Tr. 32:5 to 7). Mr. Lugo did not continue to request a copy of his grievance after October 9, 2018, because his previous requests had been repeatedly ignored. (Tr. 55:21 to 56:7).

## **B. DAWN GENTRY INFORMATION REQUEST**

### **i. Dawn Gentry Background Information**

Dawn Gentry has been a member of Respondent and registered user of its hiring hall for approximately 14 years. (Tr. 67). As a registered user of Respondent's hiring hall, Ms. Gentry was referred to work with various employers including Freeman Decorating Company. (Tr. 67). On or about November 14, 2018, Ms. Gentry received a letter in the mail from Respondent, informing her that she was being charged with violating the Referral Hall Rules. (Tr. 68 to 70 and GC 6). The letter failed to provide any specific information regarding why Ms. Gentry was being charged with violating the Referral Hall Rules, but Ms. Gentry believed it was sent in response to an incident which occurred on or about November 7, 2018, where Ms. Gentry was alleged to have cursed. (Tr. 68 and GC 6).

Ms. Gentry contacted one of Respondent's call stewards upon learning of the potential discipline. (Tr. 70:23 to 71:13). The call steward initially informed Ms. Gentry that she was

permitted to work for Freeman the following day. (Tr. 71). However, shortly thereafter, the steward called Ms. Gentry and informed her that she was not permitted to work the following day. (Tr. 71 to 72).

**ii. Dawn Gentry's November 16 Information Request**

Ms. Gentry called Respondent on or about November 16, 2018, to obtain more information about her potential discipline. (Tr. 72 to 75). Ms. Gentry initially spoke with Respondent's Administrative Assistant, Bonnie Cone. (Tr. 72 and Tr. 205). Ms. Gentry informed Bonnie Cone that she had received a letter indicating that she was being written up by Show Steward Eddie Kisosondi, and asked if she could review what had been written about her. (Tr. 86 to 87 and R 6(e)). Ms. Cone did not directly answer Ms. Gentry's question, but instead stated that Ms. Gentry could "request to appear at the Referral Hall." (Tr. 86 to 87 and R 6(e)). Ms. Gentry reiterated that she wanted to review the information beforehand, but Ms. Cone simply replied "no." (Tr. 87:3 to 11 and R (e)). As the call continued, Ms. Gentry learned for the first time that not only had Respondent written her up, but the employer, Freeman, had also written her up. (R 6(e)). At that point, Ms. Cone told Ms. Gentry that she could appeal the Referral Hall write-up. (R 6(e)). Ms. Gentry disconnected the call shortly thereafter. (R 6(e)).

Ms. Gentry called Respondent again a few minutes later to obtain more information regarding her discipline. (R 6(e)). When Ms. Gentry called back, she informed Bonnie Cone that she had not received a warning or any other indication that she was in trouble. (R 6(e)). Dawn Gentry further stated that this discipline was causing her to lose money. (R 6(e)). Ms. Gentry attempted to explain her situation to Ms. Cone, but Ms. Cone told her that Business Agent Mark Hardter would talk to her regarding the matter. (R 6(e)). Of note, Dawn Gentry's call with Bonnie Cone was recorded. (Tr. 125 to 126; Tr. 154 to 155; and R 6(e)).

When Respondent's Business Agent, Mark Hardter got on the phone Ms. Gentry asked him why she was not able to work for Freeman. (Tr. 73). Mr. Hardter responded that Dawn Gentry should have been suspended for a year, but she was only going to be suspended for 6 months because he fought for her. (Tr.73). Ms. Gentry then asked Mr. Hardter for paperwork including, a grievance, the Freeman write-up, Show Steward Kisosondi's report, and complaints. (Tr. 73 to 74 and GC 7 and GC 8). Mark Hardter informed Ms. Gentry that he did not have to give her anything. (Tr. 73; GC 7; and GC 8). During the course of their conversation, Hardter warned Gentry that the call was being recorded, even though it was not. (Tr. 154:16 to 155:4). Respondent did not provide Ms. Gentry with any of the information she requested during the call. (Tr. 74:22 to 75:9).

### **iii. Dawn Gentry November 19 Information Request**

On or about November 19, 2018, Dawn Gentry sent a letter to Respondent's Business Agent, Mark Hardter; Matthew Loeb President of the International Alliance of Theatrical Stage Employees (not the local); and to the National Labor Relations Board. (Tr. 75 and GC 8). It is uncontested that the Respondent received this letter, and it is stamped as having been received by Respondent on November 21, 2018. (Tr. 152 and GC 8). In the letter Gentry writes:

In the telephone conversation I had with Mark Hardter on 16 November 2018 I asked if I could see the complaint from Freeman about me or the report from Br. Kisosondi who had been the steward on IAAPA for the decorating. Br. Hardter refused. He did inform me the call was being recorded, however. (GC 8).

Respondent did not provide Ms. Gentry with a copy of the requested information or otherwise respond to the letter (or to her earlier verbal requests). (Tr. 78 to 79).

### **iv. Dawn Gentry's Appeal And Information Request**

Respondent maintains a written set of Referral Hall Rules which is an addendum to the Union constitution and bylaws. (Tr. 124 and R 5). The Referral Hall Rules govern how the hiring hall operates, how referrals are made, the disciplinary process and method for appealing discipline.

(Tr. 165 to 166 and GC R 5). Respondent contends that it also maintains unwritten rules, including a rule prohibiting hiring hall users and members from obtaining and reviewing information pertaining to a discipline prior to attending a referral hall committee meeting. (Tr. 184 to 185). This rule has purportedly been in effect for approximately 14 years, yet Business Agent Mark Hardter had difficulty recalling and describing this rule during his testimony. (Tr. 173 to 175). Respondent further contends that it maintains an unwritten procedure for allowing Union members and referents to review records by contacting the Business Agent to schedule a time to come to the office to review the records. (Tr. 190 to 191).<sup>4</sup> Ms. Gentry was never informed of these “unwritten rules”, and there is nothing in the record to suggest that Respondent has publicized the rules or generally informed hiring hall users of their existence. (Tr. 80 and Tr. 195).

On November 19, 2018, pursuant to the procedure set forth in the written Referral Hall Rules, Dawn Gentry mailed another letter to Mark Hardter, and to the Referral Hall Committee appealing the charges outlined in the November 12 letter. (Tr. 75 to 76; Tr. 163; and GC 7). In the appeal, Ms. Gentry explains that on November 16, 2018, she asked Mark Hardter for a copy of complaints against her, and that Mr. Hardter refused to provide the documents. (GC 7). Further, at the end of the appeal, Ms. Gentry states, “I am asking for a copy of any and all complaints regarding this matter.” (GC 7). Union President Herman Dagner admitted receiving Ms. Gentry’s letter and that the letter was read to Respondent’s Referral Hall Committee. (Tr. 188:3 to 13 and Tr. 193:12 to 194:3). Mr. Dagner also recognized that Dawn Gentry was requesting “witness statements or any other information pertaining to her case.” (Tr. 188:3 to 189: 9). Respondent failed to provide Dawn Gentry with complaints against her and took no action to contact Ms. Gentry to make arrangements to provide her with the requested information. (Tr. 76 to 77 and Tr.

---

<sup>4</sup> Of note, the Union President has the unfettered authority to create new referral Hall Committee rules as long as those rules do not conflict with a written rule, and as are fair. (Tr. 185 to 186).

194 to 195:2). Further, at no time did Respondent offer to accommodate Ms. Gentry by providing her with the requested information and redacting what it believed was confidential or by offering any other accommodations. (Tr. 200:1 to 7).

### **C. CREDIBILITY**

Witnesses Dawn Gentry and Luis Lugo testified credibly throughout the hearing. Their testimony was internally consistent and was supported by the evidence in the record. There were instances during the hearing when Ms. Gentry became frustrated, however, even when frustrated, Ms. Gentry provided truthful testimony.

On the contrary, Respondent's witness' testimony was fraught with inconsistencies. For example, Business Agent Mark Hardter attempted to shirk his responsibility for providing Ms. Gentry with the information contained in the Referral Hall Committee book by saying that it was Union President Herman Dagner's responsibility. (Tr. 173:19 to 174). Union President Herman Dagner then testified that Business Agent Mark Hardter was in charge of the information contained in the Referral Hall Committee book. (Tr. 196). Mark Hardter also admitted to falsely telling Dawn Gentry that their November 16, 2018 conversation was being recorded, when it was not. (Tr. 154:16 to 155:4). Hardter tried to explain away his statement to Gentry, by testifying that he told Gentry the line was recorded to calm her down, and simply did not consider the fact that his phone line was not a recorded line. (Tr. 125:18 to 126:1; Tr. 154:16 to 155:4; and Tr. 161:7 to 162:8). Mr. Hardter further testified that he did not speak with Ms. Gentry on Ms. Cone's phone because he wanted privacy, yet he spoke to Ms. Gentry with his door open, and with Ms. Cone close by. (Tr. 161:7 to 22 and 220:23 to 222:6).

Mr. Hardter answered questions posed by Respondent's counsel without issue, but was evasive and argumentative on cross examination. For example, Mr. Hardter recalled Mr. Lugo

leaving him voice messages, but could not recall the content of any of the voice messages, nor did he preserve the voice messages. (Tr. 170:1 to 20). Further, Mr. Hardter repeatedly asserted that he did not “perceive” Ms. Gentry’s letter stating that she had asked for the complaint from Freeman and the report from Mr. Kisosondi as being a request for information. (Tr. 152:23 to 25). Mr. Hardter further testified that Ms. Gentry’s letter was untrue. (Tr. 153). This is an interesting claim considering the only uncontested untruth was Mr. Hardter telling Ms. Gentry that the line was being recorded in an attempt to limit the conversation. (Tr. 154:16 to 155:4).

Ms. Gentry and Mr. Lugo testified in a consistent and straightforward manner throughout the hearing and they should be credited over Mr. Hardter and Mr. Dagner, who were evasive and offered inconsistent testimony.

**V. RESPONDENT VIOLATED THE ACT BY FAILING TO PROVIDE LUGO AND GENTRY WITH REQUESTED INFORMATION**

**A. THE UNION’S DUTY OF FAIR REPRESENTATION INCLUDES A DUTY TO PROVIDE BARGAINING UNIT MEMBERS WITH REQUESTED INFORMATION THAT AFFECTS THEIR EMPLOYMENT.**

A union, as the exclusive bargaining representative of employees, owes a duty of fair representation to those employees. *Vaca v. Sipes*, 386 U.S. 171, 177 (1967). That duty of fair representation includes the obligation to provide employees with requested information affecting their employment. *Branch 529, Nat’l Ass’n of Letter Carriers*, 319 NLRB 879, 880-881 (1995). A union breaches its duty of fair representation when it acts in an arbitrary, irrational, or discriminatory manner, or in bad faith. *Id* at 881. A union’s duty of fair representation broadly applies to all union activity, including the operation of a hiring hall. *Air Line Pilots Ass’n, Int’l v. O’Neill*, 499 U.S. 65, 67, 77 (1991). In fact, some courts have found that a union operating an exclusive hiring hall owes employees a heightened duty of fair dealing. *Plumbers Local Union 342 (Contra Costa)*, 336 NLRB 549, 549 (2001). A union breaches its duty of fair representation

when, "... in light of the factual and legal landscape, [its actions] can be fairly characterized as so far outside of a 'wide range of reasonableness,'" that they are irrational or arbitrary. *O'Neill*, 499 U.S. at 66. In this context, arbitrary means without reason, and irrational means a reason without logic. *International Union Operating Engineers Local 18*, 362 NLRB 1438, 1444 (2015).

**B. RESPONDENT VIOLATED THE ACT BY FAILING TO PROVIDE LUIS LUGO WITH A COPY OF HIS GRIEVANCE**

In the case at hand, Luis Lugo requested that Respondent provide him with a copy of his grievance on at least seven separate occasions. (Tr. 19:5 to 13; Tr. 20:21 to 21:4; Tr. 21:8 to 22:2; Tr. 24 to 25:5; Tr. 26 to 27; Tr. 28 to 29:25; Tr. 31:12 to 23; R 1; GC 3; and GC 4). This does not include the times that Mr. Lugo left a voicemail on Mr. Hardter's phone requesting a copy of his grievance. (R 1; GC 3; and Tr. 24:20 to 24). Over the course of several months, Respondent's Business Agent repeatedly informed Mr. Lugo that he was working on getting him the grievance, however, Respondent never provided Mr. Lugo with a copy of his grievance. (Tr. 32:5 to 7).

In *National Association of Letter Carriers, AFL-CIO, Branch 758*, 325 NLRB 952, 953, the Board held that a union breached its duty of fair representation by refusing to provide an employee with a copy of their grievance despite the employee having a legitimate interest in obtaining it, and the union had no countervailing interest in refusing to provide the requested information. As such, Respondent breached its duty of fair representation by refusing to provide Luis Lugo with a copy of his grievance, despite his legitimate interest in having it, and the Union's lack of countervailing interest.

Respondent will likely argue that Hardter's testimony establishes that Lugo was provided with a copy of grievance when he visited the office in October 2018. However, as discussed above, Hardter did not prepare the packet himself and could not testify with certainty that the packet included a copy of the grievance. Further, there is no evidence that Ms. Cone confirmed that the

packet in fact included a copy of the grievance. Mr. Lugo, on the other hand, testified credibly and with certainty that the grievance was not included in the packet he was given by Respondent. Furthermore, Respondent cannot argue that it believed a copy of the grievance had been provided and that it acted in a reasonable manner because the very next day Lugo once again requested a copy of his grievance. Respondent's repeated refusal to provide Mr. Lugo with a copy of his grievance, which consisted of two pages that were readily accessible, is so far outside the wide range of reasonableness as to be considered arbitrary. *O'Neill*, 499 U.S. at 66.

Respondent's arbitrary actions in failing to provide Mr. Lugo with a copy of his grievance was a breach of its duty of fair representation as an operator of an exclusive hiring hall. Accordingly, Counsel for the General Counsel respectfully requests that the Administrative Law Judge find that Respondent violated Section 8(b)(1)(A) of the Act as alleged in paragraphs 9(b), 9(c), and 11 of the Consolidated Complaint.

**C. RESPONDENT VIOLATED THE ACT BY FAILING TO PROVIDE DAWN GENTRY THE REQUESTED INFORMATION**

In the case at hand, Dawn Gentry made several requests to Respondent to obtain information pertaining to her six-month suspension. (Tr. 73 to 75; Tr. 86 to 87; Tr. 75 to 76; Tr. 163; GC 7; and GC 8). Administrative Assistant Bonnie Cone, Business Agent Mark Hardter, Union President Herman Dagner, and the entire Referral Hall Committee were aware of Ms. Gentry's information requests. (Tr. 73 to 75; Tr. 86 to 87; Tr. 193:12 to 194:3; GC 7; and GC 8).

Ms. Gentry specifically asked Respondent Administrative Assistant Bonnie Cone to review what Steward Eddie Kisosondi had written regarding her suspension and Business Agent Mark Hardter for paperwork showing that she was written up, complaints against her. (Tr. 87 and Tr. 73:5 to 74:19). Ms. Gentry then followed up these requests by sending letters to Respondent requesting a copy of complaints against her and the Union's report regarding her discipline. (GC 7 and GC

8). It is uncontested that Ms. Gentry was never provided with a copy of the requested information. Accordingly, Respondent breached its duty of fair representation by failing to provide Ms. Gentry with the information she requested.

As stated above, a union breaches its duty of fair representation when it refuses to provide employees with requested information affecting their employment. *Branch 529, Nat'l Ass'n of Letter Carriers*, 319 NLRB 879, 880-881 (1995). Respondent was aware that Ms. Gentry was requesting the information in connection with being suspended by the Referral Hall and Freeman, which affected her employment.

Respondent will likely argue that it is reasonable to maintain and enforce an unwritten rule prohibiting bargaining unit members and referents from obtaining information contained in the Referral Hall Committee book prior to attending a Referral Hall Committee meeting. However, the Board has held that a union cannot evade its duty to provide information to bargaining unit members by asserting particularized confidentiality concerns or adhering to broadly ordered policies. *Carpenters Local 35 (Construction Employers Assn.)*, 317 NLRB 18, 24 (1995).

In *Piedmont Gardens*, 362 NLRB 1135, 1136 (2015), the union made an information request to the employer for, “[a]ny and all statements that [were used] as part of your investigation into Mr. Arturo [Bariudad]” as well as “[t]he names and job title of everyone [who] was involved in the investigation.” The employer claimed that that the information pertaining to the witness statements was confidential, and therefore not subject to disclosure, however the employer did provide the union with the information it did not deem to be confidential. *Id.* The Board explained that “Establishing a legitimate and substantial confidentiality interest requires more than a general desire to protect the integrity of employment investigations.” *Id.* Rather, each investigation should be reviewed to determine whether, “witnesses need protection, evidence is in danger of being

destroyed, testimony is in danger of being fabricated, [or] there is a need to prevent a cover up.”  
*Id.*

In the instant case, Respondent failed to independently evaluate the need for confidentiality. (Tr 184 to 185:2). Instead, Respondent refused to provide Ms. Gentry with any of the information she requested, confidential or otherwise, relying on an internal unwritten rule that was purportedly created over 14 years ago. (Tr 184 to 185:2). A union is not at liberty to invoke internal constitutional or prohibitions to create a confidentiality bar where there is no contention, or more importantly evidence, of possible abuse of the disclosed information. *Construction Employers Assn.*, 317 NLRB 18, 24 (1995). As such, Respondent failed to establish a need for maintaining the confidentiality of witness statements.

Once a legitimate and substantial need for confidentiality is established, the need for confidentiality must be balanced against the need for the information. *Piedmont Gardens*, 362 NLRB 1135, 1135 (2015). As such, even if Respondent had established a need for confidentiality, that need would be outweighed by Ms. Gentry’s need for the information. The confidentiality interest can vary depending on the nature of the industry and circumstances on the particular case. *Metropolitan Edison Co.*, 330 NLRB 107, 108 (1999).

In *Metropolitan Edison Co.*, 330 NLRB 107 (1999), the Board found that the employer violated the Act by refusing to provide information regarding two informants who provided information to the employer regarding a coworker stealing food from the cafeteria. In that case, the Board reasoned that, “In our view, concerns about petty cafeteria theft, which poses no apparent threat to employee or public safety, do not carry the same ‘unusually great weight’ as the interests that were found to be present in *Pennsylvania Power* and *Mobil Oil*.” *Id* at 108.<sup>5</sup>

---

<sup>5</sup> In *Pennsylvania Power Co.*, 301 NLRB 1104 (1991), the Board found that the need for confidentiality outweighed the need for information when the employer did not provide the union with requested information concerning

The underlying incident leading to Ms. Gentry's suspension involved Ms. Gentry cursing, and there is no threat to employees or the public. Further, Ms. Gentry was not engaged in illegal activity as was the case in *Metropolitan Edison Co.* Respondent argued that the information contained in the Referral Hall Committee book needs to remain confidential for fear of bullying or harassment, however this claim is without reason or logic i.e. arbitrary and irrational. Union President Herman Dagner testified employees are not permitted to review the Referral Hall Committee book because it is confidential, but then also testified that that employees are provided with some information that is contained in the book, and that Respondent was only concerned about witness statements. (Tr 198:15 to 199:13). Further, Respondent failed to evaluate the reasonable likelihood that disclosing the requested information to Ms. Gentry would lead to bullying or harassment. *American Medical Response West*, 366 NLRB No. 146, slip op. at 4 (2018). As such, Respondent's interest in maintaining the confidentiality of the Referral Hall Committee book is nonexistent. On the contrary, Ms. Gentry's need for the information to is great. Not only was Ms. Gentry suspended for working for Freeman for six months, but Respondent suspended her from working for any employer for six months. (Tr. 68). Ms. Gentry made it known that she wanted to appeal her six-month suspension, and the requested information would have assisted Ms. Gentry that appeal. (Tr. 80:2 to 4; Tr. 87; GC 7; and GC 8). Even if Respondent correctly classified the information as being confidential, which it did not, and even if Respondent's need to keep the information confidential outweighed Ms. Gentry's need for the information, which it does not, Respondent still violated the Act by not providing Ms. Gentry with

---

informants who were providing information about suspected employee drug use at a nuclear power generating plant. The Board reasoned that, "The connection of confidentiality to the safety of the public and other employees and to job performance is plain here. The respondent's workplace includes both nuclear and fossil power production plants as well as other inherently dangerous work settings that make the need for a drug-free environment both obvious and necessary." *Id.* at 1107.

the information that is not confidential and making accommodations to provide the confidential information.

Under Board law, “. . . if the Board concludes that the confidentiality interest outweighs the requester’s need, the party asserting confidentiality may not simply refuse to provide the information, but must seek an accommodation that would allow the requester to obtain the information it needs while protecting the party’s interest in confidentiality.” *Piedmont Gardens*, 362 NLRB 1135, 1137 (2015) citing *Borgess Medical Center*, 342 NLRB 1105, 1106 (2004). Thus, even if Respondent could establish that it has a legitimate and substantial interest in keeping witness statements confidential and that its interest outweighed Ms. Gentry’s need for the information, it still owed a duty to Ms. Gentry to seek an accommodation, such as redacting witness’ names, that would have allowed Respondent to maintain the confidentiality of the statements, while providing Ms. Gentry with the information she needed to pursue the appeal of her suspension.

Respondent violated the Act even if it was not required to provide Ms. Gentry with the witness statements because it failed to produce the other information she requested, including the complaint from Freeman and the show report prepared by steward Kissondi.<sup>6</sup>

Counsel for the General Counsel respectfully requests that the Administrative Law Judge conclude that Respondent violated the Act as alleged in paragraphs 10(c), 10(d), and 11 of the Consolidated Complaint.

---

<sup>6</sup> To the extent that Respondent argues Gentry received a copy of the Freeman letter confirming her six-month suspension, Gentry credibly testified that she did not receive a copy of that letter in the mail and the letter itself does not show her as having been mailed a courtesy copy of the letter. (Tr. 79:16 to 18).

## **VI. CONCLUSION AND REMEDY**

Hiring hall user Luis Lugo requested on numerous occasions that Respondent provide him with copies of the grievances related to his discharge from GES. Respondent ignored those requests and never provided Lugo with a copy of his grievances. Similarly, hiring hall user Dawn Gentry made multiple requests for information related to her suspension from Freeman Decorating and from Respondent's hiring hall. Gentry's requests sought copies of the complaints against her concerning her conduct on November 7, 2018, and copies of documents received from Freeman confirming her suspension. Respondent has not established that any of the information Dawn Gentry requested was confidential or if it was, that its need to keep the information confidential outweighed Ms. Gentry's right to obtain the information. Even if it has, Respondent violated the Act by failing to provide the non-confidential information and offering to making accommodations to provide the confidential information.

To remedy these violations, Respondent should be ordered to provide Luis Lugo with a copy of his grievance. Respondent should be further ordered to provide Dawn Gentry with a copy of what it received from Freeman confirming her six-month suspension, the Union's report on the matter, and complaints against her concerning her conduct on November 7, 2018. Respondent should also be ordered to post a Notice to bargaining unit members and referents at its facility located at 7131 Grand National Drive, Suite 102, Orlando, Florida, as well as an electronic posting of the Notice on Respondent's website <http://www.iatse835.org>.<sup>7</sup>

**WHEREFORE**, Counsel for the General Counsel respectfully requests that the Administrative Law Judge find that Respondent committed the unfair labor practices alleged in the Consolidated Complaint, as amended by the Regional Director's Order dated May 14, 2019,

---

<sup>7</sup> A proposed Notice is included herein as an attachment.

and recommend that the Board order that Respondent provide the remedies described above and all other remedies deemed appropriate.

**DATED** at Tampa, Florida this 13<sup>th</sup> day of September 2019.

*/s/ Steven Barclay*

Steven M. Barclay  
Counsel for the General Counsel  
National Labor Relations Board  
201 East Kennedy Boulevard, Suite 530  
Tampa, Florida 33602  
(813) 228-2238

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing document, General Counsel's Corrected Brief to the Administrative Law Judge, in cases 12-CB-233694 and 12-CB-233788 was served this 13<sup>th</sup> day of September 2019, as follows:

**By Electronic Filing:**

Hon. Donna Dawson  
Administrative Law Judge  
National Labor Relations  
Board 1015 Half Street SE  
Washington, DC 20570

**By Electronic Mail:**

Eric Lindstrom  
Egan, Lev, Lindstrom & Siwica, P.A.  
P.O. Box 2231  
Orlando, FL 32802  
elindstrom@eganlev.com

Dawn Gentry  
4126 Pine Hill Cir.  
Orlando, FL 32808-2545  
felonygentry@yahoo.com

Luis Lugo  
216 Pelican Ct.  
Kissimmee, FL 34743  
marvelousbylousoph@gmail.com

*/s/ Steven Barclay* \_\_\_\_\_

Steven M. Barclay  
Counsel for the General  
Counsel National Labor  
Relations Board  
201 East Kennedy Boulevard, Suite 530  
Tampa, Florida 33602  
(813) 228-2238

**NOTICE TO EMPLOYEES  
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 a representative to bargain with your employer on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

**WE WILL NOT** fail or refuse upon request to promptly provide you with copies of grievances and other information in our possession concerning your eligibility to be referred to work, status on the referral list, employment status, wages, hours and other terms and conditions of employment.

**WE WILL NOT** in any like or related manner restrain or coerce employees in the exercise of the above stated rights guaranteed under Section 7 of the National Labor Relations Act.

**WE WILL** promptly provide Dawn Gentry with the information she requested from us on November 15 and 18, 2018.

**WE WILL** promptly provide Luis Lugo with a copy of the grievance he requested from us that relates to his discharge by Global Experience Specialists, Inc. on or about August 25, 2018.

**INTERNATIONAL ALLIANCE OF THEATRICAL  
STAGE EMPLOYEES, MOVING PICTURE  
TECHNICIANS, ARTISTS AND ALLIED CRAFTS  
OF THE UNITED STATES, ITS TERRITORIES  
AND CANADA, LOCAL 835, AFL-CIO, CLC**

(Labor Organization)

**Dated:**

**By:**

\_\_\_\_\_  
(Representative)

\_\_\_\_\_  
(Title)

---

*The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine*

*whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-844-762-NLRB (1-844-762-6572). Hearing impaired callers who wish to speak to an Agency representative should contact the Federal Relay Service (link is external) by visiting its website at <https://www.federalrelay.us/tty> (link is external), calling one of its toll free numbers and asking its Communications Assistant to call our toll free number at 1-844-762-NLRB.*

201 E Kennedy Blvd Ste 530  
Tampa, FL 33602-5824

**Telephone:** (813)228-2641  
**Hours of Operation:** 8 a.m. to 4:30 p.m.

---

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

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